IN THE SUPERIOR COURT OF
THE STATE OF WASHINGTON FOR KING COUNTY

FEDERAL WAY CAMPUS, LLC, a Delaware limited liability company registered in Washington, Petitioner, vs. CITY OF FEDERAL WAY, a Washington municipal corporation, Respondent. SAVE WEYERHAEUSER CAMPUS, a Washington nonprofit corporation, Additional Party.	No. LAND USE PETITION

Federal Way Campus, LLC ("Petitioner") states as follows for its Land Use Petition ("Petition") to this Court for review of the land use decision issued by the Hearing Examiner ("Examiner") for the City of Federal Way ("City") relating to Petitioner's application for a Process III land use decision and related State Environmental Policy Act ("SEPA") review for Petitioner's development project known as Woodbridge Building A ("Project").

1. Petitioner is a Delaware limited liability company registered in Washington. The

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address of its registered agent is Corporation Service Company, 300 Deschutes Way SW, Suite 304, Tumwater, WA 98501. Petitioner is the owner of the property ("Property") on which the Project is planned for development and is the applicant for the Project.

2. The attorneys for Petitioner are John C. McCullough, Courtney A. Kaylor, and David Carpman, McCullough Hill Leary, PS, 701 Fifth Avenue, Suite 6600, Seattle, Washington 98104.

3. Respondent City is a Washington municipal corporation. Its address is 33325 8th Avenue South, Federal Way, Washington 98003.

4. Additional party Save Weyerhaeuser Campus ("SWC") is a nonprofit corporation. Craig Rice is its registered agent. Mr. Rice's address is 2862 S. 354th Lane, Federal Way, Washington, 98003-7138. SWC is named pursuant to RCW 36.70C.040(2)(d) because it filed an appeal to the Examiner regarding the land use decision at issue in this case.

5. Attached to this Petition as Exhibit A is the Findings of Fact, Conclusions of Law and Final Decision, dated September 12, 2019 ("Original Decision"). Attached to this Land Use Petition as Exhibit B is the Findings of Fact, Conclusions of Law and Decision Upon Reconsideration, dated October 29, 2019 ("Reconsideration Decision"). The use of the terms "Land Use Decision" and "Decision" throughout this Petition refer to the Original Decision as amended by the Reconsideration Decision.

6. Petitioner has standing pursuant to RCW 36.70C.060 because it is the owner of the Property that is subject to the Decision and is the applicant to develop the Project on the Property. Petitioner is aggrieved and adversely affected by the Decision because its ability to develop the Project is prejudiced by the Decision, its interests are among those that the City was

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required to consider when it made the Decision, and a judgment in favor of Petitioner would redress the prejudice caused by the Decision.

7. Petitioner has exhausted its administrative remedies to the extent required by law.

8. This action is properly filed in King County Superior Court, pursuant to RCW 4.12.010, 4.12.020 and 4.12.025, since the Property is located in King County and the City is located in King County.

9. The facts upon which Petitioner relies to sustain its statements of error are set forth in the administrative record of the Decision, as it may be supplemented in this proceeding. A concise summary of the key facts follows:

a. Petitioner is the owner of several parcels of property in the City that were formerly known as the Weyerhaeuser campus are now known as Woodbridge Corporate Park ("Campus"). The Campus is located between I-5, South 320th Street, North Lake and State Route 18 ("SR-18"). Applicant proposes to construct the Project on one of these parcels ("Project Site"), which is located northwest of the interchange between SR-18 and Weyerhaeuser Way South.

b. The Project consists of a 45-foot tall, 225,950 square-foot warehouse, accessory parking, a forested buffer and frontage improvements. A stormwater detention pond will also be constructed on the parcel immediately to the south of the Project Site.

c. Pursuant to the Federal Way Revised Code ("FWRC" or "Code"), the Project was required to undergo Process III land use review and review under SEPA. On June 17, 2016, Applicant submitted a land use application for Process III approval of the Project, along with a SEPA Checklist.

d. In September 2017, Applicant submitted an application to build a second

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warehouse on the parcel directly to the south of the Project Site, referred to as Greenline Building B ("Building B"). Applicant conceived the Project and Building B separately; they were designed and may be constructed, operated and owned independently from each other. Because of the two projects' proximity, however, if they are both constructed, they will share the stormwater detention pond (which will be constructed on the Building B site) and a driveway.

e. In November 2017, Applicant submitted an application to construct three additional buildings (the "Business Park") on parcels in the northern part of the Campus. The Business Park site is not contiguous with the Project Site and is separated from it by intervening parcels and multiple roadways. The Business Park is being designed and may be constructed, operated and owned independently from both the Project and Building B.

f. Petitioner's applications to construct Building B and the Business Park are separate from each other and from its application to construct the Project. The City determined not to review the Project, Building B and the Business Park in the same environmental document. The City has not completed its review of either Building B or the Business Park, and both applications remain pending.

g. After several years of review – during which Petitioner submitted thousands of pages of technical analyses, responded to multiple rounds of comments, and made numerous revisions – the City issued a Mitigated Determination of Nonsignificance ("MDNS") for the Project on October 26, 2018 and a Process III Approval ("Process III Approval") for the Project on February 4, 2019. The Process III Approval "was supported by 28 pages of detailed findings and conclusion" and "imposed over 40 specific conditions of approval to ensure the [P]roject's regulatory compliance and to mitigate any anticipated impacts." Ex. A, p. 8.

h. SWC appealed the MDNS to the Examiner on November 30, 2018 (case

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number HEX 18-003) and appealed the Process III Approval to the Examiner on February 21, 2019 (case number HEX 19-001). The Examiner consolidated the two appeals and, during pre-hearing motion practice, granted Petitioner's and the City's joint request to dismiss numerous appeal claims. The Examiner subsequently held five days of hearing, on June 20 and 21 and August 7, 8, and 9, 2019. After the hearing, the Examiner dismissed numerous additional claims by SWC.

i. On September 12, 2019, the Examiner issued the Decision, which sustained both the MDNS and the Process III Approval. The Examiner concluded that "none of the environmental impacts cited by [SWC] qualify as probable significant adverse impacts" under SEPA and that SWC had "not cited any grounds for finding noncompliance with Process III review criteria." Ex. A, p. 41. The Decision also imposed two additional conditions of approval. The first condition (designated MDNS Condition No. 11) required the City to identify any "proportionate share mitigation" for the Project in connection with its transportation concurrency review for the Business Park and the Petitioner to pay any such funds or install any such mitigation prior to occupancy of Building A. The second condition (designated MDNS Condition No. 12) required Petitioner to supplement its stormwater drainage plan to demonstrate compliance with the *Executive Proposed Basin Plan Hylebos Creek and Lower Puget Sound* (King County Surface Water Management, 1991) ("Hylebos Basin Plan").

j. SWC filed a motion for reconsideration of the Decision on September 27, 2019, and Petitioner and the City filed responses. On October 29, 2019, the Examiner issued the Reconsideration Decision, which amended the two conditions of approval imposed by the Decision. As amended by the Reconsideration Decision, MDNS Condition 11 requires Petitioner to evaluate "[c]umulative traffic impacts" from the Project, Building B, and the

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Business Park on one intersection (the SR 18 westbound ramp intersection with Weyerhaeuser Way South) and requires the City to impose any necessary "pro-rata mitigation" for the Project. Ex. B, pp. 8-9. The Reconsideration Decision made no substantive changes to MDNS Condition No. 12 but renumbered and reclassified it as Process III Approval Condition No. 43 "to reflect the fact that it is not a SEPA mitigation measure." Ex. B, p. 9.

k. The Examiner is the "officer with the highest level of authority to make the determination" on an "application for a project permit or other governmental approval required by law before real property may be . . . developed" in the City. *See* RCW 36.70C.020(2)(a). The Decision, as amended by the Reconsideration Decision, is the City's "final determination" on Petitioner's application to construct the Project. *See id*.

10. Petitioner does not appeal the MDNS or the Process III Approval as originally issued by the City, nor does Petitioner appeal the Decision to sustain the MDNS and Process III Approval. However, in imposing MDNS Condition No. 11 and Process III Approval Condition No. 43, and in making associated factual findings and legal conclusions, the Examiner engaged in unlawful procedure and failed to follow prescribed process; erroneously interpreted the law; rendered a decision that is not supported by substantial evidence; erroneously applied the law to the facts; and rendered a decision outside his authority or jurisdiction. Petitioner's specific objections to the Decision include, but are not limited to, the following:

a. The Decision engages in unlawful procedure and fails to follow prescribed process, erroneously interprets the applicable law, makes a decision not supported by substantial evidence, and erroneously applies the law to the facts when it determines that analysis of and mitigation for "cumulative impacts" of the Project, Building B and Business Park is required for the Project under SEPA. The Decision correctly determines that WAC 197-11-060(3)(b) does

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not require SEPA review of the Project, Building B and Business Park in the same document. The City properly considered these three separate and distinct projects as separate proposals under SEPA. No other provision of SEPA or its regulations requires these three projects to be analyzed together.

b. The Decision's determination that the Project, Building B and the Business Park are economically interdependent and that this compels their development in the same timeframe is not supported by substantial evidence in the record. The evidence demonstrates the projects are economically independent and each may proceed without the others. To the extent that the Decision determines that "parts" of the Project, Building B, and the Business Park should be reviewed in the same environmental document pursuant to WAC 197-11-060(3)(b) to avoid "piecemealing," the Decision constitutes an erroneous interpretation of the law, is not supported by substantial evidence and is a clearly erroneous application of the law to the facts. The standards of WAC 197-11-060(3)(b) for review of the projects in the same environmental document are not met here.

c. The Decision engages in unlawful procedure and fails to follow prescribed process, erroneously interprets the applicable law, erroneously applies the law to the facts and renders a decision outside the Examiner's authority or jurisdiction when it fails to defer to, and effectively reverses, the City's determination not to analyze the Project in the same document as Building B and the Business Park under WAC 197-11-060(3)(c).

d. The Decision engages in unlawful procedure and fails to follow prescribed process, erroneously interprets the applicable law, makes a decision not supported by substantial evidence, erroneously applies the law to the facts and renders a decision outside the Examiner's authority or jurisdiction when it determines that a "cumulative impact analysis" under SEPA

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must consider not only the Project but also Building B and the Business Park, projects for which an application was not submitted prior to the Project application, which have not yet been approved or constructed, and which were not the subject of the appeal before the Examiner. As the Examiner properly determined, cumulative impacts are those that result from a proposal's contribution to *existing* conditions. Future projects are not existing conditions. SEPA does not require that a cumulative impacts analysis for the Project consider the potential future development of Building B or the Business Park. The requirement to consider the Project along with Building B and the Business Park is also inconsistent with the Code and the City's adopted standards and procedures for transportation impact analysis and the City's longstanding practice.

e. The Decision engages in unlawful procedure and fails to follow prescribed process, erroneously interprets the applicable law, makes a decision not supported by substantial evidence, erroneously applies the law to the facts and renders a decision outside the Examiner's authority or jurisdiction when it determines that under SEPA or the Code the City must analyze the Project's pro-rata contribution to cumulative impacts caused, in part, by Building B and the Business Park and that the Petitioner must provide pro-rata mitigation for such impacts. The Decision improperly requires analysis of the contribution of the Project to speculative future impacts rather than its impacts on existing conditions. The Decision also improperly requires mitigation for Project impacts that are less than significant. This analysis and mitigation is not required by SEPA or the Code and is inconsistent with the City's adopted standards and procedures for transportation impact analysis and the City's longstanding practice.

f. The Decision engages in unlawful procedure and fails to follow prescribed process, erroneously interprets the applicable law, erroneously applies the law to the facts and renders a decision outside the Examiner's authority or jurisdiction when it determines that the

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City may use the Washington State Department of Transportation Development Services Manual to assess the significance of impacts or as the basis for imposition of mitigation under SEPA, since this Manual has not been adopted by the City.

g. The Decision engages in unlawful procedure and fails to follow prescribed process, erroneously interprets the applicable law, makes a decision not supported by substantial evidence, erroneously applies the law to the facts and renders a decision outside the Examiner's authority or jurisdiction because it fails to apply the appropriate burden of proof under SEPA when reviewing the City's determination regarding transportation impacts of the Project. The Examiner failed to defer to the City's determination with regard to transportation impacts, which was based on the City's adopted procedures and established practice.

h. The Decision engages in unlawful procedure and fails to follow prescribed process, erroneously interprets the applicable law, makes a decision not supported by substantial evidence, and erroneously applies the law to the facts when it determines that the City did not adequately consider the Hylebos Basin Plan. The evidence shows the provisions of this Plan are largely irrelevant and, to the extent there are relevant provisions, the Project is consistent with them.

i. The Decision errs in imposing MDNS Condition No. 11 and Process III Approval Condition No. 43 for these reasons.

j. The Decision engages in unlawful procedure and fails to follow prescribed process, erroneously interprets the applicable law, makes a decision not supported by substantial evidence, erroneously applies the law to the facts and renders a decision outside the Examiner's authority or jurisdiction to the extent that it determines that Save Weyerhaeuser Campus ("SWC") or other members of the public are legally entitled to review, comment or appeal

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opportunities that have not been provided. Neither SEPA nor other law requires such additional process at this time.

k. Petitioner assigns error to all or part of the following portions of the Original Decision: Summary; Findings of Fact 9 and 17; Conclusions of Law 4, 5, 7, 8, 9, 20.C, 21, 25; Decision, Conditions. The Reconsideration Decision does not contain numbered findings or conclusions. Petitioner assigns error to all or part of the following sections and unnumbered paragraphs of the Reconsideration Decision: Summary, first, third, fourth and fifth paragraphs; Transportation Error of Fact, second and third paragraphs; Impact of Traffic Impact Error of Fact, all paragraphs; Revised Condition 1, all paragraphs; Potential Error in Delegation of Decision Making, all paragraphs; Basin Plan Only Applies to Drainage Issues, fourth paragraph; and Decision, Conditions.

12. Petitioner asks for the following relief:

(a) For an order reversing all portions of the Decision requiring additional Process III or SEPA review and striking MDNS Condition No. 11 and Process III Approval Condition No. 43;

(b) For an order upholding the Process III Approval and MDNS;

(c) For an order allowing Petitioner to supplement the record to this Court, as provided by law;

(d) For award of Petitioner's attorney fees and costs against SWC, as may be provided by law;

(e) For permission to amend this Land Use Petition to conform to the proof; and

(f) For such other further relief as the Court deems just and equitable.

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DATED this 18th day of November, 2019.

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EXHIBIT A

BEFORE THE HEARING EXAMINER FOR
THE CITY OF FEDERAL WAY

Greenline Warehouse A Administrative Appeal of Process III and MDNS HEX 18-003; 19-001	FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION

SUMMARY

The Appellant, Save Weyerhaeuser Campus ("SWC"), appeals the approval of a Process III decision and the issuance of a mitigated determination of non-significance ("MDNS") for the Greenline Warehouse A project, a 225,950 square-foot warehouse to be located on a 15.46 acre site in what is commonly known as the Weyerhaeuser Campus. With the addition of two conditions to the MDNS, the Process III approval and MDNS are sustained. The two added conditions are (1) no development activity until the concurrency review for an associated business park development is completed and pro rata mitigation imposed, if necessary, on Warehouse A for any level of service failure; and (2) the Applicant's stormwater plan shall be supplemented to demonstrate conformance to the *Executive Proposed Basin Plan Hylebos Creek and Lower Puget Sound*.

The Appellant's primary concern in the course of the five-day appeal hearing was an alleged lack of cumulative impact analysis of the proposal. Federal Way Campus LLC ("FWC"), the Applicant, currently owns the Weyerhaeuser Campus and has two other Process III applications pending with the City of Federal Way ("City") within the same campus. The two other projects are Warehouse "B,"

located adjacent and to the south of the Warehouse "A" project site, and the proposed Greenline Business Park, which is located approximately one quarter mile to the north. The Appellant believes that the cumulative impacts of all three projects should have been considered for both the environmental review (which resulted in the MDNS) and the Process III review. The Appellant's concerns in this regard were shared by the Washington State Department of Transportation (WSDOT), the King County Department of Transportation, the King County Department of Natural Resources and Parks, and the Washington State Department of Archaeology and Historic Preservation (DAHP), as well as the Muckleshoot and Puyallup Tribes.

The Appellant's concerns over adequate cumulative impact analysis is well placed, given the high environmental sensitivity of the project site. The Weyerhaeuser Campus is a community centerpiece visible to likely millions of travelers along I-5 with a corporate headquarters building that has won national and international recognition for its unique, innovative and strikingly aesthetic architectural design. The drainage basin shared by the three projects feeds into the Hylebos watershed, which the adopted *Executive Proposed Basin Plan Hylebos Creek and Lower Puget Sound*, King County Surface Water Management, 1991 plan identifies as a Regionally Significant Resource Area. Finally, the proposal is just a few hundred feet from I-5 and SR 18 interchanges, which an American Transportation Research Institute Report identifies as the 46th most congested bottleneck in the country in 2019.

Ultimately, due to the thorough review conducted by City staff, the impacts of the project, including cumulative impacts, have been adequately assessed and mitigated. This Decision concludes[1] that cumulative impact analysis of Warehouse A is required for both the MDNS and Process III reviews and that the City has conducted that required analysis. The City and the Applicant both argued that cumulative impact analysis was not required and that in any event, adequate cumulative impact analysis had been conducted. The City appeared to take the position that unless the three campus proposals were inter-related to the extent required by a State Environmental Policy Act ("SEPA") regulation, WAC 197-11-060(3)(b), no cumulative impact analysis was required. There is in fact no SEPA regulation that limits cumulative impact review to WAC 197-11-060(3)(b). The term "cumulative impact" isn't even mentioned in WAC 197-11-060(3)(b). This Decision agrees with the Appellant that WAC 197-11-060(3)(b) is not the only legal mandate for cumulative impact analysis. Specifically, as identified by Appellants, WAC 197-11-060(3)(b) governs the scope of a proposal subject to environmental review, which is distinct from the scope of review itself. Ultimately, this Decision concludes that WAC 197-11-060(3)(b) likely does not mandate consolidation of the Warehouse B and Greenline Business Park proposals, because each proposal can be constructed and operate independently of the other.

Outside of WAC 197-11-060(3)(b), the SEPA rules do not identify when cumulative impacts are required. It is apparent, however, that cumulative impacts are considered to be part of the "environmental impacts" that must be reviewed in SEPA analysis, since WAC 197-11-792(2)(c) identifies that an impact for purposes of environmental impact statement review can be either direct,

[1] The conclusion that Process III review includes cumulative impact analysis was made in the Examiner's Ruling on Motion for Partial Dismissal, dated May 26, 2019. The findings and conclusions of law on that issue are incorporated into this decision by reference as if set forth in full.

indirect or cumulative. Consequently, since SEPA rules require evaluation of environmental impacts for determining whether an environmental impact statement is required, it is reasonable to conclude that those impacts include cumulative impacts. As discussed in the conclusions of law, case law also mandates that cumulative impacts be considered when evaluating whether making a SEPA threshold determination, i.e. ascertaining whether an environmental impact statement is required.

