From: Janet Way
To: Heidi Costello; Jessica Simulcik Smith
Subject: Re: Comp Plan Amendments Comments 12/14/15
Date: Monday, December 14, 2015 4:38:57 PM

Here is the letter in body of the email. Sorry for the glitch.

Janet

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940 NE 147th St
Shoreline, WA 98155

Monday, December 14, 2015 Via Electronic Mail

Shoreline City Council
17500 Midvale Ave N
Shoreline, WA 98155

Subject: Comp Plan Amendments

Dear Council:

Please accept this as our official comment on the Comprehensive Plan Amendments process. We request to be a Party of Record with Legal Standing in this matter.

By way of background, the Shoreline Preservation Society (SPS) is an active Washington non-profit Corporation founded September 13, 2010, UBI Number 60347960. The SPS is a local, grassroots organization fostering the preservation of historical heritage, cultural and environmental assets throughout the Shoreline, Washington area. The mission of SPS is to educate Shoreline residents and disseminate information about proposed changes and impacts due to rezones and other city or developer actions; to participate in the public process; and to provide alternatives as needed to preserve the character of Shoreline's neighborhoods. We seek to promote well-planned growth that conforms to the requirements of the Growth Management Act, our state environmental laws and procedures adopted by the City for public participation. As you know from our involvement with the City and its public process, we are particularly concerned about growth plans that do not adequately plan for the cost of curing existing infrastructure deficiencies, let alone adding levels of impacts that make those conditions worse. As part of our mission to preserve the high quality life embodied in Shoreline's neighborhoods and parks, we continue to urge the Council to closely examine the sources of funding available to pay for new growth and improvements to existing deficiencies in stormwater management (flooding), sewer capacity, water supply, school facilities, fire and emergency services, and transportation.

We are writing to comment on two of your proposed comprehensive plan amendments. The first involves amendments to the comprehensive plan land use map to include three categories of designations matching the recently adopted 185th Street Station Subarea plan designations and zoning. It was our understanding that Ord. No. 702 already amended the comprehensive plan land use map, so we are unclear why any additional amendments are necessary to harmonize the comprehensive plan with the subarea plan. This has not been well explained in the public information disseminated by the City to the public for this proposal. The amendment is merely described as a housekeeping amendment. In light of our ongoing appeal of Ord. No. 702, we urge the Council to delay action on

these amendments until the scope of Board and court decisions on that challenge are resolved. To do otherwise only invites more procedural confusion and potentially more litigation.

If there is a reason to adopt these amendments now, prior to resolution of appeals, the public deserves a more detailed explanation of the intent and urgency for the amendments. If there is a reason for the amendments, it must be substantive, and we regret to inform Council that this could put the citizens in the position of having to appeal this new ordinance just to maintain the integrity of existing appeals. Our substantive concerns about the subarea plan designations and zoning apply equally here, as detailed in the attached Prehearing Brief and Reply Brief filed with the Growth Management Hearings Board, incorporated herein by reference in their entirety and intended to provide detailed analysis of GMA and SEPA violations that apply equally to the amendments currently before you. (See 2 briefs attached). An action that triggers new appeals due to procedural moves would be an unfortunate outcome if the amendments are mere "housekeeping" and are not necessary. Enough city and citizen resources are already dedicated to sorting out these issues. We urge the Council to go slow and avoid complicating the process further. Thank you for your consideration of this first point.

Our second comment concerns the proposed amendments to the public participation process followed by the City. We wish to strongly object to the Council Amendment 8(e) on "Discussion and Adoption of Resolution No. 380 Amending the Council Rules of Procedure Relating to Public Comment."

We respectfully urge the council to delay this action in accordance with Councilemember McConnell's amendment.

We believe that this action by the Council is not only unnecessary, but damaging to the City's standing with its citizens and values. Shoreline was founded with the strong concept of citizen participation. Our citizens hold this dear. To remove the opportunities for Non-profits to have a little extra time to present official positions has been a very useful tool, both to get information to council and staff and to inform the public on an array of issues from local non-profits. For instance, you have heard testimony from groups such as Forterra, Futurewise, affordable housing groups and Save Richmond Beach, just in the last year, to name a few.
This move also goes against the Council's own "City Council Goal 4: "Enhance openness and opportunities for community engagement."

Please vote to delay taking action on this measure and consider the consequences to Shoreline Citizens.

Thank you.

Sincerely,

Janet Way, President
Shoreline Preservation Society

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

SHORELINE PRESERVATION SOCIETY, a Washington Non-Profit Organization; JANET WAY, Citizen; JOHN BEHRENS, Citizen; and WENDY DIPESO, Citizen; Petitioners, vs. CITY OF SHORELINE, a Washington Non-Charter Optional Municipal Code City; Respondent.	CASE NO. 15-3-0002 PETITIONERS' OPENING PREHEARING BRIEF

INTRODUCTION

Petitioners Shoreline Preservation Society, Janet Way, John Behrens, and Wendy DiPeso submit this pleading as their Opening Prehearing Brief. The Petitioners bring this appeal of the 185th Street Subarea Plan and Development Regulations, and accompanying EIS, because they are concerned about the future of their city, and how growth will be managed and paid for. As is so often the case when planning is not done in accordance with the GMA's requirements, the City is planning to plan – and figuring out how to pay for growth later, long after it has enacted the zoning. This is exactly how planning used to be done before the enactment of GMA, and is in fact the reason that GMA was enacted by the Legislature.[1]

This case puts a straightforward question before the Board**: Can a jurisdiction adopt a plan and zoning map that expands growth seven times over the current population in the area, without**

[1] RCW 36.70A.010 states: "The Legislature finds that uncoordinated and unplanned growth . . . pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by the residents of the State."

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providing a capital facilities analysis as required under GMA? It is a threshold question that the Board can easily decide in this case; if the answer is "no," the Board can conclude the case without extensive analysis of the remaining issues in the case and without digging into the extensive record, invalidating the rezone and remanding the plan and environmental review to complete the work. This case boils down to this simple question because the City readily admits in its subarea plan and EIS that the hard work of capital facilities planning has not yet been done- it has not yet identified project priorities, costs, possible funding sources, or how to deal with deficiencies.

Petitioners want to know how much this growth will cost existing taxpayers in the City **before** the City paints the new color on the map. The City cannot give them an answer to that question, because the City hasn't yet figured it out. Some of the Board members may recall the old pre-GMA "Christmas Tree Plans" wherein capital facilities planning was nothing more than a wish list of projects. That is what this plan is. No matter how modern and sophisticated the form-based zoning and planning may appear, the core requirements of the GMA still control—there must be truth and disclosure in planning, and under the mandate of RCW 36.70A.070(3)the City must figure out how to pay for the growth **before the zoning changes are enacted**.

As the Board has determined it does not have jurisdiction over the planned action ordinance, the Petitioners will not bring that portion of the case forward, with the understanding that those issues will be addressed in other venues.[2] The Petitioners do not abandon those issues; rather, they preserve them for other venues.

The issues in this case can be broadly grouped into two categories:

1) GMA issues related to: (a) capital facilities planning; (b) external and internal consistency amongst various relevant plan documents; and (c) coordination with local service providers; and

[2] Issue Nos. 7 and 8 were stricken by the Board in the Order on Motions dated September 10, 2015. The Petitioners do not abandon those issues, but recognize the Board has directed the Petitioners not to provide briefing on those issues; thus the Petitioners wish to preserve them for appeal. Petitioners do abandon Issue 9 of the Amended PFR.

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2) SEPA issues related to the adequacy of the Final Environmental Impact Statement (FEIS) adopted in conjunction with the subarea plan and rezone; and whether the City followed the procedural and substantive requirements of SEPA in so doing.

Petitioners conclude that the City failed to do the heavy lifting necessary to comply with the GMA's requirements for adequate capital facilities planning to support designations and zoning to substantially increase growth in the 185th St. Subarea. Other related GMA deficiencies flow from this omission. Petitioner also maintain that the SEPA review that accompanied the plan and development regulations was not compliant with SEPA and did not provide the detail and analysis of impacts to ensure adequate information for decision makers and for the public to understand the true costs of this radical rezone. With respect to the FEIS, it does not even pass muster as a planning level document, let alone a "project level EIS" as it is advertised to be. The Petitioners will provide the Board with an analysis of the FEIS deficiencies in this brief.

The Board provided an adequate background and standard of review in its *Order on Motions* at 1-3 (September 10, 2015). This Prehearing Brief will address each of the issues outlined in the Board's *Prehearing Order*, as modified by the *Order on Motions,* but in a different order of appearance to enhance a logical flow in the argument.

I. VIOLATIONS OF THE GROWTH MANAGEMENT ACT

A. Introduction.

The Petitioners have brought six issues that concern capital facilities planning, and consistency, both external and internal. All of these issues are related, in that the GMA requires "truth in planning." *See* DEPARTMENT OF COMMERCE, *Capital Facilities Planning Guidebook,* Introduction at p. 6. (2014) [3] The Capital Facilities Element of a plan is meant to be a reality check to the local government and its citizens which discloses the cost of future growth and demonstrates how it will be paid for. The capital facilities plan must be consistent with the land use plan, based on the projected needs to serve anticipated growth at the levels of service adopted by the community. This

[3] Petitioners have attached this document to this brief as Legal Reference 1.

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is true even if a particular service is supplied by an outside provider. In that many of the services that are necessary for development (such as water and sewer) are supplied by outside providers, it is incumbent upon the City to ensure good coordination during the subarea planning process and double check consistency with both external plans and with internal documents.

As the Board is aware, a subarea plan is an optional element of the comprehensive plan that is subject to the goals and requirements of the Act and that must be consistent with the comprehensive plan. RCW 36.70A.080; *West Seattle Defense Fund, et al. v. Seattle,* CPSGMHB Case No. 95-3-0073 (Final Decision and Order, 4/2/96) at 25. All aspects of the plan and its implementing development regulations must be consistent with the rest of the comprehensive plan and development regulations, as well as being compliant with the various provisions of the GMA. Since the Petitioners' arguments begin and end with capital facilities planning, Petitioners will address Issue 4 first.

B. **Legal Issue No. 4. Lack of Adequate Capital and Public Facilities**. Does the adoption of Ordinances 702 and 706 violate the requirements of RCW 36.70A.020 (12), .070(3), and .070(6); and Shoreline GMA Comprehensive Plan Policy FG 2, because the plan does not ensure that those public facilities necessary to support development will be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards?

1. The GMA Roadmap for Capital Facilities Planning.

While the City may argue that the subarea plan did not necessarily need to contain a capital facilities element, Petitioners assert that the City was required to add an analysis to its existing capital facilities plan to assure consistency of the larger comprehensive plan elements. As it stands, the pre-existing capital facilities plan is outdated in that it does not include any analysis of the capital facilities needs for the designations and zoning enacted in this plan.[4] Logic would dictate that a GMA

[4] As is the case with many jurisdictions, the City's capital facility planning documents are not easily found. The City has a capital facilities element listed on its website, along with "Supporting Analysis". There is also a Capital Improvement Plan (CIP). There is reference to a "Capital Facilities Plan" but it does not appear anywhere on the City website. Although the Board required the City to include the comprehensive plan and capital facilities plan as part of the record, the City has not included those items in the record, or as core documents. In an abundance of caution and in order to prove the negative, the Petitioners go to the expense of reproducing these documents for the Board, even though there is nothing

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subarea plan that greatly intensifies growth in a particular part of the City is required to adopt a capital facilities plan or amend the existing capital facilities plan to maintain internal consistency. *See* RCW 36.70A.070 (3) ("The plan shall be an internally consistent document and all elements shall be consistent with the future land use map.").

Assuming capital facilities planning is required to maintain consistency of the plan, either as an amendment to the City capital facilities plan or as a section of the subarea plan, the GMA is explicit in its requirements for that analysis. RCW 36.70A.070(3) requires that each comprehensive plan shall include:

> (3) A capital facilities plan element consisting of:
>
> (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities;
>
> (b) A forecast of the future needs for such capital facilities;
>
> (c) The proposed locations and capacities of expanded or new capital facilities;
>
> (d) At least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and
>
> (e) A requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent.

Interpreting this provision, the Board has consistently held that land use assumptions, capital facilities, and funding are interrelated and move together. *Fallgatter et al. v. Sultan (Fallgatter IX), CPSGMHB* Case No. 07-3-0017 (Final Decision and Order 9/5/07) at 15. In addition to the capital facility element requirements, the Board must consider the capital facilities planning effort in lieu of Goal 12, which requires local government to "ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the

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in them that suggests any capital facility planning has been done consistent with the 185th Street Subarea Plan. *See Core Documents Attachment: (1) Capital Facilities Element; (2) Capital Facilities Supporting Analysis; and (3) Proposed Budget and 2015-2020 Capital Improvement Plan.*

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development is available for occupancy and use without decreasing current service levels below locally established minimum standards." RCW 36.70A.020 (12); *see McVittie v. Snohomish Cy.,* CGMHB Case No.99-3-0016 (Final Decision and Order) at 25.

