

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE HEARING EXAMINER FOR
THE CITY OF FEDERAL WAY

Greenline Warehouse A

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL DECISION

Administrative Appeal of Process III
and MDNS

HEX 18-003; 19-001

SUMMARY

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

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

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

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

18 Ultimately, due to the thorough review conducted by City staff, the impacts of the project, including
19 cumulative impacts, have been adequately assessed and mitigated. This Decision concludes¹ that
20 cumulative impact analysis of Warehouse A is required for both the MDNS and Process III reviews
21 and that the City has conducted that required analysis. The City and the Applicant both argued that
22 cumulative impact analysis was not required and that in any event, adequate cumulative impact analysis
23 had been conducted. The City appeared to take the position that unless the three campus proposals
24 were inter-related to the extent required by a State Environmental Policy Act (“SEPA”) regulation,
25 WAC 197-11-060(3)(b), no cumulative impact analysis was required. There is in fact no SEPA
26 regulation that limits cumulative impact review to WAC 197-11-060(3)(b). The term “cumulative
27 impact” isn’t even mentioned in WAC 197-11-060(3)(b). This Decision agrees with the Appellant that
28 WAC 197-11-060(3)(b) is not the only legal mandate for cumulative impact analysis. Specifically, as
29 identified by Appellants, WAC 197-11-060(3)(b) governs the scope of a proposal subject to
30 environmental review, which is distinct from the scope of review itself. Ultimately, this Decision
31 concludes that WAC 197-11-060(3)(b) likely does not mandate consolidation of the Warehouse B and
32 Greenline Business Park proposals, because each proposal can be constructed and operate
33 independently of the other.

34 Outside of WAC 197-11-060(3)(b), the SEPA rules do not identify when cumulative impacts are
35 required. It is apparent, however, that cumulative impacts are considered to be part of the
36 “environmental impacts” that must be reviewed in SEPA analysis, since WAC 197-11-792(2)(c)
37 identifies that an impact for purposes of environmental impact statement review can be either direct,
38

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

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

6 The courts define a cumulative impact as harm that results from a project's contribution to existing
7 adverse conditions or uses in an affected area. *Boehm v. City of Vancouver*, 111 Wn. App. 711, 720
8 (2002). As noted in this Decision, the MDNS must be overturned or revised if there are unmitigated
9 probable significant adverse impacts. Since cumulative impacts are considered to be part of "impacts,"
10 it is clear from this standard that if a cumulative impact is significant, probable and adverse, it must be
11 mitigated to avoid preparation of an environmental impact statement. Related to that requirement is
12 that the potential for such impacts must be reasonably evaluated. The operative limit on what
13 cumulative impacts must be evaluated and mitigated is found in the SEPA definition for "probable,"
14 which identifies that remote and speculative impacts do not qualify as probable impacts. The
15 Applicant's two pending proposals are both under active review. The likelihood of completion of those
16 two projects within the near future is neither remote nor speculative. Further, since the three campus
17 projects share the same infrastructure, drainage basin and same campus with significant historical
18 features, the potential for cumulative impacts is also neither remote nor speculative. For that reason,
19 this Decision finds that a cumulative impact analysis that addresses impacts of Warehouse B and the
20 Greenline Business Park is required for the environmental review of Warehouse A to the extent that
21 such impacts collectively adversely affect the environment.

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

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

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

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

TESTIMONY

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

1 **EXHIBITS**

2 A. City Exhibits – City Exhibit List, Doc Prefix “F”

3 B. Appellant Exhibits – Appellant Exhibit List, Doc Prefix “S,” with the following admitted
4 as rebuttal² exhibits during the hearing:

5 36A. Response to 1st round technical review comments, ESM Consulting Engineers
6 LLC, June 28, 2018

7 36B Critical Areas Report Review; Response to Comments dated 13 December 2017,
8 Talasaea Consultants, Inc. June 26, 2018

9 36C Managed Forest Buffer Management Plan at the Greenline Building B Site, Gilles
10 Consulting, June 26, 2018

11 36D Preapplication Conference Summary, City of Federal Way, Nov. 3, 2017

12 36E Preliminary Technical Information Report, ESM Consulting Engineers LLC,
13 Sept. 20, 2017

14 36F Re Notice of Incomplete Application, ESM Consulting Engineers, April 30, 2018

15 36G Transportation Impact Analysis, TENW Transportation Engineering NorthWest,
16 April 27, 2018

17 376H Critical Areas Report and Conceptual Mitigation Plan, Talasea Consultants, Inc.,
18 Oct. 27, 2017

19 36I Evaluation of Trees at Greenline Business Park, Gilles Consulting, Sept. 20, 2017

