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

SAVE WEYERHAEUSER CAMPUS, a
Washington non-profit corporation

v.

CITY OF FEDERAL WAY, a city in the
State of Washington
and

FEDERAL WAY CAMPUS, LLC, a
Washington limited partnership.

No.

LAND USE PETITION
BY SAVE WEYERHAEUSER CAMPUS
(Chapter 36.70C RCW)

1. Identification of Petitioner. Save Weyerhaeuser Campus is a Washington nonprofit corporation ("SWC") that was organized to protect and preserve the community, environmental, historic and natural values of the former Weyerhaeuser Campus in Federal Way. SWC's address is PO Box 4402, Federal Way, WA 98063.

2. Identification of Petitioner's Attorney. Save Weyerhaeuser Campus is represented by attorney J. Richard Aramburu, Law Offices of J. Richard Aramburu PLLC, 720 Third Avenue, Suite 2000, Seattle, WA 98104, Telephone (206) 625-9515, email rick@aramburu-eustis.com.

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2 **3. Identification of Local Jurisdiction.** Decisions of the City of Federal Way are at
3 issue in this appeal. The address of the City is 33325 8th Ave. S., Federal
4 Way, WA 98003.

5 **4. Identification of Decision-Maker and Land use Decisions.** The City of Federal
6 Way Hearing Examiner made the three decisions at issue in this appeal.

7 The first decision was entitled “Ruling on Motion for Partial Dismissal” (Partial
8 Dismissal) dated May 26, 2019.

9 The second decision is “Findings of Fact, Conclusions of Law and Final
10 Decision” (“Final Decision”) dated September 23, 2019.

11 The third decision is “Findings of Fact, Conclusions of Law and Decision on
12 Reconsideration” (“Reconsideration Decision”) dated October 29, 2019.

13 A copy of the Decisions made by the Hearing Examiner are found in
14 Attachments A, B and C hereto.

15
16 **5. Additional Parties to the Appeal.** The owners of the property in question and the
17 applicant for the land use decision in question is Federal Way Campus LLC, (a
18 Washington limited partnership. The address of the Federal Way Campus
19 LLC’s registered agent in Washington, Corporation Service Company, is 300
20 Deschutes Way SW, Suite 304, Tumwater WA 98501. As identified in the
21 Decision, the applicant is represented by Jack McCullough, Courtney Kaylor ,
22 and David Carpman of MCCULLOUGH HILL LEARY, PS, 701 Fifth Avenue,
23 Suite 6600, Seattle, Washington 98104, Tel: 206.812.3388, Fax:
24 206.812.3389, email addresses jack@mhseattle.com,
25 courtney@mhseattle.com, and dcarpman@mhseattle.com.
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2 **6. Petitioner’s Standing.** Petitioner SWC has standing pursuant to RCW

3 36.70C.060 for the following reasons.

4 (a) The land use decision has prejudiced or is likely to prejudice the petitioner.
5 SWC was formed to protect and preserve community, environmental and natural
6 values of the former Weyerhaeuser Corporate Campus in Federal Way (“WCC”), an
7 approximately 700 acre property located just east of Interstate 5 (I-5). SWC
8 members own property and reside in the neighborhoods nearby the WCC. SWC and
9 its members would be adversely impacted by development on the WCC property,
10 which impacts include aesthetic, visual, traffic, stormwater, historic and other values.
11 SWC and its members filed numerous comments on the several proposals for the
12 WCC property beginning in 2016. As described herein, SWC also filed appeals to
13 the Determination of Nonsignificance (DNS) under the State Environmental Policy
14 Act, chapter 43.21C RCW (SEPA) issued by the City on October 26, 2018, and on
15 the “Project Approval” for the applicant’s Warehouse “A” proposal issued on February
16 4, 2019.
17

18 (b) SWC members’ asserted interests are among those that the local
19 jurisdiction was required to consider when it made the land use decision.