While the exact timing and precise location of development cannot be predicted with certainty, "long-range coordinated planning is *the Legislature's choice* for reducing the fiscal and environmental risks of haphazard development. This long-range, coordinated planning is the reason that the GMA was initially adopted and provides the foundation for the planning decisions of cities and counties throughout the State." *Fallgatter, et al. v. Sultan (Fallgatter V),* CPSGMHB Case No. 06-3-0003 (Final Decision and Order) at 16. In *Fallgatter V,* the Board found that "By failing to look at the 'big 20-year-picture' the City [of Sultan] fail(ed) to comply with one of the most basic tenets of the GMA." *Id.*

The Petitioners focus on deficiencies related to transportation, water, sewer, and surface water. Each of these public (or capital) facilities will be discussed separately below.

2. <u>Specific Deficiencies in the Subarea Plan related to Capital and Public Facilities</u>.

This subarea plan is a "plan to plan" when it comes to capital facilities. At p. 7-2, a chart lays out when and how it plans to do capital facility planning incrementally over a period of the next 20 years. The plan states:

> 2015- 2018
> The first three years after plan adoption, system plans will need to be updated such as transportation, sewer water, and surface water master plans will need to be updated to reflect the new projects needed to support the subarea. This will be an intensive time of coordination and outreach with agencies, service providers, property owners, etc. The City and other agencies will seek funding for capital projects and move forward with implementing them.

Index No. 15 at 7-2 (Ordinance 702). Similar language is repeated for description of activities during Years 2019-2023, and Years 2024 to 2035. On page 7-5, the Plan states that the City and agencies such as Shoreline Water District (now North City Water District), Seattle Public Utilities, Ronald Wastewater and other service providers will be updating their system plans to reflect adopted zoning, and "will explore funding and implementation options and monitor the pace of

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redevelopment . . . ." *Id.* at 7-5. The plan states that the City will also update its Capital Improvement Plan "to reflect prioritization of improvements needed in the subarea," will update system plans including Parks, Recreation, and Open Space Plan, Surface Water Master Plan and Transportation Master Plan." *Id.* The City also promises to "work to fund and complete key planning and design projects such as a corridor plan with preliminary design for the NE 185th Street/10th Avenue/180th Street corridor." *Id.* On the same page, the City promises to conduct coordination and outreach with a number of entities, including service providers.

This language explicitly acknowledges an incomplete capital facilities planning process. At p. 7-20, the Plan introduces some figures and tables, but qualifies the information on estimated projects and costs by stating:

> As noticed previously, **utility assumptions are based on a preliminary, planning level of analysis a**nd assume that some lines would be installed with capacities to build-out of the subarea, beyond the next twenty years. All of the information in this plan pertaining to the utilities will need to be confirmed through updated systems planning by the City, North City Water District, Seattle Public Utilities, and Ronald Wastewater.

Index No. 15, Ordinance 702 at 7-20. This admission of a "planning level of analysis" is also inconsistent with the City's claim that this document and its FEIS somehow qualify as project level of review necessary to support a planned action.[5] More specifics on different types of services necessary for development are included below.

3. <u>Services Identified by the City as Necessary to Support Development.</u>

(a) <u>Transportation System Improvement Needs.</u>

At pp. 7-7 through 7-15 (Index No. 17, attached as Exhibit 2 to the Original PFR), the plan

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[5] City Ordinance 706 states in pertinent part:

> WHEREAS, pursuant to the State Environmental Policy Act (SEPA), RCW 43.21C, on November 26, 2014, the City issued the 185th Street Station Subarea Planned Action Final Environmental Impact Statement (FEIS) which identifies the impacts and mitigation measures associated with the adoption of the Subarea Plan . . ..

Index 15. This language would seem to indicate that the analysis would require "project level" environmental analysis, as is required for an EIS completed in conjunction with a subarea plan that provides the basis for mitigation measures applied through a planned action ordinance. RCW 43.21C.440; WAC 197-11-164 and -172.

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provides information on impacts and lists out a number of projects and even identifies costs for some projects. One of the first projects on the list is a "corridor plan" for 185th Street/10th Avenue/180th Street that includes a multi-modal transportation facilities necessary to support projected growth in the subarea, a phasing plan for implementation, and a funding plan for improvements. In other words, *the transportation plan that should have been in place before the zoning was adopted*. The other "projects" identified are mostly "soft" transportation strategies like "monitoring traffic volumes" and "employ access management strategies." It is clear that the corridor plan is expected to address the multiple Level of Service F intersections on along 185th identified on Figure 7-2. It is quite explicitly a plan to plan.

In *Fallgatter IX*, the Board provided a chart that compares the CFE (RCW 36.70A.070(3)) and TE (RCW 36.70A.070(6)) Requirements. Noting the remarkable parallels between the two provisions, the Board identified that without identified level of service standards, the future projects become a "wish list" with no needs assessment to support them. *Fallgatter IX, supra,* at 13.

In the present case, the City has failed to do a corridor study on the main arterials in the subarea and has yet to even fund the study. There is no needs assessment based on identified Level of Service standards, no six-year (or more) plan clearly identifying sources of public funding, or a mechanism for re-evaluating the land use element and assumptions in the event of an identified deficiency. RCW 36.70A.070(3). In other words, the City has not done its homework to address whether it can afford to make the improvements that will be necessary to support development in the subarea or at least disclose that cost to the taxpayers of the City. The Board should find the Subarea Plan noncompliant with GMA for failure to conduct adequate transportation planning in accordance with RCW 36.70A.070(3) and (6).

(b) <u>Water System Utility Improvement Needs</u>. At pp. 7-16 through 7-18, the Plan addresses provision of water by North City Water District and Seattle Public Utilities. Index No. 17 (attached to Petitioners' Original PFR as Exhibit 2). The theme in the plan is virtually identical for both, indicating that "upgrades and expansions to systems and facilities will be needed to serve growth through 2035." Index No. 17, at 7-16. The Plan underplays the information provided in the

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FEIS, which indicates that under Alternative 4, buildout would increase water demand up to **670 percent of the current demand within the system.** *See* Index No. 15 (attached as Exhibit 5 to the Original PFR). The FEIS indicates the following:

> All 6" diameter pipes within the subarea would most likely require upsizing to 8" to 12" pipes, and the dead-end mains should be connected into a loop to provide adequate pressure and fire suppression throughout the subarea. **Increasing demands by nearly seven times the current water demand projected within the subarea may have an [sic] affect beyond just the distribution system. Hydraulic modeling should occur on all source of supply, booster stations, and storage reservoirs to verify supply would be adequate for the projected population**.

FEIS at 3-227.[6] Although unclear, the plan seems to indicate on a map, that either a new pump station or improvements to existing pump stations will be necessary. *See* Index No. 17, Figure 7-4 at 7-21. The City's response will likely be that this capacity issue will have to addressed by the two outside water service providers, and since it is not in the City's control, it is not required to provide any needs assessment or funding analysis. However, Board cases have made clear in analogous situations such as expansion of UGAs, that the local government still has a duty ensure that public facilities and services will be adequate and available. *See Durland v. San Juan Cy.,* WWGMHB Case No. 00-2-0062c (Final Decision and Order, May 7, 2001) at 6-8 ("The GMA does not allow a County to designate a UGA and then assign the responsibility of fulfilling its requirements to some other entity.").

What this case law demonstrates is that the City may not unilaterally decide to dramatically upzone property, requiring a 670% increase in service capacity, and then direct the district to simply provide that water. There needs to be a continued coordinated conversation to ensure that water that is necessary for new development will be available at the time of occupancy. The providers should have the opportunity to do the hydraulic modeling, there should be examination of whether or not this increase in demand will have negative effects on the remainder of the water system

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[6] At pp: 3-233 through 3-235 of the FEIS, the City recites the improvements listed in the water system plans or else already completed , but fails to make the tie between these improvements and service of the newly zoned subarea. *See* Index No. 15 (attached as Exhibit 5 to Petitioners' Original PFR).

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BEFORE the zoning is put into place. There should also be a discussion of how to fund this new water, and where public funding will come from to replace all the 6" pipes in the current system, because that cost cannot be borne completely by developers. *See Benchmark Land Co. v. Battleground,* 146 Wn.2d 685, 695, 49 P.3d 860 (2002) (improvements that are not directly related to the impacts of an individual project or to relieve a pre-existing deficiency). Because the City did not do this necessary investigation prior to enacting the zoning, the subarea plan is not compliant with the GMA's capital facilities planning requirements.

(c) Wastewater Service. Identical deficiencies exist in the City's analysis of necessary upgrades to the wastewater service system and facilities. The Subarea Plan provides a cursory list of upgrades to pipes, for which it has calculated costs. *See* Index No. 17 , Ordinance 702 at 7-18 through 7-25. No calculation of cost appears for the called-for upsize to Lift Station #15. *Id.*

Again, the FEIS provides a little more startling picture of the deficits:

> Complete build out of Alternative 4 – Preferred Alternative would have the greatest effect on the wastewater collection system within the subarea, **with a 661 percent increase in flow rates over the existing system**. . . Wastewater demand would not just be concentrated along N/NE 185th Street, but would expand throughout the study area to NE 195th Street, and south to NE 175th Street. Demand increase would affect nearly all the side streets within the subarea, and may require upsizing multiple sections of pipes 8" in diameter and above, **as well as upsizing three lift stations serving the subarea.**

Index No. 15 (FEIS) at 3-229 (emphasis added). The FEIS lists projects from Ronald Sewer District's 2010 plan with some analysis of how the projects might improve conditions in the subarea, but states at the end: "These projects may be dramatically affected by the land use plan implemented by the City for the subarea, and many more sewer lines would require upsizing. Additional hydraulic modeling would be required to confirm needs and determine priorities." Index No. 15 (FEIS) at 3-236. These statements do not provide a comprehensive needs assessment, nor do the documents even begin to assess cost.[7]

[7] It should be noted that the City plans to assume Ronald Wastewater District by 2017. Petitioners request the Board take official notice of this material fact announced on the City's webpage, reproduced and provided to the Board under

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As stated above, even though the City is not yet managing this utility, it still has a duty to ensure that service will be adequate to serve the upzoned area. *Durland, supra,* at 6-8. Because the analysis done by the City falls short of providing a forecast of future needs, let alone the an analysis of where the funding will come from, the City's subarea plan is noncompliant with RCW 36.70A.070(3)(e).

(d) Surface Water Management System and Facilities Managed by the City. The analysis for utility needs for surface water can be found at pp. 7-18 through 7-25 of the Subarea Plan. Index 17, Ordinance 702. Similar to wastewater and water provision, the plan lists a number of pipes that will need to be upsized to provide for better drainage. On page 7-20, the plan lists the need to upsize a pump station, at an indeterminate cost.

The FEIS reviews five drainage issues that are identified currently with the City's Comprehensive Plan associated with the subarea. *See* Index No. 15 (FEIS) at pp. 3-236 though 3-238. It again provides that "[f]uture growth in the subarea may require the capacity of the proposed designs to be re-evaluated." *Id.* at3-236. The issue statements for almost every one of the issues include ambiguous promises to figure out costs and funding at a future date. *See* Chart included in argument supporting Legal Issue 10, *infra.* While the plan lists costs for pipes, it does not venture into providing a realistic forecast of future needs in the subarea plan, and does not even mention possible public funding sources for all of the improvements required. Finally, since surface water management is a City-owned utility, the City is required to provide a strategies to "reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent." RCW 36.70A.070(3)(e).

In summary, the City's effort at providing a capital facilities analysis to support the ambitious rezone, with a nearly 700% increase in service requirements for the area, falls far short of the

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the tab of Request for Official Notice 1. The complete capital facilities analysis for these upgrades will be required upon assumption of the District by the City.

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requirements of the GMA. As the Board has previously stated, "The lack of a fully completed capital facilities plan is more than a conceptual shortcoming—it is fatal legal defect in a comprehensive plan. It alone is sufficient cause for the Board to find that the land use element and every other component of a plan violates the requirements of the Act." *Bremerton, et al. v. Kitsap Cy.,* CPSGMHB Case No. 95-3-0039c (Final Decision and Order Oct. 6, 1995) at 77.

B. **Legal Issue No. 1. Lack of Coordinated Planning**: The City's adoption of Ordinances 702 and 706 violated the GMA requirements for coordinated comprehensive planning between local governments as well as service providers, under RCW 36.70A.020(11), .070(preamble), .100 .210(1)[8], the Countywide Planning Policy PF-2[9], and Shoreline Comprehensive Plan Policies LU 28, LU 29, LU 30, CF 26, CF 28, and CF 30. [10]

The GMA is clear that local jurisdictions must coordinate their comprehensive planning among neighboring jurisdictions and affected special service providers in RCW 36.70A.100[11] and .210(1).

In this case, the City failed to engage in the requisite coordination and collaboration with outside service providers to ensure that the utilities and capital facilities that the new subarea plan, development regulations, and zoning map will necessarily depend upon in order to implement the new dense zoning categories and meet level of service requirements. This coordination is required by the GMA , by the KCCWPPs, and by the Capital Facilities Element of the City's own comprehensive plan. The evidence of this violation is set out below.

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[8] RCW 36.70A.210(1) states in pertinent part: The legislature recognizes that counties are regional governments within their boundaries, and cities are primary providers of urban governmental services within urban growth areas. . .**This framework shall ensure that city and county comprehensive plans are consistent as required in RCW 36.70A.100.**

[9] PF2 Preamble and Policy. Coordination and collaboration among all of these [special purpose] districts, the cities, King County, the tribes, and neighboring counties is key to providing efficient, high-quality and reliable services to support the Regional Growth Strategy. Coordinate among jurisdictions and service providers to provide reliable and cost-effective services to the public.