20 36J Visual Impact Exhibit, Craft Architects, March 22, 2018

21 36K Revised Process IV Plan Set, ESC Consulting Engineers LLC, Nov. 10, 2017

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

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

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

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

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

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

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

2 C. Applicant Exhibits – Applicant Exhibit List, Doc Prefix “I”

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

4 E. Summary Judgment Motion, Response, Reply, Order

5 F. Motion for Remand and Order for Remand

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

7 H. Witness and Exhibit Lists

8 I. Pre-Hearing Order

9 J. Public Comment Letters

10 J1 – Letter from Jeff Recor

11 J2 – Letter from Sue Petersen

12 J3 – Aug. 5, 2019 Letter from Lynn Naumann

13 J4 – Aug. 6, 2019 Email from D.B. Kim

14 J5 – Aug. 6, 2019 Email from Katherine Wimble

15 J6 – Aug. 5, 2019 Email from Margery Godfrey

16 J7 – Aug. 5, 2019 Email from Anne Christiansen

17 J8 – Aug. 4, 2019 Email from Mary Sankaran

18 J9 – Aug. 1, 2019 Letter from George Weyerhaeuser (excluding third sentence re intent
CZA)

19 J10 - Aug 2, 2019 Email from Annie Phillips (excluding comments on climate change).

20 J11 - Aug. 5, 2019 Letter from Dana Hollaway (links referenced in letter limited to
screen shots provided with letter)

21 J12 - Aug. 6, 2019 Letter from Margaret Nelson

22 J13 – Aug. 6, 2019 Letter from Diana Noble-Gulliford (excluding GMA discussion).

23 J14 – Aug. 7, 2019 Letter from Suzanne Vargo

24 J15 - Aug. 9, 2019 Letter from Suzanne Vargo (only first two pages and first four photos
admitted)

25 K. Jennifer Mortenson Written Testimony

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

FINDINGS OF FACT

1 **Procedural:**

2 1. Applicant/Appellant. The Applicant is Federal Way Campus, LLC (“Applicant”) and the
3 Appellant is Save Weyerhaeuser Campus (“Appellant”).

4 2. Appeals. This Decision addresses two consolidated appeals filed by Appellant. One is appeal
5 of a Process III decision approving Warehouse A, filed on February 21, 2019. The other is an appeal
6 of the MDNS issued for Warehouse A, filed on November 30, 2018. Numerous appeal claims were
7 dismissed in advance of the hearing by the Examiner’s Ruling on Motion for Partial Dismissal dated
8 May 26, 2019. Specifically, the claims dismissed were Appeal Claims³ 3.1, 3.1.1, 3.1.2, 3.1.3, 3.1.4,
9 3.3, 3.4, 3.4a, 3.6.1, 3.6.2, 3.6.3, 3.6.4, 3.6.10, 3.6.11, 3.7.1, 3.7.4 and 3.7.6. After the hearing, the
10 Examiner dismissed claim 3.7.8 from the Process III Approval and the portions of the SEPA appeal
11 that asserted claims under the following sections of WAC 197-11-444: 1.a.iv, 1.b.i, 1.b.ii, 1.d.ii, 1.e.i,
12 2.a.i, 2.b.iii, 2.c.iv, 2.d.v, 2.d.iv and 2.d.vii.

13 The SEPA issues that remain for decision are claim 4.1 and the portions of claims 4.2 and 4.2 under
14 the following sections of WAC 197-11-444: 1.a.v, 1.c.i, 1.c.ii, 1.c.iii, 1.c.iv, 1.d.i, 1.d.iii, 1.e.v, 2.b.i,
15 2.b.iv, 2.b.v, 2.b.vi, 2.c.i, 2.c.ii, 2.c.v, 2.c.vi, and claims under 2.d.iv and 2.d.vii unrelated to public
16 facilities. The Process III issues that remain for decision are claims 3.2, 3.5.1 through 3.5.12, 3.6.5,
17 3.6.6, 3.6.7, 3.6.8, 3.6.9, 3.6.12, 3.6.13, 3.7.2, 3.7.3, 3.7.5, 3.7.7, 3.8.1 through 3.8.4, 3.9, 3.10 (if
18 intended to assert a separate claim), 3.10.1, and 3.10.2.

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

24 **Substantive:**

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

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

³ All references to “Appeal Claim” in this Decision are references to the claims listed in the Appellant’s Process III appeal.

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

3 6. Warehouse B and Greenline Business Park. The Applicant is concurrently applying for two
4 other land use projects located on the former Weyerhaeuser property: Warehouse “B,” located adjacent
5 and to the south of the Warehouse “A” project site, and the proposed Greenline Business Park, which
6 is located approximately one quarter mile to the north. The Warehouse A application was filed on June
7 17, 2016, the Warehouse B application was filed on April 5, 2017 and the business park application on
8 November 17, 2017. Warehouse B and the business park are currently still under review. No project
decision and/or SEPA threshold determination has been issued for either Warehouse “B” or the
Greenline Business Park; the applications for both projects remain pending and under administrative
review.