20 Federal Way codes and regulations provide for public notice, opportunity for
21 comment and appeal of decisions made by the City described above in Paragraph
22 7.1.6 of this appeal. Also as described above, SWC appealed the SEPA DNS and
23 Project approval.
24

25 (c) A judgment in favor of these residents would substantially eliminate or
26 redress the prejudice caused or likely to be caused by the land use decision. If the

1 Hearing Examiner’s decision is reversed or remanded, the concerns expressed in the
2 comment letters and appeals regarding the consideration of cumulative impacts and
3 adverse impacts from the projects will be either eliminated or redressed and the
4 project would be modified consistent with the legal requirements cited herein.
5

6 (d) The petitioner has exhausted its administrative remedies to the extent
7 required by law. SWC has filed comments on all project applications on the WCC
8 property, beginning with the first application for Warehouse “A” in 2016. In addition,
9 SWC has exhausted its administrative remedies by filing appeals on both the SEPA
10 determinations and the Project Approvals as described herein.
11

12 **7. STATEMENT OF ERRORS AND ASSOCIATED STATEMENT OF FACTS.**

13 **7.1 BACKGROUND REGARDING WCC AND PROJECT APPLICATIONS.**

14 7.1.1. In the late 1960s, the Weyerhaeuser Company purchased
15 approximately 700 acres in King County east of I-5, 400 of which it used for
16 development of its world corporate headquarters, the Weyerhaeuser Corporate
17 Campus (WCC).

18 7.1.2 The Weyerhaeuser Headquarters building had a unique
19 architectural style for its time, including an open interior format and exterior
20 surroundings of acres of open space, including forests, meadows and a lake. The
21 building and campus were groundbreaking, winning numerous awards for
22 architectural design and setting.
23

24 7.1.3 In 1994, the WCC was annexed into the City of Federal Way and
25 a Concomitant Pre-Annexation Development Agreement (the “CZA”) was adopted
26 between Weyerhaeuser and the City pursuant to Ordinance 94-240. The CZA went

1 into effect on August 23, 1995.

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3 7.1.4. In 2016, the WCC was purchased by a limited partnership
4 organized by Industrial Reality Group (“IRG”) called Federal Way Campus, LLC.
5 (FWC or Applicant).

6 7.1.5. Beginning in mid-2016 and through 2018, IRG, through FWC,
7 filed applications for three projects on the WCC, Warehouse “A,” Warehouse “B,” and
8 the Greenline Business Park. The Warehouse projects were proposed as general
9 commodity warehouses with tilt-up concrete construction, each on approximately
10 fifteen acres and each with about 225,000 square feet of development, plus
11 substantial parking lots and loading areas. The Greenline Business Park proposal
12 was for three buildings totaling approximately 1,068,000 square feet plus 800 parking
13 stalls for business, office and warehousing uses. SWC submitted comments on each
14 proposal, and in each comment requested that the City of Federal Way review the
15 three permit applications for cumulative impacts under both SEPA and the Federal
16 Way Codes.
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18 7.1.6 The City refused to conduct cumulative impact analysis and
19 instead issued a Mitigated Determination of Nonsignificance for just Warehouse “A”
20 on October 26, 2018 (MDNS), and a “Project Approval” for just Warehouse “A” on
21 February 4, 2019.
22

23 7.1.6 As noted above, SWC appealed the SEPA MDNS decision and
24 the Project Approval to the Federal Way Hearing Examiner. These appeals were
25 consolidated for hearing pursuant to City rules.
26

7.1.7 Prior to any evidentiary hearings, the Applicant and City filed a

1 “Joint Motion for Partial Dismissal” on April 25, 2019. Following briefing and
2 submission of declarations, the Hearing Examiner issued a decision dismissing
3 portions of SWC’s appeals (the “Partial Dismissal”). A copy of that decision is
4 Attachment A hereto.
5

6 7.1.8 Following evidentiary hearings, the Hearing Examiner issued his
7 “Final Decision” on the appeals on September 23, 2019. A copy of that decision is
8 Attachment B hereto.

9 7.1.9 Following procedures allowed by the Federal Way Revised Code
10 and Federal Way Hearing Examiner Rules, SWC requested that the Hearing
11 Examiner reconsider the Final Decision. Following briefing, the Hearing Examiner
12 issued his “Findings of Fact, Conclusions of Law and Decision on Reconsideration”
13 dated October 29, 2019 (“Reconsideration Decision.”). A copy of that decision is
14 Attachment C hereto.
15

16 **7.2 THE DECISIONS ERRED IN NOT REQUIRING CUMULATIVE**
17 **ENVIRONMENTAL REVIEW FOR THE PENDING DEVELOPMENT**
18 **APPLICATIONS.**

19 7.2.1 In its SEPA MDNS and Project Appeals, SWC asserted that the
20 environmental and land use decisions were in error because they explicitly refused to
21 consider the cumulative impacts of the three projects proposed by the applicants. In
22 his Final Decision at pages 19-23, Paragraphs 5-6, and Paragraph 19 at pages 37-
23 38, the Hearing Examiner reaches conclusions regarding the requirement to conduct
24 cumulative environmental review. The Examiner’s Finding of Fact Numbers 9, 10
25 and 13 are in error.

