

1 Legal Issue Number 4:

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- 3 ▪ Mr. Nicholson generally questions whether the City's comprehensive plan
- 4 fails to comply with GMA consistency requirements, but he makes no
- 5 reference to any specific action by the City (i.e. a plan amendment
- 6 adopted by the City on November 24, 2003)
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10 Legal Issue Number 6:

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- 13 ▪ Mr. Nicholson broadly alleges that the "City Land use element and
- 14 related development regulations" violate SEPA and the GMA, but the
- 15 issue does not identify any specific City actions taken on November 24,
- 16 2003.
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20 Legal Issue Number 7:

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- 23 ▪ Mr. Nicholson alleges that "the City amendments and regulations" violate
- 24 GMA goals, but the issue does not specify amendments or regulations
- 25 adopted on November 24, 2003
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29 Legal Issue Number 9:

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- 31 ▪ Mr. Nicholson questions the City's compliance with Washington law
- 32 when "the City purports to plan" under the GMA, but the issue does not
- 33 identify a reviewable City action (i.e. a City action taken on November
- 34 24, 2003).
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38 Legal Issue Number 10:

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- 41 ▪ Mr. Nicholson asks "[w]hether citizenry should be required to mitigate
- 42 transportation impacts after projects are complete" and alleges that "the
- 43 City has not adopted or implemented development regulations that would
- 44 legally address mitigation of cumulative impacts." These questions and
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allegations refer to actions that the City could take in the future.¹ These questions and allegations do not state a claim on the basis of actions actually taken by the City (i.e. actions taken on November 24, 2003).

Legal Issue Number 11:

- Mr. Nicholson asks whether City "development regulations" are non-compliant "without change or amendment," but the issue does not allege deficiencies in a specific development regulation adopted or amended on November 24, 2003.

Legal Issue Number 12:

- Mr. Nicholson asks whether the City's "development regulations and comprehensive planning" fail to be guided by GMA goals, but the issue does not allege deficiencies in a specific City action (i.e. a development regulation or comprehensive plan provision adopted or amended on November 24, 2003).

Legal Issue Number 14:

- Mr. Nicholson asks whether the City's "development regulations and Comprehensive planning" violate or fail to comply with Washington law. However, the issue does not allege deficiencies in a specific development regulation or comprehensive plan provision adopted or amended on November 24, 2003.

¹ To the extent that Mr. Nicholson seeks an advisory opinion on actions that the City could take in the future, this issue is not ripe for review. RCW 36.70.290(1) ("The Board shall not issue advisory opinions . . .").

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Legal Issue Number 16:

- Mr. Nicholson asks the Board to order the City to take a new action to amend existing regulations "regarding impact fee mitigation," but he does not state a claim on the basis of a specific reviewable action taken by the City (i.e. a City action adopting or amending regulations on November 24, 2003).²

Legal Issue Number 18:

- Mr. Nicholson claims that the City's "development regulations" must be revised, but he does not allege a violation or legal requirement based on a specific City action (i.e. an action taken by the City on November 24, 2003).

Legal Issue Number 19:

- Mr. Nicholson asks whether the City's existing Comprehensive plan should be amended to require "best available science," but the issue does not state a claim on the basis of a specific action by the City (i.e. an action by the City on November 24, 2003).³

Legal Issue Number 20:

- Mr. Nicholson alleges violations of law based on stormwater regulations that were not amended as part of the City's action on November 24, 2003.

² To the extent that Mr. Nicholson seeks an advisory opinion on actions that the City could take in the future, this issue is not ripe for review. RCW 36.70.290(1) ("The Board shall not issue advisory opinions . . .").

³ *Id.*

1 Legal issues 3, 4, 6, 7, 9, 10, 11, 12, 14, 16, 18, 19, and 20 fail to state a claim and should be
2 dismissed with prejudice.
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4 **3. Mr. Nicholson alleges violations of the GMA or SEPA that cannot**
5 **be violated by City action.**
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7 Several of Mr. Nicholson's issues are based on sections of the GMA or SEPA that describe
8 legislative findings or prescribe standards for review by this Board. Issues such as these do
9 not state a claim based on requirements or duties that apply to the City. Under these issues
10 and statutes, there are no facts that Mr. Nicholson could allege and prove that would sustain
11 a claim against the City. The following legal issues should be dismissed because they
12 cannot possibly state a claim against the City.
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18 **Legal Issue Number 1:**
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▪ Mr. Nicholson states his issue by reference to RCW 36.70A.300 and
RCW 36.70A.302, which describe the Board's authority and discretion in
resolving appeals and providing remedies. It is not possible for the City
to violate these provisions of the GMA before the Board has even
completed review and reached a decision.
- Mr. Nicholson cites to RCW 36.70A.130(b), which does not exist and
therefore cannot be violated by the City.
- Mr. Nicholson references RCW 43.21C.030(1)(2)(a), which is essentially
a preamble to SEPA's statutory provisions requiring specific decision-
making procedures. It is impossible for the City to violate these
provisions of SEPA without alleged violations of the specific decision-
making requirements that follow in RCW 43.21C.030(2)(b)-(h) and other
provisions of SEPA.

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Legal Issue Number 5:

- Mr. Nicholson alleges that the City has violated the consistency requirement of the GMA because the City's amendment of its Comprehensive Plan is inconsistent with the meaning of the Comprehensive plan before it was amended. This allegation requires an interpretation of the GMA that bans any amendment of comprehensive plans because an amendment is, *per se*, inconsistent with the section of the comprehensive plan that it amends. Mr. Nicholson cannot possibly state a claim that a comprehensive plan amendment is as *per se* violation of the GMA's consistency requirements.

Legal Issue Number 6:

- Mr. Nicholson alleges a claim under RCW 36.70A.3201, which is the standard of review that applies to the Board. It would be impossible for Mr. Nicholson to allege and prove facts showing that the City violated the standard of review that is applied by the Board.
- Mr. Nicholson alleges "the City land use element and development regulations" violate RCW 43.21C.020 and RCW 43.21C.030, but these SEPA provisions govern the City's decision-making procedures. RCW 43.21C.020 and RCW 43.21C.030 do not provide substantive standards for comprehensive planning and land use regulation. It is impossible for the substance of the City's comprehensive plan and development regulations to violate decision-making procedures under SEPA.

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Legal Issue Number 8:

- Mr. Nicholson alleges violation of the procedural requirements of RCW 43.21C.020(1)(c), which does not contain procedural requirements that can be violated by any action of the City.

Legal Issue Number 9:

- Mr. Nicholson alleges a claim under RCW 36.70A.130(b), which does not exist and cannot be violated by the City.

Legal Issue Number 11:

- Mr. Nicholson alleges that the City's development regulations are non-compliant with the requirements of RCW 36.70A.070, but that section of the GMA applies to comprehensive plans, not development regulations. Therefore there is no set of facts that Mr. Nicholson could prove to support his claim.

Legal Issue Number 17:

- Mr. Nicholson cites to RCW 36.70A.172, which applies when a jurisdiction amends its critical area ordinances. In this case, the City did not amend its critical area ordinances.

Legal Issue Number 19:

- Mr. Nicholson cites to RCW 36.70A.172, which applies when a jurisdiction amends its critical area ordinances. In this case, the City did not amend its critical area ordinances.
- Mr. Nicholson also alleges a violation of the requirements of RCW 36.70A.130(b), which does not exist and cannot be violated by the City.

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Legal Issue Number 21:

- Petitioner alleges violation of RCW 43.21C.020, which sets forth legislative findings and policies. It is impossible to prove that the City acted in violation of this section of SEPA without alleging and proving violations of more specific requirements of SEPA.

Legal issues 1, 5, 6, 8, 9, 11, 17, 19, and 21 fail to state a claim and should be dismissed with prejudice.

4. Mr. Nicholson does not allege facts necessary to establish the basic elements of alleged GMA violations.

For several issues, Mr. Nicholson fails to allege facts that are essential to support alleged violations of the GMA. This is particularly the case for Mr. Nicholson's issues alleging failure to be guided by the planning goals of the GMA. Under RCW 36.70A.020, the City's comprehensive planning and development regulations are guided by 13 goals. The goals should be considered by the City, but the statutory goals do not require a specific outcome in City decision making.

To state a claim under RCW 36.70.020, Mr. Nicholson must allege that the City failed to even consider a relevant goal or took action that directly conflicts with a planning goal. See, e.g., Manke Lumber Co., Inc. v. Central Puget Sound Growth Management Hearings Board, 113 Wn.App 615, 627-28, 53 P.3d 1011 (2002); Gutschmidt v. City of Mercer Island, CPSGMHB, Case No. 92-3-0006 (1993). Mr. Nicholson's issues do not allege that the City failed to consider planning goals. Rather, Mr. Nicholson's issues acknowledge that the City considered GMA planning goals before taking action with which Mr. Nicholson simply disagrees. Mr. Nicholson's objection to the City's balancing of the GMA goals does not state a claim for violation of the GMA. The Board should dismiss for

1 failure to state a claim those issues that allege a failure to be "guided" by planning goals,
2 without a more specific allegation that the City failed to even consider a GMA goal or acted
3 in direct contravention of a goal. Issues that fail to state a claim are:
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7 **Legal Issue Number 2:**

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- Petitioner alleges failure to be guided by the certain planning goals listed in RCW 36.70A.020, but does not allege a failure to consider such planning goals and does not allege a violation of the goals.

Legal Issue Number 7:

- Petitioner alleges that the City failed to be guided by the planning goals of RCW 36.70A.020(5),(10), and (11) because the City defended the adequacy of its EIS against Mr. Nicholson's appeal of the EIS to the City Hearing Examiner.

Legal Issue Number 8:

- Petitioner alleges that the City failed to be guided by the planning goals of RCW 36.70A.020(10) and (11) because the City defended the adequacy of its EIS against Mr. Nicholson's appeal of the EIS to the City Hearing Examiner.

Legal Issue Number 9:

- Petitioner alleges failure to be guided by planning goal 12 of RCW 36.70A.020(12) because the City has not yet taken an action that could be guided by GMA goal 12.

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Legal Issue Number 12:

- Petitioner alleges failure to be guided by planning goal 12 of RCW 36.70A.020(12) because the City has not yet taken an action that could be guided by GMA goal 12.

Legal Issue Number 13:

- Petitioner alleges failure to be guided by certain planning goals of RCW 36.70A.020, but he does not allege that the City failed to consider those goals.

Legal Issue Number 20:

- Mr. Nicholson alleges failure to be guided by planning goal 10 of RCW 36.70A.020(10) because the City has not yet taken an action that could be guided by GMA goal 10.

Legal Issue Number 21:

- Mr. Nicholson alleges failure to be guided by planning goals 10 and 11 of RCW 36.70A.020(10) and (11) because the City did not follow the wishes expressed in Mr. Nicholson's comments.

Issues 2, 7, 8, 9, 12, 13, 20, and 21 fail to state a claim under the GMA's goals and should be dismissed with prejudice.

D. Issues 1, 3, 6, 8, 9, 10, 11, 12, 14, 16, 18, 19, and 21 Raise Claims Under SEPA That Are Not Ripe for Review.

Although the Board has jurisdiction over claims arising under SEPA, SEPA also requires exhaustion of administrative appeals before the City. RCW 43.21C.075(4); WAC 197-11-680(3)(c); CLEAN v. City of Spokane, 133 Wn 2d 455, 464-65, 947 P.2d 1169 (1997). Mr. Nicholson's PFR, the Board's Notice of Hearing, and the Board's Prehearing

1 Order all acknowledge that Mr. Nicholson has not yet exhausted his SEPA appeal before the
2 City. The Board has assured Mr. Nicholson that he will be provided the opportunity to
3 allege SEPA claims after the City has taken final action on his pending SEPA appeal.
4
5 Prehearing Order p.3. Until then, Mr. Nicholson's issues arising under SEPA are not ripe for
6 review and should be dismissed without prejudice. If not dismissed with prejudice for
7 reasons set forth above, the following issues arising under SEPA should be dismissed:
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12 **Legal Issue Number 1:**

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14 ▪ Alleging violation of RCW 43.21C.030(1)(2)(a)
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16 **Legal Issue Number 3:**

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18 ▪ Alleging violation of RCW 43.21C.030.
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20 **Legal Issue Number 6:**

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22 ▪ Alleging violation of RCW 43.21C.020 and RCW 43.21C.030.
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24 **Legal Issue Number 8:**

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26 ▪ Alleging violation of RCW 43.21C.020(1)(c).
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28 **Legal Issue Number 9:**

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30 ▪ Alleging violation of RCW 43.21C.030.
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32 **Legal Issue Number 10:**

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34 ▪ Questioning the adequacy of the EIS and mitigation of cumulative
35 impacts.
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37 **Legal Issue Number 11:**

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39 ▪ Alleging violation of RCW 43.21C.020(1)(c).
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41 **Legal Issue Number 12:**

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43 ▪ Alleging violation of RCW 43.21C.030.
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Legal Issue Number 14:

- Alleging violation of RCW 43.21C.

Legal Issue Number 16:

- Alleging violation of RCW 43.21C.030.

Legal issue Number 18:

- Alleging violation of RCW 43.21C.030.

Legal Issue Number 19:

- Alleging violation of RCW 43.21C.020(2)

Legal issue Number 21:

- Alleging violation of RCW 43.21C.020(1)(a)(b)(c).

All claims arising under SEPA should be dismissed without prejudice.

E. The Board Should Require A More Definite Statement of Any Remaining Issues.

WAC 242-02-260(2) and CR 12(e) provide that the Board may grant a motion to provide a more definite statement if a pleading is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, or if more particularity in that pleading will further the efficient and economical disposition of the action.

For the reasons described in this motion, the Board's effective and efficient review in this appeal will be frustrated unless Mr. Nicholson satisfies his burden to concisely define the issues for review. Should the Board decide against dismissal of all of the issues in this appeal, the Board should order Mr. Nicholson to clearly restate any remaining issues in conjunction with a motion to amend the PFR.

