

BEFORE THE HEARING EXAMINER  
FOR THE CITY OF FEDERAL WAY, WASHINGTON

In Re:

Appeal by Save Weyerhaeuser Campus  
of the Process III Project Approval for  
Greenline Warehouse A (File No. 16-  
402947-UP);

MOTION FOR RECONSIDERATION  
BY APPELLANT SAVE  
WEYERHAEUSER CAMPUS

In Re:

Appeal by Save Weyerhaeuser Campus  
of the Mitigated Determination of  
Nonsignificance (MDNS) for Greenline  
Warehouse "A" (File Number 16-102948-  
S.E.)

**I. INTRODUCTION**

Save Weyerhaeuser Campus (SWC) appealed the approval of a Process III decision and the issuance of a mitigated determination of non-significance (MDNS) by the City of Federal Way (City) for the Greenline Warehouse A project. The Hearing Examiner for the City issued Findings of Fact, Conclusions of Law and Final Decision (collectively, Decision) on SWC's appeal, dated September 12, 2019. SWC hereby moves for reconsideration of certain portions of the Decision, described below.

1                   **A.     FACTS AND EVIDENCE**

2                   SWC's Post Hearing Brief<sup>1</sup> summarizes the facts relevant to this Motion and is  
3 incorporated herein by reference. This Motion also incorporates the entire record  
4 before the Hearing Examiner in SWC's appeal.  
5

6                   **B.     DISCLAIMER**

7                   This Motion raises a limited number of issues that SWC believes are vital to  
8 re-consider. This Motion should not be interpreted as implying SWC's agreement with  
9 any parts of the Decision, including its Findings of Fact and Conclusions of Law,  
10 whether raised in this Motion or not. Similarly, SWC is not waiving its right to  
11 challenge any parts of the Decision, regardless of whether they are raised in this  
12 Motion.  
13

14                  **II.     HEARING EXAMINER RULES**

15                  The City of Federal Way Hearing Examiner Rules of Procedure (Oct. 28,  
16 2014)<sup>2</sup> provide, in Section 24, for motions for reconsideration. The grounds for  
17 seeking reconsideration are limited to:

- 18                  1.     The Hearing Examiner engaged in unlawful procedure or failed  
19                  to follow a prescribed process, unless the error was harmless;  
20                  2.     The Hearing Examiner's Decision is an erroneous interpretation  
21                  of the law;  
22                  3.     The Hearing Examiner's findings, conclusions and/or conditions  
23                  are not supported by the record;  
24                  4.     The Hearing Examiner's Decision is a clearly erroneous  
25                  application of the law to the facts; or  
26                  5.     The Hearing Examiner exceeded the Hearing Examiner's  
                    jurisdiction.

                    A motion for reconsideration must:

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<sup>1</sup> Post Hearing Brief of Appellant Save Weyerhaeuser Campus (August 28, 2019).  
<sup>2</sup><http://www.federalwaywa.gov/sites/default/files/Documents/Department/CK/10-28-14%20Hearing%20Examiner%20Rules%20of%20Procedure-signed.pdf>

1. Contain the name, mailing address and daytime telephone number of the moving party, together with the signature of the moving party;
2. Identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested;
3. State the specific grounds upon which relief is requested;
4. Describe the specific relief requested; and
5. Where applicable, identify the specific nature of any new evidence. Such new evidence shall be considered only if the additional evidence relates to:
  - (i) the grounds for disqualification of the Hearing Examiner when such grounds were unknown by the moving party at the time the record was created; or
  - (ii) matters that were improperly excluded from the record after being offered by a party.

The moving party is Save Weyerhaeuser Campus, represented by J. Richard Aramburu. The address and telephone number are provided below.

Requirements 2 - 4 are discussed in the context of each topic area, described below. Requirement 5 is not applicable, as SWC does not identify any new evidence.

### **III. MATTERS REQUIRING RECONSIDERATION AND GROUNDS UPON WHICH RELIEF IS REQUESTED**

#### **A. TRAFFIC IMPACTS: THE RECORD DOES NOT SUPPORT FINDINGS THAT CUMULATIVE TRAFFIC IMPACTS MEET ACCEPTABLE STANDARDS OR WILL BE ADEQUATELY MITIGATED**

The Hearing Examiner correctly holds that the City, in making its decisions on Warehouse A, must consider the traffic impacts of Warehouse B and the Greenline Business Park along with those of Warehouse A.<sup>3</sup> The Hearing Examiner then *incorrectly* upholds findings by the City that these cumulative traffic impacts fall within acceptable standards:

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<sup>3</sup> See Decision, p. 3 (“[T]his Decision finds that a cumulative impact analysis that addresses impacts of Warehouse B and the Greenline Business Park is required for the environmental review of Warehouse A to the extent that such impacts collectively adversely affect the environment.”).

1 As mitigated, the proposal will not create any probable significant  
2 adverse cumulative traffic impacts because all affected roads and  
3 intersections will operate within adopted level of service standards as  
4 determined in the TIAs and concurrency reviews for all three campus  
proposals, including the business park TIA and concurrency certificate,  
which considers the trip generation for all three projects.<sup>4</sup>

5 (Emphasis supplied.)