The courts define a cumulative impact as harm that results from a project's contribution to existing adverse conditions or uses in an affected area. *Boehm v. City of Vancouver*, 111 Wn. App. 711, 720 (2002). As noted in this Decision, the MDNS must be overturned or revised if there are unmitigated probable significant adverse impacts. Since cumulative impacts are considered to be part of "impacts,", it is clear from this standard that if a cumulative impact is significant, probable and adverse, it must be mitigated to avoid preparation of an environmental impact statement. Related to that requirement is that the potential for such impacts must be reasonably evaluated. The operative limit on what cumulative impacts must be evaluated and mitigated is found in the SEPA definition for "probable," which identifies that remote and speculative impacts do not qualify as probable impacts. The Applicant's two pending proposals are both under active review. The likelihood of completion of those two projects within the near future is neither remote nor speculative. Further, since the three campus projects share the same infrastructure, drainage basin and same campus with significant historical features, the potential for cumulative impacts is also neither remote nor speculative. For that reason, this Decision finds that a cumulative impact analysis that addresses impacts of Warehouse B and the Greenline Business Park is required for the environmental review of Warehouse A to the extent that such impacts collectively adversely affect the environment.

Although the City and Applicant fought the premise that cumulative impact analysis needed to be conducted, this doesn't mean that the analysis they undertook was deficient. In point of fact the City and Applicant conducted a thorough cumulative impact analysis that provides good assurance that no gaps in mitigation will result because of deficiencies in review. This cumulative analysis was done explicitly for the modest shared infrastructure that will have to be built for the project as well as within a traffic study that jointly addresses the traffic impacts of Warehouses A and B. As explained in convincing detail by City and Applicant expert witnesses, cumulative impacts were addressed implicitly in the concurrency and traffic report standards adopted by the City.

Of particular utility is the fact that the traffic report for the business park (report still under review) was included in the administrative record. This report assessed traffic conditions with full buildout of all three campus proposals. The report found that all intersection level of service ("LOS") was within adopted City standards and that the only mitigation necessary was adding a lane to Weyerhaeuser Way along the business park street frontage. The only missing piece of information was a concurrency analysis for the business park. As noted in public comment from WSDOT, PM peak hour is the time of greatest concern for traffic congestion in the campus SR 18 and I-5 interchanges. The City's development standards only require AM peak hour analysis for traffic reports. The City's concurrency regulations address PM peak hour for concurrency review. Concurrency review for the business park has not yet been completed. Due to this missing information and the fact that AM peak hour numbers reveal that the SR 18/Weyerhaeuser intersection is close to failing at LOS E during AM peak hour, a condition of approval has been added to the MDNS that requires concurrency review for the business park to be completed prior to any development activity for Warehouse A.

Cumulative and all other impacts have also been adequately addressed for the historical character of the project site. For historical impacts, given the absence of any specific SEPA standards for historical protection and the highly subjective nature of what's necessary for that protection, much of what can be done is up to the cooperation of the Applicant. Under constitutional due process standards requiring specificity in land use regulations, persons of common intelligence can clearly agree that the project site is of historical significance. It is equally reasonable to conclude that a significant historical feature of the project site is the integration of the corporate headquarters building into the heavily treed landscape of the campus as a whole. From this it is reasonable to also conclude that retention of trees is necessary to maintain that integration, as is using the trees to obscure the warehouse from view while also not encroaching into view corridors to and from the headquarters building. Evidence in the record establishes that the proposal will not encroach into pertinent view corridors. The extent of the tree buffering necessary to maintain landscape integration, however, does start becoming an issue subject to valid differences of opinion. The evidence in the record establishes that the mass and scale of Warehouse A is reasonably well obscured by the extensive buffering of the tree buffers. Giving required substantial weight to the findings of the SEPA responsible official, it is found that the proposal adequately mitigates any impacts to the historical significance of the Weyerhaeuser campus.

The Appellant's hydrological concerns are focused upon loss of groundwater infiltration, de-watering of an on-site stream, downstream impacts and filling of exempt wetlands. The Applicant's stormwater and critical review has been subject to extensive review by both City staff and peer review. Those reviewers all adamantly testified there were no probable significant adverse hydrological impacts and for almost all those issues it is determined that the proposal will not create any probable significant adverse impacts or violate City standards. The one important exception is application of the *Executive Proposed Basin Plan Hylebos Creek and Lower Puget Sound* to stormwater review. The Appellant's expert testified that conformance to this basin plan is important to protecting the environmental resources of the Hylebos basin. Despite the fact that the basin plan has been adopted by the City and is required to supersede conflicting provisions of the City's stormwater manual, see Conclusion of Law No. 20C below, the City asserted in its closing brief that the City hasn't adopted the plan, none of the City witnesses identified any comprehensive application of the plan and the stormwater reports submitted into the record don't identify that it was even considered. For these reasons, this Decision concludes that environmental information on Hylebos basin impacts was not sufficiently considered per the standards on adequacy of environmental review outlined in Conclusion of Law No. 2 below. As a result, this Decision imposes an added MDNS condition requires the Applicant's stormwater plan to be supplemented with the required application of the basin plan.

TESTIMONY

A summary of testimony has been prepared by hearing examiner staff and is separately available at the City's website. It is not to be considered part of this Decision or to indicate any priority, significance or understanding of facts presented. The summary is provided as a courtesy to the public to facilitate review of the hearing testimony and no assurances are made as to accuracy. A copy of the hearing recording is available from the City Clerk upon request and payment of applicable copy charges.

EXHIBITS

A. City Exhibits – City Exhibit List, Doc Prefix "F"

B. Appellant Exhibits – Appellant Exhibit List, Doc Prefix "S," with the following admitted as rebuttal[2] exhibits during the hearing:

36A. Response to 1st round technical review comments, ESM Consulting Engineers LLC, June 28, 2018

36B Critical Areas Report Review; Response to Comments dated 13 December 2017, Talasaea Consultants, Inc. June 26, 2018

36C Managed Forest Buffer Management Plan at the Greenline Building B Site, Gilles Consulting, June 26, 2018

36D Preapplication Conference Summary, City of Federal Way, Nov. 3, 2017

36E Preliminary Technical Information Report, ESM Consulting Engineers LLC, Sept. 20, 2017

36F Re Notice of Incomplete Application, ESM Consulting Engineers, April 30, 2018

36G Transportation Impact Analysis, TENW Transportation Engineering NorthWest, April 27, 2018

376H Critical Areas Report and Conceptual Mitigation Plan, Talasea Consultants, Inc., Oct. 27, 2017

36I Evaluation of Trees at Greenline Business Park, Gilles Consulting, Sept. 20, 2017

36J Visual Impact Exhibit, Craft Architects, March 22, 2018

36K Revised Process IV Plan Set, ESC Consulting Engineers LLC, Nov. 10, 2017

37. Email from Jameson to camcalcin@hotmail.com dated June 5, 2019

38. Email from Labrie to Davis dated March 19, 2018

39. Email from Elliott to Bartenhagen dated August 24, 2018

40. Email from Welsh to Hansen dated October 9, 2018

41. Email from Elliot to Bartenhagen dated January 30, 2019

[2] Ex. 36 was originally the entire planning file for the Greenline Business Park and the Appellant narrowed down the documents from that file to those identified as Ex. 36A-K during the hearing.

42. Email from Welsh to Logan dated February 23, 2018

C. Applicant Exhibits – Applicant Exhibit List, Doc Prefix "I"

D. All emails between Appeal parties and Examiner re HEX 18-003; 19-001

E. Summary Judgment Motion, Response, Reply, Order

F. Motion for Remand and Order for Remand

G. Motion for Protective Order, Response, Reply, Order

H. Witness and Exhibit Lists

I. Pre-Hearing Order

J. Public Comment Letters

J1 – Letter from Jeff Recor
J2 – Letter from Sue Petersen
J3 – Aug. 5, 2019 Letter from Lynn Naumann
J4 – Aug. 6, 2019 Email from D.B. Kim
J5 – Aug. 6, 2019 Email from Katherine Wimble
J6 – Aug. 5, 2019 Email from Margery Godfrey
J7 – Aug. 5, 2019 Email from Anne Christiansen
J8 – Aug. 4, 2019 Email from Mary Sankaran
J9 – Aug. 1, 2019 Letter from George Weyerhaeuser (excluding third sentence re intent CZA)
J10 - Aug 2, 2019 Email from Annie Phillips (excluding comments on climate change).
J11 - Aug. 5, 2019 Letter from Dana Hollaway (links referenced in letter limited to screen shots provided with letter)
J12 - Aug. 6, 2019 Letter from Margaret Nelson
J13 – Aug. 6, 2019 Letter from Diana Noble-Gulliford (excluding GMA discussion).
J14 – Aug. 7, 2019 Letter from Suzanne Vargo
J15 - Aug. 9, 2019 Letter from Suzanne Vargo (only first two pages and first four photos admitted)

K. Jennifer Mortenson Written Testimony

L. Written closing arguments of City, Applicant and Appellant.

FINDINGS OF FACT

Procedural:

1. Applicant/Appellant. The Applicant is Federal Way Campus, LLC ("Applicant") and the Appellant is Save Weyerhaeuser Campus ("Appellant").

2. Appeals. This Decision addresses two consolidated appeals filed by Appellant. One is appeal of a Process III decision approving Warehouse A, filed on February 21, 2019. The other is an appeal of the MDNS issued for Warehouse A, filed on November 30, 2018. Numerous appeal claims were dismissed in advance of the hearing by the Examiner's Ruling on Motion for Partial Dismissal dated May 26, 2019. Specifically, the claims dismissed were Appeal Claims[3] 3.1, 3.1.1, 3.1.2, 3.1.3, 3.1.4, 3.3, 3.4, 3.4a, 3.6.1, 3.6.2, 3.6.3, 3.6.4, 3.6.10, 3.6.11, 3.7.1, 3.7.4 and 3.7.6. After the hearing, the Examiner dismissed claim 3.7.8 from the Process III Approval and the portions of the SEPA appeal that asserted claims under the following sections of WAC 197-11-444: 1.a.iv, 1.b.i, 1.b.ii, 1.d.ii, 1.e.i, 2.a.i, 2.b.iii, 2.c.iv, 2.d.v, 2.d.iv and 2.d.vii.

The SEPA issues that remain for decision are claim 4.1 and the portions of claims 4.2 and 4.2 under the following sections of WAC 197-11-444: 1.a.v, 1.c.i, 1.c.ii, 1.c.iii, 1.c.iv, 1.d.i, 1.d.iii, 1.e.v, 2.b.i, 2.b.iv, 2.b.v, 2.b.vi, 2.c.i, 2.c.ii, 2.c.v, 2.c.vi, and claims under 2.d.iv and 2.d.vii unrelated to public facilities. The Process III issues that remain for decision are claims 3.2, 3.5.1 through 3.5.12, 3.6.5, 3.6.6, 3.6.7, 3.6.8, 3.6.9, 3.6.12, 3.6.13, 3.7.2, 3.7.3, 3.7.5, 3.7.7, 3.8.1 through 3.8.4, 3.9, 3.10 (if intended to assert a separate claim), 3.10.1, and 3.10.2.

3. Hearings. Hearings on the appeal were held on June 20 and 21 and August 7, 8 and 9, 2019. The hearings were continued from June to August because at the beginning of the June hearings the Examiner identified that City regulations authorized public testimony in Process III appeal hearings. From that point the hearings were re-advertised to apprise the public of the opportunity to participate in the hearing. The hearing was left open through August 28, 2019 for written closing argument.

Substantive:

4. Proposal. The Applicant seeks Process III approval for a 45-foot tall, 225,950 square-foot general commodity warehouse, an associated office, and 287 on-site parking spaces, together with wetland fill and other incidental site work. The project site itself is comprised of 15.46 acres. The scope of the project includes installation of a stormwater pond and associated site work, including wetland fill, on the adjacent parcel to the south. The Applicant's current proposal is a modified version of the original project application (the "Preferred Freezer" submittal) that was previously filed for the underlying property in June 2016.

5. Concomitant Zoning Agreement. The project site, together with the other areas of the former Weyerhaeuser campus property, is governed by a recorded concomitant zoning agreement (the 1994 Weyerhaeuser Company Concomitant Pre-Annexation Agreement ("CZA")) and the zoning

[3] All references to "Appeal Claim" in this Decision are references to the claims listed in the Appellant's Process III appeal.

regulations in place at the time of the CZA's August 23, 1994 effective date. The Warehouse "A" site is zoned Corporate Park ("CP-1") and is also classified as Corporate Park under the City of Federal Way Comprehensive Plan.

6. Warehouse B and Greenline Business Park. The Applicant is concurrently applying for two other land use projects located on the former Weyerhaeuser property: Warehouse "B," located adjacent and to the south of the Warehouse "A" project site, and the proposed Greenline Business Park, which is located approximately one quarter mile to the north. The Warehouse A application was filed on June 17, 2016, the Warehouse B application was filed on April 5, 2017 and the business park application on November 17, 2017. Warehouse B and the business park are currently still under review. No project decision and/or SEPA threshold determination has been issued for either Warehouse "B" or the Greenline Business Park; the applications for both projects remain pending and under administrative review.

7. Issuance of MDNS. The City's SEPA Responsible Official, Community Development Director Brian Davis, issued an MDNS on October 26, 2018. The MDNS was subsequently modified to address concerns raised by the Washington Department of Transportation ("WSDOT"). On November 30, 2018, the City issued the modified MDNS, which included a new finding and condition of approval requiring FWC to construct, to WSDOT's satisfaction and approval, right-turn storage for the westbound SR-18 off-ramp.

8. Issuance of Process III Approval. On February 4, 2019, Director Davis issued the Process III Approval decision approving the Warehouse "A" proposal. The Director's decision was supported by 28 pages of detailed findings and conclusions which evaluated the project's consistency with the applicable FWRC decisional criteria, the vested 1994 regulations, and the CZA. The decision also imposed over 40 specific conditions of approval to ensure the project's regulatory compliance and to mitigate any anticipated impacts.

9. Campus Projects Not Interdependent Except Economically. The Applicant's three campus projects have many elements in common, but they are not interdependent except economically. Interdependent in this context means that the projects are dependent upon the other in order to be constructed.

Although not interdependent, the proposals have many common features. The construction of all three projects within the next few years is very likely if the projects are approved. The Warehouse A and B and the Business Park applications were all filed within 16 months of each other and the Warehouse B and Business Park applications are currently under review and are being actively marketed. See Ex. S-26-29. As testified by Mr. Ostensen, an Applicant representative, the Applicant would like to see the Warehouse B application processed as quickly as possible and it is reasonable to conclude that the Applicant would like to commence construction and sell or lease project space for all three of its campus projects as quickly as possible. The traffic report for Warehouse A and B and the separate traffic report for the Business Park identify that most of the trip generation from the three projects will use Weyerhaeuser Way and the interchanges of I-5 at 320th St. and SR 18 at Weyerhaeuser Way. Ex. F-10f; S-36G. The three projects also share a common drainage basin and are part of the former

Weyerhaeuser Campus that in its entirety many experts consider to be of historical significance. Ex. S-3, S-8.

The City and Applicant were able to present similarly compelling evidence that the three projects have no interdependency except for the driveway and stormwater pond shared by Warehouse A and B. As testified by numerous City and Applicant witnesses during the hearing, all three projects are independent of each other except for the driveway and stormwater pond. LaBrie, 8/7/19 11:00 am, 02:00-05:30; Ostensen; Davis; Testimony of Stacey Welsh ("Welsh"). Mr. LaBrie further testified that the Applicant wasn't even considering Warehouse B or the Business Park projects when the Warehouse A project was initiated.

From the points raised above, it is determined that the three campus projects are not interdependent except economically as discussed below. Each project can proceed independently of the others in any order. There is a shared driveway and stormwater facility between Warehouse A and B, but those features can easily be modified if one or the other project isn't constructed.

The economic interdependency of the campus projects was encapsulated by a comment thrown out by Mr. Ostensen at the end of his testimony, presumably regarding the economic necessity of doing all three projects: "*it doesn't make a lot of sense to buy 400 acres and build 225,000 square feet*." Testimony, June 20, 2019. Immediately after making this comment, Mr. Ostensen testified in response to questions from his own attorney that the three campus projects were fully financially independent and would each have their own separate financing. This response reduces the potential interdependence of the three projects, but still doesn't detract from the fact that all development projects on the campus contribute to and make the campus acquisition more profitable, which presumably was the over-riding and singular purpose for the acquisition of the campus in the first place. This comment raises the economic interdependency of the campus projects – that the Applicant purchased the campus to develop it and make a profit. In this sense each separate project for the campus is interdependent with the others in that each is necessary to make the campus development project profitable or may even be necessary to make it feasible.

10. City Adequately Mitigated Cumulative Impacts to WSDOT Facilities. The proposal will not create any probable significant adverse impacts to Washington State Department of Transportation ("WSDOT") facilities. The only impact identified by WSDOT was increases in queue length for the SR 18 off ramp. The City fully mitigated this impact with an MDNS condition requiring an increase in off-ramp left turn storage capacity pursuant to WSDOT standards.

The Appellant's evidence regarding impacts to WSDOT facilities is primarily based upon two WSDOT comment letters, Ex. S-35.1 and 35.2, and the testimony of Mike Swires, Assistant Regional Traffic Engineer for WSDOT for the King County area. Ex. S-35.1 is a February 8, 2017 letter expressing concern over Weyerhaeuser impacts to WSDOT facilities, identifying that access to the Weyerhaeuser campus is limited to I-5 at 320th St. and SR 18 at Weyerhaeuser Way. The letter asserts that "*[b]oth interchanges currently operate under severe congestion, particularly during the PM peak period…*" and that campus redevelopment would add trips to these interchanges. The letter further identifies that WSDOT controls terminal light signals at both interchanges and that WSDOT would "*continue to manage the signal operations to limit the risk to mainline I-5 and SR 18, thus putting more demand on*

the City's street network." Beyond adding traffic to congested facilities, the letter does not identify any specific impacts or any necessary mitigation.

The Ex. S-35.2 letter is more specific. It is a November 9, 2018 letter in which WSDOT requests cumulative traffic review of the three campus projects and another campus project known as the Davita project. It identifies that both Warehouse A and Warehouse B each independently "*exceed the vehicular trip threshold in the Development Services Manual for determining whether a highway improvement should be required*" for the SR 18 westbound off ramp/Weyerhaeuser Way intersection. It further identifies that with Warehouse A, AM peak hour traffic would result in a queue length of 142 feet in the right turn lane of the off ramp, which exceeds the storage capacity of the existing 100-foot turn lane. The letter opined that the other Applicant projects and the Davita project would necessitate a 300-foot right turn lane.

In response to the November 9, 2018 comment letter, which was submitted after the close of the comment period for the MDNS, the City issued a revised MDNS, adding a new Condition 10 that requires the Applicant to construct right hand storage for SR 18 westbound off ramp onto Weyerhaeuser Way to the satisfaction of WSDOT. At the hearing, Mike Swires testified he was present on behalf of WSDOT and that his staff was involved in preparation of the two WSDOT comment letters. During his cross-examination by Applicant's counsel, he affirmed that the traffic impacts to the westbound SR 18 offramp identified in the November 9, 2018 comment letter were adequately mitigated by the condition added to the revised MDNS

The comments above encompass the only WSDOT comments that directly address impacts to WSDOT facilities. According to WSDOT's representative at the appeal hearing, the SEPA mitigation added to the MDNS met all the impact concerns raised by WSDOT. From the comments made by WSDOT, there is no basis to conclude that additional mitigation is necessary.