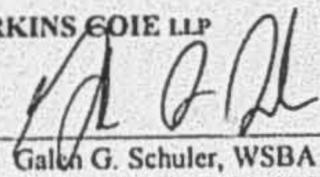
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VI. CONCLUSION AND PROPOSED ORDER

For the reasons set forth above, Boeing respectfully requests that all of Mr. Nicholson's issues be dismissed with prejudice. For any surviving issues, claims under SEPA should be dismissed without prejudice. Finally, for any remaining issues, Mr. Nicholson should be required to provide a more definite statement of each issue. A proposed order is submitted with the Presiding Officer's working copy of this motion.

RESPECTFULLY SUBMITTED this 15th day of March, 2004.

PERKINS COIE LLP

By 

Galen G. Schuler, WSBA #25158
Tia Brotherton Heim, WSBA #31802
Attorneys for The Boeing Company

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EXHIBIT A
SUMMARY OF ISSUES AND GROUNDS FOR DISMISSAL

| Issue | Lack of Subject Matter Juris. | Barred By Statute of Limits | Failure to State Claim Based on Statute | Failure to State Claim Based on City Action | Failure to State Claim That Applies to City | Failure to State Claim Based on Alleged Facts | Total Reasons Dismiss w/ Prej. | SEPA Exhaust; Dismiss w/o Prej. |
|-------|-------------------------------|-----------------------------|---|---|---|---|--------------------------------|---------------------------------|
| 1 | Dismiss | | Dismiss | | Dismiss | | 3 | Dismiss |
| 2 | | | | | | Dismiss | 1 | |
| 3 | Dismiss | Dismiss | Dismiss | Dismiss | | | 4 | Dismiss |
| 4 | | Dismiss | Dismiss | Dismiss | | | 3 | |
| 5 | | | | | Dismiss | | 1 | |
| 6 | | Dismiss | | Dismiss | Dismiss | | 3 | Dismiss |
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| 8 | | | Dismiss | | Dismiss | Dismiss | 3 | Dismiss |
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| Issue | Lack of Subject Matter Juris. | Barred By Statute of Limits | Failure to State Claim Based on Statute | Failure to State Claim Based on City Action | Failure to State Claim That Applies to City | Failure to State Claim Based on Alleged Facts | Total Reasons Dismiss w/ Prej. | SEPA Exhaust; Dismiss w/o Prej. |
|-------|-------------------------------|-----------------------------|---|---|---|---|--------------------------------|---------------------------------|
| 12 | Dismiss | Dismiss | | Dismiss | | Dismiss | 4 | Dismiss |
| 13 | | | | | | Dismiss | 1 | |
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CERTIFICATE OF SERVICE

On March 15, 2004, I caused to be served upon counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the following documents: Motion to Dismiss, Proposed Order.

Mr. Brad Nicholson
2300 NE 28th Street
Renton, WA 98056

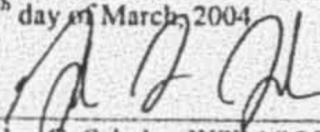
Via hand delivery
 Via U.S. Mail, 1st Class, Postage Prepaid
 Via Overnight Delivery
 Via Facsimile
 Via Email

Mr. Larry Warren
City Attorney
P.O. Box 626
Renton, WA 98057

Via hand delivery
 Via U.S. Mail, 1st Class, Postage Prepaid
 Via Overnight Delivery
 Via Facsimile
 Via Email

I certify under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED at Seattle, Washington, this 15th day of March, 2004.



Galen G. Schuler, WSBA# 25158
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PRESIDING OFFICER BRUCE C. LAING
Hearing Date: June 3, 2004
Hearing Time: 10.00 a.m.

CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

BRAD NICHOLSON,
Petitioner,
v.
CITY OF RENTON,
Respondent,
And
THE BOEING COMPANY,
Respondent-Intervenor.

NO. 04-3-0004
ORDER GRANTING BOEING'S
MOTION TO DISMISS
[PROPOSED]

The Central Puget Sound Growth Management Hearings Board, having considered the motion to dismiss of intervenor-respondent, the Boeing Company ("Boeing"), the Petition for Review initiating this matter, the Petitioner's Board Requested Restatement of Issues filed

ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS - 1
[03003-0175/811040620 291]

PERKINS COIE LLP
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in this matter on February 17, 2004 ("Restatement of Issues"), the papers filed in support of and in opposition to Boeing's motion, and all other papers filed in this matter, now, therefore, it is hereby

ORDERED that Boeing's motion to dismiss be is hereby GRANTED, and it is further

ORDERED that each of the issues listed in Petitioner's Restatement of Issues and the Board's Pre-Hearing Order be dismissed as follows:

A. Issues 1, 3, 9, 11, 12, and 18 are dismissed with prejudice for lack of subject matter jurisdiction

B. Issues 3, 4, 6, 7, 9, 11, 12, 14, 15, 16, 17, 18, 19, and 20 are dismissed with prejudice because they assert claims that are barred by the statute of limitations.

C. Issues 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21 are dismissed with prejudice for failure to state a claim.

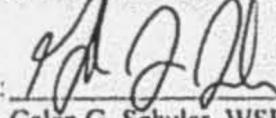
D. All issues arising under the State Environmental Policy Act are dismissed without prejudice.

DATED this _____ day of _____, 2004.

Presiding Officer

Presented by:

PERKINS COIE LLP

By: 
Galen G. Schuler, WSBA #25158
Tia Brotherton Heim, WSBA #31802
Attorneys for The Boeing Company

ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS - 2
[03003-0173-519040620 291]

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1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
(206) 583-8888

RECEIVED
MAR 29 2004
WARREN BARBER & FONTES, P.S.

BEFORE THE CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
IN AND FOR THE STATE OF WASHINGTON

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In the matter concerning purported
comprehensive planning, development
regulations, and zoning enactments
and amendments of the City of
Renton:
Brad Nicholson, a citizen of the
City of Renton:
Petitioner,
v.
City of Renton, a State of
Washington Municipal Corporation:
Respondent,
The Boeing Company, owning and
operating a commercial airplane
manufacturing plant on land zoned
Industrial Heavy in the City of
Renton:
Intervener.

Case No. 04-03-0004
PETITIONER'S RESPONSE and
BRIEF TO DISPOSITIVE MOTIONS
FOR DISMISSAL

TO THE HONORARY CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD:
Mr. Bruce Laing, Presiding Officer
Mr. Joseph W. Tovar, Administrative Chairman
Mr. Edward G. McGuire, Board Member
Ms. Susannah Karlsson, Administrative Officer

Petitioner Response brief - 1

Brad Nicholson
2100 N.E. 28th St.
Renton, Wa. 98056

1 COMES NOW, the Petitioner, Brad Nicholson according to the schedule for
2 these proceedings; for want of community and consistency; health, safety,
3 general welfare, morality; economic and social environmental quality, and
4 for want of fulfillment of the purposes and objectives, common goals, and
5 specific directives of the Laws of the State of Washington and its Growth
6 Management Act (GMA) (the act);
7 And hereby does present this response and brief upon the record and unto
8 parties before this Board according to established schedule;
9

10 INTRODUCTION

11 If the City or Proponent had given notice or leave for Petitioner or
12 Citizens to have knowledge of the actual amendments that were to be adopted,
13 the issues may have been simpler for the public and the Board to comprehend.
14 Nowhere in the EIS performed, the ordinances adopted, or for that matter
15 anywhere in the record that had been created before the City in these
16 proceedings, has it been mentioned that the Comprehensive Plan had been
17 amended to include language that would discourage the operation of
18 industrial and manufacturing (commercial aircraft manufacturing) uses on the
19 subject property. That Comprehensive Planning and development regulation is
20 now at issue, that is precisely what they have done. The above is exactly
21 what has now happened.¹ Why did the City or Proponent not answer or state in
22 a reply that they would change the inconsistency? It is clear that the
23 answer to that question is because they had not yet decided to do so. And
24

25 ¹ See conflicting and inconsistent exhibits located at exhibit 5.4)

*Unsubstantiated
Statement of
Fact*

*False
statement*

1 because they now substantially and unlawfully intend to exclude
2 manufacturing and industrial production from encouragement,
3 (that action that was recommended or articulated nowhere in the
4 proceedings), becomes more clear. After seeing the resolutions adopted and
5 the CPP adopted regarding economic development, we can all be quite
6 surprised at the choice, and that includes the Board.² Not until after the
7 drafting of the PFR and the initial hearing, did Petitioner receive a
8 mailing and notice of the amendment to the Economic development elements. I
9 suspected that was their intent, but never knew that it would be implemented
10 in that manner, that is, without prior notice and blatantly contrary to the
11 CPP.

12 What has now occurred is that in an attempt to reconcile internal local
13 consistency requirements, the City has now adopted language discouraging the
manufacturing and industry on the site. These actions and plans create and
15 present the Board with a material and factual trilemma, with inability to
16 place the rezone in a position that can be harmonized with the substantial
17 interests of the public, the CPP, or goals of the GMA. I contended that the
18 consistency requirements extend and apply to Local, Regional, and State
19 goals. Had the Proponent and Staff chosen to demonstrate that the public
20 interest would be served by the proposal, and had properly discussed the
21 procedure and probable adverse economic and social impacts that would occur
22 as a result of the direct impact of the proposal according to EIS
23 requirements, the substantive result might have been different, but they
24 have not, and instead must now litigate upon uncontroverted facts, and while

25 ² Evidence in exhibit 5.11) is to the contrary

- Believes we
can amend
the comp plan

NOT so
unsubstantiated

No proposal

1 looking at every angle for a technicality to surface, to enable dismissal of
2 lawful reasoning and logical, substantial factual material. It is said that
3 strategy would appear, especially in the light of the present need for
4 quality employment to sustain the high quality of life that all citizens
5 have a right to pursue. They have not been able to convert any of the facts
6 outlined in the EIS, that I have raised from the very outset of these
7 proceedings. And paramount consistency requirements of City planning under
8 36.70A.040 require consistency with CPP and SEPA too, as well as general
9 laws that are applicable to it under relevant provisions of law, and as will
10 be further explained in this brief. It requires consistency with the entire
11 act³. Large scale high intensity urban development on that site would cause
12 huge amounts of unmitigated transportation difficulty, water pollution that
13 they purport to discharge through 16 untreated storm water outfalls and a
14 conveyance and discharge into John's Creek and Lake Washington, as
15 reiterated herein.

*No prop of.
Unsubstantiated*

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³ 36.70A.040 RCW

1 Petitioner presents this response and brief, and now hereby reduced;
2 affirmatively and lawfully proving this posture to be just and in favor of
3 the Petition for Review herein; with discussion and review, (outlined,
4 demonstrated, and cogently proven to be right and just herein) and herein
5 subsequently discusses each subject, how each issue is related to
6 non-compliance with the GMA and SEPA; and of course, the just and legal and
7 lawful reasoning and citations and excerpts of Washington Laws that the
8 Board and Parties should be in legal concurrence with in order to sustain
9 the request for relief; and that must be applied in order to justify
10 the relief that is requested in the Petition for Review under Washington
11 Laws and the GMA and SEPA⁴.

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⁴ Petition for Review, January 22, 2004

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I. Standard of Review and burden of proof

II. Additional Statement of Issues

III. List of Exhibits (tabbed in order)

IV. Substantive and Procedural issues applicable to Review of Issues

V. Substantial, Undisputed, and Uncontroverted Material Fact

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I. STANDARD OF REVIEW

A) Pursuant to RCW 36.70A.320, comprehensive plans and development regulations, and amendments thereto, (if adopted pursuant to the Act), are presumed valid upon adoption. The burden is on the Petitioner to demonstrate that any action taken by the respondent jurisdiction is not in compliance with the Act. I have already proven the actions to be in error and outside the legitimate objectives of the act, I will again and herein satisfy the required burden of proof in demonstrating unlawfulness of their actions and their purported rezoning, (the action of rezoning may not be presumed valid) and the burden rests with the Proponents (Intervenors);

As explained herein, they have not satisfied their burden.

B) No presumption favoring rezoning exists.⁵ This foregoing requirement has become irrelevant because petitioner has, and will again demonstrate and prove herein that the actions constitute arbitrary and capricious spot zoning in violation of applicable laws.⁶

C) The Board should find compliance with the Act, unless it determines that the City actions are clearly erroneous in view of the entire record before the Board in light of the goals and requirements of the GMA." (RCW 36.70A.320)

This is the standard that is adhered to in this brief.

⁵ Schofield v. Spokane County, 96 Wn. App. 581 (1999)

⁶ Exhibit number 3, Petition for Review

*Legislature vs
quasi-judicial*

1 An arbitrary and capricious spot zoning is a clear and cogent error.⁷
2 Under that substantial evidence standard, there must be a sufficient quantum
3 of evidence contained within the record to persuade a reasonable person that
4 the declared premise is true.⁸ I will again demonstrate that the quantum of
5 evidence indicates that it is not the plan or will of the people, nor the
6 objective of our State Laws, to perform such unnecessary comprehensive
7 planning and to implement such arbitrary and capricious measures.⁹

8 A remand or declaration of invalidity should now ensue.

9 For the Board to find the City's actions clearly erroneous, the Board must
10 be "left with the firm and definite conviction that a mistake has been
11 made."¹⁰ The Board, after reviewing this briefing and other evidence
12 according to Washington Laws, will be left with such a conviction.

13 Pursuant to RCW 36.70A.3201 the Board should grant deference to the City in
14 how it plans for growth, only if it is consistent with the goals and
15 requirements of the GMA. Additionally, as our State Supreme Court has
16 stated,

17 "Local discretion is bounded by the goals and requirements of the GMA."¹¹

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19 ⁷ "A rezoning action taken without the support of required substantial evidence is
20 arbitrary and capricious" see, Parkridge, et al, Respondents, v. The City of Seattle,
21 et al, Appellants, 89 Wn.2d 454, 573 P.2d 359. and, "An arbitrary and capricious
22 action is clearly erroneous" see, Norway Hill Preservation & Protection Association v.
23 King County Council, 87 Wn.2d 267, 274, 552 P.2d 674 (1976)

24 ⁸ Wilson v. Employment Sec. Dep't, 87 Wn. App. 197, 201, 940 P.2d 269 (1997) (citing
25 Penick v. Employment Sec. Dep't, 82 Wn. App. 30, 17, 917 P.2d 136, review denied, 130
26 Wn.2d 1004, 925 P.2d 989 (1996))

27 ⁹ Comment Letter number 13; Response to comment letter 13; Final draft Boeing
28 Comprehensive Plan and rezone Environmental Impact Statement.