6 These findings are not supported by the record and are a clearly erroneous  
7 application of the law to the facts. Instead, the record shows that cumulative traffic  
8 impacts will violate standards at the most important intersection affected: the  
9 signalized intersection of Weyerhaeuser Way South and Washington State Highway  
10 18 (SR-18).<sup>5</sup>

11  
12 The Greenline Business Park's Transportation Impact Analysis (Greenline  
13 TIA)<sup>6</sup> shows that traffic will violate morning (AM) peak hour standards at that  
14 intersection for both the volume/capacity or "v/c" ratio and the "letter grade" level of  
15 service or "LOS" standard.<sup>7</sup>

16  
17 **1. CUMULATIVE TRAFFIC EXCEEDS THE MAXIMUM**  
18 **ACCEPTABLE V/C RATIO OF 1.20**

19 The v/c ratio measures the volume of traffic relative to the capacity of a  
20 roadway or intersection to handle it. The City's standard for the maximum acceptable  
21

22  
23  
24 <sup>4</sup> Decision, p. 28, Conclusion of Law 9; *see also* Decision, p. 3.

25 <sup>5</sup> As the Decision notes, the I-5 - SR-18 interchange was identified as the 46<sup>th</sup> most congested  
26 bottleneck in the country in 2019. Decision, p. 2.

<sup>6</sup> SWC Exhibit 36G.

<sup>7</sup> LOS can be a confusing term. It is routinely used to refer to the delay-related "letter grades" but is  
also used to refer to both letter grades and v/c ratios (and other traffic criteria). *See, e.g.*, definition of  
"appropriate mitigation measures" cited in footnote 8 ("Any combination of street improvements . . .  
[that] improve the level of service to a volume/capacity ratio less than 1.20 for signalized  
[intersections]."). We have tried to be specific when using the term in either context.

1 v/c ratio for a signalized intersection outside the City center is 1.20.<sup>8</sup> The Greenline  
2 TIA predicts an AM peak hour v/c ratio of 1.28 for the SR-18 – Weyerhaeuser Way  
3 intersection,<sup>9</sup> violating the City standard.  
4

5 **2. CUMULATIVE TRAFFIC EXCEEDS LOS “E,” REQUIRED FOR**  
6 **SR-18 AS A HIGHWAY OF STATEWIDE SIGNIFICANCE**

7 The “letter grade” LOS standard measures congestion-caused delay at an  
8 intersection. Although the City’s lowest acceptable LOS standard for City roadways  
9 is “E,” the standard for the SR-18 – Weyerhaeuser Way intersection is “D,” because  
10 SR-18 is a Highway of Statewide Significance.<sup>10</sup> The Greenline TIA predicts an AM  
11 peak hour grade of “E” for the SR-18 – Weyerhaeuser Way, violating the state-  
12 mandated standard.<sup>11</sup>

13 State law requires that the City meet LOS standards set by the Washington  
14 State Department of Transportation (WSDOT) for Highways of Statewide  
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17 <sup>8</sup> *City of Federal Way Public Works Department Development Standards*, section VID(1) (March  
18 2019), <http://docs.cityoffederalway.com/WEBLINK/Browse.aspx?startid=748626&dbid=0> (City  
19 Development Standards):

20 Levels of Service. Signalized intersections shall have a level of service of E or better  
21 and an average volume/capacity ratio (Xc) less than 1.20. Unsignalized intersections  
22 shall have a volume/capacity ratio less than 1.00 on all lane groups.

(Emphasis supplied.) See also City Development Standards, section 3.10.2, definition of key terms:

23 **Appropriate mitigation measures:** Any combination of street improvements or  
24 Transportation Demand Management measures which reduce the number of trips  
25 generated by the development at an impacted intersection below the impact threshold  
26 values in Table 2 [which repeats the 1.20 standard for signalized intersections] or  
improve the level of service to a volume/capacity ratio less than 1.20 for signalized  
(except in City Center, where the standard is an area average of 1.10) or a  
volume/capacity ratio of less than 1.00 for unsignalized intersections. Levels of  
service are defined by the 2000 edition of the *Highway Capacity Manual*.

See also Federal Way Comprehensive Plan, chapter 3, Transportation, p. III-47 (“Federal Way has  
adopted the following level of service policy that sets the following standards for the street and  
highway system: Signalized Intersection outside of City Center will experience a 1.20 vehicle-to-  
capacity (v/c) ratio or lower . . . .)

<sup>9</sup> Greenline TIA, p. 20, Table 5.

<sup>10</sup> Greenline TIA, pp. 11, 21.

<sup>11</sup> Greenline TIA, p. 20, Table 5.