26 7.2.2 The Examiner’s Conclusion 5 regarding whether the three

1 projects should be analyzed as one is found in the Final Decision at page 21, lines 6-
2 7, as follows:

3
4 Although the SEPA definitions for “project” and “action” are arguably flexible
5 enough to accommodate project impacts such as trip generation, it also a
6 strained interpretation of the definitions. For this reason, this Decision takes
7 the position that WAC 197-11-060(3) doesn’t apply to the three campus
8 proposals.

9 The Examiner’s Conclusion 5 is in error, as are Conclusions of Law 9 and 11.

10 7.2.3. The rulings by the Examiner that the three campus proposals do
11 not require cumulative impact analysis as one project under the SEPA rules, under
12 the facts of this case, are erroneous interpretations of the law, are not supported by
13 evidence that is substantial and are a clearly erroneous application of the law to the
14 facts within the meaning of RCW 36.70C.130(1)(b), (c) and (d).

15 **7.3 THE HEARING EXAMINER ERRED IN DETERMINING THAT HE DOES**
16 **NOT HAVE THE AUTHORITY TO REMAND.**

17 7.3.1 In the Reconsideration Decision, the Hearing Examiner indicated
18 that further review was required for traffic impacts and the application of the Hylebos
19 Basin Plan. See Reconsideration Decision at pages 8-9.

20 7.3.2 At page 6, lines 5-8 of the Reconsideration Decision, the Hearing
21 Examiner states:

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

29 7.3.2 On page 6, lines 8-10 of the Reconsideration Decision, the

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2 Examiner states:

3 Ideally, a limited scope remand for both the basin Plan issues and the
4 cumulative traffic impact issues would be the most efficient and direct way to
address the deficiencies found in the Final Decision.

5 7.3.3 On page 6, lines 28-20, the Examiner states:

6 With or without that additional evidence RCW 36.70C.140 authorizes a
7 reviewing court to require the favored limited scope remand that the Examiner
has no authority to impose for this project.

8 7.3.4 On page 6, at lines 10-11, the Examiner states:

9 Unfortunately, for the reasons outlined in the Applicant's reconsideration
10 briefing, the examiner has no authority to require a remand.

11 See also Attachment C, page 2, lines 14-15 where the Examiner discussed a remand
12 for limited scope review or reopening of the hearing "for a revised staff
13 recommendation that addresses the SR 18 and Basin Plan issues" but concludes
14 "City code, SEPA regulations and the Regulatory Reform Act preclude both those
15 options."

16 7.3.5 The creation of conditions regarding compliance with
17 requirements resulting from review of traffic impacts and the Hylebos Basin Plan,
18 which leave application review to the sole discretion of the city staff, without notice to
19 the public or opportunity for comment, is contrary to Federal Way codes allowing for
20 public comments and opportunity for appeal.

21 7.3.5 The Conclusion that the Examiner does not have the authority to
22 order a remand in the circumstances of this case is a failure to follow a prescribed
23 process, an erroneous interpretation of the law and is a clearly erroneous application
24 of the law to the facts within the meaning of RCW 36.70C.130(1)(a) (b) and (d).
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7.4 THE HEARING EXAMINER ERRED IN NOT REQUIRING THE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT FOR THE PROPOSALS.

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7.4.1 In the Final Decision at page 41, lines 19-20, the Hearing Examiner ruled that:

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As further mitigated by this Decision, none of the 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.

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7.4.2 The Conclusion that the individual and cumulative impacts of the proposed development will not create significant adverse impacts under the circumstances of this case is an erroneous interpretation of the law, is not supported by evidence that is substantial when viewed in light of the whole record before the court and is an erroneous application of the law to the facts within the meaning of RCW 36.70C.130(1)(b), (c) and (d).

