

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3
4 **SOUTH TACOMA NEIGHBORHOOD**
5 **COUNCIL**, a Washington nonprofit
6 corporation,

7 **Appellant,**

HEX2023-011a (LU21-0125)

8 **v.**

9 **CITY OF TACOMA**, a Washington
10 Municipal corporation, through its
11 Planning and Development Services
12 Department,

13 **Respondent,**

14 **and**

15 **BRIDGE POINT TACOMA, LLC**,
16 a foreign limited liability corporation,

17 **Respondent/Applicant.**

18 **350 TACOMA**, a Washington nonprofit
19 corporation,

20 **Appellant,**

HEX2023-011b (LU21-0125)

21 **v.**

CITY OF TACOMA, a Washington
Municipal corporation, through its
Planning and Development Services
Department,

Respondent,

and

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

1 **BRIDGE POINT TACOMA, LLC,**
2 a foreign limited liability corporation,

3 **Respondent/Applicant.**

4 This consolidated appeal for the above captioned matters came before JEFF H.
5 CAPELL, the Hearing Examiner for the City of Tacoma, Washington, for hearing on July 25,
6 26, 27, 28, 2023, and concluding on August 4, 2023.¹ At the hearing, Appellants South
7 Tacoma Neighborhood Council and 350 Tacoma (hereinafter collectively the “Appellants”)
8 were represented by Attorney Molly Tack-Hooper, Attorney Marisa Ordonia, and Attorney
9 Noorulanne Jan, all of Earth Justice.² Respondent City of Tacoma (the “City”) was
10 represented by Deputy City Attorney Steve Victor. Respondent/Applicant Bridge Point
11 Tacoma, LLC was represented by Attorney Courtney A. Kaylor and Attorney David P.
12 Carpman, both of McCullough Hill PLLC. Numerous interested citizens appeared virtually at
13 each day of hearing to observe the proceedings.³

14 Witnesses were sworn and testified. Exhibits were admitted and reviewed. Arguments
15 were presented by the parties and considered. The official hearing record closed at the
16 conclusion of day five of the hearing on August 4, 2023, but at the parties’ request, they were
17 given until August 21, 2023, to file post-hearing briefs in lieu of making oral closing
18

19 ¹ The appeal hearing was conducted virtually over Zoom at the request of the parties, with public access, at no
20 cost to any participant. Participation was available by video, internet, and telephonically. A conference room
21 located in the Tacoma Municipal Building was made available to the public to observe the virtual hearing
proceedings in-person. On the first day of hearing, July 25, 2023, one member of the media showed up at the in-
person room and stayed until around the lunchtime break. No one else appeared at the in-person room to observe
for the remainder of day one, and no one attended there the second day of the hearing on July 26, 2023. Based
on the low in-person viewing attendance of the first two days of hearing, the in-person attendance room was
cancelled for the remaining hearing days.

² Congratulations to Ms. Jan who was admitted to the Washington State Bar this summer.

³ On-line attendance went from a high of around 82 on day one, to a low of around 34 on day five.

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1 arguments during the hearing. This date was then extended until August 28, 2023, by joint
2 request of the parties.

3 **Witnesses**⁴

4 In order of appearance, grouped by day, and designated by party affiliation, the
5 following witnesses testified at the hearing:

6 **Day One**

- 7 • Stephen Emerman, Ph.D. (Appellants),
- 8 • Sean T. Dixon, JD, LLM (Appellants),
- 9 • Theodore J. Schepper, P.E. (Applicant),
- 10 • Glen George, P.E. (City),
- 11 • Jon Pickett, Senior Scientist (Applicant);

12 **Day Two**

- 13 • Michael McCarthy, Ph.D. (Appellants),
- 14 • Elinor Fanning, Ph.D. (Appellants),
- 15 • Priyanka deSouza, Ph.D. (Appellants),
- 16 • Cheryl Ebsworth, Senior Planner (Applicant);

17 **Day Three**

- 18 • Ben Eldridge, P.E. (Applicant),
- 19 • Ben Wright, Senior Fisheries Biologist (Applicant),
- 20 • Thomas C. Morin, L.G. (Applicant),
- 21 • Karla Kluge, Regulatory Compliance Analyst (City),
- 22 • Jeff Schramm, Transportation Engineer (Applicant);

23 **Day Four**

- 24 • Jeff Schramm, Transportation Engineer, (Applicant) continued,
- 25 • Naomi Goff, CSP, (Applicant),
- 26 • Trevor Perkins, Associate Civil Engineer (City),
- 27 • Scott Hallenberg, Regulatory Compliance Analyst/Operations Manager (City),
- 28 • Shirley Schultz, Principal Planner (City),
- 29 • Dan Hansen, P.E. (City),
- 30 • Kevin Warner, Principal Scientist (Applicant);

31 **Day Five**

- 32 • Kevin Warner, Principal Scientist (Applicant) continued,
- 33 • Lisa M. Corey, Ph.D., DABT (Applicant),

⁴ Outside of this list, witnesses will generally be referred to by last name only without meaning any disrespect.

- Matt Gladney, VP Development, Bridge Industrial (Applicant),

Day Five Appellants’ Rebuttal Witness

- Michael McCarthy, Ph.D.

Exhibits

A definitive list of the exhibits admitted on the record during the hearing is attached hereto as Appendix A. Any issues regarding individual exhibits that are relevant/pertinent to the decision herein are referenced in the body below.

Citations

The Examiner acknowledges that citations to the record herein may not include every instance of a particular bit of evidence from the hearing record. The Examiner determined that such exhaustive string-type citing was not absolutely necessary given the amount of additional time and page space such would have required.

From the evidence in the hearing record, the Hearing Examiner enters the following:

FINDINGS OF FACT:

The Site / Subject Property⁵

1. The present appeal stems from the City’s April 21, 2023 issuance of a Critical Areas Development Permit (the “CADP”) and a Mitigated Determination of Non-Significance (the “MDNS”) under the State Environmental Policy Act (“SEPA” RCW 43.21C⁶). Appellants filed their appeal of the MDNS and the CADP on May 5, 2023. The MDNS and the CADP were issued for an industrial project (the “Project” described in further

⁵ Additional facts about the Subject Property will, no doubt, be found in later sections of this Decision where they are more beneficially set forth than they would be here as a general introduction. The same is true in the Project section immediately below.

⁶ “RCW” is the commonly used abbreviation for the Revised Code of Washington.

1 detail below) proposed to be constructed and operated on real property having a primary
2 address of 5024 South Madison Street in the city of Tacoma. Nineteen parcels of real
3 property comprise the Project site, including all of the following Pierce County Tax Parcels
4 numbered as follows: 0220131131, 0220131132, 0220134004, 0220134011, 0220134800,
5 0220241001, 2783010090, 2783010100, 2783010110, 2783010120, 3740000086,
6 3740000140, 3740000181, 5735000070, 5735000110, 5735000120, 5735000130,
7 5735000140, and 5215001580 (the “Site” or the “Subject Property”). Total area of the
8 Subject Property is around 150 acres. *Ex. C-1, Ex. C-2, Ex. C-9, C-19.*⁷

9 2. The Site is currently vacant, and it has been for some time. It consists primarily
10 of compacted soils and unconsolidated fill covered with grasses and other invasive
11 vegetation, except for a treed area along the west/northwest edges. Invasive vegetation
12 present across the Subject Property includes scotch broom, butterfly bush, Himalayan
13 blackberry, annual ryegrass, and reed canary grass. The treed western edge of the Subject
14 Property exhibits Douglas fir, Pacific madrone, red alder and black cottonwood, along with
15 various species of understory growth. There are 68 protected Garry Oaks on the Site as well,
16 only one of which is proposed for removal (down from seven) after discussions with the City
17 and some plan revision. Refuse is also present across the Site due to its vacant state,
18 presumably from illicit dumping or transient activity. The Site is bordered mostly by other
19 industrial or commercial uses, however, at the northwest corner there is a residentially zoned
20
21

⁷ Various places in the record list different numbers of parcels making up the Site. *See e.g., Ex. C-1, C-7 and C-9.* Applicant’s counsel cleared up the actual parcels included in the Site, as above, in a post-hearing email at the Examiner’s inquiry.

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1 area adjacent to the Site. *Morin Testimony, Eldridge Testimony, Schultz Testimony; Ex. C-1,*
2 *Ex. C-2, Ex. C-9, Ex. C-30.*

3 3. There are four wetlands, designated A through D, and a stream given the
4 designation Z⁸ present along the western portion of the Site. The treed area, and the wetlands
5 and stream will not be developed as part of the intended industrial use of the Subject
6 Property, but rather these features will be enhanced and protected as part of the overall Site
7 activity. As a result, these areas are often referred to collectively as the “Undeveloped Area”
8 of the Site.⁹ The exceptions to non-development in the Undeveloped Area are that Stream Z
9 will be relocated/shifted slightly westward along its alignment adjacent to Building D, and
10 the buffers to Wetlands A and B and Stream Z will be temporarily impacted during
11 construction and realigned. The ultimate result of the foregoing will be a net gain in total
12 buffer area. On top of that, work in the Undeveloped Area will include “[w]etland and stream
13 buffer restoration and enhancement, the re-establishment of historic wetlands, [and] FEMA
14 floodplain compensation areas within the wetland buffer areas to achieve the required ‘no net
15 rise’ criteria for floodplain development. Stream Z is dry for a good part of any given year. It
16 is not a fish-bearing stream. *Id.; Wright Testimony, Eldridge Testimony, Schepper Testimony,*
17 *Kluge Testimony; Ex. C-1, Ex. C-20~Ex. C-22, Ex. C-34.*

18 //

19 //

20 _____
21 ⁸ This stream is sometimes also referred to as the South Tacoma Channel.

⁹ In testimony, Eldridge explained the difference in designation employed by the development team in response to a mistaken presumption that arose earlier during Emerman’s testimony which is addressed in more detail at Finding of Fact (“FoF”) 121. The “Developed Area” of the Site is where the buildings, parking, utilities, access roads, and etc. are intended to be built. The “Undeveloped Area” is the treed area along the western border of the Site where no buildings, parking, etc. are intended.

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1 4. The FEMA floodplain compensation is due to the Site being within 100-year
2 floodplain areas requiring the Project to compensate and result in no net loss of base flood
3 storage capacity. *Eldridge Testimony; Ex. C-21, Ex. C-30.*

4 5. The Subject Property is located in the South Tacoma Neighborhood, at the
5 southern end of the Nalley Valley in an area of historic, and present, industrial uses.
6 Recognizable city streets that surround the Subject Property include South 38th Street toward
7 the northern end, South 56th Street along the south, and South Tyler Street to the west, with
8 railroad tracks running along the eastern edge of the Subject Property. *Ex. C-1, Ex. C-2.*

9 6. The nearest residential parcels (referenced above at the northwest corner of the
10 Site) are approximately 250 feet away from the intended development area, but in addition to
11 those, there are a number of additional residences within one-quarter mile of the Site mostly
12 in the Oakland-Madrona Neighborhood and the Tacoma Mall Neighborhood. *Id.*

13 7. The Site is primarily zoned M2 – Heavy Industrial District, which necessitates
14 application of the industrial development standards and uses set forth in Tacoma Municipal
15 Code (“TMC”) 13.06.060. The Site is situated within two separate overlay districts: The
16 South Tacoma Groundwater Protection District (“STGPD”), as set forth in and governed by
17 TMC 13.06.070.D, and the Manufacturing Industrial Center, which is governed by TMC
18 13.06.070.B. A small portion of the westerly parcels of the Subject Property (along South
19 Tyler Street in the Undeveloped Area), which will remain undeveloped (again, the
20 Undeveloped Area), is zoned “T” Transitional District. *Schultz Testimony; Ex. C-1, Ex. C-30.*

21 8. The Subject Property has a long history of industrial use prior to its current

1 vacancy. Earlier industrial use for over 80 years by prior owner Burlington Northern and
2 Santa Fe Railway Company (BNSF) for rail car manufacturing, and repair and maintenance
3 led to the Subject Property being included in the “South Tacoma Field” portion of the former
4 Commencement Bay/South Tacoma Channel Superfund site. This put the Subject Property
5 under the jurisdiction of the EPA (Environmental Protection Agency) and made it subject to
6 extensive investigation and remediation activities under the federal Comprehensive
7 Environmental Response, Compensation, and Liability Act (“CERCLA” or “Superfund”)
8 beginning in the 1990s. *Morin Testimony; Ex. C-1, Ex. C-12.*

9 9. Under the EPA’s supervision, remedial actions were completed on the Subject
10 Property in the 1998-1999 timeframe. The remediation process produced formal documents
11 that govern the Subject Property and set forth continuing legal obligations or covenants that
12 run with the Site relevant to its environmental condition. Chief among these documents are a
13 1994 Record of Decision, Commencement Bay South Tacoma Channel, South Tacoma Field
14 Operable Unit (“Record of Decision” or the “ROD” *Ex. B-10*) prepared by EPA, and a 1996
15 consent decree (the “Consent Decree” *Ex. B-11*) entered into by EPA, the Washington State
16 Department of Ecology (“Ecology”), and private parties that provided legally binding
17 obligations for the continued funding and cleanup of the Subject Property in conjunction with
18 the ROD. *Morin Testimony; Ex. C-12.*

19 10. The ROD identified remedial actions that were required at the Site to address
20 contamination (mainly treatment and containment of contaminated soils), and it also sets
21 forth continuing obligations that remain in effect even after the EPA-required cleanup was

1 completed (“institutional controls” and monitoring requirements). The Applicant will have to
2 abide by these conditions in the development of the Project. These covenants and conditions,
3 as set forth in the ROD and the Consent Decree, limit uses of the Site to industrial and
4 commercial uses and prohibit residential use of the Subject Property. *Morin Testimony; Ex.*
5 *C-12.*

6 **The Project**

7 11. The Project is proposed to be a four-building industrial development, with total
8 floor space of the buildings projected at approximately 2,500,000 square feet of space (the
9 “Project” as further described in this section). The proposed buildings will have dock loading
10 areas suitable for cross-loading,¹⁰ and the Site is proposed to have parking for approximately
11 1,242 vehicles. Additional Project improvements will include private access roads, pedestrian
12 walkways, landscaping, stormwater infrastructure, public sanitary sewer and water main
13 extensions, as well as modifications to, and enhancements of the critical area buffers and
14 enhancements to Stream Z. *Ex. C-1, Ex. C-2, Ex. C-30.*

15 12. Vehicular access to/from the Site is proposed to happen primarily via South
16 35th Street to the north, and South 56th Street along the south end of the Subject Property.
17 North end vehicular access is proposed to happen via an access easement that would create a
18 new intersection with South 35th Street. At the south end of the Site, vehicular access would
19 be provided via South Madison Street and South Burlington Way, both of which intersect
20

21 ¹⁰ The Examiner uses the term here somewhat generically to mean freight can be received at a dock on one side
of a building and then loaded for delivery on a dock on the opposite side of the building. The terms “cross-
docking” and “transloading” are also commonly used and one take on the difference between the two is
explained here: [https://www.partnership.com/blog/post/what-is-the-difference-between-cross-docking-and-
transloading](https://www.partnership.com/blog/post/what-is-the-difference-between-cross-docking-and-transloading).

1 with South 56th Street. Additional vehicular access to the east could occur via South 50th
2 Street through a connection to South Washington Street and South Tacoma Way. All
3 traffic/transportation improvements must be constructed according to City standards.

4 *Schramm Testimony, Hansen Testimony; Ex C-1, Ex. C-7.*

5 13. The Project is speculative at present. The Applicant has no specific tenants
6 identified to occupy any buildings in the Project as yet. The Project is being designed to cater
7 to industrial and warehouse uses. Each building has the potential to serve multiple tenants,
8 with potential office areas at most corners. The buildings are proposed to include natural gas
9 and electric service and will be designed to accommodate rooftop solar installation. Future
10 tenants will be subject to tenant-specific permitting requirements as well as potential
11 additional environmental review, depending on the tenant-proposed use. *Ebsworth*

12 *Testimony, Schramm Testimony; Ex. C-1~Ex. C-5.*

13 14. The City is requiring the Project either to achieve 30 percent tree canopy
14 coverage within the Developed Area of the Site (i.e., not the Undeveloped Area) or to provide
15 for an equivalent amount of tree planting within one half-mile of the Site if the final approved
16 landscape plan cannot accommodate 30 percent coverage on-site. *Ex. C-1, Ex. C-2, Ex. C-30.*

17 15. As currently proposed, the Project appears to be able to, and intends to comply
18 with all applicable regulations, including (without limitation necessarily) the International
19 Building Code, as adopted and amended by the City, as well as TMC Chapter 13.06 Zoning,
20 and TMC 13.11 Critical Areas Ordinance, TMC 12.08 on stormwater, and the accompanying
21 Stormwater Management Manual (the "SWMM"). *Ex. C-1.*

1 16. The Project’s fill and grade quantities may approach one million cubic yards.
2 Any imported fill will have to come from an approved source. Grading activities should fall
3 under the jurisdiction of, and comply with the Soil Management Plan for Property
4 Redevelopment that is Exhibit C-12 of the Hearing Record. EPA will also certainly have a
5 say in how soils are touched. *Ex. C-1.*

6 17. Primary truck access for the Site will be at the north end through a newly
7 constructed access road that will connect at an intersection with South 35th Street. The
8 Project also proposes extensive off-site traffic improvements, including improvements for
9 pedestrians and bicyclists. *Ex. C-1, Ex. C-7.*

10 18. Applicant’s submittals for the Project included a SEPA Checklist (the
11 “Checklist” Exhibit C-2) and associated technical reports that are the basis for the Checklist’s
12 assertions/conclusions. The Checklist and its accompanying reports were revised based on
13 feedback from City permitting staff as part of a lengthy review process. As part of its review
14 process, the City provided notice for and then held a public information meeting about the
15 Project. A one-month public comment period was also provided in conjunction with the
16 public meeting. Comments were received from the public, and along with responses to many
17 of the issues raised, are included in the Hearing Record at Exhibit C-29. Comments received
18 from other government agencies or offices are in the Hearing Record as Exhibit C-28. City
19 staff comments, some of which address issues raised in the complete body of the comments is
20 included in the Hearing Record as Exhibit C-27. *Ex. C-1~Ex. C-22, Ex. C-26~Ex. C-29.*

21 19. Mitigation for the Project relevant to the CADP will include wetland and stream

1 buffer restoration and enhancement, the re-establishment of historic wetlands, FEMA
2 floodplain compensation areas within the wetland buffer areas to achieve the required “no net
3 rise” criteria for floodplain development. *Kluge Testimony; Ex. C-30.*

4 20. Beginning at page 13 of 19 in Exhibit C-1, the City set forth required mitigation
5 measures that are part of the MDNS as issued. These mitigation measures are incorporated
6 here by this reference (the “MDNS Mitigation Measures”). During the hearing, and in all
7 filings on the record, the Applicant made no objection to the City’s imposition of the MDNS
8 Mitigation Measures.

9 **Witness Testimony and Credibility**

10 21. The Examiner has broken out this “Witness Testimony and Credibility” section
11 separately in the Findings of Fact in order to address a handful of issues and set forth express
12 findings thereon.

13 22. First, not surprisingly, the corpus of testimony presented by the Appellants
14 largely disagreed with the corpus of testimony presented by the Respondents. Disagreement
15 is the heart of an appeal such as this. The particular disagreement here did not require the
16 Examiner to make outright credibility determinations, however. In any event, the Examiner
17 found both sides’ witnesses to be essentially credible. Much of the hearing testimony was
18 opinion. To that extent, the Examiner finds the opinions given to be credible and the
19 legitimate opinion of that witness. The relevance and weight of any given opinion depends on
20 how that opinion lines up with the actual facts found as part of this decision and how those
21 facts align with the laws and regulations applicable to this appeal.

1 23. Both sides, of course, have an agenda in this appeal.¹¹ The Applicant wants its
2 Project to be constructed and then operated successfully. Without mincing words or
3 attempting to be overly politically correct, the Appellants would like to prevent the Project
4 from being built and operated. This is apparent more from the many comments in the record
5 from individuals who are members of, or are affiliated with, the two organizational
6 Appellants than from any overt testimony at the hearing. *See Ex. C-29.*

7 24. Based in large part on these competing agendas, there was at least some
8 testimony from the parties that appeared to question the other side’s credibility or veracity.
9 For example, Appellants keyed on Transportation Engineering NorthWest’s (“TENW”) shift
10 from its initial (May 2021) Traffic Impact Analysis to its final updated report (December
11 2021) (collectively the “TIA”) in the calculation methodology used for trip generation. *Ex. C-*
12 *7.* The insinuation, without saying so expressly, was that the Applicant had electively
13 changed its methodology in order to artificially minimize trips generated by the Project which
14 then would artificially minimize the environmental impacts of the Project. After the
15 testimony of Jeff Schramm which explained the change, the Examiner found nothing
16 untoward in the recalculation, as discussed further below. Rather the revision was made
17 simply to bring TENW’s analysis into conformance with the applicable standards in the
18 governing manual. The fact that this revision resulted in a lower trip generation number was
19 not shown to be clearly erroneous or in any way duplicitous, as will also be discussed further
20 below.

21 _____
¹¹ That said, the City is the party that probably comes closest to having no agenda. For its part, which was evident from how the City presented its case at the hearing and in briefing, the City’s only intention is to show that its decision to issue the MDNS was correct and therefore not clearly erroneous under applicable laws. The City showed no bias toward having the Project built, nor was such shown by the Appellants.

1 25. An example from the other side occurred when the Applicant pointed out in
2 cross-examination that Dr. Fanning had worked for several years exclusively as an expert
3 witness for Appellants’ attorneys EarthJustice, the unspoken insinuation being that she is
4 clearly biased for the Appellants.

5 26. The biggest example of an insinuation of a credibility problem comes from what
6 can only be considered the Appellants’ foundational allegation of error—the disagreement
7 over the land use designation TENW used in the TIA. Particularly, in the testimony of Dr.
8 McCarthy, there was a pervasive insinuation that the Applicant’s consultant TENW had
9 duplicitously, or at least in an intentionally erroneous manner, chosen the Industrial Park land
10 use designation in order to artificially minimize the number of projected trips generated by
11 the Project and thereby erroneously underestimate potential impacts to traffic, air and noise,
12 as well as water and wildlife. Despite these insinuations, the Examiner finds no reason to
13 determine the Applicant’s testimony on this issue (primarily from Jeff Schramm) to lack
14 credibility. The underlying issue is dealt with further in the Transportation/Traffic/Trip
15 Generation subsection below.

16 27. Although the Examiner found all witnesses to be credible, the weight given to a
17 particular witness’s testimony can, and should at times, vary. Appellants’ witnesses were all
18 very highly credentialed,¹² but detrimentally to Appellants’ efforts to show that the City’s
19 MDNS was clearly erroneous under SEPA, virtually none of them could include in their
20 credentials or experience familiarity with SEPA and how SEPA review has to take place in
21

¹² See Ex. A-1, Ex. A-16, Ex. A-17, Ex. A-45, and Ex. A-52.