1 Significance. The requirements are well stated in WSDOT's Development Services  
2 Manual,<sup>12</sup> page 1-4:

3 **Level of Service (LOS) and Local Planning**

4 The Legislature enacted RCW 47.06.140 in 1998 - the "Level of  
5 Service Bill." The main elements of the law are:

- 6 1. Local agencies must include transportation facilities of state-wide  
7 significance . . . in their comprehensive plans consistent with the  
8 state-wide transportation plan.
- 9 2. The WSDOT has the sole authority to set the LOS standards for  
10 highways of state-wide significance . . . .
- 11 3. Improvements to facilities and services of state-wide significance  
12 identified in the state-wide multi- modal plan are essential state  
13 public facilities under RCW 36.70A.200 (see RCW 47.06.140).  
14 No local comprehensive plan or development regulation may  
15 preclude the siting of essential public facilities (RCW  
16 36.70A.200(5)).

17 While SEPA is the primary statutory authority for WSDOT to  
18 require mitigation from developments that cause significant adverse  
19 impacts to state highways, the GMA plays an important role in that it  
20 requires local agencies to include the LOS standards for state highways  
21 of state-wide significance (HSS) within their comprehensive plans.  
22 These LOS standards can then be used in assessing the need for  
23 mitigation measures.

24 (Emphasis supplied.) Under state law the relevant LOS standard for the SR-  
25 18 – Weyerhaeuser Way intersection is "D." The Examiner erred in entering  
26 Conclusion of Law 8 and 9, at pages 25-31, and Finding 10 (page 19). The City must  
mitigate for the failure of the cumulative IRG projects to meet both this and the v/c  
ratio standard of 1.20.<sup>13</sup>

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<sup>12</sup> Washington State Department of Transportation, Development Services Manual (April 2016),  
<https://www.wsdot.wa.gov/Publications/Manuals/M3007.htm> (WSDOT Development Services Manual).

<sup>13</sup> The Federal Way Comprehensive Plan does not explicitly set LOS standards for Highways of  
Statewide Significance. However, the Plan acknowledges State jurisdiction and recognizes they are  
treated differently from City roadways. The plan provides as follows in chapter 3 (Transportation),  
Appendix III-C (Concurrency Management System), page 3, immediately following Level of Service  
(LOS) Standards:

1                                   **3. THE CONCLUSION THAT PROJECTS WILL MEET**  
2                                   **APPLICABLE STANDARDS IS NOT SUPPORTED BY THE**  
3                                   **RECORD**

4                   The record shows that cumulative AM traffic from the IRG projects will violate  
5 both the LOS E and v/c 1.20 standards. The data is in the Greenline TIA<sup>14</sup> and  
6 summarized in SWC Exhibit 5 (Ross Tilghman memo), page 5:  
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12                   **Legislative Requirement**

13                   The transportation element section of the Washington State GMA reads: "Local  
14 jurisdictions must adopt and enforce ordinances which prohibit development approval  
15 if the development causes the level of service on a transportation facility to decline  
below standards adopted in the transportation element of the comprehensive plan,  
unless transportation improvements or strategies to accommodate the impacts of  
development are made concurrent with development (RCW 36.70A.070)."

16                   ...  
17                   Highways of Statewide Significance (HSS) are exempt from concurrency  
requirements, but local agencies are required to identify their comprehensive plan's  
impacts on the HSS network. In Federal Way, the HSS network consists of I-5 and SR  
18 18 east of I-5.

19                   <sup>14</sup> See Table 5, p. 20, and accompanying narrative on p. 21:

20                   As shown in Table 5, all study intersections are anticipated to operate at  
21 acceptable levels (LOS D or better) in 2020 with the proposed Greenline Business  
22 Park development during both the weekday AM and Saturday PM peak hours with  
23 one exception. The Weyerhaeuser Way S / SR-18 westbound ramps intersection is  
24 anticipated to operate at LOS E without or with the proposed project in 2020 during  
25 the weekday AM peak hour.

26                   Additionally, all v/c ratios except at the of Weyerhaeuser Way S/SR-18 WB  
Ramps intersection during the AM peak hour are anticipated to be less than 1.2 for all  
lane groups at signalized intersections, and less than 1.0 for all movements at  
unsignalized intersections, meeting City standards.

SR-18 is classified as a WSDOT Highway of Statewide Significance (HSS)  
and has an established LOS standard of LOS D. The SR-18 ramp study intersections  
with Weyerhaeuser Way S are anticipated to operate at LOS D or better during the  
weekday AM and Saturday PM peak hours with one exception. The Weyerhaeuser  
Way S / SR-18 westbound ramps intersection is anticipated to operate at LOS E  
without or with the proposed project in 2020 during the weekday AM peak hour.

It should be noted that the weekday PM peak hour LOS analyses were conducted by the City  
of Federal Way as part of the transportation concurrency evaluation, and is not included in this  
TIA.

(Emphasis provided.)

Difference in LOS Results at Weyerhaeuser Way S/SR-18 Westbound Ramps		
Document	2020 with Warehouse A + B	
	AM Peak Hour LOS / Delay (secs) / v/c	PM Peak Hour LOS / Delay (secs) / v/c
<b>Warehouse A TIA</b> (March 6, 2018)	LOS D 41.0* 0.96*	LOS D 53.1 1.11
<b>Greenline Business Park TIA</b> (April 27, 2018)	LOS E 65.1 1.28	Not analyzed

\* The delay and v/c ratio reported in Table 6 for both warehouses A & B appear in error, with better results than for just Warehouse A in Table 5. The cause appears to be erroneously entered signal timing data. In any case, the extreme difference in results between the two reports stands.