7.5 THE HEARING EXAMINER ERRED IN NOT REQUIRING CUMULATIVE IMPACT ANALYSIS UNDER FEDERAL WAY CODES AND REGULATIONS.

7.5.1 Federal Way codes and regulations require that the cumulative impacts of all three of the applicant's proposals be analyzed when project decisions on any one are made. The code regulations are as follows:

7.5.1.1 *FWRC 19.100.030*

Determination of direct impact. *Before any development is given the required approval or is permitted to proceed, the official or body charged with deciding whether such approval should be given shall determine direct impacts, if any, that are a consequence of the proposed development and which require mitigation, considering, but not limited to, the following factors:*

....

(2) Likelihood that a direct impact of a proposed development would require mitigation due to the cumulative effect of such impact when aggregated with the similar impacts of future development in the immediate vicinity of the proposed development;

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2 7.5.1.2 FWRC 19.90.190, entitled “**Coordination with other**
3 **requirements,**’ provides as follows:

4 (2) *Concurrency determinations provide for mitigation only for vehicle*
5 *capacity issues during the weekday evening peak hour. Mitigation of*
6 *transportation impacts outside of vehicle capacity issues during the*
7 *weekday evening peak hour shall be addressed through other review*
8 *processes (in city code, land use permit conditions, or SEPA). This*
9 *analysis may be prepared either by the applicant or the city at the*
10 *applicant’s expense.*

11 7.5.1.3 *Federal Way Guidelines for Transportation Impact*
12 *Analysis (G/TIA) Subsection III.C.*

13 7.5.1.4 *Federal Way Guidelines for Transportation Impact*
14 *Analysis (G/TIA) Subsection IV.B.*

15 7.5.2 The Hearing Examiner erred in concluding that the City’s
16 analysis of impacts of the three proposed projects met the standards of the foregoing
17 provisions of the Federal Way codes and regulations. To the extent that the Hearing
18 Examiner required consideration of some cumulative impacts, such as for traffic and
19 compliance with the Hylebos Basin Plan, the Hearing Examiner erred by giving sole
20 discretion to determine such impacts to Federal Way City staff, without opportunity
21 for public notice, public comments or appeal.

22 7.5.3 The determination that the three proposed projects met the
23 foregoing Federal Way code and regulatory requirements under the circumstances of
24 this case is an erroneous interpretation of the law, is not supported by evidence that
25 is substantial when viewed in light of the whole record before the court and is an
26 erroneous application of the law to the facts within the meaning of RCW
36.70C.130(1)(b), (c) and (d).

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7.6. THE HEARING EXAMINER ERRED IN DETERMINING THAT REQUIREMENTS OF THE BASIN PLAN ARE SUBORDINATE TO CITY CODES AND THE CZA.

7.6.1 In the Final Decision at page 16, lines 24-25, the Hearing Examiner concluded that:

The City did not adequately consider the policies and requirements of the Executive Proposed Basin Plan for Hylebos Creek and Lower Puget Sound in the application of the stormwater manual.

(Hereinafter, the Executive Proposed Basin Plan: Hylebos Creek and Lower Puget Sound will be referenced as the "Hylebos Basin Plan").

7.6.2. The Hearing Examiner found in his Final Decision at page 17, lines 2-3 that "it is fairly clear that the City didn't seriously consider the plan and even believed it was not applicable."

7.6.3 Compliance with the Hylebos Basin Plan is required by Federal Way codes in FWRC 16.25.010(2)(a) as follows:

(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

1 the KCSWDM and Federal Way Addendum.

2
3 7.6.4 The Hylebos Basin Plan is a SEPA condition under FWRC

4 14.25.070(4)(l), State Environmental Policy Act policies:

5 (l) The Executive Proposed Basin Plan Hylebos Creek and Lower Puget
6 Sound, King County Surface Water Management, July 1991.

7 7.6.5 Under Paragraph 14.3 of the CZA:

8 Drainage for future additional and new development shall be designed to
9 comply with Federal Way drainage requirements applicable at the time of
10 development application, including the Proposed Executive Basin Plan,
11 Hylebos Creek Area and Lower Puget Sound Basin Plan . . .

12 7.6.6 On page 7, lines 9-14 of his Reconsideration Decision, the
13 Hearing Examiner concluded that:

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

26 7.6.7. On page 8 of the Reconsideration Decision, lines 1-9, the
27 Hearing Examiner refuses to require that an analysis of cumulative stormwater
28 impacts of the applicant's three pending development projects be conducted, based
29 on his interpretation of Federal Way code requirements and the King County
30 Stormwater Design manual. This conclusion is in error.