[10] The Capital Facilities Element Goals and Policies are attached as a Core Document.

[11] RCW 36.70A.100 states: The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall coordinated with, and consistent with, the comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or with which the county or city has, in part, common borders or related regional issues.

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WAC 365-196-415(4) discusses the relationship to plans of other service providers or plans adopted by reference:

> A county or city should not meet their responsibility to prepare a capital facilities element by relying only on assurances of availability from other service providers. When system plans or master plans from other service providers are adopted by reference, counties and cities should do the following:
> a) Summarize this information within the capital facilities element;
> b) Synthesize the information from the various providers to show that the actions, taken together, provide adequate public facilities; and
> c) Conclude that the capital facilities element shows how the area will be provided with adequate public facilities.

In this case, the plan does not even begin to attempt to go through this analysis. Rather, Page 7-2 of the Subarea Plan lays out a "plan to plan," stating that "

> The first three years after plan adoption, system plans will need to be updated such as transportation, sewer, water, and surface water master plans, the park and the recreation plan, etc. Capital improvement plans will need to be updated to reflect the new projects needed to support the subarea. This will be an intensive time of coordination and outreach with agencies, service providers, property owners, etc. The City and other agencies will seek funding for capital projects and move forward with implementing them.

The text is written as if the zoning and the plan land use element will not go into effect until the Sound Transit improvements are built in 2023. But the zoning is already in place, and redevelopment is already authorized, if not already happening. Here are the reactions of a few of the providers that responded through the public notice requirements:

1. <u>North City Water District (formally known as Shoreline Water District)</u>. North City Water District submitted a comment letter on the DEIS on July 6, 2014 clearly indicating that the sub area planning process took them by surprise: "Other than the public notice that recently went out by the City of Shoreline , our utility has not been contacted by the City to provide comments or suggestions about any draft plan." Index No. Ii (1) (public comments). Later in the process, at the only publicly noticed hearing for the entire plan adoption, the District Manager's testified as follows (comments paraphrased in 1/15/15 minutes to meeting):

> Diane Pottinger, District Manager, North City Water District, said the district is generally located between Interstate 5, Lake Washington, City of Seattle, and the Snohomish County

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line. The district serves 8,100 connections in the Cities of Shoreline and Lake Forest Park. She said she was present to address the district's major concerns related to the aggressive growth alternatives proposed in the 185SSSP. **As a utility provider for the eastern half of the subarea, they have not yet identified the capital projects that will be needed to meet the increased demand, nor will they until they complete their pump station design, which is in the process of going out to bid now and will be constructed later this year. This will enable them to calibrate the hydraulic model and identify what capital improvements will need to be.** The improvements will be designed to meet the district and State Department of Health standards for water systems.

Index No. Uu (minutes of 1/15/15 Planning Commission Public Hearing).

2. Ronald Wastewater District. Ronald Wastewater District, which serves the subarea, also commented on the DEIS. The comments again reflect a lack of prior coordination with the District regarding the demands that this new comprehensive plan will make upon rate payers. For example, the letter asks, "Where is the 3,200 feet of sewer main located that are of "undetermined diameter"? Please let us know." And "The table predicts a 508% increase in sewer demand. This increase will need to be verified by adjusting the District's hydraulic modeling after the City has finalized its land use designations for the subarea." Index Ii(2).

In determining whether plans of adjacent jurisdictions are coordinated, the Board may look to the record of inter-agency communication in adoption of the challenged plan provisions. *Governor's Point Development Co., et al. v. Whatcom County,* WWGMHB Case No. 11-2-0010c (Final Decision and Order Jan. 9, 2012), at 141. In a situation such as this one, in which the City relies on the service plans of outside service providers for infrastructure necessary for development, the City has a duty to consult the providers' plans and "ascertain that the service provide has the capacity to make adequate service available to the area." *Suquamish Tribe et al. v. Kitsap Cy,* CPSGMHB Case No. 07-3-0019c, (Final Decision and Order Aug. 15, 2007).

In *Governor's Point,* the Board found that the County had failed to meet the coordination requirements of the GMA, despite the County's provision of regular notices throughout its plan update process. *Governor's Point, supra, at 140.* Although the Board relied principally on the County's own policies in its plan to make this finding, those policies are similar in scope to the

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Shoreline policies and to the KCCWPP. Shoreline Policies CORRESPONDENCE FROM 26 and CORRESPONDENCE FROM 28 require that the City "plan accordingly" to ensure that capital facility improvements are provided by the City or responsible service providers, and to resolve conflicts between level of service standards CIPs, and service strategies with interrelated service providers. *See Core Documents, KCCWPP Capital Facilities Element* PF-2 requires cities to ensure "cooperation and collaboration. " These policies all allude to an expectation of a higher level of communication than simply expecting outside providers to respond to public notices without more communication and collaboration on how to meet future public facility needs in a manner consistent with the City's GMA responsibilities.

C. **Legal Issue No. 5: Lack of Consistency and Capital Facilities Planning**. Does the adoption of Ordinances 702 and 706 violate RCW 36.70A.020 (12), .040(3) and .120, which require that: (a) implementing development regulations be consistent with comprehensive plan policies; (b) infrastructure be in place at the time of development; and (c) planning decisions be consistent with budget decisions and adopted capital facility plans, because the amendments allow development that is inconsistent with adopted utility and capital facilities plans?

The GMA requires that planning decisions be consistent with budget decisions and adopted capital facilities plans. RCW 36.70A.120. Related to that is Goal 12 of the GMA which states: "Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards." Without linkage between the land use element and City budget decisions through an adequate capital facilities plan that reflects the land use choices made, the City is noncompliant with RCW 36.70A.120. This section will demonstrate exactly how that linkage has been broken with respect to transportation and surface water management.

1. **Transportation.** The City adopted a Transportation Master Plan in 2011 (TMP) with very minor amendments to the plan in project sheets. Relevant portions of the TMP are attached as the "Core Documents" Exhibits. In this document, the City clearly sets out the appropriate "planning level" concurrency analysis required under the GMA. As the document states, "[t]he relationship

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between LOS standards, funding needs to accommodate increased travel, and land use assumptions is referred to as "concurrency." TMP at 182.

The City has adopted Level of Service D for all signalized intersections on arterials and unsignalized intersecting arterials, with additional volume to capacity standards for Principal and Minor Arterials. TMP at 183. The Subarea Plan indicates that in the first twenty years of the plan (up to 2035), there are at least three intersections on 185th and one on 175th that will violate the LOS D standard. Index No. 17, Ordinance 702 at p. 7-9. On p. 7-8, the graphic indicates that the volume to capacity standards will be violated for a major portion of 185th and Meridian. The Plan attempts to whitewash these serious violations of LOS standards by looking on the bright side: "However, many intersections would still operate at or better than LOS D . . . ." The Plan fails to analyze how the Christmas wish list of projects provided would fix the situation, or where the funding might come from to do so. *Id.* at 7-10. The one-page analysis ends with a recommendation that the City develop a corridor plan for 185th St that includes multi-modal transportation facilities necessary to support the project growth in the subarea, a phasing plan for implementation, and a funding plan for improvements. " *Id.* Petitioners' reading of the GMA is that such a study is required BEFORE the area is zoned for development, not AFTER. [12]

2. <u>Surface Water Management.</u> The City of Shoreline Surface Water Master Plan (Dec. 2011) indicates a level of service for the current program, which would require meeting anticipated regulatory requirements and increased emphasis on asset management. [13] It is not a true level of service standard, in that it does not measure the quality or quantity of service that will be maintained as growth occurs. *See* DEPARTMENT OF COMMERCE, *Capital Facilities Planning Guidebook,* Introduction at p. 37 (2014). It only promises a level of funding equivalent to $1.5 million dollars per year for funding

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[12] Tellingly, the following week after adoption of the 185th Street Subarea Plan and Development Regulations, including the Planned Action Ordinance, the City Council voted to delay the identical planning process at for the 145th Street Station so that a corridor study could be completed PRIOR to adopting rezones. Petitioners request the Board to take official notice of the Minutes of the City Council meeting of March 23, 2015, attached as Request for Official Notice No. 2.

[13] *See* Excerpt from City of Shoreline Surface Water Master Plan Update at 5-18 (December 2011) (attached as a core document.).

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capital facility projects for the entire city, even though this standard of service is described as a "minimum threshold necessary to adequately serve development, as well as a minimum threshold to which the City will strive to provide for existing development."[14] *See* CR 31.

Be that as it may, the Subarea Plan makes no attempt to correlate the LOS identified in the Surface Water Master Plan and forecast the future needs assessment with available funding. The subarea plan is therefore inconsistent with both Comprehensive Plan Policy CF 31 and the Surface Water Master Plan Update. Nor does it provide decision makers and the public with a true picture of the challenges facing the City with respect to surface water infrastructure because of this ambitious rezone.

Problems with surface water management funding are compounded in comparing the Thornton Creek Basin Plan estimates of capital project costs of existing development (approximately 11.5 to 12.5 million in 2009 dollars) compounded by a 37% increase in runoff forecasted by the FEIS. *Compare* Index No. 24 (Thornton Creek Basin Plan)[15] at ES 8 to FEIS at p. 3-231 Table 3.5.11

The end result, looking at just these two examples of City-operated public facilities, is that there is not adequate capital facility planning allowing internal consistency of the City's comprehensive plan and supporting documents. The subarea plan and development regulation enactments (Ordinance 702 and 706) violate Goal 12 of the GMA, which states: "Ensure that those

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[14] A LOS standard "necessary to adequately serve development" is used for the types of facilities and services a community determines are necessary to support development. "Counties and cities should forecast needs for capital facilities during the planning period based on the LOS or other planning assumptions, consistent with the growth, densities, and distribution of growth anticipated in the land use element." DEPARTMENT OF COMMERCE, *Capital Facilities Planning Guidebook* at 30 (2014).

[15] It should not escape the Board's notice that the Thornton Creek Basin Plan did not even look at existing pipe conditions, which has only recently come to light as a significant deficiency of the surface water management system and was not addressed in the FEIS. Request for Official Notice 3, Staff Memo to Council dated June 15, 2015. With an estimated existing pipe inventory of approximately 244,000 feet, the estimated cost of repair of deficient pipe in the Thornton Creek basin is unknown. Although the inspection of TCB pipe is still incomplete (only about 35% has been inspected as of June 2015), 36,870 feet of pipe has already been found to be significantly defective. A memo from staff candidly recognizes that the CIP allocated funding only addresses 16,790 feet, or less than half of the defective pipe found so far. The staff indicate in 2014 dollars, there is already a deficit of approximately $5,568,000 in surface water management funding for Thornton Creek . Petitioners request that the Board take Official Notice of the material facts noted in this staff memo to City Council pursuant to WAC 242-03-640. This document clearly indicates that the capital facilities deficits are much greater than the Subarea Plan and FEIS acknowledge.

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public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards." The Department of Commerce quotes a local planning expert on what Goal 12 means in the context of growth management planning:

> To achieve planning goal 12, a capital facilities element should address, over the life of the plan, how the needed public facilities and services will be provided and financed throughout the jurisdiction. This does not need to be as explicit or detailed as the financing plan specifically required by the RCW 36.70A.070(3)(d), but an effective CFP should describe a strategy (or at least an approach) for financing the facilities needed and how it will be able to support the land use plan at the adopted levels of service.

DEPARTMENT OF COMMERCE, *Capital Facilities Planning Guidebook* at 16 (2014). In this instance, the Subarea Plan is simply mute on the difficult questions of how the identified public facilities and questions will be funded, and in many instances it does not even disclose the costs. This approach of "figure it out later" through an "implementation strategy" is completely at odds with the structural framework of the Growth Management Act. The Board should find that the City actions in adopting Ordinance 702 and 706 thwarted Goal 12 and violated the requirement that the City engage in capital facilities planning and ensure that planning decisions and development regulations are internally consistent.

D. **Legal Issue No. 6: Lack of Consistency.** Does the adoption of Ordinances 702 and 706 violate the consistency requirements of RCW 36.70A.070 (preamble)[16], .040(3), .070(3), .070(6), and .120 because the subarea plan and development regulations are not consistent with the Shoreline GMA Comprehensive Plan, including the following goals, policies, and

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[16] RCW 36.70A.070 states:

> The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. **The plan shall be an internally consistent document and all elements shall be consistent with the future land use map. A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140.** (Emphasis added).

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other parts of the comprehensive plan: Goals FG 2, FG 7, FG 8, FG 9, FG 10, FG 11, and FG 17; Goal CP 1; Policies CP 1, CP 2, CP 3, CP 4, and CP 8; Goals LU IV, and LU V; Policies LU 5, LU 6, LU 12, LU 28, LU 29, LU 31, LU 32, LU 50, LU 68, LU 70, and LU 71; Goal UI; Policies U 1, U 4, and U 5; Goals CF I, CF II, CF III, CF IV, and CF VI, Policies CF 3, CF 4, CF 5, CF 7, CF 23, CF 25, CF 26, CF 27, CF 28, CF 29, CF 30, CF 31, and CF 32, Goals NE VI and NE X; Policies NE 1, NE 2, NE 6, NE 7, NE 11, NE 12, NE 19, NE 21, NE 24, NE 25, NE 29, NE 32, NE 33, NE 40, NE 42, and NE 44; as well as the 2011 *Shoreline Surface Water Master Plan Update*, and the 2009 *Shoreline Thornton Creek Watershed Basin Plan*?