The Decision, however, ignores this information and concludes, erroneously, that “all affected roads and intersections will operate within adopted level of service standards.”<sup>15</sup> The first failure—the v/c ratio—is not mentioned at all. The second—the violation of WSDOT’s LOS standard of “D”—is “read out” of the record on the apparent theory that WSDOT was not specific enough in identifying the noncompliance, and the City is entitled to ignore it despite its existence in the record.

This position is not defensible. The City is required by law to apply WSDOT’s standard.<sup>16</sup> The record shows WSDOT raised concerns in written comments to the City about the “severe congestion” at the SR-18 interchanges and requested review of the “cumulative traffic review of the three campus projects.”<sup>17</sup>

The Decision discounts this input, however, saying that WSDOT was responsible for identifying specific cumulative impacts that are “close to or likely will trigger any WSDOT thresholds for mitigation,” and had failed to do so.<sup>18</sup> The Decision then concludes that *SWC* failed to meet its burden of proof to establish a

<sup>15</sup> See references in fn. 4.

<sup>16</sup> See RCW 47.06.140 (“Level of Service Bill”), discussed in the text associated with fn 12. The Decision does recognize that WSDOT’s standard may be a “legitimate reference,” Decision, pp. 25-26, and rightly points out that “the City’s obligation to assess and mitigate environmental impacts in SEPA extends into other jurisdictions.” Decision, p. 25, citing *SAVE v. Bothell*, 576 P2d 401 (1979).

<sup>17</sup> Decision, pp. 9-10.

<sup>18</sup> Decision, p. 26.

1 need for mitigation (even though SWC had introduced the data in the Greenline TIA),  
2 apparently because WSDOT did not introduce that data.

3           The Decision's analysis is antithetical to the principles in SEPA, calling for the  
4 use of good information to make well-informed decisions about environmental  
5 impacts.<sup>19</sup> It also, in a nutshell, captures the problem of "misleading, piecemeal  
6 environmental review"<sup>20</sup> such as the City is conducting on the IRG projects,  
7 presenting information to the public one project at a time. Recall that the City *did not*  
8 include the Greenline TIA in its administrative record for Warehouse A.<sup>21</sup> It was in  
9 draft form in the record on a different project, and WSDOT personnel may not have  
10 even been aware of it when commenting on Warehouse A.

11           If they were aware of it, perhaps WSDOT can be faulted for poor interagency  
12 politics in not putting the data in their comments, or pressing it harder in the face of  
13 the City's emphatic position that it was irrelevant.<sup>22</sup> But this is not an excuse for the  
14 City to ignore the data in the Greenline TIA, especially once SWC brought it to the  
15 City's attention. Nor is it an excuse for the Hearing Examiner to expunge the data  
16 from the record. In its comments WSDOT raised the issues of traffic and cumulative  
17 effects with enough specificity to alert the City to its concerns. The City had available  
18 to it the Greenline TIA, which provided sufficient data to verify WSDOT's concerns:  
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22 <sup>19</sup> WAC 197-11-055 and -060.

23 <sup>20</sup> Decision, p. 20.

24 <sup>21</sup> The Decision notes on p. 3 that it is of "particular utility . . . that the [Greenline TIA] was included in  
25 the administrative record." However, the Greenline TIA was *not* included in the City's decision records  
26 for Warehouse A but *was* included in the hearing record only at the request of SWC.

<sup>22</sup> The Hearing Examiner concedes that the City may not have even reviewed the Greenline TIA  
before making its decisions on Warehouse A. Decision, p. 25 ("City and Applicant witnesses did  
sometimes reference evidence that hadn't been reviewed prior to issuance of the MDNS or Process III  
approval, which may have included the Greenline Business Park TIA.") Is it fair to hold the public to a  
higher standard than the City to search outside the administrative record when commenting on a  
decision?

1 namely, that cumulative traffic impacts would exceed acceptable standards at the  
2 SR-18 interchange.

3 The record shows that the cumulative traffic impacts of Warehouse A,  
4 Warehouse B, and the Greenline Business Park are predicted to exceed acceptable  
5 standards at the I-5-SR-18 interchange: both the City's v/c standard and WSDOT's  
6 LOS "D" standard. The Decision's findings to the contrary are not supported by the  
7 record and are a clearly erroneous application of the law to the facts. The result is  
8 significant impacts on the environment which, as discussed below, are not sufficiently  
9 mitigated and require reconsideration.  
10

11 **4. THE TRAFFIC CONDITION IMPOSED BY THE HEARING**  
12 **EXAMINER WILL NOT ADEQUATELY MITIGATE FOR**  
13 **TRAFFIC IMPACTS**