1 the project review context.¹³ This unfamiliarity was borne out by their insistence that the
2 Respondents should have used a worst-case scenario analysis on nearly all fronts.¹⁴ The same
3 inexperience and unfamiliarity was present regarding Appellants’ witnesses and the
4 Washington State Department of Ecology’s municipal stormwater requirements (and
5 manual), the City’s NPDES¹⁵ permit, the Tacoma Municipal Code’s environmental
6 provisions (TMC 13.11 and TMC 13.12), and the City’s SWMM, which is adopted by action
7 of the City Council. *See TMC 12.08D.040*. It goes without saying that opinions about a
8 particular subject matter area should be afforded much greater weight when those opinions
9 are actually informed by familiarity with that subject matter in the applicable context
10 (Washington State projects), and the governing law at issue (SEPA).

11 28. Very little to none of Appellants’ witnesses’ opinions regarding their
12 contentions that the City and the Applicant had insufficient information and should have
13 done more or different analysis were tied to SEPA, WAC 197-11¹⁶, TMC 13.11 or TMC
14 13.12, or any other controlling/applicable law(s). In other words, very little testimony from
15 Appellants’ witnesses was framed like, “Because WAC 197-11-XX states YY, the Applicant

16 ¹³ McCarthy came the closest perhaps when he testified that he was very familiar with California’s corollary
17 environmental laws, at least relating to air quality, and he seemed to contend that Washington State’s SEPA
18 areas of analysis are merely a “cut and paste” of what happens in California. The Examiner has not done a
19 comparison between these two states’ laws, but he questions whether Dr. McCarthy has done such an analysis
20 either. For his own part, the Examiner has spent the last 23 years of his career heavily involved in land use, real
21 estate and related environmental laws, primarily in Washington State. Even if McCarthy’s assertions of
fungibility are correct, for his own part, the Examiner would not feel comfortably portable dealing with complex
environmental issues in California without extensive research and a base of work experience in California. On
cross-examination, McCarthy was not even familiar with what the “project application documents” were for this
SEPA review without direction from Applicant’s counsel. Claiming familiarity with SEPA requirements without
direct experience with Washington State’s submittal and review requirements seems a bit ambitious under the
circumstances. *See Day Three at 2:44 to 2:48*.

¹⁴ This issue is dealt with further at Conclusion of Law (“CoL”) 29 below.

¹⁵ NPDES stands for National Pollutant Discharge Elimination System. This is a federal permit under the
auspices of the EPA and the Clean Water Act which governs municipal stormwater handling and discharge.

¹⁶ “WAC” is the commonly used abbreviation for the Washington Administrative Code.

1 was required to do ZZ, and the Applicant did not do ZZ.” Perhaps this absence was due to
2 their already mentioned unfamiliarity with these controlling laws and regulations. Without
3 those tie-ins, however, much of Appellants’ witnesses’ testimony essentially becomes legally
4 untethered opinion contending that the Respondents should have done more or done
5 differently. Such opinions do not necessarily show that what was done was clearly erroneous
6 under SEPA, its applicable regulations, and the Tacoma Municipal Code.

7 29. From this point forward in this decision, references to a particular witness and
8 what he or she testified to will be a finding of fact only insofar as it recognizes that it is
9 indeed a fact that this testimony was offered. Where the Examiner finds particular testimony
10 to then be factual and relevant to the decision rendered herein, it will be so noted.

11 **Environmental Impacts**

12 30. A WAC-197-11-960 SEPA Checklist is used in analyzing projects that are not
13 exempt from SEPA review to help determine whether the impacts of the proposed project are
14 likely to be significant. The SEPA Checklist sets forth the usual battery of environmental
15 impact areas analyzed by an applicant and the reviewing lead agency. These include:

16 Earth, Air, Water (surface, ground), Plants, Animals, Energy and Natural
17 Resources, Environmental Health, Noise, Land and Shoreline Use, Housing,
18 Aesthetics, Light and Glare, Recreation, Historic and Cultural Preservation,
19 Transportation, Public Services, and Utilities.

19 Of these, Appellants have taken issue with the Respondents’ analysis of Transportation
20 (traffic), Earth, Air, Water, Environmental Health, Animals (salmon) and Noise.
21 Appellants’ argument is essentially that the Respondents used incorrect analysis and/or

1 did not do enough analysis, and therefore the City’s decision to issue the MDNS on the
2 basis that likely significant impacts were sufficiently mitigated was clearly erroneous.

3 31. As part of the SEPA review process here, the Applicant submitted a SEPA
4 Checklist accompanied by voluminous reports and studies. Findings of Fact now turn to
5 these impact areas.

6 **Transportation**¹⁷

7 **Traffic/Trip Generation Methodology**

8 32. As already mentioned at FoF 13 above, the Project is speculative. No
9 improvements have been built yet, and there are no tenants identified for occupancy of any of
10 the proposed buildings. No one knows what uses will occupy the proposed buildings if they
11 are, in fact, built. That said, given the size and layout, and the underlying zoning, the uses
12 will have to conform to the City’s industrial zoning category. The City conducted its review
13 on the Applicant’s *proposal*, based on the SEPA Checklist, and accompanying reports,
14 studies and documents. Of necessity, and as set forth in WAC 197-11-055(2), SEPA review
15 happens “at the earliest possible point in the planning and decision-making process, when the
16 principal features of a proposal and its environmental impacts can be reasonably identified.”

17 TMC 13.12.240.B mirrors this language from the WAC. *Ebsworth Testimony, Schramm*
18 *Testimony, Schultz Testimony; Ex. C-1, Ex. C-7, Ex. A-18.*

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¹⁷ Within each environmental impact area addressed in this Decision there are at least some additional non-
disputed facts that are in the record, but that will not be recounted or formally “found” here. That is so because
they are not relevant to the disputed issues in this appeal, and recounting them would simply add page length to
this Decision. With over 13,000 pages in the hearing record it did not seem to make sense to include as findings
all facts even if not in dispute. Transportation is addressed first because of the prominent role it played at the
hearing.

1 33. In this appeal, the proposed design of the Project buildings and the Site layout,
2 play a central role in the dispute over transportation impacts. For its review of the Project
3 buildings, the City had site plans, drawings, and elevations. Again, as already mentioned, the
4 buildings are proposed to total approximately 2.5 million square feet in floor area. Although
5 the zoning of the Subject Property allows for building heights up to 100 feet, the Project
6 buildings are proposed to be only 40 feet in height. *Ebsworth Testimony; Ex. C-1, Ex. C-2,*
7 *Ex. C-3~Ex. C-5.*

8 34. Buildings A, B and C are all shown in proposed documents to have freight
9 docks on both sides of the longest length of these rectangular buildings. Sometimes referred
10 to as “cross-docks,” these facilities can be used for cross-loading, which descriptively means
11 for purposes of this Decision (and not as a term of art) receiving deliveries on one side of a
12 building and then loading them again on the other side for re-delivery.¹⁸ In some cases, this
13 traversal of a warehouse floor and reshipping can happen quite closely in time, but that is not
14 an absolute. Such docks can also simply facilitate both loading and unloading on two separate
15 sides of a warehouse building, but that is not necessarily the intention here. *Ebsworth*
16 *Testimony, Schramm Testimony, McCarthy Testimony.*

17 35. Buildings B and C have separate, almost bulbed-out nodes at all four corners
18 which could accommodate office space for four different tenants that could separately
19

20 ¹⁸ The term “cross-docking” is similar but seems to have a timing element built into it that does not fit in all
21 cases here. See e.g., <https://www.shipbob.com/blog/cross-docking/>. From what the Examiner has ascertained,
cross-docking can also occur directly from one truck (or delivery vehicle) to another without docks and
warehouses even involved. “Trans-loading” is another term sometimes used and has its own particular meaning.
<https://www.partnership.com/blog/post/what-is-the-difference-between-cross-docking-and-transloading#:~:text=Cross%2Ddocking%20is%20unloading%20inbound,another%20truck%20for%20outbound%20shipping.>

1 partition warehouse space and docks or share the whole of it/them. Building A appears to
2 have two corners at the north end for such purpose, and Building D has this type of corner
3 space on each end of its west side. The Applicant’s witnesses indicated that this design
4 feature is intended to allow for flexibility in attracting multiple, diverse tenants which is an
5 element of the Industrial Park 130 land use code description further addressed below.

6 *Ebsworth Testimony, Schramm Testimony; Ex. C-3.*

7 36. The Applicant employed Transportation Engineering NorthWest (again
8 “TENW”) to conduct a Traffic Impact Analysis (again, the “TIA”) for the Project analyzing
9 the probable traffic impacts that will result. TENW submitted its 411-page TIA to the City as
10 part of the SEPA review. TENW’s initial TIA was dated May 19, 2021, but it was updated at
11 least once in response to comments received from the City and to correct a notable error
12 before it was finally dated December 10, 2021.¹⁹ The TIA deals with numerous issues and
13 potential impacts from the Project, including, without limitation, existing transportation
14 facilities (including collision history), level of service issues, traffic volumes—both existing
15 and predicted, access issues and mitigation. *Schramm Testimony; Ex. C-7.*

16 37. Based on the Project proposal, TENW had to apply a suitable land use
17 designation or code to the Project to facilitate its trip generation analysis as part of the TIA.
18 Schramm testified that although a general “warehouse” code could have been chosen based
19 on the proposal, TENW chose instead to use an “industrial park” (abbreviated as “IP”) land
20 use code because using the IP code was a better overall fit and was considered more

21

¹⁹ The differences between the May 2021 TIA and the updated TIA from December 2021 have already been referred to in FoF 24 above, and they are addressed again in FoF 54~FoF 57 below.

1 conservative in that it generates more trips than the warehouse code, and thereby the TIA
2 ends up considering a greater level of potential transportation impact. TENW’s use of the IP
3 code predicts 4,980 new weekday daily trips for the Project. TENW’s use of the IP land use
4 code is perhaps the most contested issue in this appeal and several other issues hinge on it, at
5 least in part. *Schramm Testimony, McCarthy Testimony; Ex. C-1, Ex. C-7, Ex. A-18.*

6 38. The land use codes just referenced come from the Institute of Transportation
7 Engineers’ (“ITE”) Trip Generation Manual (the “ITE Manual”) which is the standard
8 reference guide for predicting trip generation used by traffic engineers. The warehouse land
9 use code just referenced above is ITE’s code 150. The IP code is 130. Other land use codes
10 and their corresponding number references that came into play at the hearing are as follows:

- 11 • High-Cube Transload and Short-Term Storage Warehouse – 154,
- 12 • High-Cube Fulfilment Center Warehouse (non-sort) – 155,
- 13 • High-Cube Fulfilment Center Warehouse (sort) – also 155,
- High-Cube Parcel Hub Warehouse – 156, and
- High-Cube Cold Storage Warehouse – 157.²⁰

14 These codes are referenced extensively below. Of these additional land use codes, uses 155
15 and 156 generate materially more trips than using the IP land use code. Code 155 only
16 generates more trips than IP 130 code in the subcategory “sort” (as opposed to “non-sort”) at
17 15,939 trips, and code 156 generates 11,459 trips.²¹ Codes 154 (3,465 trips) and 155 non-sort
18 (4,480 trips) generate fewer trips than the IP 130 code. Code 157 is only slightly higher than
19 the IP 130 code at 5,247 trips. Appellants contend (a) that use of the IP 130 code was error
20 because it does not generate worst-case scenario numbers, (b) that the most viable codes to
21

²⁰ See *Ex. B-23*, and see also *Ex. A-18 and A-19*. The abbreviation “HCW” is used hereafter to refer to the high cube warehouse category of uses both collectively and generically.

²¹ All numbers here are for total average daily trips.

1 use were either 155 (sort) or 156,²² and therefore, (c) that the Applicant's TIA is clearly
2 erroneous as was the City's acceptance of the TIA using the IP 130 code use because they
3 underestimated Project trips and therefore also underestimated the traffic impacts. *McCarthy*
4 *Testimony, Dixon Testimony, deSouza Testimony; Ex. A-18~Ex. A-20.*

5 39. The City determined that the 4,980 new weekday daily trips for the Project
6 generated using the IP 130 code, which includes 1,411 daily truck trips,²³ would have
7 significant impacts under SEPA, but that those impacts could be sufficiently mitigated. The
8 City set forth its required mitigation measures at pages 14 through 17 of the MDNS (Exhibit
9 C-1).²⁴ Those mitigation measures are incorporated here by this reference.²⁵ They are
10 extensive and include, without limitation, new streets/access roads, sidewalks, signals,
11 intersection modifications, and significant monitoring of the Project as it gets built-out and
12 occupied to account for the possibility²⁶ of higher generating uses coming into the Project as
13 tenants. If that were to happen, a new TIA(s) could be required that would include new trip
14 generation analysis addressing a specific tenant's use, the additive, cumulative impacts of the
15 Project, as well as new mitigation measures suited to the new tenant information. *Schultz*
16 *Testimony, Hansen Testimony, Schramm Testimony; Ex. C-1, Ex. C-7.*

17
18
19 ²² This is so presumably because these are the highest trip generators and therefore fit with Appellants' worst-
20 case scenario argument. Later, McCarthy testified that any of the HCW uses 154~157 codes were more
21 appropriate than the IP 130 code even though codes 154 and 155 (non-sort) generate fewer trips than IP 130.

²³ Schramm emphasized in his testimony that this number is actually higher than the truck number for code 155 (sort) which is only 470.

²⁴ See also *Ex. B-27* for a graphic representation overlain on an aerial map of traffic impact mitigation measures.

²⁵ Reprinting, rather than incorporating them here seemed imprudent given their length.

²⁶ The possibility that something can happen does not necessarily make it likely or even probable under SEPA. See e.g., *RCW 43.21C.031(2), RCW 43.21C.110.1(d), and RCW 43.21C.240(2)(a), WAC 197-11-782, WAC 197-11-060(4)(a)* (an impact must be likely and not merely speculative). In briefing, Appellants argued that the Project's use as a high-trip-generating HCW is not speculative. The Examiner disagrees based on the evidence.

1 40. In analyzing the traffic impacts for the Project, TENW met and corresponded
2 with City of Tacoma staff, responded to comments, and undertook all of the following:²⁷

- 3 • Assessed existing conditions through field reconnaissance and reviewed existing
4 planning documents.
- 5 • Reviewed historical documents for the Site, including previous traffic analysis
6 and development agreement.
- 7 • Described existing roads, non-motorized facilities, and transit facilities in the
8 Project vicinity.
- 9 • Documented the latest 3-years of collision history at the study intersections.
- 10 • Documented existing (2021) traffic volumes and intersection level of service
11 (LOS) at 16 study intersections during the weekday AM and PM peak hours.
- 12 • Documented planned roadway improvements in the Project vicinity.
- 13 • Developed weekday daily, AM peak hour, and PM peak hour trip generation
14 estimates for the proposed industrial park Project.
- 15 • Documented trip distribution and assignment of AM and PM peak hour Project
16 generated trips.
- 17 • Documented AM and PM peak hour traffic forecasts and assumptions for year
18 2024 (year of opening) conditions without and with the proposed Project.
- 19 • Conducted weekday AM and PM peak hour LOS analyses for future year 2024
20 (year of opening) conditions without and with the Project at the study
21 intersections and proposed new site access on S 35th Street.
- Performed queuing analyses for future year 2024 (year of opening) conditions
 with the proposed Project at all Site access locations.
- Conducted signal warrant analysis at three study intersections.
- Analyzed weekday AM and PM peak hour LOS and operations at the study
 intersections and proposed new Site access on S 35th Street for future year 2030
 conditions (6 years post-opening) with the Project.
- Documented AutoTurn truck turning evaluation at proposed new Site access
 location and key intersections.
- Documented proposed traffic mitigation.

41. Appellants' critique of the Applicant's analysis and the City's review thereof is
based on their witnesses' (primarily Dr. McCarthy on this issue) experience²⁸ as applied to
their third-party review of the permit submission record to the point of the MDNS's issuance.

²⁷ This is quoted essentially verbatim from Exhibit C-7 at p. 4, but with slight formatting changes such as changing "site" to "Site" and "project" to "Project" to match current context.

²⁸ Again, Appellants' witnesses' experience in the Washington State, SEPA project context is by their own admission slim. *FoF 27 and FoF 28*.

1 Finding of Fact 40 and this Finding 41 highlight a difference between the Appellants’
2 witnesses and the Respondents’ witnesses that the Examiner finds significant on these issues
3 and for this Decision generally. On this issue, Dr. McCarthy is not a licensed (traffic/civil)
4 engineer, but he has become knowledgeable about land use codes and trip generation by
5 *reviewing* hundreds of traffic impact analyses and through developing resources regarding this
6 topic primarily with a California focus. Schramm is a licensed engineer with nearly 30 years of
7 experience during which he has *conducted* hundreds of traffic impact analyses in Washington.
8 The City’s Hansen is a licensed engineer as well and has reviewed, in his regulatory role, at
9 least scores of traffic impact analyses. *McCarthy Testimony, Schramm Testimony, Hansen*
10 *Testimony; Ex. B-2, Ex. A-17, Ex. A-18.*

11 42. During the hearing, Appellants offered the following as their main allegations of
12 error in regard to the Respondents’ analysis/review of transportation impacts:

13 (a) Because the Project is speculative, the Respondents should have taken an
14 “assume the worst” approach to trip generation analysis.²⁹ This approach
15 should have disqualified the IP 130 land use code and required using one of
the high-trip-generating HCW land use codes instead (155 sort or 156)
because they generate more trips.

16 (b)(i) Because the Project buildings are large and have docks on opposing
17 sides, (ii) because the buildings are projected to be built at a height that
could accommodate mezzanines which are commonly present in HCW
18 uses,³⁰ and (iii) because the present economy seems to be creating the need

19 ²⁹ McCarthy testified that, “The decision maker should be informed about the possible impacts of the project and
a conservative assumption should in fact give them a decent estimate of what the worst-case scenario would be.”
Day 5 PM at the 28-minute mark (Day 5 Zoom recording at 01:54:23).

20 ³⁰ McCarthy offered detailed testimony in rebuttal (with references to *Ex. A-78* primarily) explaining how
21 HCWs typically have high levels of on-site automation and logistics management. There was nothing in the
record that tied these factors to the proposed Project buildings, however, other than the building height, which at
40 feet could accommodate mezzanines, and mezzanines are where some automated activity often takes place in
a HCW. See *FoF 45 re. 40-foot buildings (40-foot height is common for standard warehouses as well)*. Without
more ties between the building design and automation, this HCW characteristic does not support Appellants’
argument that the Project will inevitably become a high-trip-generating HCW complex. Proposed parking was
also mentioned as a factor, but it is certainly not conclusive on whether the building will include automation

1 for more HCW space, the City should have assumed that the Project will
2 ultimately be a higher trip generating HCW complex.³¹ *McCarthy*
Testimony; Ex. A-18~Ex. A-21, Ex. A-78.

3 43. McCarthy offered his opinion that the design of the buildings, and current
4 economics make it a virtual certainty that the Project will end up being used as four HCWs of
5 the high-trip-generating variety—either codes 155 (sort) or 156 type. He testified that the
6 proposed Project buildings are simply the same thing four times over, and that this same
7 thing is a high-trip-generating HCW. By the end of the hearing, it was clear that for
8 McCarthy, these building features (cross docks, building height) or building types make it a
9 virtual certainty that the Project will become four buildings-worth of high-trip-generating
10 HCWs. This opinion notwithstanding, McCarthy did concede that it was certainly possible
11 for typical Industrial Park uses to tenant the buildings. On the other side, Schramm
12 acknowledged that the buildings’ proposed design could accommodate HCW uses, and that
13 per the ITE Manual’s definition of HCW code 155 (sort), such a use can be part of an
14 Industrial Park. *Schramm Testimony; Ex. B-24.*

15 44. During initial direct questioning from Appellants’ counsel in reference to the
16 ITE Manual’s entry for IP land use code 130, McCarthy also testified that the IP land use

17
18 facilities. In any event, Exhibit A-78’s references to typical parking for “Fulfillment Center” and “Parcel Hub”
19 do not support McCarthy’s contentions regarding lower parking numbers in the range of the Project. The
20 opposite is actually set forth in Exhibit A-78, which confirms Schramm’s testimony regarding parking for these
21 uses.

³¹ McCarthy analogized support for his position that the Project is not an Industrial Park and is obviously a
HCW by offering that you can play baseball or football on a field designed more specifically for the other, but
that it is easy to tell when a field is really a football field. McCarthy is probably both too young and too far
removed geographically, being from California, to remember the Kingdome—a facility designed for both
football and baseball, that even hosted NBA and NCAA basketball on multiple occasions. Some facilities are
designed to be able to accommodate more than a single type use as Schramm testified. Because a particular use
can be accommodated does not mean that such use is an inevitability or even probable. And yes, the author is
aware that at least part of the Kingdome’s demise was due to its flexible nature not being necessarily perfect for
any of these sports.

**FINDINGS OF FACT,
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1 code is appropriately used as “sort of a catch-all for when you don’t know what’s going to go
2 into an area or when you think it’s going to be a diversified set of buildings.” He also
3 characterized IP land use code 130 as “an industrial mixed-use category.”³² While the
4 Examiner fully understands McCarthy’s building-centric opinion about the inevitability of
5 HCWs in the Project, the Applicant’s characterization of its proposal and the site plan fits
6 well with the ITE Manual and McCarthy’s own description of the IP 130 code. No one knows
7 what tenants will occupy the Project, if built, and despite McCarthy’s assertions otherwise,
8 the buildings are not exactly the same across the board. Although similar, they are more-or-
9 less vanilla shells set up for the possibility of multiple tenants who could have diversified
10 uses. *Ebsworth Testimony, Schramm Testimony; Ex. C-3~Ex. C-5.*

11 45. Later during rebuttal testimony, in response to questioning about ceiling heights
12 being indicative of HCW use, McCarthy used the phrase “[t]here is wiggle room in all of
13 these.” That seems to be true, in the end, for all the building characteristics pointed to as
14 proof that the Project is intended to be a high-trip-generating HCW complex. Exhibit A-78
15 shows 40-foot building heights as being typical for non-HCW, standard warehouses as well,³³
16 and cross-docks are not used for HCWs without exception. Exhibit A-78 showed dock
17 configurations for HCWs to be more varied than the proposed Site plan even, which tends to
18 undercut the Appellants’ position that the proposed Project dock configuration makes a HCW
19 use virtually inevitable because the Project matches so well. There does not really seem to be
20

21 ³² Day 2 AM around the 15-minute mark (Day 2 Zoom recording at 00:15:06). Appellants cite to this same
testimony in their Post-hearing Brief at p. 5, but omit McCarthy’s language regarding IP 130 code’s
appropriateness in cases “[w]hen you don’t know what’s going to go into an area...” as is the case here.

³³ McCarthy testified that many jurisdictions will have a maximum building height and that a fulfillment center
will be built to that maximum building height. That is not proposed here. *FoF 33.*

**FINDINGS OF FACT,
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1 just one exact match. In addition, Schramm stated the opposite of what McCarthy claimed
2 about parking for a code 155 (sort) use, contending that proposed Project parking was way
3 too low for a code 155 (sort) facility. Appellants’ own Exhibit A-78 seems to support
4 Schramm’s contention in this regard about both 155 (sort) and 156 code uses and their typical
5 parking being higher than what the Project proposes.

