BEFORE THE HEARING EXAMINER
FOR THE CITY OF TACOMA

In the Matter of the Appeal of: 350 TACOMA and SOUTH TACOMA NEIGHBORHOOD COUNCIL From the April 21, 2023, Mitigated Determination of Nonsignificance and Critical Area Development Permit issued by the City of Tacoma.	No. HEX2023-011a and HEX2023-011b File No. LU21-0125 **PREHEARING BRIEF OF APPELLANTS 350 TACOMA AND SOUTH TACOMA NEIGHBORHOOD COUNCIL**

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LEGAL STANDARDS

I. STATE ENVIRONMENTAL POLICY ACT ("SEPA")

Chapter 13.12 of the Tacoma Municipal Code incorporates SEPA and its implementing regulations. TMC 13.12.120; 13.12.130.

A. SEPA's Purpose

"In passing SEPA, the legislature expressed 'the clear aim of injecting environmental awareness into all levels of governmental decision-making.'" *Wild Fish Conservancy v. Wash. Dep't of Fish & Wildlife*, 198 Wn.2d 846, 855, 502 P.3d 359 (2022) (quoting *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 80, 104, 392 P.3d 1025 (2017) (Stephens, J., dissenting)). "A basic purpose of SEPA is to require local governments to consider total environmental and ecological factors to the fullest extent when taking 'major actions significantly affecting the quality of the environment.'" *Lassila v. City of Wenatchee*, 89 Wn.2d 804, 813, 576 P.2d 54 (1978) (quoting RCW 43.21C.030(c)). SEPA "'is an attempt by the people to shape their future environment by deliberation, not default.'" *Wild Fish Conservancy*, 198 Wn.2d at 872–73 (quoting *Sisley v. San Juan Cnty.*, 89 Wn.2d 78, 89, 569 P.2d 712, 718 (1977); *Stempel v. Dep't of Water Res.*, 82 Wn.2d 109, 118, 508 P.2d 166 (1973)). "SEPA demands a 'thoughtful decision-making process' where government agencies 'conscientiously and systematically consider environmental values and consequences.'" *Wild Fish Conservancy*, 198 Wn.2d at 872–73(quoting *ASARCO*, 92 Wn.2d at 700; Richard R. Settle, *The Wash. State Environmental Policy Act: A Legal and Policy Analysis* (2021), § 3.01[2], at 3-4).

This "thoughtful," "conscientious[]," "deliberative," and "systematic" consideration of environmental impacts required by SEPA serves several essential purposes, including providing

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the public with transparency and an opportunity for public engagement and serving as an important precursor to the exercise of SEPA's substantive authority.[1]

Unlike the federal NEPA statute, SEPA is not merely procedural: it also vests agencies with substantive authority to require mitigation of environmental impacts. *See* RCW 43.21C.060 (authorizing agencies to condition or deny projects "to mitigate specific adverse environmental impacts"); Peter J. Eglick & Henryk J. Hiller, *The Myth of Mitigation Under NEPA and SEPA,* 20 Envtl. L. 773, 774 (1990) (The Washington SEPA "generally is considered stronger than NEPA because it provides agencies with substantive authority to condition or deny a project. Moreover, SEPA may mandate the mitigation of significant adverse impacts."); *Kucera v. State, Dep't of Transp*., 140 Wn.2d 200, 224, 995 P.2d 63 (2000) ("public policy behind SEPA is stronger than that behind NEPA").

B. When EIS Is Required

SEPA requires the preparation of an environmental impact statement (EIS) for any action that has a "probable significant, adverse environmental impact." RCW 43.21C.031(1). An adverse environmental impact is "probable" and "significant" when there is "a reasonable likelihood of more than a moderate adverse impact on environmental quality." WAC 197-11-794. Adverse impacts must be reasonably likely to occur, but certainty is not required. *City of Des Moines v. Puget Sound Reg'l Council*, 98 Wn. App. 23, 854, 988 P.2d 27 (1999). An impact's significance may depend on the context and location of the proposed project or may be absolute. WAC 197-11-330(2), (3)(a)–(b). And "several marginal impacts when considered together may result in a significant adverse impact." WAC 197-11-330(3)(c). "An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred." WAC 197-11-794(2).

[1] *E.g.*, WAC 197-11-030(2)(e), (f) (directing agencies to "[e]ncourage public involvement in decisions" and "[i]ntegrate SEPA with agency activities at the earliest possible time to ensure that planning and decisions reflect environmental values"); Wash. Dep't of Ecology, *SEPA Handbook*, https://ecology.wa.gov/DOE/files/4c/4c9fec2b-5e6f-44b5-bf13-b253e72a4ea1.pdf (same).

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SEPA requires consideration not only of a project's "direct" impacts on the elements of the environment covered under SEPA in WAC 197-11-444 but also of a project's "indirect" and "cumulative" impacts. WAC 197-11-060(4)(d), (e); WAC 197-11-792(2)(c); *see also Boehm v. City of Vancouver*, 111 Wn. App. 711, 714, 47 P.3d 137 (2002) (suggesting that agencies have to consider non-speculative cumulative impacts at threshold determination stage). It likewise requires consideration of both short-term and long-term impacts, including those likely to arise or exist over the lifetime of a proposal or longer. WAC 197-11-060(3)(b), (4)(c). And SEPA review is not limited only to local or state impacts or impacts within the agency's jurisdiction. WAC 197-11-060(4)(b); *see also* WAC 197-11-330(3); RCW 43.21C.030(f) (agencies must "recognize the worldwide and long-range character of environmental problems"). "Implicit in [SEPA] is the requirement that the decision makers consider more than what might be the narrow, limited environmental impact of the immediate, pending action. The agency cannot close its eyes to the ultimate probable environmental consequences of its current action." *Cheney v. City of Mountlake Terrace*, 87 Wn.2d 338, 344, 552 P.2d 184 (1976).

A "Mitigated Determination of Nonsignificance" (MDNS) is a threshold determination that certain specific mitigation measures will reduce the project's probable and significant adverse environmental impacts to a level acceptable under SEPA. *Wild Fish Conservancy*, 198 Wn.2d at 856. Mitigation measures must be "reasonable and capable of being accomplished." WAC 197-11-660(1)(c).

Agencies have the authority to issue an MDNS "so long as all significant adverse environmental impacts are sufficiently mitigated." *Anderson v. Pierce Cnty.*, 86 Wn. App. 290, 303 n.6, 936 P.2d 432 (1997). An EIS is required if a proposed project continues to have a probable significant adverse environmental impact, even with mitigation measures. WAC 197-11-350(2).

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An agency's decision to issue an MDNS rather than ordering an EIS does not relieve an agency of the obligation to examine the full scope of environmental impacts covered under SEPA. The MDNS process "is not intended to reduce the amount of environmental review done on a project" but to encourage applicants and agencies to work together early in the SEPA process to modify the project and eliminate significant adverse impacts. *Anderson v. Pierce Cnty*, 86 Wn. App. 290, 304, 936 P.2d 432 (1997) (citing Richard L. Settle, DOE Interpretations of Determination of Non-Significant Provisions, at 466); *see also Wild Fish Conservancy* 198 Wn.2d at 856–57 ("An MDNS does not function to evade environmental review or undermine SEPA's purpose.") (citing *Anderson*, 86 Wn. App. at 305).

C. Reversal of MDNS

SEPA's goal of ensuring "the full disclosure of environmental information so that environmental matters can be given proper consideration during decision making" is "thwarted whenever an incorrect 'threshold determination' is made." *Sisley.*, 89 Wn.2d at 89 (quoting *Norway Hill v. King Cnty. Council*, 87 Wn.2d 267, 273, 552 P.2d 674 (1976)). The Supreme Court has described the "clearly erroneous" standard of review under SEPA as "broad" and "a "higher degree of judicial scrutiny than is normally appropriate for administrative action." *Polygon Corp. v. City of Seattle*, 90 Wn.2d 59, 68–69, 578 P.2d 1309 (1978).