As set out above, the City's action in adopting the Subarea Plan and implementing development regulations created internal inconsistencies within the plan, as the capital facilities and land use element are no longer consistent. Those actions are also inconsistent with a number of policies in the comprehensive plan. The City's action in failing to adequately address public and capital facilities, as addressed above and under Issues 4, 1,3 and 5 demonstrate that many city policies have not been met. For convenience, each is listed below.

A. FG 2, which states: *Provide high quality public services, utilities , and infrastructure that accommodate anticipated levels of growth, protect public health and safety, and enhance the quality of life.* High quality public services, utilities, and infrastructure will not be available to accommodate anticipated levels of growth if the City does not do required capital facilities planning, and if the City does not coordinate with its outside service providers.

B. FG 7, which states: *Conserve and protect our environmental and natural resources, and encourage restoration, environmental education, and stewardship.* The lack of adequate planning for surface water management, water provision, and waste water services does not conserve and protect environmental and natural resources, in fact quite the opposite.

C. FG 9, which states: *Promote quality building, functionality, and walkability through good design and development that is compatible with the surrounding area.* With a lack of good planning for infrastructure, including transportation and utilities, the city is not promoting functionality or compatibility with the surrounding area.

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D. FG 10, which states: *Respect neighborhood character and engage the community in decisions that affect them.* A lack of transparency in capital facilities planning does not respect and engage the community in decisions that greatly affect them, including the cost of paying for deficient infrastructure.

E. FG 11, which states: *Make timely and transparent decisions that respect community input.* Again, the failure of the City to achieve "truth in planning" by clearly laying out the capital facilities challenges inherent in this upzone, along with a funding plan to pay for them, necessarily means that there was not transparency in the planning process.

F. FG 17, which states: Strengthen partnerships with schools, non-governmental organizations, volunteers, public agencies, and the business community. The City cannot strengthen its relationships with outside service providers by ignoring them in the planning process, and failing to meaningfully coordinate with them.

G. CP:1, which states: *Encourage and facilitate public participation in appropriate planning processes, and make those processes user-friendly*. The City did not encourage and facilitate public participation because it did not conduct a legally compliant planning process in sidestepping the questions that matter most to residents, principally being transparent about the true costs of development.

H. CP:2, which states: *Consider the interests of the entire community, and the goals and policies of the Plan before making decisions. Proponents of change in planning guidelines should demonstrate that the proposed change responds to the interests and changing needs of the entire city, balanced with the neighborhoods most directly impacted by the project.* Clearly the City did not consider its capital facilities planning requirements, the need for consistency of the Subarea Plan with other parts of the plan.

I. CP 3, which states: *Ensure that the process that identifies new, or expands existing , planning goals and policies considers the effects of potential changes on the community, and results*

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in decisions that are consistent with other policies of the Comprehensive Plan. This subarea planning process failed to consider the impacts laid out in the FEIS, flawed as the analysis was, because the City did not try to do the hard work of reconciling impacts with robust capital facilities plan that would assure the community that despite changes, the City had figured out how to pay for this growth and mitigate the impacts.

J. CP:4, which states: *Consider community interests and needs when developing modifications to zoning or development regulations*.

K. CP 8, which states: *Consider the interests of present and future residents over the length of the planning period when developing new goals, policies, and implementing regulations.* This "rush to rezone" did not consider the interests of residents over the planning period. Transportation deficiencies in LOS were not addressed, deficiencies in surface water management planning were not acknowledged and addressed, and basic questions of capacity of water and wastewater systems were not addressed.

L. LU 28, which states: *Implement a robust community involvement process that develops tools and plans to create vibrant, livable, and sustainable light rail station areas.* Uncoordinated and unplanned for growth in the subarea will not create a vibrant, livable or sustainable light rail station area. Rather, there will be serious gridlock on surface streets surrounding the light rail station, and poor water quality resulting from the lack of an adequate surface water management system. In addition, it is unknown whether there will be adequate water supply, fireflow supply, or wastewater system capacity.

M. LU 29, which states: *Create and apply innovative methods and tools to address land use transitions in order to manage impacts on residents and businesses in a way that respects individual property rights. Develop mechanisms to provide timely information so residents can plan for and respond to changes.* The problem with the City's scheme to simply provide a "plan to plan" is that there is no process for revisiting this plan and zoning, now that it is adopted. Impacts are ignored,

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and growth will just happen, because there is nothing to preclude it from happening. Short of denial of a project application due to a lack of project level concurrency, there are no "brakes" in the system to prevent the unchecked impacts from occurring. The City has failed to even commit to a re-assessment of the plan and zoning, opting instead to allow intensified phases to kick in automatically.

N. LU 32, which states: *Allow and encourage uses in station areas that will foster the creation of communities that are socially, environmentally, and economically sustainable.* The goal of environmental and economic sustainability cannot be attained if the City doesn't provide appropriate capital facilities planning to ensure that growth colored on a map can be served by adequate infrastructure.

O. LU 70, which states: *Maintain and enhance natural drainage systems to protect water quality, reduce public costs, protect property, and prevent environmental degradation.* The City's documents acknowledge serious existing deficits in surface water management. Adoption of the subarea plan and development regulations exhibit apparent unwillingness of the City to reconcile its ambitious planning with those deficiencies . In that planning atmosphere, the City is not protecting, maintaining and enhancing its natural drainage systems. Rather it is ignoring problems and allowing property damage and environmental degradation to continue to occur in its watersheds.

P. LU 71, which states: *Collaborate with the State Department of Ecology and neighboring jurisdictions, including participation in regional forums and committees, to improve regional surface water management, enhance water quality, and resolve related interjurisdictional concerns;*

Q. Goal U I., which states: *Facilitate , support, and/or provide citywide utility services that are: consistent, reliable and equitable; technologically innovative, environmentally sensitive, and energy efficient; sited with consideration for location and aesthetic; and financially sustainable*;

R. U1, which states: *Coordinate with utility providers to ensure that the utility services are provided at reasonable rates citywide and that those services meet service levels identified or*

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recommended in the Capital Facilities Element. The City failed to coordinate with its utility providers, as demonstrated above.

S. U4, which states: *Support the timely expansion, maintenance, operation, and replacement of utility infrastructure in order to meet anticipated demand for growth identified in the Land Use Element.* Policy U4 was ignored in this planning process, since the City did not address its issues of existing deficiency of pipe within Thornton Creek, or the obvious deficiencies of the existing pipe systems for water and wastewater throughout the subarea.

T. U5, which states: *Coordinate with other jurisdictions and governmental entities in the planning and implementation of multi-jurisdictional utility facility additions and improvements;* The City failed to adequately coordinate with other governmental entities, as demonstrated above.

U. Goal CF I, which states*: Provide adequate public facilities that address past deficiencies and anticipate the needs of growth through acceptable levels of service, prudent use of fiscal resources, and realistic timelines*. The City failed to provide for adequate public facilities that address past deficiencies and anticipate the needs of growth, as demonstrated above.

V. Goal CF II, which states: *Ensure that capital facilities and public services necessary to support existing and new development are available, concurrent with locally adopted levels of service and in accordance with Washington State Law;* The City ignored Goal 12, concurrency, and other capital facilities requirements of RCW 36.70A.070(3) and (6), as demonstrated above.

X. Goal CF III, which states*: Provide continuous, reliable and cost-effective capital facilities and public services in the city and its Urban Growth Area in a phased, efficient manner, reflecting the sequence of development as described in other elements of the Comprehensive Plan.* The City ignored Goal 12, concurrency, and other capital facilities requirements of RCW 36.70A.070(3) and (6), as demonstrated above.

Y. Goal CF IV, which states: *Enhance the quality of life in Shoreline through the planned provision of capital facilities and public services that are provided either directly by the City or through*

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coordination with other public and private entities. The City did not comply with either the requirement to plan for the provision of capital facilities and public services, or the requirement to coordinate with outside service providers.

Z. CF 3, which states: *Review capital facility inventory findings and identify future needs regarding improvements and space, based on adopted levels of service standards and forecasted growth, in accordance with this Plan and its established uses.* As demonstrated above, the City failed to complete these basic capital facilities requirements in the subarea planning process.

AA. CF 4, which states: *Coordinate with public entities that provide services with the City 's planning area in development of consistent standards*. The City did not coordinate with other public entities during this planning process, let alone work on coordinated standards.

BB. CF 5, which states: *Identify, construct, and maintain infrastructure systems and capital facilities needed to promote the full use of the zoning potential in areas zoned for commercial and mixed use.* Since the City did not do adequate capital facility during this planning process, it did not comply with this requirement.

CC. CF 7, which states: *Work with service providers to ensure that their individual plans have funding policies that are compatible with this element.* The City did not work with service providers to ensure that funding policies or the plan itself was consistent with this planning effort.

DD. CF 23, which states: *Critically review updated capital facility plans prepared by special districts or other external service providers for consistency with the Land Use and Capital Facilities Element of this Plan.* While the City looked at some of the project lists in existing plans, it made no attempt to work with those outside providers to attain external consistency between the new land use plan, and the providers' service plans.

EE. CF 25, which states: *Evaluate and establish designated levels of service to meet the needs of existing and anticipated development;* Inherent in this policy is the need to apply LOS standards

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once they have been developed. The City failed to even evaluate the anticipated growth under its own adopted LOS standards, identified in Policy CF 31 and 32.

FF. CF 26, which states: *Plan accordingly so that capital facility improvements needed to meet established level of service standards can be provided by the City or the responsible service providers.* As demonstrated above, the City did not comply with this policy.

GG. CF 27, which states*: Identify deficiencies in capital facilities based on adopted levels of service and facility life cycles, and determine the means and timing for correcting these deficiencies.* As demonstrated above, the City failed to complete these critical steps in capital facility planning.

HH. CF 28, which states: *Resolve conflicts between level of service standards, capital improvement plans, and service strategies for interrelated service providers.* As demonstrated above, the City failed to complete these critical steps in capital facility planning.

II. CORRESPONDENCE FROM 29, which states: *Encourage the adequate provision of the full range of services, . . .at service levels that are consistent throughout the city*. In failing to address LOS for transportation and for surface water management in the subarea planning process, the City's actions violated this policy.

JJ. CORRESPONDENCE FROM 30, which states: *Work with all outside service providers to determine their ability to continue to meet service standards over the 20-year timeframe of the Comprehensive Plan.* Because the City failed to adequately coordinate with outside providers, as demonstrated above, the City did not comply with this policy.

E. Legal Issue No. 3. Subarea Plan Violates GMA. Does the adoption of Ordinances 702 and 706 violate the requirements of RCW 36.70A.020(10) and .130(2)(a)(i) because the subarea plan: (i) does not implement jurisdiction-wide comprehensive plan policies; and (ii) does not address the cumulative impacts of the proposed plan by appropriate environmental review under RCW Chapter 43.21C?

Petitioners have demonstrated above how the subarea plan fails to implement jurisdiction-wide comprehensive plan policies in the previous issue, and elsewhere in this brief; and has also shown how the subarea plan and its accompanying EIS failed to address cumulative effects of the proposed plan.

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The failure to address cumulative effects in the EIS, as thoroughly briefed in the SEPA portion of this brief, resulted in violation of Goal 10 of the GMA, which states: Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water. In addition, this goal was violated in the City's poor analysis in the "Implementation Strategy" and FEIS with respect to water providers, since the documents indicated that the 650% increase in water usage would result in significant ramifications for water availability that needed further investigation. *See* FEIS at 3-227. There is no documentation indicating that any follow-up work was done to ensure protection of water resources BEFORE the subarea plan, development regulations and new zoning map were adopted.

The Petitioners respectfully request the Board to find that adoption of Ordinances 702 and 706 violated RCW 36.70A.130(2)(a) and Planning Goal 10.

F. Legal Issue No. 2. Lack of Public Participation.

(a) Does the adoption of Ordinances 702 and 706 violate the requirements of RCW 36.70A.020(11), .035, .130(2) (a), .140; and goals and policies of the Shoreline GMA Comprehensive Plan, including FG 11, LU 28[17],, LU 29, [18], and LU 30[19] because the City did not provide for early and continuous public participation?

(b) Does adoption of the Ordinances also violate the requirements of RCW 36.70A.020(11), .035, .070(3), .120, .130(2) (a), .140; and goals and policies of the Shoreline GMA Comprehensive Plan Policies, including FG 11, LU 28 LU 29 and LU 30 by authorizing automatic zoning map amendments in the future, without additional public input or rights of appeal as to whether the City has actually completed future capital facilities planning necessary to support the subsequent automatic zoning or identified funding to support it?

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[17] LU 28: Implement a robust community involvement process that develops tools and plans to create vibrant, livable, and sustainable light rail station areas.

[18] LU 29: Create and apply innovative methods and tools to address land use transitions in order to manage impacts on residents and business in a way that respects individual property rights. Develop mechanisms to provide timely information so residents can plan for and respond to changes.

[19] LU 30: Encourage and solicit the input of stakeholder, including residents; property and business owners, non-motorized transportation advocates; environmental preservation organizations; and transit, affordable housing, and public health agencies.