6 46. As already pointed out above, only one category of HCW (code 156) and one
7 sub-category (155 sort) generate materially more trips than the IP 130 code. McCarthy
8 testified that any of land use codes 154-157 were a better fit than IP code 130 because of
9 “size, ceiling height, and the dock doors” and that the IP 130 code does not fit because it does
10 not pass his football field “I-know-it-when-I-see-it” test referenced in n. 30 above. McCarthy
11 concluded his testimony by stating that his opinion regarding the necessity of using the
12 highest trip generating use(s) comes from his emissions/air-quality background and was not
13 based in the legal requirements of SEPA regarding transportation impacts, or otherwise based
14 in applicable laws in this appeal because he is not a lawyer. *McCarthy Testimony; Ex. A-17.*

15 47. Schramm testified that the choice of IP 130 code was deliberate and appropriate.
16 He testified that the IP 130 code is appropriate because the tenants of the Project are not
17 identified yet (consistent with McCarthy’s “catch-all for when you don’t know what’s going
18 to go into an area”) and because there are multiple buildings proposed with multiple uses
19 likely that will share access and parking. Schramm also indicated that the number of available
20 data points for a given use is important in choosing the appropriate land use code to estimate
21 the number of trips a given project will generate. In the current edition of the ITE Manual, the

1 IP 130 code is based on 27 studies. He admitted that the overall square footage of the Project
2 is at the high end of those 27, but the Project is not such an extreme statistical outlier as to
3 make the IP 130 code inapplicable. The Project is also larger than the largest data point/study
4 for 155 (sort), which makes this argument a distinction without a difference.³⁴ The 155 (sort)
5 code has only 2 studies or data points (ITE Manual p. 169, Exhibit B-24). Of those studies,
6 Schramm testified that one was collected during the month of December which goes without
7 saying is a statistically high month for trip generation in this type of use. Schramm testified
8 further that he has been the traffic engineer for seven other projects in Western Washington
9 that have similar physical characteristics to this Project (tenants unknown, multiple buildings,
10 site plan that shares access and parking, parking number, building layout, number of dock
11 doors, presence of cross-docks) that were all classified as land use code 130 Industrial Parks.
12 Schramm gave his concluding opinion that the Project will not produce “significant adverse
13 traffic impacts.” This specific testimony was not clear as to whether Schramm was speaking
14 simply about the Project as proposed or whether he was taking into account the City-required
15 mitigation measures as well in arriving at his opinion. *Schramm Testimony; Ex. B-24.*

16 48. deSouza also challenged the Applicant’s trip generation methodology by making
17 her own calculations. Schramm explained that she did not follow the correct ITE Manual
18 methodology in doing so. deSouza’s calculations used both the lowest hourly rate and the
19 highest hourly rate. Schramm testified that using the average hourly rate is the correct way to
20 calculate trips. *deSouza Testimony, Schramm Testimony; Ex. A-47, Ex. B-24.*

21

³⁴ See *Ex. B-24 ITE Manual p. 169.*

1 49. Hansen testified that McCarthy’s criticism of the TIA was unwarranted and that
2 (a) the TIA was reasonable, (b) the methods used were appropriate, and (c) the results were
3 based on sound traffic engineering principles. Hansen further testified that, although
4 McCarthy had impressive credentials, he was not qualified to perform and submit a traffic
5 impact analysis, or any engineering study for a City permit because he is not a civil engineer
6 licensed by the State of Washington.

7 50. In response to the Examiner’s direct inquiry to the Applicant³⁵ as to whether
8 Bridge Industrial or its subsidiaries and affiliates are operating any HCWs (particularly in
9 Washington State), and if so, whether any of them began their permitting claiming to be an IP
10 130 use only to change later to HCW as an actual use, the Applicant submitted the
11 Declaration of Matt Gladney, Senior Vice President of Development for Bridge Industrial
12 (“Bridge”) in its Northwest office. Toward the close of the hearing, the Appellants requested
13 the opportunity to examine him under oath and the Examiner granted the request.³⁶ Gladney
14 indicated in his Declaration that of approximately 140 projects that Bridge has in
15 development, has constructed or has acquired, his estimate was that less than 5% of those are

17 _____
³⁵ This inquiry came initially during Schramm’s direct testimony toward the close of Day 3.

18 ³⁶ The Examiner finds no reason to exclude Gladney’s testimony either in the Declaration or verbally under oath
19 as Appellants argued in their Post-hearing Brief. He only came into the hearing in response to the Examiner’s
20 questions to the Applicant and he was put on the stand at the request of the Appellants. His declaration was
21 qualified by a short turnaround time and his responses given were to the best of his knowledge. Appellants’
information used in an attempt to impeach Gladney was not based on first-hand knowledge of any Appellants’
witness, but rather was gathered from the internet. Appellants objected to Gladney’s testimony because he was
unfamiliar with a number of Bridge’s locations outside of Washington. This was after Appellants’ counsel
indicated that she wanted to question him about these sites that again, someone on Appellants’ team found on
Bridge’s website. The Examiner finds very little of value in the whole exchange but sees no reason to exclude
Gladney’s Declaration and testimony based on an attempt to impeach him with information of which Appellants
really had no first-hand knowledge. The one Washington State facility Appellants’ counsel referenced was not
permitted or operated as a code 156 or 155 (sort), but was a code 154 transload facility, it was permitted as such,
and it was no longer in Bridge’s ownership portfolio in any event.

1 currently used as a HCW fulfillment center or HCW parcel hub. Gladney indicated that
2 Bridge only has seven cold storage warehouses (high cube or otherwise) and that they were
3 originally designed and permitted as such.

4 51. As referenced above (*FoF 39*), the City's required mitigation measures set forth
5 in the MDNS include monitoring measures. Both Schultz and Hansen testified that the City's
6 SEPA authority does not end with the issuance of the MDNS and that as the Project gets built
7 and occupied, if tenants are proposed or features of the Project change that will trigger
8 additional review, that review will be done, and additional mitigation measures may become
9 necessary and will be imposed. SEPA requires as much. *Ex. C-1*.

10 52. Based on the evidence, the Examiner finds it difficult to presume that very large,
11 rectangular, 40-foot-high buildings with potential office spaces provided at most corners, and
12 that have cross-dock facilities can only be used for 155 (sort) or code 156 uses, or that these
13 codes should have been used anyway to account for worst-case scenario numbers when
14 nothing in SEPA, the WAC or the TMC require that. The Examiner can appreciate the
15 Appellants' advocacy in that direction, but cannot find the Applicant and the City's use and
16 acceptance of the IP 130 land use code to be clearly erroneous.

17 53. In light of all the foregoing, and (a) given that McCarthy admitted that
18 manufacturing and industrial uses are still certainly possible in the Project as proposed, (b)
19 given that the Project as proposed fits within the IP 130 code description as well as McCarthy
20 own characterization thereof (*FoF 44*), (c) given that a forty-foot building height is not a
21 unique feature of HCWs, (d) given that HCW dock configurations are actually more varied

1 than the Project and cross-docks are not unique to HCW uses, (e) given that two seasoned,
2 licensed traffic engineers (Schramm and Hansen), one of whom at least is disinterested (the
3 City's Hansen)³⁷ gave logical explanations for why the IP 130 code was more appropriate
4 than either code 155 (sort) or code 156, and (f) given the City's intention to continue
5 monitoring the Project and require additional mitigation measures if necessary, the Examiner
6 cannot find anything clearly erroneous in how the Respondents approached and analyzed, and
7 how the City approved the transportation/traffic impacts of the Project for the MDNS by
8 using the IP 130 code.

9 **May 2021 to December 2021 TIA Calculation Revision**

10 54. As mentioned at Finding of Fact 24 above, the Applicant's TIA had a
11 conspicuous revision from the May 19, 2021, version until the final version dated December
12 10, 2021. The IP 130 land use code was used in both versions, but a different calculation
13 methodology was used. In the May 19, 2021 version, TENW used averaging to calculate trip
14 generation for the Project. Using the average rate produced an estimated trip number of
15 8,425. In the final December 10, 2021 version, a regression equation was used which
16 produced the smaller number of 4,980 new weekday daily trips for the Project. Schramm
17 explained that when there are more than 20 studies or data points for a chosen land use (27
18 for the IP 130 code³⁸), a regression equation (or fitted curve equation) is dictated by the ITE
19 Manual's quality controls. He also pointed out that on the graph in the ITE Manual that
20 shows the 27 data points for the IP 130 code, the three data points from industrial parks over
21

³⁷ There is no evidence in the record that the City has any vested interest in the outcome of this appeal or the fate of the Project.

³⁸ See *Ex. B-24*, p. 48 of the *ITE Manual*.

1 2 million square feet were closer to the regression curve line than the dotted average rate line.
2 He indicated that this was confirmation of the regression methodology being more accurate.
3 *Schramm Testimony; Ex. B-24, Ex. A-21.*³⁹

4 55. Appellants’ counsel pointed out in cross-examining Schramm that the ITE
5 Manual cautions a traffic engineer against “applying data” when using the regression
6 equation “produce[s] an illogical trip-end estimate for independent variable values that are
7 significantly less than the average-sized value.”⁴⁰ The ITE Manual then directs the reader to
8 another text location “for additional guidance,” but no evidence was offered by either side as
9 to what that additional guidance is, nor did Appellants show that this made the averaging
10 approach the appropriate calculation type even though there are in excess of 20 data points
11 for the IP 130 code. During his testimony Schramm did reaffirm that, under the regression fit,
12 the larger the square footage, the lower the trip rate, which was borne out by TENW’s final
13 calculation. *Schramm Testimony; Ex. B-24.*

14 56. Appellants’ counsel drew attention to the fact that the final TIA made no
15 mention of the changed calculation methodology, stating only that revisions had been made
16 based on City comments on the prior version from May of 2021. Schramm could not recollect
17 the City commenting on TENW’s choice of calculation method. Although the Examiner

19 ³⁹ Appellants’ argument in their Post-hearing Brief makes it seem like Schramm only switched the calculation
20 methodology because a colleague told him the ITE Manual required the regression calculation. Schramm
21 provided ample testimony, as referenced in this section why the ITE Manual required the revision, and he
pointed to the pages in the ITE Manual that so indicate in his testimony. Likewise, Appellants’ briefed assertion
that Schramm conceded “the regression fit equation is not the only appropriate calculation methodology” is
misleading. He testified essentially that although you could erroneously use the average method—as TENW did
in the May 2021 TIA—the ITE Manual says that the regression fit equation “should” be used when there are
more than 20 data points. His own words were “That is the guidance right from the manual.” *Schramm
Testimony, Day Four at 39:49.*

⁴⁰ *Ex. B-24, p. 20 of the ITE Manual.*

1 understands the insinuation here, he does not find that TENW was making any intentional
2 concealment or that the revision was unwarranted. Sometimes when an error is discovered,
3 you just correct it and move on. *Schramm Testimony; Ex. C-7.*

4 57. In a final attempt at clarity at the end of Schramm’s testimony, the Examiner
5 asked Schramm, point blank, what the reason for the change in calculation methodology was,
6 and Schramm responded that TENW’s internal quality control process and a re-examination
7 of the ITE Manual dictated using the regression fitted curve equation. Schramm’s explanation
8 for the change, even though the change implicated ultimately unexplained cautionary
9 language and resulted in lower trips, appears valid based on the ITE Manual and Schramm’s
10 testimony.⁴¹ Appellants did not clearly show otherwise.

11 **Collision Analysis/Traffic Safety**

12 58. deSouza disputed the sufficiency of the TIA and the Respondents’ conclusions
13 that traffic impacts will be sufficiently mitigated by testifying that there is no collision
14 information/data in the TIA. That is incorrect. As referenced above (*FoF 36 and 40*), the TIA
15 included researching and documenting “the latest 3-years of collision history” at selected
16 intersection in the vicinity of the Subject Property. Giving the benefit of the doubt, deSouza’s
17 statement claiming there was no collision data in the TIA may have meant that there were no
18 collision projections for the future after the Project is completed. deSouza stated that with the
19 addition of a large project to the area, it is essentially common sense that traffic accidents will
20 increase. Her testimony and experience on this subject come primarily from studying the
21

⁴¹ Complex lengthy documents such as the ITE Manual often do not square internally on all points. A municipality’s Comprehensive Plan is almost invariably another example of incomplete eternal consistency. Competing goals and policies in a comprehensive plan are usually found without much difficulty.

1 effects of large warehouses (greater than 10,000 sq. ft.) on traffic collisions in Southern
2 California. *deSouza Testimony; Ex. A-45~A-47.*

3 59. Schramm testified that the results from surveying the collision history of the
4 latest three years produced numbers low enough that it was concluded through employing
5 standard professional traffic engineering practices that the Project will not adversely impact
6 traffic safety significantly, especially after the MDNS Mitigation Measures are implemented.
7 *Schramm Testimony; Ex. C-7.*

8 **Air Quality/Health/Climate**⁴²

9 60. In regard to air impacts, the Applicant submitted an approximately 500-page Air
10 Quality Study (the “AQS” *Exhibit C-13*) with a Construction Addendum (*Exhibit C-32*),
11 prepared by TRC Companies, Inc. (“TRC”). The AQS is dated May 24, 2022, with an update
12 on July, 15, 2022. TRC’s principal who conducted the AQS was Naomi Goff, a chemical
13 engineer, who was the “Air Group Western States Lead” with TRC at the time the AQS was
14 performed. Goff has 17 years of experience in environmental compliance related to air
15 quality issues. She has notable experience in preparing emissions inventories, air permit
16 applications, dispersion analyses, greenhouse gas inventories, and handling other regulatory
17 compliance issues. *Goff Testimony; Ex. C-1, Ex. C-13, Ex. C-32.*

18 61. As part of the AQS, TRC conducted an evaluation of background ambient air
19 quality using data obtained from the monitoring network operated by the EPA. TRC used a
20 regional approach to discerning baseline ambient air quality because TRC determined that
21 direct measurement of ambient air quality would be a limited snapshot of an unrepresentative

⁴² Air quality is sometimes abbreviated herein as “AQ.”

1 time period due to seasonal variability in meteorology, vehicular mix, and fuel blend, noting
2 that vehicle emissions differ from summer to winter in Washington State due to different,
3 seasonal fuel formulations. *Ex. C-13*.

4 62. Based on the regulations applicable to the Project, the Project does not need a
5 separate air permit. Air permits are generally applicable to stationary sources. The only
6 stationary sources proposed in the Project are natural gas heaters in the buildings that will
7 only be in use seasonally. The Project’s proposed heaters have smaller output rates than what
8 meets the threshold for requiring an air permit. *Goff Testimony; Ex. C-13, Ex. C-32*.

9 63. Washington State has no air permitting requirements for mobile sources such as
10 cars and trucks, but rather regulates such emissions more with a vehicle-by-vehicle approach.
11 This does not necessarily exclude mobile emissions from being considered in SEPA review.
12 *Goff Testimony; Ex. C-13*.

13 64. There are no specific attainment thresholds for air quality under SEPA used to
14 measure impacts. As a result, and due to her engineering background, Goff applied a number
15 of other state and federal air quality regulatory standards to the Project for her evaluation in
16 order best to objectively determine whether air impacts from the Project would be significant
17 under SEPA. These included Ecology’s framework for assessing stationary source toxic air
18 pollutants (“TAPS”) that require an air permit. Of these, Goff focused on nine different
19 TAPS⁴³ that are identified by the EPA as being priority mobile source air toxics (“MSATs”)
20 which are the primary drivers for long term health impacts. Goff also looked at oxides of
21 nitrogen and carbon monoxide. These pollutants are also on the Washington list for toxic air

⁴³ But others were analyzed as well. *See FoF 84(f)*.

1 pollutants and are most commonly associated with combustion engine emissions such as are
2 at issue here. *Goff Testimony; Ex. C-13.*

3 65. Using the same standards for mobile sources (cars and trucks entering and
4 exiting the Site) analysis is more complicated because Ecology’s standards for evaluating
5 TAPS are intended to only apply to stationary sources. For mobile sources, TRC looked to
6 EPA standards for something more regionally applicable, settling on “concentration-based
7 standards” for “criteria air pollutants.” These are part of the EPA’s National Air Quality
8 Standards (National Ambient Air Quality Standards or “NAAQS”). The NAAQS are
9 concentration-based standards EPA has set for the entire country to be protective of public
10 health. *Id.*

11 66. EPA assures that states continue to comply with the NAAQS through a standard
12 called the Prevention of Significant Deterioration (“PSD”). This program sets quantitative
13 thresholds for pollutants. PSD standards are applicable to projects that trip the requirement
14 for an air permit which the Project does not, but TRC applied them here analogously. EPA
15 designed the PSD standards to be protective of public health. *Id.*

16 67. During the hearing proceedings, Goff took the opportunity additionally to apply
17 AQ standards promulgated by the Federal Highway Administration (“FHWA”) to the Project
18 in response to testimony from McCarthy.⁴⁴ These standards included the FHWA’s Interim
19 Guidance for the Evaluation of Mobile Source Toxics, which are generally used for highway
20
21

⁴⁴ In their Post-hearing Brief, Appellants challenged the use of the FHWA standards for a number of reasons including asserting that Respondents had not relied on it previously. Given that McCarthy first referenced the FHWA standards, that the Applicant was responding to that testimony in turn, and that this proceeding is *de novo* (*TMC 1.23.060*), the Examiner finds the challenge to be unpersuasive).

1 projects under NEPA (the National Environmental Policy Act). The Washington Department
2 of Transportation (WSDOT) uses these same standards for road/highway projects. *Id.*

3 68. TRC applied all of these various standards in order to come to a more
4 standardized, objective evaluation of whether the Project would have significant impacts to
5 AQ. Looking to other state and federal standards as TRC did, seems to be encouraged under
6 SEPA at RCW 43.21C.240(6), which states, “Nothing in this section limits the authority of
7 an agency in its review or mitigation of a project to adopt or otherwise rely on environmental
8 analyses and requirements under other laws, as provided by this chapter.” *Id.*

9 Greenhouse Gas Emissions

10 69. There are no specific source or project limits or exceedance thresholds for
11 greenhouse gas emissions at the state or federal level. The state does have a reporting
12 program for stationary sources, which again does not apply to vehicles. Washington also has
13 a “cap and invest” program that applies at 25,000 metric tons of carbon dioxide equivalent,
14 but again this program imposes no emission limits. TRC attempted to contextualize the
15 Project’s greenhouse gases (“GHG”) against other inventories of GHGs on the state and
16 federal level. *Goff Testimony; Ex. C-13.*

17 70. TRC then identified sources of GHG for the Project such as trucks and cars
18 coming to and leaving the Site and idling while there, as well as considering the heaters
19 mentioned above. This was followed by determining an appropriate calculation method for
20 GHGs at the Project Site. *Id.*

21 71. All told, TRC looked at four categories in assessing AQ impacts for the Project:

1 (a) on-site emissions (idling vehicles, gas heaters), (b) off-site emissions (cars and trucks
2 going to and from the Site), (c) GHG, and (d) temporary construction emissions. *Goff*
3 *Testimony; Ex. C-13, Ex. C-35.*

4 72. For on-site emissions, hourly, daily and annual calculations were made for the
5 heaters using an EPA accepted method. EPA guidance and modeling programs were used for
6 idling truck emissions. A 20-minute idling time was used and considered conservative.⁴⁵
7 Passenger vehicles were not included because they are captured in the off-site analysis. Yard
8 equipment (forklifts, etc.) emissions were also excluded as *de minimus*. *Goff Testimony; C-*
9 *13, Ex. B-28, Ex. C-32.*

10 73. For off-site emissions, passenger vehicles and truck were accounted for to the
11 Pierce County/Thurston County line, while also accounting for these vehicles' non-idling
12 time on the Project Site (non-stationary traversal). *Id.*

13 74. For GHG, TRC looked at total GHG for both on-site and off (vehicles) within
14 the contextualization framework referenced above. *Id.*

15 75. Lastly, for temporary construction emissions a computer program was used to
16 predict quantities and impacts for the Project. *Goff Testimony; Ex. C-32.*

17 76. TRC's calculations concluded that four pollutants exceeded Ecology's *de*
18 *minimus* thresholds for stationary sources as applied to the Project. Again, the Project heaters
19 and motor vehicles are not subject to AQ permitting requirements. Two pollutants, diesel
20 particulate exhaust and nitrogen dioxide exceeded the Small Quantity Emissions Rate
21

⁴⁵ TRC did not anticipate that any vehicle at the Site would actually idle for 20 minutes. One of the MDNS Mitigation Measures requires a no-idling policy at the Site enforceable through tenant lease provisions and signage.

1 (“SQER”). Exceeding the SQER requires a first-tier health impact review under Ecology’s
2 framework, which includes dispersion modelling to determine whether a SQER-exceeding
3 pollutant exceeds the Acceptable Source Impact Levels referred to as “ASILs.” *Goff*
4 *Testimony; Ex. B-28.*

5 77. A first-tier health impact review was conducted for these two pollutants. For
6 diesel particulate, the maximum off-site concentration was less than 10% of the ASIL. For
7 nitrogen dioxide, the maximum off-site concentration was around 20% of the ASIL. As a
8 result, TRC determined that the impacts from these two pollutants—the only ones that
9 exceeded the SQER—would not be significant for the Project using Ecology’s standards.
10 Given the level of analysis here, that conclusion seems both supported and reasonable. *Id.*

11 78. For vehicles travelling to and from the Site, TRC used Moves3, a computer
12 modelling program developed by the EPA, to calculate an emissions factor in grams per mile,
13 as well as account for brake wear and tire wear. Geographical variables are also taken into
14 account. TRC used Pierce County data for 2023. *Id.*

15 79. For these impacts, as mentioned above, the longest route out of the county from
16 the Site was used. The stationary source standards were used to make calculations for these
17 sources, but, as with many measures here, they are a bit of a round peg in a square hole if
18 used for mobile sources. TRC also used EPA’s PSD standards. Using the PSD standards—
19 still also generally applicable to stationary sources—showed the emissions for the Project as-
20 a-whole to be well under the PSD thresholds. Applying the FHWA’s guidance addressed
21 further below, also showed that there would not be significant adverse impacts from off-site

1 emissions. As a result, TRC and the Applicant, with City approval after review, determined
2 that there were no significant adverse AQ impacts in this category likely from the Project. *Id.*

3 80. For the third category, GHG, TRC calculated potential GHG for “the various
4 sources and categories”⁴⁶ such as the Project heaters (using an activity factor from EPA),
5 truck idling (computer program), and off-site mobile sources (also using a computer
6 modeling program). TRC also included indirect GHG impacts for electricity generation to
7 account for electricity usage at the Site in order to be conservative. These were calculated
8 using a Northwest Power Profiler emission factor from EPA’s eGRID (Emissions &
9 Generation Resource Integrated Database) tool. The totality of TRC’s analysis estimated
10 approximately 24,000 short tons of CO₂ equivalent per year. Of that 24,000 short tons, about
11 18,000 tons was attributable to off-site vehicle emissions. *Id.*

12 81. Based on all the foregoing, TRC concluded that within a framework of there
13 being no source or project limits or exceedance thresholds for greenhouse gas emissions at
14 the state or federal level, GHGs from the Project were not significant.