9 7. Issuance of MDNS. The City’s SEPA Responsible Official, Community Development Director
10 Brian Davis, issued an MDNS on October 26, 2018. The MDNS was subsequently modified to address
11 concerns raised by the Washington Department of Transportation (“WSDOT”). On November 30,
12 2018, the City issued the modified MDNS, which included a new finding and condition of approval
requiring FWC to construct, to WSDOT’s satisfaction and approval, right-turn storage for the
westbound SR-18 off-ramp.

13 8. Issuance of Process III Approval. On February 4, 2019, Director Davis issued the Process III
14 Approval decision approving the Warehouse “A” proposal. The Director’s decision was supported by
15 28 pages of detailed findings and conclusions which evaluated the project’s consistency with the
16 applicable FWRC decisional criteria, the vested 1994 regulations, and the CZA. The decision also
imposed over 40 specific conditions of approval to ensure the project’s regulatory compliance and to
mitigate any anticipated impacts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 Mr. Flesher’s concerns are largely based upon existing conditions. He specifically mentions truck
15 traffic as a new impact associated with the proposal and it’s fair to presume from his comments that
16 he’s also concerned about increased regular vehicular traffic as well. Mr. Flesher’s concerns are
17 addressed by an extensive amount of mitigation. Most notably, frontage improvements will be required
18 of the Warehouse A and B parcels, which will take care of any safety concerns related to truck traffic.
19 The frontage of the Warehouse A and B parcels takes up the entirety of Weyerhaeuser Way frontage
20 between the two projects and the SR 18 and I-5 ramps to the south. Those frontage improvements
21 include bicycle lanes and additional left-turn storage for trucks turning into the project site’s driveway.
22 The Applicant has also included within its proposal median curbing to prevent trucks from turning left
23 (north) out of the project site and also installing a no left turn sign to supplement the curb. See Ex. I-
24 20, pp. 10-11. The Warehouse A owner will also have high incentive to direct its truck visitors to refrain
25 from driving north of the project site on Weyerhaeuser Way, since a threshold is set in the SEPA
26 conditions that will require the owner to repave Weyerhaeuser Way if truck trip generation north of the
project on Weyerhaeuser Way exceeds a specified minimum.

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

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

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

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

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

22 Unrebutted testimony from FWC’s historic resources expert, Architectural Historian Michelle Sadlier,
23 clarified, however, that no part of the Warehouse “A” project site has been formally designated as a
24 landmark or otherwise listed on any registry at the federal, state, or local level. The absence of any
25 formal designation or listing under the afore-mentioned regulatory schemes is arguably⁴ a sufficient
26 basis to conclude for purposes of SEPA review that the project site has no historical resources requiring
protection. However, even the Applicant’s own expert would likely agree that there are elements of
the Weyerhaeuser campus, most notably the corporate headquarters, that are historically significant.
Indeed, the Washington State Department of Archaeological and Historic Preservation (DAHP)
commented as follows:

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

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

4 Attachment 1 to Exhibit S-8.

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

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

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

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

1 issuing the MDNS. City Ex. 5(c)(c), p. 11; City. Ex. 5(c), p. 8. The Applicant has also provided a visual
2 impact study of the Project and Building B from multiple angles, City Ex. 10(a); a photographic study
3 indicating that a 50-foot native-vegetation buffer is sufficient to block views of the maintenance
4 building that currently occupies the Project Site, City Ex. 1(dd), and a photograph of the view from the
5 Headquarters demonstrating the height and screening ability of existing trees. Applicant Rebuttal Ex.
6 3. The Applicant's visual survey and expert testimony revealed that the only views from the
7 Headquarters toward the Project site are from the "fourth-floor entry lobby" and that other views from
8 the interior look only northward, over the parking lots and towards the highway. See LaBrie, 8/7/19
9 11:00am, 00:00-00:45; City Ex. 1(gg), PDF p. 6.

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

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

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

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

3 Dr. Cooke pointed to a discrepancy in the wetland delineation boundaries. She noted that the size of
4 three wetlands (DQ, DX and DZ) are different between the Management Plan and the Critical Areas
5 Report and Conceptual Mitigation Plan: Greenline Warehouse A. Crucially, one document states the
6 total proposed fill is 10,092sf and surpasses the allowed 10,000sf of exempt impacts. The City's
7 justification for providing no mitigation is that the total of 9,922sf of affected wetland is just under
8 (~78sf) the defined exemption threshold in the CZA. The critical areas report suggests the fill exceeds
9 the CZA threshold. In the Applicant's Post Hearing Brief (page 21), the Applicant stated that ESA had
10 "agree[d] with the wetland delineation boundaries, rating forms, and rating classifications established
11 by Talasaea". In her testimony, Ms. Redman stated that these minor differences are common. In this
12 circumstance, the issue is not minor in that the difference between the delineations defines whether or
13 not the wetlands are exempt from protection. Substantial weight must be accorded to the expert
14 testimony including the City's SEPA responsible official and the City's third-party reviewer, ESA. The
15 burden of proof requires the Appellant to prove the action by the City was clearly erroneous, a standard
16 that is difficult to achieve without another third-party verifying delineation. The Appellant has not met
17 the burden of proof demonstrating that the wetlands delineation performed by Talasaea is clearly
18 erroneous. Therefore, it is determined that the total square footage of the affected wetlands is indeed
19 within the exemption threshold. The Appellant has not demonstrated any adverse impacts associated
20 with the elimination of these wetlands to overcome prima facie compliance.