31 7.6.8 The Hearing Examiner erred in concluding that the requirements

1 and provisions of the Hylebos Basin Plan are subordinate to critical area standards or
2 requirements of the CZA.
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4 7.6.9 The Decisions described above in Paragraphs 7.6.7 and 7.6.8,
5 under the circumstances of this case, are erroneous interpretations of the law, are
6 not supported by evidence that is substantial when viewed in light of the whole record
7 before the court and are erroneous applications of the law to the facts within the
8 meaning of RCW 36.70C.130(1)(b), (c) and (d).

9 **7.7 THE HEARING EXAMINER ERRED IN CONCLUDING THAT THE**
10 **PROPOSAL MET THE STANDARDS OF THE COMPREHENSIVE PLAN.**

11 7.7.1 The Federal Way zoning codes require that all Process III
12 applications be consistent with the Federal Way Comprehensive Plan. FWRC
13 19.65.100.2.b.i.

14 7.7.2 Federal Way's Comprehensive Plan has a specific section
15 regulating "Office Development" which includes not only general office zoning, but the
16 Corporate Park designation specifically applicable to the WCC:
17

18 The Corporate Park designation applies to the Weyerhaeuser Corporate
19 Campus generally located east of Interstate Highway 5. The property is a
20 unique site, both in terms of its development capacity and natural features.
21 Development standards and conditions for the Corporate Park designation are
22 unique to Weyerhaeuser's property and are outlined in a pre-annexation
23 concomitant development agreement between the City and the Weyerhaeuser
24 Company.

25 Federal Way Comprehensive Plan at page II-17 (Land Use Element).

26 7.7.3. Federal Way Comprehensive Plan Goal LUG 8, applicable to
the WCC, provides:

LUG8 Create office and corporate park development that is known regionally,
nationally, and internationally for its design and function.

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2 Federal Way Comprehensive Plan Policy LUP-49, applicable to the WCC states:

3 **LUP49** In the East Campus Corporate Park area, encourage quality
4 development that will complement existing uses and take advantage of good
5 access to I-5, Highway 18 and future light rail as well as proximity to the City
6 Center

7 7.7.4 In its appeal of the proposal, at Paragraph 3.5.11, SWC asserted
8 that the Warehouse "A" building was not consistent with LUG 8 because it was a tilt-
9 up concrete sided building that was not and would not be known regionally,
10 nationally, and internationally for its design and function. In Paragraph 3.5.12, SWC
11 asserted that the Warehouse "A" building was not consistent with LUP 49 because it
12 was not quality development that will complement existing uses.

13 7.7.5 In the Partial Dismissal Ruling, the Hearing Examiner refused to
14 dismiss SWC Appeal Issues 3.5.11 and 3.5.12, stating that these paragraphs of the
15 appeal would not be read to preclude any use authorized by the zoning code, but
16 rather read that the specific proposal made by the Applicant was precluded by the
17 comprehensive plan. See page 7, lines 16-18.

18 7.7.6 During the hearing, there was no substantial evidence that
19 Warehouse "A" would be "known regionally, nationally and internationally for its
20 design and function" nor that it was "quality development that will complement
21 existing uses."

22 7.7.7 In his Final Decision on this issue, the Hearing Examiner stated:

23 Appeal Claim 3.5.11 asserts noncompliance with Comprehensive Plan Goal
24 LUG 8. This is one of the goals that was not intended to guide project specific
25 development for the reasons identified in the preceding subsection,
26 Conclusion of Law No 12D.

Final Decision, Conclusion of Law No. 12.E at page 34, lines 2-4.

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2 7.7.8 The Hearing Examiner went on to state that:

3 Although Warehouse A appears to be of high-quality development (see
4 discussion below), it is unlikely that by itself it will be known regionally, let
alone nationally or internationally.

5 Final decision, page 34, lines 7-8.

6 7.7.9 The Hearing Examiner's decision ultimately determined the
7 Warehouse "A" building was consistent with LUG 8 because:

8 The resulting Weyerhaeuser campus as a whole will be different, hence new
9 "corporate development" because of the addition of Warehouse A, and that
10 new "corporate development" will likely be regionally, nationally and
11 internationally recognized because Warehouse A will not detract from the
12 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.