29 ¹⁰ Dep't of Ecology v. PUD 1, 121 Wn.2d 179, 201 (1993)

30 ¹¹ King County v. Central Puget Sound Growth Management Hearing Board,
31 142 Wn.2d 543, 561

1 Further, our Courts of Law have stated, "Consistent with Law, and
notwithstanding the 'deference' language of RCW 36.70A.3201,

3 "The Board acts properly when it foregoes deference to a plan that is not
4 'consistent with the requirements and goals of the GMA.'"12

5 "The broad discretion allowed to local governments under the Growth
6 Management Act (RCW 36.70A) to draft comprehensive plans and development
7 regulations (zoning ordinances) tailored to local circumstances is limited
8 by the requirement that final plans and regulations be consistent with the
9 mandates and goals of the act".13

10 Where a local ordinance cannot be harmonized with a conflicting statute, the
11 statute prevails. A local ordinance conflicts with a statute if it permits
12 that which the statutes forbid or forbids that which the statutes permits.14

13 Regarding the adequacy of the EIS, the EIS must present decision makers with
14 a reasonably thorough discussion of the probable significant adverse impacts
15 associated with the proposal.

16 The adequacy of an environmental impact statement is a question of law that
17 is subject to de novo review both on the administrative level and by the
18 courts. The legal adequacy of an environmental impact statement is tested
19 under the rule of reason. Under the rule of reason, an environmental impact
20 statement is adequate only if it provides a reasonably thorough discussion of
21 the significant aspects of the probable environmental consequences of the
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24 ¹² Cooper Point Association v. Thurston County, No. 26425-1-II
Div. II, September 14, 2001), 108 Wn. App. 429 (2001).

25 ¹³ DIEHL v. MASON COUNTY, 94 Wn. App. 645 (Mar. 1999)

¹⁴ RURAL RESIDENTS v. KITSAP COUNTY, 95 Wn. App. (Mar. 1999)

1 proposed activity and presents sufficient information to allow the
2 governmental decision-makers to make an informed and reasoning decision.¹³
3 Arbitrary and capricious actions are generally defined by law to be willful
4 and unreasoning actions taken in disregard of facts and circumstances¹⁴
5 A finding is clearly erroneous when, even if there is evidence to support it,
6 the reviewing body on the entire evidence of record, is left with the
7 definite and firm conviction that a mistake has been committed.¹⁵ It must
8 equally apply to all.¹⁶
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14 ¹³ KIKWIT CONSTRUCTION GROUP, INC., ET AL., Appellants, v. CLARK COUNTY, ET AL.,
15 Respondents (Nos. 18667-5-II; 18781-7-II. Division Two. August 16, 1996.) 83 Wn. App.
133, 920 P.2d 1207 (Aug. 1996)

16 ¹⁴ "The fact that the disjunctive "or" is used in the first part of the statute
17 shows that acting either arbitrarily or capriciously will create a cause of
18 action" Lutheran day care v. Snohomish County, 119 Wn. 2d. 91. see also,
19 Carlson v. Beaux Arts Village, 41 Wn. App. 402, 704 P.2d 663 An administrative
20 decision is arbitrary and capricious if it is willful, unreasoning, and made without
21 consideration and in disregard of the facts and circumstances.

22 ¹⁵ Norway Hill Preservation & Protection Ass'n v. King County Council, 87 Wn.2d 267,
23 274, 552 P.2d 674 (1976)).

24 ¹⁶ "The United States supreme court specifically decided that police regulations were
25 subject to the equal protection clause of the fourteenth amendment in Atchison, Topeka
& Santa Fe R.R. Co. v. Vosburg, 238 U.S. 56, 59 L.Ed. 1199, 35 S.Ct. 675. The reasons
for that conclusion were stated as follows:

"But we cannot at all agree that a police regulation is not, like any other law,
subject to the equal protection clause of the Fourteenth Amendment.

"The constitutional guaranty entitles all persons and corporations within the
jurisdiction of the State to the protection of equal laws, in this as in other
departments of government. "It does not prevent classification, but does require that
classification shall be reasonable, not arbitrary, and that it shall rest upon
distinctions having a fair and substantial relation to the object sought to be
accomplished by the legislation".

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II. ADDITIONAL STATEMENT OF ISSUES

1. Is the EIS at issue here that was performed relevant to these actions legally adequate?
2. Are the presumptions used for the discussion of transportation impacts based upon unreasonable or erroneous number of trips?
3. Are the impacts to salmon species understated, or were they based upon presumptions that were not analyzed according to EIS or Best Available Science requirements?

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III. LIST OF EXHIBITS

- 1) City Minutes of adoption of ordinances (included with Petition for Review)
- 2) Hearing Examiner limiting order (included with Petition for Review)
- 3) Copy of 61 page spot motion and brief filed with City Hearing Examiner (included with Petition for Review)
- 4) Copy of City comprehensive plan economic development element (included with Petition for Review)
- 5) Exhibits tabbed for this brief (tabbed 1-12 referred to as 5.1 thru 5.12)
 - 5.1) City Capital facilities element (tabbed 1)
 - 5.2) Letter of Mr. Larry Warren dated January 22, 2004. (tabbed 2)
 - 5.3A) City of Renton ordinance #2913
 - 5.3B) City of Renton ordinance #3100
 - 5.4) Two economic development elements
 - 5.5) Planning commission letter dated November 19, 2003
 - 5.6) Copy of City web page
 - 5.7) City of Renton Policy for Protection of Salmonid Species
 - 5.8) Three clippings (1 concerning species extinction) (1 concerning a regional planning error similar to here) (one concerning massive public subsidies)
 - 5.9) Resolution No. 3641
 - 5.10) Paccar, Boeing, and Boeing Realty comment City minutes
 - 5.11) Copy of Resolution #3641
 - 5.12) Copy of Hearing Examiner EIS decision

1 .
2 **IV. SUBSTANTIVE AND PROCEDURAL ISSUES**

3 The Parties and the City should and must be trying to encourage productive
4 and enjoyable harmony between man and the environment¹⁹ And in the oath of the
5 offices and executive leadership positions relevant here and of authority,
6 there are certain responsibilities that everyone that is involved in this
7 action should already inherently know, and hold as paramount and necessary to
8 our success and to carry out mandatory elements of Laws ²⁰ It all encompasses
9 a good deal more, like I originally contended, than just the financial goals
10 of the Proponent.²¹

11 _____
12 ¹⁹ RCW 43.21C.010 Purposes.

13 The purposes of this chapter are: (1) To declare a state policy which will encourage
14 productive and enjoyable harmony between man and his environment; (2) to promote
15 efforts which will prevent or eliminate damage to the environment and biosphere; (3)
16 and stimulate the health and welfare of man; and (4) to enrich the understanding of
17 the ecological systems and natural resources important to the state and nation. [1971
18 ex.s. c 109 § 1.]

16 ²⁰ RCW 43.21C.020 Legislative recognitions--Declaration--Responsibility.

17 (1) The legislature, recognizing that man depends on his biological and physical
18 surroundings for food, shelter, and other needs, and for cultural enrichment as well;
19 and recognizing further the profound impact of man's activity on the interrelations of
20 all components of the natural environment, particularly the profound influences of
21 population growth, high-density urbanization, industrial expansion, resource
22 utilization and exploitation, and new and expanding technological advances and
23 recognizing further the critical importance of restoring and maintaining environmental
24 quality to the overall welfare and development of man, declares that it is the
25 continuing policy of the state of Washington, in cooperation with federal and local
26 governments, and other concerned public and private organizations, to use all
27 practicable means and measures, including financial and technical assistance, in a
28 manner calculated to: (a) Foster and promote the general welfare; (b) to create and
29 maintain conditions under which man and nature can exist in productive harmony; and
30 (c) fulfill the social, economic, and other requirements of present and future
31 generations of Washington citizens.

25 ²¹ EIS letter number 13

1 They have not lived up to their responsibilities, and this board has
2 jurisdiction because all Agencies of the State are to be consistent with
3 State policies.²² One provision of State Policy should not thwart another. The
4 reasons behind that very much demonstrate why it is so very important.²³ It
5 has been very clearly articulated by the legislature.²⁴
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8 ²² (2) In order to carry out the policy set forth in this chapter, it is the continuing
9 responsibility of the state of Washington and all agencies of the state to use all
10 practicable means, consistent with other essential considerations of state policy, to
11 improve and coordinate plans, functions, programs, and resources to the end that the
12 state and its citizens may:

- 13 (a) Fulfill the responsibilities of each generation as trustee of the environment for
14 succeeding generations;
15 (b) Assure for all people of Washington safe, healthful, productive, and aesthetically
16 and culturally pleasing surroundings;
17 (c) Attain the widest range of beneficial uses of the environment without degradation,
18 risk to health or safety, or other undesirable and unintended consequences;

19 ²³ RCW 36.70A.010 Legislative findings.

20 The legislature finds that uncoordinated and unplanned growth, together with a lack of
21 common goals expressing the public's interest in the conservation and the wise use of
22 our lands, pose a threat to the environment, sustainable economic development, and the
23 health, safety, and high quality of life enjoyed by residents of this state. It is in
24 the public interest that citizens, communities, local governments, and the private
25 sector cooperate and coordinate with one another in comprehensive land use planning.
Further, the legislature finds that it is in the public interest that economic
development programs be shared with communities experiencing insufficient economic
growth.

26 ²⁴ RCW 43.21C.030 Guidelines for state agencies, local governments--Statements--
27 Reports--Advice--Information.

28 The legislature authorizes and directs that, to the fullest extent possible: (1) The
29 policies, regulations, and laws of the state of Washington shall be interpreted and
30 administered in accordance with the policies set forth in this chapter, and (2) all
31 branches of government of this state, including state agencies, municipal and public
32 corporations, and counties shall:

- 33 (a) Utilize a systematic, interdisciplinary approach which will insure the integrated
34 use of the natural and social sciences and the environmental design arts in planning
35 and in decision making which may have an impact on man's environment;

1 The goals of the Growth Management Act are exclusive, and other objectives of
2 the Proponent and City are outside of the act.²⁵

3

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²⁵ RCW 36.70A.020 Planning goals.

5 The following goals are adopted to guide the development and adoption of comprehensive
6 plans and development regulations of those counties and cities that are required or
7 choose to plan under RCW 36.70A.040. The following goals are not listed in order of
8 priority and shall be used exclusively for the purpose of guiding the development of
9 comprehensive plans and development regulations:

- 10 (1) Urban growth. Encourage development in urban areas where adequate public
11 facilities and services exist or can be provided in an efficient manner.
- 12 (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into
13 sprawling, low-density development.
- 14 (3) Transportation. Encourage efficient multimodal transportation systems that are
15 based on regional priorities and coordinated with county and city comprehensive plans.
- 16 (4) Housing. Encourage the availability of affordable housing to all economic
17 segments of the population of this state, promote a variety of residential densities
18 and housing types, and encourage preservation of existing housing stock.
- 19 (5) Economic development. Encourage economic development throughout the state that is
20 consistent with adopted comprehensive plans, promote economic opportunity for all
21 citizens of this state, especially for unemployed and for disadvantaged persons,
22 promote the retention and expansion of existing businesses and recruitment of new
23 businesses, recognize regional differences impacting economic development
24 opportunities, and encourage growth in areas experiencing insufficient economic
25 growth, all within the capacities of the state's natural resources, public services,
and public facilities.
- (6) Property rights. Private property shall not be taken for public use without just
compensation having been made. The property rights of landowners shall be protected
from arbitrary and discriminatory actions.
- (7) Permits. Applications for both state and local government permits should be
processed in a timely and fair manner to ensure predictability.
- (8) Natural resource industries. Maintain and enhance natural resource-based
industries, including productive timber, agricultural, and fisheries industries.
Encourage the conservation of productive forest lands and productive agricultural
lands, and discourage incompatible uses.
- (9) Open space and recreation. Retain open space, enhance recreational opportunities,
conserve fish and wildlife habitat, increase access to natural resource lands and
water, and develop parks and recreation facilities.
- (10) Environment. Protect the environment and enhance the state's high quality of
life, including air and water quality, and the availability of water.
- (11) Citizen participation and coordination. Encourage the involvement of citizens in
the planning process and ensure coordination between communities and jurisdictions to
reconcile conflicts.
- (12) Public facilities and services. Ensure that those public facilities and services
necessary to support development shall be adequate to serve the development at the
time the development is available for occupancy and use without decreasing current
service levels below locally established minimum standards.

1 It should be very clear and cogent to all concerned that the purpose of all
2 of these proceedings are for purpose of the health, safety, general welfare,
3 and morals of the public.²⁶ Zoning ordinances and the context of their
4 applications to the GMA and this board are clearly defined.²⁷ When the City
5 plans, with or without assistance from the Proponent, it should comply with
6 all of the consistency and implementation requirements of the act;²⁸
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9 ²⁶ RCW 36.70.010 Purpose and intent.

10 The purpose and intent of this chapter is to provide the authority for, and the
11 procedures to be followed in, guiding and regulating the physical development of a
12 county or region through correlating both public and private projects and coordinating
13 their execution with respect to all subject matters utilized in developing and
14 servicing land, all to the end of assuring the highest standards of environment for
15 living, and the operation of commerce, industry, agriculture and recreation, and
16 assuring maximum economies and conserving the highest degree of public health, safety,
17 morals and welfare.

18 ²⁷ RCW 36.70A.030 Definitions.

19 Unless the context clearly requires otherwise, the definitions in this section apply
20 throughout this chapter.

21 (1) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use
22 plan or to update an existing comprehensive land use plan.
23 (7) "Development regulations" or "regulation" means the controls placed on development
24 or land use activities by a county or city, including, but not limited to, zoning
25 ordinances, critical areas ordinances, shoreline master programs, official controls,
planned unit development ordinances, subdivision ordinances, and binding site plan
ordinances together with any amendments thereto.