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

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

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

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

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

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

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

6 CONCLUSIONS OF LAW

7 1. Authority of Examiner. The land use decision under appeal is a Process III decision. See Ex.
8 F-6a. FWRC 19.65.120 provides that appeals of Process III decisions are governed by Process IV.
9 FWRC 19.70.150 provides that the hearing examiner shall conduct a hearing and issue a final decision
10 on Process IV applications that affirms, reverses or modifies the Process III decision. The Appellant's
11 SEPA appeal has been consolidated with the appeal of the Process III decision as required by FWRC
12 14.10.060.

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

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

21 If such impacts are created, conditions will have to be added to the DNS to reduce impacts so there are
22 no probable significant adverse environmental impacts. In the alternative, an environmental impact
23 statement would be required for the project. In assessing the validity of a MDNS, the determination
24 made by the City's SEPA responsible official shall be entitled to substantial weight. WAC 197-11-
25 680(3)(a)(viii).

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

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

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

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

14 (citations, quotations omitted).

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

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

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

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

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

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

*b) Proposals or parts of proposals that are related to each other closely enough to be, in effect,
a single course of action shall be evaluated in the same environmental document. (Phased
review is allowed under subsection (5).) Proposals or parts of proposals are closely related,
and they shall be discussed in the same environmental document, if they:*

*(i) Cannot or will not proceed unless the other proposals (or parts of proposals)
are implemented simultaneously with them; or*

*(ii) Are interdependent parts of a larger proposal and depend on the larger
proposal as their justification or for their implementation.*

*(c) (Optional) Agencies may wish to analyze "similar actions" in a single environmental
document.*

*(i) Proposals are similar if, when viewed with other reasonably foreseeable
actions, they have common aspects that provide a basis for evaluating their
environmental consequences together, such as common timing, types of impacts,
alternatives, or geography. This section does not require agencies or applicants to
analyze similar actions in a single environmental document or require applicants to
prepare environmental documents on proposals other than their own.*

*(ii) When preparing environmental documents on similar actions, agencies may
find it useful to define the proposals in one of the following ways: (A) Geographically,
which may include actions occurring in the same general location, such as a body of
water, region, or metropolitan area; or (B) generically, which may include actions*

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

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

6 For the reasons identified in Finding of Fact No. 9, the only interdependency amongst the three campus
7 projects is economic. In terms of WAC 197-11-060(3)(b)(ii), each separate project is part of the
8 campus development project (i.e. develop the campus to make a profit) and the impetus for each
9 separate project, i.e. justification for their implementation, is the profit motive for the campus
10 development project. The difficulty with the Appellant's one pertinent point of interdependency is that
11 the basis for it is economic, which is not an environmental impact pertinent to SEPA review. *See* WAC
12 197-11-444. However, the results of the economic interdependency for this project are environmental.
13 The economic interdependence of the three campus projects compels their development within the
14 same timeframe, which in turn has significant potential for cumulative impacts due to shared interior
15 and exterior circulation, a shared drainage basin and shared historical and aesthetic impacts. The
16 totality of circumstances, both economic and environmental, makes the impacts anything but remote
17 or speculative. Allowing the Applicant to avoid review of shared impacts under these circumstances
18 enables the piecemealing that Richard Settle claims WAC 197-11-060(3)(b) has been designed to
19 prevent.

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

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

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

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

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

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

Regarding the car wash, the court found that:

1 *We note at the onset that the responsible official's initial evaluation of the underground*
2 *fuel storage tanks separate from other phases of the proposal was in error. Parts of*
3 *proposals which are "related to each other closely enough to be, in effect, a single course*
4 *of action shall be evaluated in the same environmental document." WAC 197-11-060(3)(b).*
5 *Here, a phased review of the project was clearly inappropriate because it would serve only*
6 *to avoid discussion of cumulative impacts. WAC 197-11-060(5)(d)(ii). See also WAC 197-*
7 *11-060(3)(b)*