13 Final Decision, page 34, lines 15-17.

14 7.7.10 In Conclusion of Law 12.F, at pages 34-35 of the Final Decision,
15 the Hearing Examiner concluded that the project is consistent with LUP 49.

16 7.7.11 The Decisions described in Paragraphs 7.7.7, 7.7.9, and 7.7.10
17 above, under the circumstances of this case, are erroneous interpretations of the law,
18 are not supported by evidence that is substantial when viewed in light of the whole
19 record before the court and are erroneous applications of the law to the facts within
20 the meaning of RCW 36.70C.130(1)(b), (c) and (d).

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22 **7.8 THE HEARING EXAMINER ERRED IN CONCLUDING THAT**
23 **CUMULATIVE IMPACT ANALYSIS WAS SUFFICIENT TO MEET LOCAL**
24 **CODE AND SEPA STANDARDS**

25 7.8.1 In making both the SEPA MDNS decision and the Project
26 Decision, the City entered identical conclusions regarding the need to prepare a

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2 “Cumulative Impacts Analysis.” See Project Approval Decision, page 20, Paragraph
3 35 and page 3, Paragraph 6 and the MDNS, page 3, Paragraph 6. These
4 conclusions stated that cumulative impact analysis was not consistent with state law.

5 7.8.2 Other than asserting in both the MDNS and Project Decisions that
6 cumulative analysis of the impacts of the three projects was impermissible, there was
7 no indication in the record that “cumulative impact analysis” was actually undertaken
8 - by the City or the Applicant - for the impacts of the Applicant’s three proposed
9 projects.

10 7.8.3 At the hearings, both the City and the Applicant asserted that they
11 had in fact conducted cumulative impact analysis, even though they expressly
12 rejected doing so in their MDNS and Project approval decisions.
13

14 7.8.4 Regarding the cumulative impacts analysis, the Hearing Examiner
15 stated in his Final Decision at page 3, lines 14-18:

16 Although the City and Applicant fought the premise that cumulative impact
17 analysis needed to be conducted, this doesn’t mean that the analysis they
18 undertook was deficient. In point of fact the City and Applicant conducted a
19 thorough cumulative impact analysis that provides good assurance that no
20 gaps in mitigation will result because of deficiencies in review. This cumulative
21 analysis was done explicitly for the modest shared infrastructure that will have
22 to be built for the project as well as within a traffic study that jointly addresses
23 the traffic impacts of Warehouses A and B. As explained in convincing detail
24 by City and Applicant expert witnesses, cumulative impacts were addressed
25 implicitly in the concurrency and traffic report standards adopted by the City.
26

22 7.8.5 Also regarding cumulative impacts analysis, the Hearing
23 Examiner concluded in Conclusion of Law 7, at pages 23-25, that the City had
24 conducted cumulative impact analysis and that such analysis did not constitute post-
25 hoc rationalization.
26

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2 7.8.6 Though the City and Appellant witnesses claimed that they
3 conducted cumulative impact analysis, there is no substantial evidence in the record
4 that such an exercise was undertaken.

5 7.8.7 The Decision described in Paragraphs 7.8.4 and 7.8.5 above,
6 under the circumstances of this case, is an erroneous interpretation of the law, is not
7 supported by evidence that is substantial when viewed in light of the whole record
8 before the court and is an erroneous application of the law to the facts within the
9 meaning of RCW 36.70C.130(1)(b), (c) and (d).

10 **7.9 THE HEARING EXAMINER ERRED IN ADOPTING CONDITION 1 IN**
11 **THE RECONSIDERATION DECISION.**

12 7.9.1 In his Reconsideration Decision, at pages 8-9, the Hearing
13 Examiner revised conditions to be imposed for traffic analysis in Condition #1.

14 7.9.2 Even the Revised Condition #1 is vague and ambiguous and does
15 not spell out the actions to be taken by the City in response thereto, including a)
16 whether cumulative traffic impacts from the three FWC projects “shall be evaluated
17 and mitigated in a SEPA analysis addendum and/or revision to the Warehouse A and
18 B TIA” (page 9, lines 1-2), and b) whether the “PM peak hour cumulative impacts
19 shall be included in the TIA analysis, or added to the concurrency review for
20 Warehouse A as the City finds most consistent with its regulations” (page 9, lines 2-
21 3) (emphasis supplied).