15 82. Lastly, for temporary construction emissions, TRC used a computer modelling
16 program called “Cal-E-Mod”⁴⁷ adding in information about construction equipment and
17 construction phases specific to the Project over a projected two-year period in order to have a
18 more representative and accurate result. Table 3 of Exhibit C-32 shows the results of TRC’s
19 calculations. These calculations all showed results for criteria pollutants far below the EPA

20 ⁴⁶ Day 4 at 2:12:51.

21 ⁴⁷ Goff testified about using computer models that were developed in California. She clarified that although these programs were developed in California, they do not apply California laws or regulations in their modelling. Goff also clarified that in her opinion, California laws, regulations, practices or standards are not applicable in Washington because of their being differently situated in regard to many things including federal AQ attainment.

1 PSD thresholds, which again, are designed to protect public health. As a result, TRC
2 determined that construction impacts were not significant under SEPA. *Goff Testimony; Ex.*
3 *C-32.*

4 83. TRC/Goff's overall opinion regarding AQ, health and GHG impacts for the
5 Project is that they are not significant even before the MDNS (AQ) Mitigation Measures, but
6 certainly with such measures, she opined that the Project met SEPA's requirements for
7 keeping impacts in these areas (AQ/GHG/Health) below the level of significance. *Goff*
8 *Testimony.*

9 **Appellants' Allegations of AQ/Health/GHG-Climate Errors**

10 84. Appellants alleged a number of errors they believe undermine the accuracy of
11 TRC's analysis for the Project. These allegations, and responses thereto, are as follows:

12 (a) The AQS underestimated the Project's offsite vehicle emissions by
13 excluding all emissions occurring past the county line and by relying on
the overly low trip generation estimates in the final TIA.

14 Last things first, as addressed above, the Examiner does not find that using the IP
15 130 code was clearly erroneous. As a result, the AQS was not in error by relying on the
16 trip generation numbers from the TIA. The Examiner also does not find it to be clear error
17 to have used the trip length to the county line as TRC did. This is addressed separately
18 below.

19 (b) TRC should have used FHWA standards to bolster its analysis and
20 should have done dispersion modelling for off-site impacts.

21 During the hearing but before her testimony, Goff did look to FHWA standards,

1 including an FHWA Internal Guidance Memo from 2023, and her use thereof still
2 showed no significant impacts for offsite traffic. The FHWA and EPA standards
3 additionally showed that the thresholds for needing dispersion analysis for offsite traffic
4 were not triggered by the Project. Specifically, the FHWA standards indicate that
5 dispersion analysis is not implicated for projects where “design year traffic is projected to
6 be less than 140,000 to 150,000 annual average daily traffic.” Projects falling below this
7 level/range do not require a quantitative analysis, and even if performed, such may be
8 unreliable because of extremely long data/sample periods, among other things. The
9 Project falls below the FHWA threshold/range based on projected trips in any event. *Goff*
10 *Testimony*.

11 (c) Appellants contend that TRC should have accounted for refrigeration
12 trucks.

13 Goff testified that refrigeration trucks were a speculative use at the Site and so did
14 not include them. This goes back to the findings in the Transportation/Traffic/Trip
15 Generation section above. The Examiner has not found use of the IP 130 code to be
16 clearly erroneous. Stating here that TRC should have accounted for refrigeration trucks
17 presuming the possibility of a HCW 157 code use goes counter to that. This non-
18 inclusion was not clearly erroneous for an Industrial Park Project.

19 (d) Appellants contended that TRC should have used a 6-day week in its
20 analysis.

21 After hearing this assertion prior to her testimony, Goff did the math for a 6-day
week at the Project. She testified that levels of pollutants were still below PSD and other

1 standards used (SQERs ASILs etc.) for all criteria air pollutants.

2 (e) Appellants contended that GHGs from the concrete used in
3 construction should be accounted for or a “life cycle inventory” performed.

4 Goff testified that there is no requirement for this, nor is there an easily applicable
5 standard for its measurement.

6 (f) Appellants contended in earlier testimony that TRC should have
7 considered Acetaldehyde and other pollutants among those it analyzed.

8 Goff testified that TRC did, in fact analyze Acetaldehyde and a number of other
9 pollutants but did not include them in their top pollutants list. TRC’s Table A-1 goes
10 beyond the 9 priority TAPS and these additional pollutants were examined against the
11 ASILs and were below in all cases.

12 (g) Appellants argued that TRC should have looked to reporting standards
13 for GHGs instead of state GHG inventories as a better measure of
significance.

14 Goff found nothing helpful in looking to a reporting standard when determining
15 significance, especially given that the estimated GHGs for the Project do not rise to the
16 reportable thresholds Appellant referenced in any event. *Goff Testimony.*

17 **Truck Trip Lengths**

18 85. TRC initially assumed that the South 56th Street access point would be primary
19 to the Site. This was in error to the extent that one traffic impact MDNS Mitigation Measure
20 requires the Project to direct traffic—especially trucks—away from the South 56th Street
21 access to the North Access Road. Regardless, TRC calculated off-site emission impacts using

1 a route from the Site to the Pierce County line to the south connecting to Thurston County
2 because it is the longest route out of Pierce County from the Project.

3 86. Appellants challenged this approach claiming it to be error and claiming that it
4 has no basis in law or fact. Appellants cite to WAC 197-11-060(4)(b), arguing (a) that impact
5 assessment is not locally limited, and (b) that TRC should have used the Puget Sound
6 Regional Council's average trip lengths or the local Metropolitan Planning Organization's
7 published data on average truck trip lengths instead. Appellants contend that these resources
8 would result in greater trip lengths and therefore greater impacts for which to account, which
9 is consistent with Appellants' worst-case scenario approach.

10 87. Goff testified that the Puget Sound Regional Council's averages covered a
11 greater regional area than Pierce County specifically and that AQ issues are typically
12 monitored more at a county level. Therefore, she (TRC) concluded it was reasonable to use
13 the one-way 17 mile trip length to the county line. *Goff Testimony*.

14 88. Appellants provided no authority for having to use either the Puget Sound
15 Regional Council's average or the local Metropolitan Planning Organization's published
16 data. TRC did not limit the trip lengths to the city limits of Tacoma. They assumed a greater
17 trip length. The simple fact that longer trip estimates can be found in publications, and that a
18 longer trip affects the impacts analysis does not make what TRC did clearly erroneous.

19 89. TRC's AQ/GHG/Health analysis was extensive. Appellants' arguments that
20 TRC/the Applicant/the City had insufficient information are not well founded in that the
21 Applicant's use and the City's acceptance of the IP 130 code was not clearly erroneous, for

1 the reasons discussed above, and the remaining claims of insufficient information all hinge
2 on differences of opinion as to *what* TRC should have done or *how* they should have been
3 done (the “Whats and Hows”) differently. For this area of environmental impact(s), Goff
4 explained the Whats and the Hows at length. She combined that with explanation of why
5 TRC did what it did and also why the Appellants’ criticisms do not change TRC’s analysis
6 and the conclusions therefrom. After all that, unless the Examiner finds that the Appellants’
7 opinions and evidence claiming deficiency in the Whats and Hows prove the Applicants’
8 Whats and Hows to be clearly erroneous, there is no reversible error. Again, TRC’s analysis
9 was extensive, even continuing during the hearing in order to answer Appellants’
10 contentions. Though the parties’ opinions differ, the Examiner cannot find that what TRC did
11 and concluded was clearly erroneous.

12 Environmental Health

13 90. On environmental health more specifically, Appellants offered the testimony of
14 Dr. Elinor Fanning who has a PhD in Environmental Health Science on top of an impressive
15 biology background. Fanning does not have experience with performing AQ studies or
16 analysis under SEPA, however. *Fanning Testimony; Ex. A-52.*

17 91. Consistent with other Appellants’ witnesses, Fanning testified that worst-case
18 scenarios should be assumed in order to fully analyze environmental health impacts for the
19 Project. Fanning testified regarding air pollutants mainly from truck traffic at the Site and
20 potential health impacts therefrom. Again, higher numbers of trips were assumed based on
21 the Appellants’ contentions regarding HCW uses. Fanning relied on numbers from

1 McCarthy’s testimony and exhibits and she did not perform her own “technical analysis for
2 this matter” or her own AQ modelling. *Fanning Testimony, Day 2, at 5:31; Ex. A-19.*

3 92. On questioning from Appellants’ counsel Fanning gave her opinion that it is ***not***
4 ***possible*** to conclude that there ***will not be*** significant health impacts from the Project. This
5 seems to be saying simply that she does not know for certain whether there will be significant
6 health impacts from the Project. She based that opinion on her further opinion that “the
7 current analysis is still insufficient.” Her determination of insufficiency is based on two
8 things: (a) the fact that the analysis did not assume worst-case scenario conditions, and (b)
9 within that framework, she assumed greater truck trips. Her final characterization was that the
10 Project as currently written and mitigated is “likely to cause health harms to this
11 neighborhood.”⁴⁸ She did not testify that the health harms were likely and likely to be
12 significant. *Id.*⁴⁹

13 93. The Applicant offered testimony on this issue from Dr. Lisa Corey⁵⁰ who has a
14 PhD in Environmental Health/Toxicology. Corey’s background has included an emphasis in
15 risk assessment, and 19 years of chemical/biological assessments, and noise and odor studies.
16 *Corey Testimony; Ex. B-8.*

17 94. Corey was not involved in the permitting/MDNS process. Rather, she reviewed
18

19 ⁴⁸ *Fanning Testimony, Day 2, 5:25~26.*

20 ⁴⁹ The Examiner realizes that this could be considered splitting semantic hairs, but such semantic differences are
21 what determines this appeal in many ways.

⁵⁰ In their Post-hearing Brief, Appellants challenged Corey’s testimony stating that her testimony “[w]as so
vague, unsupported, and conclusory that it is likely inadmissible and should be stricken from the record or at a
minimum not be given any weight.” The Examiner disagrees. While perhaps more succinct than some witnesses
(on both sides), Corey explained her approach, analysis, and conclusions sufficiently for consideration. Corey’s
preparation and testimony had at least as solid a foundation many of Appellants’ witnesses. She based her
testimony on identified documents in the record. It was not necessary for her to give a play-by-play of that
already-testified-to analysis. She explained her review process of those analyses sufficiently.

1 permitting submittals focusing on the AQ materials (*Exhibits C-13 and C-32*), the NS and
2 SNS (defined below at FoF 97 and 98, *Exhibits C-11 and B-18*) and the resulting MDNS
3 (*Exhibit C-1*). She also spoke with the Applicant’s AQ and noise experts, and reviewed other
4 hearing submissions relating to health impacts. *Corey Testimony*.

5 95. Corey has experience conducting health risk assessments for projects such as
6 this one. She applied that experience to the Project explaining that such an assessment is a
7 four-step process that is standard and accepted in her field. First, she identified what the
8 “agents of concern” (or relevant pollutants/toxic substances/noise) are. Step two is to evaluate
9 what the exposure to these agents of concern are, which is typically done through research
10 and/or modelling. Third, the dose-response relationship is examined, or in other words, the
11 effects of the agents of concern are taken into account at the exposures determined.
12 Regulatory standards/thresholds are often used as a reference in this third step. The last step
13 requires synthesizing all that came before to make final determinations on the levels of
14 exposure compared to the critical effects of the identified agents of concern. *Id.*

15 96. Corey’s health risk assessment here determined that all relevant agents of
16 concern were identified, and exposures were evaluated. She found the calculations
17 appropriate and the modelling in the air quality and noise analyses for the Project also to be
18 accurate. She concluded that the City had sufficient information to evaluate whether the
19 Project will result in environmental health impacts, and it was her determination that the
20 Project will not result in significant adverse environmental health impacts. *Id.*

21 //

1 **Noise**

2 97. For analyzing noise impacts under the SEPA Checklist, the Applicant submitted
3 an approximately 33-page Site Noise Study which is Exhibit C-11 (the “NS” for Noise
4 Study). The NS was prepared by SSA Acoustics which bills itself “a leader in engineering
5 spaces for sound quality and noise mitigation.”⁵¹ The NS sets forth its purpose as being “to
6 document the extent of impact of noise from truck traffic and loading operation associated
7 with the site [sic] to the surrounding properties within Tacoma.” *Ex. C-11*.

8 98. In addition to the NS, the Applicant submitted a 22-page supplemental Noise
9 Study conducted by Landau and Associates which is Exhibit B-18 (referred to herein as the
10 “SNS”). Testimony showed that the SNS was not intended to invalidate the NS, but rather to
11 expand upon it using a more robust methodology. *Warner Testimony; Ex. B-18*.

12 99. At the hearing, the Applicant presented testimony from Kevin Warner, a
13 Principal Scientist with Landau Associates. Warner has a BS in Environmental Science and
14 25 years of experience in the U.S. and Canada conducting environmental noise and vibration
15 studies. Warner has several noise-specific certifications as set forth in his resume. He
16 conducted the SNS, the purpose of which is described as “[t]o evaluate whether the project
17 would comply with applicable sound level limits, to characterize potential noise impacts, and
18 to quantify noise emissions from specialized construction methods.” The SNS states further
19 that it was “[c]ompleted using three-dimensional noise modeling informed by project details
20 provided by Bridge and the project traffic consultant” *Ex. B-18*.

21

⁵¹ <https://www.ssaacoustics.com/about>.

1 100. Appellants' primary witness on noise impacts was Dr. Priyanka deSouza. Dr.
2 deSouza has a PhD in Urban Planning from MIT (Mass. Institute of Tech.), a Msc. (and
3 MBA) from Oxford in Environmental Change and Management, and a degree in Energy
4 Engineering from the Indian Institute of Technology Bombay. Despite these credentials, she
5 has never conducted any sort of project noise analysis prior to her review of the NS and SNS
6 here and has no experience using computer modelling programs to assess noise impacts as
7 was done here. *deSouza Testimony; Ex. A-45.*

8 101. Both the NS and the SNS looked to regulatory requirements of the TMC and the
9 WAC. Both the NS and the SNS seemed to presume that if the Project's noise levels would
10 not violate the TMC and the WAC's noise limitation, impacts from noise would not be
11 significant. Looking to existing, applicable regulatory schemes to see whether they
12 sufficiently address/mitigate environmental impacts is encouraged, and certainly not
13 prohibited, in the SEPA regulations.⁵² *Warner Testimony; Ex. C-11, Ex. B-18.*

14 102. The primary noise source for the Project will be truck traffic. Noise from
15 loading docks is expected to be minimal and therefore was not analyzed overly much by the
16 Applicant. *Id.*

17 103. Much of deSouza's testimony was based in the Appellants' argument that the
18 Project will generate a far greater number of trips than what was concluded in the TIA using
19 the IP 130 code. Because the Examiner has already found that using the IP 130 code was not
20 clearly erroneous, the Examiner gives no weight to Appellants' analysis and arguments of
21 error when this analysis and argument is based on assuming a HCW 155 (sort) or code 156

⁵² *WAC 197-11-158.*

1 use of the Subject Property. Such analysis and conclusions are speculative, not likely.
2 *deSouza Testimony; Ex. A-46, Ex. A-47.*

3 104. In addition, Warner testified that deSouza did not have the model needed to
4 correctly critique the NS and the SNS and that her spreadsheet calculations could not
5 adequately replicate the studies. Warner testified that deSouza’s truck numbers were greatly
6 inflated when not using the numbers from the TIA using the IP 130 code, and instead using
7 the HCW 155 (sort) and code 156 numbers. She also did not account for truck dispersal
8 across the Site instead assuming all truck noise would emanate from a single point. *Warner*
9 *Testimony.*

10 105. Looking to the existing noise regulations reveals (a) that noise emissions from
11 temporary construction activities are exempt from applicable sound level limits during
12 daytime hours, (b) that the TMC (TMC 8.122) measures acceptable noise levels (i.e., not in
13 violation of the code) as increases over the existing ambient sound level, (c) that the WAC
14 (WAC 173-60) bases determinations of acceptable noise level by measuring the levels and
15 duration of noise that crosses property boundaries. *Warner Testimony; Ex. C-11, Ex. B-18.*

16 106. Warner used these regulations as a backdrop to reviewing the NS and for
17 conducting the SNS. He measured and then modelled expected noise levels using the
18 Datakustik CadnaA noise model. The CadnaA computer tool “[c]alculates sound levels after
19 considering the noise reductions or enhancements caused by distance, topography, varying
20 ground surfaces, atmospheric absorption, and meteorological conditions.” Measurements
21 were made using distances that represented the actual distance from proposed Project

1 buildings and roads as noise generating locations to nearby noise model receivers positioned
2 to represent actual residential dwellings adjacent to the Site. *Warner Testimony; Ex. B-18.*

3 107. Even though temporary construction noise is exempt from enforceable sound
4 level limits during daytime hours, Warner also analyzed construction noise including noise
5 from deep dynamic compaction which will likely be used “[t]o densify existing soils prior to
6 construction of the foundations for Building A.” *Warner Testimony; Ex. B-18.*

7 108. Table 5 of Exhibit B-18 sets forth the modelled sound levels predicted for the
8 Project against daytime and nighttime acceptable levels from the WAC. All are within
9 acceptable levels. Table 6 of Exhibit B-18 shows potential increases in noise levels over
10 existing ambient levels at receivers R19 through R25. Table 6 shows the Project is predicted
11 to result in increases of between 0.3 and 2.6 dBA, Ldn, at the nearest residential receivers to
12 the west. These increases are all well below the limits set in TMC 8.122.

13 109. The City required the Applicant to construct a “12’ high noise barrier as
14 described by SSA acoustics...” All of Warner’s conclusions assumed the existence of the
15 noise barrier required by the City as a noise mitigation measure, but he testified that even
16 without the wall, noise impacts from the Project will not be significant under SEPA. *Warner*
17 *Testimony; Ex. C-1.*

18 110. deSouza’s review of the NS and SNS is found in Exhibits A-46 and A-47. She
19 testified that she replicated the SSA analysis although it was difficult, but as Warner testified,
20 she did not have the correct modelling software to be able to truly replicate the studies.
21 deSouza also based her testimony and opinions on a WHO (World Health Organization)

1 study prepared for the European Region which collected literature and reviewed existing
2 studies from Europe. deSouza did not participate personally in the WHO summary study. The
3 WHO study concluded that sustained exposure to traffic noise above 53dBA can have varied
4 detrimental health effects. That notwithstanding, deSouza did state in her testimony that
5 “Honestly, the legal limits in the City of Tacoma are quite close to the limits recommended
6 by the WHO but are a couple dBA higher.” *deSouza Testimony Day 2 at 5:58, Warner*
7 *Testimony; Ex. A-50, Ex. C-11, Ex. B-18.*

8 111. After a lengthy comparison of the Applicant and the Appellants’ respective
9 testimony and evidence on noise impacts from the Project, the Examiner cannot conclude that
10 the Applicant’s analysis, and the City’s acceptance thereof (with mitigation measures) was
11 either insufficient or clearly erroneous. It was extensive. It used what appears to be more
12 sophisticated modelling. It was performed by Warner whose experience in noise modelling
13 and analysis outweigh the Appellants’ witness’s albeit impressive academic credentials.

14 **Water – Stormwater**⁵³

15 112. For water impact analysis, the Applicant provided the City with a Geotechnical
16 Report, Hydrogeological study, Stormwater Retention analysis, Stormwater Site Plan,
17 Floodplain Study, and Mounding Study to assess the groundwater and stormwater at the Site.
18 These materials are approximately 1,461 pages worth of information and analysis. *Eldridge*
19 *Testimony, Schultz Testimony, Perkins Testimony; Ex. C-1, Ex. C-10, Ex. C-14, Ex. C-16, Ex.*
20 *C-17.*

21 _____
⁵³ This is an area where the Examiner does not make a Finding of Fact regarding every scintilla of the hours of testimony about stormwater at the Site and the System (defined below). Testimony not in dispute is taken at face value. Appellants’ specific challenges are addressed, and findings made for sufficient background as well as findings to settle the parties’ disputed issues.

1 113. As to the Stormwater Site Plan specifically, Perkins testified that the plan was
2 preliminary, but was probably around 50% complete. He testified that this level of
3 completion was usual at this stage of review and was enough for the City to assess whether
4 the plan would ultimately be able to comply with the applicable provisions of the TMC and
5 the City’s Stormwater Management Manual (the “SWMM”). Perkins testified that all
6 projects, including this one, have to comply with the TMC and the SWMM in order to obtain
7 permit approval. The City’s SWMM is based on stormwater regulations promulgated by
8 Ecology and it follows them closely. In certain cases, the SWMM is even more restrictive
9 than the state regulations. The SWMM is designed to sufficiently mitigate or prevent adverse
10 impacts to the environment altogether when complied with. *Perkins Testimony, Eldridge*
11 *Testimony.*

12 114. The proposed stormwater system (the “System”) includes a number of features
13 and facilities such as, without intending an exhaustive list, infiltration galleries, retention
14 ponds, bio-filter pods, sloped surfaces (roofs, parking lots), and channelization. The bio-pods
15 are considered an enhanced treatment feature/facility. Stormwater infiltration on the Site will
16 be equal to or greater than present conditions once the System is complete. That is so, at least
17 in part due to the System being able to capture and infiltrate stormwater that is currently lost
18 due to soil compaction and surface evaporation even though proposed improvements will
19 result in more impervious surface. A minimal amount of stormwater may still be lost to
20 evaporation, but the additional impervious surfaces will be sloped with channelization to
21 capture rainfall into the System. *Schepper Testimony, Eldridge Testimony, Perkins*

1 *Testimony, Emerman Testimony; Ex. C-1, Ex. C-10, Ex. C-14, Ex. C-16, Ex. C-17.*

2 115. The System is designed to mimic existing conditions on the Site, except insofar
3 as the intention is to actually infiltrate more water than what happens at present naturally. The
4 System was designed after existing conditions were studied extensively, which study
5 included researching existing conditions, digging test pits or making soil borings and taking
6 soil samples, and assessing permeability. *Id.*

7 116. The System is designed to capture and treat at least the first 15% of all
8 stormwater from significant rainfall, or “water quality” events (such as 50 year, 100 year
9 events, with 50% of a two-year storm event being a minimum capacity mandated by
10 Ecology). That first 15% is considered the critical percentage that must be treated because it
11 will carry accumulated surface contaminants. After that initial “first flush” of 15%,
12 subsequent stormwater is not contaminated at levels that require treatment. In other words,
13 that subsequent stormwater is considered effectively clean.⁵⁴ These standards are set by
14 Ecology at the state level. The System is designed with capacity to capture and treat at least
15 that first-flush volume/rate up front. In situations where the System is overtaxed by heavy
16 rainfall, some stormwater may stay on the surface longer that it otherwise would (or pool),
17 but eventually, such stormwater generally makes its way through the System with very little,
18 if any, bypassing the System altogether. Perkins testified that the SWMM requires that 91%
19 of onsite stormwater passes through and is treated by the System *Id.*⁵⁵

20
21 ⁵⁴ This answers Appellants’ contention that the Respondents erred by not examining the pollutant profile of stormwater runoff. Per the testimony/evidence just referenced, the System will capture the required amount of stormwater that Ecology has determined is polluted and it will be treated. Any significant stormwater runoff will have been cleaned to non-significant levels in accordance with state standards and the SWMM.