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

10 Application of the *Indian Trails* case is somewhat difficult because beyond the court’s determination
11 that the shopping center constitutes a “single course of action” as quoted above, the court doesn’t
12 identify which of the two criteria are met to qualify as a single course of action, i.e. because of
13 simultaneous implementation under WAC 197-11-060(3)(b)(i) or interdependence under WAC 197-
14 11-060(3)(b)(ii). WAC 197-11-060(3)(b) only compels consolidated environmental review if the
15 criterion of WAC 197-11-060(3)(b)(i) “or” (ii) are met, so those criterion must be applied to evaluate
16 the applicability of WAC 197-11-060(3)(b). The *Indian Trails* court didn’t mention the WAC 197-11-
17 060(3)(b)(i) or (ii) criteria and didn’t identify what elements of the project it found to be interrelated
18 for purposes of WAC 197-11-060(3)(b)(i) or what parts it considered to involve simultaneous
19 implementation for purposes of WAC 197-11-060(3)(b)(ii). For these reasons, a modest amount of
20 speculation as to the basis of the *Indian Trails* rationale is necessary for its application to the three
21 campus projects.

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

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

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

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

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

23 Ultimately, the two points of distinction addressed above render *Indian Trails* inapplicable to this
24 project. As previously noted, the adverse consequences of piecemealing that WAC 197-11-
25 060(3)(b)(ii) is designed to prevent is avoided if a project properly addresses all cumulative impacts.
26 Indeed, the *Indian Trails* court characterized the requirements of WAC 197-11-060(3)(b) as
“cumulative effects,” 76 Wn. App. at 443, suggests that it was using WAC 197-11-060(3)(b) as a means
of requiring a cumulative impact analysis that in contrast has already been conducted by this project.
The interdependence and simultaneous features of the *Indian Trails* project were also far more
pronounced than those of the three campus projects. Overall, project consolidation was necessary for
a complete review of all environmental impacts for the *Indian Trails* project. There is no such necessity
for the three campus projects since all cumulative and individual impacts of Warehouse A are fully
addressed.

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

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

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

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

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

13 Contrary to the interpretation made by the Appellant, the comment above does not take the position
14 that the City is legally barred from undertaking a cumulative impact analysis. It merely reflects the
15 constitutional nexus and proportionality requirements that prohibit a City from requiring a developer
16 to mitigate more than its own proportionate share of impacts. *See Dolan v. City of Tigard*, 512 US 374
17 (1987); *Nollan v. California Coastal Commission*, 483 US 825 (1987). The statement that the City
18 cannot make the Applicant mitigate an impact "*that it does not otherwise contribute to*" implicitly
19 recognizes that if the project does contribute to an impact, the developer can be held responsible. That
20 proportionate share responsibility is precisely how a developer would be held accountable for its fair
21 share of cumulative impacts.

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

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

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

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

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

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

1 impacts⁵. However, as shall be discussed, even using the Manual, the Appellant has not met its burden
2 to establish that the SEPA responsible official erroneously determined that there are no outstanding
probable significant adverse impacts to WSDOT facilities.

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

13 As to its burden to establish probable significant adverse impacts, the Appellant produced no
affirmative information supporting any specific impacts that weren't addressed by the City. Beyond
14 the increase in storage lane and the WSDOT letters, Mr. Swires was unable to identify any additional
mitigation that may be necessary to mitigate the traffic generated by the IRG proposals, despite
15 extensive questioning even from the Appellant's own counsel. As succinctly put in cross examination,
16 Mr. Swires affirmed that WSDOT is contending there might be cumulative impacts not that WSDOT
has identified any cumulative impacts. Further, given Mr. Swires' testimony that the storage lane
17 mitigation had addressed WSDOT's concerns over thresholds being exceeded in its *Development*
Services Manual, WSDOT has not presented any evidence that cumulative impacts from the campus
18 project is close to or likely will trigger any WSDOT thresholds for mitigation. Under the Appellant's
burden of proof to produce affirmative facts establishing a need for mitigation as outlined in COL No.
19 2, no such facts were produced for mitigation of WSDOT facilities. The Appellant has not met its
20 burden of proving any need for additional mitigation.