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As extensively briefed in the Petitioners' Response to City's Dispositive Motion, the City violated the terms and spirit of the GMA public participation requirements. Petitioners add to that argument by asserting a further violation of RCW 36.70A.140.[20]

The Board has already reviewed the public participation record offered up by the City and Petitioners would agree it appears extensive. However, the result was chaotic. Petitioners, who are all veteran citizen activists, had a difficult time following the documents through the process. The reason for this is that the City lacks a public participation program that is codified in city code. If there is a public participation code, citizens have a place to go to understand what steps the City must take to go through the adoption process for a major piece of legislation such as the subarea plan. Although the consultant provided a public outreach plan as part of the package of materials, there were few details or specific dates. *See Index Z.* While there were some Currents and Alert Shoreline notifications of particular meetings, the process steps were never clear, because they weren't legally adopted. There was no anchor process set out in a program that had been developed by the City Council to determine how the City best reaches out to its citizens.

The Petitioners ask the Board to take official notice of material fact[21] regarding this subject: a memorandum written by city staff to the City Council on June 15, 2015 which recommends **adopting a public participation code based on an audit by the Washington's Cities Insurance Authority, based on the need for compliance with RCW 36.70A.140**. The memo states. "The plan emphasizes the involvement of the broadest cross-section of the community, **including the involvement of groups not previously involved.**" (Emphasis added). This document explicitly validates Petitioners' experience in trying to follow the haphazard methods of communication used by the City to provide

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[20] RCW 36.70A.140 states in pertinent part: Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments.

[21] WAC 242-03-640 allows the Board to take official notice of material facts.

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public involvement in the process. Despite best efforts, the result was chaotic and inconsistent process that sometimes that was simply made up as the project progressed along.

A solid public participation program is critical to making the GMA process work, especially in circumstances like these, wherein radical changes are proposed at the 11th hour in a process that will have a major effect on property rights. If the public does not have the solid framework of a codified public participation program to work from, all the little postcards, tweets and Facebook alerts are little more than chaotic noise. The code needs to establish the necessary contents of public notice, outline a hearing process and when opportunities for public participation. Social media and other alerts are great as extra steps. And if citizens know to expect public notices to appear in Currents or Alert Shoreline, perhaps they will receive more attention from the public. But as it stands now, there are no guideposts which tell a citizen where to look.

The Board should overturn the subarea plan and development regulations due to the City's failure to follow a previously codified public participation code. The Board should send the message to local jurisdictions that one of the basic requirements of the GMA is to ensure that one of the bedrocks of the GMA statute, early and continuous public participation, is respected and implemented in every legislative process adopting comprehensive plan amendments and development regulations.

The zoning for the subarea will be implemented in three phases: the first and largest rezone occurred March 16, 2015. Phase 2 will automatically occur (without further legislative action) in 2021, while Phase 3 will automatically activate in 2033. Especially given the fact that the City has not completed an adequate capital facilities analysis under GMA or an adequate SEPA analysis, the lack of any public process preceding these automatic rezones is problematic. Petitioners believe that the phrase "early and continuous public participation" necessarily requires the City to provide a public process to re-evaluate Phase 2 and Phase 3 in light of the experience with Phase 1. Given the many unknowns about cost and the ability to provide infrastructure, the City should do its utmost to keep the public informed about changing conditions in the rezone area. Providing the results of monitoring efforts, updated forecasts of future needs and funding possibilities should be provided

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through a public process, to ensure consistency with the capital facilities element of the City comprehensive plan.

The Board should require the City to provide additional public participation prior to any automatic rezone pursuant to RCW 36. 70A.140, to provide for continuous public participation in the rezone process, and to ensure consistency with future capital facilities plan.

II. VIOLATIONS OF THE STATE ENVIRONMENTAL POLICY ACT

The vision statements in Shoreline's new subarea plan, Ord. No. 702, optimistically describe a complete transformation of neighborhoods built in the 1950's surrounding the planned 185th Street rapid transit station into a modern pedestrian, transit-oriented urban core. In the same action, the City Council adopted Ord. No. 706, rezoning the area to allow 70-foot tall mixed-use buildings similar to those seen in Bellevue or South Lake Union. According to the subarea plan, the City hoped to attract redevelopment that would almost double the population of the subarea within twenty years. Index No. 17 at 5-11, 5-12 (Ord. No. 702, Subarea Plan).

The City adopted this subarea plan and area-wide rezone without complying with the procedural and substantive requirements of the State Environmental Policy Act, RCW ch. 43.21C. In the first order, the City failed to prepare an environmental impact statement that analyzed the probable significant adverse environmental impacts of the deficient capital facilities planning described in the preceding sections of this brief. The City's actions also violated a number of other provisions in the Act, and its implementing rules at WAC ch. 197-11 ("SEPA Rules").

A fundamental concept in SEPA is the sharp distinction between "planning-level" SEPA review, where project-level details are left for a subsequent stage of SEPA review, and "planned action" EIS review, where a city front-loads its SEPA analysis so that a subarea plan EIS contains the project-level details necessary to meet SEPA's requirements and thus avoid subsequent SEPA review. The City of Shoreline framed its planning for Ord. Nos. 702 and 706 to utilize the latter -- the project-level SEPA review at the plan/rezone stage, rather than later during the actual development that

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implements the subarea plan. This approach requires a detailed environmental review at the plan-stage.

Unfortunately, the City's SEPA EIS for the 185th Street Station subarea plan did not rise to the level of a project-level analysis. The City set lists of needed improvements, which it called "mitigation measures," but failed to perform the "hard look" necessary to evaluate the financing that would be necessary to ensure these improvements would occur. This was difficult to achieve because there was no specific development proposal in view, as is typically the case for front-loaded SEPA review providing details of project-level impacts and mitigation.

To illustrate the point in this introduction (more detailed examples to follow), the City discloses that the new projects in the future will result in "Level F" at the two main intersections on 185th but fails to show how it might raise performance to "Level D" from specific traffic mitigation measures. The City either needed to specify in its plan or zoning ordinance a change in level of service, a reduction in the land use density under Alternative 4, or come up with other concrete and creative alternatives that would bring the plan and zoning impacts into alignment with the City's current LOS "D" for intersections.[22]

This lack of detail fails to meet SEPA's procedural requirements for even a planning-level review, let alone for future projects throughout an entire subarea spread out over decades into the future (the City zoned the area for 125 years worth of growth).

A. <u>Background on SEPA's Purposes and how the City's FEIS Fell Short</u>.

In its FEIS, the City on the one hand acknowledges openly that its SEPA review is at the "planning-level" review rather than the project level: "Recommended improvements within this study are based on a planning level of analysis of each utility in relation to the area of rezoning and projected growth." Index No. 15 at 3-224 (FEIS "Analysis of Potential Impacts"). Even at that less-detailed "planning-level" review, SEPA mandates important procedural and substantive steps that were not followed here.

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[22] *Shoreline 2011 Transportation Master Plan* at 182 (Core document).

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1. SEPA's First Stage Analysis: Describing the "Action" and its "Significance."

In the first stage of the analysis under SEPA, the City acknowledged that its planning actions were "actions" subject to SEPA, by issuing a Determination of Significance and preparing an EIS. That EIS decision is an acknowledgement that the actions significantly affected the environment. SEPA's environmental review requirements apply to all major actions significantly affecting the quality of the environment. RCW 43.21C.030(c).

Major actions are defined to include nonproject decisions. WAC 197-11-704(1)(b). Nonproject actions involve decisions on policies, plans, or programs. WAC 197-11-704(2)(b). These include adoption or amendment of legislation, ordinances, rules, or standards controlling use or modification of the environment; the adoption or amendment of comprehensive land use plans or zoning ordinances; creations of districts or annexations to cities, towns, or districts; capital budgets; and road, street, and highway plans. WAC 197-11-704(2)(b)(i)-(vi).

By requiring EIS review for these nonproject actions significantly affecting the environment, SEPA recognizes that nonproject and programmatic (planning-level) plans form the foundation for subsequent projects. When the legislature adopted GMA, it kept those statutory and common law SEPA standards and purposes in place, emphasizing the importance of considering the likely significance of environmental impacts of land use policy decisions at the nonproject stage.

2. SEPA's Purpose is to Ensure Well-Informed Choices by Decision Makers. SEPA requires that decisionmakers consider these non-project impacts and a range of alternatives, prior to adopting plans and zoning map changes generating significant impacts, as part of a "trustee" duty to protect the environment:

> Over 40 years ago, with the adoption of SEPA, we first read in Washington law that each generation is trustee of the environment for succeeding generations. We read also that it is the "continuing responsibility" of the state and its agencies to act so that we may carry out that trust. RCW 43.21C.020. SEPA demands that this trust be more than merely a stirring maxim or artful slogan. Instead, it is the quickening principle in the application of the statute.

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The Lands Council v. Washington State Parks & Recreation Commission, 176 Wn. App. 787, 807–808 (2013).

> In essence, what SEPA requires, is that that the "presently unquantified environmental amenities and values will be given appropriate consideration in decision making with economic and technical considerations." RCW 43.21C.030(2)(b). It is an attempt by the people to shape their future environment by deliberation, not default.

Stemple v. Department of Water Resources, 82 Wn.2d 109, 118 (1973).

SEPA requires compliance with certain procedural steps to ensure decision makers are well informed about the potential environmental consequences of their planning and zoning decisions. *Moss v. City of Bellingham,* 109 Wn. App. 6, 14 (2001) (SEPA's procedural requirements "promote the policy of fully informed decision making by government bodies when undertaking 'major actions significantly affecting the quality of the environment'"). The policy of the Act is to "ensure via a 'detailed statement' the full disclosure of environmental information so that environmental matters can be given proper consideration during decision making." *Norway Hill Preservation and Protection Association v. King County Council*, 87 Wn.2d 267, 273 (1976).

3. The Purpose of the EIS is to Disclose Those Impacts for Which no Mitigation is Feasible, for Informed Decision Making.

As described above, SEPA requires that decision makers be informed of probable significant adverse environmental impacts and planned mitigation so that they can make informed choices among alternatives. Where it is determined that no mitigation is feasible and the subarea plan or zoning action will have unmitigatable significant impacts, the FEIS must disclose these and make them clear to the Decision Makers. WAC 197-11-440(6). The City's EIS fell short of that mark, by acknowledging that the City did not have funding to support the projected deficits in infrastructure services associated with current conditions even before adding the impacts of the new planned growth. The City compounded the error under SEPA by failing to even offer an analysis of available funding sources that might go some distance to curing the deficiencies:

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> More planning will be necessary to determine the specific requirements for meeting future demands on utilities, infrastructure, parks and shools. Cost estimates will be an important component of this planning. In addition, funding sources will need to be identified.

Index No. 17 at 5-33 (Ord. No. 702, subarea plan). This is quite an admission. It underscores the complete lack of facilities fiscal analysis at the time the City authorized an area-wide rezone that the City acknowledges will result in 23,554 new households within this single subarea at buildout. *Id.* at 5-11.

Under SEPA, the purpose of an EIS is to delve into and make sure decision makers have a detailed analysis of impacts that otherwise are unknown and would be difficult to gauge. WAC 197-11-330(3)(e)(iv).[23] One factor that is not relevant in determining the severity of impacts is whether the proposal will have a benefit. WAC 197-11-330(5). If, for example, a proposal is attractive to a City in terms of a future vision for high density redevelopment, the proposal may still have significant adverse environmental impacts that must be studied in the EIS. *Id.* Thus, SEPA does not pave a pathway to prepare an "EIS-light" under a lesser standard, based on the City's zeal to move into the future. SEPA requires a rigorous review of significant impacts, even when the answer revealed by the analysis may be that the proposal's impacts are not adequately mitigated. The City cannot stop short of an answer it does not like. Only by disclosing this result can SEPA's purposes be served, by informing decision makers in advance of selecting an alternative among the range of alternatives analyzed in the EIS.

4. <u>The City may not Minimize Environmental Review of Capital Facilities Shortfalls Simply Because Impacts may not Arrive in the Short Term</u>.

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[23] WAC 197-11-330(3) sets forth the criteria the City had to analyze in making its decision to prepare an EIS. Under these criteria, the City determined that the impacts were significant and needed to be studied.

> "(3) In determining an impact's significance (WAC 197-11-794), the responsible official shall take into account the following, that: . . .
> (e) A proposal may to a significant degree: . . .
> (iv) Establish a precedent for future actions with significant effects, involves unique and unknown risks to the environment, or may affect public health or safety."

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In order to ensure the environment is shaped by a deliberative process, SEPA requires that environmental impacts of a plan or rezone be analyzed even if there are no-short term impacts likely to flow from the action. Deferral of the SEPA impact analysis approach defies an important concept in the GMA context: A "land use related action is not insulated from full environmental review simply because . . . there are no immediate land use changes that will flow from the proposed action." *King Cnty. v. State Boundary Review Bd*., 122 Wn.2d 648, 664, 860 P.2d 1024 (1993).

During planning, a City may not defer its analysis of impacts that are readily known. In *King County v. State Boundary Review Board,* 122 Wn.2d at 666, the Washington State Supreme Court confirmed that SEPA's purpose is to provide consideration of environmental factors at the earliest possible stage, so that decisions are based on complete disclosure of environmental consequences. In that case, the court clarified that SEPA's objective during land use planning is "not to evaluate agency decisions after they are made, but rather to provide environmental information to assist with *making* those decisions." *King County*, 122 Wn.2d at 666; *see also* WAC 197-11-406. SEPA's procedural requirements thus include a timing element that prohibits deferral of the analysis.[24]

Here, Shoreline deferred the analysis of a number of important infrastructure impacts, and a fiscal plan to address them, on the theory that it had time to do the analysis before the development arrived. See, e.g., Index No. 15 at 3-224 (FEIS). Thus, an important part of the analysis useful to making decisions about the wisdom of the rezone were deferred to an unknown date – and an unknown outcome. The City's review of environmental impacts did not contain the hard look required by SEPA.