11. Preferred Freezer CRC Considered Same Trip Generation as Produced by Warehouse A. When the Warehouse A application was filed on June 17, 2016, the prospective tenant was Preferred Freezer. Sometime prior to the filing of the Warehouse B application the Preferred Freezer tenant withdrew from the Warehouse A project and the Applicant revised the project to the current Warehouse A proposal. The concurrency review certificate ("CRC") issued for the Preferred Freezer project has been recognized by City staff to meet the City's concurrency review requirements for the Warehouse A project, because the Warehouse A project resulted in only one additional peak hour PM trip over the Preferred Freezer project. *Long; Schramm.*

12. Traffic Safety. The proposal will not create any probable significant adverse transportation safety impacts. Transportation safety has been reviewed and addressed by City and Applicant transportation engineers. The Applicant only raises anecdotal evidence presented by lay testimony that trip generation from the proposal could create a safety hazard. Although as noted in the Appellant's closing brief the Appellant's transportation planner identified that traffic safety should be evaluated, see Appellant Closing Brief, p. 32, the planner did not identify any factors that created a safety hazard other than an increase in truck traffic. City experts and regulations addressed traffic safety in much greater detail.

Other than the transportation planner's generic reference to traffic safety, Appellant's claim of significant impacts to traffic safety and recreation is based upon the testimony of Larry Flesher. Mr. Flesher testified that he has lived at 38th Avenue S, next to North Lake, since 1973. Larry Flesher Testimony ("Flesher"), 6/21/2019, 2:00 p.m., 15:25-20:10, 2:40 p.m., 01:08 – 1:35. He testified that he rides his bicycle on Weyerhaeuser Way S, but that "*[i]t has gotten to the point where we no longer feel safe riding from our house towards Federal Way*" due to "*[m]ostly traffic and secondly there really are no bicycle lanes – and so even though there is a wide apron on most of that road, often we're sharing it with a car sneaking up behind us, and so we don't feel safe*." *Id*. He also noted that there are "*a few short sections*" of sidewalk, "*nothing continuous*." *Id*. Mr. Flesher further noted that his "*concern is safety: as a road bicycler, as a bicycler that's almost been hit a number of times, it will be at the point that you will not be able to come from our neighborhood to Federal Way*." Id. "*It will just be flat not safe enough, so you won't do it*." Id. Mr. Flesher was concerned that because the project will increase truck traffic, his neighborhood will no longer be safe enough. Id.

Mr. Flesher's concerns are largely based upon existing conditions. He specifically mentions truck traffic as a new impact associated with the proposal and it's fair to presume from his comments that he's also concerned about increased regular vehicular traffic as well. Mr. Flesher's concerns are addressed by an extensive amount of mitigation. Most notably, frontage improvements will be required of the Warehouse A and B parcels, which will take care of any safety concerns related to truck traffic. The frontage of the Warehouse A and B parcels takes up the entirety of Weyerhaeuser Way frontage between the two projects and the SR 18 and I-5 ramps to the south. Those frontage improvements include bicycle lanes and additional left-turn storage for trucks turning into the project site's driveway. The Applicant has also included within its proposal median curbing to prevent trucks from turning left (north) out of the project site and also installing a no left turn sign to supplement the curb. See Ex. I-20, pp. 10-11. The Warehouse A owner will also have high incentive to direct is truck visitors to refrain from driving north of the project site on Weyerhaeuser Way, since a threshold is set in the SEPA conditions that will require the owner to repave Weyerhaeuser Way if truck trip generation north of the project on Weyerhaeuser Way exceeds a specified minimum.

In a May 2018 letter to the City, Applicant reaffirmed its plans to: replace the existing concrete walkway along Weyerhaeuser Way S frontage and install an 8-foot wide ADA-compliant sidewalk; relocate bus stops and add shelters; provide additional left turn lane storage for the truck entrance to the Project Site; install a curb to relocate bus stops and add shelters; provide additional left turn lane storage for the truck entrance to the project site; install a curb to prevent trucks from going north on Weyerhaeuser Way S; relocate the pedestrian crossing location and include a pedestrian refuge; and provide a pedestrian path from the Project through the managed forest buffer to the new sidewalk. Ex. I-26, p. 1. Applicant also stated its intent to provide additional street lighting and a 5-foot bike lane but requested that it be permitted to defer those improvements until construction of Building B in accordance with the CZA. The City denied the deferral request, noting that street lighting, like several of the other proposed improvements, is "*a life-safety issue*." City Ex. 6(d), p. 2. The staff evaluation of the SEPA Checklist indicated that "*[f]rontage improvements and right-of-way dedication consistent with*" the City's denial "are required." City Ex. 5(c), p. 8. The staff evaluation was fully incorporated in the MDNS. City Ex. 5(b), p. 3. The MDNS also expressly recognized the additional left-turn storage required on Weyerhaeuser Way S as a means "*to provide safer . . . access into the site*." Id., p. 6. Mr.

Perez testified that there was no need for the City to study additional traffic safety impacts "*based on existing collision history*." Perez, 8/9/19 12:20 pm, 15:50-16:10.

In short, the City has both evaluated overall safety by reviewing collision history and also took numerous measures to separate bicycle and pedestrian traffic from Warehouse A traffic. Based upon this type of evaluation and mitigation, the SEPA responsible official determined that the proposal would not create any probable significant adverse safety impacts. Mr. Flesher's concerns are certainly understandable given the existing traffic of the area, but his observations did not in any way undermine the responsible official's conclusion that the safety improvements undertaken by the Applicant will be sufficient to mitigate Warehouse's A impacts to traffic safety.

As to cumulative transportation safety impacts, the Appellant did not specifically raise any in the course of the hearing and none are immediately apparent from the administrative record. The primary area of concern presumably would be Weyerhaeuser Way S between the business park parcel and the Warehouse A parcel, as no improvements are required for this area. However, the two intersections north of the Warehouse A parcel, specifically those of Weyerhaeuser Way with 336th and Weyerhaeuser Road, are operating at LOS A or B with or without the Warehouse A project. The draft Greenline Business Park TIA, which takes into account traffic from all three campus projects finds no traffic safety issues.

13. Historic Impacts. The proposal will not create any probable significant adverse historic impacts. The proposed tree buffers of the project site adequately protect the historic significance of the site by preserving the integration of the Weyerhaeuser corporate office into the surrounding landscape and obscuring the mass and scale of Warehouse A from view.

Unrebutted testimony from FWC's historic resources expert, Architectural Historian Michelle Sadlier, clarified, however, that no part of the Warehouse "A" project site has been formally designated as a landmark or otherwise listed on any registry at the federal, state, or local level. The absence of any formal designation or listing under the afore-mentioned regulatory schemes is arguably[4] a sufficient basis to conclude for purposes of SEPA review that the project site has no historical resources requiring protection. However, even the Applicant's own expert would likely agree that there are elements of the Weyerhaeuser campus, most notably the corporate headquarters, that are historically significant. Indeed, the Washington State Department of Archaeological and Historic Preservation (DAHP) commented as follows:

[4] Ms. Mortensen, an Appellant historic preservation expert, testified that lack of designation is not determinative because many designations require voluntary consent of the property owner. Although arguably not determinative, the lack of historic designation is probative of historical significance. For impacts as subjective as historic impacts, the values expressed by various legislative bodies in their historic preservation ordinances as to what should be recognized or protected is highly pertinent as to what should be considered historically significant. The extent to which legislative bodies choose to recognize and/or at least protect historical resources necessarily involves a balancing of impacts to property owners against the historic significance of a building or area. If the legislative body determines that a building under its regulatory scheme isn't significant unless the property owner consents, that factor is probative in the overall analysis of historic significance.

> *While not yet 50 years old the Weyerhaeuser Headquarters would easily qualify for listing on the National Register of Historic Places (under criteria A and C) as a groundbreaking design that has been studied by generations of architect, architectural historians, landscape architects and historians.*

Attachment 1 to Exhibit S-8.

As shall be discussed, the evidence is quite strong, likely irrefutable, that the Weyerhaeuser campus has historical significance. For this reason, it is determined that parts of the campus, including at the least the headquarters, is historically significant. How far and to what extent that significance goes beyond the headquarters itself (which is the only portion of the campus mentioned in the DAHP quote above) is ambiguous. Further, what qualifies as probable significant adverse impacts to those historical resources, whatever they may be, is even more difficult to identify and evaluate.

The Appellant presented a significant amount of written and/or oral testimony from qualified professionals, specifically Jennifer Mortensen and Chris Moore from the Washington Trust for Historic Preservation ("WTHP"), a commentator from the Department of Archeology and Historic Preservation ("DAHP") and a commentator from the Cultural Landscape Foundation. These commentators noted that the Weyerhaeuser headquarters is nationally known for its architectural design and has been professionally recognized and won design awards for which only the most architecturally significant buildings in the nation qualify. All of the commentators identified that a significant part of the architectural significance of the project site is the corporate headquarters' integration into the natural landscape, most notably the numerous tree stands of the campus.

The Warehouse A impacts raised by the Appellant's historic preservation experts primarily revolve around two design features, (1) the loss of trees which reduces the integration of the headquarters building into the surrounding landscape, and (2) the scale of Warehouse A, which is allegedly too large for compatible landscape integration. See, e.g. Ex. S-8, p. 2 (tree loss) and p. 10 (building scale). In identifying the impacts of tree loss, Appellant witness Chris Moore focused upon view impacts to and from the headquarters. See, e.g. Ex. S-8, p. 2. The Applicant's historic expert, Michelle Sadler, determined that development on the Project Site would not create significant adverse impacts to eligible historic resources as long as adequate forested buffers are maintained. Sadlier, 8/7/19 3:00 pm, 18:45-20:00.

From the testimony summarized above, it is determined that to avoid probable significant adverse impacts to historical resources, the tree buffers must be wide enough to obscure Warehouse A from sight and the building must not encroach into the view corridors to and from the headquarters building. Giving substantial weight to the determination of the SEPA responsible official, it is determined that standard is met. A forested buffer ranging from 50 to 140 feet will surround the east, north, and west sides of the Project Site, largely formed by existing vegetation. LaBrie; City Ex. 1(f), sheet 5. Warehouse B adjoins the project on its south side. City Ex. 1(f), sheet 5. In the area between the Project and the Headquarters, this buffer is approximately 70 feet wide. Id. A visual survey by Tetra Tech determined that because the Project will be at most 44 feet above grade and will be separated from the Headquarters by trees ranging from 71 to 88 feet tall, views of the Headquarters from I-5 will not be impacted by the Project. City Ex. 1(gg), PDF p. 6. The City took this analysis into account when

issuing the MDNS. City Ex. 5(c)(c), p. 11; City. Ex. 5(c), p. 8. The Applicant has also provided a visual impact study of the Project and Building B from multiple angles, City Ex. 10(a); a photographic study indicating that a 50-foot native-vegetation buffer is sufficient to block views of the maintenance building that currently occupies the Project Site, City Ex. 1(dd), and a photograph of the view from the Headquarters demonstrating the height and screening ability of existing trees. Applicant Rebuttal Ex. 3. The Applicant's visual survey and expert testimony revealed that the only views from the Headquarters toward the Project site are from the "*fourth-floor entry lobby*" and that other views from the interior look only northward, over the parking lots and towards the highway. See LaBrie, 8/7/19 11:00am, 00:00-00:45; City Ex. 1(gg), PDF p. 6.

The Appellant presented no view impact analysis or any other evidence showing that the project would be visible from the headquarters or that Warehouse A would encroach in or impair viewsheds to or from the headquarters. The evidence in the record is not as direct on the effectiveness of the trees in obscuring the mass and scale of Warehouse A from other vantage points, but given the extensive tree buffering on all sides of the project except where it adjoins Warehouse B and given the lack of any evidence that shows adverse view impacts, giving substantial weight to the determination of the SEPA responsible official it is also determined that the mass and scale of the building is sufficiently obscured from view to not create any probable significant adverse impacts to historical resources as well.

The Appellant raised a valid concern that the City had requested the Applicant to conduct a historical inventory more than two years ago and none has been completed as yet. This raises the issue of whether the City had sufficient information to evaluate historical impacts as outlined in COL No. 2. However, during the hearing the Applicant's historical expert, Michelle Sadler, testified that she has already conducted a significant amount of evaluation of historical records and has determined that while the tree buffers around the project site may be eligible for historic designation, the interior of the site is not. This comes perilously close to the post-hoc rationalization that is disfavored by the courts as outlined in the Appellant's closing briefing, but the extensive amount of visualization studies prepared by the Applicant arguably shows that the SEPA responsible official has always understood that the historically significant impacts of the site are limited to its aesthetic impacts, including view corridor impacts, and that those impacts are limited to the adequacy of the tree buffer surrounding the project site. The testimony and written materials presented by the Appellant does not establish any compelling need for additional information on this issue. For this reason, it is concluded that the City had sufficient information to evaluate historical impacts.

14. On-Site Wetlands Exempted. Several wetlands will be affected by the proposal including nine wetlands and one regulated stream. All 13 on-site wetlands are rated Category III. The total area of wetlands on the Warehouse A proposal site is 16,595sf. Construction of the project will impact nine of the wetlands (DU, DW, DX, DZ, EB, EC, ED, EE and EF) for a total of 9,922sf. Wetlands EC and EF are not directly impacted. However, the City considered these wetlands as impacted by fill because they will be insufficiently buffered post construction. According to the Concomitant Zoning Agreement (CZA), 'development affecting wetlands which are individually smaller than 2,500sf and/or cumulatively smaller than 10,000sf in size in any 20-acre section of the property' is exempt from sensitive area regulations. Therefore, the Talasaea Critical Areas Report did not propose, and the City did not require, any mitigation for wetland impacts (City Post-Hearing Brief, page 34). Testimony from

both Marriott and Redman stated the project is consistent with all applicable regulations and standards and will not result in significant, adverse impacts.

Dr. Cooke pointed to a discrepancy in the wetland delineation boundaries. She noted that the size of three wetlands (DQ, DX and DZ) are different between the Management Plan and the Critical Areas Report and Conceptual Mitigation Plan: Greenline Warehouse A. Crucially, one document states the total proposed fill is 10,092sf and surpasses the allowed 10,000sf of exempt impacts. The City's justification for providing no mitigation is that the total of 9,922sf of affected wetland is just under (~78sf) the defined exemption threshold in the CZA. The critical areas report suggests the fill exceeds the CZA threshold. In the Applicant's Post Hearing Brief (page 21), the Applicant stated that ESA had "agree[d] with the wetland delineation boundaries, rating forms, and rating classifications established by Talasaea". In her testimony, Ms. Redman stated that these minor differences are common. In this circumstance, the issue is not minor in that the difference between the delineations defines whether or not the wetlands are exempt from protection. Substantial weight must be accorded to the expert testimony including the City's SEPA responsible official and the City's third-party reviewer, ESA. The burden of proof requires the Appellant to prove the action by the City was clearly erroneous, a standard that is difficult to achieve without another third-party verifying delineation. The Appellant has not met the burden of proof demonstrating that the wetlands delineation performed by Talasaea is clearly erroneous. Therefore, it is determined that the total square footage of the affected wetlands is indeed within the exemption threshold. The Appellant has not demonstrated any adverse impacts associated with the elimination of these wetlands to overcome prima facie compliance.

15. De-watering of Wetlands and Streams. The Appellant argued the project would contribute to de-watering of on-site wetlands and streams. Dr. Cooke testified she is specifically concerned that the water will no longer infiltrate to groundwater and recharge the regional aquifer, the associated wetlands and the on-site stream. Appellant makes the compelling point that with 261,679 square feet (6 acres) of added impervious surface in Warehouse A alone and 2,060,048 square feet (47.29 acres) of new impervious surface over the three proposals, the present and combined proposals will adversely impact groundwater resources that likely feed into the Hylebos watershed and hydrate the campus stream. However, the Applicant proposes to retain nearly 60% of the Warehouse A project site as pervious surface. Substantial open space will also be preserved in the remaining projects. The City's expert witnesses and staff testified that there would be no adverse impacts to groundwater infiltration and the Applicant's geotechnical report concluded that infiltration potential for the site was low. As noted in FOF No. 17, the proposal will also be conditioned to apply the Executive Proposed Basin Plan Hylebos Creek and Lower Puget Sound. As conditioned, giving substantial weight to responsible official it's reasonable to conclude that even incrementally, the project site will not create any material significant impact to groundwater infiltration and associated hydration of streams and wetlands.

16. Drainage Analysis Adequate. The proposal provides an adequate drainage analysis and will not create any probable significant adverse stormwater drainage impacts. As North Lake is at a topographically higher elevation than the present proposal, the current proposal does not drain to North Lake. Therefore, no impacts to North Lake are anticipated. Dr. Cooke testified the Applicant performed only a ¼ mile downstream analysis (Appellant Post Hearing Brief, Page 40). The King County Storm Water Design Manual only requires a ¼ mile downstream analysis (KCSWDM Section 1.2.2.1) for the minimum flow path distance downstream and beyond that, as needed, to reach a point where the project

site area constitutes less than 15% of the tributary area. The Applicant and City testified the Applicant had, in fact, performed a downstream analysis for a full mile from the project site (City Post Hearing Brief, page 45), for exceeding the requirements of the KCSWDM. The Appellant argues the true point of beginning for the analysis should have been the confluence of the watercourse from Warehouses A and B with that from Greenline Business Park. The Appellant did not provide any studies or evidence suggesting that the project site area contributes to more than 15% of the tributary area beyond the ¼ mile or the mile the Applicant analyzed, or produce any affirmative facts that the confluence of Warehouse and Business Park waters would lead to any probable significant adverse impacts. The City affirmed that the project's stormwater analysis with respect to drainage and design has met or exceeded all requirements of the KCSWDM.

The Appellant stated the proposal did not adequately consider or analyze impacts to drainage, including that the discharge of drainage waters would not be in the natural location or at the same volume as under pre-existing conditions. The NHC report (Appellant Ex. 7) states the development would substantially dewater the headwater reach of Stream EA, though this impact is not discussed in either the TIR or the Critical Area report. The Appellant argues the TIR shows that the drainage from the Warehouse A site naturally discharges to the head of Stream EA. The project will collect that drainage and convey it to a detention pond that drains into Stream EA below the headwaters. Dr. Cooke, as noted in Finding of Fact 15, suggests a significant contributor to the wetlands and streams on-site is sub-surface flow and groundwater (Appellant Ex. 3) and that there are multiple, rather than a single drainage points. She notes that Stream EA will be cut off from all but direct precipitation by the proposal. Ms. Bartenhagen testified the natural discharge point for the Warehouse A site is not Stream EA, it is in fact 0.7 miles away after the confluence of drainage with the Warehouse B site and the business park campus. She stated the project site currently drains toward the southeast and discharges into Stream EA but then continues on to the discharge point downstream. Ms. Bartenhagen stated post-construction, the stormwater will continue to flow in this direction as it moves through first the detention pond, then Stream EA and finally the natural discharge point about 0.7 miles downgradient. (Appellant Ex. 16 and City Ex. 1(q), page 4). Mr. Elliott testified the City had conducted four rounds of review of the proposed drainage plan over the course of over two years. The City re-ran the model provided by the Applicant and concurs that the stormwater will comply with the KCSWDM and adequately mitigate all impacts associated with the project. The Appellant provided anecdotal evidence based on the expert opinion and site visits from Dr. Cooke and NHC, but the Appellant produced no formal studies demonstrating that the Applicant's proposed stormwater design will adversely impact the on or off-site critical areas.