Several independent categories of errors require reversal of an MDNS as "clearly erroneous." First, an MDNS is clearly erroneous if the record does not demonstrate that "environmental factors were adequately considered in a manner sufficient to ensure *prima facie* compliance with SEPA." *E.g.*, *Wild Fish Conservancy v*, 198 Wash. 2d at 867; *Chuckanut Conservancy v. Dep't of Nat. Res.*, 156 Wn. App. 274, 286–87, 232 P.3d 1154 (2010); *Wenatchee Sportsman Ass'n v. Chelan Cnty.*, 141 Wn. 2d 169, 176, 4 P.3d 123 (2000). Second, an MDNS is clearly erroneous if it is not "based on information sufficient to evaluate the proposal's environmental impact." *Wenatchee Sportsman Ass'n*, 141 Wn.2d at 176 (citing

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Anderson., 86 Wn. App. at 302; *Pease Hill Cmty. Grp. v. Cnty. of Spokane*, 62 Wn. App. 800, 810, 816 P.2d 37 (1991)). Third, even if the record contains substantial evidence to support the agency's decision, an MDNS is still clearly erroneous "if the decisionmaker is left with a definite and firm conviction that a mistake has been made." *King Cnty. v. Washington State Boundary Rev. Bd. for King Cnty.*, 122 Wn.2d 648, 664–65, 860 P.2d 1024 (1993); *Cougar Mt. Assocs. v. King Cnty.*, 111 Wn.2d 742, 747, 765 P.2d 264 (1988); *Norway Hill Preservation & Prot. Ass'n v. King Cnty. Council*, 87 Wn.2d 267, 274, 552 P.2d 674 (1976). Fourth, "[i]f a MDNS is issued and an appealing party proves that the project will still produce significant adverse environmental impacts, then the MDNS decision must be held to be 'clearly erroneous' and an EIS must be promulgated." *E.g.*, *Anderson*, 86 Wn. App. at 304; *see also* WAC 197–11–350(2) (if, while formulating an MDNS, the lead agency determines that "a proposal continues to have a probable significant adverse environmental impact, even with mitigation measures, an EIS shall be prepared.").

D. Phased Review and Incomplete Information

SEPA review may be phased to allow "agencies and the public to focus on issues that are ready for decision and exclude from consideration issues already decided or not yet ready." WAC 197-11-060(5). But "[w]hen a lead agency knows it is using phased review, it shall so state in its environmental document." WAC 197-11-060(5)(e). Phased review is appropriate when "The sequence is from an environmental document on a specific proposal at an early stage (such as need and site selection) to a subsequent environmental document at a later stage (such as sensitive design impacts)." WAC 197-11-060(5)(c)(ii). Phased review is not appropriate when it "would merely divide a larger system into exempted fragments or avoid discussion of cumulative impacts" or "segment and avoid present consideration of proposals and their impacts that are required to be evaluated in a single environmental document[.]" WAC 197-11-060(5)(d)(ii), (iii).

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When essential information about significant adverse impacts is incomplete or unavailable, SEPA requires agencies to obtain it when the costs of obtaining it are not exorbitant. WAC 197-11-080(1). When there are gaps in the relevant information, or scientific uncertainty regarding significant impacts, SEPA requires agencies to "make clear that such information is lacking or that substantial uncertainty exists." WAC 197-11-080(2). To proceed with an action despite information gaps or uncertainty, an agency:

> shall weigh the need for the action with the severity of possible adverse impacts which would occur if the agency were to decide to proceed in the face of uncertainty. If the agency proceeds, it shall generally indicate in the appropriate environmental documents its worst case analysis and the likelihood of occurrence, to the extent this information can reasonably be developed.

WAC 197-11-080(3)(b).

E. Reliance on Other Regulatory Processes

An environmental impact may be "significant" under SEPA even if the impact is otherwise allowed under local zoning laws. *West Main Assocs. v. City of Bellevue*, 49 Wn. App. 513, 525, 742 P.2d 1266 (1987) (SEPA "overlays local ordinances and must be enforced even where a particular use is allowed by local law or policy") (internal quotations and citation omitted). A reviewing agency in a Growth Management Act ("GMA") county or city can decide that a specific project impact has already been adequately addressed by some other existing regulatory or planning process only in certain circumstances. *See* WAC 197-11-158. First, the adverse project impact that has purportedly been addressed by another regulation or planning process must be identified with specificity. *See* WAC 197-11-158(2)(b). Second, the specific project impact must have been "identified" and "adequately addressed" in the other regulation or policy. *See* WAC 197-11-158(2)(b)(i), (ii). Third, the existing regulation or policy document must avoid or mitigate the specific project impacts or designate the specific project impacts as acceptable. *See* WAC 197-11-158(b)(ii)(A), (B). Fourth, the agency must place a statement with

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particular wording in the threshold determination reflecting the determination that another process has adequately addressed the specific project impact. *See* WAC 197-11-158(2)(d). If the specific project impacts were not reasonably foreseeable at the time the other regulation or policy was created, or if changed conditions or new information means that the specific project impacts were not adequately identified and addressed, then additional environmental review is needed. WAC 197-11-158(3).

II. CRITICAL AREAS PERMIT

Appeals of SEPA threshold determinations of nonsignificance must be combined with appeals of the underlying government action, such as permit issuance. *See* RCW 43.21C.075; *Boss v. Dep't of Transp.*, 113 Wn. App. 543, 549, 54 P.3d 207 (2002). When a threshold determination of nonsignificance or MDNS is reversed as clearly erroneous, the matter must be remanded to the agency to prepare an EIS, and the underlying agency action must be enjoined until the EIS is complete. *Kucera v. Wash. Dep't of Transp.*, 140 Wn.2d 200, 219, 995 P.2d 63 (2000) (citing *King Cnty. v. Wash. State Boundary Rev. Bd.*, 122 Wn.2d 648, 667, 860 P.2d 1024 (1993)).

ABOUT APPELLANTS

This appeal is brought by 350 Tacoma[2] and the South Tacoma Neighborhood Council,[3] local nonprofit organizations that filed public comments in opposition to the City's proposed MDNS and critical areas permit for the proposed Bridge Industrial project. Ex. C-29 (MDNS Ex. BB, Public Comments, Part 1 at 438–47, 628–29, Part 2 at 152–53). The parties have stipulated that 350 Tacoma and the South Tacoma Neighborhood Council have standing to bring this appeal.[4]

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[2] Ex. A-35 (350 Tacoma, About, http://www.350tacoma.org/about/ (last visited July 17, 2023)).
[3] Ex. A-36 (City of Tacoma, Neighborhood Council Program, https://www.cityoftacoma.org/cms/one.aspx?pageId=21111 (last visited July 17, 2023)).
[4] *See* RCW 43.21C.075(4) (any "person aggrieved" by a SEPA determination may obtain judicial

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ARGUMENT

As explained below, the evidence at trial will show that the City's decision to issue an MDNS and critical areas permit was clearly erroneous because (1) the City failed to adequately consider some environmental factors in a manner sufficient to ensure *prima facie* compliance with SEPA, (2) the City's decision was not based on information sufficient to evaluate some of the project's environmental impacts, and (3) even with the proposed mitigation, the project is still reasonably likely to have more-than-moderate adverse environmental impacts.

I. TRAFFIC AND TRANSPORTATION—INADEQUATE INFORMATION AND SIGNIFICANT IMPACTS

SEPA requires consideration of a project's reasonably likely impacts on transportation, including "direct, indirect, and cumulative" impacts on "transportation systems," "vehicular traffic," "movement/circulation of people or goods," and "traffic hazards." WAC 197-11-060(4)(d), (e); WAC 197-11-444(2)(c)(i), (ii), (iv), (v).

The evidence will show that the Applicant and the City failed to adequately analyze the project's probable impacts on traffic, safety, and transportation in light of the site's likely use as a high-cube warehouse and failed to adequately analyze the project's impacts on collisions and safety. The evidence will also show that, under most potentially applicable land use categories, the project will likely have at least twice the level of vehicle traffic that the Applicant estimated. In other words, the project will have significant adverse traffic impacts that have not been reduced to non-significance by the MDNS.