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

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

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

4 Mr. Tilghman’s first and second point is that the cumulative impacts of all three projects should be
5 considered. As conditioned, the three campus projects will be fully evaluated for cumulative impacts.
6 With an added SEPA condition requiring consideration of the concurrency review for the Business
7 Park, the SEPA review process will ultimately include a review of trip generation impacts from all
8 three projects through the City’s concurrency review and adopted TIA procedures. These review
9 processes and procedures provide for individual study of each proposed project that considers the
10 additive impact of all projects that have come before. Thus, the traffic analysis for Warehouse A
11 considered all projects with applications submitted before the Warehouse A application, with the
12 concurrency analysis addressing the weekday PM peak hour and the TIA addressing the AM and
13 weekend PM peak hour. The TIA for the Business Park, which is under review by the City, considers
14 the AM peak hour trips for the Business Park and all prior applications, including Buildings A and B.
15 The concurrency analysis for the Business Park will do the same for the PM peak hour. This provision
16 has been in the City’s adopted concurrency and TIA guidelines since their initial adoption in the late
17 1990s and has consistently been applied to require that a concurrency analysis and TIA take into
18 account existing traffic and traffic from projects in the “pipeline” – those whose applications were
19 submitted prior to the application for the project under review and are pending or approved. *Perez*,
20 8/9/19 12:00 pm, 17:00-20:00; *Schramm*; City Ex. 1(j); Applicant Rebuttal Ex. 8, p. 3-43 (“Add
21 Impacts of Adjacent Major Developments Pending and Approved.”). Notably, the TIA for the
22 Greenline Business Park has already been completed⁶ and is part of the administrative record of this
23 appeal. See Ex. 36G. As previously mentioned, that TIA includes the impacts of the trip generation
24 from Warehouses A and B. The Business Park TIA found no need for off-site mitigation except for an
25 additional lane of traffic along the Weyerhaeuser Way frontage of the business park. The TIA for
26 Warehouse A itself also addresses the trip generation of Warehouse B. See Ex. F-1j.

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

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

1 LOS⁷. For that reason, in order for the City to sufficiently review environmental information of
2 cumulative traffic impacts as outlined in COL No. 2, the concurrency review for the business park
3 should be completed before traffic mitigation requirements for the Warehouse A project are finalized.
4 With that information, the City will then have the opportunity to require proportionate share mitigation
5 from Warehouse A if necessary, to assure that all cumulative impacts have been addressed. Given the
6 separation of the Warehouse A site from the SR 18 off-ramp intersection and the fact that any required
7 mitigation would be pro-rata, it is unlikely that any mitigation would require an alteration to the
8 Warehouse A project or any of its required frontage improvements. For these reasons, the Warehouse
9 A project will be authorized to move forward but with a condition added to the MDNS that requires
10 the owner to pay any proportionate share mitigation found necessary for the SR 18 off-ramp
11 intersection as a result of the completed business park concurrency review.

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

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

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

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

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

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

19 Mr. Tilghman's fifth point is that there are likely LOS problems because some intersections will barely
20 operate at LOS D with Warehouse A and that this is without consideration of the trip generation for
21 the Greenline business park. This criticism is based on the erroneous premise that the City's adopted
22 level of service standard is LOS D. See Tilghman, 6/21/2019 10:20 am, 17:50-18:05. The City's
23 standard, however, is LOS E. See *City of Federal Way Public Works Development Standards* Section
24 VID(1)(6)(adopting LOS E for signalized intersections). The potential for PM traffic reducing the SR
25 18 intersection LOS E has been addressed by added SEPA mitigation as discussed supra. Beyond this,
26 Mr. Tilghman presented no evidence that the addition of business park traffic would lower level of
service below LOS E and there is no basis to require additional review or mitigation under the review
standards identified in COL No. 2.

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

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

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

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

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

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

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

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

6 10. Traffic Safety Impacts. The proposal will not create any probable significant adverse
7 transportation safety impacts for the reasons identified in Finding of Fact No. 12. The City’s frontage
8 standards and the staff’s careful and expert consideration of traffic safety issues as outlined in FOF No.
9 12 are more compelling than the anecdotal evidence presented by the Appellant. The review also shows
10 that the City sufficiently considered environmental impacts as required by COL No. 2. The Appellant’s
11 closing brief asserts that discounting lay testimony devalues the concerns of City residents. Lay
12 testimony is certainly important in identifying actual impacts to City residents and providing context
13 to the technical analysis presented by expert witnesses. However, in evaluating the credibility of
14 evidence, expert opinion and adopted street standards found adequate by the City Council will often be
15 more compelling than observations made from personal use of City infrastructure.

16 11. Historic Impacts. The proposal will not create any probable significant adverse impacts to
17 historic resources⁸. The corporate headquarters and its integration into the treed landscape of the
18 Weyerhaeuser landscape is found to be historically significant and the proposal is found to adequately
19 protect these historical features given the highly subjective nature of historical impacts and the
20 substantial weight due the SEPA responsible official.

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

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

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

1 significance of the project site, none of those professionals has identified a clear set of standards that
2 can be applied to ascertain if the Warehouse A proposal adversely affects that historic significance in
3 any probable or significant way. This leaves the SEPA responsible official having to ascertain whether
4 Warehouse A impacts to these undefined historic resources are “probable,” which is defined as “*a*
5 *reasonable likelihood of more than a moderate adverse impact on environmental quality*,” see WAC
6 197-11-794(1). Under the circumstances of this case, with lack of clarity as to what needs to be
7 protected and how much it needs to be protected, the substantial weight due to the determination of the
8 SEPA responsible official takes added significance in resolving differences of opinion between
9 qualified experts.⁹ For the reasons identified in FOF No. 13, applying the substantial weight standard,
10 the proposal is found to adequately protect the historic character of the campus and thereby does not
11 create probable significant adverse impacts.