⁵⁵ See also *SWMM* at §2.2.3.A.

1 117. The Appellants’ challenges to the System (and thereby the Water conclusions of
2 the MDNS) were not well founded. These challenges fall into two categories as follows:

3 (a) The Applicant erred by not designing a system in which 100% of onsite
4 stormwater will be treated; and

5 (b) The Applicant erred by not having sufficient information with which to determine
6 whether the System will comply with the SWMM.

7 118. Appellants point to a sentence at paragraph 21 of the Water section of the
8 MDNS, which reads “All stormwater on the site will be captured and treated prior to
9 infiltration or discharge to the stream/wetland system.” Perkins testified that he probably
10 supplied this language for the MDNS, and that it was an example of writing something
11 facially in error that was based on his correct understanding. Perkins explained that what the
12 sentence should say is that all stormwater *on the Site* required under the SWMM to be treated
13 will be treated.⁵⁶ That does not necessarily mean that the System will treat 100% of
14 stormwater onsite nor is it necessarily required to do so. The percentages and process for
15 treatment sequencing have been referenced already above. These percentages and the process
16 are consistent with the SWMM and other applicable regulations designed to ensure against
17 adverse impacts to stormwater. Appellants’ issue here seems like an attempt to cast an
18 erroneous turn of phrase in the MDNS in amber, and then exalt it to being a reversible error.
19 An errata page to the MDNS could certainly be issued correcting this sentence. Appellants
20 provided no authority for the proposition that Perkins’s error in wording could not be
21 explained and corrected in a *de novo* proceeding, nor did they supply any authority for the

⁵⁶ Nothing in the hearing process requires the sentence from the MDNS to become immutable and unexplainable.

1 proposition that the System's not treating a full 100% of stormwater on the Site constitutes
2 reversible error. *Perkins Testimony, Eldridge Testimony; Ex. C-1.*

3 119. Appellants primary witness for stormwater was Dr. Steven H. Emerman.
4 Emerman has a PhD in Geophysics and notable hydrology experience. He is not familiar with
5 the Site beyond what was in the record, he has not visited the Site, and he is not particularly
6 familiar with SEPA and its WAC regulations. Emerman performed no quantitative analysis
7 of his own in arriving at the opinions he offered at the hearing. *Emerman Testimony; Ex. A-*
8 *16.*

9 120. Emerman's testimony showed that he was not particularly familiar with the
10 City's stormwater regulation regime or the scope of the Project either. He testified that the
11 Respondents had insufficient information to assess impacts for a number of reasons. First,
12 like other Appellants' witnesses, he opined that unless stormwater analysis were done
13 assuming a worst-case scenario, the analysis would be insufficient. Both Emerman and
14 McCarthy gave what they described as scientific and engineering-based opinion assessments
15 of what the City and the Applicant should have done in the SEPA review. Neither based their
16 analysis on the actual provisions of SEPA, WAC 197-11 or TMC 13. *Emerman Testimony;*
17 *McCarthy Testimony.*

18 121. Second, Emerman testified that Respondents had erroneously concluded that
19 there would be no upstream stormwater entering the Site. This was incorrect. Emerman had
20 missed the distinction—which was not necessarily glaringly obvious from the MDNS and the
21 record—that the Applicant and the City were making separating the Site into Developed and

1 Undeveloped divisions.⁵⁷ Upstream stormwater will enter the Undeveloped Area, but not the
2 Developed Area. The only stormwater that will enter the Developed Area will be rainfall.
3 This mistaken assumption unfortunately colored Dr. Emerman's testimony and opinions.
4 There was no error on the Respondents' part regarding upstream stormwater, and there
5 certainly was no insufficiency of information in this area from a mistake that was not a
6 mistake (on the Respondents' part). *Emerman Testimony; Eldridge Testimony.*

7 122. Third, Emerman stated that he was not certain if compliance with the SWMM
8 would be sufficient to mitigate impacts, and he stated that we, in a general sense, do not
9 know if compliance with the SWMM is mandatory. This is incorrect. The intent of the
10 SWMM, against the backdrop of Ecology's own stormwater regulations, is that stormwater
11 impacts will be addressed and mitigated to a point that is protective of environmental health.
12 Compliance is mandatory. As referenced above at FoF 27, under TMC 12.08, the SWMM is
13 formally adopted by action of the City Council. Again, this unfamiliarity with the SWMM
14 and its place in the City's regulatory scheme and the role it plays in SEPA review colored
15 Emerman's testimony. On this issue, there was no insufficiency of information on the City or
16 the Applicant's part. They understood the SWMM and its mandatory role in permit approval.
17 *Emerman Testimony, Eldridge Testimony, Perkins Testimony.*

18 123. Emerman also testified that in order to adequately assess whether the proposed
19 System would sufficiently handle stormwater so that there are no adverse health impacts
20 therefrom you would have to know past performance data for the System in order to gauge
21 whether it will work in the future. The Examiner presumes that Emerman meant past

⁵⁷ Addressed above at FoF 3.

1 performance from a similar system to that proposed and was not implicating the need for time
2 travel. This is where Eldridge’s experience with similar systems and Perkins’ experience
3 reviewing and regulating similar systems come into play. Both evaluated the System from
4 that base of experience and determined that it will be able to comply with the SWMM, and
5 from Perkins’ standpoint, that the Project will have no greater stormwater impacts than any
6 other project in Tacoma. *Id.*

7 124. Lastly, Emerman testified that the Respondents did not have sufficient
8 information because the System analysis/modelling was not calibrated/validated⁵⁸ using local
9 data or actual data from the Subject Property, and a sensitivity analysis was not performed.
10 Emerman seemed to have keyed on the calibration issue from comments Perkins made during
11 the City’s review stating that past stormwater information should be updated and the model
12 calibrated. Perkins testified to making the comment but confirmed Eldridge’s testimony that
13 the Applicant and the City together determined that the local/Site data Perkins thought would
14 be helpful turned out to be not robust enough for a calibration. In addition, Eldridge testified
15 that the 2007 survey referenced in conjunction with Perkins’ original comment has been and
16 continues to be updated and that the Western Washington Hydrology Model⁵⁹ that was used
17 to model the system already incorporates data for and performs sensitivity analysis as part of
18 its modelling. *Id.*

19
20 _____
⁵⁸ These two terms seemed to get used somewhat interchangeably.

21 ⁵⁹ The Western Washington Hydrology Model is a tool provided by Ecology. Its stated purpose is for use “[t]o design stormwater-control facilities so they can best mitigate the effects of increased runoff (peak discharge, duration, and volume). This model can also inform facility developers and managers on the effects likely to result from proposed land-use changes that impact nearby natural streams, wetlands, and other water courses.” <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Stormwater-permittee-guidance-resources/Stormwater-manuals/Western-Washington-Hydrology-Model>.

1 125. Offsite stormwater affected by the Project, such as in locations where the
2 Applicant will be making roadway improvements, or where vehicles will ultimately travel to
3 and from the Site, will be regulated by the SWMM which requires that stormwater at these
4 locations be captured and treated to SWMM and state standards (Project improvement
5 locations), and the City’s NPDES permit’s requirements (vehicle travel throughout the City).
6 *Perkins Testimony.*

7 126. Because the System is not yet 100% complete, and because the Project may
8 continue to evolve, as Perkins testified, review of the System will be on-going, and that on-
9 going review will continue to require that the System comply with the SWMM and design
10 manual, as well as all other applicable provisions of the TMC and state (final Ecology
11 review) and federal law. *Perkins Testimony.*

12 127. Given Emerman’s mistaken assumptions and unfamiliarity with the Site and the
13 regulatory framework in place, it is difficult to find that his highly speculative assertions
14 regarding Site stormwater and the System should be taken to constitute clear error on the
15 Respondents’ part given the breadth and depth of Respondents’ analysis. Respondents’
16 witnesses clearly and authoritatively answered his allegations of error. Comparing both sides’
17 bodies of evidence, the balance tips easily here to the Applicant’s having designed the System
18 to handle stormwater in a manner compliant with the SWMM that will not produce
19 significant adverse impacts under SEPA.

20 //

21 //

1 **Water – Groundwater/Aquifer**

2 128. The Site sits above the South Tacoma Aquifer (the “STA”), and is part of the
3 South Tacoma Groundwater Protection District (again, the “STGPD”). The STGPD is
4 regulated and protected in the TMC.⁶⁰

5 129. The City has wells that draw water from the STA (as well as other places) as a
6 backup drinking water source to the City’s primary source the Green River. Ninety to ninety-
7 five percent of the City’s drinking water comes from the Green River. The STA gets tapped
8 through wells mainly in the summer if it is dry and the Green River is stressed. The STA is
9 not the only alternate water source besides the Green River. The City (Tacoma Water) has a
10 detailed plan for maintaining healthy drinking water for Tacoma (its Integrated Resource
11 Plan), which takes into account climate change factors. Dependence on wells may increase,
12 but Tacoma Water has at least 30 different methods under review and consideration for
13 maintaining water supply in the face of climate change. The City’s research and planning
14 account for a possible 18% reduction in supply from the Green River in the future. The City
15 has participated in multi-agency studies of the STA. *George Testimony, Hallenberg*
16 *Testimony, Dixon Testimony; Ex. A-7.*

17 130. Well usage in Tacoma has been historically monitored, and such monitoring
18 continues presently. Compared to historic high water demand and well use in the 1970s and
19 1980s, demand at present is down 30% from those historic highs due to conservation
20
21

⁶⁰ See generally TMC 13.01.090.G (Definitions); TMC 13.12. Provisions relating to the STGPD are found throughout TMC Title 13 designed for its protection. TMC 13.06.070 “Overlay Districts” at section D. covers the regulations and requirements of the STGPD in focus.

1 measures. The City monitors its wells and aquifer levels at regular intervals. There has been
2 no decline in available water overall. *George Testimony.*

3 131. The City has ten to twelve water monitors located in the STGPD and samples
4 are taken regularly to assess water quality and alert to the presence of contamination. The
5 Pierce County Health District participates in and inspects sampling. *Hallenberg Testimony.*

6 132. The Applicant has installed groundwater monitoring wells as part of its analysis
7 as well. This was done in conjunction with the soil studies mentioned above (*FoF 115*) in
8 order to determine the flow of stormwater into the groundwater/aquifer. *Schepper Testimony.*

9 133. The STA has three levels of aquifers, shallow, sea level and deep. The City has
10 wells that draw from all levels. Rainfall percolates down into all these levels from the top
11 down. The shallow aquifer shows more variability in water level, but there has been no
12 notable decline in available water from any of the three levels over the course of the City's
13 monitoring. *Id.*

14 134. Tacoma Water prefers projects that infiltrate their stormwater into the ground
15 (rather than into the City's stormwater system) for better maintenance of aquifer levels.
16 Again, the Project relies heavily on infiltration, and the System is designed to maintain or
17 improve current levels of infiltration on the Subject Property. *Id., Eldridge Testimony.*

18 135. George testified that the City of Tacoma's codified laws and regulations are
19 designed to negate any adverse impacts from projects such as this one, and that if complied
20 with, there should be no significant impacts to the aquifer. He did not, however, review the
21 Project as part of the City's SEPA review team. *George Testimony.*

1 136. The Appellants contend that the Respondents erred because there will be
2 significant impacts to groundwater and thereby the Tacoma drinking water supply through (a)
3 depletion (lessening of aquifer recharge) of available supply due to the increase of impervious
4 surface in the Project, and (b) contamination entering the aquifer. The City witnesses (George
5 and Hallenberg) and the Applicant’s witnesses (primarily Schepper and Eldridge) refute these
6 contentions.

7 137. Appellants contend that the City failed to study how paving over the aquifer will
8 affect groundwater supply. This is incorrect. Testimony and the written record show that the
9 Respondents did review this area in the design of the (stormwater) System, even enlarging
10 proposed infiltration ability at one point, to ensure that infiltration levels will either remain
11 consistent with the present condition of the Subject Property, or even improve them.

12 Emerman testified that the Project’s additional impervious surface would unavoidably
13 increase infiltration loss, but he gave no analysis of his own to show that, only speculative
14 and conclusory statements. *Schepper Testimony, Eldridge Testimony, Emerman Testimony,*
15 *Perkins Testimony, George Testimony; Ex. A-2, Ex. A-5, Ex. A-7, Ex. A-9.*

16 138. Respondent’s evidence and witnesses pointed to System and Project features
17 such as sloped surfaces and channelization, and environmental enhancements to the
18 Undeveloped Area to support their contention of no loss to aquifer infiltration recharge from
19 present levels. The burden falls on the Appellants. Conclusory statements like Dr. Emerman’s
20 that he has never seen a project result in an environmental betterment, without more, are
21 unpersuasive. *Id., Ex. C-9, Ex. C-10, Ex. C-14, Ex. C-16, Ex. C-17, Ex. B-20, Ex. B-22.*

1 139. Evidence and testimony regarding contamination from the Site entering the STA
2 was inconclusive at best. Appellants bear the burden to show clear error. *Dixon Testimony*,
3 *Emerman Testimony*.

4 140. Appellants contend that because soils on the Site will be disturbed in the
5 construction of the Project, existing contamination on this former Superfund site may enter
6 the groundwater. They contend further that the presence and functioning of the System may
7 change groundwater flows and infiltration patterns that will lead to migration of
8 contamination. Appellants' testimony on both these issues was highly speculative. *Id.*

9 141. Contaminated soils already exist on the Subject Property.⁶¹ Stormwater is
10 already percolating through these soils into the ground. The System will provide far more
11 treatment to stormwater than anything that occurs naturally on the Site at present. Evidence or
12 testimony beyond mere speculation that the Project will worsen the present situation is
13 largely absent from the record. The City's monitoring of the STGPD will detect
14 contamination if it does occur and the City has code enforcement provisions that can be used
15 to hold the sources of contamination accountable. State and federal requirements and
16 enforcement provisions exist as well. *Morin Testimony, George Testimony, Hallenberg*
17 *Testimony; Ex. B-11~Ex. B-15.*

18 142. The City relied in large part on its own existing regulatory scheme as well as
19 state and federal regulations. On the federal side, the Site's history with CERCLA and the
20 EPA have left it still under various covenants and controls. Continued compliance with the

21 _____
⁶¹ In their Post-hearing Brief, Appellants argue that when the Site remediation was closed, "EPA assumed conditions would not be changed..." This is highly unlikely. EPA intends, as a general rule, that a remediated site, even superfund sites, will be developed for productive use. *See Ex. B-13* ("[i]t is the Agency's priority to return lands to productive reuse.").

1 ROD and the Consent Decree also offer significant protection from soil contamination
2 impacts. *Id.*, *Morin Testimony*, *George Testimony*, *Perkins Testimony*, *Schepper Testimony*.

3 **Animals – Salmon**

4 143. Appellants contend that the City failed to adequately assess the Project’s indirect
5 impacts on fish, particularly salmon, and their habitat. *Dixon Testimony*.

6 144. Appellants’ contention centers on 6PPD-quinone (“6PPD-Q”)⁶² which is a toxic
7 substance that has been found to originate from vehicle tires. Given the ubiquity of cars/tires
8 in our society, 6PPD/Q is also presumed quite prevalent. 6PPD-Q exposure in salmon
9 bearing waters, often transmitted there from stormwater “[c]an cause acute mortality of coho
10 salmon” (Ex. A-11, at p. A). *Dixon Testimony*, *Wright Testimony*; *Ex. A-11~Ex. A-14*.

11 145. Although much research has been done regarding 6PPD/Q since discovery, the
12 record showed that there is still much to be done in order to understand how best to address
13 this harmful pollutant. Ecology is currently undertaking the process of researching in order to
14 promulgate regulations relevant to containing the spread of 6PPD/Q and its harmful effects.
15 In the interim, Ecology has issued a publication titled “6PPD in Road Runoff Assessment and
16 Mitigation Strategies.” (the “Ecology 6PPD Assessment” - Exhibit B-31). *Dixon Testimony*,
17 *Wright Testimony*; *Ex. A-11~Ex. A-14*.

18 146. The Ecology 6PPD Assessment, at Appendix C, presents Best Management
19 Practices (“BMPs”) for better containing and controlling the effects of 6PPD/Q. For a project
20 such as this one, having an enhanced stormwater treatment system that uses bio-pods for
21

⁶² For purposes of this Decision, references to 6PPD/Q are meant to include both variants, 6PPD and 6PPD-Q.

1 treatment, such as proposed here, is one of the most highly effective BMPs known at present.
2 *Wright Testimony; Ex. B-31.*

3 147. Appellants' contention above is incorrect regarding the City's level of
4 assessment on this issue. The City determined that Stream Z is seasonal, meaning that it only
5 has water in it for part of the year. It is not fish bearing, nor does it connect to any fish
6 bearing streams or other fish bearing bodies of water. Kluge testified that because of many
7 intervening barriers and general topography, salmon making it to the Subject Property is
8 highly unlikely. Any stormwater that actually leaves the Site will have been through the
9 System or will not have taken up contaminants after the first flush. Site stormwater will have
10 passed through the bio-pods which one of the best know effective methods for treating and
11 containing 6PPD/Q. Appellants' testimony that vehicles on the Site will leave 6PDD/Q on
12 the Site from tire wear is likely. What is not likely from any testimony even though it was
13 speculated at, is that 6PPD/Q on the Site will make it past the System, leave the boundaries
14 of the Site and make it to salmon bearing waters. The testimony to that effect was too
15 speculative to be considered the basis for reversible error. At present, the Project is
16 employing the best-known BMP on the Site for prevention of impacts from 6PPD/Q—bio-
17 pods. *Dixon Testimony, Kluge Testimony, Wright Testimony, Eldridge Testimony, Perkins*
18 *Testimony; Ex. C-19, C-20, C-22, C-30.*

19 **Earth – Soils**

20 148. As already referenced herein, the Site contains contamination. The Site was
21 remediated and closed under the EPA's supervision. The Consent Decree (*Exhibit B-11*) and

1 the ROD (*Exhibit B-10*) still govern the allowed uses on the Subject Property. The EPA
2 presumes redevelopment of Brownfield properties such as the Site,⁶³ which is a large reason
3 for these controls staying in place. *Morin Testimony; Ex. B-10, Ex. B-11.*

4 149. Currently existing contaminated soils on the Site are primarily “capped” with
5 soils that are clean enough to pass EPA review for an industrial property. Most of these
6 contaminated soils will be better capped and contained by buildings and concrete after the
7 Project is constructed leaving less chance for them to become airborne or mix with rainfall.
8 *Morin Testimony.*

9 150. Appellants cast doubt on the City’s review questioning whether the Director had
10 seen the EPA-approved version of the Soil Management Plan (SMP) prior to signing the
11 MDNS.”⁶⁴ The Director is not free to ignore existing EPA covenants and restrictions on the
12 Subject Property, nor certainly was it his intention to do so. In that vein, the only acceptable
13 and applicable SMP ultimately is one that will (or already has) EPA’s sign off. The EPA
14 approved SMP should be used. Given the combination of EPA’s apex oversight, combined
15 with the state and City regulatory schemes that are in place that dictate how soils must be
16 managed on the Subject Property, adverse impacts from or to soils is not likely.

17 151. Appellants contend that not all contaminants on the Site will be contained. That
18 may be true in some senses. Dixon testified that it is dangerous to leave contaminated soils in
19 the wetland buffer because most of the Site will be changed into impervious cover, and that
20 will change how stormwater moves and flows over the Site. As already mentioned above, the
21

⁶³ See *n. 59*.

⁶⁴ Appellant’s Post-hearing Brief at p. 25.

1 System is designed to mimic existing conditions on the Site. Dixon’s speculation that
2 stormwater flows may change did not negate this overarching intention of the System and the
3 evidence supporting it. In response to questioning from the Examiner, Morin testified that
4 removal of contaminated soils in a wetland buffer can be tricky if trying to keep
5 contamination out of the wetland, and as a result, in many cases such removal/disturbance is
6 prohibited by regulatory authorities.

7 **The CADP**

8 152. Appellants ostensibly appealed the City’s issuance of the CADP.⁶⁵ Appellants’
9 prehearing issue statements contained a few conjoined references to the CADP and the
10 MDNS, but focus was clearly on the MDNS.

11 153. At the hearing, Kluge testified regarding her analysis of the CADP and the
12 reasons for the City approving the CADP. Exhibit C-30, and its attachments and exhibits,
13 which is the CADP itself, also recount the City’s analysis and reasons for approving the
14 CADP. *Kluge Testimony*.

15 154. After much review of the video recordings of the hearing, the Examiner cannot
16 find that the CADP was materially challenged. Appellants’ Post-hearing Brief makes only
17 one reference to the CADP in the context of alleging error regarding infiltration from the
18 Project affecting the STA.

19 **City Review Process**

20 155. The City’s review of the Project appears to have begun no later than May of
21

⁶⁵ See Appellants’ “Notice of Appeal” dated May 5, 2023. The Notice of Appeal is not a hearing exhibit, but it is part of the overall hearing record.

1 2021.⁶⁶ The City’s review concluded, for purposes of this appeal, with the issuance of the
2 CADP and the MDNS on April 21, 2023.⁶⁷ The record shows that there were multiple rounds
3 of comments (both agency and public) and new/revised submittals from the Applicant to the
4 City.⁶⁸ Altogether, it appears that the Applicant submitted somewhere in the range of 4,000
5 pages of information,⁶⁹ studies and reports addressing SEPA Checklist items and City, other
6 agency, and public comments. *Ex. C-1, Ex. C-27~Ex. C-29.*

7 156. As part of this review process, the City met its obligation for “The responsible
8 official [] [to] consult with agencies and the public to identify [] impacts and limit the scope
9 of an environmental impact statement.” *RCW 43.21C.031(2); Ex. C-28.*

10 157. As already mentioned herein, although the City concluded its SEPA review by
11 issuance of the MDNS, environmental review of the Project will continue until completion
12 and even after in some cases. *Schultz Testimony, Hansen Testimony.*

13 158. Any Conclusion of Law hereinafter stated which may be deemed to be more
14 properly considered a Finding of Fact, is hereby adopted as such.

15 Based upon the foregoing Findings of Fact, the Hearing Examiner enters the
16 following:

17 //

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19
20 ⁶⁶ See *Ex. C-1 at p. 2 of 19, citing to “Accela Application Information: Barghausen Consulting Engineers, May 29, 2021.* The City’s review may have started even sooner than that based on the submission date of the SEPA Checklist, which is August 9, 2020. *Ex. C-2.*

21 ⁶⁷ The Examiner qualifies this finding with the adjectival phrase “for purposes of this appeal” because, as both the Applicant and the City well know, and as they even testified to, review of the Project will continue in earnest for some time to come, up to and including build out and even after for some areas of compliance.