14 The cumulative traffic impacts of IRG's projects, which cause loss of service  
15 failures at an already-congested major intersection on a Highway of Statewide  
16 Significance, are probable significant adverse impacts under the State Environmental  
17 Policy Act (SEPA). *See City of Federal Way v. Town & Country Real Estate LLC*, 161  
18 Wn.App 17, p. 36 (2011).<sup>23</sup> These impacts must either be reduced to non-significant  
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23 <sup>23</sup> In *Town & Country* the City of Federal Way argued that traffic that would contribute to LOS failures  
24 was a significant, adverse impact on the environment despite contributing only 0.05% and 0.12% of  
25 the automobile trips at the two relevant intersections. The Court agreed, saying on p. 37:

26 "[S]ignificance' under SEPA is not limited to a 'formula or quantifiable test.'  
WAC 197-11-794(2). Rather, the dispositive factors are the 'context and intensity.'  
WAC 197-11-794(2). Based on these factors, the traffic that the Scarsella plat will  
generate, when taken in conjunction with projected population growth, would cause  
LOSFs at the two intersections and is, therefore, a significant adverse impact under  
the SEPA rules.

1 levels—at a minimum to LOS “D” and below the v/c 1.20 threshold—or addressed  
2 through an environmental impact statement (EIS).<sup>24</sup>

3 Because, as discussed above, the City failed to do either of these, the Hearing  
4 Examiner should have reversed the Process III approval and MDNS and remanded  
5 both decisions to the City.<sup>25</sup> Instead, the Hearing Examiner concludes incorrectly that  
6 the cumulative traffic impacts of IRG’s projects fall within acceptable standards. The  
7 Hearing Examiner did, however, conclude that PM peak hour traffic, which had not  
8 been analyzed in the Greenline TIA, might exceed applicable standards.<sup>26</sup> He  
9 therefore imposed a condition on the City’s approval of Warehouse A to fill this  
10 limited gap:  
11

12  
13 The Applicant shall acquire its Concurrency Review Certificate for the  
14 Greenline Business Park prior to any construction activity for  
15 Warehouse A. As part of that concurrency review, the City shall identify  
16 any proportionate share mitigation necessary from the Warehouse A  
17 project to meet PM level of service requirements. The Applicant shall  
18 pay any such funds or install any such mitigation prior to occupancy of  
19 Warehouse A. Any collected funds shall be subject to the limitations of  
20 RCW 82.02.020.

21 (Emphasis supplied.)<sup>27</sup> This traffic condition will not, however, adequately mitigate  
22 for the cumulative impacts of the IRG projects, for the reasons discussed below.

23 a. **THE CONCURRENCY PROCESS CANNOT ADDRESS**  
24 **KEY IMPACTS**

25 The traffic condition relies on the concurrency planning process, which cannot  
26 address the probable significant impacts already demonstrated in the record. It does  
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28 <sup>24</sup> See Decision, p. 17 (“If such impacts are created, conditions will have to be added to the DNS to  
29 reduce impacts so there are no probable significant adverse environmental impacts. In the alternative,  
30 an environmental impact statement would be required for the project.”).

31 <sup>25</sup> See Post Hearing Brief of Appellant Save Weyerhaeuser Campus, p. 48 (August 28, 2019).

32 <sup>26</sup> Decision, p. 3.

33 <sup>27</sup> Decision, p. 42.

1 not apply to Highways of Statewide Significance and it does not address AM peak  
2 hour traffic.

3 The City has two primary means to address a development's traffic impacts:

- 4 • Through the concurrency process, which requires that any development  
5 generating even one new PM peak hour trip must "pass" the City LOS/v/c  
6 ratio standards and receive a "Capacity Reserve Certificate" from the  
7 City.<sup>28</sup> If the project "fails" concurrency, it must bring its impacts within  
8 standards, through traffic control measures, by reducing the size of the  
9 project, by changing the proposed land use altogether, or other means.<sup>29</sup>  
10 The concurrency process is a requirement of the Growth Management Act  
11 and exempt from SEPA.<sup>30</sup> It does not apply to Highways of Statewide  
12 Significance,<sup>31</sup> and addresses PM peak hour traffic only.
- 13 • Through a transportation impact analysis (TIA). Major new developments  
14 generating 100 or more trips during either AM or PM peak hours must  
15 conduct a TIA. Mitigation is required for projects that fail to meet applicable  
16 LOS or v/c ratio standards.<sup>32</sup> The scope of mitigation is broad: "Any  
17 combination of street improvements or Transportation Demand  
18 Management measures" that reduce impacts to acceptable levels.<sup>33</sup> The  
19 scope of the TIA process is also broad, including traffic levels in general  
20 (including AM and PM peak levels), transportation systems, traffic capacity,  
21 access management, and traffic safety.<sup>34</sup> The process is subject to SEPA,  
22 which is also the source of authority for local agencies to require developer  
23 mitigation of impacts on Highways of State Significance.<sup>35</sup>

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24 <sup>28</sup> City TIA Standards, p. 3-39 (IRG Rebuttal Exhibit 8).

25 <sup>29</sup> *Id.* at pp. 3-39-40.

26 <sup>30</sup> FWRC 19.90.190(1)

27 <sup>31</sup> See WSDOT Development Services Manual (April 2016), p. 3-15 ("Concurrency requirements of the  
28 GMA do not include highways of statewide significance.")