As required by the KCSWDM, the proposed stormwater system provides enhanced water quality treatment in the form of a "modular wetland" filtration system that treats water for suspended solids, copper, zinc, and phosphorus. *Bartenhagen* testimony. The system also includes an oil/water separator to treat vehicular related pollutants from truck and passenger car traffic. Runoff from the non-pollution generating frontage improvements will be dispersed into the landscaping. City staff testified the stormwater treatment conforms to all applicable standards.

17. Basin Plan Should Have Been Considered. The City did not adequately consider the policies and requirements of the *Executive Proposed Basin Plan Hylebos Creek and Lower Puget Sound* in its application of the stormwater manual. Failure to consider the plan results in an analysis of stormwater impacts that is not based on information sufficient to evaluate the proposal's environmental impacts as

outlined in COL No. 2 below. For the reasons outlined in the Summary section of this Decision, it is fairly clear that the City didn't seriously consider the plan and even believed it wasn't applicable, despite the fact that it has been adopted by the City Council with the mandate that it supersede any conflicting provisions of the City's stormwater manual. See FWRC 16.25.010(2). Given the priority given to the basin plan by the City Council and the environmental sensitivity of the Hylebos drainage basin, a condition will be added to the MDNS requiring that the Applicant's stormwater plan be supplemented with an analysis of the applicability of the basin plan and integration of any additional mitigation as necessary to conform to the plan.

CONCLUSIONS OF LAW

1. Authority of Examiner. The land use decision under appeal is a Process III decision. See Ex. F-6a. FWRC 19.65.120 provides that appeals of Process III decisions are governed by Process IV. FWRC 19.70.150 provides that the hearing examiner shall conduct a hearing and issue a final decision on Process IV applications that affirms, reverses or modifies the Process III decision. The Appellant's SEPA appeal has been consolidated with the appeal of the Process III decision as required by FWRC 14.10.060.

2. Review Criteria/Burden of Proof for MDNS. The relevant inquiry for purposes of assessing whether the City correctly issued an MDNS is whether the project as proposed has a probable significant environmental impact. See WAC 197-11-330(1)(b). WAC 197-11-782 defines "probable" as follows:

> *'Probable' means likely or reasonably likely to occur, as in 'a reasonable probability of more than a moderate effect on the quality of the environment' (see WAC 197-11-794). Probable is used to distinguish likely impacts from those that merely have a possibility of occurring but are remote or speculative. This is not meant as a strict statistical probability test.*

If such impacts are created, conditions will have to be added to the DNS to reduce impacts so there are no probable significant adverse environmental impacts. In the alternative, an environmental impact statement would be required for the project. In assessing the validity of a MDNS, the determination made by the City's SEPA responsible official shall be entitled to substantial weight. WAC 197-11-680(3)(a)(viii).

Courts have held that the substantial weight standard mandates application of the "clearly erroneous" standard. *Moss v. City of Bellingham,* 109 Wn. App. 6, 19, 31 P.3d 703, 712 (2001). Under the clearly erroneous standard, reviewing bodies do not substitute their judgments for those of the agency and may invalidate the decision only when left with the definite and firm conviction that a mistake has been committed. *Cougar Mountain Ass'n. v. King County*, 111 Wn.2d 742, 747, 764 P.2d 264 (1988); *Polygon Corp. v. Seattle*, 90 Wn.2d 59, 69, 578 P.2d 1309 (1978); *Ass'n of Rural Residents v. Kitsap County*, 141 Wn.2d 185, 4 P.3d 115 (2000); *Moss,* 109 Wn. App. 13. An appellant does not meet its burden to show an MDNS is clearly erroneous if the evidence shows only that reasonable minds might differ with the decision. To prove that a decision was clearly erroneous, the Appellant must produce affirmative "*facts or evidence in the record demonstrating that the project as mitigated will cause significant environmental impacts warranting an EIS*." *Moss*, 109 Wn. App. at 23-24. Specifically,

where an appellant claims a failure to adequately identify or mitigate adverse impacts, the appellant must produce evidence that such significant adverse impacts will occur for a decision to be overturned. *Boehm,* 111 Wn. App. 719-720; *Moss,* 109 Wn. App. at 31. Mere complaints or claims, without the production of affirmative evidence proving that the decision was clearly erroneous, are insufficient to satisfy an appellant's burden of proof as a matter of law. *Id*.

Although the burden on an appellant to overturn an MDNS is relatively high, this does not absolve the City from the responsibility of establishing that it has conducted at least a prima facie review of environmental impacts. As summarized in *Boehm v. City of Vancouver*, 111 Wn. App. 711, 718 (2002):

> *For the MDNS to survive judicial review, the City must demonstrate that it actually considered relevant environmental factors before reaching that decision. Moreover, the record must demonstrate that the City adequately considered the environmental factors in a manner sufficient to be prima facie compliance with the procedural dictates of SEPA. Further, the decision to issue a MDNS must be based on information sufficient to evaluate the proposal's environmental impact.*

(citations, quotations omitted).

3. Review Criteria/Burden of Proof for Process III Decision. In a Process III appeal, applicable review standards require that the City make a prima facie showing of compliance with review criteria and that the examiner give deference to agency interpretation. The decisional criteria for Process III approval are set by FWRC 19.65.100(2). Administrative appeals of Process III Approval decisions are governed by the Process IV regulations codified at Chapter 19.70 FWRC. See FWRC 19.65.120(3). In a Process IV proceeding, the Hearing Examiner "*shall give great deference to the agency's interpretation of its own properly promulgated regulations, matters within its expertise, and procedural determinations.*" FWRC 19.70.120. Chapter 19.70 FWRC does not specify burden of proof in a Process III appeal. Hearing Examiner Rule of Procedure 11(a)(3) specifies that in the absence of a burden of proof set by ordinance for an appeal, the City shall make a prima facie showing that the City satisfies applicable ordinance requirements.

4. Cumulative Impacts Subject to Process III and SEPA Review. Appeal Claim 3.2 asserts that cumulative impact review is required for the three campus projects. It is concluded that consideration of cumulative impacts is required for the three projects for both Process III and SEPA review. The legal basis for cumulative impact review in Process III decisions is outlined in the Examiner's May 26, 2019 partial dismissal ruling referenced in Finding of Fact No. 2. This Conclusion of Law ("COL") addresses the SEPA requirement to consider cumulative impacts.

SEPA rules and caselaw make it clear that cumulative impacts are a required part of SEPA review. As noted in COL No. 2, the operative criterion for a threshold determination is whether a proposal will create probable significant adverse impacts. Case law requires that impacts considered in SEPA review include "*the cumulative harm that results from its [proposal's] contribution to existing adverse conditions or uses in the affected area*." *Chuckanut Conservancy v. Department of Natural Resources*, 156 Wn. App. 274, 285 (2010). The SEPA rules themselves identify that cumulative impacts are one

type of "environmental impact." WAC 197-11-792(2)(c). As noted in COL No. 2, the operative criteria for MDNS review is whether a proposal creates probable significant adverse environmental impacts. The Applicant argues that this cumulative impact standard forecloses cumulative impact review of the Applicant's other two campus proposals because they don't qualify as existing conditions. This misses the point that all of the impacts of concern raised by the Appellant relate to existing conditions – existing traffic conditions of shared traffic infrastructure, existing drainage conditions in the shared drainage basin, existing wetlands and the existing historic significance of the campus. Warehouse A by itself may not push existing conditions to adverse levels on its own, but it can very well push the existing conditions closer to trigger levels that make them qualify as significant. For example, for impacts such as traffic, Warehouse A could add to traffic congestion levels that enable one of the other two projects to push those levels beyond adopted level of service standards. In the resulting environmental analysis Warehouse A could be held responsible for its proportionate share of traffic mitigation costs and its proportionate share of traffic generation would be considered traffic added to an existing condition.

5. Cumulative Review Not Mandated by WAC 197-11-060(3)(b). The Appellant contends that Warehouse A, Warehouse B and the Greenline Business Park should all be evaluated in one environmental document under WAC 197-11-060(3)(b)(ii). If WAC 197-11-060(3)(b) did indeed require joint environmental evaluation of two or all three of the Applicant's campus projects, that review would most likely necessitate cumulative impact review. However, the three projects do not meet the standards of independence required by WAC 197-11-060(3)(b) to compel that joint review.

WAC 197-11-060(3)(b) requires as follows:

> *b) Proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same environmental document. (Phased review is allowed under subsection (5).) Proposals or parts of proposals are closely related, and they shall be discussed in the same environmental document, if they:*
>
> *(i) Cannot or will not proceed unless the other proposals (or parts of proposals) are implemented simultaneously with them; or*
>
> *(ii) Are interdependent parts of a larger proposal and depend on the larger proposal as their justification or for their implementation.*
>
> *(c) (Optional) Agencies may wish to analyze "similar actions" in a single environmental document.*
>
> *(i) Proposals are similar if, when viewed with other reasonably foreseeable actions, they have common aspects that provide a basis for evaluating their environmental consequences together, such as common timing, types of impacts, alternatives, or geography. This section does not require agencies or applicants to analyze similar actions in a single environmental document or require applicants to prepare environmental documents on proposals other than their own.*
>
> *(ii) When preparing environmental documents on similar actions, agencies may find it useful to define the proposals in one of the following ways: (A) Geographically, which may include actions occurring in the same general location, such as a body of water, region, or metropolitan area; or (B) generically, which may include actions*

which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, environmental media, or subject matter.

According to Richard Settle, the purpose of WAC 197-11-060(3)(b) is to avoid misleading, piecemeal environmental review. Richard A. Settle, *The Washington State Environmental Policy Act*, § 1101[5].

For the reasons identified in Finding of Fact No. 9, the only interdependency amongst the three campus projects is economic. In terms of WAC 197-11-060(3)(b)(ii), each separate project is part of the campus development project (i.e. develop the campus to make a profit) and the impetus for each separate project, i.e. justification for their implementation, is the profit motive for the campus development project. The difficulty with the Appellant's one pertinent point of interdependency is that the basis for it is economic, which is not an environmental impact pertinent to SEPA review. *See* WAC 197-11-444. However, the results of the economic interdependency for this project are environmental. The economic interdependence of the three campus projects compels their development within the same timeframe, which in turn has significant potential for cumulative impacts due to shared interior and exterior circulation, a shared drainage basin and shared historical and aesthetic impacts. The totality of circumstances, both economic and environmental, makes the impacts anything but remote or speculative. Allowing the Applicant to avoid review of shared impacts under these circumstances enables the piecemealing that Richard Settle claims WAC 197-11-060(3)(b) has been designed to prevent.

Of course, projects that are only related economically will not always collectively result in environmental impacts. For example, the development and sale of one property to facilitate the financing of another project can result in no environmental consequences if the projects are constructed on the opposites sides of town. Economically interdependent proposals will only create shared, i.e. cumulative impacts if they are associated with common or interdependent project features, such as those shared by this project. Since the purpose of SEPA review is to assess environmental impacts and the purpose of WAC 197-11-060(3)(b) is to prevent piecemeal review of those impacts, one could simply require that economic interdependence only qualifies a proposal for consolidated review under WAC 197-11-060(3)(b) if it is paired with common project elements such as shared infrastructure or shared environmental impacts. The problem with this approach is that it requires pairing of nonenvironmental factors with common features that 197-11-060(3)(c) expressly identifies as a discretionary basis for consolidated review. This type of statutory construction involves implied terms and restrictions that runs far afield of the plain text of the SEPA rules.

Ultimately, the purposes and function of SEPA can be more directly met without such a creative construction of WAC 197-11-060(3)(b) by simply falling back on the basic obligation to evaluate cumulative impacts that are not too remote or speculative to qualify as "probable" as outlined in COL No. 2. So long as the City mitigates all cumulative impacts resulting from the future construction of Warehouse B and the Greenline Business Park, there is nothing lost from gaps in piecemeal SEPA review. As a result, having to apply a strained interpretation of WAC 197-11-060(3)(b) becomes unnecessary.

Even if a reviewing court were to conclude that WAC 197-11-060(3)(b) applies to the campus projects, it can be interpreted in a manner that is consistent with the principle that SEPA review encompasses cumulative impacts. WAC 197-11-060(3)(b) allows "parts" of proposals to be consolidated for environmental review as opposed to the entirety of each proposal. If the "parts" are construed as limited to those portions of the three campus projects that involve cumulative impacts, WAC 197-11-060(3)(b) is effectively applied to limit consolidated review to cumulative impacts. The problem with this approach is that it necessitates project impacts to be considered parts of a proposal, such as added traffic to exterior roads. Although the SEPA definitions for "project" and "action" are arguably flexible enough to accommodate project impacts such as trip generation, it is also a strained interpretation of the definitions. For this reason, this Decision takes the position that WAC 197-11-060(3)(b) doesn't apply to the three campus proposals. However, if a reviewing court accepts that the "parts" of the campus proposals subject to WAC 197-11-060(3)(b) are limited to those "parts" creating cumulative impacts, there should usually be no difference in result except for the applicability of some case that governs cumulative impact analysis. That is as it should be, since either approach ensures that all individual and cumulative impacts are evaluated and mitigated, which is the ultimate purpose of SEPA review.

6. Indian Trails Case Distinguishable. The Appellant relies heavily upon a factually similar case to assert that WAC 197-11-060(3)(b) consolidation is required, specifically Indian *Trail Property Owner's Ass'n v. City of Spokane*, 76 Wn. App. 430 (1994). *Indian Trail* involved the reconstruction of a shopping center. Redeveloping portions of an existing shopping center does bear some functionally similar characteristics to developing portions of the Weyerhaeuser campus. However, *Indian Trails* is ultimately distinguishable because it involved significantly more shared infrastructure than the current proposal and didn't identify that any cumulative impact analysis had been conducted. This is in stark contrast to the current proposal where the City considered cumulative impacts for several of the major impacts of the project.

The *Indian Trail* shopping center contained a 16,500-square-foot grocery store, retail shops, dental clinic and service station. A portion of the site was undeveloped. The applicant of that case wanted to replace the grocery with a 47,000-square-foot store, construct a 3,820-square-foot building for retail space, relocate the dental clinic, add a car wash, expand and relocate the service station to other parts of the site and add underground storage tanks. 76 Wn. App. at 432-33; 443. The car wash and possibly the underground storage tanks were apparently all part of the initial redevelopment plans, since the court noted that redevelopment of the shopping district also included plans for a car wash and the underground storage tanks were presumably planned for the service station relocation. Id.

In what the court referenced as phased SEPA review, the City issued three separate SEPA DNSs for the proposal, the first for the redevelopment omitting the underground storage tanks and car washes and then the subsequent additional DNSs for the storage tanks and car wash. The car wash required a separate "special permit". The *Indian Trail* court determined that the three proposals covered by the three separate threshold determinations should have been evaluated as one proposal under WAC 197-11-060(3)(b).

Regarding the car wash, the court found that:

> *We note at the onset that the responsible official's initial evaluation of the underground fuel storage tanks separate from other phases of the proposal was in error. Parts of proposals which are "related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same environmental document." WAC 197-11-060(3)(b). Here, a phased review of the project was clearly inappropriate because it would serve only to avoid discussion of cumulative impacts. WAC 197-11-060(5)(d)(ii). See also WAC 197-11-060(3)(b)*

The court also ruled that any separate threshold determination for the car wash was also "in error" due to WAC 197-11-060(3)(b), without providing any explanation.

Application of the *Indian Trails* case is somewhat difficult because beyond the court's determination that the shopping center constitutes a "single course of action" as quoted above, the court doesn't identify which of the two criteria are met to qualify as a single course of action, i.e. because of simultaneous implementation under WAC 197-11-060(3)(b)(i) or interdependence under WAC 197-11-060(3)(b)(ii). WAC 197-11-060(3)(b) only compels consolidated environmental review if the criterion of WAC 197-11-060(3)(b)(i) "or" (ii) are met, so those criterion must be applied to evaluate the applicability of WAC 197-11-060(3)(b). The *Indian Trails* court didn't mention the WAC 197-11-060(3)(b)(i) or (ii) criteria and didn't identify what elements of the project it found to be interrelated for purposes of WAC 197-11-060(3)(b)(i) or what parts it considered to involve simultaneous implementation for purposes of WAC 197-11-060(3)(b)(ii). For these reasons, a modest amount of speculation as to the basis of the *Indian Trails* rationale is necessary for its application to the three campus projects.

Indian Trails is analogous to the circumstances of the Weyerhaeuser campus because it concerns multi-part development of an existing project site that already contains at least some of the infrastructure that will serve the new development. The timing of the multi-part development for *Indian Trails* was also analogous in that the applicant of that case apparently had plans for all the component parts in place during initial project review.

The Applicant (FWC) and City have not identified any other case with more closely analogous facts than those of the *Indian Trails* case to help assess whether the three campus projects qualify as a "*single course of action*" under WAC 197-11-060(3)(b). There are two significant points of distinction, however, that significantly limit the applicability of *Indian Trails*. The first is the extent of interdependence between the projects. As previously noted, the *Indian Trails* court failed to apply the specific interdependence factors of WAC 197-11-060(3)(b)(ii), so we are left to speculate as to what, if any, interdependence led the court to construe the development stages of the shopping center redevelopment as interdependent. Given the modest size of the structures proposed for the *Indian Trails* development, it is reasonable to conclude that the shopping center was on a site only a few acres in size wherein the proposed uses and facilities were likely to share common parking, internal circulation, exterior access points and stormwater facilities the use of which had a high likelihood of creating cumulative impacts. Depending on proposed timing of the stages of development, construction impacts could also have been cumulative.

In contrast, the Weyerhaeuser campus is 400 acres in size with the Greenline Business Park separated by about a quarter mile from the warehouse buildings. The only shared infrastructure for the three projects is the stormwater detention pond and a driveway access for the two warehouses. The campus projects also share internal circulation, but unlike the *Indian Hills* proposal, which involves the relocation of existing buildings, the campus projects do not appear to involve any major changes in internal circulation routes except for the addition of another lane of travel to Weyerhaeuser Way in front of the Business Park as recommended by its traffic report . See Ex. S-36G

Similar distinctions can be extrapolated for application of the WAC 197-11-060(3)(b)(i) "*simultaneous*" implementation standard. The *Indian Trails* project likely necessitated significantly more simultaneous implementation than the three campus projects due to the tighter site constraints of the *Indian Trails* site coupled with its relocation of existing uses. These distinctions are somewhat speculative, but as earlier noted there is no choice given the complete absence of any explanation by the *Indian Trails* court as to how it applied WAC 197-11-060(3)(b)(i) or (ii).