The Applicant's traffic study assumed that the site will be used as an "industrial park,"[5] a land use category described in ITE's Trip Generation Manual (11th edition) as containing "several individual industrial or related facilities . . . characterized by a mix of manufacturing,

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review); *Anderson v. Pierce Cnty.*, 86 Wn. App. 290, 300, 936 P.2d 432 (1997) (allegation that coalition chairman who owned property adjacent to proposed project site would be adversely affected by the project was sufficient to confer standing on the coalition to challenge an MDNS).

[5] Ex. C-7 (MDNS Ex. D, Updated Transportation Impact Analysis) at 1, 6, 19–20.

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service, and warehouse facilities," or for traditional "warehousing," a use primarily devoted to long-term storage of materials. Ex. A-20 (McCarthy App'x to Technical Analysis) at 1–2 (quoting ITE, Trip Generation Manual (11th ed.)).

However, as the evidence will show, the site is far more likely to be used as a type of "high-cube warehouse," a land use category created to describe warehouses that are used "primarily for the storage and/or consolidation of manufactured goods (and to a lesser extent, raw materials) prior to their distribution to retail locations or other warehouses[.]" *Id.* at 2 (quoting ITE, Trip Generation Manual (11th ed.)). A typical high-cube warehouse "has a high level of on-site automation and logistics management" to "enable highly-efficient processing of goods[.]" *Id.*

As the evidence will show, the boom in e-commerce has created record-high demand for high-cube warehouses near highways and ports.[6] The proposed Bridge Industrial site is not just

[6] *See*, *e.g.*, 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) (trade publication noting that e-commerce has ensured high demand for warehousing, distribution and fulfillment, especially in western U.S.); 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) (noting that logistics industry growth "shows no signs of slowing"); 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) (reporting that retailers are accelerating investments in warehouses to fulfill online orders, and "[s]uch is demand for logistics centers that prices for industrial space outgained offices and apartments for most of 2021."); 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/) (describing correlation between increased e-commerce sales and demand for warehouse space, growth in warehouse purchases); 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/) ("Sites that are close to the core of a major metropolitan area to handle that last mile distribution and servicing is key"); 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) (noting that, even though brick-and-mortar stores are reopening, "consumer behavior has shifted permanently" towards e-commerce).

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suitable for such uses, but designed for it.[7] Indeed, Bridge Industrial's application materials are rife with references to the project site's planned use as an e-commerce warehouse.[8]

Moreover, the site's physical characteristics are more consistent with a high-cube warehouse than a traditional warehouse or industrial park. High-cube warehouses are buildings with at least 200,000 gross square feet of floor area and ceiling heights of 24 feet or more. Ex. A-20 (McCarthy App'x to Technical Analysis) at 1. As the Applicant's architectural site plan shows, each of the four proposed buildings on the Bridge Industrial site has 40-foot ceilings and could be built with up to 100-foot ceilings. Building A is 517,042 square feet; Building B is 957,726 square feet; Building C is 661,523 square feet; and Building D is 332,295 square feet. The site plan features 488 dock doors and 15 grade-access doors. Ex. C-3 (MDNS Attach. B); *see also* Ex. C-13 (MDNS Ex. K, Air Quality Study) at ii; Ex. A-18 (McCarthy Summary of Technical Analysis) at 4. In addition, Buildings A, B, and C are cross-dock facilities with multiple loading bays. Ex. A-18 (McCarthy Summary of Technical Analysis) at 4. These are the characteristics of a high-cube warehouse, designed for short-term and "highly efficient"

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[7] 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/) (describing site advantages for e-commerce and third-party logistics users and distribution hubs); 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) (acknowledging several e-commerce tenants).

[8] Ex. C-10 (MDNS Ex. G, Geotechnical Report) at 1; Ex. C-10 (MDNS Ex. G, Hydrogeologic Assessment) at 2, 7; Ex. C-12 (MDNS Ex. H, Soil Management Plan) at 8; Ex. C-11 (MDNS Ex. I, Noise Study) at 3, 10; Ex. C-32 (MDNS Ex. J, Air Quality Construction Addendum) at 1; Ex. C-13 (MDNS Ex. K, Air Quality Study) at ii, iii, 11, 13, 19, 21, App'x (Table A-9); Ex. C-16 (MDNS Ex. N, Stormwater Site Plan) at §§ 1.1, 2; Ex. C-17 (MDNS Ex. O, Floodplain Study) at 2; Ex. C-21 (MDNS Ex. T, Mitigation Plan) at 3, 7–9; Ex. C-33 (MDNS Ex. U, Tech. Memorandum) at 3; Ex. C-26 (MDNS Ex. Y, Fourth Submittal Comment Resp. Ltr.) at 5; Ex. C-27 (MDNS Ex. Z, Staff Comments) at 1; Ex. C-28 (MDNS Ex. AA, Agency Comments) at 1, 14, 18, 19, 24, 25, 28, 29, 30; Ex. C-2 (MDNS Attach. A, SEPA Checklist) at ¶¶ A(11), B(7)(a)(3), B(8)(i), B(10)(c); Ex. C-30 (MDNS Attach. C, CAPO Tech. Memorandum) at 1, 11, 13.

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processing of goods before they are distributed elsewhere, rather than a traditional warehouse intended for long-term storage.[9]

The Updated Transportation Impact Analysis incorrectly claimed that its assumed use as an industrial park "should be considered conservative" because it results in higher vehicle numbers than assumed use for general warehousing. Ex. C-13 (MDNS Ex. D, Updated Transportation Impact Analysis) at 1, 20; Ex. A-18 (McCarthy Summary of Technical Analysis) at 3. But it acknowledged that other tenants, including a high-cube fulfillment center or parcel hub, could generate higher traffic levels and that its analysis would not apply to such uses. *Id*. Moreover, the evidence will show that, in calculating vehicle trips associated with an industrial park, the Applicant's traffic study employed a line fit methodology involving a logarithmic equation that yielded a vehicle trip rate far below ITE's average rate for industrial parks. *See* Ex. A-18 (McCarthy Summary of Technical Analysis) at 3 (describing TENW's calculation methodology); *id*. at 4–5 (comparing to other calculation methods for industrial park use); Ex. A-19 (McCarthy Trip Generation and Emissions Calculations) ("Industrial Park Log Method" tab).

Assumptions that systematically understate a project's impacts are not "conservative." To perform a truly "conservative" traffic analysis, Respondents should have analyzed the vehicle trips associated with the site's probable use as one of ITE's five categories of high-cube warehouses. *See Lanzce G. Douglass, Inc. v. City of Spokane Valley*, 154 Wn. App. 408, 424, 225 P.3d 448 (2010) (EIS required whenever significant impacts are "probable, not just when they are inevitable.").

The evidence will show that by applying a reliable trip generation analysis that considers all the site's likely uses, the project will likely have significant traffic impacts. *See generally* Ex. A-18 (McCarthy Summary of Technical Analysis); Ex. A-19 (McCarthy Trip Generation and Emissions Calculations). Specifically, the evidence will show that use as an industrial park

[9] *See generally* Ex. A-18 (McCarthy Summary of Technical Analysis).

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would likely generate 8,762 total daily vehicle trips, including 1,411 daily truck trips; that use as a high-cube fulfillment center warehouse (sort) would likely generate 15,939 total daily vehicle trips; that use as a high-cube parcel hub warehouse would likely generate 11,459 total daily vehicle trips (including 1,436 truck trips), and that use as a cold storage warehouse would likely generate the equivalent of 5,371 truck trips due to Transport Refrigeration Units). Ex. A-19 (McCarthy Trip Generation and Emissions Calculations) ("Vehicle Trips" tab).

These vehicle traffic levels are indisputably "significant," as they exceed the Applicant's estimated traffic levels that the City deemed significant. Ex. C-1 (MDNS) at 10 ¶ 52 ("The [Transportation Impact Assessment] projects significant volumes of new traffic to be generated at the site when it is fully occupied. This new traffic includes 4,980 additional daily vehicle trips of which 1,411 are estimated to be truck trips.").

Because the MDNS conditions do not reduce the project's traffic impacts to non-significance, the MDNS is clearly erroneous.