5. <u>The City Chose but Failed in SEPA's Optional "Front-Loading" Path</u>. SEPA's procedural requirements discussed to this point have more than a pro forma element to them; they drive the careful weighing of substantive policy choices at a planning level of review, making sure

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[24] It is important to note that neither the City's subarea plan or the FEIS invoked SEPA's phasing procedures. This is because the City wanted the plan and FEIS to serve as the basis for future project-level approvals, without additional SEPA review, under the planned action exemption authorized by RCW 43.21C.030.

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that decision makers understand the full range of impacts if they choose one policy over another. And in the case of Shoreline's movement forward using a "planned action" scheme, the City chose a path that required even more detailed planning than usually required for a "plan-level" EIS; it chose to prepare an EIS advertised as analyzing *project-level* impacts, with more detail than a plan-level EIS. In the City's own words:

> The intent is to provide more detailed environmental analysis during formulation of planning proposals, rather than at the project permit review stage. A Planned Action designation by a jurisdiction reflects a decision that adequate environmental review has been completed and further environmental review under SEPA , for each specific development proposal or phase, would not be necessary if it is determined that each proposal or phase is consistent with the development levels specified in the adopted Planned Action Ordinance and supporting environmental analysis. . . . This FEIS helps the City identify impacts of development and specific mitigation measures that developers would have to meet to qualify for a Planned Action project.

Index No. 15 at FS-4 (FEIS Fact Sheet).

Thus, in this instance, had the FEIS contained an analysis of costs and potential funding deficiencies to cure deficiencies in roadway right-of-ways, water supply, sanitary sewer service, fireflow, and stormwater runoff infrastructure, City Council members could have made substantive decisions on whether to scale back the proposal to more closely fit the City's fiscal capabilities. By choosing less density, they could have ensured that at least a large portion of the deficiencies were mitigated prior to adding new impacts.

In fact, at the City Council's March 16, 2015 meeting, three of the City Councilmembers called for completion of a transportation corridor study prior to the planning and zoning action appealed here (as the City is doing for its 145th Street Station plan). Index No. Zz, No.4 (Staff Memorandum). This indicated again that the FEIS had not yet achieved the level of detail necessary to support future project-level actions let alone identify the deficiencies and mitigation necessary at the plan-level.

In some cases, the courts have allowed a city to proceed with zoning changes in reliance on a less detailed planning-level EIS, but only if the EIS properly identified all impacts and the city committed to preparing a supplemental EIS at the time more specific project proposals materialized.

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Ullock v. City of Bremerton, 17 Wn. App. 573, 565 P.2d 1179, *review denied,* 89 Wn.2d 1011 (1977) (declining to invalidate a rezone, where EIS disclosed the adverse environmental impacts and city committed to supplemental environmental review when actual development materialized).

The conditions leading to the Court's decision in *Ullock v. City of* Bremerton do not apply here. The City has entered into a planned action framework as an integral part of its subarea plan and rezone, *precluding future environmental review when actual development materializes*. RCW 43.21C.440.

The City's specific errors under SEPA are now identified in the following sections, following the issue decided in the Board's *Order on Motions,* and then the issues listed in the Board's Prehearing Order.

B. <u>The Board's Order on Dispositive Motion Found a Failure to Prepare a Draft Supplemental EIS. WAC 197-11-405(4)</u>.

The City's first violation of the Act has already been determined by the Board in its *Order on Dispositive Motions*. The Board held that the City violated WAC 197-11-405(4)(a), which states:

> (4) A supplemental EIS (SEIS) shall be prepared as an addition to either a draft or final statement if:
>
> (a) There are substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts;

In its ruling, the Board recognized that Alternative 4, the City's adopted alternative, generated significant environmental impacts greater than any of the alternatives considered by the City during its draft EIS process, and therefore the City was required to supplement the analysis in the original draft EIS:

> However, after the close of the DEIS comment period, the planning commission and city council developed a new preferred alternative – Alternative 4. Alternative 4 extended the subarea boundaries. Alternative 4 also assumed a different balance between residential and non-residential development than Alternative 3, the DEIS "most growth" alternative. [Footnote omitted]. The FEIS acknowledged that Alternative 4 was beyond the scope of the previous analysis – that it "proposed a greater level of change in population, density, and urban form than the two previous

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> action alternatives analyzed in the DEIS." FEIS at 1-1 and 1-4. City's Motion to Dismiss, pp. 20-21.
>
> In the present case, the City should appropriately have prepared a draft supplemental EIS analyzing the new, more intense Alternative 4 and then circulated it for comment before issuing its FEIS. [Footnote omitted]. Instead, the City completed an FEIS that reviewed the environmental impacts of Alternative 4, specifically and in detail, and then invited public comment before finalizing and adopting the subarea plan.

Order on Motions at 16-19.[25] This error was part of a larger pattern the City engaged in to minimize the analysis of deficiencies in its transportation mitigation analysis and financing plan for capital facilities. Those errors in the SEPA EIS process are compounded by the City's failure to analyze cumulative impacts of other proposals occurring at the same time and in the same area, directly within or adjacent to the 185th Street Station subarea.

C. **<u>Legal Issue No. 10: Illegal Segmentation/Piecemealing of the Proposal</u>:** Does the adoption of Ordinances 702 and 706 violate the requirements of GMA and the procedural and substantive requirements of SEPA, because the FEIS accompanying and incorporated by reference in those ordinances violated RCW 43.21C.030, WAC 197-11-055(5), -060(3)(b) and -060(4), because the FEIS failed to consider impacts identified in the 145th Street Station planning and environmental review and the Sound Transit planning and environmental review on the Lynnwood Link Extension, and failed to consider impacts identified in prior environmental documents supporting the Shoreline Comprehensive Plan and other subarea plans?

<u>Preface</u>. The City's noncompliance with SEPA under Legal Issue No. 10 (piecemealing) is intertwined with Legal Issue No. 13 (Cumulative Impacts). The arguments under both issues are presented here. The argument concerning the last portion of this Legal Issue No. 10 (Impacts Identified in Prior Environmental Documents) is moved to merge with the argument under Legal Issue No. 15 below (Use of Prior Environmental Documents).

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[25] The Board ultimately applied "the rule of reason" to determine that the resulting deprivation of a public comment on a supplemental Draft EIS was "harmless error," *Order* at 18:25-26, which is not challenged here, since Petitions for reconsideration are not authorized under WAC 242-03-555(4). The Board's ruling was based on dispositive motions that dealt only with public participation requirements, not the substance of whether the City's environmental analysis for Alternative 4 met other SEPA or GMA procedural or substantive requirements.

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Argument. The City's subarea planning and rezoning for the 185th Street Station (Ord. Nos. 702 and 706) was conducted by the City, while the planning for the construction and operation of the actual light-rail station at 185th Street was conducted separately by a regional entity, Sound Transit, in conjunction with the U.S. Department of Transportation. Sound Transit issued a Draft EIS in 2013, and a Final EIS two days after the City's January 15, 2015 hearing on its own action.

These separate planning efforts did not result in the kind of coordinated planning between agencies contemplated under SEPA, when two governmental actions are progressing at the same time and involve the same locations (the City's subarea plan bordered both sides of the Sound Transit project).[26]

1. SEPA Requires Integrated Review Among Actions to Ensure Full Disclosure and Mitigation of Cumulative Impacts, Including Selection of a Lead Agency.

SEPA requires integration of environmental review so that known impacts are not analyzed in a sequence that isolates them from each other:

> (i) The fact that proposals may require future agency approvals or environmental review shall not preclude current consideration, as long as proposed future activities are specific enough to allow some evaluation of their probable environmental impacts.

WAC 197-11-055(2)(a)(i).[27] The SEPA rules include a mandate that the City "shall" determine lead agency status with jurisdictions who also are preparing environmental review for a related proposal:

> (5) An overall decision to proceed with a course of action may involve a series of actions or decisions by one or more agencies. If several agencies have jurisdiction over a proposal, they should coordinate their SEPA processes wherever possible. The agencies shall comply with lead agency determination requirements in WAC 197-11-050 and 197-11-922.

WAC 197-11-055(5).

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[26] The Sound Transit action was the larger of the two projects, involving construction of a continuous rail line an multiple stations along the I-5 corridor from North Seattle (Northgate) to Lynwood.

[27] Although Petitioners did not specifically call out this sub-subsection of SEPA, they did identify violations of WAC 197-11-055 in their Petition for Review, specifically calling out "piecemealing" so that the City had notice that this would be an issue in the case.

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Nothing in the City's subarea plan or FEIS indicate that the City did any coordination with Sound Transit to identify either party as a lead agency for the two actions, under SEPA. Yet, Sound Transit's planned light-rail stop at 185th Street was the entire driver for the City's vision expressed in its subarea plan and FEIS. Index No. 6. Sound Transit's construction and the City's planning and zoning were "a course of action [that] may involve a series of actions or decisions by one or more agencies." Thus, under SEPA, the City had a duty to "comply with lead agency determination requirements in WAC 197-11-050 and 197-11-922." The City's failure to follow this procedure resulted in uncoordinated, piecemeal review of environmental impacts and a failure to mitigate cumulative impacts, as discussed in detail, below.

SEPA prohibits isolating the environmental review of impacts for "actions" occurring in the same location and timeframe:

> (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.

WAC 197-11-060(3)(b). Redevelopment of this area, according to the subarea plan, is intertwined with the construction and operation of Sound Transit's 185th Street station. Sound Transit's proposal is intertwined with both the 185th Street station and the 145th Street Station. There can be little argument that these three actions are "proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action" for purposes of combining their environmental review. *Id.* The City's two stations and their surrounding subareas were "interdependent parts of a larger proposal and depend on the larger proposal as their justification or for their implementation." *Id.*

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2. <u>The City's Failure to Coordinate its EIS' With Sound Transit Results in Probable Significant Adverse Environmental Impacts From Cumulative Impacts</u>.

Even if the Board were to find that these proposals were not interrelated enough to require joint SEPA review and selection of a lead agency in order to avoid piecemealing, the City had a duty in its 185th Street EIS to consider the cumulative impacts of proposals that fall within the same general area and within the same time-scale as the subarea plan. As it concerns the Sound Transit action, the City's EIS failed to include the cumulative impact analysis required by SEPA, failed to mitigate probable significant adverse environmental impacts, and failed to identify those unmitigated impacts in the FEIS, as required by SEPA.

SEPA requires that cumulative impacts of proposals occurring in proximity, either spatially or temporally, be analyzed to ensure a complete picture of probable significant adverse environmental impacts. RCW 43.21C.060. That duty to analyze cumulative impacts extends even to impacts that are beyond the jurisdiction of the reviewing agency:

> (b) In assessing the significance of an impact, a lead agency shall not limit its consideration of a proposal's impacts only to those aspects within its jurisdiction, including local or state boundaries (see WAC 197-11-330(3) also).
>
> (c) Agencies shall carefully consider the range of probable impacts, including short-term and long-term effects. Impacts shall include those that are likely to arise or exist over the lifetime of a proposal or, depending on the particular proposal, longer.
>
> (d) A proposal's effects include direct and indirect impacts caused by a proposal. Impacts include those effects resulting from growth caused by a proposal, as well as the likelihood that the present proposal will serve as a precedent for future actions. For example, adoption of a zoning ordinance will encourage or tend to cause particular types of projects or extension of sewer lines would tend to encourage development in previously unsewered areas.

WAC 197-11- 060(4)(b). In this case, the FEIS failed to take into account the cumulative transportation impacts of its own subarea planning and rezoning combined with the traffic impacts of the Sound Transit project. The City and Sound Transit appear to have agreed on the extent of road improvements needed under their separate reviews, but they were in conflict about how those improvements would be paid for, beginning in 2013 and continuing even into the final publication of

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Sound Transit's FEIS in March 2015. As a result, both FEIS' presented an incomplete picture of probable significant adverse environmental impacts to City roadways.

The Sound Transit project is expected to affect the operation of City transportation systems as reflected in the listing of the road improvements in the City's FEIS, a list obtained by the City from Sound Transit's Draft EIS describing impacts in the vicinity of the 185th Street Station. Index No. 15 at 3-119 (FEIS). However, as early as September 2013, when Sound Transit issued its DEIS, the City disagreed with Sound Transit about who would pay for these identified impacts to the City's road system. The problem is, the City's FEIS also did not analyze that question in order to identify potential mitigation.

Petitioners request that the Board take official notice of Sound Transit's FEIS for the "Lynwood Link Extension,"[28] which contains the City's comment letter to Sound Transit dated September 16, 2013. The letter is incorporated as part of the Final EIS for the Lynwood Link Extension and is attached herein as "Request for Official Notice No. 4." The City's comment letter in 2013, made it clear that the City and Sound Transit were in a disagreement over who would pay for roadway improvements necessary to serve Sound Transit's stop at 185th Street:

> The City does not agree that sound Transit will only be responsible for paying a portion of improvements at some locations. Sound Transit is responsible for all costs associated with mitigation for transportation impacts that result in failures to meet Shoreline's adopted concurrency standards.