The second point of distinction from *Indian Trails* is that the three campus projects has gone through significant cumulative impact analysis, while no cumulative impact analysis was identified for the *Indian Trails* project. Finding No. 8 of the City's MDNS identified shared infrastructure that would have to be constructed for the warehouse projects and evaluated their cumulative impacts. Finding No. 8 also referenced cumulative impacts conducted in the reports supporting the environmental review, specifically citing the traffic impact study for the proposal. In contrast, the *Indian Trails* court identified no cumulative impact analysis undertaken for its project. In point of fact, the *Indian Trails* court identified that the three projects involved phased review, suggesting that at least some cumulative impact was being deferred to subsequent phases of development.

Ultimately, the two points of distinction addressed above render *Indian Trails* inapplicable to this project. As previously noted, the adverse consequences of piecemealing that WAC 197-11-060(3)(b)(ii) is designed to prevent is avoided if a project properly addresses all cumulative impacts. Indeed, the *Indian Trails* court characterized the requirements of WAC 197-11-060(3)(b) as "cumulative effects," 76 Wn. App. at 443, suggests that it was using WAC 197-11-060(3)(b) as a means of requiring a cumulative impact analysis that in contrast has already been conducted by this project. The interdependence and simultaneous features of the *Indian Trails* project were also far more pronounced than those of the three campus projects. Overall, project consolidation was necessary for a complete review of all environmental impacts for the *Indian Trails* project. There is no such necessity for the three campus projects since all cumulative and individual impacts of Warehouse A are fully addressed.

7. No Post-Hoc Rationalization. Pages 23-24 of the Appellant's closing brief asserts that the City engaged in post-hoc rationalization to support its cumulative impact analysis and then identifies case law that prohibits this type of rationalization to support agency decisions. The underlying premise to this position is incorrect and it is found that the City did not engage in any post-hoc rationalization. The City explicitly identified that it had conducted a cumulative impact analysis and then presented testimony to explain how that analysis was conducted, much of it already built into City regulations. Some evidence, most notably the TIA for the business park, was likely not considered during review

of the Warehouse A project, but that evidence merely constituted rebuttal evidence to the Appellant's assertions of environmental impacts.

The Appellant largely based its assertion that the City didn't conduct a cumulative impact analysis during project and SEPA review upon Finding No. 8 of the MDNS, Ex. F-5a and Finding No. 35 of the Process III decision (both of which are identical and headed as "cumulative impacts") and some preliminary comments made by the City at page 3 of its Process III Decision Exhibit A Findings.

As to the Ex. A preliminary comments made in the Process III decision, the City stated as follows in response to public comments requesting master plan, EIS and cumulative impact review:

> *Finally, the city is generally prohibited from requiring an applicant to provide mitigation of a project to an extent that exceeds the project's anticipated impacts. The city accordingly cannot require the Greenline Warehouse "A" project to mitigate an impact that it does not cause or otherwise contribute to.*

Contrary to the interpretation made by the Appellant, the comment above does not take the position that the City is legally barred from undertaking a cumulative impact analysis. It merely reflects the constitutional nexus and proportionality requirements that prohibit a City from requiring a developer to mitigate more than its own proportionate share of impacts. *See Dolan v. City of Tigard*, 512 US 374 (1987); *Nollan v. California Coastal Commission*, 483 US 825 (1987). The statement that the City cannot make the Applicant mitigate an impact "*that it does not otherwise contribute to*" implicitly recognizes that if the project does contribute to an impact, the developer can be held responsible. That proportionate share responsibility is precisely how a developer would be held accountable for its fair share of cumulative impacts.

The City's cumulative impact findings in its MDNS and Process III decision contain a little ambiguity but also more likely than not evidence an intent to review cumulative impacts. In the first paragraph of the findings, the Responsible Official identifies the common elements of the project (limited to a driveway access and a stormwater pond) and identifies the evaluation conducted for those impacts. In the second paragraph the findings note that for the cumulative impacts of both warehouse projects, "*many of the project documents for Greenline Warehouse 'A' reference Greenline Warehouse 'B.*'" singling out the traffic study in particular. Contrary to the assertions made by the Appellant, this comment clearly identifies that cumulative impact analysis was conducted on multiple fronts for the two warehouse projects. The second paragraph concludes that the two warehouses do not have to be evaluated in the same document, which as correctly identified by the Appellant is distinct from concluding that cumulative impacts (part of the scope of environmental review) from the two projects is not required. See Appellant closing brief, p. 11. The third and final paragraph of the cumulative impact findings identifies that the business park has no interrelationship with the warehouses and for that reason the business park also doesn't have to be reviewed in the same environmental document as the two warehouses.

From all of the text summarized above, at no point anywhere did the City state it was precluded from conducting environmental review or that it refused to do so. In point of fact, for the two warehouses at least, the SEPA responsible official expressly stated in the MDNS and Process III decisions that both

warehouses were concurrently reviewed in several documents used to conduct the environmental analysis. As previously noted, much of the City's testimony was focused upon explaining how cumulative impact analysis was already built into City development standards, e.g. the additive methodology in concurrency review and the triggers in stormwater review that require joint review of development proposals situated next to each other. The SEPA official, serving as the City's Community Development Director, more likely than not by virtue of his position knew and understood the cumulative impact review incorporated into his City's development regulations when he issued the MDNS. The multiple references to Warehouse B in supporting documents identified by the responsible official are many times likely attributable to those cumulative review standards. Much of the testimony by both City and Applicant experts during the appeal hearing was focused upon explaining how these standards addressed cumulative review. This testimony was not post-hoc rationalization, it was an explanation of the cumulative review that had been factored into both the SEPA review and the Process III review.

City and Applicant witnesses did sometimes reference evidence that hadn't been reviewed prior to issuance of the MDNS or Process III approval, which may have included the Greenline Business Park TIA. However, that testimony was essentially provided as rebuttal to the assertions made by the Appellant that there are outstanding probable significant adverse environmental impacts. As outlined in COL No.2, in terms of its duty to review cumulative impacts, the City must base its threshold determination on information sufficient to evaluate a proposal's environmental impact. Overall the City has done a thorough review of all pertinent impacts given the extensive multiple reports, peer review and detailed findings in both the Process III decision and the MDNS. Every pertinent element of the environment was thoroughly addressed. However, given the scale and complexity of the campus projects, there is plenty of room for the City to overlook a significant cumulative impact even if the standard for adequate scope of review is met. Under those circumstances, it is up to the Appellant to identify what impacts have not been adequately mitigated with some concrete evidence that amounts to more than just conjecture. For that type of evidence, the City and Applicant have a right to defend themselves, which includes rebuttal evidence not considered during project review.

8. State Transportation Facility Impacts. Giving substantial weight to the determination of the SEPA responsible official, it is determined that the proposal will not create any probable significant adverse impacts to state transportation facilities, including cumulative impacts.

At the outset, both the City and Applicant suggest in their post-hearing briefs that there is no obligation to assess or mitigate impacts to state highway facilities because they are exempt from concurrency requirements as authorized by RCW 36.70A.070. City Closing Brief, FN 60; Applicant Closing Brief, p. 35. Along these lines, the City also notes that WSDOT's *Development Services Manual*, which WSDOT uses to evaluate and mitigate transportation impacts, is not an adopted City standard and therefore should not be applied to assess impacts. City Closing Brief, p. 22. Although the City may not have any standards that directly apply to WSDOT facilities, there is no question that the City's obligation to assess and mitigate environmental impacts in SEPA extends into other jurisdictions. *See SAVE v. Bothell*, 576 P2d 401 (1979). In the absence of any specific City policies that would apply to WSDOT facilities, documents such as the *Development Services Manual* can be applied to assess impacts if they are credibly based and used consistently as a matter of policy by WSDOT itself to assess

impacts[5]. However, as shall be discussed, even using the Manual, the Appellant has not met its burden to establish that the SEPA responsible official erroneously determined that there are no outstanding probable significant adverse impacts to WSDOT facilities.

As to sufficiency of environmental review, the City was warranted in relying upon information provided by WSDOT. WSDOT facilities are outside City jurisdiction and the City has not adopted any standards to regulate use and development of WSDOT facilities within WSDOT right of way. The City is therefore reliant upon WSDOT to exercise its own policies and expertise in identifying impacts to its facilities and what's needed to mitigate them. WSDOT is certainly entitled to expect that any detailed traffic impact review be prepared by the Applicant in a TIA and SEPA review, but if WSDOT believes there are any deficiencies in this analysis it is incumbent upon WSDOT to make some showing that the information is incomplete. In this case, as determined in FOF No. 10, WSDOT has not provided any such information. Assuming arguendo that its *Development Services Manual* is a proper standard for assessing SEPA significance, the only specific impact that allegedly reached significance identified by WSDOT was increased congestion on the SR 18 westbound off ramp in its November 9, 2018 comment letter. Mr. Swires testified that this impact was mitigated by the storage lane condition added to the Revised MDNS. Beyond the comment letter the City also met with WSDOT to discuss its concerns. The City gave WSDOT full opportunity to comment, met with WSDOT and was responsive to its only specific concerns. In this regard the City considered information sufficient to evaluate impacts to WSDOT facilities.

As to its burden to establish probable significant adverse impacts, the Appellant produced no affirmative information supporting any specific impacts that weren't addressed by the City. Beyond the increase in storage lane and the WSDOT letters, Mr. Swires was unable to identify any additional mitigation that may be necessary to mitigate the traffic generated by the IRG proposals, despite extensive questioning even from the Appellant's own counsel. As succinctly put in cross examination, Mr. Swires affirmed that WSDOT is contending there might be cumulative impacts not that WSDOT has identified any cumulative impacts. Further, given Mr. Swires' testimony that the storage lane mitigation had addressed WSDOT's concerns over thresholds being exceeded in its *Development Services Manual*, WSDOT has not presented any evidence that cumulative impacts from the campus project is close to or likely will trigger any WSDOT thresholds for mitigation. Under the Appellant's burden of proof to produce affirmative facts establishing a need for mitigation as outlined in COL No. 2, no such facts were produced for mitigation of WSDOT facilities. The Appellant has not met its burden of proving any need for additional mitigation.

9. Local Street Trip Generation Impacts. As conditioned, Warehouse A will not create any probable significant adverse trip generation impacts to local City streets, including cumulative impacts.

[5] RCW 43.21C.060 requires imposition of any SEPA mitigation to be based upon adopted SEPA policies, but Federal Way has plenty of broad-based policies adopted by FWRC 14.25.060 that in turn would justify mitigation of impacts on WSDOT facilities.

The Appellant's evidence on local street impacts is limited to a memo prepared by Ross Tilghman, Ex. S-5a, and his associated public testimony. This Decision will address each of the five points raised in that memo.

Mr. Tilghman's first and second point is that the cumulative impacts of all three projects should be considered. As conditioned, the three campus projects will be fully evaluated for cumulative impacts. With an added SEPA condition requiring consideration of the concurrency review for the Business Park, the SEPA review process will ultimately include a review of trip generation impacts from all three projects through the City's concurrency review and adopted TIA procedures. These review processes and procedures provide for individual study of each proposed project that considers the additive impact of all projects that have come before. Thus, the traffic analysis for Warehouse A considered all projects with applications submitted before the Warehouse A application, with the concurrency analysis addressing the weekday PM peak hour and the TIA addressing the AM and weekend PM peak hour. The TIA for the Business Park, which is under review by the City, considers the AM peak hour trips for the Business Park and all prior applications, including Buildings A and B. The concurrency analysis for the Business Park will do the same for the PM peak hour. This provision has been in the City's adopted concurrency and TIA guidelines since their initial adoption in the late 1990s and has consistently been applied to require that a concurrency analysis and TIA take into account existing traffic and traffic from projects in the "pipeline" – those whose applications were submitted prior to the application for the project under review and are pending or approved. *Perez*, 8/9/19 12:00 pm, 17:00-20:00; *Schramm*; City Ex. 1(j); Applicant Rebuttal Ex. 8, p. 3-43 ("Add Impacts of Adjacent Major Developments Pending and Approved."). Notably, the TIA for the Greenline Business Park has already been completed[6] and is part of the administrative record of this appeal. See Ex. 36G. As previously mentioned, that TIA includes the impacts of the trip generation from Warehouses A and B. The Business Park TIA found no need for off-site mitigation except for an additional lane of traffic along the Weyerhaeuser Way frontage of the business park. The TIA for Warehouse A itself also addresses the trip generation of Warehouse B. See Ex. F-1j.

The one missing link in cumulative trip generation in the administrative record is the lack of completed concurrency review for the Business Park. One compelling point raised by Mr. Tilghman that wasn't raised in his memo but instead in his testimony was the lack of PM peak hour analysis in the Greenline Business Park TIA. As noted in the WSDOT comments identified in Finding of Fact No. 10, WSDOT's focused its concerns on PM peak hour, stating traffic at that time of day its I-5 and SR 18 facilities are severely congested at the campus site. As shown in Point 5 of Mr. Tilghman's memo, the traffic delay at the Weyerhaeuser Way/SR 18 intersection increases from 41.0 seconds to 53.1 seconds between AM and PM peak hour. As further noted in the memo, the AM peak hour LOS for the intersection upon completion of the business park is reduced from D to E. This information, along with the high traffic counts of the Business Park, raises the reasonable possibility that there could be a failing PM peak hour

[6] The report has been completed but is still under review by the City, so presumably the City may still require modifications. However, the detail and analysis in the report certainly qualifies as sufficient information to evaluate cumulative impacts. Beyond points raised in the Tilghman letter, which are all addressed in this Decision, the Appellant has not presented any evidence that challenges the accuracy of the analysis.

LOS[7]. For that reason, in order for the City to sufficiently review environmental information of cumulative traffic impacts as outlined in COL No. 2, the concurrency review for the business park should be completed before traffic mitigation requirements for the Warehouse A project are finalized. With that information, the City will then have the opportunity to require proportionate share mitigation from Warehouse A if necessary, to assure that all cumulative impacts have been addressed. Given the separation of the Warehouse A site from the SR 18 off-ramp intersection and the fact that any required mitigation would be pro-rata, it is unlikely that any mitigation would require an alteration to the Warehouse A project or any of its required frontage improvements. For these reasons, the Warehouse A project will be authorized to move forward but with a condition added to the MDNS that requires the owner to pay any proportionate share mitigation found necessary for the SR 18 off-ramp intersection as a result of the completed business park concurrency review.

> As mitigated, the proposal will not create any probable significant adverse cumulative traffic impacts because all affected roads and intersections will operate within adopted level of service standards as determined in the TIAs and concurrency reviews for all three campus proposals, including the business park TIA and concurrency certificate, which considers the trip generation for all three projects.

The added SEPA condition also resolves a legal point raised in the Appellant's closing brief, that the concurrency review for Warehouse A fails to comply with FWCR 19.90.120(2), which requires that consideration must be taken of development permit applications on contiguous parcels if project approval for those projects occurs within two years. The concurrency review certificate for Warehouse A is not in the record, so it's unknown if traffic counts for Warehouse B, located on a contiguous parcel, were included. It is also unknown if the Warehouse B application had been filed at the time Warehouse A (then called Preferred Freezer) was under concurrency review, such that the City may not even have known of the Warehouse B project during that concurrency review. The City and Appellant raise the point that the concurrency certificate for Warehouse A has not been timely appealed and the Appellant responds that they are not challenging the validity of the certificate but rather the utility of the information for purposes of cumulative impact review. Regardless, whether or not the certificate for Warehouse A was based upon required information for contiguous parcels, the added SEPA condition requiring the issuance of the certificate for the business park will include the trip generation from both Warehouses A and B, since the applications for Warehouses A and B were in the pipeline prior to the business park application. See FOF No. 6. In short, for utility purposes, the information required by FWCR 19.90.120(2) will be provided in the concurrency review for the Business Park.

Mr. Tilghman's third point is that a planned extension of 324th Street, as anticipated in the City's Comprehensive Plan, should also be considered for its effect on traffic volumes on Weyerhaeuser Way S. The City's comprehensive plan was recently amended to allow realignment of that road's extension so that it would terminate at Weyerhaeuser Way S. The comprehensive plan also anticipates that new

[7] The City's LOS standard for signalized intersections is LOS E. *See* City of Federal Way Public Works Development Standards Section VID(1)(6)(adopting LOS E for signalized intersections). It's unclear from the record whether or not the SR 18 off-ramp intersection is actually within City jurisdiction and hence subject to the LOS. However, in the absence of any other information, LOS F is highly indicative of inadequate level of service and more likely than not would be considered inadequate by WSDOT if under WSDOT jurisdiction.

ramps to I-5 would be part of the new overcrossing. However, the extension is not funded and is not on the City's Transportation Improvement Plan ("TIP") or Capital Improvement Plan ("CIP"). Under such circumstances, it cannot be included in the TIA under the City's adopted TIA guidelines. *Perez; Schramm*; Applicant Rebuttal Ex. 8, p. 3-45. In this regard, the City's TIA standards are consistent with state concurrency guidelines, which only allow capital improvement projects with financial commitments in place to be considered as helping a project to meet level of service standards. See RCW 36.70A.070(6)(b) (future improvements can only be considered to meet concurrency standards if "*financial commitments are in place*" to complete the improvements within six years of project approval). As identified in COL No. 2, project impacts do not qualify as probable if they are "*remote or speculative*." To provide consistency with the City's transportation guidelines and Growth Management Act standards, public improvements with no financial commitments in place will be considered too remote and speculative to be considered in a cumulative impact analysis. Using this standard, the 324th extension is too remote and speculative to be considered in the traffic impacts of Warehouse A because the extension is unfunded.

Mr. Tilghman's fourth point is that the TIA for Warehouse A is deficient because it failed to comply with FWRC 19.90.010, a concurrency review definition of "background traffic." That definition applies to concurrency review and does not apply to TIAs. As a matter of law, FWRC 19.90.010 is irrelevant to TIA review.

Mr. Tilghman's fifth point is that there are likely LOS problems because some intersections will barely operate at LOS D with Warehouse A and that this is without consideration of the trip generation for the Greenline business park. This criticism is based on the erroneous premise that the City's adopted level of service standard is LOS D. See Tilghman, 6/21/2019 10:20 am, 17:50-18:05. The City's standard, however, is LOS E. *See City of Federal Way Public Works Development Standards* Section VID(1)(6)(adopting LOS E for signalized intersections). The potential for PM traffic reducing the SR 18 intersection LOS E has been addressed by added SEPA mitigation as discussed supra. Beyond this, Mr. Tilghman presented no evidence that the addition of business park traffic would lower level of service below LOS E and there is no basis to require additional review or mitigation under the review standards identified in COL No. 2.

Mr. Tilghman's sixth point is that the Warehouse A TIA should have included updated traffic counts used for the Greenline Business Park study. Mr. Tilghman points out that the 2018 Warehouse A traffic study relied upon 2016 traffic counts when 2017 traffic counts were available from the business park study. As identified in the City's closing brief, it is undisputed that the project application for the Greenline Business Park had not been submitted at the time the Warehouse "A" TIA was performed and that the business park TIA had not been completed. Rick Perez, a City traffic engineer who worked on the project, testified that the approach contemplated by Mr. Tilghman – i.e. constantly updating and supplementing project-specific transportation studies with new information – is neither required by the City's TIA guidelines nor feasible in practice. He noted that Mr. Tilghman's approach would render project review chaotic and impractical by effectively requiring "*an endless loop*" of transportation review for every new development. Under the City's longstanding methodology, review is confined to traffic conditions in place on the date of application. These existing traffic conditions include the traffic counts for all other projects with filed applications predating the project under review, what Mr.