29 <sup>32</sup> City TIA Standards section 3.10.2, p. 3-41.

30 <sup>33</sup> *Id.*

31 <sup>34</sup> City TIA Standards section 3.10.1.

32 <sup>35</sup> See WSDOT Development Services Manual p 1-3:

33 SEPA requires state agencies, counties, municipal cities and public  
34 corporations to evaluate and determine mitigation for the environmental impacts of  
35 land use proposals. Provisions of SEPA require the lead agency to involve agencies,  
tribes, and the general public in most review processes prior to a final decision being  
made. SEPA authorizes WSDOT to require developers to mitigate traffic impacts  
created by their developments, if WSDOT is the permitting agency i.e. access permits.  
Otherwise, WSDOT must work through the local agencies to fashion developer  
mitigation requirements. Mitigation may be in the form of developer constructed  
transportation improvements, financial contributions to programmed WSDOT projects,  
and/or dedication of property for right of way.

1 The record shows that the cumulative impacts of the IRG projects exceed  
2 acceptable standards for AM peak hour traffic at intersections on a Highway of  
3 Statewide Significance. The concurrency process and traffic condition are both  
4 explicitly limited to PM peak hour traffic impacts, leaving the City unable to address  
5 AM peak hour impacts through other codes or SEPA. Under the Decision these  
6 impacts will go unmitigated.  
7

8 The concurrency process also does not address Highways of Statewide  
9 Significance. The traffic condition is not as explicit in excluding the SR-18  
10 intersections as it does the AM impacts, however, so the City has authority to  
11 mitigate Warehouse A's proportionate share of at least PM impacts on the SR-18-  
12 Weyerhaeuser Way intersection based on the concurrency process for the Greenline  
13 Business Park.<sup>36</sup> Assuming, for the sake of argument, that the City has this authority,  
14 the traffic condition still faces several problems that likely make it ineffective.  
15

16 b. **THE TRAFFIC CONDITION ALLOWS CONSTRUCTION**  
17 **BEFORE MITIGATION, THEREBY LIMITING THE CITY'S**  
18 **AVAILABLE OPTIONS TO CASH PAYMENT, WHICH IS**  
19 **LIKELY NOT SUFFICIENT AND MAY BE BEYOND THE**  
20 **CITY'S AUTHORITY TO COLLECT**

21 The traffic condition allows Warehouse A to move forward with construction  
22 before requiring mitigation, based on a belief that no changes to Warehouse A's size  
23 or other physical features will be needed to bring traffic levels into compliance with  
24 acceptable standards:

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25 <sup>36</sup> The City does not appear to have included the WSDOT LOS standards in the City's comprehensive  
26 plan, despite being required to do so. See WSDOT Development Services Manual p. 1-4 ("While  
SEPA is the primary statutory authority for WSDOT to require mitigation from developments that cause  
significant adverse impacts to state highways, the GMA plays an important role in that it requires local  
agencies to include the LOS standards for state highways of state-wide significance (HSS) within their  
comprehensive plans. These LOS standards can then be used in assessing the need for mitigation  
measures.").

1           Given the separation of the Warehouse A site from the SR 18  
2 off-ramp intersection and the fact that any required mitigation would be  
3 pro-rata, it is unlikely that any mitigation would require an alteration to  
4 the Warehouse A project or any of its required frontage improvements.  
5 For these reasons, the Warehouse A project will be authorized to move  
6 forward but with a condition added to the MDNS that requires the owner  
7 to pay any proportionate share mitigation found necessary for the SR  
8 18 off-ramp intersection as a result of the completed business park  
9 concurrency review.

10 (Emphasis supplied.)<sup>37</sup> This Conclusion is in error.

11           This belief rests on three unstated assumptions: 1) that Warehouse A's share  
12 of impacts will be relatively low; 2) that monetary fees can adequately mitigate  
13 impacts; and 3) that IRG will pay the fees necessary to accomplish the mitigation. All  
14 of these assumptions are problematic, however.

15           First, the proportionate impacts of Warehouse A are not likely to be low. The  
16 record suggests that the traffic from Warehouse A (or Warehouses A and B) will  
17 create the largest share of impacts requiring mitigation. For AM peak hour conditions  
18 at the SR-18 – Weyerhaeuser Way intersection, the Greenline TIA describes existing  
19 traffic conditions (Table 3) and then future traffic conditions (Table 5) both with and  
20 without the Greenline Business Park. Although the traffic results are bad, the impact  
21 of the Business Park itself on SR-18 is relatively low: Table 5 shows future impacts at  
22 level E both with and without the Business Park, with little difference in delay (65.1  
23 seconds (without) and 66.7 seconds (with)), or v/c ratio (1.28 without v. 1.29 with). In  
24 contrast, the difference between existing and future conditions shows a big drop in  
25 performance: Table 3 shows the SR-18 intersection at LOS C, with delays of 29.2  
26 seconds and a v/c ratio of 0.90.

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<sup>37</sup> Decision, p. 28.