The proposed mitigation involving modifications to intersections, signals, street connections, and sections (*see* Ex. C-1 (MDNS) at 16–17, §§ 5–6) is based on fundamentally flawed traffic estimates. Nothing in the record suggests that these conditions will effectively mitigate traffic, transportation, and safety impacts associated with higher levels of traffic.[10]

The City's conditions that involve additional future traffic studies also do not save the MDNS from being clearly erroneous. First, the City's proposed review does not comport with SEPA's requirements for phased review or for proceeding with an action in the face of uncertainty. *See* WAC 197-11-060(5) (requirements for phased review); WAC 197-11-080(3)(b)

[10] Indeed, there is little evidence in the record of how the project will impact collisions and safety. Although the Updated Transportation Impact Analysis set forth historical data on collision rates at intersections near the project site, there is no evidence of any analysis to determine how the project's increase in traffic levels is likely to affect collisions and safety. *See* Ex. C-7 (MDNS Ex. D) at 15 ("Collision History"). And this topic warrants study: the evidence will show that, in other jurisdictions, large warehouses increase collision rates. 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) at 4–6.

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(to proceed in the face of uncertainty or information gaps, the agency must disclose its worst case analysis and the likelihood of occurrence).

Second, the terms of the future review do not ensure that the project will not generate traffic levels far higher than the "significant" levels reflected in the Applicant's traffic study. The City did not require the Applicant's lease agreements to limit the types of tenants or the number of vehicles onsite, nor did the City require any additional review before the Applicant can sign lease agreements and tenants can begin occupying the site. Rather, once the site is 50% occupied, and again at 75% occupation and 100% occupation, the Applicant must tell the City who the tenants are and what land use types they are. Ex. C-1 (MDNS) at 14 ¶ 4(a)(1), (2). But if the tenants are "industrial park" type tenants or are associated with the type of land uses "that generate a lower rate of trip generation than Industrial Park," then nothing further is required. Ex. C-1 (MDNS) at 14 ¶ 4(a)(1).

Put another way, if the Applicant claims its tenants plan to use the site as an "industrial park," then it does not matter whether such use generates traffic far beyond the 4,980 total daily vehicle trips (including 1,411 truck trips) projected by TENW; no further study or mitigation is required. And the evidence will show that higher traffic levels should be expected, even for industrial park use. *See* Ex. A-19 (McCarthy Trip Generation and Emissions Calculations) ("Industrial Park Log Method" tab showing that industrial park use could generate 8,319 to 9,507 total daily vehicle trips); Ex. A-30 (TENW, *Transportation Impact Study* (May 19, 2021)) (original trip generation analysis submitted by Bridge Industrial estimating project would generate 8,425 daily vehicle trips based on average industrial park rate) at 19, 354.

Similarly, if the Applicant reports that its tenants fall into any of the use categories that have lower vehicle trip rates than the industrial park category, then no further traffic study or mitigation of traffic impacts is required. Notably, this exemption precludes consideration of the potentially significant impacts associated with use as a high-cube cold storage warehouse, which

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has a lower ITE average trip generation rate (2.12) than industrial park (3.37), even though the evidence will show that use as a cold storage warehouse could generate nearly twice the vehicles and nearly four times the number of trucks projected by TENW. *See* Ex. A-19 (McCarthy Trip Generation and Emissions Calculations) ("Vehicle Trips" tab showing that High-Cube Cold Storage Warehouse use could generate the equivalent of 5,371 truck trips).

This condition does not prevent significant traffic impacts. Nor does the additional trip generation study requirement if the Applicant reports that its tenants are a high-cube parcel hub or high-cube fulfillment center (sort). Ex. C-1 (MDNS) at 14 ¶ 4(a)(1)(iii). If that additional traffic study reveals greater traffic volumes than estimated in the original study (4,980 weekday daily trips, 842 PM peak hour trips), then the Applicant will have a three-month period to work with tenants to reduce site-generated trips and can then conduct a new trip generation study after those three months. Ex. C-1 (MDNS) at 15 ¶ 4(b)(4)(ii)(1), (2). But if traffic volumes are still greater than estimated in the original study, then the only requirement is that the Applicant has to work with the City to plan a traffic analysis focused on level-of-service and "may" be required to improve service levels depending on analysis results. Ex. C-1 (MDNS) at 15–16 ¶ 4(b)(4)(ii)(2)(b); ¶ 4(c)(i).

Furthermore, the project's traffic mitigation does nothing to mitigate the other environmental impacts associated with high traffic levels, including impacts on safety, air quality, GHG emissions, and environmental health and noise.

II. AIR QUALITY AND GREENHOUSE GAS EMISSIONS—INADEQUATE INFORMATION AND SIGNIFICANT IMPACTS

SEPA requires consideration of a project's "direct, indirect, and cumulative" impacts on "air quality" including "climate," and on energy. WAC 197-11-060(4)(d), (e); WAC 197-11-444(1)(b)(i), (iii); WAC 197-11-444(1)(e)(i)–(iv). SEPA review is not limited only to local or state impacts or impacts within the agency's jurisdiction. WAC 197-11-060(4)(b); *see also* WAC

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197-11-330(3); RCW 43.21C.030(f) (agencies must "recognize the worldwide and long-range character of environmental problems").

The MDNS is clearly erroneous because the Applicant and City failed to adequately study the project's probable impacts on air quality and greenhouse gas emissions and because the evidence shows that the project is reasonably likely to have more than moderate adverse impacts.

First, the Applicant's air quality analysis does not analyze the impact of the full scope of the project's emissions, omits important pollutants and important sources of emissions, and understates the probable emissions. Second, the Applicant and City failed to assess how the project's largest source of emissions—offsite vehicles transiting to and from the project site—would affect ambient air at nearby sensitive receptors. The Applicant submitted air dispersion modeling only for the project's on-site emissions from idling diesel trucks and natural gas heaters (which represent only about 5% of the total project emissions) and only for a few pollutants. As the evidence will show, a more accurate analysis of the project's probable emissions reflects a reasonable likelihood that the project will have more than moderate adverse impacts on air quality and greenhouse gas emissions.

A. Unreliable Estimated Vehicle Numbers

The only analysis in the record of the project's largest sources of air pollution—the diesel truck traffic traveling to and from the facility—is based on fundamentally flawed vehicle estimates, as described above in Section I. The evidence will show that if emissions are re-calculated based on the traffic associated with the site's use as a high-cube warehouse or as an industrial park using a more conservative trip generation calculation methodology, then the emissions are substantially higher and exceed the Small Quantity Emission Rates (SQER) for many pollutants. *See* Ex. A-18 (McCarthy Summary of Technical Analysis) at 9–11; Ex. A-19 (McCarthy Trip Generation and Emissions Calculations) ("Offsite Vehicle Emissions" tab and "HCW ParcelHub Vehicle Emissions" tab, with SQER exceedances highlighted in pink). For

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land use categories with higher passenger vehicle traffic (such as parcel hub warehouse, fulfillment center, industrial park), emissions of carbon monoxide, ethylbenzene, 1,3-butadiene, benzene, and benzo[a]pyrene all increase above the estimated levels in the record. *See* Ex. A-18 (McCarthy Summary of Technical Analysis) at 10. And in higher diesel truck scenarios (cold storage warehouse, warehouse, or parcel hub), emissions of NOx, Diesel PM, acrolein, formaldehyde, and acetaldehyde all increase above the estimated levels in the record. *Id.*

B. Unsupported Truck Emissions Assumptions (Route, Miles Traveled, Fuel)

The Applicant's analysis of emissions from offsite truck traffic traveling to and from the project site is based on an assumed truck travel route that is inconsistent with the MDNS and based on calculating truck emissions only to the county line. *See* Ex. A-18 (McCarthy Summary of Technical Analysis) at 6–7. In fact, primary truck access to and from the site will be via South 35th St. rather than South 56th St. *Id.* And rather than arbitrarily calculating travel only to the county line, there is data available from the local metropolitan planning organization on the average truck miles traveled for trucks in the region. *Id.* The evidence will show that when emissions are re-calculated to take into account the correct route and average truck trip length, emissions rise by a factor of at least 2, even using the Applicant's own trip generation numbers. *Id.*; Ex. A-19 (McCarthy Trip Generation and Emissions Calculations) ("Truck Routes Table A-4" tab, "Offsite Vehicle Emissions" tab, "HCW ParcelHub Vehicle Emissions" tab, "GHG Emissions" tab).