Perez characterized as "pipeline projects." Mr. Perez testified the City has applied this standard consistently and evenhandedly for over 20 years.

The City's methodology used to limit cumulative review to pipeline projects is a sound approach that ensures that all applicants will be treated in a predictable and equal fashion and that traffic review can be completed in a timely manner. Further, Mr. Tilghman did not identify any significant adverse impacts or gaps in environmental review that resulted from that methodology. He did show that the updated 2017 counts showed traffic volumes 15% higher than Warehouse A counts for the SR-18 westbound ramp intersection and 35% higher at the eastbound ramp intersection. However, these counts were still consistent with the adopted LOS E standard and the Greenline Business park TIA, Ex. S-36G, demonstrates that even with the addition of business park traffic to the updated traffic counts, required LOS is still maintained at these intersections. As previously discussed, the Business Park TIA doesn't address PM peak hour traffic at the SR-18 intersection, but that deficiency is addressed by the added SEPA mitigation imposed by this Decision.

Mr. Tilghman's 7th point is that there are inconsistencies in level of service projections between the business park and warehouse TIAs. As testified by Mr. Perez, those differences are attributable to the dates that traffic counts are set as explained in the preceding paragraphs and also because trip generation data is constantly evolving. As with all of the other issues raised by Mr. Tilghman, Mr. Tilghman did not identify how the disparities in data between the traffic studies has resulted in any unmitigated impacts. The business park TIA, using the most current traffic counts and trip generation data available, still finds that affected intersections are operating at LOS E or better.

Mr. Tilghman's 8th point is that the Warehouse A TIA should consider truck traffic impacts to SR 18. Traffic impacts to SR 18 were adequately evaluated and addressed for the reasons identified in COL No. 8.

Mr. Tilghman's 9th point is that truck traffic impacts should be considered on Weyerhaeuser Way north of the project site. That issue was in fact considered in environmental review and fully mitigated. City reviewers expressed concern that trucks leaving the Project would attempt to turn left and travel north up Weyerhaeuser Way S rather than south to SR-18. *Schramm*. Accordingly, the Applicant proposes the installation of a raised curb in the middle of Weyerhaeuser Way S and a "no left turn" sign to prevent trucks from traveling in the prohibited direction. See Ex. F-1j, p. 10. In the course of SEPA review, the City recommended another measure: a SEPA condition that Applicant provide a bond that will be used for pavement improvements on the northern portion of Weyerhaeuser Way S in the event that more than 28 trucks per week travel north from the Project. City Ex. 5(c), p. 9. The City issued the MDNS on the basis of this information and included these conditions. City Ex. 5(b), pp. 2, 3, 6-7.

The Appellant also contests the City's concurrency review on the basis that the City is using the certificate issued for a prior development project at the Warehouse A site. As outlined in Finding of Fact No. 11, the City is using the concurrency review certificate issued for the Preferred Freezer proposal to find compliance with its concurrency review standards. As further determined in Finding of Fact No. 11, the CRC is based upon trip generation data and the only difference in data between the Preferred Freezer and Warehouse A proposals is an increase in one PM peak hour trip. Requiring a separate CRC would therefore not change the results, except for changes in background traffic. As

pointed out by Appellants, FWRC 19.90.100 states that a CRC is only valid "*until the development permit . . . is withdrawn*." However, FWRC 19.90.090 anticipates that development projects may be amended and that changes in trip generation are allowed without need for a new CRC up to an increase of 10% in trips. Given these factors, the Preferred Freezer application is not considered withdrawn but rather amended and is appropriately applied to the Warehouse A proposal.

10. Traffic Safety Impacts. The proposal will not create any probable significant adverse transportation safety impacts for the reasons identified in Finding of Fact No. 12. The City's frontage standards and the staff's careful and expert consideration of traffic safety issues as outlined in FOF No. 12 are more compelling than the anecdotal evidence presented by the Appellant. The review also shows that the City sufficiently considered environmental impacts as required by COL No. 2. The Appellant's closing brief asserts that discounting lay testimony devalues the concerns of City residents. Lay testimony is certainly important in identifying actual impacts to City residents and providing context to the technical analysis presented by expert witnesses. However, in evaluating the credibility of evidence, expert opinion and adopted street standards found adequate by the City Council will often be more compelling than observations made from personal use of City infrastructure.

11. Historic Impacts. The proposal will not create any probable significant adverse impacts to historic resources[8]. The corporate headquarters and its integration into the treed landscape of the Weyerhaeuser landscape is found to be historically significant and the proposal is found to adequately protect these historical features given the highly subjective nature of historical impacts and the substantial weight due the SEPA responsible official.

SEPA evaluation and protection of historically significant areas and structures is difficult because the SEPA rules do not define historical significance or how to protect it. Where an undefined term or concept is used in a statute, it is appropriate to consider the usage and application of that term or concept in other statutes. *See, e.g., City of Seattle v. Hammon*, 131 Wn. App. 801, 805-06, 130 P.2d 385 (2006). Several statutes, regulations and ordinances at the federal, state and municipal level establish formal, binding criteria that designate and sometimes protect historical significance. See, e.g., 36 CFR Parts 60-68; Chapter 27.34 RCW; Chapter 25-12 WAC; Chapter 19.285 FWRC. Each of these regulatory programs contains specific standards and procedures for nominating, evaluating and designating particular lands and/or features as having sufficient historical importance to warrant formal listing and protection. As outlined in FOF No. 13, the proposal has not been designated as historic in any of the afore-mentioned regulatory schemes. This absence of designation is probative of the historical significance of the campus site, but as outlined in FOF No. 13 other evidence concerning historical significance is so strong that ultimately the campus headquarters and its integration into the treed landscape is found to be historically significant.

The evaluation of historic resources is further complicated by the fact that although the Appellant has presented numerous comment letters and testimony from qualified professionals on the historic

[8] To the extent that the Appellant was also asserting aesthetic and view impacts as a SEPA appeal issues, the proposal is also found to create no probable significant adverse aesthetic or view impacts for the reasons identified in Finding of Fact No. 13.

significance of the project site, none of those professionals has identified a clear set of standards that can be applied to ascertain if the Warehouse A proposal adversely affects that historic significance in any probable or significant way. This leaves the SEPA responsible official having to ascertain whether Warehouse A impacts to these undefined historic resources are "probable," which is defined as "*a reasonable likelihood of more than a moderate adverse impact on environmental quality*," see WAC 197-11-794(1). Under the circumstances of this case, with lack of clarity as to what needs to be protected and how much it needs to be protected, the substantial weight due to the determination of the SEPA responsible official takes added significance in resolving differences of opinion between qualified experts.[9] For the reasons identified in FOF No. 13, applying the substantial weight standard, the proposal is found to adequately protect the historic character of the campus and thereby does not create probable significant adverse impacts.

A final relevant issue regarding historical impacts is its cumulative impacts. The Appellant wasn't very clear as to what those cumulative impacts would be, but it is reasonable to infer that concern raised over the scale and mass of proposed campus projects in toto can affect the perceived integration of building into landscape, which is one of the primary historical features of the project site. Unfortunately, this is a highly subjective issue and persons of common intelligence under the *Anderson* standard, see Footnote No. 6, could differ as to whether the incremental aesthetic impacts of the Warehouse A project would push aesthetic impacts into the significant category when combined with the impacts of Warehouse B and the Greenline Business Park. Given the extensive amount of buffering around the Warehouse A site, it is entirely reasonable to conclude that those incremental impacts are too minor to make any difference in a cumulative impact analysis. Giving substantial weight to the determination of the SEPA responsible official, it is determined that the proposal will not create any probable significant adverse cumulative impacts.

12. Proposal Consistent with Comprehensive Plan. The proposal is found to be consistent with the Comprehensive Plan policies raised by Appellant for the reasons identified below. In applying comprehensive plan policies, it must be recognized that comprehensive plans ordinarily do not directly control development and that they must yield in the face of specific zoning regulations. *See, e.g., Citizens for Mount Vernon v. City of Mount Vernon,* 133 Wn.2d 861, 873, 947 P.2d 1208 (1997); *Cougar Mountain Assocs. v. King County,* 111 Wn.2d 742, 757, 765 P.2d 264 (1988); *Carlson v. Beaux Arts Village,* 41 Wn. App. 402, 408, 704 P.2d 663 (1985). Even where — as here — a local zoning code purports to require comprehensive plan consistency at the project approval level, only general consistency is required in this context unless the comprehensive plan itself contains specific mandates and/or prohibitions that expressly apply to the permit at issue; general statements from the Comprehensive Plan may not be invoked to overrule the specific land use authorization otherwise granted by the code. *See, e.g., Lakeside Indus. v. Thurston County,* 119 Wn. App. 886, 898, 83 P.3d 433 (2004). Applying these principles, the comprehensive plan policies raised by the Appellant are individually addressed as follows:

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[9] In this regard, that substantial weight standard protects the threshold determination from a void for vagueness "as applied" challenge under *Anderson v. Issaquah*, 70 Wn. App. 64 (1993), which holds that an ordinance violates due process if its terms are so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application.

A. Policy Background "Goals" Not Applicable to Project Review. In Appeal Claim 3.5.1 and 3.5.2, Appellant asserts that the Project fails to comply with two goals in the "Policy Background" section of the Comprehensive Plan's Land Use Chapter, the requirements of which include that (1) growth outside the City center be limited to areas that are already urbanized; and (2) that the proposal protect environmentally sensitive areas. These two goals are not applicable to development project review. As noted in the introductory section to the goals, the Comprehensive Plan's Land Use chapter was designed to implement those goals – there is nothing to suggest the goals were intended to guide future development beyond the implementing policies. See Comp. Plan p. II-1.

B. GMA Goals Not Applicable to Project Review. In Appeal Claims 3.5.3, 3.5.4, and 3.5.5, Appellant claims nonconformance to the GMA goals listed in page II-2 of the Comprehensive Plan. The GMA goals were listed in the Comprehensive Plan to identify how the GMA regulated the content of Comprehensive Plan policies and goals. The listing of the GMA goals was not intended to directly regulate project review. The GMA goals are inapplicable to individual project review.

C. Urban Design and Form Introductory Text Not Applicable to Project Review. Appeal Claims 3.5.6 and 3.5.7 cite a Land Use Goal and a Land Use Policy from the "Urban Design and Form" section of the Chapter. City Ex. 2(b), II-8. The introductory text for this section indicates that it establishes "*goals and policies*" that will "*serve as a basis from which to develop appropriate implementation measures*." *Id*. The text then identifies the City's design guidelines as the implementation measures for these goals and policies. As is clear from the introductory text, project review was not an intended implementation measure.

D. Land Use Designation Criteria Not Applicable to Project Review. Appeal Claims 3.5.8, 3.5.9, 3.5.10 and 3.5.11 cite standards from Section 2.7 of the Land Use Chapter, entitled "Land Use Designations." City Ex. 2(b), II-10. This section "*set[s] forth locational criteria for each specific class of uses*" designated by the Plan. *See id*. In short, the policies were intended to be used by the City to legislatively set the boundaries for zoning districts and guide their use restrictions. The provisions are not intended to require the re-evaluation of these land use choices during project level review.

Even if the policies identified by the Appellant are applied to development review, the proposal still complies with them. Claims 3.5.8 through 3.5.10 assert nonconformance to Comprehensive Plan policies that require compatibility with and protection of single-family neighborhoods. The Appellant has comprehensively brought up every single adverse environmental impact that could conceivably adversely affect adjoining neighborhoods and this Decision has found that all such impacts are mitigated to non-significant levels. In the absence of any significant adverse impacts, the proposal is compatible with and adequately protects surrounding residential neighborhoods as contemplated in the comprehensive plan.

E. Project Creates Recognized Design and Function. Appeal Claim 3.5.11 asserts noncompliance with Comprehensive Plan Goal LUG 8. This is one of the goals that was not intended to guide project specific development for the reasons identified in the preceding subsection, Conclusion of Law No. 12D. However, its specific applicability to the Weyerhaeuser campus warrants individualized attention. Goal LU 8 provides as follows:

> *Create office and corporate park development known regionally, nationally and internationally for its design and function*."

Although Warehouse A appears to be of high-quality development (see discussion below), it is unlikely that by itself it will be known regionally, let alone nationally or internationally. Due process requires some element of reasonableness to be incorporated into zoning standards. Construing the goal above as requiring that a warehouse can only be allowed if it is likely to win international awards for its architectural design is not reasonable when the warehouse is otherwise listed as an authorized use by the CZA. A more liberal interpretation is warranted. In this particular case, the "development" referenced in the goal does not have to be limited to the building itself, but how it is located, configured and buffered within the campus as a whole. As discussed in the FOF No. 13, the proposed development includes retention of tree stands that maintain the overall landscape integration between the Weyerhaeuser headquarters and campus vegetation, while not encroaching into the view corridors both from and to those headquarters. The resulting Weyerhaeuser campus as a whole will be different, hence new "corporate development" because of the addition of Warehouse A, and that new "corporate development" will likely be regionally, nationally and internationally recognized because Warehouse A will not detract from the regional, national and international status of the headquarters. Ultimately, Warehouse A's contribution to the high status of the headquarters building and its surrounding campus is that Warehouse A is designed to stay out of the way.

F. Project Qualifies as Quality Compatible Development. Appeal Claim 3.5.12 asserts that the proposal violates Comprehensive Plan Policy LUP 49, which requires that the proposal "*encourage quality development that will complement existing uses*." As with COL No. 12D and E, Policy LUP 49 was intended to be implemented in the zoning code and not during project review. The policy sets a subjective standard where the substantial weight due to the SEPA responsible official is determinative. In their closing brief, the Applicant provided a well-founded explanation from project architects as to how the project qualifies as quality and complimentary development as follows:

> *This design has been envisioned with a clear mindset of the surrounding landscape and regional materials. Sourcing materials and design elements from the Pacific Northwest aesthetic allows this warehouse building to blend in with the surrounding character of Federal Way. Located on a well-known*

> *site, we have included timber accents and artistic reveal patterns to emphasize the history and character of the area. Entry nodes, visible to the public streets, are comprised of large expanses of glass, glue laminated timber framing, façade modulation, large canopies and arcades. Building signage will be provided with non-traditional methods including regional materials and forms, strong composition with the building design and unique signage elements. Altogether, the proposed approach to the building is of superior design quality and deep appreciation for the character and history of the chosen site.*

City Ex. 1(y), p. 2. They also stated:

> *Landscaping provided pursuant to Section XI, maintains native vegetation on undeveloped portions of the site as well as adds screening of built structures from the right-of-way. Open space amenities include the managed forest buffer that is in effect a conservation of nature. Additional open space is provided nearby on the grassy meadows where users enjoy pedestrian trails for running, walking pets, or space to fly kites. Most importantly, [the Project] has been designed to voluntarily incorporate many of Federal Way Revised Code community design guidelines.*

Id., p. 1.

In the Process III Approval, the City recognized Applicant's voluntary incorporation of elements from the design guidelines, "*including façade modulation; use of a canopy and arcade at the building entries; recessed windows and panels; artistic reveal patterns; paint scheme; indentations; overhangs; emphasizing the building entrances with transparent glass; timber beams; and large overha*ngs." City Ex. 6(b), p. 9.

The Appellant's only evidence on quality of construction and its compatibility is from Mr. Flesher, who testified that he believes that the construction method to be used for the Project will result in "*a big cement-block house*" that is "*ugly*" and is "*not a quality construction*"; that "*people are going to be driving down the road and they're going to see that*"; and that he "*has a strong feeling that it's going to impact our property values*." Flesher, 6/21/19 2:20 pm, 19:05-20:00; 6/21/19 2:40 pm, 3:30-5:00. It's not clear how familiar Mr. Flesher actually was with the architectural design of the proposal. Despite the warehouse's architectural attention to quality design, its bulk and scale likely will still be found objectionable to at least some people due to the bulk and scale inherent in a warehouse project. Only so much can be done to minimize those impacts and allowances have to be made for the fact that warehouses are an allowed use by the zoning code for the project site. Ultimately, however, compatibility is assured by the tree buffering on all sides of the project except for that adjoining Warehouse B. Given all these factors, it must be concluded that the proposal is consistent with Comprehensive Plan Policy No. LUP 49.

13. Proposal Prepared Adequate Downstream Drainage Analysis. In Appeal Claim 3.6.5 the Appellant claims that the Applicant did not meet stormwater standards for downstream analysis to consider impacts to streams and wetlands, including North Lake and the several branches of the Hylebos Creek. As described in Finding of Fact 16, the proposal provides an adequate downstream analysis. The King County Storm Water Design Manual only requires a ¼ mile downstream analysis (KCSWDM Section 1.2.2.1) for the minimum flow path distance downstream and beyond that, as needed, to reach a point where the project site area constitutes less than 15% of the tributary area. The Applicant and City testified the Applicant had, in fact, performed a downstream analysis for a full mile from the project site (City Post Hearing Brief, page 45), for exceeding the requirements of the KCSWDM. This analysis took into account the natural drainage point of the flows from Warehouse A and B which join those of the Business Park roughly 0.7 miles from the Warehouse A site. The study went ¼ mile past this confluence. Therefore, the analysis reviewed downstream flows a mile from Warehouse A and a 1/4 mile from the natural drainage point. The Appellant did not provide any studies or evidence suggesting that the project site area contributes to more than 15% of the tributary area beyond the ¼ mile from Warehouse A or the mile the Applicant analyzed. The City affirmed that the project's stormwater analysis and design has met or exceeded all requirements of the KCSWDM. It is recognized that cumulative impacts involving the Business Park are pertinent to stormwater review, but the Appellant has not produced any affirmative facts that a downstream analysis more than a quarter mile beyond the confluence of all three projects is necessary to evaluate cumulative impacts. Therefore, the Applicant is deemed to have prepared an adequate downstream drainage analysis.

14. Proposal Adequately Assessed for Drainage. In Appeal Claim 3.6.6, Appellant claims the proposal does not consider or analyze impacts to drainage, including a claim that the discharge of drainage waters is not at the natural location and not at the same volume as under preexisting conditions. As noted in Finding of Fact 16, the Appellant failed to provide evidence that the natural point of drainage is Stream EA. The Applicant claims and the City concurs that the natural point of drainage is 0.7 miles away from the Warehouse A project site at a point of convergence with the Warehouse B and business park campus location. The City went through an extensive review process including re-running the drainage models. Given that the expert testimony provides evidence of thorough review and that the Appellant was unable to provide any evidence to the contrary, it is determined that the Applicant made a prima facie showing that it made an adequate assessment of drainage impacts.