1           This drop in performance therefore occurs *before* the Business Park is  
2 developed. The cause, logically, is the development of Warehouses A and B, along  
3 with backfill of the Weyerhaeuser headquarters building, all three of which will send  
4 the majority of their traffic to the SR-18 interchange. Warehouse A's share of traffic  
5 impacts, therefore, cannot be assumed to be low.  
6

7           Second, monetary fees are unlikely to be sufficient to reduce the traffic  
8 impacts at SR-18 to acceptable levels. Under the Concomitant Zoning Agreement,  
9 page 11, Paragraph 14.2, the property owner (now IRG) is vested "for "on-site  
10 development up to an additional 300,000 square feet of Corporate Office Park  
11 development" for "purposes of roadway capacity requirements and any concurrency  
12 requirements." See City Attachment 2(c). Thus the City may not be able to collect  
13 traffic impact fees for the first 300,000 square feet of new construction.  
14

15           Additionally, the SR-18 intersection is already signalized and, as the Decision  
16 notes, already "under severe congestion" according to WSDOT. WSDOT controls  
17 the traffic lights at the intersection and made clear in its comment letter that it will not  
18 adjust them to ease the flow of traffic onto SR-18 and I-5: the agency said it will  
19 "continue to manage the signal operations to limit the risk to mainline I-5 and SR 18,  
20 thus putting more demand on the City's street network." The only viable option for  
21 the City to mitigate impacts is likely to be reducing the number of trips generated by  
22 the IRG projects, starting with Warehouse A: in other words, by requiring IRG to  
23 reduce the size of the project or change its use to one generating less traffic. Neither  
24 of these options is available if IRG can proceed to build Warehouse A before  
25 mitigation is required with WSDOT's concerns unaccounted for.  
26

1 Further, the Examiner's Decision limits continuing review to just the  
2 Concurrency Certificate for the Greenline Business Park. However, FWRC  
3 19.90.190(2) makes clear that concurrency determination only impacts "weekday  
4 evening peak hour" capacity issues. Impacts at other times "shall be addressed  
5 through other review processes" which include "city code, land use permit conditions,  
6 or SEPA. . ." Certainly the provisions of FWRC 19.100.030(2) require review of  
7 projects when impacts are "aggregated with similar impacts of future development in  
8 the immediate vicinity of the proposed development. The Examiner either ignored or  
9 misunderstood these code provisions and requirements by saying at page 3 of his  
10 Decision that: "The city's development standards only require AM peak hour analysis  
11 for traffic reports." As noted in Mr. Tilghman's report, the SR-18/Weyerhaeuser Way  
12 ramps are failing during the AM peak hour, indicating the need to address mitigation  
13 under SEPA and the city code.  
14

15  
16 An additional concern is why the proportionate share mitigation should not be  
17 required for Warehouse "B" as well as Warehouse "A." FWRC 19.100.030(2)  
18 requires that the "direct impacts" include the "cumulative effect of such impact when  
19 aggregated with the similar impacts of future development in the immediate vicinity of  
20 the proposed development." Warehouse "B" is certainly a future development in the  
21 immediate vicinity of both Warehouse "A" and the Greenline Business Park.  
22

## 23 **5. CONCLUSION RE TRAFFIC**

24 The record demonstrates that Warehouse "A" and the other IRG projects will  
25 create unacceptable impacts on important elements of the transportation network in  
26

1 Federal Way. The condition proposed to remedy these impacts is inadequate and  
2 should be revised as described in this motion.

3 **B. THE HEARING EXAMINER SHOULD RECONSIDER THE**  
4 **CONDITION REGARDING COMPLIANCE WITH THE HYLEBOS**  
5 **BASIN PLAN.**

6 The Examiner added a new SEPA condition (No. 12) to the MDNS at page 42  
7 of his Decision. This condition provides that the Applicant “shall supplement its  
8 stormwater plan to demonstrate compliance and consistency with” the Hylebos Creek  
9 basin plan. While SWC agrees that the City’s and IRG’s compliance with the  
10 Hylebos Plan has been nonexistent, the proposed condition is insufficient, especially  
11 where Federal Way Code incorporates the Hylebos Basin Plan in the city’s  
12 stormwater design manual, in the drainage code and as a SEPA policy. See  
13 Decision, page 39.  
14

15 The Examiner should reconsider his Decision and add the following elements  
16 and conditions regarding compliance with the Hylebos Basin Plan.

17 First, the Examiner should order that the “supplementation” provided for in the  
18 conditions be for all stormwater that will be generated by the cumulative impact of the  
19 several IRG proposed projects, Warehouse A, Warehouse B and the Greenline  
20 Business Park. The Examiner erred in entering Conclusion 19. As described in the  
21 hearing, and accepted in the findings, stormwater originating from the pending IRG  
22 proposals, Warehouse “A,” Warehouse “B” and the Greenline Business Park all join  
23 in the area south of SR 18. See City Exhibit 1q at page 19. The record shows that  
24 drainage plans have been prepared for each of the projects and combining them for  
25  
26

1 purposes of cumulative review does not impose a substantial burden (Exhibit SWC-  
2 18).