26 ²⁸ RCW 36.70A.040 Who must plan--Summary of requirements--Development regulations
must implement comprehensive plans.

27 (1) Each county that has both a population of fifty thousand or more and, until May
28 16, 1995, has had its population increase by more than ten percent in the previous ten
29 years or, on or after May 16, 1995, has had its population increase by more than
30 seventeen percent in the previous ten years, and the cities located within such
31 county, and any other county regardless of its population that has had its population
32 increase by more than twenty percent in the previous ten years, and the cities located
33 within such county, shall conform with all of the requirements of this chapter.

1 I will further cite rules of the Board following this paragraph, but the City
2 comprehensive plan must be consistent with the King County Framework Policies
3 (CPP). That is a mandatory requirement of the GMA.²⁹ The City evidently does
4 not care about water quality or economic development as it relates to the
5 CPP, but that is illegal as will be explained further. There are certain
6 mandatory provisions and requirements necessary for legitimate planning under
7 the GMA and SEPA.³⁰

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13 ²⁹ RCW 36.70A.100 Comprehensive plans--Must be coordinated.
The comprehensive plan of each county or city that is adopted pursuant to RCW
14 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans
15 adopted pursuant to RCW 36.70A.040 of other counties or cities with which the county
or city has, in part, common borders or related regional issues.

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17 ³⁰ RCW 36.70A.070 Comprehensive plans--Mandatory elements.
The comprehensive plan of a county or city that is required or chooses to plan under
18 RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering
19 objectives, principles, and standards used to develop the comprehensive plan. The
20 plan shall be an internally consistent document and all elements shall be consistent
with the future land use map. A comprehensive plan shall be adopted and amended with
public participation as provided in RCW 36.70A.140.
Each comprehensive plan shall include a plan, scheme, or design for each of the
following:
21 (1) A capital facilities plan element consisting of: (a) An inventory of existing
22 capital facilities owned by public entities, showing the locations and capacities of
the capital facilities; (b) a forecast of the future needs for such capital
23 facilities; (c) the proposed locations and capacities of expanded or new capital
24 facilities; (d) at least a six-year plan that will finance such capital facilities
within projected funding capacities and clearly identifies sources of public money for
such purposes; and (e) a requirement to reassess the land use element if probable
25 funding falls short of meeting existing needs and to ensure that the land use element,
capital facilities plan element, and financing plan within the capital facilities plan
element are coordinated and consistent. Park and recreation facilities shall be
included in the capital facilities plan element.

1 Economic development is an essential element of those plans, and the Renton
2 plans, now with that purported revision is inconsistent and conflicts with
3 the CPP.¹¹ Renton has now purported to adopt a comprehensive plan that
4 discourages the type of economic growth that is precisely the type of
5 economic growth that is required to be encouraged. At the same time, they
6 have unlawfully limited discussion and excluded facts with regard to the
7 adverse social and economic consequences of doing so.¹²

8 They instead rely upon an urban center designation that was adopted for the
9 Renton Central Business District (CBD), not the Heavy Industrial Zone¹³

12 ¹¹ 1. Strengthen, Expand, and Diversify the Economy (CPP)
ED-6 Local jurisdictions. plans shall include policies that actively support the
13 retention and expansion of the economic base of the multi-County region. Local
jurisdictions and the County shall work cooperatively on a regional basis and invite
private sector participation to evaluate the trends, opportunities and weaknesses of
the existing economy and to analyze the economic needs of key industries. Local
jurisdictions comprehensive plans shall include policies intended to foster:
15 a. The development and retention of those businesses and industries which export their
goods and services outside the region. These businesses and industries are critical to
the economic strength and diversification of the economy; and
16 b. A business climate which is supportive of business formation, expansion, and
retention and recognizes the importance of small businesses in creating new jobs.
ED-7 Jurisdictions shall cooperate to establish economic diversification and
17 development goals for the multi-County region. Jurisdictions shall, in process of
comprehensive planning, identify the contribution they will make to the regional
18 diversification and development goals.
ED-8 Where appropriate, jurisdictions, plans shall include policies intended to
attract and retain industries, firms and jobs, within their locally determined or
zoned manufacturing and industrial areas.
ED-9 Jurisdictions shall recognize businesses, facilities, and institutions within
their boundaries that provide opportunities to maintain economic stability and realize
economic growth for the entire region.
19 These include major educational facilities, research institutions, health care
facilities, high value added manufacturing facilities and port facilities among
others. The County and local jurisdictions shall encourage these institutions
20 businesses and facilities to thrive while maintaining the environmental and other
goals of the local comprehensive plans.

23 ¹² Hearing Examiner Order and Response to letter number 13

24 ¹³ LU-39
25 d. The Growth Management Planning Council confirmed the following Urban Centers:
Renton CBD

1 The administrative procedures that are used are very clear and unambiguous
2 when it comes to ensuring infrastructure is adequate at the time the
3 developments would be ready for occupancy.¹⁴ WAC 365-195-750 outlines those
4 specific provisions.¹⁵

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6 ¹⁴ WAC 365-195-705 Basic assumptions.

7 (1) Where the legislature has spoken expressly on the relationship of the act to other
8 statutory provisions, the explicit legislative directions shall be carried out.
9 Examples of such express provisions are set forth in WAC 365-195-750.

10 (2) Absent a clear statement of legislative intent or judicial interpretation to the
11 contrary, it should be presumed that neither the act nor other statutes are intended
12 to be preemptive. Rather they should be considered together and, wherever possible,
13 construed as mutually consistent.

14 ¹⁵ WAC 365-195-750 Explicit statutory directions.

15 (1) In approving the Growth Management Act, the legislature expressly amended numerous
16 existing statutes. On the matters they address, these amendments define the
17 relationship of such existing statutes to comprehensive plans and development
18 regulations under the act. Examples are:

19 (a) RCW 19.27.097 (state building code - evidence of adequate supply of potable
20 water.)

21 (b) RCW 35.13.005 (annexation of unincorporated areas - prohibited beyond urban growth
22 areas)

23 (c) RCW 35.58.2795 (municipal corporations - six-year transit plan consistent with GMA
24 comprehensive plans)

25 (d) RCW 35.77.010 (city streets - six-year comprehensive street program consistent
with GMA comprehensive plans)

(e) RCW 35A.14.005 (annexation by code cities - prohibited beyond urban growth areas)

(f) RCW 36.81.121 (county roads - six-year comprehensive road program consistent with
GMA comprehensive plans)

(g) RCW 36.94.040 (sewerage, water, drainage systems - incorporation of relevant
comprehensive plan provisions into sewer or water general plan)

(h) RCW 56.08.020 (sewer districts - district comprehensive sewer plan consistent with
urban growth area restrictions)

(i) RCW 57.16.010 (water districts - district comprehensive water plan consistent with
urban growth area restrictions)

(j) RCW 58.17.060 (short plats - written findings about appropriate provisions for
infrastructure)

(k) RCW 58.17.110 (subdivisions - written findings about appropriate provisions for
infrastructure)

(l) RCW 58.18.440 (land development - authority of GMA planning entities to require
relocation assistance)

(m) RCW 86.12.200 (comprehensive flood control management plans - may be incorporated
into comprehensive plans under the act)

(2) Approval of the act included the creation of a new chapter (chapter 47.80 RCW)
authorizing and assigning duties to regional transportation planning organizations
(RTPO's). These organizations were expressly given responsibilities for ensuring the
consistency of transportation planning throughout a region containing multiple local
governmental jurisdictions.

(3) Approval of the act included the addition of new sections (RCW 82.02.050 through
82.02.090) concerning impact fees on development in counties or cities that plan under
the GMA. These sections explicitly authorize and condition the use of such fees as
part of the financing of public facility system improvements needed to serve new
development.

*1/10
Steve Wymant
Proposed*

1 The City even has stated itself that the impact fees should be imposed and
2 adopted under the GMA.¹⁶ The legislature has clearly defined how those fees
3 can be legally imposed to address the cumulative impacts of projects when
4 they arise, and the reasons for that application.¹⁷ The Renton ordinance
5 stated that they would comply with the act, but it has never happened.¹⁸
6

7
8 ¹⁶ Exhibits 5.3A and 5.3B

9 ¹⁷ RCW 82.02.050 Impact fees--Intent--Limitations.

10 (1) It is the intent of the legislature:

11 (a) To ensure that adequate facilities are available to serve new growth and
12 development;

13 (b) To promote orderly growth and development by establishing standards by which
14 counties, cities, and towns may require, by ordinance, that new growth and development
15 pay a proportionate share of the cost of new facilities needed to serve new growth and
16 development; and

17 (c) To ensure that impact fees are imposed through established procedures and criteria
18 so that specific developments do not pay arbitrary fees or duplicative fees for the
19 same impact.

20 (2) Counties, cities, and towns that are required or choose to plan under RCW
21 36.70A.040 are authorized to impose impact fees on development activity as part of the
22 financing for public facilities, provided that the financing for system improvements
23 to serve new development must provide for a balance between impact fees and other
24 sources of public funds and cannot rely solely on impact fees.

25 (3) The impact fees:

(a) Shall only be imposed for system improvements that are reasonably related to the
new development;

(b) Shall not exceed a proportionate share of the costs of system improvements that
are reasonably related to the new development; and

(c) Shall be used for system improvements that will reasonably benefit the new
development.

(4) Impact fees may be collected and spent only for the public facilities defined in
RCW 82.02.090 which are addressed by a capital facilities plan element of a
comprehensive land use plan adopted pursuant to the provisions of RCW 36.70A.070 or
the provisions for comprehensive plan adoption contained in chapter 36.70, 35.63, or
35A.63 RCW. After the date a county, city, or town is required to adopt its
development regulations under chapter 36.70A RCW, continued authorization to collect
and expend impact fees shall be contingent on the county, city, or town adopting or
revising a comprehensive plan in compliance with RCW 36.70A.070, and on the capital
facilities plan identifying:

(a) Deficiencies in public facilities serving existing development and the means by
which existing deficiencies will be eliminated within a reasonable period of time;

(b) Additional demands placed on existing public facilities by new development; and

(c) Additional public facility improvements required to serve new development.

If the capital facilities plan of the county, city, or town is complete other than for
the inclusion of those elements which are the responsibility of a special district,

*outside
Board
jurisdiction*

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the county, city, or town may impose impact fees to address those public facility needs for which the county, city, or town is responsible.

[1994 c 257 § 24; 1993 sp.s. c 6 § 6; 1990 1st ex.s. c 17 § 43.]

Notes:

- Severability--1994 c 257: See note following RCW 36.70A.270.
- Effective date--1993 sp.s. c 6: See note following RCW 36.70A.040.
- Severability--Part, section headings not law--1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.
- SEPA: RCW 43.21C.065.
- RCW 82.02.060 Impact fees--Local ordinances--Required provisions.
- The local ordinance by which impact fees are imposed:
 - (1) Shall include a schedule of impact fees which shall be adopted for each type of development activity that is subject to impact fees, specifying the amount of the impact fee to be imposed for each type of system improvement. The schedule shall be based upon a formula or other method of calculating such impact fees. In determining proportionate share, the formula or other method of calculating impact fees shall incorporate, among other things, the following:
 - (a) The cost of public facilities necessitated by new development;
 - (b) An adjustment to the cost of the public facilities for past or future payments made or reasonably anticipated to be made by new development to pay for particular system improvements in the form of user fees, debt service payments, taxes, or other payments earmarked for or proratable to the particular system improvement;
 - (c) The availability of other means of funding public facility improvements;
 - (d) The cost of existing public facilities improvements; and
 - (e) The methods by which public facilities improvements were financed;
 - (2) May provide an exemption for low-income housing, and other development activities with broad public purposes, from these impact fees, provided that the impact fees for such development activity shall be paid from public funds other than impact fee accounts;
 - (3) Shall provide a credit for the value of any dedication of land for, improvement to, or new construction of any system improvements provided by the developer, to facilities that are identified in the capital facilities plan and that are required by the county, city, or town as a condition of approving the development activity;
 - (4) Shall allow the county, city, or town imposing the impact fees to adjust the standard impact fee at the time the fee is imposed to consider unusual circumstances in specific cases to ensure that impact fees are imposed fairly;
 - (5) Shall include a provision for calculating the amount of the fee to be imposed on a particular development that permits consideration of studies and data submitted by the developer to adjust the amount of the fee;
 - (6) Shall establish one or more reasonable service areas within which it shall calculate and impose impact fees for various land use categories per unit of development;
 - (7) May provide for the imposition of an impact fee for system improvement costs previously incurred by a county, city, or town to the extent that new growth and development will be served by the previously constructed improvements provided such fee shall not be imposed to make up for any system improvement deficiencies.

[1990 1st ex.s. c 17 § 44.]

Notes:

Severability--Part, section headings not law--1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

¹⁸ Exhibit 5.3A, 5.3B

1 The ordinance applied according to SEPA can be utilized to impose fees only
2 for impacts that are direct, specifically related to the Projects, and
3 significant.³⁹ SEPA is supplementary, to existing laws.