15. Proposal Adequately Addresses Groundwater Impacts. In Appeal Claim 3.6.7, Appellant claims the proposal does not consider adverse impacts to groundwater and downstream resources caused by the interruption of groundwater infiltration due to the construction of large impervious surfaces, including the elimination of storage of stormwater in current wetlands on site. As noted in Finding of Fact 15, the Appellant argued this interruption of groundwater infiltration would contribute to de-watering of on-site wetlands and streams. However, the Applicant and City argued the on-site wetlands do not infiltrate and instead, both the on-site wetlands and Stream EA are fed by precipitation and not groundwater. This position is supported by the Applicant's geotechnical report, which identifies that the project site has low infiltration. The Applicant further argues the buffers for Stream EA will provide protection for the stream (City Post Hearing Brief, Page 27-28 and testimony of Mr. Bartenhagen, Mr. Elliott, Ms. Marriott and Ms. Redman). Finally, the Applicant argues all flows from the project site will continue to discharge to, and hydrate, the Stream EA area (City Post Hearing Brief,

page 28). The Appellant failed to provide any substantive proof that the on-site wetlands are not in fact fed predominantly by precipitation. Based upon this evidence, it is concluded that the City has made a prima facie showing of no impacts to groundwater or resultant de-watering of Stream EA or downstream resources.

16. Proposal Adequately Addresses Collection and Treatment of Stormwater. In Appeal Claim 3.6.8, Appellant claims the proposal does not provide for the collection and treatment of surface water and removal of pollutants, including petroleum products, from surfaces used by vehicles and trucks. As described in Finding of Fact 16, the proposed stormwater system provides enhanced water quality treatment in the form of a "modular wetland" filtration system that treats water for suspended solids, copper, zinc, and phosphorus and includes an oil/water separator to treat vehicular related pollutants from truck and passenger car traffic. Runoff from the non-pollution generating frontage improvements will be dispersed into the landscaping. City staff testified the stormwater treatment conforms to all applicable standards of the KCSWDM. The Appellant did not provide any evidence that the proposed stormwater collection and treatment will be inadequate to mitigate downstream impacts. Therefore, the collection and treatment systems are deemed adequate to protect the downstream environment.

17. Proposal Consistent with Section XI, A.2 of CZA. In Appeal Claim 3.6.9, the Appellant alleges that the Warehouse "A" project is noncompliant with Section XI, A.2 of the CZA, which provides in relevant part that "*alterations to existing landscaping in connection with new development shall match or be compatible with existing vegetation*." The Applicant's landscaping plan in point of fact involves retention of a significant Managed Forest Buffer. Several reports in the Warehouse "A" project file document the extent to which on-site trees have been inventoried and will be preserved, effectively ensuring continuity with the existing landscape. The landscaping plan further shows that the majority of landscaping associated with the proposal will not just "match or be compatible with existing vegetation," it will be existing vegetation. City Ex. 1(f), pp. 5-6; *LaBrie*.

18. Proposal Correctly Sizes Stormwater Detention Pond. In Appeal Claim 3.6.12, Appellant asserts that the hydrological model used to size stormwater detention ponds overestimates existing peak flows from the site and underestimates the volume of required stormwater detention. Testimony by Bartenhagen and Elliott stated the analytical model was intentionally conservative using pre-developed forested conditions. This model assumes the least amount of impervious surface possible. Also, both experts testified the Wetland A storm detention facilities were oversized to accommodate a 27% safety factor beyond the required 100-year storm event. The Applicant notes the KCSWDM requires the stormwater system to achieve release rates based not on existing flows but on predevelopment flows. Therefore, this methodology tends to overstate the required volume of the stormwater pond (Applicant Post Hearing Brief, page 58). The Appellant provided no evidence beyond the assertion that the current model is flawed to demonstrate the Applicant's model used in determining the pre-development conditions and stormwater pond sizing would result in flows beyond the current conditions. Additionally, the pond is conservatively oversized. For these reasons, the pond sizing is found to be adequate.

19. Stormwater Regulations Do Not Require Proposal Consolidation for Warehouse A and B. In Appeal Claim 3.6.13, Appellant claims that the areas of Warehouse A and B should be considered a single project on a single site for purposes of compliance with the City's stormwater manual.

Presumably this claim is based upon NHC's assertion that a master drainage plan should be required for Warehouse "A," Warehouse "B," and the Greenline Business Park. This position is not supported by the stormwater manual, which requires master plans only for contiguous projects, and only where the aggregate amount of new impervious surface on the subject proposals exceeds 50 acres. See KCSWDM § 3.2, Appendix B. The campus projects fall beyond the scope of this standard. The aggregate new impervious surface from the Warehouse "A" (11 acres) and Warehouse "B" (13 acres) proposals is only 24 acres, and neither the Warehouse "A" nor Warehouse "B" project sites are contiguous with the Greenline Business Park property. The standard cited by NHC is inapplicable

20. Proposal Consistent with Public Health, Safety and Welfare. The proposal is consistent with public health safety and welfare as required by FWRC 19.65.100(2)(a)(iii).

Appeal Claim 3.7 compiles eight sub-claims that assert inconsistency with public health, safety and welfare. Four of those claims were dismissed in the Examiner's Partial Dismissal Ruling. The surviving claims are individually addressed below.

A. Traffic Safety/Water Quality Not Adversely Affected. Appeal Claim 3.7.2 asserts that the proposal is inconsistent with public health, safety and welfare due to traffic safety issues caused by truck and freight traffic and water quality problems caused from road runoff. For the reasons identified in Finding of Fact No. 12 and 16, the proposal will not create any probable significant impacts to traffic safety or water quality. For this reason, the facts asserted in Appeal Claim 3.7.2 are not found to be contrary to public health, safety and welfare.

B. Consultation Conducted. Appeal Claim 3.7.3 asserts that the Director did not consult with other organizations in making his determination, including impacted tribes and WRIA 10 organizations in downstream areas. Ms. Welsh testified that the City sent information about the project to three Tribes and received comments from two of them, which it considered in good faith. Welsh, 8/8/19 2:00 pm, 01:00-03:00. Ms. Marriott likewise testified that she is working to address the Tribes' comments as part of the permitting required by the Army Corps of Engineers. *Marriott*. Mr. Elliot testified that the City reached out to the Tulalip Tribe to discuss salmon conservation and go not response. The City's efforts at consultation establish prima facie compliance with any public health, safety and welfare necessities for consultation. Appellant has not identified any applicable standard that requires additional consultation or provided any explanation as to why additional consultation would be necessary. For these reasons, the facts asserted in Appeal Claim 3.7.3 are not found to be contrary to public health, safety and welfare.

C. Conformance to Basin Plans. Appeal Claim 3.7.5 asserts that "*The proposal did not consider or comply with executive basin plans for the Hylebos Watershed, including, but not limited to the Pierce County Hylebos Watershed Plan, the Earth Corps Hylebos Watershed Plan and the King County East Hylebos Watershed Plan*." None of these plans has been adopted by the City of Federal Way. The only plan that has been adopted

into the Federal Way code is the *Executive Proposed Basin Plan Hylebos Creek and Lower Puget Sound* (Basin Plan) (King County Surface Water Management, 1991). The Appellant argues the Applicant failed to comply with the Basin Plan, despite this plan being adopted by the City and listed in the Federal Way SEPA environmental review policies (FWRC 14.25.070(4)) and the Surface Water Management Approval Standards (FWRC 16.25.010(2)). Specifically, the relevant section of the Federal Way drainage code (FWRC 16.25.010(2)) states,

> *(2) Special requirements.*
>
> > *(a) Special Requirement #1 – Other Adopted Area-Specific Requirements. King County has developed several types of area-specific plans and regulations that contain requirements for drainage design. These regulations include critical drainage areas, master drainage plans, basin plans, lake management plans, and shared facility drainage plans. In some cases, these plans and regulations could overlap with the city of Federal Way's jurisdictional area.*
> >
> > *The Hylebos Creek and Lower Puget Sound Basin Plan is the only one of these area-specific regulations that currently affects Federal Way. King County developed this basin plan which recommends specific land uses, regional capital projects, and special drainage requirements for future development within the Hylebos and lower Puget Sound basin.*
> >
> > The drainage requirements of adopted area-specific regulations such as basin plans shall be applied in addition to the drainage requirements of the KCSWDM and Federal Way Addendum unless otherwise specified in the adopted regulation. Where conflicts occur between the two, the drainage requirements of the adopted area-specific regulation shall supersede those in the KCSWDM and Federal Way Addendum. (Emphasis added.)

This City code section references the special requirements listed in the 2016 King County Storm Water Design Manual (KCSWDM) (Section 1.3.1). As noted in the Appellant's Post Hearing Brief (Page 42), the KCSWDM imposes thresholds wherein if a proposed project is within an adopted basin plan, the project must comply with the basin plan and where conflicts between the two arise, the basin plan prevails. The entire former Weyerhaeuser campus area falls within the adopted Basin Plan.

King County's Department of Natural Resources also requested compliance with the Basin Plan, specifically recommendations BW-2 and BW-3. KC DNR also stated special treatment is required under the KCSWDM. Dr. Cooke, in her testimony, cited BW-7 which discourages, but does not prohibit, alterations of Class 2 stream channels (Appellant Post-Hearing Brief, page 43). The Appellant notes neither the impact to Stream EA nor the wetlands have been evaluated or mitigated as required in the Basin

Plan and the KCSWDM. Similarly, the Basin Plan was called to the attention of the City by the Puyallup and Muckleshoot Tribes in November 2018[10].

Despite being an adopted plan within the Federal Way code, the City's argues that compliance with the Basin Plan is not required and is not applicable to the Warehouse A project (City Post Hearing Brief, Page 31 and testimony of Bartenhagen and Elliott). Mr. Elliott testified portions of the relevant downstream analysis had been performed, though neither the City nor the Applicant made any attempt to demonstrate compliance with the full requirements of the Basin Plan. In fact, both denied the requirement to comply with the Basin Plan's more area-specific requirements as required by the City's code and the KCSWDM (City Post Hearing Brief, pages 50-52 and Applicant Post Hearing Brief, Page 61).

For these reasons, this decision finds the City did not show a prima facie demonstration of compliance with the Federal Way Code and the KCSWDM with respect to compliance with the Special Requirements of the Basin Plan. Therefore, a condition of approval will require the Applicant to demonstrate compliance with FWRC 16.25.010(2), the 2016 King County Storm Water Design Manual (KCSWDM) Section 1.3.1, and the Executive Proposed Basin Plan Hylebos Creek and Lower Puget Sound (King County Surface Water Management, 1991) including all analysis and subsequent mitigation requirements.

D. Elimination of Small Wetlands Authorized. Appeal claim 3.7.7 asserts that "*[the City has authorized and approved the elimination of smaller wetlands and their buffers*." As identified in FOF No. 14, the CZA authorizes the elimination of wetlands less than a quarter acre in size. Marriott; Redman; City Ex. 1(k). Compliance with CZA wetland protection standards establishes prima facie compliance with public health safety and welfare. As noted in Finding of Fact No. 14, Appellant has not demonstrated any adverse impacts associated with the elimination of these wetlands to overcome that prima facie compliance. For these reasons, elimination of the smaller wetlands is found to be consistent with public health, safety and public welfare.

21. Streets and Off-Ramps Adequate to Meet Project Traffic Demand. Appeal Claims 3.8.1, 3.8.2 and 3.8.3 assert that streets and SR 18 ramps affected by the proposal cannot adequately accommodate the trip generation of the project and that the project TIA fails to take into account other projects that affect road capacity. For the reasons identified in COL No 8 and 9 and the FOF referenced in them, as conditioned the proposal will not create any probable significant adverse impacts upon the vicinity streets and SR 18 off ramps that serve the proposal. The findings underlying those COLs are sufficient to make a prima facie showing of adequate street capacity and the Appellant has not presented evidence sufficient to overcome that showing.

[10] See Appendices E, G and H.

22. Condition No. 29 Doesn't Create De facto Street Reclassification. Appeal Claim 3.8.4 asserts that the Project will create a "*de facto reclassification of Weyerhaeuser Way South as a truck route, inconsistent with the Federal Way Comprehensive Plan*." FWRC 8.40.040 limits truck traffic through the City[11] to designated truck routes. However, trucks going to and from Warehouse A are not going through the City as contemplated by the truck route restriction of FWRC 8.40.040. Rather they are going to a destination (Warehouse A). Trucks driving to a City destination are authorized to use non-designated truck routes by FWRC 8.40.040.

23. Truck Access at Optimal Location and Configuration. In Appeal Claim 3.9, Appellant asserts that access to the property is not optimal. Access to the property is at an optimal location and configuration. The City made a prima facie showing in this regard by imposing mitigation to limit truck traffic to the south as outlined in Finding of Fact No. 12 and by considering the configuration of access in light of Building B. *Schramm; Perez*. Mr. LaBrie noted that the Applicant placed the project truck access as close to the I-5 and SR 18 ramps as the City would allow. Appellant presented no contrary evidence to overcome this showing.

24. Traffic Safety Impacts Adequately Mitigated. Appeal Claim 3.10 makes multiple assertions of inadequately mitigated traffic safety impacts, focusing on truck traffic impacts. For the reasons identified in Conclusion of Law No. 10, the City has made a prima facie showing that the proposal will not create any significant traffic safety impacts and this showing was not overcome by the lay testimony and cursory reference to traffic safety in the Tilghman memo made by the Appellant.

25. Proposal Creates No Probable Significant Adverse Impacts to Hydrological Resources. For the reasons identified in FOF No. 14-17 and COL No. 13-16, 18 and 20C and D, the proposal is found to not create any significant adverse impacts to hydrological resources, including wetlands, streams, groundwater or stormwater.

DECISION

With the addition of the SEPA MDNS conditions below, the Appellant's appeals of the Process III Decision (File No. 16-102947-UP) and issuance of the MDNS (File No. 16-102948-SE) for the Process III decision are denied. As further mitigated by this Decision, none of the environmental impacts cited by the Appellant qualify as probable significant adverse impacts for the reasons identified in the Conclusions of Law. For this reason, the MDNS is sustained. The Appellant has also not cited any grounds for finding noncompliance with Process III review criteria for the reasons identified in the Conclusions of Law and for that reason the Process III decision is sustained.

A new Condition 11 is hereby added to the Warehouse A MDNS to provide as follows:

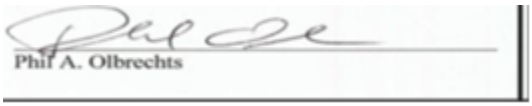
[11] Technically, FWRC 8.40.040 only exempts truck making deliveries to City destinations from having to drive on the City's truck routers. Making a strict interpretation, this exemption would not apply to empty trucks driving to Warehouse A to pick up materials. Deference is given to the apparent staff interpretation that the exemption would apply to truck picking up loads as well, since the stricter interpretation could easily be circumvented by nonsensical "deliveries" of very nominal amounts of goods.

The Applicant shall acquire its Concurrency Review Certificate for the Greenline Business Park prior to any construction activity for Warehouse A. As part of that concurrency review, the City shall identify any proportionate share mitigation necessary from the Warehouse A project to meet PM level of service requirements The Applicant shall pay any such funds or install any such mitigation prior to occupancy of Warehouse A. Any collected funds shall be subject to the limitations of RCW 82.02.020.

A new condition No. 12 is added to the MDNS to provide as follows:

The Applicant shall supplement its stormwater plan to demonstrate compliance and consistency with the *Executive Proposed Basin Plan Hylebos Creek and Lower Puget Sound* (King County Surface Water Management, 1991).

DECISION issued this 12th day of September 2019.



Phil A. Olbrechts

Hearing Examiner for Federal Way

EXHIBIT B

BEFORE THE HEARING EXAMINER FOR
THE CITY OF FEDERAL WAY

Greenline Warehouse A Administrative Appeal of Process III and MDNS HEX 18-003; 19-001	FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION UPON RECONSIDERATION

Summary

Upon reconsideration, it is determined that the Final Decision of the above-captioned matter contained a material factual error not supported by the record. Specifically, Finding of Fact No. 9 erroneously concluded that the Greenline Business Park Transportation Impact Analysis (TIA) determined that all affected road segments operated within adopted levels of service upon completion of the business park. In point of fact, the Greenline Business Park TIA determined that a Weyerhaeuser Way S/SR 18 intersection would be in violation of both City and Washington State Department of Transportation ("WSDOT") level of service ("LOS") standards upon completion of the business park. The error is remedied by imposing a condition that requires the Applicant to supplement its Warehouse A and B TIA with a SEPA analysis that assesses the cumulative traffic impacts of Warehouses A and B and the business park to the SR 18 intersection and to assign proportionate share mitigation, if necessary, to Warehouse A.

In addition to identifying the error in Finding of Fact No. 9, the Appellant also argued that the conditions added by the Final Decision constituted an improper delegation of decision-making authority to staff. The Final Decision added two mitigation measures to the Warehouse A approval,

specifically requiring some additional traffic impact analysis to the SR 18 intersection identified above and requiring application of the *Executive Proposed Basin Plan Hylebos Creek and Lower Puget Sound* to the project's stormwater review. The Appellant argued that the additional analysis required by the Final Decision would involve some major decisions that could materially affect project and mitigation design, thereby necessitating an opportunity for public comment and appeal.

Of course, local land use decisions subject to public hearings are universally subject to conditions of approval on a regular basis. However, most of the time those conditions are of minor significance or involve ministerial decision making from which little benefit would be derived from public review and comment. However, when conditions delegate discretionary matters of significant importance to the staff level, they can be construed as removing decisions from the public hearing process that were intended to be subject to public scrutiny by the ordinances and statures requiring public hearings. For the reasons identified in this reconsideration decision, staff application of the *Basin Plan* will likely not involve any significant decision making and its application in a condition of approval will not involve any improper delegation. The significance of cumulative traffic impacts to the SR 18 intersection is not so clear cut. The current draft of the Greenline Business Park TIA doesn't identify any project specific mitigation to the SR 18 intersection for impacts of the business park trip generation. The administrative record contains little or no information on what would be involved in mitigation necessary to address the cumulative impacts of Warehouses A, B and the business park. Further, it's not even clear at this point whether City or WSDOT LOS standards apply to the intersection.

Ideally, in an abundance of caution to avoid the delegation issue, the Warehouse A approval would be remanded for limited scope review of the SR 18 and *Basin Plan* issues. In the alternative, the hearing would be re-opened for a revised staff recommendation that addresses the SR 18 and *Basin Plan* issues. As discussed in this reconsideration decision, City code, SEPA regulations and the Regulatory Reform Act preclude both those options. The only clear-cut options available are outright denial of the Warehouse A application or taking a modest risk that in imposing conditions. Denial would be directly antithetical to the principles that underlie the regulations prohibiting remand and multiple hearings on a project application. The hearing for this application took five days involving an army of attorneys and land use experts. Making the Applicant go through this entire process again for a re-application would be a tremendous waste of judicial resources. Principles of collateral estoppel might work to limit a re-application hearing to the SR 18 and *Basin Plan* issues, but that is far from certain.

Given the poor choices available for resolving the SR 18 and Basin Plan issues, addressing those issues by imposing conditions is the most effective and efficient course. More likely than not, staff review of the conditions will be limited to minor and/or ministerial decision making. The Land Use Petition Act ("LUPA") statutes gives the courts the opportunity to re-open the administrative record to consider whether the decision making was exercised in that manner. Further, if staff does find itself making significant discretionary decisions in application of the conditions, it has some options to address the situation that would subject the decisions to administrative appeal. Resolution of the conditions could be processed as a major amendment[1] to the application. In the alternative,

[1] In practice, review of amendments to project applications is limited to the changes to an approved proposal and there is much less uncertainty on issues of collateral estoppel since compliance issues have been resolved in an approved final decision subject to full appeal rights.

staff could issue their decision finding compliance with the conditions as an administrative interpretation applying the code provisions raised by the conditions to the project application. Both alternatives would provide the opportunity for appeal sought by the Applicant.