The Applicant's air quality study also inappropriately discounted the significance of the project's long-term greenhouse gas emissions from vehicle emissions. The Applicant mischaracterized Washington's vehicle emissions standards, claiming that "by 2034, 75% of Classes 4-8 truck deliveries" and "40% of Class 8 truck tractor[] deliveries" would be carried out by zero-emission vehicles. Ex. C-13 (MDNS Ex. K, Air Quality Study) at 9. But the referenced vehicle emissions standards apply only to sales of new trucks. Given the expected lifetime and

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turnover of vehicles and trucks, battery-powered electric vehicles would be a much smaller fraction of the fleet. *See* 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). The evidence will show that the likely greenhouse gas emissions from the project easily qualify as significant under SEPA.[11]

C. Incomplete Inventory of Project's Emissions Sources and Pollutants

The Applicant's air quality analysis also failed to assess the entirety of the project's sources of emissions and all the relevant pollutants emitted.

In analyzing greenhouse gas emissions from construction, the Applicant did not account for emissions from manufacturing the large amount of concrete involved in constructing the facility. *See generally* Ex. J (Construction Air Quality Addendum). As the evidence will show, construction of concrete slab foundations for approximately 150 acres of warehouses and roads will likely emit at least 24,200 tons of CO_2 into the atmosphere during the construction phase. *See* Ex. A-18 (McCarthy Summary of Technical Analysis); Ex. A-19 (McCarthy Trip Generation and Emissions Calculations); Ex. A-28 (Portland Cement Association, Environmental Life Cycle Inventory of Portland Cement Concrete (Rev. July 2002)).

The Applicant's analysis of air pollution was likewise incomplete. For the construction phase, the Applicant's analysis only quantified emissions of criteria pollutants. But, as the evidence will show, construction could generate significant emissions of air toxics and metals. For the operation phase, the Applicant's analysis overlooked acetaldehyde, one of the top five air toxics contributing to cancer risk. *See* 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).

[11] *Compare* Ex. A-19 (McCarthy Trip Generation and Emissions Calculations) ("GHG Emissions" tab) *with* 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).

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D. Limited and Unreliable Modeling

The Applicant and the City failed to examine the project's full impacts on ambient air near the facility. Notably, the Applicant did not model the impact of all the emissions that exceed the Small Quantity Emission Rate (SQER). Rather, it modeled only a miniscule subset of the project's emissions: Diesel PM and NO_2 from on-site diesel vehicle idling (estimated to be 20 minutes per day per vehicle) and from the 52 natural gas heaters onsite. It did not model any onsite emissions from gasoline vehicles. It did not model construction emissions. And it did not model the project's most significant category of emissions—offsite vehicle emissions—even though Diesel PM from the project's offsite emissions are 100 times higher than the onsite diesel emissions they chose to model. Ex. A-19 (McCarthy Trip Generation and Emissions Calculations) ("HCW ParcelHub Vehicle Emissions" tab, "Offsite Vehicle Emissions" tab, and "Onsite Vehicle Emissions-Idling" tab).

In addition, the Applicant's air analysis methodology appears to minimize short-term impacts. For example, it assumed that idling emissions would be evenly distributed throughout the day. Ex. C-13 (MDNS Ex. K, Air Quality Study) at 19–21. Similarly, in modeling the NO_2 emitted from 40 days per year of assumed operation of 52 gas heaters, it assumed that the NO_2 emissions would be distributed evenly across an entire year, thus underestimating the concentration of NO_2 in the air during the 40 days a year when it was emitted. *See* Ex. C-13 (MDNS Ex. K, Air Quality Study) at 21.

E. Mitigation Insufficient to Reduce the Project's Air, Climate Impacts, and Health Impacts to Nonsignificance

The City's mitigation measures "intended to address concerns about human and environmental health related to air quality and greenhouse gases" by reducing emissions[12] are insufficient to reduce the project's impacts to nonsignificance. For the construction phase, the City's mitigation requires that construction equipment meet Tier 4 standards (if reasonably

[12] MDNS at 13 ¶ 1(a).

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available) and that the Applicant meets or exceeds best practices for fugitive dust emissions, including watering exposed soil to suppress dust and covering any soil loads removed from the site. Ex. C-1 (MDNS) at 13 ¶ 1(a), (b). For the operations phase, the City's mitigation is limited to a requirement of signage and tenant agreements implementing a strict no-idling policy for all vehicles on site. Ex. C-1 (MDNS) at 13 ¶ 1(c).

The evidence will show that the project's air, climate, and health impacts are still significant, even with the City's mitigation. Most importantly, the mitigation does nothing to address offsite vehicle emissions, the largest source of air, climate, and health impacts attributable to the project.

Furthermore, if the site is used as a high-cube warehouse cold storage facility—as the evidence will show is a reasonably likely use of the property—the prohibition on idling may well be incapable of being accomplished. *See* WAC 197-11-660(1)(c) ("Mitigation measures shall be reasonable and capable of being accomplished."). For example, unless loading docks have an electrical hookup available (which is not part of the Applicant's design), trucks pulling Transport Refrigeration Units (TRUs) will have the trailer diesel generators running during their time at the facility to maintain cold temperatures. *See* Ex. A-18 (McCarthy Summary of Technical Analysis).

III. ENVIRONMENTAL HEALTH—INADEQUATE INFORMATION AND SIGNIFICANT IMPACTS

SEPA requires agencies to analyze a project's "direct, indirect, and cumulative" impacts on environmental health, including "noise" and "[r]eleases or potential releases to the environment affecting public health, such as toxic or hazardous materials." WAC 197-11-060(4)(d), (e); WAC 197-11-444(2)(a)(i), (iii). The significance of a project's health impacts may depend on the context and location of the proposed project. WAC 197-11-330(3)(a); WAC 197-11-330(2). And several "marginal" health impacts "when considered together may result in a significant adverse impact." WAC 197-11-330(3)(c). Where a project's health impacts would

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be "severe," they can be deemed "significant" even if there is a low likelihood of those severe impacts occurring. WAC 197-11-794(2); *see also ASARCO Inc. v. Air Quality Coal.*, 92 Wn.2d 685, 514, 601 P.2d 501 (1979) (finding reasonable probability of at least a moderate adverse impact based on exceedances of health-protective emissions levels and the environment and testimony regarding the emissions' potential to cause serious health problems among residents in the area including children attending schools in the vicinity).

A. Health Impacts from Air Pollution

The record documents identify the project site as an area of concern for air quality and the associated health risks.[13] The evidence will show that the Applicant and City inadequately assessed the adverse impacts on public health that the project's air pollution is likely to have.

To determine the severity and likelihood of adverse health impacts from a project likely to generate significant quantities of pollution,[14] a health analysis should include several core elements: an evaluation of the nature and magnitude of pollutants from the project; identification of the receptors where the emissions are likely to have the most impact, accounting for any vulnerabilities or risk factors that could worsen the impacts; and assessment of the expected impact of that pollution—along with any other sources of pollution that could have cumulative, synergistic adverse impacts—on the people who are who are exposed to it.[15]

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[13] Ex. C-13 (MDNS Ex. K, Air Quality Study) at ii ("Due to seasonal wildfire and emissions from port transportation, the existing air quality in South Tacoma is considered to be among the worst in Pierce County, thus air quality impacts due to incremental increases in emissions as a result of the project are of concern."); *id.* at 1 ("The increasing prevalence of wildfires during the summer is of concern in the airshed and air quality, particularly due to fine particulate levels ([PM2.5]). Short-term exposures of PM2.5 have been associated with premature mortality, increased hospitalization from cardiovascular causes, acute and chronic bronchitis, exacerbation of asthma, and other health conditions."); *id.* at 5 (observing that Pierce County has been in maintenance status for PM2.5 since 2015); Ex. C-1 (MDNS) at 4 ¶ 16 ("Despite the lack of identified probable significant impacts, the site is located within an area of human health concerns, which warrants further analysis.").