4 Any amendment must comply with the act and the regulations must be consistent
5 with and implement the comprehensive plan, and they are subject to continuous
6 review and evaluation.⁴⁰ City ignores the relevant sections of the CPP. The
7 public has an essential and critical role in carrying out the provisions of

8
9 ³⁹ RCW 43.21C.060 Chapter supplementary--Conditioning or denial of governmental
10 action.
11 The policies and goals set forth in this chapter are supplementary to those set forth
12 in existing authorizations of all branches of government of this state, including
13 state agencies, municipal and public corporations, and counties. Any governmental
14 action may be conditioned or denied pursuant to this chapter: PROVIDED, That such
15 conditions or denials shall be based upon policies identified by the appropriate
16 governmental authority and incorporated into regulations, plans, or codes which are
17 formally designated by the agency (or appropriate legislative body, in the case of
18 local government) as possible bases for the exercise of authority pursuant to this
19 chapter. Such designation shall occur at the time specified by RCW 43.21C.120. Such
20 action may be conditioned only to mitigate specific adverse environmental impacts
21 which are identified in the environmental documents prepared under this chapter. These
22 conditions shall be stated in writing by the decisionmaker. Mitigation measures shall
23 be reasonable and capable of being accomplished. In order to deny a proposal under
24 this chapter, an agency must find that: (1) The proposal would result in significant
25 adverse impacts identified in a final or supplemental environmental impact statement
prepared under this chapter; and (2) reasonable mitigation measures are insufficient
to mitigate the identified impact. Except for permits and variances issued pursuant to
chapter 90.58 RCW, when such a governmental action, not requiring a legislative
decision, is conditioned or denied by a nonelected official of a local governmental
agency, the decision shall be appealable to the legislative authority of the acting
local governmental agency unless that legislative authority formally eliminates such
appeals. Such appeals shall be in accordance with procedures established for such
appeals by the legislative authority of the acting local governmental agency.
[1983 c 117 § 3; 1977 ex.s. c 278 § 2; 1971 ex.s. c 109 § 6.]

20 RCW 43.21C.065 Impact fees and fees for system improvements.
21 A person required to pay an impact fee for system improvements pursuant to RCW
22 82.02.050 through 82.02.090 shall not be required to pay a fee pursuant to RCW
43.21C.060 for those same system improvements.

23 ⁴⁰ RCW 36.70A.130 Comprehensive plans--Review--Amendments.
24 (1)(a) Each comprehensive land use plan and development regulations shall be subject
25 to continuing review and evaluation by the county or city that adopted them.
(b) Any amendment of or revision to a comprehensive land use plan shall conform to
this chapter. Any amendment of or revision to development regulations shall be
consistent with and implement the comprehensive plan.

No projects
to which to
apply fees

1 the GMA; Petitioner is considered the "Public" for purposes of this process."
2
3 There is no doubt that they must include the Best Available Science into the
4 record, and that includes scientific and empirical bases for not implementing
5 the Best recommendation and what effect the plans might have upon the
6 environment if the recommendations contained within their statements are not
7 implemented."⁴²
8 Further scientific evidence and advice is needed. The Puget Sound Plan
9 articulated and identified in King County Framework uses the word "shall" as
10 outlined further in the following pages of this response, and the City must
11 implement those development regulations that are an essential part of that
12 plan and also, as will be explained later, an important part of their own
13 Policy."⁴³

14
15 ⁴¹ RCW 36.70A.140 Comprehensive plans--Ensure public participation.
16 Each county and city that is required or chooses to plan under RCW 36.70A.040 shall
17 establish and broadly disseminate to the public a public participation program
18 identifying procedures providing for early and continuous public participation in the
19 development and amendment of comprehensive land use plans and development regulations
20 implementing such plans.

21 ⁴² RCW 36.70A.172 Critical areas-Designation and protection--Best available science
22 to be used.
23 (1) In designating and protecting critical areas under this chapter, counties and
24 cities shall include the best available science in developing policies and development
25 regulations to protect the functions and values of critical areas. In addition,
26 counties and cities shall give special consideration to conservation or protection
27 measures necessary to preserve or enhance anadromous fisheries.
28 (2) If it determines that advice from scientific or other experts is necessary or will
29 be of substantial assistance in reaching its decision, a growth management hearings
30 board may retain scientific or other expert advice to assist in reviewing a petition
31 under RCW 36.70A.290 that involves critical areas.

32 ⁴³ RCW 36.70A.210 County-wide planning policies.
33 (1) The legislature recognizes that counties are regional governments within their
34 boundaries, and cities are primary providers of urban governmental services within
35 urban growth areas. For the purposes of this section, a "county-wide planning policy"
36 is a written policy statement or statements used solely for establishing a county-wide

*No proof
Public not
involved*

*Not in record
Not cited*

1 It seems as though it should be clear to all concerned that the CWA
2 serves as the most useful provision to construe and effectuate the terms of
3 SEPA and the GMA.⁴⁴ Consistency with the CPP is a must.
4 The Countywide Planning Policy is very clear and unambiguous when it comes to
5 Water Quality.⁴⁵ And also when it comes to protecting the very valuable
6 resource of Salmon and water quality.⁴⁶ Those resources are very necessary for

7
8 framework from which county and city comprehensive plans are developed and adopted
9 pursuant to this chapter. This framework shall ensure that city and county
comprehensive plans are consistent as required in RCW 36.70A.100.

10 ⁴⁴ RCW 90.48.010 Policy enunciated.
11 It is declared to be the public policy of the state of Washington to maintain the
12 highest possible standards to insure the purity of all waters of the state consistent
13 with public health and public enjoyment thereof, the propagation and protection of
14 wild life, birds, game, fish and other aquatic life, and the industrial development of
15 the state, and to that end require the use of all known available and reasonable
16 methods by industries and others to prevent and control the pollution of the waters of
17 the state of Washington. Consistent with this policy, the state of Washington will
18 exercise its powers, as fully and as effectively as possible, to retain and secure
high quality for all waters of the state. The state of Washington in recognition of
the federal government's interest in the quality of the navigable waters of the United
States, of which certain portions thereof are within the jurisdictional limits of this
state, proclaims a public policy of working cooperatively with the federal government
in a joint effort to extinguish the sources of water quality degradation, while at the
same time preserving and vigorously exercising state powers to insure that present and
future standards of water quality within the state shall be determined by the
citizenry, through and by the efforts of state government, of the state of Washington.

19 ⁴⁵ G. Air and Water Quality (CPP)
CA-15 All jurisdictions shall implement the Puget Sound Water Quality Management Plan
to restore and protect the biological health and diversity of the Puget Sound Basin.

20
21 ⁴⁶ CA-9 Natural drainage systems including associated riparian and shoreline habitat
shall be maintained and enhanced to protect water quality, reduce public costs,
22 protect fish and wildlife habitat, and prevent environmental degradation.
Jurisdictions within shared basins shall coordinate regulations to manage basins and
23 natural drainage systems which include provisions
to:
24 a. Protect the natural hydraulic and ecological functions of drainage systems,
maintain and enhance fish and wildlife habitat, and restore and maintain those natural
25 functions;
b. Control peak runoff rate and quantity of discharges from new development to
approximate pre-development rates; and
c. Preserve and protect resources and beneficial functions and values through
maintenance of stable channels, adequate low flows, and reduction of future storm
flows, erosion, and sedimentation.

*No Jones of
Clean Water
Act*

New issues

1 quality of life and economic development.⁴⁷ All of these matters are very much
2 subject to board review.⁴⁸

3 And an order should ensue accordingly.⁴⁹

4
5
6 ⁴⁷ 2. Environment (CPP)

ED-10 Jurisdictions shall adopt economic development and other policies which will
7 recognize and help protect the environment as a key economic value in the region.
Local policies shall seek to achieve an appropriate balance between the needs for
8 economic growth and the need for protecting the environment. Local governments are
encouraged to look for ways to work cooperatively with businesses to help them comply
9 with environmental regulations and to develop policies that result in environmental
protection through regulatory processes that are understandable and efficient.

10 ⁴⁸ RCW 36.70A.280 Matters subject to board review.

(1) A growth management hearings board shall hear and determine only those petitions
11 alleging either:

(a) That a state agency, county, or city planning under this chapter is not in
12 compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to
the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW
13 as it relates to plans, development regulations, or amendments, adopted under RCW
16.70A.040 or chapter 90.58 RCW;

14
15 ⁴⁹ RCW 36.70A.300 Final orders.

(1) The board shall issue a final order that shall be based exclusively on whether or
16 not a state agency, county, or city is in compliance with the requirements of this
chapter, chapter 90.58 RCW as it relates to adoption or amendment of shoreline master
17 programs, or chapter 43.21C RCW as it relates to adoption of plans, development
regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW.

(2)(a) Except as provided in (b) of this subsection, the final order shall be issued
18 within one hundred eighty days of receipt of the petition for review, or, if multiple
19 petitions are filed, within one hundred eighty days of receipt of the last petition
that is consolidated.

(b) The board may extend the period of time for issuing a decision to enable the
20 parties to settle the dispute if additional time is necessary to achieve a settlement,
and (i) an extension is requested by all parties, or (ii) an extension is requested by
21 the petitioner and respondent and the board determines that a negotiated settlement
between the remaining parties could resolve significant issues in dispute. The request
22 must be filed with the board not later than seven days before the date scheduled for
the hearing on the merits of the petition. The board may authorize one or more
23 extensions for up to ninety days each, subject to the requirements of this
24 section.

(3) In the final order, the board shall either:

25 (a) Find that the state agency, county, or city is in compliance with the
requirements of this chapter, chapter 90.58 RCW as it relates to the adoption
or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to

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19 adoption of plans, development regulations, and amendments thereto, under RCW
20 36.70A.040 or chapter 90.58 RCW; or
21 (b) Find that the state agency, county, or city is not in compliance with the
22 requirements of this chapter, chapter 90.58 RCW as it relates to the adoption or
23 amendment of shoreline master programs, or chapter 43.21C RCW as it relates to
24 adoption of plans, development regulations, and amendments thereto, under RCW
25 36.70A.040 or chapter 90.58 RCW, in which case the board shall remand the matter to
the affected state agency, county, or city. The board shall specify a reasonable time
not in excess of one hundred eighty days, or such longer period as determined by the
board in cases of unusual scope or complexity, within which the state agency, county,
or city shall comply with the requirements of this chapter. The board may require
periodic reports to the board on the progress the jurisdiction is making towards
compliance.

1 V. UNDISPUTED AND UNCONTROVERTED FACTS

2 5.1 All of the factual allegations contained the Petition for Review are true
3 and undisputed, and Respondent and Intervener were unable to convert any of
4 those facts. They did not respond to the Petition for Review.

5 5.2 All of the factual material in the FEIS letter number thirteen is
6 true and correct. They were undisputed and incontrovertible.

7 5.3 Proponent Intervener, Hearing Examiner, and City Respondent cite Judicial
8 interpretations of Law freely, but ignore Judicial interpretations concerning
9 spot zoning and adequately presenting decision makers with a disclosure of
10 the probable significant and adverse social, economic, and other
11 consequences (among others). No citations of Law or argument concerning
12 those, and other issues was included into the record, even after Petitioner
13 timely raised those issues. Hearing Examiner ordered exclusion of
14 supplementary discussion of social and economic consequences in violation of
15 law.⁵⁰

16
17 ⁵⁰ See, BARRIE v. KITSAP COUNTY, 84 Wn.2d 579, 527 P.2d 1377 (1974). The decision
18 clearly states, "An environmental impact statement for a proposed action must include
19 a discussion of those social and economic consequences which are neither remote nor
20 speculative". (emphasis supplied) And further in the discussion, reviewing,
21 "RCW 43.21C.030(2)(c)(i) and (ii) require that an EIS disclose both the environmental
22 impact and any unavoidable adverse environmental effects of the proposed action. SEPA
23 declares that the state's intended policy is to "fulfill the SOCIAL, ECONOMIC, and
24 other requirements" of present and future generations of Washington Citizens, stating
25 further,
RCW 43.21C.020(1)(c). with approval; See also notes, THE REQUIREMENT FOR AN IMPACT
STATEMENT: A SUGGESTED FRAMEWORK FOR ANALYSIS, 49 Wash. L. Rev. 939, 957 (1974) cited,
(Social and Economic impacts fall within EIS requirement)
citing, E.G., ROCHESTER v. UNITED STATES POSTAL SERV., 541 F.2d 967 (2d Cir. 1976)
(placing postal service center outside urban core caused increased commuting, loss of
inner-city jobs and moving to suburbs, leading to economic
and physical downtown deterioration, downturn, and downtown abandonment, all factors
contributing to urban decay, city degradation, loss of environmental quality, and
blight).
Federal guidelines for EIS preparation state clearly that secondary or indirect
consequences, including changed patterns of social and economic activities,
"should be included". That is also exactly the same type of
disclosure that is required here. Citing, 40 C.F.R. 1500.8(a)(3)(ii).

1 That was arbitrary and capricious and clearly erroneous. All of the facts
2 presented with the motion and brief before the City Hearing Examiner were
3 also true and uncontroverted.¹¹

4
5 5.4 The City has now changed the economic development element in such a

6
7 Thus WAC 197-11 and those similar counterproductive assertions and counterparts cited
8 are misconstrued or inconsistent with SEPA policies, citing, RCW 43.21C.020(1)(c).
9 "Because their rules conflict with SEPA policy they are invalid".

10 Cite, SMITH v. GREENE, 86 Wn.2d 363, 371, 545 P.2d 550 (1976). MEYERHAUSER CO. v.
11 DEPARTMENT OF ECOLOGY, 86 Wn.2d 310, 314, 545 P.2d 5 (1976) 93 Wn.2d 843

12 Next, Proponent evidently argues that the EIS was not required to address social and
13 economic impacts, and it evidently claims that questions as to the scope of the EIS
14 are not appealable under WAC 197-11-680(3)(a)(ii).

15 As in KIEWIT CONSTR. GROUP v. CLARK COUNTY Aug. 1996 83 Wn. App. 133, 920 P.2d 1207
16 where the court stated, "This argument is without merit".

17 First, the scoping notice states that the EIS will discuss, among other topics,
18 "employment, land use patterns, transportation, and compliance with SEPA and CMA.
19 Those commitments encompass the social and economic effect upon the city. Secondly,
20 that WAC applies to appeals within an administrative agency. I am requesting that
21 specific incorporation under WAC 197-11-680 (3),

22 Third, If it were otherwise, our agency officials could preclude review of an EIS
23 merely by limiting its scope, and that is also blatantly contrary to the
24 provisions of SEPA. That is exactly what has occurred here. WAC 197-11-680(3)(b)
25 provides that a supplemental EIS is required if there are either: "[1] Substantial
changes to a proposal so that the proposal is likely to have significant adverse
environmental impacts; which is also applicable here, or, [2] New information
indicating a proposal's probable significant adverse environmental impacts is
required. "(This includes discovery of misrepresentation or lack of factual material
disclosure.)"