⁶⁸ See e.g., *Ex. C-26 Letter responding to the then latest round of comments from the City.*

⁶⁹ This is based on an approximate page count from Exhibit C-2 through Exhibit C-26, all of which appear to be submissions that were made during the SEPA review period.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

1 **CONCLUSIONS OF LAW:**

2 1. The Hearing Examiner has jurisdiction over the parties and subject matter in this
3 proceeding. *Tacoma Municipal Code (TMC) 1.23.050.B.2, 10, 24, and 30; TMC 13.11.280.C,*
4 *and TMC 13.12.820.*

5 2. The hearing is a *de novo* proceeding under TMC 1.23.060 which allows or even
6 requires the Examiner to give all issues presented a fresh look, but the TMC, SEPA and
7 controlling case law are clear regarding the standard of review that governs the overall
8 proceeding.

9 3. The existence and function of the City’s Office of the Hearing Examiner (the
10 “OHEX”) is authorized first at the state level under RCW 35.63.130 and RCW 58.17.330.
11 Tacoma Municipal Code 1.23 authorizes the OHEX specifically at the City level, and further
12 specifies the OHEX’s areas of jurisdiction (subject matter areas). Pursuant to RCW
13 35.63.130, a local “[l]egislative body may vest in a hearing examiner the power to hear and
14 decide those issues it believes should be reviewed and decided by a hearing examiner,
15 including but not limited to: ...(b) Appeals of administrative decisions or determinations;...”
16 The City’s issuance of the MDNS and the CADP are administrative decisions or
17 determinations.

18 4. As just alluded to, hearing examiners are creatures of statute. Hearing examiners’
19 jurisdiction (authority) is only as extensive as what their creating body (the City Council here)
20 can, and does expressly grant under applicable statutes and ordinances.⁷⁰

21

⁷⁰ See e.g., *Exendine v. City of Sammamish*, 127 Wn. App. 574, 586-587, 113 P.3d 494, 500-501 (2005).

1 5. Washington case law has indicated, that hearing examiners do not have the
2 authority to engage equitable principles in their decisions.⁷¹ Examiners cannot generally
3 engage equitable principles as a/the basis for their decisions. They cannot simply do what
4 they think is fair. Examiners are limited to determining the facts of a given appeal and
5 applying the law to them to decide the issues presented. The Examiner has no authority to
6 reverse a decision because it is unpopular.⁷² Likewise, interested parties' preference for an
7 Environmental Impact Statement ("EIS") is not grounds for overturning a decision such as
8 the MDNS here.⁷³ The Examiner has no authority to deviate from the dictates of the law and
9 what the law requires under the given facts. The Examiner cannot negate the MDNS here and
10 require an EIS simply because the Project is large.⁷⁴

11 6. Any appeal brought under SEPA must be linked to a specific governmental
12 action.⁷⁵ SEPA goes on to state that "Judicial review under this chapter shall without
13 exception be of the governmental action together with its accompanying environmental
14 determinations."⁷⁶ TMC 13.12.820 incorporates RCW 43.21C.075 and with certain
15 exceptions that do not apply here, requires that "[a]ppeals on Environmental Determinations
16 shall be heard at the same time as appeals on the underlying governmental action..."⁷⁷

18
19 ⁷¹ *Chaussee v. Snohomish County Council*, 38 Wn. App. 630, 638-640, 689 P.2d 1084 (1984)(hearing examiner had no authority to consider equitable issues and equitable estoppel in particular).

20 ⁷² *Anderson v. Pierce Cty.*, 86 Wn. App. 290, 305, 936 P.2d 432, 441 (1997)(community displeasure and another local jurisdiction's preference for an EIS are inadequate grounds for overturning the decision of the Hearing Examiner). See also. *Maranatha Mining, Inc. v. Pierce County*, 59 Wn. App. 795, 804, 801 P.2d 985 (1990).

21 ⁷³ *Id.*

⁷⁴ *Id.*, at 306.

⁷⁵ *RCW 43.21C.075(1)*.

⁷⁶ *RCW 43.21C.075 (4)(c)*.

⁷⁷ *TMC 13.12.820.A*.

1 **The CADP**

2 7. Here, Appellants’ appealed the CADP in conjunction with the MDNS challenge.
3 The record essentially reflects that Appellants abandoned their challenge of the CADP at the
4 hearing. To the extent the abandonment was not intentional, the Examiner is forced to
5 conclude that the Appellants did not meet their burden of proof to show that the CADP was
6 approved in error. TMC 13.11.280.C establishes that appeals of decisions regarding critical
7 areas are to be conducted under TMC 13.05 and TMC 1.23. TMC 1.23.070 dictates that the
8 Appellants had to show by a preponderance of the evidence that issuance of the CADP was in
9 error.

10 8. There was no material evidence presented that challenged the CADP based on
11 the standards for issuance set forth in TMC 13.11.220.B.3 and TMC 13.11.230. The
12 Appellants did not meet their burden to show that the CADP was inconsistent with applicable
13 legal standards or should otherwise be reversed.⁷⁸

14 **The MDNS**

15 9. WAC 197-11-310(1) requires that the City perform “A threshold
16 determination... for any proposal which meets the definition of action and is not categorically
17 exempt...” The Project is such a proposal and it is not categorically exempt. No one has
18 claimed otherwise. The City’s main task in making the threshold determination is to
19 determine whether the action/project will result in “probable significant adverse
20 environmental” impacts.⁷⁹ The City reviewed the Project through its SEPA Checklist and
21

⁷⁸ TMC 1.23.070.

⁷⁹ WAC 197-11-330(1)(b); RCW 43.21C.031.

1 accompanying submissions for the better part of two years and made its threshold
2 determination in issuing the MDNS.⁸⁰

3 10. “An environmental impact statement is required to analyze only those probable
4 adverse environmental impacts which are significant.”⁸¹ The same is true in the MDNS
5 process. An action or project significantly affects the environment “whenever more than a
6 moderate effect on the quality of the environment is a reasonable probability.”⁸²

7 11. “[A] proposal must degrade the existing condition of the environment to have
8 significant adverse impact. Mere failure to restore or improve environmental quality is not a
9 significant adverse impact under SEPA.”⁸³

10 12. A reviewing agency such as the City here, can make essentially one of three
11 types of threshold determinations: (a) a determination of significance which will then require
12 an EIS, (b) a determination of non-significance (“DNS”) which requires nothing additional,
13 or (c) a mitigated determination of non-significance (MDNS), as the City determined here.
14 An MDNS is a determination that the Project being reviewed has some impacts that are
15 significant, but that they can be successfully mitigated below levels of significance.

16 13. “An MDNS is an alternative threshold determination that involves changing or
17 conditioning a project to eliminate its significant adverse environmental impacts.”⁸⁴ An
18 MDNS does not then require an EIS, but it does require the project to comply with

19
20 ⁸⁰ *RCW 43.21C, WAC 197-11 and TMC 13.12* all have timing requirements that apply to the City’s
environmental review, but because no party has put them in issue, they are not discussed.

21 ⁸¹ *RCW 43.21C.031(2)*.

⁸² *Brown v. Tacoma*, 30 Wn. App. 762, 768, 637 P.2d 1005 (1981).

⁸³ *Wild Fish Conservancy v. Dep’t of Fish & Wildlife*, 198 Wn.2d 846, 871, 502 P.3d 359 (2022), citing *Richard L. Settle, The Washington State Environmental Policy Act: A Legal and Policy Analysis*, at § 13.01[1].
Additional internal cites omitted.

⁸⁴ *Anderson*, 86 Wn. App. at 301; *WAC 197-11-350*.

1 mitigation conditions imposed by the reviewing agency.⁸⁵ In challenging the MDNS here,
2 Appellants have argued that the MDNS should be overturned and that an EIS should be
3 required.

4 14. Regarding MDNS determinations, our State Supreme Court recently stated that:

5 An MDNS does not function to evade environmental review or
6 undermine SEPA's purpose. The requirement of an EIS may be
7 "superseded by the MDNS"; and the imposition of numerous
8 mitigation measures that specifically target a proposal's potential
adverse impacts "may provide more effective environmental
protection than promulgation of an EIS, since an EIS does not
automatically result in substantive mitigation."⁸⁶

9 In other words, there is nothing substantively or procedurally inferior about an MDNS in
10 comparison to an EIS, and in many cases the public policy and environmental values of
11 SEPA, which the reviewing agency is required to consider in making a threshold
12 determination such as an MDNS, come out ahead in the MDNS process because of the
13 mitigation measures that are imposed.⁸⁷

14 15. When an MDNS is challenged, "A review of the record must show that
15 'environmental factors were considered in a manner sufficient to amount to prima facie
16 compliance with the procedural requirements of SEPA.'"⁸⁸ In addition, before a court (or the
17 Examiner in this instance) may uphold a determination of "no significant impact," the
18 decision maker "[m]ust be presented with a record sufficient to demonstrate that *actual*

19
20 ⁸⁵ *Wild Fish Conservancy*, 198 Wn.2d at 855-858.

21 ⁸⁶ *Wild Fish Conservancy*, 198 Wn.2d at 857-858, citing *Anderson v. Pierce County*, 86 Wn. App. 290, 305,
936 P.2d 432 (1997).

⁸⁷ *Wild Fish Conservancy*, 198 Wn.2d at 866-867.

⁸⁸ *Wild Fish Conservancy*, 198 Wn.2d at 867, citing *Chuckanut Conservancy v. Dep't of Nat. Res.*, 156 Wn.
App. 274, 286-87, 232 P.3d 1154 (2010) additional internal cites omitted. See also *Boehm v. City of Vancouver*,
111 Wn. App. 711, 718, 47 P.3d 137 (2002).

1 consideration was given to the environmental impact of the proposed action or
2 recommendation.”⁸⁹ [Emphasis in the original.]

3 16. “Although the preparation of an initial checklist is delegated to the applicant, the
4 regulations do not contemplate complete reliance by the lead agency upon the statements
5 contained therein. The agency ‘shall independently evaluate each item on the checklist and
6 indicate the results of this evaluation.’”⁹⁰ The City made its own analysis as best evidenced
7 by the lengthy MDNS Mitigation Measures required to arrive at the decision issued. City staff
8 performed Site visits.⁹¹ They reviewed and scrutinized the Applicant’s submissions.

9 17. The Applicant submitted thousands of pages along with its SEPA Checklist.⁹²
10 The City reviewed it all over a period of nearly two years in order to make its determinations
11 regarding the SEPA Checklist environmental factors and whether the Project has probable
12 significant adverse environmental impacts that will result. During this process, the City made
13 comments on the Project proposal (*Ex. C-27*) and solicited comments from interested
14 agencies (*Ex. C-28*) and members of the public (*Ex. C-29*). The Applicant made revisions
15 based on comments.⁹³ Prior to the hearing, the parties submitted over 13,000 pages of
16 proposed exhibits, most of which were admitted.⁹⁴ The hearing itself took the better part of
17 five working days with extensive testimony from all parties. The City’s review constitutes
18 *prima facie* proof that necessary environmental factors were sufficiently considered to
19

20 _____
21 ⁸⁹ *Lassila v. Wenatchee*, 89 Wn.2d 804, 814, 576 P.2d 54 (1978).

⁹⁰ *Brown*, 30 Wn. App. at 764, *citing WAC 197-10-320*.

⁹¹ *Perkins Testimony, Kluge Testimony*.

⁹² *FoF* 155.

⁹³ Unsurprisingly, not all comments resulted in a revision, but many did.

⁹⁴ The Examiner has not done a final page count of actually admitted exhibits.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

1 comply with SEPA. The extensive review conducted during the hearing only furthers that
2 compliance.

3 18. RCW 43.21C.0311(1) requires that an EIS be prepared in “[a]s expeditious a
4 manner as possible while not compromising the integrity of the analysis.” This provision of
5 SEPA continues by stating that:

6 “For even the most complex government decisions associated with
7 a broad scope of possible environmental impacts, a lead agency
8 shall aspire to prepare a final environmental impact statement
9 required by RCW 43.21C.030(2) within twenty-four months of a
10 threshold determination of a probable significant, adverse
11 environmental impact.”⁹⁵

12 No time limits or timing requirements have been challenged on this appeal, but it is notable
13 that the City spent approximately the same amount of time reviewing the Project proposal
14 that SEPA sets as a goal for EIS completion. As already stated above, the City’s review was
15 thorough and extensive, and not just because it took nearly two years.

14 **Standard of Review**

15 19. Beginning at home, TMC 13.12.820 governs appeals of SEPA threshold
16 determinations such as the one on appeal here. TMC 13.12.820.B.4.f, titled “Evidence –
17 Burden of Proof” states that in each proceeding: “[t]he appellant shall have the burden of
18 proof, and the determination of the responsible official shall be presumed prima facie correct
19 and shall be afforded substantial weight.”

20 20. The above comports with RCW 43.21C.090 which states: “In any action
21 involving an attack on a determination by a governmental agency relative to the requirement

⁹⁵ RCW 43.21C.0311(1)(a).

1 or the absence of the requirement, or the adequacy of a "detailed statement", the decision of
2 the governmental agency shall be accorded substantial weight.”

3 21. In the context of appealing an MDNS, our state courts have been succinct in
4 stating “We accord substantial weight to an agency's decision to issue an MDNS and not
5 require an EIS.”⁹⁶

6 22. The foregoing weight/deference notwithstanding, “If an MDNS is issued and
7 an appealing party proves that the project will still produce significant adverse environmental
8 impacts, then the MDNS decision must be held to be ‘clearly erroneous’ and an EIS must be
9 promulgated.”⁹⁷ “A finding is ‘clearly erroneous’ when although there is evidence to support
10 it, the reviewing court on the entire evidence is left with the definite and firm conviction that
11 a mistake has been committed.”⁹⁸

12 23. Given the preceding 4 paragraphs, it is clear that the Examiner does not get to
13 substitute his own judgment for that of the Planning Director/City SEPA Official. To the
14 contrary, the Examiner is required to give the Director’s decision substantial weight. The
15 MDNS cannot be overturned/reversed simply because there is significant opposition to it, or
16 because the public/Examiner/whoever does not like it, or for whatever reason that does not
17 comport with the standard of review above. In the appeal process, the Examiner must weigh
18 the evidence of what was done in the environmental review that led to the MDNS, and the
19 evidence from the hearing, and he then must determine whether the City, as the SEPA agency
20 having issued the MDNS, can make a prima facie case for having followed the requirements
21

⁹⁶ *Boehm v. City of Vancouver*, 111 Wn. App. 711, 718, 47 P.3d 137, 141 (2002).

⁹⁷ *Anderson*, 86 Wn. App. at 304.

⁹⁸ *Brown*, 30 Wn. App. at 764.

1 of SEPA and its accompanying regulations in WAC 197-11. If a *prima facie* case is made, the
2 Appellants' evidence must then overcome that prima facie showing to prove that the issuance
3 of the MDNS was clearly erroneous, or as stated above, after weighing the entirety of the
4 evidence, the Examiner must be left with the definite and firm conviction that a mistake has
5 been committed.

6 24. That did not happen here. In general, Appellants attempted to show that the
7 Respondents should have done more analysis (e.g., more dispersion analysis for AQ) or
8 different analysis (e.g., trip generation under 155 [sort] or code 156), and because they did
9 not, the MDNS was clearly erroneous. The Appellants failed to meet their burden of proof on
10 the issues presented. Giving the City's decision to issue the MDNS and not require an EIS the
11 substantial weight required by law, and then weighing the evidence on appeal against that
12 deference, the Examiner was not left with the definite and firm conviction that a mistake has
13 been committed.⁹⁹

14 25. It is always easier to critique a body of work after the fact than to create that
15 body of work in the first place. A musician creates a piece or work that uses certain
16 instruments and/or voices. When that piece is finished from the creator's standpoint, some
17 listeners will like it; some will not. Some will say that more instrumentation or different
18 instrumentation should have been used. Some simply will not like the style/genre of the
19 piece. But, even though tastes differ, the question of whether the original piece is a viable
20 musical work must be answered from an objective standpoint. It is a truism of human
21

⁹⁹ *Id.*

1 experience that one could always do more, or do a given task differently.¹⁰⁰ That does not
2 make what was done clearly erroneous. Such is the case here.

3 **Evidence**

4 26. In applying the above standard(s) of review to deciding an appeal, the quality of
5 the evidence¹⁰¹ matters. In some instances, evidence can be so faulty, unfounded or biased
6 that it is deemed not credible and entirely disregarded. The Examiner did not determine any
7 evidence here to be entirely lacking in credibility. That notwithstanding, the Examiner gives
8 certain evidence more weight or importance in a decision than other evidence. Sometimes
9 evidence is given greater weight because it is simply more believable. Sometimes greater
10 weight is given because of the knowledge and experience of the witness offering it. Many
11 factors can come into play.

12 27. Here, as has already been alluded to above in the **Witness Testimony and**
13 **Credibility** section, in a SEPA appeal, the Examiner finds it difficult to give greater or even
14 equal weight to testimony from witnesses who are not familiar with SEPA and have no
15 experience applying SEPA and its accompanying WAC regulations in the project review
16 context as the weight given to witnesses who do have that experience. Drilling down further,
17 lack of familiarity with the reviewing agency's (Tacoma) own code and regulations does not
18 enhance the weight given to a witnesses' testimony. Appellants' witnesses' lack of familiarity
19 with applicable laws and regulations, and in some cases with facts important to the Project,

20 _____
21 ¹⁰⁰ For example, this very decision could have been written differently. In the Examiner's very iterative writing process, the content of this decision was revised, and re-revised multiple times, and perhaps should have been revised additionally. The Decision here also could have been "more." Given more time, it could have been perhaps much more detailed and significantly longer. If you have continued reading to this point, you are perhaps grateful that it is not.

¹⁰¹ Evidence here includes all forms, such as physical, documentary, testimonial, etc.

1 colored the Appellants’ case. An important and somewhat pervasive example of this
2 unfamiliarity resulting in less weight given to testimony resulted from Appellants’ witnesses
3 essentially giving opinions on the significance of impacts under SEPA without really being
4 familiar with what SEPA says regarding those impacts. Many times, experience in other
5 jurisdictions and standards therefrom were offered to in order to show significance
6 (California standards, WHO reports from Europe), but these other standards are only
7 persuasive authority at best, and were not then persuasively shown to tie into SEPA.

8 28. Without that familiarity and experience with controlling law, many instances of
9 witnesses’ testimony boils down to their opinion that the Applicant and the City should have
10 done more than they did or differently, based on worst-case scenario predictions—or even
11 speculations, without the foundation of being tied into applicable laws.

12 **Worst Case Scenario / Speculation**

13 29. SEPA does not require engaging in worst-case scenario analysis unless
14 “[i]nformation on significant adverse impacts essential to a reasoned choice among
15 alternatives is not known, and the costs of obtaining it are not exorbitant...”¹⁰² This was not
16 the case here. Appellants argued insufficiency of information and for the application of
17 different measures and methods such as the trip generation rates for the HCW 155 (sort) and
18 156 land use codes being necessary to produce such information. They contended that using
19 these codes and other methods of analysis should be required because they will better show
20 the worst-case impacts for the Project and that failure to do so leaves the Project analysis
21

¹⁰² WAC 197-11-080.

1 without complete information. SEPA does not require worst-case scenario analysis nor does
2 it require this type of circular review.

3 30. The evidence on this issue was inconclusive at best in any event. Using the IP
4 130 code was shown more convincingly to be the correct choice.¹⁰³ Contentions that the
5 Project will become a 155 (sort) code or 156 HCW code were far more speculative. SEPA
6 does not require speculation to be accounted for in an MDNS.¹⁰⁴ In the EIS context, our State
7 Supreme Court has stated that “The mandate of SEPA does not require that every remote and
8 speculative consequence of an action be included in the EIS. The adequacy of an EIS must be
9 judged by application of the rule of reason.”¹⁰⁵ The same should hold true for an MDNS.
10 Sufficiently analyzing the probable adverse impacts does not require hypothetical journeys
11 into speculation.

12 **Continuing Review**

13 31. “The fact that proposals may require future City approvals or environmental
14 review shall not preclude current consideration, as long as proposed future activities are
15 specific enough to allow some evaluation of their probable environmental impacts.”¹⁰⁶ The
16 City took into account that the Project is only a proposal at this point in time and that future
17 City approvals and environmental review may become necessary.¹⁰⁷ The City took
18 precautions against such changes in the MDNS and specifically in the MDNS Mitigation
19

20 ¹⁰³ FoF 37~FoF 53.

21 ¹⁰⁴ *WAC 197-11-060(4)(a)*. See also *Anderson*, 86 Wn. App. at 305 (speculation not a basis for finding MDNS clearly erroneous).

¹⁰⁵ *Cheney v. Mountlake Terrace*, 87 Wn.2d 338, 344, 552 P.2d 184, 189 (1976).

¹⁰⁶ *TMC 13.12.240.B.1*. Specific future activities here would most likely be permit applications for specific tenants in the Projects.

¹⁰⁷ FoF 51.

1 Measures.¹⁰⁸ SEPA accounts for such changes as well. WAC 197-11-600 goes so far as to
2 require an entirely new threshold determination if there are substantial changes to a proposal
3 such as if the Project does indeed change from being an industrial park to being a HCW
4 complex with 155 (sort) and 156 land use codes. If it were the Applicant's intention to
5 somehow skirt future review, should such be triggered, their silence from challenging the
6 City's stated intention and authority to do so here could speak volumes later on.

7 **Regulatory Reliance**

8 32. Respondents were not in error by relying on existing regulatory frameworks and
9 standards as a measure of significant impacts. Instances of this kind of reliance were
10 numerous and included, without intending to be exhaustive:

- 11 • Looking to the SWMM for stormwater compliance/mitigation,
- 12 • Relying on the City's street/traffic standards,
- 13 • Looking to the WAC and the TMC's noise regulations as an appropriate
14 measure for significance,
- 15 • Looking to EPA standards for measuring AQ impacts, and
- 16 • Relying on Ecology's modelling tools and published BMPs.

17 33. In its closing brief, the City expressly argued the appropriateness and
18 effectiveness of such reliance stating that “[e]xisting City regulations in the TMC are intended
19 to mitigate the impacts of such industrial developments.”¹⁰⁹

20 34. WAC 197-11-158 allows for this type of “Reliance on existing plans, laws, and
21 regulations” beginning with its section title. As already referenced above, SEPA encourages a

¹⁰⁸ Ex. C-1, FoF 20, FoF 51, FoF 59.

¹⁰⁹ City's Closing Brief at p. 2.

1 reviewing agency to “[a]dopt or otherwise rely on environmental analyses and requirements
2 under other laws...”¹¹⁰

3 **Appellants’ Prehearing Issues**

4 Lastly, based on all the foregoing, the Examiner answers the Appellants’ issues/error
5 statements as presented prehearing. These are reproduced here verbatim in bolded italics, but
6 given a preceding number to sequentially become part of the Conclusions of Law,¹¹¹ and then
7 answered.