Id. Sound Transit's FEIS, citing the City's letter, contains a comment saying that Sound Transit also disagreed with the City's demand.

This disagreement between dual agencies reviewing environmental impacts of projects occurring in the same location were never resolved as part of the City's environmental review for approval of Ord. Nos. 702 and 706. When issued in November 2014, the City's FEIS failed to identify which of these improvements the City would have to pay for if Sound Transit constructed its project

[28] http://www.soundtransit.org/node/9489.

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and refused to pay. The City's letter makes clear the City would not proceed with its rezone and redevelopment plan unless the Sound Transit project were built. *Id.*

In conclusion, the adoption of Ordinances No. 702 and 706 violated GMA's requirement for compliance with SEPA, specifically arising from the mandate in RCW ch. 36.70A.020(10), and SEPA's requirements for integrated review of cumulative impacts under RCW 43.21C.030, WAC 197-11-055, -060(3)(b) and -060(4).

3. The City Also Grossly Piecemealed its Review of City Infrastructure Impacts, by Relying to a Great Extent on Deferred Analysis of Cost and Extent of Improvements Needed to Support the Rezones.

(a) The City Improperly Deferred its Impact Analysis Under SEPA. Another key error under SEPA in the City's planning for the new subarea and rezone was its deferral of impact analysis, in effect piecemealing environmental review necessary to support future projects within the subarea, under the planned action mechanism. SEPA authorizes the City to skip environmental review of future development projects within its subarea ("planned actions"), if the environmental impacts of the project were already considered in an EIS prepared for a subarea plan. The City asserted it was using this SEPA exempt process when it adopted Ord. No. 702, which the City billed as a "planned action subarea plan." [29]

SEPA's anti-piecemealing provisions prohibited the City from deferring the analysis of capital facilities and transportation impacts in the 185th Street EIS and subarea plan until some undefined later "implementation" step. Both the subarea plan and the FEIS acknowledge that they did not complete the analysis of capital facilities needs for the planned higher density development, leaving that work up to non-City utilities providers who the City hoped would do that analysis on their own, apparently in order to match the City's adoption of higher density zoning and plans.

As described at length in the preceding section on GMA non-compliance, incorporated herein by reference, the subarea plan repeatedly deferred the completion of infrastructure planning to

[29] The City titled its FEIS as the "185th Street Station Subarea *Planned Action* Final Environmental Impact Statement." Ord. No. 702 (6th "Whereas" recital) (emphasis added).

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subsequent phases of planning described as an "implementation phase." SEPA does not recognize this type of second-step infrastructure planning for planned actions, or any type of subarea plan, unless the City utilizes SEPA's procedures for "phased review," which the City elected not to use.

The FEIS also repeatedly defers actual analysis of mitigation for infrastructure deficiencies, rather than analyzing funding sources the City would use to cure them.[30] The FEIS falls short in various sections, deferring the review and cost of infrastructure deficiencies until later action by the City or utility providers, in the following sections of the FEIS:

Page	Type of Deficiency	Analysis Deferred Until?	Who
3-153	Transportation: Additional right-of-way near intersections for road-widening; corridor development plan "which would need to be completed following adoption of the subarea plan; revise concurrency standards to allow for LOS E in certain situations.	After subarea plan adoption	City of Shoreline
3-228	Fireflow: Upgrade of 7,200 feet of water mains for fire suppression (Seattle) and 8,400 feet (North City Water District)	Unspecified	Seattle Public Utilities; North City Water District

[30] In the case of transportation impacts, the record contains no tangible evidence the City will be able to afford to obtain the necessary right-of-way for the identified road widening of 185th Street.

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3-235	Mains may need to be upsized to 8" or larger for fire flow	Unspecified	
3-226, 27 **3-238**	Potable Water: Hydraulic modeling should occur on all water source of supply, booster stations, and storage reservoirs to verify they are adequate for a seven-fold increase in demand by the projected population. Additional storage or flow control facilities may be required	Once the rezoning is adopted Once preferred alternative is chosen	North City Water District; Seattle Public Utilities
Page	Type of Deficiency	Analysis Deferred Until?	Who
3-229, and 3-236 **3-235** **3-236**	Sanitary Sewer: Update wastewater hydraulic model to determine upsizing and necessary improvements to serve forecasted population 10" to 15" piping may not be large enough for projected flow; new demand may require upsizing 3 lift systems Replace 2,136 feet of sewer mains and side sewers along NE 180th, along 5th Ave NE and along NE 175th	Once the rezoning alternative has been decided upon (Alt. 4 = 661% increase over existing) No specified timeframe or estimated cost for upgrades Cost estimated ($1.305 Million) but no funding sources identified	Ronald Wastewater District
3-237	Runoff: Additional	"Once the zoning	City of

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	analysis of increased runoff "should be performed" to determine need for "upsizing of the bog and associated pipe network." Revisions to hydraulic modeling should be completed to verify infrastructure upsizing needs "to accommodate projected runoff to Ronald Bog."	alternative has been selected."	Shoreline
3-225	Runoff: 11,500 feet of surface water pipes less than 8" will most likely need to be upsized, and possibly 5,000 feet more ("the majority of surface water collection pipes are reaching the end of their serviceable life").	Unspecified	City of Shoreline

This listing of needs continues on Pages 3-241 through 3-253 of the FEIS with additional detail, but again without any timelines for completion or funding sources identified.

(b) <u>The SEPA Violation Substantially Interferes With GMA's Goals</u>. This widespread deferral of SEPA analysis for capital facilities needs and the absence of funding analysis is exactly the kind of phasing or piecemeal review that SEPA was enacted to prevent, as discussed previously even at the planning level. In the GMA era, the lack of detailed analysis of inventory, growth needs, potential funding sources and deficiencies for a growth plan of this magnitude defeats GMA's goal of preventing uncoordinated and unplanned growth that degrades the environment. RCW 36.70A.020(10). It also flies in the face of one of the Board's most consistent interpretations of GMA, that the goal of capital facility planning lies at the core of planning and zoning:

> (12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the

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development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

RCW 36.70A.020(12). Because the City's incomplete analysis flies in the face of this paramount goal, Petitioners request that the Board invalidate the City's three-phase zoning and remand for completion of the subarea planning and SEPA review necessary to support a zoning map change.[31] The effect of the City's noncompliance with SEPA is to substantially interfere with Goals 10 and 12 of the GMA.[32]

(c) <u>The EIS for the Subarea Plan and Zoning are Illegal Piecemealing</u>. In the context of planned actions, where the City's current environmental review forms the basis allowing future project review to forego SEPA review, this deferral thwarts SEPA's policy in new ways. Index Nos. 17, 18 (Ord. Nos. 702, 706). Without a completed environmental analysis, this front loading of SEPA analysis to set the stage for "planned action" SEPA exemption fails to pass SEPA's test for non-segmented environmental review:

> (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.

WAC 197-11-060(3)(b). For reasons only it can answer, the City did not invoke SEPA's procedures for phased review under WAC 197-11-060(5), presumably because it would have been incompatible

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[31] The City acknowledges in its FEIS that its total zoning buildout authorized by Ord. No. 706 is an additional 23,554 households. Index No. 15, FEIS at 3-123 (Analysis of Potential Impacts, Alternative 4 – Preferred Alternative). "Alternative 4 – Preferred Alternative is projected to create an increase of surface water flow by 37 percent over existing conditions . . . " *Id.* at 3-21 (Surface Water – Alternative 4 – Preferred Alternative). Even though GMA only requires the City to plan for a 20-year planning horizon, SEPA requires analysis of the total likely outcome of the action, in this case a 37% increase in stormwater over the next 8 decades in this subarea alone.

[32] As argued in the previous section, the City's actions also substantially interfere with Goal 11 (public participation).

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with the front-loading of detailed SEPA review required for planned action approval of future projects.

The Board can and must find this approach deficient. It can do so without taking jurisdiction over the City's planned action Ordinance No. 707, just as the Board did in remanding the subarea plan and EIS in the Board's own *Davidson Serles* case, based on non-compliance with SEPA. *Davidson Serles v. City of Kirkland,* CPSGMHB No. 09-3-0007c, *Final Decision and Order* (Oct. 5, 2009). In this decision, there was no challenged to the planned action ordinance, but the Board overturned a single EIS was the basis of SEPA review for all the legislative actions in other various ordinances. That approach is suitable here, where the analysis underlying the zoning is not supportable and the City has improperly deferred the hard planning work required under GMA and SEPA. Importantly to Petitioners, a remand of the plan and EIS would reopen the public policy discussion about how the City can pay for substantial infrastructure deficiencies that have already perpetuated flooding and environmental damage, including to the Thornton Creek watershed.[33] A better mechanism is needed prior to entering into the Light-Rail era. Petitioners do not oppose transit-oriented development; they want it to be well-planned and funded to ensure impacts to roads, wetlands, and public services are addressed.

D. <u>Legal Issue No. 11. Adopted Alternative Outside the Range of Alternatives.</u> Does the adoption of Ordinances 702 and 706 and the FEIS accompanying and incorporated by reference in those ordinances violate the requirements of GMA, including RCW 36.70A.020(11), .035, .130(2)(a), .140 and Shoreline Comprehensive Plan Goal FG 11 and Policies LU 28, 29, and 30; and the procedural and substantive requirements of SEPA, including but not limited to WAC 197-11-440(5), -402, and -655 because the alternative adopted was outside of the range of alternatives identified in the DEIS and/or the FEIS; and the City failed to analyze the unique probable significant adverse environmental impacts of this alternative as additional "mitigation," as required by WAC 197-11-660(2)?

Petitioners incorporate by reference in its entirety the preceding sections, as proof the City violated GMA's public participation goal, and acted inconsistently with the above-cited

[33] Petitioners testified extensively to the City on these impacts and the others discussed in this Brief. Index 1(Uu)(2).

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comprehensive plan goals and policies. The inadequacies of the EIS, under WAC 197-402, 440(5) are discussed under Legal Issue No. 14, below.

E. **Legal Issue No. 13.**[34] **Failure to Analyze Cumulative Impacts.** Does the adoption of Ordinances 702 and 706 violate the requirements of GMA and the procedural and substantive requirements of SEPA, because the FEIS accompanying and incorporated by reference in those ordinances violated, among others, the requirement of WAC 197-11-060(4) to evaluate cumulative impacts of the proposal?

[Please see Discussion in Legal Issue No. 10, above, incorporated herein by reference.]

F. **Legal Issue No. 14. FEIS Inadequacy**. The violations of GMA and SEPA cited elsewhere in this Petition are hereby incorporated by reference in their entirety, as independent bases for finding the EIS inadequate.[35]

Based on the foregoing analysis, the City's FEIS violated a number of SEPA's procedural sections specified above. Also, noteworthy is the manner in which the City's planning program under Ord. No. 702 and the FEIS violate WAC 197-11-660, by relying almost exclusively on "redevelopment" to fund improvements necessary to correct deficiencies in the City's surface water system and other

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[34] In its Order on Motions, the Board struck Legal Issue No. 12.

[35] The remainder of Legal Issue No. 14 is as follows:

> In addition, does the adoption of the FEIS violate SEPA, RCW 43.21C.031, .060., WAC 197-11-060(4), 330(3) – (5), Part 4, 660, -906(2)(g), because:
>
> (a) the FEIS did not adequately identify all probable significant adverse environmental impacts of the Ordinances, including but not limited to impacts to critical areas, floodplains, tree canopy, City services, schools, emergency, police and fire services, water and sewer service providers, transportation, clean air, clean water, City budgets and funding sources already allocated for use by other City programs;
>
> (b) did not identify all the mitigation necessary to reduce the impacts of the Ordinances to a level that was less than significant, with appropriate citation to adopted SEPA policies;
>
> (c) did not demonstrate how proposed mitigation measures were reasonable or capable of being accomplished, e.g., did not identify the funding sources available and adequate to ensure the mitigation would take place at the times required by GMA, and did not identify the regulatory mechanisms by which all identified mitigation would be required at the required time;
>
> (d) did not identify which impacts could not be avoided or would not be mitigated;
>
> (e) did not disclose or discuss all significant alternatives; and
>
> (f) contained factual errors or statements of fact unsupported by any underlying analysis, study or report?

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capital facilities. See, e.g., Index No. 17 at 6-6 (Ord. No. 702, subarea plan). In subsection 1(d) of that SEPA Rule, the City is prohibited from relying upon future applicants as the funding source for the existing deficiencies identified in the FEIS:

> (d) Responsibility for implementing mitigation measures may be imposed upon an applicant only to the extent attributable to the identified adverse impacts of its proposal. Voluntary additional mitigation may occur.

WAC 197-11-660. Thus, the lack of financing analysis in the City's subarea plan capital facilities analysis and FEIS is not rescued by complete reliance on future unspecified redevelopment.[36] Although it may or may not be that the City can negotiate with future developers to pay more than their fair share of infrastructure costs, the Board should find that reliance on that source of funding cannot be made exclusive, due to the limitations imposed by SEPA's substantive provision in WAC 197-11-660.