[14] *See* Ex. A-19 (McCarthy Trip Generation and Emissions Calculations) ("Offsite Vehicle Emissions" tab).

[15] *E.g.*, Ex. A-73 (CEQ, Considering Cumulative Effects under NEPA, https://ceq.doe.gov/publications/cumulative_effects.html) at v ("in many ways, scoping is the key to

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Despite identifying the project's location as an area of preexisting air quality problems and health concerns, the Applicant and the City did not gather sufficient information to adequately analyze the project's health impacts from air pollution. The Applicant and the City did not analyze, nor attempt to mitigate, the potentially severe health impacts from the project's largest category of air pollution: tailpipe emissions from trucks and vehicles traveling to and from the site. Nor did the Applicant or City attempt to assess who will be most likely to be exposed to these emissions or what vulnerabilities or other compounding sources might affect how the emissions impact their health. The health impact analysis in the record was limited to modeling the impacts of just two pollutants (Diesel PM and NO2) produced by two of the project's smallest emissions sources (on-site diesel trucks idling for 20 minutes per day and emissions from the 52 natural gas heaters onsite) and comparing the modeled levels to state Acceptable Source Impact Levels (ASILs). Ex. C-13 (MDNS Ex. K, Air Quality Study) at 16; *see also* Section II(D) ("Limited and Unreliable Modeling").

The evidence will show that, given the nature and magnitude of the project's emissions, the existence of many sensitive receptors such as schools and daycares close to the facility and the primary travel routes to and from the warehouse, the demographics of the people most likely to be exposed, and the existence of other significant sources of pollution likely to amplify the project's adverse health impacts, additional study of the project's likely health impacts is necessary. The evidence will show further that, based on the Applicant's and City's assessment of health impacts, it is not possible to rule out significant health impacts from the project.

B. Health Impacts from Noise

As the evidence will show, noise can cause a range of adverse health impacts, including from both short-term (acute) and long-term (chronic) exposure. Acute excursions—an air brake

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analyzing cumulative effects . . . Scoping allows the NEPA practitioner to 'count what counts.'"); *id.* at vi (analyzing cumulative effects involves "using modeling, trends analysis, and scenario building when uncertainties are great.").

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sound, clanging metal—or chronic exposure to noise can be stressors that affect health even at levels far below the levels associated with hearing impairment or loss, interfering with sleep and causing stress, anxiety, depression, high blood pressure, and other health problems.[16] The World Health Organization has found that road traffic noise above 53 dB is associated with adverse health effects.[17]

The evidence will also show that the project is reasonably likely to have significant noise impacts associated with adverse health effects and that the City and Applicant failed to gather adequate information about the project's noise impacts.

The noise study in the MDNS record, performed by SSA Acoustics, assumes that the peak number of trucks onsite during any single hour is 99 trucks, relying on TENW's traffic study. Ex. C-11 (MDNS Ex. I, Noise Study) at 8. But as explained in Section I, TENW's traffic study is deeply flawed. The "peak" rate of 99 trucks likewise understates the actual maximum number of trucks that could reasonably be expected onsite. *Id.* SSA Acoustics' noise study did not analyze the noise impacts associated with reasonably likely higher volumes of truck traffic. Ex. A-46 (deSouza Summary of Technical Analysis) at 3.

The evidence will show that when traffic levels and other unsupportable baseline assumptions in the SSA Acoustics study are adjusted,[18] the noise that the project is reasonably likely to generate could be significantly higher than the levels estimated by SSA Acoustics, causing more exceedances of applicable noise levels at Buildings A and B. *See* Ex. A-46 (deSouza Summary of Technical Analysis) at 6; Ex. A-47 (deSouza Noise Calculations).

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[16] *E.g.*, Ex. A-50 (World Health Organization, *Environmental Noise Guidelines for the European Region* (2018), https://www.who.int/europe/publications/i/item/9789289053563) at xvi, 30–48; 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) (cited in letter from Tacoma-Pierce County Health Dep't, Ex. C-28, MDNS Ex. AA at 25) (collecting sources on the health impacts of noise).

[17] Ex. A-50 (World Health Organization, *Environmental Noise Guidelines for the European Region* (2018), https://www.who.int/europe/publications/i/item/9789289053563) at xvi, 30–48.

[18] For example, the SSA Acoustics study also assumed that truck traffic would be evenly distributed across the four buildings onsite, notwithstanding their very different sizes and characteristics. *See* Ex. A-46 (deSouza Summary of Technical Analysis) at 4–5.

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IV. OFF-SITE STORMWATER—INADEQUATE ANALYSIS AND SIGNIFICANT IMPACTS ON FISH

The MDNS must also be reversed because of the City's failure to adequately consider the Bridge Industrial project's indirect impacts on fish and fish habitat and failure to gather sufficient information on this topic. Specifically, the Applicant and the City ignored how pollutants and tire and road wear particles from diesel trucks and other vehicles transiting to and from the project will affect salmonids in nearby streams. The City and Applicant also based their conclusion that there would be no adverse significant impacts on fish on insufficient information about 6PPD-quinone ("6PPD-q"), a transformation chemical from tires that is toxic to some of the salmonid species that are known to be present or presumed present in Flett and Chambers Creek. When considering the Applicant's project's impacts on Endangered Species Act ("ESA") listed and threatened species and other fish and fish habitat, the City should have analyzed the indirect impact of stormwater pollutants generated offsite from truck and vehicle traffic on near-site stormwater runoff and downstream fish and fish habitat.

Fish and fish habitat are elements of the environment covered under SEPA. WAC 197-11-444(1)(d)(i) ("habitat for and numbers or diversity of species of plants, fish, or other wildlife"); WAC 197-11-444(1)(d)(iii) ("fish or wildlife migration routes"). And environmental review under SEPA requires assessing "indirect" impacts, including impacts beyond the immediate area of the proposed project. WAC 197-11-060(4)(d) ("A proposal's effects include direct and indirect impacts caused by a proposal."); WAC 197-11-792(c)(ii)("*impacts* may be: (ii) indirect") (emphasis in original); WAC 197-11-060(4)(b) ("[i]n assessing the significance of an impact, a lead agency shall not limit its consideration of a proposal's impacts only to those aspects within its jurisdiction, including local or state boundaries."); *Cheney*, 87 Wn.2d at 344 ("Implicit in [SEPA] is the requirement that the decision makers consider more than what might be the narrow, limited environmental impact of the immediate, pending action."). In determining the project's significance, the City was also required to consider whether the project "may to a

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significant degree . . . adversely affect endangered or threatened species or their habitat[.]" WAC 197-11-330(3)(e)(ii).

Even using the Applicant's own traffic generation analysis, the Bridge Industrial project will introduce thousands of additional vehicles—each with multiple tires—onto roads near the project site. As the evidence will show, due to this increased vehicle traffic, it is a virtual certainty that 6PPD-quinone levels will increase in stormwater runoff. 6PPD, a ubiquitous and highly reactive tire antiozonant used in commercial and passenger tires, births a transformation chemical, 6PPD-q, which is "among the most toxic chemicals known for aquatic organisms, at least to coho salmon."[19] The evidence will show that coho is the most sensitive salmonid species with lethal acute toxicity[20] and that 6PPD-q can kill coho salmon within hours, including up to 100% of coho returning to spawn in urban streams. According to recent studies, Chinook and steelhead also show delayed effects of toxic poisoning from 6PPD-q, including eventual death.[21]

The evidence will show how 6PPD-q will be transported through stormwater runoff from roadways and streets near the project site into Flett and Chambers Creek, which are both habitat and spawning grounds for 6PPD-q-sensitive salmonids, including coho salmon, Puget Sound Chinook, and Puget Sound steelhead trout. Two of these species—Puget Sound Chinook and Puget Sound steelhead—are protected under the Endangered Species Act.