22 7.9.3 Condition #1 also purports to give the City the authority to
23 determine “if WSDOT has jurisdiction over the SR 18 intersection.” Further, the
24 condition assumes that “pro-rata mitigation for Warehouse ‘A’ shall be formulated in
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1 consideration with WSDOT.” In fact, the Federal Way Hearing Examiner cannot
2 determine jurisdiction over state facilities and cannot determine whether, or what type
3 of mitigation, is appropriate in advance of technical analysis of traffic impacts by
4 WSDOT.
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6 7.9.4 The adoption of Condition #1 described in Paragraphs 7.9.2 and
7 7.9.3 above, under the circumstances of this case, is an erroneous interpretation of
8 the law, not supported by evidence that is substantial when viewed in light of the
9 whole record before the court and is an erroneous application of the law to the facts
10 within the meaning of RCW 36.70C.130(1)(b), (c) and (d).
11

12 **7.10 THE HEARING EXAMINER ERRED IN DISMISSING CLAIMS**
13 **RELATED TO THE CONCLUSIONS OF LAW IN ORDINANCE No. 94-240.**

14 7.10.1 In SWC’s Notice of Appeal concerning the project application,
15 Paragraphs 3.3, 3.6.10 and 3.6.11 contended that the Warehouse A Proposal
16 violated certain Conclusions of Law in Ordinance 94-240 which adopted zoning
17 regulations for WCC. FWRC 19.190.040, relating to annexed property, provides:

18 Whenever, prior to annexation, a proposed extended comprehensive plan and
19 zoning regulations and/or map have been prepared and adopted by the city
20 pursuant to RCW 35A.14.330, as adopted and amended from time to time,
21 that plan and zone regulation and/or map will, upon the effective date of
22 annexation, be deemed to amend this title to the extent set forth in the
23 annexation ordinance

24 7.10.2 In response to a prehearing motion by respondents to dismiss,
25 the Hearing Examiner dismissed these claims as a matter of law in his Partial
26 Dismissal decision at page 7, Paragraph 5.

7.10.3 The dismissal of Paragraphs 3.3, 3.6.10 and 3.6.11 in the Notice
of Project Appeal, under the circumstances of this case, is an erroneous

1 interpretation of the law, and is an erroneous application of the law to the facts within
2 the meaning of RCW 36.70C.130(1)(b) and (d).
3

4 **7.11 VIOLATION OF REQUIREMENTS FOR PERIODIC REVIEW OF**
5 **COMPREHENSIVE PLAN AND DEVELOPMENT REGULATIONS.**

6 7.11.1 In its Notice of Appeal of the Process III project approval, SWC
7 asserted at Paragraph 3.1.3 that the City failed to engage in periodic review of code
8 provisions related to the CP-1 zone regarding the WCC, as required by RCW
9 36.70A.130. In that paragraph, SWC asserted that the City failed to review the terms
10 of codes and regulations regarding the CP-1 zone because it believed that the CZA
11 from 1994 was binding on the city indefinitely.

12 7.11.2 In response to a prehearing motion by respondents to dismiss,
13 the Hearing Examiner dismissed Paragraph 3.1.3 of SWC's notice of appeal as a
14 matter of law in his Partial Dismissal decision at page 5, Paragraph 3.

15 7.11.3 The dismissal of Paragraph 3.1.3 in the Notice of Project Appeal,
16 under the circumstances of this case, is an erroneous interpretation of the law, and is
17 an erroneous application of the law to the facts within the meaning of RCW
18 36.70C.130(1)(b) and (d).
19

20 **8. REQUEST FOR RELIEF.**

21 Based on the foregoing, Petitioner requests that the court enter the following
22 relief.

23 8.1 Reverse those land use decisions identified in this petition as contrary to
24 RCW 36.70C.130(1); and/or

25 8.2 Remand for further proceedings, as appropriate, regarding the decisions
26

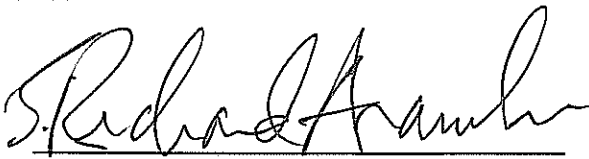
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identified above;

8.3 Enter such further and additional relief as may be appropriate;

8.4 Enter a judgment for costs and attorney fees as allowed by law.

DATED this 18th day of November, 2019.



J. Richard Aramburu, WSBA #466
Attorney for Appellant
Save Weyerhaeuser Campus