The adequacy of this EIS is a question of law, *de novo,* granting deference to the responsible official's determinations, based on the record. *Barrie v. Kitsap County*, 93 Wn.2d 843, 854, 613 P.2d 1148 (1980); *Glasser v. City of Seattle,* 139 Wn. App. 728, 162 P.3d 1134 (2007), *review* denied, 163 Wn.2d 1033 (2008); RCW 43.21C.075(3)(c),(d). In determining whether the EIS provides decision makers with sufficient information, the Board applies the "reasonableness" standard, i.e., does the information allow a reasoned decision? *Citizens Alliance to Protect our Wetlands v. City of Auburn*, 126 Wn.2d 356, 362, 894 P.2d 1300 (1995). Under this "rule of reason," the Board closely examines whether there is a "reasonably thorough discussion of the significant aspects of the probable environmental consequences of the agency's decision." *Gebbers v. Okanogan Cnty. Pub. Util. Dist. No. 1, 144 Wn. App. 371, 183 P.3d 324,* review denied, *165 Wn.2d 1004 (2008).* But importantly, our courts have required a determination of "whether the environmental effects of the proposed action and reasonable alternatives are sufficiently disclosed, discussed and that they are substantiated by supporting opinion and data." *Leschi Improvement Council v. State Highway Comm'n*, 84 Wn.2d 271,

[36] Unlike most other reported cases involving planned actions, the City's future development is not a defined project proposal encompassing a single ownership.

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285 525 P.2d 774 (1974). Thus, the Board does closely examine the record to determine whether the City's evaluation of impacts is supported by substantial evidence. Unlike the presumption of validity afforded to ordinances by the Board under GMA, SEPA review involves a less deferential standard, under the "clearly erroneous" test. *Norway Hill Preservation and Prot'n Ass'n v. King County*, 87 Wn. 2d 267, 274, 552 P.2d 674 (1976) ("broader review" than the arbitrary and capricious standard).

Here, as explained in preceding sections in great detail, the City's FEIS did not adequately identify all probable significant adverse environmental impacts of the Ordinances and mitigation measures that would significantly reduce those impacts, including but not limited to impacts to transportation, water supply, sanitary sewer, fire protection and stormwater runoff, as required under WAC 197-11-440(6)(a). The lack of detail about potential public financing needs will likely result in adverse impacts to City budgets, in violation of WAC 197-11 Part 4. The FEIS did not identify all the mitigation necessary to reduce the impacts of future extensive growth to a level that was less than significant, with appropriate citation to adopted SEPA policies, as expressly required by WAC 197-11-660(1)(a). A greater level of detail than ordinarily required for a subarea planning process was required here, to address the project-level review intended for the EIS. WAC 197-11-442(1). SEPA expressly requires that more detailed analysis as well, when a city changes the alternatives and their mitigation, change and the changes or mitigation will not be the subject of subsequent SEPA review. WAC 197-11-440(6)(c)(4). In its *Order on Motions*, the Board recognized that the City did add a more intensive Alternative 4 to the proposal, after completion of the DEIS, with no additional SEPA review to follow.

The City's ordinances refer to the FEIS as the collection of mitigation measures necessary to make the subarea plan and rezones compliant with GMA. However, the FEIS listed a large number of deficiencies in infrastructure and funding, without demonstrating how the FEIS would mitigate those impacts with identifiable funding sources, in violation of the requirements for the content of an EIS:

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> Discussion of significant impacts shall include the cost of and effects on public services, such as utilities, roads, fire, and police protection, that may result from a proposal.

WAC 197-11-440(6)(e). The FEIS fell severely short in that department and must be remanded on the basis of this one SEPA rule alone.

Finally, as mentioned frequently above, the Shoreline FEIS did not identify which impacts could not be avoided or would not be mitigated. Under WAC 197-11-440(6)(c)(v), the FEIS must be remanded for further work.

G. <u>Legal Issue No. 15</u>. <u>Use of Prior Environmental Documents</u>. To the extent the City relied upon prior existing environmental documents, did adoption of the FEIS violate the specific parameters for use of these documents under RCW 43.21C.034; WAC 197-11-600?

In its 1998 FEIS, the City of Shoreline identified the importance of cataloguing locations for new drainage facilities to handle stormwater runoff from future development:

> A drainage master plan could be developed to **identify primary locations for drainage capital facilities including the creation of water quality or detention ponds** to assist in the mitigation of existing drainage problems. This is important, because as development takes place, available locations for drainage mitigation projects will be prime locations for new development as well. By identifying those locations through a master drainage plan, they can be set aside for use as drainage facilities.

Index No. 23 at 2-18, 19 (emphasis added). This step was identified as a "mitigation measure." *Id.* As the City did additional planning, it should have pursued this mitigation measure, contained in the SEPA document underlying the comprehensive plan. The City should have created an inventory of available land for future stormwater runoff water quality and detention ponds

At the time it issued its 2014 FEIS for the 185th Street Station action, the City knew there was a need for just these kinds of facilities and yet did not incorporate this prior mitigation measure or conduct the inventory in its FEIS. This step is a major flaw in the City's FEIS. The FEIS identifies had a major stormwater runoff problem that periodically flooded residences in the vicinity of Ronald Bog, due to existing levels of development. Under SEPA's duty to fully disclose impacts, the City should

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have identified the problem and mitigation described in the 1998 FEIS.[37] The City's EIS should have analyzed the extent to which, since 1998, "available locations for drainage mitigation projects" still existed capable of handling the subarea's planned increases in stormwater runoff.

The City's failure to analyze the stormwater mitigation in the prior 1998 FEIS,[38] and failure to determine whether it was sufficient to analyze impacts from the current subarea planning action and rezone violated SEPA's requirements for the use of prior environmental documents:

> The lead agency shall independently review the content of the existing documents and determine that the information and analysis to be used is relevant and adequate. If necessary, the lead agency may require additional documentation to ensure that all environmental impacts have been adequately addressed.

RCW 43.21C.034. In other words, the City may not simply say, "we did that analysis previously." SEPA contains an affirmative duty to update the analysis. Under that requirement, the City's EIS for the 185th Street Station subarea plan and rezone should have modernized the 1998 analysis and its inventory of available land for drainage facilities, under the requirements of WAC 197-11-600(4)(d).[39] The City's recent information regarding repeat flooding at the Ronald Bog and surrounding neighborhoods should have triggered that update or available land for stormwater runoff storage facilities, in the form of a Supplemental EIS or Addendum. *Id.*

H. Legal Issue No. 16. Failure to Provide Adequate Opportunity for Public Review and Comment.

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[37] In an interim ruling in this case, the Board rejected the City's contention that "the FEIS for the 1998 Comprehensive Plan is outdated or unnecessary." *Order on Motions* at 28:15-25. The Board acknowledged SPS' contention that the City had updated its comprehensive plan twice, in 2005 and 2012, both times utilizing the 1998 EIS as the baseline environmental analysis, supplemented by Determinations of Nonsignificance for the 2005 and 2012 changes to the plan.

[38] As mentioned previously, this prior 1998 EIS was never replaced by the City; the City merely adopted DNS' when it amended the comprehensive plan in 2005 and 2012 (the latest version).

[39] An update to a prior FEIS is required under the following circumstances, under WAC 197-11-600(4)(d):

> "(4) Existing documents may be used for a proposal by employing one or more of the following methods:
> (d) Preparation of a SEIS if there are:
> (i) Substantial changes so that the proposal is likely to have significant adverse environmental impacts; or
> (ii) New information indicating a proposal's probable significant adverse environmental impacts."

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(a) Did the City's process for issuance of the Draft EIS and adoption of the Final EIS violate SEPA's requirements for public participation? WAC 197-11-550; WAC 197-11-560; WAC 197-11 Part Five; WAC 197-11-904(3)?

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

For their argument under this SEPA legal issue, Petitioners incorporate by reference in its entirety as though fully set forth herein the arguments and evidence on public participation under Legal Issue No. 2, above. The same failure to provide opportunities for public comment in that section under GMA apply equally here under SEPA.

The City set up its rezone within the subarea in a manner that placed it out of the reach of citizen comments authorized and required under Part 5 of the SEPA Rules, WAC 197-11 Part 5. The SEPA rules require the public and agencies to provide specificity in their comments about proposed rezones. WAC 197-11-550. But the City's delayed effective date for its zoning made it impossible for anyone to be specific about adverse impacts occurring at the time the zoning will take effect, because it is too far in the future to be able to predict today. This violated the intent behind WAC 197-11-550 and the public participation mandated by RCW 43.21C.031. It also made it impossible for citizens to challenge the adequacy of mitigation measures adopted under RCW 43.21C.060, because there is no crystal ball allowing evaluation of adequacy when the implementation of the action is placed too far in the future, without any public-comment steps required in the interim (and none available after).

In Section 2 of Ordinance No. 706, the City adopted amendments to the official zoning map that will not take place for six years (Phase 2) and eighteen years (Phase 3) respectively, provided the ordinance has not been repealed or amended prior to that time. While the City's legal counsel may speculate to this Board that there is a high likelihood that future Councils will amend this ordinance prior to those automatic zoning changes, the Board must base its decision on the record at the time

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of the action – and there is absolutely nothing in this record that requires further Council action in order for these automatic zoning amendments to take place.

Thus, in Ord. No. 706, the Council allowed zoning to take place as far as eighteen years from now, with no guarantee of additional public process under SEPA, prior to the zoning taking effect. How can citizens know today what adverse conditions may exist in eighteen years in order to comment meaningfully now under SEPA about whether those rezones should take place at that later time? The Board should find, as a matter of law, that the City's automatic zoning in six and eighteen years violates SEPA's public policy providing the public the opportunity to comment upon proposed zoning changes, just prior to the time the changes are to take place. Alternatively, the Board should invalidate Section 2 of the ordinance until the City adopts provisions allowing for contemporaneous SEPA appeals at the time of actualization, in order to allow a fair review of probable significant adverse environmental impacts nearer in time to the actual changes.

The City's adoption of the subarea plan and rezone ordinances also violated SEPA's requirements for meaningful public participation, based on the process described under the GMA public participation arguments and evidence, above. SEPA includes an affirmative duty to engage the public meaningfully in the scope of the EIS to be prepared, before the Responsible Official makes a decision about the content of the EIS:

> The responsible official shall consult with agencies and the public to identify such impacts and limit the scope of an environmental impact statement.

RCW 43.21C.031.

The City's lack of outreach to the public under an adopted public participation procedure under GMA also prevented meaningful public input on the scope of the EIS. As noted above, the Board already ruled that the City failed to prepare a supplemental EIS when the City expanded the alternatives studied in the Draft EIS. Instead the City allowed comment on the Final EIS and then modified its proposal in response to the comments. Even though the Board found this altered procedure lawful in order to fulfill SEPA's public participation requirements, it did not rule upon

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whether this procedure complies with SEPA's requirements for preparation of a Final EIS, which specifically require restatement of the comments and inclusion of the name of each commenter. That piece is completely absent from the record.

The SEPA rules identify this procedural step as an important part of the FEIS' unique function under SEPA as a comprehensive disclosure document whenever significant impacts are likely to result from an action. Under the SEPA rules, the FEIS is a catalogue of citizen and agency comments on the draft EIS, so that the decision maker can evaluate those comments, along with the responses of the Responsible Official in a final document. The City did not prepare that catalogue of comments on Alternative 4, the preferred alternative in the draft EIS, because there was none – as the Board ruled, the City did not analyze that alternative in a draft EIS. The City Council did not have the benefit of studying those comments in an EIS, prior to making decisions about the alternatives. The Board should find that, although the alternative process satisfied other provisions of SEPA, it did not satisfy the basic content requirements of SEPA under WAC 197-11-560[40] that were not raised in dispositive motions.

I. **Legal Issue No. 17. Failure to Condition the Proposal Based on SEPA Policies**. Did the City violate RCW 43.21C.060 and WAC 197-11-660, -902, -906(2)(g), by purporting to condition the proposal (adoption of the Ordinances) with mitigation measures from plans, reports or ordinances that have not been adopted by the City as policies available for the exercise of substantive authority; are not enforceable under the City's SEPA authority; and therefore are not enforceable mitigation measures that are reasonable and capable of being accomplished?

[Petitioners elect not to brief this issue, in part due to the page limitation.]

III. REQUEST FOR RELIEF

[40] WAC 197-11-560(1) provides that: "(1) . . . . The lead agency shall consider comments on the proposal and shall respond by one or more of the means listed below, *including its response in the final statement*. . . . (2) All substantive comments received on the draft statement shall be appended to the final statement or summarized, where comments are repetitive or voluminous, and the summary appended. If a summary of the comments is used, the names of the commenters shall be included (except for petitions)."

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For the reasons identified above, the Petitioners request that the Board issue an order with appropriate findings and conclusions consistent with the foregoing:

1. Invalidating the City's amendments to the official zoning map under Ord. No. 706, based on findings and conclusions that the rezone substantially interferes with GMA Goals (10), (11), and (12) and violates the requirements for consistency with the goals, objectives and policies of Countywide Planning Policies, the Shoreline comprehensive plan and 185th Street Station subarea plan;

2. Remanding Ord. No. 702, adopting the 185th Street Station subarea plan, for completion of capital facilities planning and public participation required by GMA, as set forth herein; and

3. Remanding the City's FEIS because, under SEPA, it did not adequately disclose the full extent of probable significant adverse environmental impacts resulting form Ord. Nos. 702 and 706, did not comply with SEPA's procedural and substantive provisions, set forth above, and was therefore adopted without adequate public participation;

all setting forth a deadline by which the City must reach compliance with the Board's order.

Respectfully submitted, this 24th day of September, 2015.

Dykes Ehrlichman PS

Barbara Dykes

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