Bridge Industrial's application materials and the MDNS ignored 6PPD-q altogether. And neither the Applicant nor the City analyzed how increased vehicle traffic could harm fish in nearby creeks by introducing 6ppd-q into *offsite* stormwater.

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[19] 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).

[20] *Id. See also* 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/).

[21] 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).

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The Applicant acknowledged the presence of Chinook and steelhead in the vicinity of the project site and acknowledged potential downstream impacts and discharge from the project. *See* Ex. C-9 (MDNS Ex. F, Biological Evaluation) at 20 ¶ 4.4.2. Nonetheless, the Applicant's analyses concluded that the project would not impact fish based on a determination that (1) there are no fish on site (and "two potential fish barriers" that would prevent fish from reaching the project site from nearby waters) and (2) *on-site* stormwater management systems would be sufficient to prevent discharge to the Flett Creek Holding Basin from impacting Puget Sound Chinook and steelhead. *See* Ex. C-8 (MDNS Ex. E, JARPA) at 13, ¶ 9l; Ex. C-9 (MDNS Ex. F, Biological Evaluation) at 20 ¶ 4.4.2; 13 ¶ 3.2.1; 20–21 ¶ 4.4.2

The record lacks sufficient evidence or analysis to support a conclusion that existing *off-site* stormwater detention facilities, specifically the Flett Creek Holding Basin, provide adequate filtration of 6PPD-q to ensure the flow of stormwater downstream into the reaches of Flett Creek, and eventually Chambers Creek, will not harm salmonids. A thorough off-site stormwater analysis—including analyzing the Flett Creek Holding Basin's infiltration capacity and potential—is necessary to accurately determine whether the project's indirect impacts on fish and fish habitat are significant.

V. ON-SITE STORMWATER—INADEQUATE INFORMATION

SEPA requires consideration of a project's impacts on water, including surface water movement/quantity/quality," "runoff/absorption," "floods," "groundwater movement/quantity/quality," and "public water supplies." WAC 197-11-444(1)(c)(i)–(v).

The Applicant and the City failed to adequately analyze the project's stormwater impacts. First, the City failed to consider the risk of stormwater system failure even though the consequences of failure would likely be significant since the project would be built on a Superfund site and above the aquifer recharge area. Second, because of glaring analytical flaws in the hydrological and stormwater assessments, the City did not have sufficient information to

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reliably assess the feasibility of the project's compliance with the Stormwater Management Manual.

A. Failure to analyze the risk and consequences of the stormwater system failing

Understanding the consequences of failure—a project's worst-case impacts—is essential to analyzing project impacts under SEPA. *See* WAC 197-11-752 ("'Impacts' are the effects or consequences of actions. Environmental impacts are effects upon the elements of the environment listed in WAC 197-11-444."); WAC 197-11-080(3)(b) (to proceed in the face of uncertainty or information gaps, agency must disclose its worst-case analysis and the likelihood of occurrence). In determining significance under SEPA, the severity of the impact must be weighed as well as its likelihood of occurring. WAC 197-11-794(2). "An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred." *Id*.

Yet the risk and consequences of failure were not addressed in the Applicant's stormwater analyses and will not be addressed in other regulatory processes. The City's conclusion that the project would not have significant stormwater impacts relied heavily on the assumption that the project will comply with Tacoma's Stormwater Management Manual. *See* Ex. C-1 (MDNS) at 5 ¶ 19. But as the evidence will show, the manual is merely guidance—it does not assess any particular project's risk of failure or the consequences of failure.

Here the evidence will show that the consequences of the project's stormwater management system failing are likely severe. The proposed project would be built on top of a Superfund site and an aquifer recharge area that provides a significant amount of drinking water for the City of Tacoma. Consequences of failure could include remobilizing contaminants from the Superfund site into groundwater or introducing other pollutants into the aquifer. It could also affect the water quality of existing production wells. But the Terra Associates Hydrogeologic

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Assessment, Ex. G at 159–61, merely lists nearby wells without analyzing how the project could impact those wells.

Moreover, there is a clear risk of failure with inadequate design. For example, the record plans reflect a stormwater conveyance system designed to accommodate a 100-year event, Ex. C-16 (MDNS Ex. N, Stormwater Site Plan) at 24, but the drainage basins are assumed to accommodate only a 50-year event, *id.* App'x I. If built as reflected in the MDNS record documents, a 100-year storm would result in uncontrolled overflow of the drainage basins. Moreover, extreme winter precipitation is a likely consequence of climate change in the Tacoma area, and the stormwater system may need to accommodate a storm event larger than both the assumed 50-year event and the 100-year event.

Such serious consequences require a more robust environmental analysis than the City performed. Because the consequences of failure here are probably severe, even if the likelihood of failure were low, the Applicant's analyses should have addressed the consequences of the stormwater system failing to capture and treat all the project's stormwater, including consequences for the municipal water supply.

B. Inadequate information to assess feasibility of compliance with Stormwater Management Manual

The City contends that, at this stage, it only needs to consider whether project's compliance with the Stormwater Management Manual is feasible. *See* Ex. C-27 (MDNS Ex. Z, Staff Comments) at 8–9. The City is incorrect because it has not identified the specific project impacts that were identified and adequately addressed (or designated as acceptable) in the manual; nor has the City established that changes in conditions do not require additional environmental review. *See* WAC 197–11–158.

While Appellants disagree with the City's interpretation of its SEPA obligations and the extent to which it can rely on future permitting processes to evade environmental review, Appellants also contend that the City lacks adequate information to determine whether

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compliance with the manual is feasible because of the pervasive analytical flaws in the record documents pertaining to stormwater.

As an initial matter, the Applicant's consultants failed to validate and calibrate the stormwater model, even though the City informed the Applicant that the City had data that could be used to validate the stormwater model.[22] Moreover, the stormwater model fails to account for uncertainty in the input parameters, including uncertainty concerning the upstream basins, uncertainty as to the magnitude of extreme storms due to climate change, and uncertainty in the existing stormwater infrastructure that conveys stormwater onto the project site. The Applicant's analyses also do not examine the pollutant profile of stormwater runoff, which is necessary to determine the appropriate stormwater treatment.

The most glaring problem with the stormwater analysis is its systematic underestimation of the stormwater volume and flow rate that the infrastructure will need to manage. The stormwater analysis failed to account for upstream inputs, assuming instead that the only stormwater input will be rainfall that lands onsite. This is not a realistic assumption, which City staff pointed out.[23] Indeed, upstream inputs and their sources were accounted for in the Applicant's floodplain analysis, but these inputs were inexplicably omitted from the Stormwater Site Plan, which incorrectly assumes that no stormwater could flow onto the project site.[24] Likewise, relying on a 2007 survey of the site, the stormwater analysis assumed that no existing stormwater infrastructure onsite could convey water onto the project site. But this assumption is

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[22] Ex. C-27 (MDNS Ex. Z, Staff Comments) at 44 ("The City of Tacoma has been collecting flow metering data on the channel. The City can provide this data to Barghausen to calibrate the model.").

[23] *See* Ex. C-27 (MDNS Ex. Z, Staff Comments) at 34 ("Please be advised that a full quantitative analysis will be required. Upstream inputs must be accounted for."); *see also id.* at 10 ("This project is located in the natural drainage course of abutting properties. Adequate provisions shall be made to collect drainage that naturally flows across the project site.").

[24] *Compare* Ex. C-17 (MDNS Ex. O, Floodplain Study) at 6–7 ("Soil data was required for all upstream Basins… Vegetative cover was estimated based on photographs and materials of the site and upstream Basins… The primary culvert contributing flow to the site is a 60-inch culvert at the northern end of the site…)" *with* Ex. C-16 (MDNS Ex. N, Stormwater Site Plan) at 15 ("There is no upstream basin to the developed site, nor are there any existing points of discharge from the site.").