Background

Hearing Examiner jurisdiction over the above-captioned matter was initiated upon the Appellant's filing of an appeal of a mitigated determination of non-significance ("MDNS") and Process IIII approval for a warehouse to be located in the Weyerhaeuser Corporate Campus. The Process III approval and MDNS were upheld with two conditions by Final Decision dated September 12, 2019. Save Weyerhaeuser Campus ("Appellant"), filed a reconsideration request to both conditions by motion dated September 27, 2019. In response, an Order on Reconsideration was mailed to all parties of record setting a briefing schedule for response and reply. Suzanne Vargo[2] and Dana Hollaway also submitted comment letters dated October 8, 2019. The City of Federal Way ("City") and Federal Way Campus LLC ("Applicant") filed responses dated October 10, 2019 and Appellant filed a reply dated October 14, 2019. No new evidence was admitted. There was no oral argument on the reconsideration briefing. This Decision Upon Reconsideration is based entirely upon the reconsideration briefing and the administrative record of the Final Decision. All documents referenced in this section are admitted except the portions of the Vargo letter excluded in Footnote No. 2.

Transportation Error of Fact

The Appellant's reconsideration argument is limited to one error of fact, which can be specifically directed to the following passage in Finding of Fact No. 9 of the Final Decision:

> *…As mitigated, the proposal will not create any probable significant adverse cumulative traffic impacts because <u>all affected roads and intersections will operate within adopted level of service standards as determined in the TIAs</u> and concurrency reviews for all three campus proposals, including the Greenline Business Park TIA and concurrency certificate, which considers the trip generation for all three projects.* (emphasis added)…

This finding is incorrect because the Greenline Business Park TIA did not find that all affected roads and intersections will operate within adopted level of service standards. All of the briefing and arguments made during the appeal hearing focused upon letter intersection delay level of service ("LOS") standards, which will not fall below adopted City level of service standards according to the TIAs for all three projects. However, the Greenline Business Park TIA addressed volume to capacity ("V/C") LOS in addition to the intersection LOS. The Greenline Business Park TIA found one affected intersection that would not meet V/C LOS upon completion of the Greenline Business Park,

[2] Ms. Vargo's comments regarding historical impacts are not admitted as beyond the scope of the motion for reconsideration. Her personal observations regarding development activities on the property and the past condition of the property are not admitted due to qualifying as new evidence after the close of the hearing.

specifically the signalized intersection of Weyerhaeuser Way South and the Washington State Highway 18 westbound ramp. According to Section VID(1) of the City of Federal Way Public Works Department Development Standards, (March 2019), the V/C LOS for signals outside the City center is 1.20. After completion of the Greenline Business Park, the Greenline Business Park TIA finds that the V/C for the SR 18 intersection will violate that standard at 1.29. See Greenline TIA, p. 20, Table 5.

Finding of Fact 9 as quoted above is also incorrect in that it assumes that the Weyerhaeuser Way South/SR 18 westbound intersection is within City jurisdiction, as opposed to WSDOT jurisdiction. The parties have in fact studiously avoided addressing that issue, with the Appellant applying both WSDOT and City level of service standards to the intersection in its reconsideration briefing and the Applicant expressly declining to determine which standard applies in its reconsideration briefing, only positing that it can't be both. It doesn't appear that there's any information in the record as to whether the intersection is in WSDOT right of way. The Greenline Business Park TIA appears to take the position, without directly addressing it, that the intersection is within WSDOT jurisdiction. *See* Greenline TIA, p. 20. If the Weyerhaeuser Way South/SR 18 westbound intersection is within WSDOT jurisdiction, then it violates WSDOT intersection LOS. The WSDOT intersection LOS is D, *see* Greenline TIA, pp. 11, 21, while as previously mentioned the Weyerhaeuser Way S/SR 18 westbound ramp intersection will operate at LOS E upon completion of the business park.

Impact of Traffic Impact Error of Fact

The error of fact identified above renders Condition No. 1 inadequate to address the cumulative traffic impacts of the proposal. As currently structured, Condition No. 1 fails to require mitigation of the cumulative impacts of trip generation caused by Warehouse A and B to the SR 18 intersection.

The Final Decision concluded that the cumulative impacts of Warehouse A and B and the business park had to be assessed and mitigated. Condition 1 was based upon the false premise that the only potential for transportation failure was a failure in PM peak hour LOS of the SR 18/Weyerhaeuser Way westbound intersection. At the time the Final Decision was issued, no PM peak hour analysis had been conducted for all three projects and it was determined in the Final Decision that there was a reasonable probability that the trip generated by all three proposals would push PM trip generation to violate adopted LOS standards. This was based upon the false premise (the error) that the Greenline Business Park TIA established that there would be no AM peak hour LOS violations resulting from construction of all three projects. The Greenline Business Park TIA, as required by City regulations, was limited to an AM peak hour analysis and did not address PM traffic. PM traffic was to be addressed in the City's concurrency review. To remedy the lack of analysis on PM peak hour cumulative impacts, Condition No. 1 required the PM concurrency review for the business park to be completed prior to construction of Warehouse A in conjunction with requiring pro-rata mitigation from Warehouse A if justified. That PM concurrency review would require an assessment of traffic conditions after completion of all three proposals, thus ensuring that their cumulative impacts would be assessed and mitigated prior to construction of Warehouse A.

As currently structured, the Greenline Business Park TIA would only have to consider the incremental increase in AM trip generation caused by the Greenline Business Park proposal alone. Warehouse A and B traffic would be construed as background traffic for which the Applicant is not

responsible, even though those warehouses would be contributing traffic to a failing intersection, whether City LOS is applied (the V/C 1.20 standard) or WSDOT standards are applied (LOS D). Under this scenario, the cumulative impacts of Warehouse A have not been fully mitigated, as the Applicant would not be required to provide any pro-rata mitigation for Warehouse A AM trip generation.

Revised Condition 1

As outlined in the analysis above, Condition No 1 is inadequate because it fails to require assessment and potential mitigation for AM peak hour traffic caused by cumulative traffic impacts. To remedy this situation, Condition No.1 must be revised to require the assessment of cumulative impacts of both AM and PM traffic for the Weyerhaeuser Way South/SR 18 westbound intersection. This can most efficiently be accomplished by requiring the Warehouse A and B TIA to be supplemented with a SEPA analysis that makes a cumulative impact analysis of the traffic impacts to the Weyerhaeuser Way S/SR 18 westbound intersection from the Warehouse A and B projects and the Greenline Business Park[3]. Mitigation, if necessary, shall be assigned on a proportionate share basis[4] to each of the three projects as consistent with constitutional nexus and proportionality requirements.

In assessing required mitigation, City staff will also have to determine whether the intersection is in City or WSDOT jurisdiction and apply the appropriate level of service standards. This reconsideration decision makes no ruling on that issue since it hasn't been briefed by the parties and the record doesn't appear to have any information on whether or not the intersection is located within WSDOT right of way. If WSDOT levels of service do apply, the City is expected to apply those standards deferring to WSDOT as outlined in Conclusion of Law No. 8 of the Final Decision. Although the storage lane mitigation requested by WSDOT was found to be adequate mitigation for the Warehouse A stage of review, this should not be construed as precluding WSDOT from requesting additional pro-rata Warehouse A mitigation during evaluation of the SEPA addition to the Warehouse A and B TIA.

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[3] The Applicant's reconsideration briefing asserts that the Final Decision concluded that there was no legal rule that the "*projects be considered together*." *See* Applicant Recon Brief, p. 3. To the extent that the Applicant interprets the Final Decision as precluding consideration of combined traffic impacts of the Warehouse A and B and business park projects on the SR 18 intersection, the Applicant is incorrect. As to combining proposals, the Final Decision only concluded that WAC 197-11-060(3)(b) doesn't mandate combination of the proposals. WAC 197-11-060(3)(b) was not construed as setting the exclusive terms upon which combination was required. As determined in Conclusion of Law No. 4, case law and SEPA rules require cumulative impact review independent of WAC 197-11-060(3)(b). WAC 197-11-060(3)(b) does not mandate consideration of all three proposals in the Warehouse A SEPA review, but combined traffic impacts are still required to be addressed under the cumulative impact requirements identified in Conclusion of Law No. 4. The Warehouse A pro-rata traffic impacts to the SR 18 intersection qualify as cumulative impacts under the case law definition advocated in the Applicant's post-hearing briefing, i.e. "*the cumulative harm that results from its [proposal's] contribution to existing adverse conditions or uses in the affected area*." *Chuckanut Conservancy v. Department of Natural Resources*, 156 Wn. App. 274, 285 (2010).

[4] Proportionate share mitigation should resolve the City's concerns over nexus/proportionality requirements that it cites in its reconsideration briefing.

Potential Error in Delegation of Decision Making

The Final Decision was arguably in error in delegating traffic mitigation and stormwater design issues to resolution by City staff. The Appellant asserts in its reconsideration briefing that compliance with the two conditions imposed by the Final Decision will involve some major compliance issues and that any decision making made under the plan should be done in a reversal or remand so that the analysis can be subject to appeal and public review.

The Appellant is entitled to its expectation for a right to appeal major compliance issues of the Warehouse A application. An appeal coupled with a right to a public hearing attaches by code to appeals of both the Process III decision and the MDNS threshold determination. By delegating assessment of compliance with the *Basin Plan* and traffic impacts to staff review, the Examiner is arguably removing the ability of the public to appeal some potentially significant issues.

Ideally, a limited scope remand for both the Basin Plan issues and the cumulative traffic impact issues would be the most efficient and direct way to address the deficiencies found in the Final Decision. Unfortunately, for the reasons outlined in the Applicant's reconsideration briefing, the examiner has no authority to require a remand. For the Process III Approval, like other City agency decisions, the Code authorizes the Examiner to "*affirm, reverse, or modify the decision being appealed*." FWRC 19.70.150. Similarly, the Hearing Examiner Rules provide that the Examiner may "*vacate, affirm or modify the underlying appealed from decision*." The SEPA rules prohibit a second hearing, see WAC 197-11-680(3)(a)(iv), and a remand could very likely be viewed as a second hearing on the project application, which is prohibited by the Regulatory Reform Act, Chapter 36.70B RCW. *See* RCW 36.70B.050; RCW 36.70B.060(3).

For the reasons identified in the Summary section of this reconsideration decision, the most appropriate action for remedying the deficiencies found by the Final Decision and this reconsideration decision is imposition of conditions. For the reasons identified below, application of the *Basin Plan* will likely involve only minor and/or ministerial decision making and is thus an appropriate issue to delegate to staff implementation. The significance of decision making for the traffic mitigation issues is more uncertain but is also likely to be resolved by some modest mitigation. Ultimately, a reviewing court could assess how the conditions were applied under RCW 36.70C.120(2)(c) or (3) to determine whether staff did actually engage in decision making that should have been subject to administrative appeal. With or without that additional evidence, RCW 36.70C.140 authorizes a reviewing court to require the favored limited scope remand that the examiner has no authority to impose for this project. In short, resolving the issues of this application with conditions of approval is the most effective and efficient way to address the situation even if it is found to be in error by a reviewing court.

Basin Plan Only Applies to Drainage Issues

The Appellant's reconsideration motion identifies numerous *Basin Plan* standards that could change the drainage review conducted by the City. Many, if not all, of the standards identified by the Appellant are likely not applicable because the applicability of the *Basin Plan* to the project is limited to drainage review. Application of the *Basin Plan* will most likely involve minor or ministerial decision making.

At the outset, it is important to recognize that as previously mentioned the Basin Plan only applies to stormwater review to the extent it addresses drainage issues. FWRC 16.25.010.2[5] provides as follows as to the applicability of the Basin plan to stormwater review:

> *The **drainage requirements** of adopted area-specific regulations such as basin plans shall be applied in addition to the drainage requirements of the KCSWDM and Federal Way Addendum unless otherwise specified in the adopted regulation. Where conflicts occur between the two, the **drainage requirements** of the adopted area-specific regulation shall supersede those in the KCSWDM and Federal Way Addendum.*

(emphasis added).

Critical area regulations, which among other standards impose wetland and stream buffer requirements, are not drainage requirements. It is recognized that there is some overlap in the objectives of stormwater and critical area standards, but it is not plausible to presume that the detailed consideration the City Council gives to its critical area and CZA wetland and stream buffers was to be rendered meaningless by the buffers imposed by the Basin Plan. Unless the Warehouse A property has a unique and pertinent relationship to the Hylebos System that separates it from most other properties in the City of Federal Way, the requirements of the Basin Plan should not be considered applicable to the extent that they conflict with critical area or CZA standards. Conflicts should be construed to exist in circumstances that include the Basin Plan requiring protection for critical areas exempted from protection by the CZA, or the Basin Plan imposing greater buffers than those required by the CZA.

Ultimately, given the detailed standards of the City's stormwater regulations and the exclusion of matters governed by CZA critical area standards, it is entirely possible that the City may legitimately conclude that all of the *Basin Plan* drainage requirements are already covered by the City's other stormwater standards. Compliance with the *Basin Plan* in the Final Decision was made a condition of approval not because there was an apparent compliance issue, but rather because it didn't appear that the *Basin Plan* had even been considered. As determined in Conclusion of Law No. 2 of the Final Decision, one of the standards for review of a SEPA threshold appeal is that the City must demonstrate that it conducted a "*prima facie review*" of pertinent environmental impacts. FWRC 16.25.010(2) specifically noted that "*King County has developed several types of area-specific plans and regulations that contain requirements for drainage design*…," but that the *Basin Plan* "*is the only one of these area-specific regulations that currently affects Federal Way*." Given this heightened emphasis upon the applicability of the *Basin Plan*, it was particularly important that the City establish "*prima facie*" review of that plan. Instead, the City took the position that the *Basin Plan* didn't apply to stormwater review and had no documentation to evidence that it had considered it. Given the age of the *Basin Plan* (finalized in 1991) and the extent to which stormwater regulations have improved since then, it is entirely possible that *Basin Plan* drainage requirements have been subsumed into more effective and protective modern-day stormwater standards.

[5] Section 14.3 of the CZA also requires conformance to the Basin Plan for purposes of drainage review.

On a final issue, the Appellant requests that Condition 2 of the Final Decision should specify that the cumulative impacts of Warehouse B and the Greenline Business Park should be evaluated in application of the Basin Plan. That request is denied. Unlike SEPA, the City's stormwater regulations do not impose broad-based cumulative impact review standards. The City's stormwater regulations limit cumulative impact review to the narrow circumstances identified in Conclusion of Law No. 19 of the Final Decision. As determined in that conclusion, the Applicant's proposals don't qualify for that cumulative review. The Appellant points out that the proposal is subject to the cumulative impact analysis required by FWRC 19.100.030(2). However, FWRC 19.100.030(2) generally sets the standard for cumulative review for all permit review whereas the Conclusion of Law No. 19 standards (largely found in King County Surface Water Design Manual ("KCSWDM") § 3.2 and Appendix B[6]) sets a specific cumulative impact standard for stormwater review. The narrow standards specifically set for drainage review would be rendered meaningless if the broader standard of FWRC 19.100.030(2) were applied. For this reason, the KCSWDM standards and FWRC 19.100.030(2) are found to conflict. As the more specific standard, the KCSWDM standards govern when cumulative drainage review is necessary.

As is evident from the foregoing analysis, Condition No. 2's application of the *Basin Plan* is based exclusively upon its adoption as a stormwater regulation by FWRC 16.25.010(2) as determined in Conclusion of Law 20C in the Final Decision. Condition No. 2 was not based upon any SEPA policy[7]. It is acknowledged that the *Basin Plan* has also been adopted as a SEPA policy as identified by the Appellant. However, there is no basis to require additional SEPA review under that policy. Unlike the stormwater regulations, the Appellant has the burden of proof in establishing deficiencies in the SEPA review as outlined in Conclusion of Law No. 2 of the Final Decision. The CZA and the City's stormwater regulations address the legislative standards of acceptable impacts to critical areas and drainage. The Appellant has not overcome the substantial weight due the SEPA responsible official in demonstrating that something unique about the Applicant's proposal creates impacts beyond those anticipated in the CZA or stormwater regulations.

DECISION

The Final Decision of the above-captioned matter dated September 12, 2019 is superseded only to the extent it conflicts with this reconsideration decision. For the reasons identified above, upon reconsideration, the conditions imposed by the Final Decision are revised as follows:

1. <u>MDNS Condition No. 11 is replaced by the following</u>: Cumulative traffic impacts from Warehouse A and B and the Greenline Business Park to the SR 18 westbound ramp

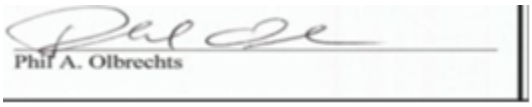
[6] The KCSWDM citation in Finding of Fact No. 19 was taken from the City's post-hearing briefing. The triggers for master drainage plan review and the relationship of those plans to cumulative impact review are more scattered throughout other sections of the KCSWDM. The Finding Fact No. 19 interpretation of the KCSWDM was based upon the manual itself and the interpretation made by Ms. Bartenhagen and Mr. Elliot during the appeal hearing.

[7] Condition No. 2 was erroneously imposed upon the Warehouse A project as a SEPA mitigation measure in the Final Decision. That error is remedied by this reconsideration decision by reclassifying it as a Process III condition of approval.

intersection with Weyerhaeuser Way South shall be evaluated and mitigated in a SEPA analysis addendum and/or revision to the Warehouse A and B TIA. PM peak hour cumulative impacts shall be included in the TIA analysis, or added to the concurrency review for Warehouse A as the City finds most consistent with its regulations. The City shall determine if WSDOT has jurisdiction over the SR 18 intersection. If WSDOT has jurisdiction over the SR 18 intersection, WSDOT LOS standards shall be applied to the intersection and any necessary pro-rata mitigation for Warehouse A shall be formulated in consultation with WSDOT as contemplated in Conclusion of Law No. 8 of the Final Decision. If WSDOT doesn't have jurisdiction over the intersection, City LOS standards shall be applied and pro-rata mitigation for Warehouse A imposed as necessary. All mitigation shall be subject to RCW 82.02.020 and constitutional nexus/proportionality.

2. MDNS Condition No. 12 is to be reclassified and re-numbered as Condition No. 43 to the Warehouse A Process III approval to reflect the fact that it is not a SEPA mitigation measure as identified in this reconsideration decision.

RECONSIDERATION DECISION issued this 29th day of October 2019.



Hearing Examiner for Federal Way

Appeal Right and Valuation Notice

This reconsideration decision may be appealed to the Superior Court of King County by the applicant or any Party of Record. A Party of Record includes the applicant and any individual who presented oral or written testimony for the appeal hearing. An appellant must submit an appeal to the Superior Court of King County within 21 calendar days after the decision as governed by the Land Use Petition Act, Chapter 36.70C. RCW.

Notice: Per RCW 36.70B.130, affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.