3  
4 Second, FWRC 19.100.030(2) clearly applies here. The Examiner has  
5 concluded that stormwater impacts deserve mitigation by requiring the  
6 supplementation of existing stormwater plans to be consistent with the Hylebos Basin  
7 Plan. That being the case, it is appropriate to consider “the similar aggregated  
8 impacts of future development.”

9 Third, adopting a piecemeal approach results in incremental review whereby  
10 the stormwater impacts from a prior approved project become background  
11 conditions. Here, Warehouse A drainage would become a “background condition” for  
12 Warehouse B and the GBP, much as the inclusion of Warehouse “A” traffic has  
13 become a background condition for the Greenline Business Park TIA. The  
14 assessment of cumulative impacts is required by the code.

15  
16 Fourth, the Basin Plan has a number of specific requirements:

17 BW-11, -12, and -13: The Basin Plan requires mitigation for fill of any wetland.  
18 Warehouse A was approved without requiring any mitigation of wetland  
19 impacts because the wetlands on the site were less than 10,000 square feet in  
20 total area.[No 10,000 square foot exemption (or any exemption) for filling  
21 wetland. Have to reevaluate and mitigate.]

22 BW-4 and -5: The Basin Plan requires buffers on streams and wetlands. It  
23 does not provide for buffer averaging. Warehouse A was approved with  
24 buffers that do not meet the Basin Plan’s minimums, because of buffer  
25 averaging.

26 No buffer averaging for either wetlands or stream EA

BW-7(2): The Basin Plan requires justification and mitigation for alteration of a  
Class 3 stream. Warehouse A was approved without analysis, justification, or  
mitigation for alterations allowed to Stream EA, a Class 3 stream.

BW-8 (4): The Basin Plan requires retention of significant trees, defined as  
conifers 8” in diameter at breast height (dbh) and hardwoods 12” dbh, other

1 than red alder. Warehouse A's approval allows all conifers less than 12" dbh to  
2 be cut.

3 The City completely disregarded the adopted Hylebos Basin Plan. While the  
4 Examiner has addressed the issue in the Decision, it stops far short of the measure  
5 necessary to assure the plan is fully implemented by its terms. The Examiner should  
6 require that any modifications to stormwater plans include the cumulative impacts of  
7 all pending IRG projects and demonstrated compliance with the specific criteria of the  
8 Hylebos Plan.  
9

10 **IV. CONDITIONS SHOULD INCLUDE REMAND FOR CONTINUING REVIEW.**

11 The Decision adds new conditions to the MDNS regarding both traffic and  
12 stormwater, however both conditions are vague and subject to substantial  
13 interpretation.

14 Regarding traffic impacts, there are a variety of concerns regarding  
15 compliance with the intent of the Examiner's Decision. However, the condition does  
16 not provide for review or comment on compliance, leaving a decision on the  
17 adequacy of compliance entirely between the City and the applicant. As the  
18 Examiner is aware, only the applicant or owner may appeal the concurrency  
19 determination (FWRC 19.90.160), so SWC or any other interested resident or  
20 member of the public has no recourse on any decision to be made pursuant to the  
21 new traffic condition.  
22

23 The stormwater condition requires the Applicant to "demonstrate compliance  
24 and consistency" with the Hylebos Basis Plan. But there is no mechanism in the  
25 decision for either public review or comment on what the applicant proposes as proof  
26 of "compliance and consistency" with the plan. The condition even lacks a

1 requirement that the City review and determine that submittals demonstrate  
2 compliance; there is certainly no appeal or review mechanism. Given that the City  
3 staff and its counsel have completely ignored the Plan in the City's initial review  
4 (Final Decision, page 4, lines 14-18), a mechanism for review and comment is  
5 necessary. This is especially true where the Hylebos Plan requires, as stated above,  
6 "no net loss," "net gain," and mitigation for projects that impact the basin. In addition,  
7 the Hylebos plan is a multi-jurisdictional plan and the condition makes no provision  
8 for review, approval or even comment by King County, other jurisdictions or impacted  
9 tribes. Resting unrestrained discretion in the applicant is not consistent with plan or  
10 review procedures within the City.  
11

12  
13 Accordingly, we ask the Examiner to, in addition to substantive changes in the  
14 traffic and stormwater conditions, order that the matter be remanded to staff for  
15 further analysis and consideration in a revised staff report and Decision. There  
16 should be notice of materials submitted regarding traffic and stormwater, the  
17 opportunity for public comment and appeal.  
18

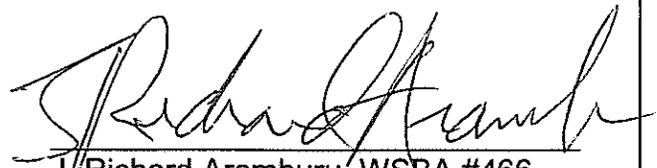
19 **V. CONCLUSION.**

20 The Examiner has correctly concluded that compliance with both traffic and  
21 stormwater standards and criteria has been insufficient to meet long established  
22 standards and code. However, the Examiner should reconsider both the content of  
23 the conditions and the manner in which compliance with them is demonstrated and  
24 reviewed, as set forth herein.  
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DATED this 27<sup>th</sup> day of September, 2019.

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