See, Citizens for Clean Air v. City of Spokane, 114 Wn.2d 20, 34, 785 P.2d 447 (1990);
West 51s, Inc. v. Spokane County, 53 Wn. App. 838, 845, 770 P.2d 1065, review denied,
113 Wn.2d 1005 (1989).

By focusing exclusively on the impacts of the proponent the EIS overlooks the real
possibility of lost capacity, productivity, and output, income and tax base.

See, An EIS "should disclose the history of success and failure of similar projects"

in re: SIERRA CLUB v. MORTON, 510 F.2d 813, 824 (5th Cir. 1975), quoting NATURAL
RESOURCES DEFENSE COUNCIL, INC. v. GRANT, 355 F. Supp. 280, 288 (E.D.N.C. 1973).

While stating, "Because we might disagree on the possible effects, the statement
should set forth the responsible opposing views rather than ignoring the potential
dabilitating impact". Citing, CITIZENS AGAINST TOXIC SPRAYS, INC. v. BERGLAND, 428 F.
Supp. 908, 922 (D. Ore. 1977); COMMITTEE FOR NUCLEAR RESPONSIBILITY, INC. v. SEABORG,
463 F.2d 781, 787 (D.C. Cir.), INJUNCTION DENIED, 404 U.S. 917, 30 L. Ed. 2d 191, 92
S. Ct. 242 (1971).

¹¹ Exhibit number 3

1 manner so as to be inconsistent with the Countywide Planning Policy, as well
2 as the GMA and SEPA. If they follow proper procedure and encourage
3 manufacturing and industry on the site according to such plans, the land use
4 element would become inconsistent with applicable laws. They now purport to
5 discourage industrial and manufacturing activity on site.

6 5.5 City ordinance commits to implementing impact fee ordinance in accordance
7 with the GMA, but this present amendment again refuses to implement those
8 requirements. It is contrary to policies of the State of Washington.⁵²

9 5.6 City representative agreed to carry out the Countywide Planning Policies
10 and participated in those processes.⁵³

11 5.7 City representative is now Mayor, and knows that all agreed to carry out
12 Puget sound plan to protect water quality. City of Renton policy to protect
13 Salmonid species stated its policy to carry out that plan.⁵⁴

14
15 ⁵² WAC 365-195-705 Basic assumptions.

16 (1) Where the legislature has spoken expressly on the relationship of the act to other
17 statutory provisions, the explicit legislative directions shall be carried out.

18 Examples of such express provisions are set forth in WAC 365-195-750.

19 (2) Absent a clear statement of legislative intent or judicial interpretation to the
20 contrary, it should be presumed that neither the act nor other statutes are intended
21 to be preemptive. Rather they should be considered together and, wherever possible,
22 construed as mutually consistent.

23 ⁵³ GROWTH MANAGEMENT PLANNING COUNCIL MEMBERS*

24 Metropolitan King County:

25 Ron Sims, King County Executive, Chair

Jane Hague, Councilmember

David Irons, Councilmember (alternate)

Kathy Lambert, Councilmember (alternate)

Julia Patterson, Councilmember

Larry Phillips, Councilmember

Cynthia Sullivan, Councilmember

Pete von Reichbauer, Councilmember

Other Cities and Towns in King County

Kathy Keolker-Wheeler, Councilmember, City of Renton

25 ⁵⁴ See page 42 Exhibit 5.7 § 7.26 Storm water

1 There is no reason in the record not to implement the Plan. City policies say
2 they will implement regulations but they now will not. That is not
3 speculative, because it is exactly what has occurred.

4 5.8 In order for the Best Available Science requirement to be implemented,
5 the scientific reasons for not implementing the CPP and the Policy for the
6 protection of Salmonid species must be included in the record. It has not
7 been. They recommended the measures but did not implement them.

8 5.9 Petitioner repeatedly requested a reason that the Ecology Manual and best
9 management practices should not be used, but no reason was ever supplied and
10 as a matter of fact, the experts admitted specifically that there was no
11 reason. That is inconsistent with the CPP and SEPA.

12 5.10 The Proponent Intervener, and City respondent could not convert the
13 facts (letter 13 section 21 FEIS) that an unjustifiable extension of
14 privilege would be furthered by the options and alternatives in question."
15

16
17 " FEIS specifically outlines the facts and states: "It is not at all total and
18 absolute logic, it is our experiences. The felt necessities of the public,
19 ethical and moral demands of social and economic institutions, and even the
20 prejudices that we might share, that should have a good deal more to do with it
21 when we adapt to the changing time in our history.

22 The changes that we adopt, should embody the story of our successful and
23 prosperous development through time, and we can not deal with it as though it
24 contains only a one sided or partial or subjective conclusion.

25 We should in the alternate consult our existing zoning and our best science, and
while persevering to combine the two into the public use and interest at every
turn. The substance of this should be what we understand to be convenient, but
the extent that we are able to achieve our goals and objectives depend very much
upon our observance and construction of public policy.

Considering the broad frame of reference and the broad impact of the proposal
upon the City along with its complex code implications, we cannot allow
redevelopment to occur within the context of such a broad range of uses. I
believe that any one citizen standing alone, would also like to be allowed to
develop their land with such broad terms, while enjoying a broad and
discretionary freedom.

It is for these reasons that I must contend that the proponents is not unlike
other properties, in our City and region and under identical circumstances. This
is the very essence of this letter, and I believe that the adopted standards
should apply because the nature of the proposal indicates only that an

*Unresponded
allegation*

1 5.11 City plans and regulations have no procedure for mitigation of
2 cumulative impacts.

3 5.12 City Impact fee development regulations violate Washington Law.
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24 unjustifiable extension of privilege would be furthered by the options and
25 alternatives in question".

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Petitioner Response brief - 32

Brad Nicholson
230C N.E. 28th St.
Renton, Wa. 98056

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2 VI. AUTHORITY AND ARGUMENT

3 To begin with, the Board has jurisdiction that is specifically intended to be
4 enforced through the GMA and SEPA. RCW 36.70A.280. Intervener misapplies
5 *Wenatchee Sportmen Ass'n v. Chelan County* issues⁵⁶. That case was with regard
6 to the fact that development regulations are not the equivalent of
7 comprehensive planning.⁵⁷ Counsel tries to confuse the issues, or doesn't
8 understand them. We should instead be trying to decide whether the
9 comprehensive planning and development regulations comply with applicable
10 laws, are consistent, and follow the collaborative and substantive processes
11 of GMA and 43.21C (SEPA).⁵⁸
12 We should be very much thinking first whether the EIS is adequate and about
13 how to construe the Laws and apply them to the facts of record utilizing the
14 principles of statutory construction.⁵⁹

15 ⁵⁶ ISSUES as stated in *Wenatchee Sportsmen*:

- 16 (1) Does a party's failure to timely appeal a county's approval of a site-specific
17 rezone bar it from challenging the validity of the rezone in a later LUPA challenge
18 to county approval of a plat application to develop the property?
19 (2) Was Chelan County's decision to issue an MDNS for the Highlands project instead
20 of requiring that an environmental impact statement be prepared clearly erroneous?

21 ⁵⁷ *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169.

22 ⁵⁸ RCW 43.21C.030 Guidelines for state agencies, local governments--Statements--
23 Reports--Advice--Information.

24 The legislature authorizes and directs that, to the fullest extent possible: (1) The
25 policies, regulations, and laws of the state of Washington shall be interpreted and
administered in accordance with the policies set forth in this chapter, and (2) all
branches of government of this state, including state agencies, municipal and public
corporations, and counties shall:

- (a) Utilize a systematic, interdisciplinary approach which will insure the
integrated use of the natural and social sciences and the environmental design arts
in planning and in decision making which may have an impact on man's environment.

⁵⁹ "In placing a construction upon a legislative enactment, the entire sequence of all
statutes relating to the same subject matter should be considered". . . *Brewster
Public Schools v. PUD No. 1*, 82 Wn.2d 839, 843, 514 P.2d 913 (1973), citing *Amburn v.*

1 Those statutes construed to the end that All of their actions should be for
2 the purpose of the Health, Safety, General Wel'are and Morals of the public.
3 36.70 RCW.⁴⁰ And that means proper and legal construction.⁴¹ They did not even
4 address my issues in the impact statement or the record, or answer the PPR or
5 signal any fact with regard to the interest of citizens.⁴² They performed the
6 amendment and rezone for their other unilateral purposes.⁴³ The decision
7 permits City of Renton to flout the Growth Management Act (GMA) by allowing
8 urban center development in a heavy industrial zone, it permits them to
9 thwart and circumvent the City and Countywide planning policy regarding
10 economic development, storm water and the environment.

*Old facts
conclusionary w/o
citation*

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15 Daly, 81 Wn.2d 241, 245-46, 501 P.2d 178 (1972). "Legislative intent, will, or
16 purpose, is to be ascertained from the statutory text as a whole, interpreted in
17 terms of the general object and purpose of the act." Brewster, 82 Wn.2d at 843.

18 ⁴⁰ "Statutes are construed to effectuate their purposes, while rendering no
19 provisions superfluous or absurd" Honesty in Environmental Analysis and Legislation,
20 et al. Respondants, v. Central Puget Sound Growth Management Hearings Board,
21 defendant, The City of Seattle, appellant, 96 Wn. App. 522 (No. 40939-5-1, Division
22 One, June 21, 1999.)

23 ⁴¹ Statutory construction is a question of law reviewed de novo under the error of law
24 standard. See Waste Management of Seattle, Inc. v. Utilities & Transp. Comm'n, 123
25 Wn.2d 621, 627, 869 P.2d 1034 (1994)

⁴² Under the substantial evidence standard, there must be a sufficient quantum of
evidence in the record to persuade a reasonable person that the declared premise is
true. Wilson, 87 Wn. App. at 200-01 (citing Penick v. Employment Sec. Dep't, 82 Wn.
App. 30, 37, 917 P.2d 136, review denied, 103 Wn.2d 1004, 925 P.2d 989 (1996)).

⁴³ Response 1 and others of EIS letter number 13

1 Rather than interpreting the law in a way that upholds the goals of the GMA
2 and the intent of the Legislature, the City and proponent find yet another
3 way to allow what the GMA was enacted to prevent in the first place-
4 excluding the public, loss of environmental quality and jobs, degradation,
5 and loss of social and economic environmental quality.⁴⁴

6 This action would eliminate supplies of industrial land that has always been
7 needed in order to create much needed jobs. (some rely on salmon)⁴⁵

8 Article 11, § 11, does not apply only to certain instances, it is the
9 supreme law for all Washingtonians.⁴⁶ The basic source of authority for the
10 adoption of a zoning code by either a county or a city or town (in order to
11 regulate land uses within its territory) is Article XI, § 11 of our state
12 Constitution which provides that:

13 "Any county, city, town or township may make and enforce within its limits
14 all such local police, sanitary and other regulations as are not in conflict
15 with general laws." That must mean consistency with State laws as well.

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22 ⁴⁴ see, Association of Rural Residents v. Kitsap County, 141 Wn.2d 185, 4 P.3d 115
(2000); Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County, 135 Wn.2d 542, 958
P.2d 962 (1998).

23 ⁴⁵ Because development regulations must be consistent with the comprehensive plan, they
24 cannot decrease the land supply available for implementing the comprehensive plan. RCW
16.70A.040(3) [Children's I, 5321, 5/17/95 Order, p. 6]

25 ⁴⁶ JOHN WEEDEN II, ET AL., Respondents, v. SAN JUAN COUNTY, ET AL., Appellants 135 Wn.2d
678, [No. 64776-3. En Banc.] (1998)

1 "The broad scope of the Const. art. XI, § 11 police power encompasses all
2 measures local in nature that bear a reasonable and substantial relation to
3 promoting the public health, safety, and welfare and that do not conflict
4 with the general laws".⁶⁷ And I wish to reassert that the briefing that is
5 written into this action was also before the City Hearing Examiner.⁶⁸
6 They are not even consistent with the Countywide Planning Policy⁶⁹
7 Again the well known and applicable law for rezoning requiring a
8 demonstration that circumstances have substantially changed and that the
9 proposal serves public interest requirements is not satisfied⁷⁰ It is clear
10 also that spot zoning is thought of as zoning that does not implement the
11 comprehensive plan, they believe that they may rezone the properties because
12 they were told to do so by the previous Mayor, and will plan for Capital
13 facilities and water quality later⁷¹

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16 ⁶⁷ JOHN WEDEN II, ET AL., Respondents, v. SAN JUAN COUNTY, ET AL., Appellants 135 Wn.2d
17 678, [No. 64776-3. En Banc.] (1998)

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18 ⁶⁸ Exhibit number 3

19 ⁶⁹ The CPP "framework" of .210(1) is to ensure the consistency (required by .100) of
20 the comprehensive plans of cities and counties that have common borders or related
21 regional issues. [Snoqualmie, 2304c, FDO, p. 8]

21 The City must adhere to the plan amendment process set forth in the CPPs.
22 Citing King County v. Friends of the Law, Wash. App. (1998). [Fircrest, #302, 3/27/98

22 Order, p. 4] also, in RE: the consolidated WHIP II and Moyer proceeding CPSQMB FDO.

23 ⁷⁰ "A jurisdiction which creates overlap or conflict with a CPP should not benefit from
24 its disregard of the law". Cite, CPSQMB case,
24 [Newcastle v. Renton, 7326, FDO, p. 10]

25

⁷¹ Exhibit 5.2

1 Counsel exacerbates already complicated issues and assists and thwarts or
2 circumvents comprehensive environmental regulations.⁷²

3 Judicial interpretations of Law are also rendered useless in the face of the
4 policy set forth in 43.21C provisions outlining the responsibilities for all
5 agencies of the State to use all practicable means consistent with essential
6 considerations of State policy to fulfill the responsibilities of each
7 generation as trustee of the environment for succeeding generations.⁷³

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10 ⁷² "A jurisdiction which creates overlap or conflict with a CPP should not benefit from
its disregard of the law". Cite, CPSGMB case, Newcastle v. Renton, 7326, FDO, p. 10]