8 ***35. 1) Whether the City erred in issuing a Mitigated Determination of Non-
9 Significance (MDNS) and critical areas development permit for the project, rather
10 than a Determination of Significance, when the record accompanying the decision
lacks adequate information, analysis, or evidence to support the City’s conclusion
that the proposed mitigation will reduce the project’s impacts to non-significance.***

11 No. The City did not err here. Evidence at the hearing showed that the MDNS record
12 was sufficient to support the City’s issuance of the MDNS and this sufficiency was bolstered
13 by the hearing record. Appellants’ contentions of error here are based on the allegations of
needing to do more analysis and different analysis and the Appellants failed to meet their
burden of proof that such was necessary to fully assess significant adverse impacts.¹¹²

14 ***36. 2) Whether the City applied the incorrect legal standard for “significance”
under SEPA, including by ignoring project impacts that are addressed by existing
regulations.***

15 The City did not err in this regard. The City and the Applicant appropriately relied on
16 existing standards, laws and regulations,¹¹³ not ignoring them, in determining significance.
Appellants did not show otherwise or show that what was done was clearly erroneous.

17
18 ***37. 3) Whether the City erred in concluding that an Environmental Impact
Statement and additional mitigation are unnecessary because environmental
19 impacts may be addressed in other regulatory processes.***

20 This issue statement is somewhat misleading or misstated. The City did not simply
defer to “other regulatory processes. Both Respondents incorporated regulatory standards and

21

¹¹⁰ RCW 43.21C.240(6).

¹¹¹ “Conclusion of Law” is abbreviated “CoL” herein.

¹¹² CoL 15~CoL 17.

¹¹³ CoL 32~CoL 34.

1 processes in order to arrive at the best objective results and conclusion. There is nothing
2 erroneous in having done so, and Appellants did not prove otherwise.

3 **38. 4) Whether the City erred by failing to consider the project's full impacts—**
4 **including short- and long-term impacts; direct, indirect, and cumulative impacts;**
5 **and local and global impacts—when evaluating the project proposal for SEPA and**
6 **critical areas compliance.**

7 The breadth and resulting vagueness of this particular issue statement make it difficult
8 to answer without simply pointing back to all that has come before in this Decision that is
9 based on the entirety of the hearing record. Given that entirety, the City did not fail to
10 consider the Project's full impacts as they are presently know through the Project proposal.
11 As addressed at Conclusion of Law 31, regulatory review and the imposition of additional
12 requirement and mitigation measures does not end with the MDNS. There is no clear error
13 here.

14 **39. 5) Whether the City erred by failing to adequately account for climate**
15 **change when evaluating the project proposal for SEPA and critical areas**
16 **compliance.**

17 As addressed above, climate change issues were addressed on the way to the MDNS
18 and further addressed at the hearing. Appellants did not prove clear error here. Appellants did
19 not address climate change relevant to the CADP. There is no clear error.

20 **40. 6) Whether the City erred in determining that the City's decision was**
21 **consistent with the goals and policies outlined in City policies including the One**
22 **Tacoma Comprehensive Plan.**

To the extent that compliance with Comprehensive Plan policies have any controlling
role in this appeal, the City's codified land use regulations in TMC Title 13 control over
conflicting policies such as are embodied in the Comprehensive Plan.¹¹⁴ Appellants failed to
meet their burden of proof on this issue as to whether it should be grounds for disqualifying
the MDNS.

41. 7) Whether the City erred in issuing an MDNS for the project, rather than a
Determination of Significance, when the project is likely to have a probable,
significant adverse impact on traffic in South Tacoma and surrounding areas.

As discussed herein above at length (*FoF 32~FoF 59*), Respondents did not clearly
err in their traffic analysis. The same is true in assessing impacts for air quality (AQ). For 7.
a.~c. and 8. a.~c. Appellants failed to overcome the weight afforded the City's *prima facie*
MDNS and its foundational record to show that there was clear error in assessing and
analyzing traffic and AQ impacts.

¹¹⁴ *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 947 P.2d 1208 (1997).

1 *a. Whether it was reasonable for the City to accept Applicant's traffic*
2 *estimates, which were based on assumed use as a traditional warehouse*
3 *or industrial park.*

4 *b. Whether conditions that provide for possible future study of traffic*
5 *impacts is sufficient to support the City's decision to issue an MDNS.*

6 *c. Whether the City erred by failing to examine project-related traffic*
7 *impacts on emergency response times, public transit, pedestrian safety,*
8 *or bicycle safety.*

9 **8) Whether the City erred in issuing an MDNS for the project, rather than a**
10 **Determination of Significance, when the project is likely to have a probable,**
11 **significant adverse impact on air quality in South Tacoma and surrounding**
12 **areas.**

13 *a. Whether the City erred by relying on Applicant's air quality studies,*
14 *which used inappropriately conservative estimates for vehicle trips*
15 *generated by the project and flawed analytical methodologies.*

16 *b. Whether the City erred by failing to analyze the project's air pollution*
17 *impacts on human health, particularly on sensitive populations.*

18 *c. Whether the City erred by making incorrect and unsupported*
19 *conclusions about the project's impacts on climate and energy.*

20 **9) Whether the City erred in issuing an MDNS for the project, rather than a**
21 **Determination of Significance, when the project is likely to have a probable,**
significant adverse impact on environmental health and equity¹¹⁵ in South
Tacoma and surrounding areas.

a. Whether the City erred in failing to analyze how the project will
adversely impact human health, particularly on sensitive populations
and with respect to increased asthma and cancer incidences and lower
life expectancy.

b. Whether the City erred in failing to analyze the cumulative impacts of
the project combined with other environmental and health harms
already affecting South Tacoma and surrounding areas.

As addressed above,¹¹⁶ Appellants failed to meet their burden to show clear error in how the Respondents addressed the area of environmental health.

¹¹⁵ Issues relating to environmental justice and equity were addressed in the prehearing motion decision as being beyond the Examiner's jurisdictional authority.

¹¹⁶ *FoF 90-FoF 96* principally.

1 42. ***10) Whether the City erred in issuing an MDNS for the project, rather than***
2 ***a Determination of Significance, when the project is likely to have a***
3 ***probable, significant adverse impact on water in South Tacoma and***
 surrounding areas.

4 The issues alleged in 10) a~f are all addressed herein.¹¹⁷ Appellants failed to meet their
5 burden in these impact areas to show that the Respondents had clearly erred in their
6 assessments leading to the MDNS.

7 ***a. Whether the City erred by failing to adequately analyze and mitigate***
8 ***for project impacts to the South Tacoma aquifer and the aquifer***
9 ***recharge area, including consideration of anticipated population***
10 ***growth, project impacts to water quantity and Tacoma’s drinking water***
11 ***supply.***

12 ***b. Whether the City erred by failing to consider climate change in***
13 ***evaluating project impacts on the South Tacoma Aquifer.***

14 ***c. Whether the City erred by failing to analyze the project’s impacts on***
15 ***stormwater, including failing to adequately analyze the stormwater***
16 ***pollutant profile, quantity of runoff, or how contaminants in stormwater***
17 ***could impact the aquifer and nearby production wells.***

18 ***d. Whether the City erred by failing to analyze the probability of failure***
19 ***of stormwater treatment methods, or the consequences therefrom.***

20 ***e. Whether the City erred by failing to adequately describe how***
21 ***contaminated soils will be prevented from mobilizing into groundwater.***

f. Whether the City erred by improperly relying on the developer’s
 hydrological and stormwater assessments, which are analytically flawed
 for reasons including that they are conclusory, use unreliable models,
 and do not connect the data to the opinions expressed in the
 assessments.

g. Whether the City erred by failing to account for climate change in its
 flood analysis and mitigation.

h. Whether the City erred by failing to adequately analyze off-site
 stormwater impacts to fish and fish habitat in Leach Creek, Flett Creek,
 and Chambers Creek.

 43. ***11) Whether the City erred in issuing an MDNS for the project, rather than***
 a Determination of Significance, when the project is likely to have a

¹¹⁷ Chiefly at *FoF 128-142*.

1 *probable, significant adverse impact on housing, aesthetics, noise, light,*
2 *heat, and recreation in South Tacoma.*

3 *a. Whether the City erred by failing to adequately study and mitigate for*
4 *these impacts on the community.*

5 This issue set was abandoned prehearing.

6 44. Ultimately, the Subject Property is zoned for industrial use. The covenants and
7 restrictions remaining from the Superfund cleanup limit the Subject Property to industrial
8 uses. The Project is just such an industrial use. The Examiner has no authority to block a
9 project that complies with the extant zoning, and has complied with the requirements for
10 environmental review sufficient to obtain an MDNS. The Project and the Site were
11 thoroughly reviewed on the way to issuance of the MDNS, and then further scrutinized in the
12 appeal/hearing process. The Appellants showed that more could have been done, and/or that
13 things could have been done differently, but that is not the same as showing clear error in
14 what was done or that a different conclusion should have been reached under the law. The
15 hearing itself was a microcosm of Appellants' arguments being insufficient to show clear
16 error in several instances, for example, when early in the hearing error was alleged and an
17 alternative or additional approach was championed. Prior to an Applicant's witness testifying,
18 that alternative or additional approach was taken with no appreciable or significant change in
19 the result.¹¹⁸ Respondents' witnesses answered the Appellants' witnesses' allegations of error
20 sufficiently in all cases for the Examiner to be convinced that issuing the MDNS was not
21 clearly erroneous. For all alleged areas of impact, under the standard(s) of review applicable
 to the challenge of an MDNS, Appellants failed to show clear error in what the Respondents

¹¹⁸ See Goff Testimony.

1 did in order to determine that the Project will not have significant adverse impacts.
2 Appellants failed to prove that “the [P]roject will still produce significant adverse
3 environmental impacts.”¹¹⁹


4 45. Any Finding of Fact deemed to be properly considered a Conclusion of Law is
5 hereby adopted as such.

6 Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing
7 Examiner makes the following:

8 **DECISION:**

9 Based on all the foregoing, the APPELLANTS’ consolidated appeal is DENIED and
10 RESPONDENT City of Tacoma’s issuance of both the Mitigated Determination of Non-
11 Significance (MDNS) and the Critical Areas Development Permit (CADP) to
12 RESPONDENT Bridge Point Tacoma, LLC is UPHELD.

13 **DATED** this 5th day of October, 2023.

14 
15 _____
16 **JEFF H. CAPELL, Hearing Examiner**

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¹¹⁹ *Anderson*, 86 Wn. App. at 304.

1 **NOTICE**

2 **RECONSIDERATION/APPEAL OF EXAMINER'S DECISION**

3 **RECONSIDERATION:**

4 Any aggrieved person or entity having standing under the ordinance governing the matter, or
5 as otherwise provided by law, may file a motion with the Office of the Hearing Examiner
6 requesting reconsideration of a decision or recommendation entered by the Examiner. A
7 motion for reconsideration must be in writing and must set forth the alleged errors of
8 procedure, fact, or law and must be filed in the Office of the Hearing Examiner within 14
9 calendar days of the issuance of the Hearing Examiner's decision/recommendation, not
10 counting the day of issuance of the decision/recommendation. If the last day for filing the
11 motion for reconsideration falls on a weekend day or a holiday, the last day for filing shall be
12 the next working day. The requirements set forth herein regarding the time limits for filing of
13 motions for reconsideration and contents of such motions are jurisdictional. Accordingly,
14 motions for reconsideration that are not timely filed with the Office of the Hearing Examiner
15 or do not set forth the alleged errors shall be dismissed by the Hearing Examiner. It shall be
16 within the sole discretion of the Hearing Examiner to determine whether an opportunity shall
17 be given to other parties for response to a motion for reconsideration. The Hearing
18 Examiner, after a review of the matter, shall take such further action as he/she deems
19 appropriate, which may include the issuance of a revised decision/recommendation. (*Tacoma*
20 *Municipal Code 1.23.140*)
21

12 **APPEAL TO SUPERIOR COURT OF EXAMINER'S DECISION:**

13 **NOTICE**

14 Pursuant to the Official Code of the City of Tacoma, Section 1.23.160, the Hearing
15 Examiner's decision may be appealable to the Superior Court for the State of Washington.
16 Any court action to set aside, enjoin, review, or otherwise challenge the decision of the
17 Hearing Examiner shall likely have to be commenced within 21 days of the entering of the
18 decision by the Hearing Examiner, unless otherwise provided by statute.
19
20
21

Appendix A

APPELLANTS SOUTH TACOMA NEIGHBORHOOD COUNCIL (STNC)

APPELLANT 350 TACOMA (350 Tac)

EXHIBIT LIST

HEARING: July 25-28, 2023, at 9:00 am and August 4, 2023

FILE NOS. & NAMES: *HEX2023-011a STNC v. City of Tacoma; Bridge Point Tacoma, LLC;*
HEX2023-011b 350 Tacoma v. City of Tacoma; Bridge Point Tacoma, LLC

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	SUBMITTED BY	A	E	W	COMMENT
EX. A-1	Qualifications of Sean Dixon, JD, LL.M. (CV)	App STNC; App 350 Tac	X			Exs. A-1 and A-2 stipulated
EX. A-2	City of Tacoma, Map 10: Aquifer Recharge & Wellhead Prot. Areas, https://cms.cityoftacoma.org/Planning/Shoreline/Maps/10_Aquifer.pdf	App STNC; App 350 Tac	X			
EX. A-3	Alexis Krell, Q&A: What summer drought means for Tacoma water users, Tacoma News Tribune, Sep. 6, 2015, https://www.thenewstribune.com/news/local/article34264530.html	App STNC; App 350 Tac	X			Objections - Applicant and City
EX. A-4	City of Tacoma, One Tacoma Plan, Introduction + Vision https://cms.cityoftacoma.org/Planning/OneTacomaPlan/1-1IntroductionVision.pdf	App STNC; App 350 Tac	X			Exs. A-4 and A-5 stipulated
EX. A-5	City of Tacoma, One Tacoma Plan, Environment + Watershed Health, https://cms.cityoftacoma.org/Planning/OneTacomaPlan/1-4EnvironmentWatershedHealth.pdf	App STNC; App 350 Tac	X			
EX. A-6	University of Washington Climate Impacts Group et al., An Unfair Share Exploring the Disproportionate Risks from Climate Change Facing Washington State Communities (2018), https://cig.uw.edu/wp-content/uploads/sites/2/2018/08/AnUnfairShare_WashingtonState_August2018.pdf	App STNC; App 350 Tac	X			Objections - Applicant and City
EX. A-7	Tacoma Water, Integrated Resource Plan 2018, https://www.mytpu.org/wp-content/uploads/tacomawaterirp0219.pdf	App STNC; App 350 Tac	X			Ex. A-7 stipulated
EX. A-8	City of Tacoma, Tacoma 2040: Growing Tomorrow's City, https://www.cityoftacoma.org/cms/one.aspx?portalId=169&pageId=30055	App STNC; App 350 Tac				Ex. A-8 not offered.

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APPELLANTS SOUTH TACOMA NEIGHBORHOOD COUNCIL (STNC)

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EXHIBIT NUMBER	EXHIBIT DESCRIPTION	SUBMITTED BY	A	E	W	COMMENT
EX. A-9	Wash. Dep't of Ecology, Watershed Restoration and Enhancement Plan, WRIA 12 -Chambers-Clover Watershed, https://apps.ecology.wa.gov/publications/documents/2111012.pdf	App STNC; App 350 Tac	X			
EX. A-10	SalmonScape, https://apps.wdfw.wa.gov/salmonscape/	App STNC; App 350 Tac	X			
EX. A-11	Zhenyu Tian et al., 6PPD-Quinone: Revised Toxicity Assessment and Quantification with a Commercial Standard, Environ. Sci. Technol. Lett. (2022), https://pubs.acs.org/doi/abs/10.1021/acs.estlett.1c00910	App STNC; App 350 Tac	X			
EX. A-12	Zhenyu Tian et al., A ubiquitous tire rubber-derived chemical induces acute mortality in coho salmon, 371 Science 185–89 (2021), https://pubmed.ncbi.nlm.nih.gov/33273063/	App STNC; App 350 Tac	X			
EX. A-13	Markus Brinkmann, et al., Acute Toxicity of the Tire Rubber-Derived Chemical 6PPD-quinone to Four Fishes of Commercial, Cultural, and Ecological Importance, Environ. Sci. Technol. Lett. (2022), https://pubs.acs.org/doi/abs/10.1021/acs.estlett.2c00050	App STNC; App 350 Tac	X			
EX. A-14	Appendix D, Salmonid Habitat Limiting Factors Analysis, Chambers-Clover Creek Watershed, Water Resource Inventory Area 12, https://www.piercecountywa.gov/DocumentCenter/View/105949/WRIA-12-Limiting-Factors-Report	App STNC; App 350 Tac	X			Objections - Applicant and City

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HEX2023-011b 350 Tacoma v. City of Tacoma; Bridge Point Tacoma, LLC

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	SUBMITTED BY	A	E	W	COMMENT
EX. A-15	City of Tacoma, Regional Stormwater Facility Plan: Attachment 1: Flett Creek Watershed, https://cms.cityoftacoma.org/enviro/SurfaceWater/Manual/Update%202019/Aug2017RevRegionalFacilitiesPlanAttachment_A_Flett.pdf	App STNC; App 350 Tac	X			Exs. A-15 thru A-28 stipulated
EX. A-16	Steven Emerman CV	App STNC; App 350 Tac	X			
EX. A-17	Qualifications of Michael McCarthy, Ph.D.	App STNC; App 350 Tac	X			
EX. A-18	Summary of Technical Analysis of Michael McCarthy, Ph.D.	App STNC; App 350 Tac	X			
EX. A-19	Michael McCarthy Trip Generation and Emissions Calculations	App STNC; APP 350 Tac	X			
EX. A-20	Appendix to Summary of Technical Analysis of Michael McCarthy, Ph.D.	App STNC; APP 350 Tac	X			
EX. A-21	ITE, 100s – Industrial -- Truck Data Plots, https://www.ite.org/ITEORG/assets/File/Trip%20Generation%20Appendices%20PUBLISHED/Truck/100s%20-%20Industrial%20-%20Truck%20Data%20Plots.pdf (excerpts)	App STNC; APP 350 Tac	X			
EX. A-22	U.S. EPA, Identifying AirToxScreen’s Risk Drivers (2019), https://www.epa.gov/system/files/documents/2023-01/2019%20AirToxScreen%20Risk%20Drivers.pdf	App STNC; APP 350 Tac	X			

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EXHIBIT NUMBER	EXHIBIT DESCRIPTION	SUBMITTED BY	A	E	W	COMMENT
EX. A-23	U.S. EPA, Air Toxic Emissions from Onroad Vehicles in MOVES3, https://cfpub.epa.gov/si/si_public_file_download.cfm?p_download_id=541809&Lab=OTAQ	App STNC; APP 350 Tac	X			
EX. A-24	Puget Sound Regional Council, Regional Transportation Plan 2022-2050, App'x A (Transportation Sys. Inventory), https://www.psrc.org/media/5935	App STNC; APP 350 Tac	X			
EX. A-25	South Coast AQMD, Rule 2305(d)(1)(C), Warehouse Indirect Source Rule (May 7, 2021), http://www.aqmd.gov/docs/default-source/rule-book/reg-xxiii/r2305.pdf?sfvrsn=15	App STNC; APP 350 Tac	X			
EX. A-26	E-Source, Warehouses, https://esource.bizenergyadvisor.com/article/warehouses	App STNC; APP 350 Tac	X			
EX. A-27	U.S. EPA, Dose-Response Tables, https://www.epa.gov/fera/dose-response-assessment-tables	App STNC; APP 350 Tac	X			
EX. A-28	Portland Cement Association, Environmental Life Cycle Inventory of Portland Cement Concrete (Rev. July 2002)	App STNC; APP 350 Tac	X			
EX. A-29	Wash. Dep't of Ecology, Electric trucks to join state's clean transportation future (Apr. 6, 2023), https://ecology.wa.gov/Blog/Posts/April-2023/Electric-trucks-to-join-state-s-clean-transportati	App STNC; APP 350 Tac				Ex. A-29 not offered.
EX. A-30	TENW, Transportation Impact Study (May 19, 2021)	App STNC; APP 350 Tac	X			

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HEX2023-011b 350 Tacoma v. City of Tacoma; Bridge Point Tacoma, LLC

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	SUBMITTED BY	A	E	W	COMMENT
EX. A-31	Cal. Dep't of Justice, Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act, https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/warehouse-best-practices.pdf	App STNC; APP 350 Tac	X			Objection
EX. A-32	Knutson Farms Industrial Park LLC, Declaration of Restrictive Covenant, https://www.cityofpuyallup.org/DocumentCenter/View/16925/Restrictive-covenant-August-2022	App STNC; APP 350 Tac	X			Objections
EX. A-33	Settlement Agreement, World Logistics Center (City of Moreno Valley, CA)	App STNC; APP 350 Tac	X			
EX. A-34	Wash. Dep't of Ecology, Wash. State Greenhouse Gas Emissions Inventory: 1990-2019, https://apps.ecology.wa.gov/publications/documents/2202054.pdf	App STNC; APP 350 Tac				Exs. A-34 thru A-43 not offered.
EX. A-35	350 Tacoma, About, http://www.350tacoma.org/about/	App STNC; APP 350 Tac				
EX. A-36	City of Tacoma, Neighborhood Council Program, https://www.cityoftacoma.org/cms/one.aspx?pageId=21111	App STNC; APP 350 Tac				
EX. A-37	Karen E. Thuermer, Record-Breaking Demand for Warehouse and DC Development, Logistics Management, Feb. 8, 2021, https://www.logisticsmgmt.com/article/record-breaking-demand-for-warehouse-and-dc-development	App STNC; APP 350 Tac				

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HEX2023-011b 350 Tacoma v. City of Tacoma; Bridge Point Tacoma, LLC

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	SUBMITTED BY	A	E	W	COMMENT
EX. A-38	Debbie Cockrell, All these big new warehouses help us get our stuff faster. But are they worth the cost? Tacoma News Tribune, Aug. 22, 2022, https://www.thenewstribune.com/news/local/article264296916.html#storylink=cpy	App STNC; APP 350 Tac				
EX. A-39	Ana Monteiro, Covid E-Commerce Boom Sees U.S. Retailers Hunt for Warehouses, Bloomberg, Jan. 11, 2022, https://www.bloomberg.com/news/newsletters/2022-01-11/supply-chain-latest-covid-e-commerce-boom-sees-warehouse-demand-soar	App STNC; APP 350 Tac				
EX. A-40	Frintz Finlay, Fulfillment and Delivery Sites Breed Warehouses as E-commerce Sales Flourish (Jan. 6, 2023), https://rethink.industries/article/fulfillment-and-delivery-sites-breed-warehouses-as-e-commerce-sales-flourish/	App STNC; APP 350 Tac				
EX. A-41	Sebastian Obiando, Warehouse, distribution center demand accelerates as e-commerce grows (Jan. 12, 2023), https://www.supplychaindive.com/news/distribution-centers-warehouses-growth-2022/617804/	App STNC; APP 350 Tac				
EX. A-42	Mat Dolly, A decade in the making: Forecasting the Future of Colossal Warehouse Demand (Oct. 1, 2022), https://c.transwestern.com/2bd3edc1-4f67-4245-984b-fdaad2cf6a8e/28ba861e-f7ea-4d85-ab5b-87d90fd0cd93.pdf	App STNC; APP 350 Tac				
EX. A-43	Bridge Industrial, Will the Industrial Boom Continue? At Least Throughout 2022, Expectedly, Apr. 5, 2022, https://bridgeindustrial.com/media/article/will-the-industrial-boom-continue-at-least-throughout-2022-expectedly/	App STNC; APP 350 Tac				

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EXHIBIT NUMBER	EXHIBIT DESCRIPTION	SUBMITTED BY	A	E	W	COMMENT
EX. A-44	Bridge Industrial, Bridge Industrial Acquires 2.5 Million SF Seattle Site for Future ‘Bridge Point Tacoma 2MM,’ Sept. 29, 2021, https://bridgeindustrial.com/media/deal/bridge-industrial-acquires-2-5-million-sf-seattle-site-for-future-bridge-point-tacoma-2mm/	App STNC; APP 350 Tac	X			Objections Testimony on it was disallowed as w/o foundation.
EX. A-45	Priyanka deSouza CV	App STNC; APP 350 Tac	X			Ex. A-45 thru A-47 stipulated
EX. A-46	Summary of Technical Analysis of Priyanka deSouza, Ph.D.	App STNC; APP 350 Tac	X			
EX. A-47	Priyanka deSouza Noise Calculations	App STNC; APP 350 Tac	X			
EX. A-48	Federal Transit Admin., Transit Noise and Vibration Impact Assessment Manual (2018), https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/research-innovation/118131/transit-noise-and-vibration-impact-assessment-manual-fta-report-no-0123_0.pdf	App STNC; APP 350 Tac				Ex. A-48 not offered.
EX. A-49	deSouza et al., The Environmental and Traffic Impacts of Warehouses in California, J. Transp. Geo. (2022), https://doi.org/10.1016/j.jtrangeo.2022.103440	App STNC; APP 350 Tac	X			Objection by Applicant Scope limited.
EX. A-50	World Health Organization, Environmental Noise Guidelines for the European Region (2018), https://www.who.int/europe/publications/item/9789289053563	App STNC; APP 350 Tac	X			Objection by Applicant
EX. A-51	U.S. EPA, Clean Air Act Title IV – Noise Pollution, https://www.epa.gov/clean-air-act-overview/clean-air-act-title-iv-noise-pollution	App STNC; APP 350 Tac				Ex. A-51 not offered.