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

24
25 12. Proposal Consistent with Comprehensive Plan. The proposal is found to be consistent with the
26 Comprehensive Plan policies raised by Appellant for the reasons identified below. In applying
comprehensive plan policies, it must be recognized that comprehensive plans ordinarily do not directly
control development and that they must yield in the face of specific zoning regulations. *See, e.g.,*
Citizens for Mount Vernon v. City of Mount Vernon, 133 Wn.2d 861, 873, 947 P.2d 1208 (1997);
Cougar Mountain Assocs. v. King County, 111 Wn.2d 742, 757, 765 P.2d 264 (1988); *Carlson v. Beaux*
Arts Village, 41 Wn. App. 402, 408, 704 P.2d 663 (1985). Even where — as here — a local zoning
code purports to require comprehensive plan consistency at the project approval level, only general
consistency is required in this context unless the comprehensive plan itself contains specific mandates
and/or prohibitions that expressly apply to the permit at issue; general statements from the
Comprehensive Plan may not be invoked to overrule the specific land use authorization otherwise
granted by the code. *See, e.g., Lakeside Indus. v. Thurston County*, 119 Wn. App. 886, 898, 83 P.3d
433 (2004). Applying these principles, the comprehensive plan policies raised by the Appellant are
individually addressed as follows:

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

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- A. Policy Background “Goals” Not Applicable to Project Review. In Appeal Claim 3.5.1 and 3.5.2, Appellant asserts that the Project fails to comply with two goals in the “Policy Background” section of the Comprehensive Plan’s Land Use Chapter, the requirements of which include that (1) growth outside the City center be limited to areas that are already urbanized; and (2) that the proposal protect environmentally sensitive areas. These two goals are not applicable to development project review. As noted in the introductory section to the goals, the Comprehensive Plan’s Land Use chapter was designed to implement those goals – there is nothing to suggest the goals were intended to guide future development beyond the implementing policies. See Comp. Plan p. II-1.
- B. GMA Goals Not Applicable to Project Review. In Appeal Claims 3.5.3, 3.5.4, and 3.5.5, Appellant claims nonconformance to the GMA goals listed in page II-2 of the Comprehensive Plan. The GMA goals were listed in the Comprehensive Plan to identify how the GMA regulated the content of Comprehensive Plan policies and goals. The listing of the GMA goals was not intended to directly regulate project review. The GMA goals are inapplicable to individual project review.
- C. Urban Design and Form Introductory Text Not Applicable to Project Review. Appeal Claims 3.5.6 and 3.5.7 cite a Land Use Goal and a Land Use Policy from the “Urban Design and Form” section of the Chapter. City Ex. 2(b), II-8. The introductory text for this section indicates that it establishes “*goals and policies*” that will “*serve as a basis from which to develop appropriate implementation measures.*” *Id.* The text then identifies the City’s design guidelines as the implementation measures for these goals and policies. As is clear from the introductory text, project review was not an intended implementation measure.
- D. Land Use Designation Criteria Not Applicable to Project Review. Appeal Claims 3.5.8, 3.5.9, 3.5.10 and 3.5.11 cite standards from Section 2.7 of the Land Use Chapter, entitled “Land Use Designations.” City Ex. 2(b), II-10. This section “*set[s] forth locational criteria for each specific class of uses*” designated by the Plan. *See id.* In short, the policies were intended to be used by the City to legislatively set the boundaries for zoning districts and guide their use restrictions. The provisions are not intended to require the re-evaluation of these land use choices during project level review.

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

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

7 *Create office and corporate park development known regionally, nationally and*
8 *internationally for its design and function.”*

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

18 F. Project Qualifies as Quality Compatible Development. Appeal Claim 3.5.12 asserts that
19 the proposal violates Comprehensive Plan Policy LUP 49, which requires that the proposal
20 “encourage quality development that will complement existing uses.” As with COL No.
21 12D and E, Policy LUP 49 was intended to be implemented in the zoning code and not
22 during project review. The policy sets a subjective standard where the substantial weight
23 due to the SEPA responsible official is determinative. In their closing brief, the Applicant
24 provided a well-founded explanation from project architects as to how the project qualifies
25 as quality and complimentary development as follows:

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

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

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

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

18 Id., p. 1.

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

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

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

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

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

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

4 16. Proposal Adequately Addresses Collection and Treatment of Stormwater. In Appeal Claim
5 3.6.8, Appellant claims the proposal does not provide for the collection and treatment of surface water
6 and removal of pollutants, including petroleum products, from surfaces used by vehicles and trucks.
7 As described in Finding of Fact 16, the proposed stormwater system provides enhanced water quality
8 treatment in the form of a “modular wetland” filtration system that treats water for suspended solids,
9 copper, zinc, and phosphorus and includes an oil/water separator to treat vehicular related pollutants
10 from truck and passenger car traffic. Runoff from the non-pollution generating frontage improvements
11 will be dispersed into the landscaping. City staff testified the stormwater treatment conforms to all
12 applicable standards of the KCSWDM. The Appellant did not provide any evidence that the proposed
13 stormwater collection and treatment will be inadequate to mitigate downstream impacts. Therefore, the
14 collection and treatment systems are deemed adequate to protect the downstream environment.