11 ⁷³ J. T. CHROBUCK et al., Respondents, v.
12 SNOWMOUNT COUNTY et al., Appellants 78 Wn.2d 850, [No. 41145. En Banc. Supreme Court.
13 Stating, "The initial imposition of zoning regulation compels the highest degree of
public trust upon the governmental processes bringing about such an action".
14 Parkridge, et al, Respondents, v. The City of Seattle, et al, Appellants. 89 Wn.2d
15 454, 573 P.2d 359 "A rezoning action taken without the support of credible evidence is
arbitrary and capricious". "The necessary relationship to the public interest will not
16 be presumed in a rezoning". "In considering the evidence, the court noted that (1)
there is no presumption of validity favoring the action of rezoning; (2) the
17 proponents of the rezone have the burden of proof in demonstrating that conditions
have substantially changed since the original zoning; and (3) the rezone must bear
18 a substantial relationship to the public health, safety, morals and welfare".
SCHOFIELD v. SPOKANE COUNTY 96 Wn. App. 581 (1999) saying, [4] We are guided by
19 general principles. (1) No presumption of validity favoring rezoning exists. (2)
Rezoning proponents have the burden of proving that conditions have
20 changed since the original zoning. (3) A rezoning must bear a substantial relationship
to the public health, safety, morals, or welfare.
21 Citing, Citizens for Mount Vernon v. City of Mount Vernon, 133 Wn.2d 861, 874-75, 947
P.2d 1208 (1997) citing Lutz, 83 Wn.2d at 573-74.
22 "Spot zoning is a zoning action by which a smaller area is singled out of a larger
area or district and specially zoned for a use classification totally different from,
and inconsistent with, the classification of surrounding land and not in accordance
with the comprehensive plan". Lutz, 83 Wn.2d at 573-74
(citing Smith v. Skagit County, 75 Wn.2d 715, 743, 453 P.2d 832 (1969)). Pierce v.
23 King County, 62 Wn.2d 324, 382 P.2d 628 (1963); and State ex rel. Miller v. Cain, 40
Wn.2d 216, 242 P.2d 505; Save a Neighborhood Environment v. City of Seattle, 101 Wn.2d
24 280, 286, 676 P.2d 1006 (1984). cited with approval, Professor Richard L. Settle. He
wrote in WASHINGTON LAND USE AND ENVIRONMENTAL LAW AND PRACTICE, "The vice of "spot
25 zoning" is not the differential regulation of adjacent land but the lack of public
interest justification for such discrimination. In considering the validity of this
amendment the court first asked of itself the following questions:
"Do we have here a spot zoning?"

1 That is blatantly in disregard of the GMA¹⁴ But is perfectly acceptable, and
2 are all of the evidence exhibits.¹⁵

3
4 "Is it spot zoning of such a character as to be deemed an arbitrary and capricious
act?"
5 Then, in order to set the stage for its answers to these questions with primary
emphasis upon the second one that court quoted at length from several text writers
6 definitions of this term, and while saying:
7 "The concept of spot zoning as an evil in the field of municipal growth is well
recognized by nearly all authorities"
8 "and it is the very antithesis of planned zoning". Citing, 101 C.J.S., Zoning § 34.
The court also said, "A well supported statement is also found in 2 Metzenbaum, Law of
9 Zoning. Further "Spot zoning" is thought of as zoning not in accordance with a
comprehensive plan, but for mere private gain to favor or benefit a particular
10 individual or group of individuals and not the welfare
of the community as a whole, and thus in effect granting by amendment, a special
11 exception from general regulations. "Spot zoning" of this nature has been found
unauthorized, discriminatory, and invalid. Again, Rhyne, Municipal Law, chapter 32, p.
12 810, 825." Smith v. Skagit County, 75 Wn.2d 715, 453 P.2d 832 (1969)
The evil sought to be remedied is not only actual bias, improper influence, or
13 favoritism, but also the curbing of conditions which tend to create suspicion and
misinterpretation, and cast a pall of partiality, impropriety, conflict of interest or
prejudgment over the proceedings". see, J. T. Chrobuck et al., Respondents, v.
Snohomish County et al., Appellants, 75 Wn.2d 850.

14
15 "The mandatory and optional elements of a comprehensive plan must be consistent; the
policies within the various Plan elements must work together, in harmony, and must not
16 thwart each other. Although the Plan identifies and designates future land uses, the
Plan itself does not directly regulate land use. However, the Plan is required to be
17 implemented. The Plan is implemented through various methods, such as development
regulations (e.g. zoning maps and code and other land development controls), and other
18 implementing techniques, such as fiscal measures contained in a jurisdiction's capital
expenditure program for infrastructure or road improvements or land acquisitions.
19 Within many Plan elements an inventory and assessment of present conditions and needs
must be discussed and identified. The ways to meet the identified needs must then be
20 expressed in the form of map designations and policy statements. These policy
statements and goals establish the jurisdiction's strategy and specific actions to be
taken to meet the identified needs. The Plan describes, graphically and in policy
21 statements, a desired future outcome for a planning city or county. The Plan also
establishes, through map designations and policy statements, the basis and direction
22 to achieve that desired future outcome. The Plan's future land use map designations
indicate where certain land uses outcomes are desired, the Plan's policy statements,
23 objectives and goals indicate how those outcomes are to be achieved. [LH1 I. 0317,
2/21/02 Order, at 5-6.]

24 ¹⁵ WAC 242-02-650 does not require the strict application of the Washington
25 Rules of Evidence in hearings before the Board. [Northgate, 3309, 11/6/93
Order, p. 8]

They are required to implement the Puget Sound Plan, it is also their own
2 policy⁷⁶ How can they develop a capital facilities element later?⁷⁷

3 Mr. Warren and Mr. Shuler and the City staff, and for that matter anyone
4 concerned should know that even if the rezone is valid (but it is not) a new
5 capital facilities amendment for high intensity urban development is
6 necessary⁷⁸

7 That is very obvious.⁷⁹ How can any one aid the applicant to achieve that
8 which would have been void, had they collaborated and utilized the procedures
9 of the GMA and SEPA?⁸⁰ They want to adopt a capital facilities later, but no
10 requirement to reassess the land use element if projected funding falls
11 short of meeting needs is present.

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13 ⁷⁶ Exhibit 5.7

14 ⁷⁷ Any development regulations that attempt to implement such a fully
15 non-complying comprehensive plan cannot stand as a matter of law during
16 the period that the plan fails to comply with the Act. Regulations that
17 attempt to implement and be consistent with fatally flawed comprehensive plan
18 are in turn poisoned by the plan's defects. [Bremerton, 5339c, FDO, p. 82]

19 ⁷⁸ The lack of a fully completed capital facilities plan is more than a conceptual
20 shortcoming - it is a fatal legal defect in a comprehensive plan. It alone is
21 sufficient cause for the Board to find that the land use element and every other
22 component of a plan violates the requirements of the Act. [Bremerton, 5339c, FDO, p.
23 77]

24 ⁷⁹ All of the mandatory requirements of a comprehensive plan must be fully complete at
25 the time of plan adoption. (Citations omitted) A comprehensive plan's capital facility
26 element is inextricably linked to the land use element. The two must be consistent.
27 The linkage between the two elements is what makes planning under the GMA truly
28 comprehensive (i.e., complete, inclusive, connected) as compared to pre-GMA planning.
29 [Bremerton, 5339c, FDO, p. 77]

30 ⁸⁰ Any development regulations that attempt to implement such a fully
31 noncomplying comprehensive plan cannot stand as a matter of law during
32 the period that the plan fails to comply with the Act. Regulations that
33 attempt to implement and be consistent with a fatally flawed comprehensive
34 plan are in turn poisoned by the plan's defects. [Bremerton, 5339c, FDO, p.

1 Social and Economic values have been unlawfully ignored.⁸¹ Our water quality
2 and Salmon resource is very valuable economically, and the findings and
3 argument with regard to water quality improvement are clearly erroneous to a
4 great degree, asphalt paving and vehicles are a major cause of environmental
5 and aquatic degradation; that is the original and uncontroverted fact
6 applicable to this case.⁸² That plan and regulations they have is going to
7 kill and harm Salmon.

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11 ⁸¹ "It is clear that the legislature intended that environmental values be
12 given full consideration in government decision making, and it implemented
13 this policy through the procedural provisions of SEPA which specify the
14 nature and extent of the information that must be provided, and which require
15 its consideration, before a decision is made. See Loveless v. Yantis, supra at 764;
16 Eastlake Community Council v. Roanoke Associates, Inc., supra at 487, 490; Stempel
17 v. Department of Water Resources, supra at 117-18; Juanita Bay Valley Community
18 Ass'n v. Kirkland, supra at 63-65. Generally, the procedural requirements of SEPA,
19 which are merely designed to provide full environmental information, should be
20 invoked whenever more than a moderate effect on the quality of the environment is a
21 reasonable probability.
22 See City of Davis v. Coleman, 521 F.2d 661, 673-74 & n.16 (9th Cir.)

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25 ⁸² "Storm water runoff is one of the most significant sources of water pollution
in the nation, 4 at times comparable to, if not greater than, contamination from
industrial and sewage sources".
See, Environmental Defense Center v. USEPA, 319 F.3d 390, *4 (9th Cir. 2003)
(internal quotation marks and citations omitted).

"The volume and quality of storm water discharges associated with industrial
activity will depend on a number of factors, including the industrial
activities occurring at the facility, the nature of precipitation, and the
degree of surface imperviousness. Rain water may pick up pollutants from
structures and other surfaces as it drains from the land. In addition, sources
of pollutants other than storm water, such as illicit connections, spills, and
other improperly dumped materials may increase the pollutant loads discharged
from separate storm sewers. The sources which contribute pollutants to storm
water discharges differ with the type of industry operation and facility-
specific features. For example, air emissions may be a significant source of
pollutants at some facilities, material storage operations may be important at
different operations, while other facilities may discharge storm water
associated with industrial activity with relatively low levels of pollutants.
The most extensively studied storm water discharges have been those from
residential and commercial areas (urban runoff). Evaluating these discharges
will provide a starting point for understanding the pollutants that can be
expected in storm water discharges associated with industrial activity.

1 King County was compelled to adopt the BMP's so urgently needed to protect
2 the sensitivities of Fish and wildlife habitat⁴³ But it appears that for the
3 Kokanee, that ruling has come too late,⁴⁴ Mr. Warren contends they will
4 protect the fish later so that they do not have to change their regulations
5 again⁴⁵ Renton agreed during the adoption of the CPP but now acts
6 inconsistently.

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11 Many storm water discharges are expected to contain the pollutants typically
12 associated with urban runoff, along with additional pollutants that result
13 from the specific industrial operations of the facility".
58 Fed.Reg. 61,146, at 61,153-54 (Nov. 19, 1993) (citations omitted).

14 "Storm water runoff from lands modified by human activities can harm surface water
15 resources and, in turn, cause or contribute to an exceedance of water quality
16 standards by changing natural hydrologic patterns, accelerating stream flows,
17 destroying aquatic habitat, and elevating pollutant concentrations and loadings. Such
18 runoff may contain or mobilize high levels of contaminants, such as sediment,
19 suspended solids, nutrients (phosphorous and nitrogen), heavy metals and other toxic
20 pollutants, pathogens, toxins, oxygen-demanding substances (organic material), and
21 floatables. After a rain, storm water runoff carries these pollutants into nearby
22 streams, rivers, lakes, estuaries, wetlands, and oceans. The 2 highest concentrations
23 of these contaminants often are contained in first flush discharges, which occur
24 during the first major storm after an extended dry period. Individually and combined,
25 these pollutants impair water quality, threatening designated beneficial uses and
causing habitat alteration or destruction.
64 Fed.Reg. 68,721, 68,724 (Dec. 8, 1999)

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43 Exhibit 5.8

44 Exhibit 5.2

VI. CONCLUSION

2 The issues of Comprehensive planning, zoning, development regulations and
3 adequacy of the EIS are properly before this Board. This proceeding should
4 move forward for resolution of the issues and based upon the facts of record
5 that justify affirmative relief in my favor. It should not be disposed of
6 without the scheduled hearing.⁶⁶ The Intervener or City has not proved any
7 fact that justifies dismissal.⁶⁷

8 However, Petitioner has proved enough.⁶⁸ And can now be granted relief.⁶⁹

9 The facts show the substantial inconsistencies between the CPP and the City
10 Plan, or the failure of the City to implement the Plan. There are
11 substantial irregularities and violations of Washington Laws.⁷⁰

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16 ⁶⁶ Summary judgment is a procedure available to avoid unnecessary trials on formal
17 issues that cannot be factually supported and could not lead to, or result in, a
18 favorable outcome to the opposing party. Jacobsen v. State, 89 Wn. 2d 104, 569 P.2d
1152 (1977)

19 ⁶⁷ The party moving for summary judgment must show that there are no genuine issues of
20 material fact and the moving party is entitled to judgment as a matter of law. Magula
21 v. Benton Franklin Title Co., Inc., 131 Wn. 2d 171, 182; 930 P. 2d 307 (1997)

22 ⁶⁸ Summary judgment may be granted where there are no genuine issues of material fact,
23 and the law supports the motion. WAC 242-02; Civil Rules for Superior Court ("CR")
56(c).

24 ⁶⁹ "The Board may also grant relief to the non-moving party". See, Impecoven v. Dept.
25 of Revenue, 120 Wn.2d 357, 365; 841 P.2d 752 (1992). There are no genuine issues of
material fact.

⁷⁰ Summary judgment is appropriate when the only controversy involves the meaning of
statutes, and neither party contests the facts relevant to a legal determination.
Rainier Nat'l Bank v. Security State Bank, 59 Wn. App. 161, 164, 796 P. 2d 441(1990),
review denied, 117 Wn. 2d 1004, 815 P.2d 266(1991).