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EXHIBIT NUMBER	EXHIBIT DESCRIPTION	SUBMITTED BY	A	E	W	COMMENT
EX. A-52	Elinor Fanning Resume	App STNC; APP 350 Tac	X			Ex. A-52 stipulated
EX. A-53	U.S. CDC, NIOSH, Current Intelligence Bulletin 50: Carcinogenic Effects of Exposure to Diesel Exhaust (Aug. 1988), https://www.cdc.gov/niosh/docs/88-116/default.html	App STNC; APP 350 Tac				Exs. A-53 thru A-77 not offered.
EX. A-54	World Health Organization, Diesel and Gasoline Engine Exhausts and Some Nitroarenes, vol. 105 (2014), https://monographs.iarc.who.int/wp-content/uploads/2018/06/mono105.pdf	App STNC; APP 350 Tac				
EX. A-55	A. Sydbom et al., Health Effects of Diesel Exhaust Emissions, 17 Eur. Respiratory J. 733 (2001), https://erj.ersjournals.com/content/erj/17/4/733.full.pdf	App STNC; APP 350 Tac				
EX. A-56	S. Wilson et al., Effects of Diesel Exhaust on Cardiovascular Function and Oxidative Stress, 28 Antioxidants & Redox Signaling 819, 826 (2018), https://pubmed.ncbi.nlm.nih.gov/28540736/	App STNC; APP 350 Tac				
EX. A-57	Wash. Dep't of Ecology, Health effects from diesel pollution, https://ecology.wa.gov/Air-Climate/Reducing-Greenhouse-Gas-Emissions/Diesel-emissions/Health-impacts	App STNC; APP 350 Tac				
EX. A-58	Wash. Dep't of Ecology, Diesel Emissions, https://ecology.wa.gov/Air-Climate/Reducing-Greenhouse-Gas-Emissions/Diesel-emissions	App STNC; APP 350 Tac				
EX. A-59	U.S. EPA, Suppl. to the 2019 Integrated Science Assessment for Particulate Matter, EPA/635/R-22/028 (2022), https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=354490	App STNC; APP 350 Tac				

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EXHIBIT NUMBER	EXHIBIT DESCRIPTION	SUBMITTED BY	A	E	W	COMMENT
EX. A-60	Di et al., Air Pollution and Mortality in the Medicare Population, New England J. Med. (June 29, 2017), https://www.nejm.org/doi/full/10.1056/nejmoa1702747	App STNC; APP 350 Tac				
EX. A-61	Kioumourtzoglou et al., PM2.5 and Mortality in 207 US Cities: Modification by Temperature and City Characteristics, Epidemiology (Mar. 2016), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4748718/	App STNC; APP 350 Tac				
EX. A-62	CDC, Acrolein Public Health Statement (Aug. 2007), https://www.atsdr.cdc.gov/ToxProfiles/tp124-c1-b.pdf	App STNC; APP 350 Tac				
EX. A-63	deCastro, Acrolein and asthma attack prevalence in a representative sample of the United States adult population 2000-2009 (2014), https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0096926&type=printable	App STNC; APP 350 Tac				
EX. A-64	OEHHA, App'x D1, Technical Supporting Document for Noncancer RELs (Updated July 2014), https://oehha.ca.gov/media/downloads/crn_r/appendixd1final.pdf	App STNC; APP 350 Tac				
EX. A-65	Cook et al., Contribution of mobile sources to secondary formation of carbonyl compounds, J Air Waste Manag. Assoc. (Dec. 2020), https://www.tandfonline.com/doi/full/10.1080/10962247.2020.1813839	App STNC; APP 350 Tac				

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EX. A-66	B. Bukowska et al., Benzo(a)pyrene – Environmental Occurrence, Human Exposure, and Mechanisms of Toxicity (2022), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9181839/	App STNC; APP 350 Tac				
EX. A-67	U.S. EPA, Health Assessment of 1,3-Butadiene, EPA/600/P-98/001F (2002), https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=54499	App STNC; APP 350 Tac				
EX. A-68	U.S. EPA, Basic Information about NO2, https://www.epa.gov/no2-pollution/basic-information-about-no2	App STNC; APP 350 Tac				
EX. A-69	U.S. EPA, Integrated Science Assessment (ISA) for Oxides of Nitrogen – Health Criteria, EPA/600/R-15/068 (Final Report, Jan 2016), https://ordspub.epa.gov/ords/eims/eimscomm.getfile?p_download_id=526855	App STNC; APP 350 Tac				
EX. A-70	McGwin et al., Formaldehyde exposure and asthma in children: a systematic review, <i>Envtl Health Perspect.</i> (Mar. 2010), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2854756/pdf/ehp-118-313.pdf	App STNC; APP 350 Tac				
EX. A-71	Health Effects Institute, Special Report: Systematic Review and Meta-analysis of Selected Health Effects of Long-Term Exposure to Traffic-Related Air Pollution (Updated Apr. 2023), https://www.healtheffects.org/system/files/hei-special-report-23_6.pdf	App STNC; APP 350 Tac				
EX. A-72	J. Wu et al., Association between local traffic generated air pollution and preeclampsia and preterm delivery, <i>Envtl. Health Perspectives</i> (Nov. 2009), https://ehp.niehs.nih.gov/doi/epdf/10.1289/ehp.0800334	App STNC; APP 350 Tac				

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APPELLANTS SOUTH TACOMA NEIGHBORHOOD COUNCIL (STNC)
APPELLANT 350 TACOMA (350 Tac)
EXHIBIT LIST

HEARING: July 25-28, 2023, at 9:00 am and August 4, 2023

FILE NOS. & NAMES: *HEX2023-011a STNC v. City of Tacoma; Bridge Point Tacoma, LLC;*
HEX2023-011b 350 Tacoma v. City of Tacoma; Bridge Point Tacoma, LLC

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	SUBMITTED BY	A	E	W	COMMENT
EX. A-73	CEQ, Considering Cumulative Effects under NEPA, https://ceq.doe.gov/publications/cumulative_effects.html	App STNC; APP 350 Tac				
EX. A-74	5024 S. Madison St., Google Maps, https://www.google.com/maps/d/edit?mid=1w021YUjBcFsuaxQg4Fj6qKn_g4yDtBU&usp=sharing	App STNC; APP 350 Tac				
EX. A-75	Wash. Env'tl Health Disparities Map, https://fortress.wa.gov/doh/wtnibl/WTNIBL/ (excerpts for 5024 S. Madison St., Tacoma, WA)	App STNC; APP 350 Tac				
EX. A-76	U.S. EPA, EJScreen 2.0, https://ejscreen.epa.gov/mapper/ (excerpts for 5024 S Madison St, Tacoma, WA)	App STNC; APP 350 Tac				
EX. A-77	Tacoma-Pierce County Health Dep't, S. Tacoma Groundwater Prot. Dist., https://www.tpchd.org/healthy-places/waste-management/business-pollution-prevention/south-tacoma-groundwater-protection-district	App STNC; APP 350 Tac				
EX. A-78	Institute for Transportation Engineers, High-Cube Warehouse Vehicle Trip Generation Analysis (Oct. 2016)	App STNC; APP 350 Tac	X			Rebuttal exhibit.

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RESPONDENT/APPLICANT BRIDGE POINT TACOMA, LLC (BPT)

EXHIBIT LIST

RECEIVED

By Hearing Examiner's Office at 4:53 pm, Jul 18, 2023

HEARING: July 25-27, 2023, at 9:00 am

FILE NOS. & NAMES: *HEX2023-011a STNC v. City of Tacoma; Bridge Point Tacoma, LLC;*
HEX2023-011b 350 Tacoma v. City of Tacoma; Bridge Point Tacoma, LLC

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	SUBMITTED BY	A	E	W	COMMENT
EX. B-1	Resume of Cheryl Ebsworth, Barghausen Consulting Engineers	Respondent/ Applicant Bridge Point Tacoma, LLC (BPT)	X			Exs. B1 thru B-9 stipulated.
EX. B-2	Resume of Jeff Schramm, TENW	Resp/Applic BPT	X			
EX. B-3	Resume of Naomi Goff, Farallon Consulting	Resp/Applic BPT	X			
EX. B-4	Resume of Thom Morin, TRC Companies	Resp/Applic BPT	X			
EX. B-5	Resume of Kevin Warner, Landau Associates	Resp/Applic BPT	X			
EX. B-6	Resume of Ben Eldridge, Barghausen Consulting Engineers	Resp/Applic BPT	X			
EX. B-7	Resume of Ted Schepper, Terra Associates	Resp/Applic BPT	X			
EX. B-8	Resume of Dr. Lisa Corey, Intertox	Resp/Applic BPT	X			
EX. B-9	Soundview Team Professional Background [Jon Pickett and Ben Wright]	Resp/Applic BPT	X			
EX. B-10	September 1994 US EPA Record of Decision	Resp/Applic BPT	X			

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RESPONDENT/APPLICANT BRIDGE POINT TACOMA, LLC (BPT)
EXHIBIT LIST

HEARING: July 25-27, 2023, at 9:00 am

FILE NOS. & NAMES: *HEX2023-011a STNC v. City of Tacoma; Bridge Point Tacoma, LLC;*
HEX2023-011b 350 Tacoma v. City of Tacoma; Bridge Point Tacoma, LLC

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	SUBMITTED BY	A	E	W	COMMENT
EX. B-11	January 18, 1997, South Tacoma Field Consent Decree	Resp/Applic BPT	X			
EX. B-12	September 28, 2018, US EPA Fifth Five-Year Report for Commencement Bay, South Tacoma Channel Superfund Site Tacoma, Washington	Resp/Applic BPT				Ex. B12 - Not offered.
EX. B-13	August 18, 2021, US EPA Comfort Letter re: Bridge Industrial's Purchase and Development of 150 acres of Burlington Northern/Santa Fe Railway Company property, South 56 th Street and Burlington Way South, South Tacoma Field Superfund Site, Tacoma, Washington	Resp/Applic BPT	X			
EX. B-14	October 20, 2022, Piper Peterson Email	Resp/Applic BPT	X			
EX. B-15	October 19, 2022, Soil Management Report	Resp/Applic BPT	X			
EX. B-16	April 7, 2021, Planning Commission Findings of Fact and Recommendations Report regarding Tidelands and Industrial Land Use	Resp/Applic BPT	X			
EX. B-17	November 16, 2021, Amended Ordinance No. 28786	Resp/Applic BPT	X			

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EXHIBIT NUMBER	EXHIBIT DESCRIPTION	SUBMITTED BY	A	E	W	COMMENT
EX. B-18	July 11, 2023, Bridge Tacoma 2MM Noise Study	Resp/Applic BPT	X			Ex. 18 stipulated.
EX. B-19	January 9, 2017, South Tacoma Groundwater Protection District Permitting Requirements	Resp/Applic BPT	X			
EX. B-20	Washington Geologic Information Portal – Steilacoom Gravel Aquifer	Resp/Applic BPT	X			
EX. B-21	3d Visualization of Stratigraphic Units for Well 12A Superfund Site, Tacoma, Washington	Resp/Applic BPT				Ex. B21 - Not offered.
EX. B-22	1999 Ground-Water Hydrology of the Tacoma-Puyallup Area, Pierce County, Washington	Resp/Applic BPT				Ex. B22 - Not offered.
EX. B-23	Institute of Transportation Engineers Industrial Land Use Types (Descriptions Only)	Resp/Applic BPT	X			Ex. B-23-Stipulated Revised Ex. B-23 received by OHEX on 7-21-23.
EX. B-24	Institute of Transportation Engineers – Land Use 130 Industrial Park and Land Use 155 High-Cube Fulfillment Center Warehouse	Resp/Applic BPT	X			

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RESPONDENT/APPLICANT BRIDGE POINT TACOMA, LLC (BPT)
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HEX2023-011b 350 Tacoma v. City of Tacoma; Bridge Point Tacoma, LLC

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	SUBMITTED BY	A	E	W	COMMENT
EX. B-25	Excerpts from City of Tacoma Transportation Master Plan	Resp/Applic BPT	X			
EX. B-26	July 10, 2023, Traffic Routing Map	Resp/Applic BPT	X			Exs. B-26 thru B-28 stipulated.
EX. B-27	Transportation Mitigation Elements	Resp/Applic BPT	X			
EX. B-28	Summary of Toxic Air Pollutants and Ecology De Minimis or SQER Thresholds	Resp/Applic BPT	X			
EX. B-29	June 2, 2020, Site Development and Institutional Controls Plan for Properties Under a Restrictive Covenant	Resp/Applic BPT	X			
EX. B-30	June 2022, Stormwater Treatment of Tire Contaminants	Resp/Applic BPT				Ex. B-30 - Not offered.
EX. B-31	October 2022, 6PPD in Road Runoff Assessment and Mitigation Strategies	Resp/Applic BPT	X			
EX. B-32	Land Use Maps	Resp/Applic BPT	X			Ex. B-32 stipulated.
EX. B-33	Site Photographs	Resp/Applic BPT	X			

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RESPONDENT/APPLICANT BRIDGE POINT TACOMA, LLC (BPT)
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FILE NOS. & NAMES: *HEX2023-011a STNC v. City of Tacoma; Bridge Point Tacoma, LLC;*
HEX2023-011b 350 Tacoma v. City of Tacoma; Bridge Point Tacoma, LLC

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	SUBMITTED BY	A	E	W	COMMENT
EX. B-34	Excerpts from 2019 Stormwater Management Manual for Western WA	Resp/Applic BPT	X			
EX. B-35	July 2018, General Use Level Designation for Basic (TSS), Dissolved Metals (Enhanced), and Phosphorus Treatment		X			
EX. B-36	FHWA NEPA MSAT Memorandum 2023	Resp/Applic BPT	X			
EX. B-37	FHWA NEPA MSAT Appendix C 2023		X			

The parties have agreed to stipulate to admission of the decision documents and their attachments (Exhibits C-1 to C-34). The Applicant also identifies as exhibits any exhibits listed by other parties. The Applicant reserves the right to reference generally applicable and available land use plans and regulatory or guidance documents, including but not limited to the One Tacoma Comprehensive Plan, the Tacoma 2030 Climate Action Plan, 2021 City of Tacoma Stormwater Manual, Washington Department of Ecology 2019 Stormwater Manual for Western Washington, the Tacoma Municipal Code, and the Institute of Traffic Engineers Trip Generation Manual as well as local, state and federal laws. As the responding party, the Applicant reserves the right to introduce additional exhibits in response to witness testimony or exhibits introduced by the Appellant. In accordance with the Examiner’s ruling on the Applicant and City’s motion to dismiss, the Applicant has not included exhibits relating to equity or social policy. To the extent that any such exhibits are offered by Appellants and admitted by the Examiner, the Applicant reserves the right to offer responsive exhibits. These may include but are not limited to maps and other information from the United State Environmental Protection Agency EJScreen website (<https://www.epa.gov/ejscreen>) and the City of Tacoma Equity Index mapping website (<https://tacomaequitymap.caimaps.info/CAILive/>). The Applicant also reserves the right to offer responsive exhibits on other subjects.

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RESPONDENT CITY
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HEARING: July 25-27, 2023 and August 4, 2023 (via Zoom)

FILE NOS. & NAMES: HEX2023-011a STNC v. City of Tacoma and Bridge Point Tacoma, LLC;
HEX2023-011b 350 Tacoma v. City of Tacoma and Bridge Point Tacoma, LLC

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	A	E	W	SUBMITTED BY	COMMENTS
EX. C-1	Mitigated Determination of Nonsignificance (MDNS) attachments for Bridge Point Tacoma, LLC, File No. LU21-0125, issued by the City of Tacoma Planning and Development Services Department on April 21, 2023,	X			City of Tacoma, Planning & Development Services (“COT, PDS”)	Admission Exs. C-1 thru C-34 stipulated by Parties on July 25, 2023.
EX. C-2	SEPA Checklist: Barghausen Consulting Engineers, August 9, 2022	X			COT, PDS	Same as Ex. C-1 comment.
EX. C-3	Architectural Site Plan: Synthesis PLLC, August 9, 2022	X			COT, PDS	Same as Ex. C-1 comment.
EX. C-4	Accela Online Application Information: Barghausen Consulting Engineers, May 28, 2021	X			COT, PDS	Same as Ex. C-1 comment.
EX. C-5	Building Elevations: Synthesis PLLC, December 9, 2021	X			COT, PDS	Same as Ex. C-1 comment.
EX. C-6	Inadvertent Discovery Plan: Barghausen Consulting Engineers, December 10, 2021	X			COT, PDS	Same as Ex. C-1 comment.
EX. C-7	Bridge Point Tacoma, Updated Transportation Impact Analysis, December 10, 2021, TENW	X			COT, PDS	Same as Ex. C-1 comment.
EX. C-8	Joint Aquatic Resources Permit Application: Soundview Consultants, February, 2022	X			COT, PDS	Same as Ex. C-1 comment.
EX. C-9	Biological Evaluation, May 2021, Soundview Consultants	X			COT, PDS	Same as Ex. C-1 comment.

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FILE NOS. & NAMES: HEX2023-011a STNC v. City of Tacoma and Bridge Point Tacoma, LLC;
 HEX2023-011b 350 Tacoma v. City of Tacoma and Bridge Point Tacoma, LLC

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	A	E	W	SUBMITTED BY	COMMENTS
EX. C-10	Geotechnical Report: Terra Associates, Inc., March 20, 2022	X			COT, PDS	Same as Ex. C-1 comment.
EX. C-10	Geotechnical Report, Figure 2 only (final) dated May 2021	X			COT, PDS	Revised and filed July 25, 2023
EX. C-11	Site Noise Study: SSA Acoustics, May 23, 2022	X			COT, PDS	Same as Ex. C-1 comment.
EX. C-12	Amendment to operations and Maintenance Plan south Tacoma Field Site, soil Management Plan for Property Development, March 24, 2022, TRC	X			COT, PDS	Same as Ex. C-1 comment.
EX. C-13	Air Quality Study: TRC, July 15, 2022	X			COT, PDS	Same as Ex. C-1 comment.
EX. C-14	Stormwater Retention Facilities (Infiltration/ Mounding) Report: Terra Associates, Inc., August 3, 2022	X			COT, PDS	Same as Ex. C-1 comment.
EX. C-15	Tree Retention Plan, August 5, 2022, Soundview Consultants	X			COT, PDS	Same as Ex. C-1 comment.
EX. C-16	Stormwater Site Plan: Barghausen Consulting Engineers, August 9, 2022	X			COT, PDS	Same as Ex. C-1 comment.
EX. C-17	Preliminary Floodplain Study: West Consultants, August 9, 2022	X			COT, PDS	Same as Ex. C-1 comment.
EX. C-18	Photometric Site Calculations: TLG, August 18, 2022	X			COT, PDS	Same as Ex. C-1 comment.

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HEX2023-011b 350 Tacoma v. City of Tacoma and Bridge Point Tacoma, LLC

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	A	E	W	SUBMITTED BY	COMMENTS
EX. C-19	Wetland Delineation Report, Part 2, BNSF Property, July 17, 2007, Barghausen Consulting Engineers	X			COT, PDS	Same as Ex. C-1 comment.
EX. C-20	Critical Areas Mitigation BQW: Soundview Consultants, November 16, 2022	X			COT, PDS	Same as Ex. C-1 comment.
EX. C-21	Mitigation Plan, BNSF Tacoma, Revised November 2022, Soundview Consultants	X			COT, PDS	Same as Ex. C-1 comment.
EX. C-22	Wetland and Fish and Wildlife Habitat Assessment Report, BNSF Report, Revised November 2022, Soundview Consultants	X			COT, PDS	Same as Ex. C-1 comment.
EX. C-23	Response to EPA Air Quality Comments: McCullough Hill Leary, November 30, 2022	X			COT, PDS	Same as Ex. C-1 comment.
EX. C-24	FEMA Site Plan Exhibit: Barghausen Consulting Engineers, December 12, 2022	X			COT, PDS	Same as Ex. C-1 comment.
EX. C-25	Civil Engineering Plans: Barghausen Consulting Engineers, December 2, 2022	X			COT, PDS	Same as Ex. C-1 comment.
EX. C-26	Fourth Submittal Comment Response Letter: Barghausen Consulting Engineers, December 2, 2022	X			COT, PDS	Same as Ex. C-1 comment.
EX. C-27	City of Tacoma Staff Subject Matter Expert Comments	X			COT, PDS	Same as Ex. C-1 comment.
EX. C-28	Agency Comments	X			COT, PDS	Same as Ex. C-1 comment.

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	A	W	E	SUBMITTED BY	COMMENTS
EX. C-29	Public comments	X			COT, PDS	Same as Ex. C-1 comment.
EX. C-30	Critical Area Development Permit (CAPO) and all attachments for Bridge Point Tacoma, LLC, File No. LU21-0125, issued by the City of Tacoma Planning and Development Services Department on April 21, 2023.	X				Same as Ex. C-1 comment.
EX. C-31	Distribution List	X				Same as Ex. C-1 comment.
EX. C-33	Technical Memorandum, November 29, 2022, Soundview Consultants	X				Same as Ex. C-1 comment.
EX. C-34	April 21, 2023 Cover Memo issued along with the MDNS and CAPO decisions	X				Same as Ex. C-1 comment.

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