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

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

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

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

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

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

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

21 B. Consultation Conducted. Appeal Claim 3.7.3 asserts that the Director did not consult
22 with other organizations in making his determination, including impacted tribes and
23 WRIA 10 organizations in downstream areas. Ms. Welsh testified that the City sent
24 information about the project to three Tribes and received comments from two of them,
25 which it considered in good faith. Welsh, 8/8/19 2:00 pm, 01:00-03:00. Ms. Marriott
26 likewise testified that she is working to address the Tribes’ comments as part of the
permitting required by the Army Corps of Engineers. *Marriott*. Mr. Elliot testified that
the City reached out to the Tulalip Tribe to discuss salmon conservation and go no
response. The City’s efforts at consultation establish prima facie compliance with any
public health, safety and welfare necessities for consultation. Appellant has not
identified any applicable standard that requires additional consultation or provided any
explanation as to why additional consultation would be necessary. For these reasons,
the facts asserted in Appeal Claim 3.7.3 are not found to be contrary to public health,
safety and welfare.

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

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

8 (2) *Special requirements.*

9 (a) *Special Requirement #1 – Other Adopted Area-Specific Requirements.*
10 *King County has developed several types of area-specific plans and*
11 *regulations that contain requirements for drainage design. These*
12 *regulations include critical drainage areas, master drainage plans, basin*
13 *plans, lake management plans, and shared facility drainage plans. In some*
14 *cases, these plans and regulations could overlap with the city of Federal*
15 *Way’s jurisdictional area.*

16 *The Hylebos Creek and Lower Puget Sound Basin Plan is the only one of*
17 *these area-specific regulations that currently affects Federal Way. King*
18 *County developed this basin plan which recommends specific land uses,*
19 *regional capital projects, and special drainage requirements for future*
20 *development within the Hylebos and lower Puget Sound basin.*

21 The drainage requirements of adopted area-specific regulations such as
22 basin plans shall be applied in addition to the drainage requirements of the
23 KCSWDM and Federal Way Addendum unless otherwise specified in the
24 adopted regulation. Where conflicts occur between the two, the drainage
25 requirements of the adopted area-specific regulation shall supersede those
26 in the KCSWDM and Federal Way Addendum. (Emphasis added.)

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

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

1 Plan and the KCSWDM. Similarly, the Basin Plan was called to the attention of the
2 City by the Puyallup and Muckleshoot Tribes in November 2018¹⁰.

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

12 For these reasons, this decision finds the City did not show a prima facie demonstration
13 of compliance with the Federal Way Code and the KCSWDM with respect to
14 compliance with the Special Requirements of the Basin Plan. Therefore, a condition of
15 approval will require the Applicant to demonstrate compliance with FWRC
16 16.25.010(2), the 2016 King County Storm Water Design Manual (KCSWDM) Section
17 1.3.1, and the Executive Proposed Basin Plan Hylebos Creek and Lower Puget Sound
18 (King County Surface Water Management, 1991) including all analysis and subsequent
19 mitigation requirements.

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

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

¹⁰ See Appendices E, G and H.

1 22. Condition No. 29 Doesn't Create De facto Street Reclassification. Appeal Claim 3.8.4 asserts
2 that the Project will create a “*de facto reclassification of Weyerhaeuser Way South as a truck route,*
3 *inconsistent with the Federal Way Comprehensive Plan.*” FWRC 8.40.040 limits truck traffic through
4 the City¹¹ to designated truck routes. However, trucks going to and from Warehouse A are not going
5 through the City as contemplated by the truck route restriction of FWRC 8.40.040. Rather they are
6 going to a destination (Warehouse A). Trucks driving to a City destination are authorized to use non-
7 designated truck routes by FWRC 8.40.040.

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

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

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

24 **DECISION**

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

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


33
34 ¹¹ Technically, FWRC 8.40.040 only exempts truck making deliveries to City destinations from having to drive on the
35 City's truck routers. Making a strict interpretation, this exemption would not apply to empty trucks driving to
36 Warehouse A to pick up materials. Deference is given to the apparent staff interpretation that the exemption would
37 apply to truck picking up loads as well, since the stricter interpretation could easily be circumvented by nonsensical
38 “deliveries” of very nominal amounts of goods.

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

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

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

12 DECISION issued this 12th day of September 2019.

13 
14 Phil A. Olbrechts

15 Hearing Examiner for Federal Way