1 The Property is to be utilized for manufacturing and industry for the
2 foreseeable future, which is undisputed.¹¹ Any normal person of reasonably
3 good and normal intelligence knows that something shady is going on here
4 then. The City and Intervener move dispositively for summary dismissal.¹² The
5 EIS is inadequate as a matter of Law but a reasonably thorough discussion of
6 the probable significant adverse impacts that will result from this proposal
7 that are in dispute.¹³ Again, the City has failed to effectuate the
8 commitment to realize the requirements of the Puget Sound Plan to protect
9 water according to the CPP. That plan must be carried out according to
10 requirements for collaboration and coordination.

11 The relationship between 82.02 RCW and 36.70A.070 has been clearly
12 established by the legislature, and I understand that past decisions
13 regarding 82.02 RCW are still standing, which is why I urge the Board to
14 consider that the undisputed fact that cumulative impacts may only be
15 addressed with comprehensive planning and development regulations.¹⁴

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18 ¹¹ A material fact in a summary judgment proceeding is one that will affect the outcome
under the governing law. Eriks v. Denver, 118 Wn.2d 451, 456, 824 P. 2d 1207 (1992)

19 ¹² The trier of fact must construe the evidence and consider the material facts and all
reasonable inferences therefrom in the light most favorable to the nonmoving party.
20 Weatherbee v. Gustafson, 64 Wash. App. 128 (1992); 822 P. 2d 1257.

21 ¹³ The summary judgment procedure is designed to eliminate trial if only questions of
law remain for resolution. Eriks v. Denver, 118 Wn.2d 451, 456, 824 P. 2d 1207 (1992).

22 ¹⁴ When a judicial conclusion of the past which established a public policy comes
again, accepted assumptions should be reexamined in the light of current conditions
23 and thinking. Pierce v. Yakima Valley Memorial Hosp. Ass'n, 43 Wn.2d 162, 260 P.2d
765 (1953) The factors upon which public policy is based are not static but change as
24 conditions and ways of looking at things change; public policy simply meaning that
policy recognized by the Agency in determining what acts are unlawful or undesirable
25 as being injurious to the public or contrary to the public good.

Ask for the City to carry out the measures that were outlined within
2 resolution #3100, that is how it is construed in WAC 365-195." There are
3 mandatory requirements left out of the City Capital facilities element."
4 There are errors in the capacity presumptions in the EIS." That high
5 intensity urban development and retail would pour pollution through the 16
6 untreated storm water outfalls, John's Creek, and subsequently into lake
7 Washington and important Salmon habitat, unjustifiably without discussion of
8 what will happen without the needed BMP's (factual adoption of ordinances)

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11 "An administrative construction of a statute is particularly persuasive if it is
12 nearly contemporaneous with the enactment of the statute and the Legislature has
13 amended the statute without disturbing the agency's interpretation. Asarco,
14 Incorporated, Respondent, v. Puget Sound Air Pollution Control Agency, et al,
15 Appellants, 51 Wn. App. 49, 751 P.2d 1229

16 " (3) A capital facilities plan element consisting of: (a) An inventory of
17 existing capital facilities owned by public entities, showing the locations and
18 capacities of the capital facilities; (b) a forecast of the future needs for such
19 capital facilities; (c) the proposed locations and capacities of expanded or new
20 capital facilities; (d) at least a six-year plan that will finance such capital
21 facilities within projected funding capacities and clearly identifies sources of
22 public money for such purposes; and (e) a requirement to reassess the land use element
23 if probable funding falls short of meeting existing needs and to ensure that the land
24 use element, capital facilities plan element, and financing plan within the capital
25 facilities plan element are coordinated and consistent. Park and recreation
26 facilities shall be included in the capital facilities plan element.

27 " All of the mandatory requirements of a comprehensive plan must be fully complete at
28 the time of plan adoption. (Citations omitted) A comprehensive plan's capital facility
29 element is inextricably linked to the land use element. The two must be consistent.
30 The linkage between the two elements is what makes planning under the GMA truly
31 comprehensive (i.e., complete, inclusive, connected) as compared to pre-GMA planning.
32 [Bremerton, 5339c, FDO, p. 77]

33 The lack of a fully completed capital facilities plan is more than a conceptual
34 shortcoming - it is a fatal legal defect in a comprehensive plan. It alone is
35 sufficient cause for the Board to find that the land use element and every other
36 component of a plan violates the requirements of the Act. [Bremerton, 5339c, FDO, p.
37 77]

1 They never mentioned within the enumerated ordinances or the EIS; they
2 failed to respond to the Petition; or anywhere in the record that they would
3 be discouraging industrial and manufacturing activity on the site." That
4 would thwart the rules of the board and GMA and SEPA. They did not pass that
5 legislation, or advance notice of the pending change; I wanted to know the
6 answer to the Petition; I should have had a GMA right to notice for the
7 formation of Statement of issues; but City deferred notice so that I could
8 not frame the issues; I do not dispute that they could attempt it, it is
9 just that they can not attempt it without notice that is the way they want
10 to proceed."

11
12
13 "If a local legislative body wishes to make changes to the draft of a
14 proposed comprehensive plan that, to that point, has ostensibly satisfied the public
15 participation requirements of RCW 36.70A.020(11) and .140, it has the discretion to
16 do so. However, if the changes the legislative body wishes to make are substantially
17 different from the recommendations received, its discretion is contingent on two
18 conditions:

19 (1) that there is sufficient information and/or analysis in the record to support the
20 Council's new choice (e.g., SEPA disclosure was given, or the requisite financial
21 analysis was done to meet the Act's concurrency requirements); and (2) that the
22 public has had a reasonable opportunity to review and comment upon the contemplated
23 change. If the first condition does not exist, additional work is first required to
24 support the Council's subsequent exercise of discretion. If the second condition does
25 not exist, effective public notice and reasonable time to review and comment upon the
substantial changes must be afforded to the public in order to meet the Act's
requirements for "early and continuous" public participation pursuant to RCW
36.70A.140. see.

[NSDF I, 4316, FDO, pp. 76-77

21 "The GMA requires a jurisdiction to provide notice and the opportunity for public
22 participation, either prior to, or after, any GMA action - the adoption or amendment
23 (permanent, temporary or interim) of comprehensive plans or implementing regulations.
The GMA is clear; a jurisdiction must always provide the opportunity for public
participation, including notice". [McVittie V, 0316, FDO, at 28.]

24 "A jurisdiction may not bar GMA public participation standing by not providing notice
25 or the opportunity to participate at any time, either prior to, or after, adoption of
an amendment to a GMA Plan, development regulation or other related GMA document. If
no notice or opportunity for public participation is provided for a GMA action, a
petitioner may assert GMA participation standing pursuant to RCW 36.70A.280(2)(b)".
[McVittie V, 0316, FDO, at 29].

Petitioner Response brief - 45

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"Public notice is at the core of public participation. Effective notice is a necessary and essential ingredient in the public participation process". (WRRCO, 8335, FDO, at 6.)

"Notice is reasonably related to public participation. Raising concerns about a local government's public participation process is sufficient to challenge the jurisdiction's notice procedures before this Board. (WRRCO, 8335, FDO, at 6.)

"The Act mandates that the public must have an opportunity to be heard and comment before an "11th hour" change [that is not within the exceptions of RCW 36.70A.035(2)(b)] is adopted as part of comprehensive plan". (Radabaugh, 0302, FDO, at 16.)

"The public participation goal RCW 36.70A.020(11) provides an umbrella under which all the GMA public participation requirements fit. It articulates a premium on involving citizens in the entire GMA planning process; and specifically emphasizes the importance of public participation for comprehensive plans and development regulations". (McVittie V, 0316, FDO, at 16.)

A jurisdiction must provide notice and the opportunity for the public to participate prior to adopting any GMA plan or amendment to that plan. (McVittie V, 0316, FDO, at 25.)

When a change [amendment] is substantially different from the prior designation, the public needs a reasonable opportunity to comment. (Vashon-Maury, 5308c, FDO, p. 56)

1 As I have shown, it is unreasonable to not sustain the request for relief.
2 All of the issues are properly before this board, depending on the outcome of
3 the EIS appeal, some of the issue may re-emerge, and when the comprehensive
4 plan economic development element becomes consistent, the other issues are
5 appropriate. If the City Respondent and Proponent Intervener would respond to
6 the issues as opposed to skirting them, the process would proceed easily and
7 without the need for a motion for dismissal. A demonstration that the
8 proposal is consistent with CPP, SEPA, GMA, and Legal requirements might
9 dispose of the issues. This is spot zoning outright. There are many GMA
10 inconsistencies and failures, and uncontroverted facts. They have not
11 included the Best Available Science. The Capital Facilities Plan and Impact
12 fee ordinances are severely lacking in GMA consistency. A Remand or
13 declaration of invalidity should ensue, as opposed to a dismissal of these
14 legitimate GMA issues. It is now ripe and necessary.

15
16 Dated this 29th day of March, 2004

17 Respectfully Submitted,
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22
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Petitioner Response brief - 48

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Presiding officer Bruce Laing

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CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

BRAD NICHOLSON,
Petitioner,
v.
CITY OF RENTON,
Respondent,
and
THE BOEING COMPANY,
Intervener-Respondent.

NO. 04-3-0004

REBUTTAL BY THE CITY OF
RENTON TO PETITIONER'S
RESPONSE AND BRIEF TO
DISPOSITIVE MOTIONS FOR
DISMISSAL

I. RELIEF REQUESTED

The City of Renton (Renton) requests that the Board dismiss all of petitioner's issues as set forth in petitioner's Statement of Issues.

RENTON'S REBUTTAL TO PETITIONER'S RESPONSE
& BRIEF TO DISPOSITIVE MOTIONS FOR DISMISSAL - I

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II. ARGUMENT

1. Petitioner's response brief fails to answer the legal arguments of Renton and Boeing.

Before the Board's deadline of March 15, 2004, both Renton and Boeing filed dispositive motions to dismiss each and every one of petitioner's 21 issues. The motions are primarily based on jurisdictional grounds (non-GMA issues, standing, limitations, etc.) and the general failure of petitioner to cite facts or law that support his issues. In answer, petitioner has made no response to the arguments made by Renton and Boeing, but rather heads in a completely new direction, adding new issues and new exhibits, all without leave of the Board, and all without citation to his previously stated 21 issues. Petitioner's Response Brief is a response in name only, as it doesn't respond to any of Renton or Boeing's legal arguments.

Petitioner set this case in motion and established the issues he wished to have argued before the Board. And yet, his responsive brief is totally devoid of citation to any of those issues. Petitioner chooses to ignore his 21 legal issues but argues new issues, apparently in support of a motion for summary judgment. Each pleading by Petitioner seems to open new issues and new lines of argument.

The Board and the respondents should not have to sift through petitioner's pleadings, attempting to guess what issue is being discussed, when the rules clearly require citation to the issue as part of the text. WAC 242-02-570(1) states as follows:

A petitioner, or a moving party, when a motion has been filed, shall submit a brief on each legal issue it expects a board to determine. Failure by such a party to brief an issue shall constitute abandonment of the unbrieffed issue. Briefs shall enumerate and set forth the legal issue(s) as specified in the prehearing order if one has been entered.

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Renton and Boeing followed this rule and cited to each of the 21 issues and supplied legal arguments why each should be dismissed. Petitioner has chosen to utterly disregard this rule and not cite to any issue that he has raised, and thus, under the rules, has abandoned those issues.

The Board should not be in the position of sifting through the many pages of petitioner's pleadings, searching for a gem of truth or cogent reasoning that would support any portion of the petition. Rather, petitioner bears the burden of making his point clearly, obviously, and with reference to a specific legal issue that was raised.

Petitioner has abandoned the rhetoric field of battle and, since petitioner has offered no meaningful resistance to Boeing and Renton, their un rebutted motions to dismiss petitioner's 21 issues must be granted in full.

2. Petitioner's response fails to cite to the Revised Index to the Record.

As part of this proceeding, Renton prepared an Index to the Record and a Revised Index to the Record.

On page 12 of Petitioner's response, he lists exhibits, without any reference to the Amended Index to Exhibits. As part of his list of exhibits, Petitioner lists 12 exhibits that he indicates are attached to his responsive brief. However, the brief served on Renton did not contain any of these exhibits, as attachments.

With one week to prepare a rebuttal to Petitioner's response, and without access to the proposed exhibits, it is impossible for Renton to determine if the proffered exhibits are from the Amended Index to the Record and are true and correct copies of portions of the Record. It should be unnecessary for Renton, Boeing, or the Board to spend time and

1 resources to do the job that is petitioner's, in the first instance. Petitioner's failure to
2 correctly cite to the Record should result in consequences to petitioner, and to no other
3 party. All of petitioner's exhibits should be rejected and those parts of the responsive brief
4 based upon those exhibits should be ignored.
5

6 **3. Petitioner has failed to follow correct procedures to supplement the**
7 **Record.**

8 Petitioner's list of exhibits, page 12 of petitioner's responsive brief, contains exhibits
9 not contained within the Amended Index to the Record. The procedure for supplementing
10 the record is set out in WAC 242-02-540:

11 **New or supplemental evidence.** Generally, a board will review only the
12 record developed by the city, county, or state in taking the action that is the
13 subject of review by the board. A party by motion may request that a board
14 allow such additional evidence as would be necessary or of substantial
15 assistance to the board in reaching its decision, and shall state its reasons. A
16 board may order, at any time, that new or supplemental evidence be
17 provided.

18 Petitioner failed to move to supplement the record and cannot simply add new
19 exhibits to a response brief. Not only did petitioner not properly move to submit the new
20 exhibits, he did not submit those exhibits in time for Renton and Boeing to study and
21 prepare objections, and he didn't attach the exhibits to Renton or Boeing's copy of his
22 response brief. Renton and Boeing may guess as to the contents of these exhibits, and may
23 be able to resurrect some of the information from their files, but that effort should be
24 unnecessary if petitioner had followed the rules.

25 The proposed new exhibits should be rejected for failure to timely move to
26 supplement the record and as copies were never provided to Renton or Boeing.¹

27 ¹ Renton did stipulate to the admissibility of the Hearing Examiner's decision on Petitioner's challenge to the
28 adequacy of Renton's Environmental Impact Statement. Renton presumes that the Hearing Examiner's
decision is the decision referenced in List of Exhibits No. 5.12 on page 12 of Petitioner's responsive brief.