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inconsistent with the floodplain analysis, which details data from existing culverts and inflow locations.[25] Indeed, the City of Tacoma pointed out the unreliability of making assumptions based on the 2007 site survey: "Use of the 2007 survey may not be accurate 15 years later. Strongly recommend confirming/updating the existing survey to accurately reflect existing conditions." Ex. C-27 (MDNS Ex. Z, Staff Comments) at 44. In addition, the stormwater analysis failed to consider reasonably foreseeable changes in conditions that will likely change the flow of stormwater to the project site. For example, the analysis failed to account for development upstream of the project site; additional impervious surfaces could reduce infiltration and cause more stormwater to flow downstream to the Bridge Industrial site.

Without having validated or calibrated the stormwater model, accounted for uncertainty in the input parameters, analyzed the pollutant profile of the stormwater that must be managed, or accounted for the correct volume and flow rate of stormwater that must be managed, the Applicant's stormwater analyses do not constitute a sufficient basis for concluding that compliance with the Stormwater Management Manual is feasible.

VI. AQUIFER AND MUNICIPAL WATER SUPPLY—INADEQUATE INFORMATION ABOUT DECREASED SUPPLY AND INCREASED DEMAND

SEPA requires considering a project's impacts on "groundwater movement/quantity/ quality" and "public water supplies." WAC 197-11-444(1)(c)(iv)–(v). And it requires consideration of a project's long-term impacts on groundwater and public water supplies as well as short-term impacts. *See* RCW 43.21C.030(f) (agencies must "recognize the worldwide and long-range character of environmental problems").

The evidence will show that the City failed to adequately assess the project's adverse environmental impacts on the South Tacoma Aquifer and how that will affect the municipal

[25] Ex. C-17 (MDNS Ex. O, Floodplain Study) at 3–4. ("Some culverts or inflow locations could not be located due to conditions on site but were included in the model due to conversations with the city, or through data obtained in the City of Tacoma GIS Portal… Three existing culverts are located on site and are used in the existing [] and proposed conditions model.").

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water supply in the long term in light of increasing demands on the aquifer as a source of municipal water due to climate change and population growth.

A. Decreased Aquifer Supply

The evidence will show that the project's plan to pave over 75 percent of a presently undeveloped site with either asphalt or concrete will decrease infiltration of rainfall and increase evaporative losses, and that paving over the aquifer recharge area could impact groundwater availability and production wells in the vicinity. But the City failed to gather information sufficient to assess the project's impact on the aquifer.

The stormwater analysis looks at rainfall on-site and assumes that all rainfall will infiltrate, but impervious surfaces mean that not all rainfall will infiltrate as it does under current conditions because of evaporation on the asphalt and metal roofs. Moreover, a certain-sized rain event is needed for the stormwater to even move into the system, which should have been considered or analyzed, but was not. The City cannot know, based on current information, whether the Applicant's plan to use infiltration basins and detention ponds will be adequate to mitigate the project's impacts on aquifer recharge and, relatedly, public water supplies.

B. Increased Aquifer Demand

The City also failed to consider the likely increased demand for water from the aquifer due to climate change and population growth.

The primary source of Tacoma's drinking water is the Green River. Ex. A-7 (Tacoma Water, *Integrated Resource Plan 2018*, https://www.mytpu.org/wp-content/uploads/tacomawaterirp0219.pdf) at 6. Municipal water also comes from production wells, many of which are fed by the South Tacoma Aquifer. Currently, the South Tacoma Aquifer supplies about five percent of Tacoma's drinking water each year and may supply up to 40 percent of the city's drinking water supply during peak summer demand.[26]

[26] Ex. A-77 (Tacoma-Pierce County Health Dep't, *S. Tacoma Groundwater Prot. Dist.,*

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As a result of climate change, the Tacoma area is projected to experience warmer temperatures, extreme heat, drought, reduced snowpack, and earlier snowmelt that may lead to a reduction in the freshwater supply for drinking water. Ex. A-5 (City of Tacoma, *One Tacoma Plan, Environment + Watershed Health*, https://cms.cityoftacoma.org/Planning/OneTacomaPlan/1-4EnvironmentWatershedHealth.pdf) at 4-8. Under projected climate change conditions, Tacoma will have reduced ability to divert surface water from the Green River for municipal water supply. *See* Ex. A-7 (Tacoma Water, *Integrated Resource Plan 2018*, https://www.mytpu.org/wp-content/uploads/tacomawaterirp0219.pdf) at 18 ("The overall impact [of climate change] to Tacoma Water's surface water supply system is expected to be on the order of 18 percent reduction.").

Consequently, Tacoma will likely have to rely more on its groundwater wells—many of which are fed by the South Tacoma aquifer—during periods of drought. *See* TMC 13.06.070(D)(2) (aquifer is "extremely important" to the City of Tacoma for "future growth, supplemental supply, and emergency response."). Conditions during the 2015 drought are instructive in considering likely increased demand under climate change—Tacoma was using between 40 and 60 percent well water daily that summer. 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). Low snowpack and warmer temperatures contributed to the 2015 drought and are projected to become average conditions because of climate change. 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) at 17–18.

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https://www.tpchd.org/healthy-places/waste-management/business-pollution-prevention/south-tacoma-groundwater-protection-district).

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At the same time, Tacoma's anticipated population growth will increase demand for municipal water supplies. Under the "Vision 2040" Puget Sound Regional Council comprehensive plan, Tacoma must plan for 127,000 new residents and 97,000 new jobs by 2040.[27] In evaluating the project proposal for SEPA compliance, the City should have considered the project's impacts in the context of projected population growth, projected future use of well water (including any new wells), and estimated how much water can be drawn from wells while still maintaining the health of the aquifer.

In sum, the evidence will show that the project is reasonably likely to decrease supply from the aquifer while there is increasing demand for water from the aquifer. The City failed to gather information sufficient to study these cumulative adverse impacts.

VII. SOIL MANAGEMENT PLAN—INADEQUATE INFORMATION ABOUT POTENTIAL FOR SUPERFUND CONTAMINANTS TO MOBILIZE IN GROUNDWATER

The Applicant and the City failed to adequately assess how lead- and arsenic-contaminated soil will be prevented from mobilizing into groundwater.

The risks of contamination are clear. The Applicant's Soil Management Plan admits that not all contaminants will be contained and that the site's initial Superfund cleanup left hot spots where contaminants are covered in just a foot of soil. The Applicant's plan to deal with some contaminated soils containing lead levels requiring cleanup under CERCLA is to simply mix them with non-contaminated soils. Ex. C-12 (MDNS Ex. H, Soil Management Plan) at 20. Despite not having assessed the risks associated with this action, the Soil Management Plan asserts that these highly contaminated soils are not a concern because it is a relatively small amount. *Id*.

[27] Ex. A-4 (City of Tacoma, *One Tacoma Plan, Introduction + Vision* https://cms.cityoftacoma.org/Planning/OneTacomaPlan/1-1IntroductionVision.pdf) at 1–3.

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Moreover, 9,000 square feet of contaminated soil in the wetland buffer will be left as is. Ex. C-12 (MDNS Ex. H, Soil Management Plan) at 8 & Figure 2. The Soil Management Plan fails to account for the likelihood that stormwater runoff from the paved areas that line the wetlands will discharge into those wetland buffers, leading to runoff that will channelize and resuspend contamination. Nothing in the record suggests that EPA assessed the risk of resuspended contaminants from project construction—EPA merely said that implementation of the Soil Management Plan and redevelopment of the site would "not change regulatory status of the Site." Ex. C-12 (MDNS Ex. H, Soil Management Plan) at 12.

The Applicant and City also failed to assess the possibility that existing contaminants will be mobilized due to a change in soil chemistry. The evidence will show that replacing forest soil with pavement can change soil chemistry by reducing the water content and oxygen content of the underlying soil and by compacting the underlying soil. The higher the water table, the more likely it is that mobilized contaminants will move into the groundwater system.

CONCLUSION

For the foregoing reasons, the evidence will show that the MDNS is clearly erroneous. The Hearing Examiner should reverse the MDNS and enjoin Respondents from taking further action until an EIS is completed.[28]

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Respectfully submitted,

s/ Molly Tack Hooper

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[28] The elements of the environment addressed in this prehearing brief reflect the scope of Appellants' appeal. Appellants are no longer challenging the project's impacts on housing, aesthetics, light and glare, and recreation and parks.

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