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SUPREME COURT
OF THE STATE OF WASHINGTON

No. 56890-0-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

ENGLISH FARM LLC and JENNIFER ENGLISH WALLENBERG,

Appellants,

vs.

CITY OF VANCOUVER,

Respondent.

JLL, HP Inc., JENNIFER BAKER, MARIAN ENGLISH-HUSE, and DON JENNINGS,

Respondents.

AMENDED PETITION FOR REVIEW

(Filing Party Listed on Next Page)

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A. IDENTITY OF PETITIONERS

English Farm LLC and Jennifer English Wallenberg (collectively the "Winery") ask this Court to review the Court of Appeals, Division II opinion terminating review in this case.

B. COURT OF APPEALS OPINION

The Court of Appeals, Division II, filed its unpublished opinion terminating review in this case on May 2, 2023. A copy of the "Opinion" is in the Appendix at pages A-1 through A-22.

C. ISSUES PRESENTED FOR REVIEW

When reviewing a decision by a city that is required to plan under the Growth Management Act ("GMA"), may a court affirm that city's land use development application decision:

> 1. By stretching the "general conformity" standard of review beyond comprehensive plans and plan amendments – as recited in *Woods v. Kittitas County*, 162 Wn.2d 597, 174 P.3d 25 (2007) and *Spokane County v. Eastern Washington Growth Management Hearings Board,* 176 Wn. App. 555, 309 P.3d 673 (2013), respectively – and extending it to land use development regulations, without analyzing the development regulations' expressly stated compliance requirements?

2. If the city imposes a land use condition of approval that authorizes serial State Environmental Policy Act ("SEPA") reviews, which are otherwise prohibited by *King County v. Washington State Boundary Review Board*, 122 Wn2d 648, 860 P2d 1024 (1993)?

D. STATEMENT OF THE CASE

The English family has owned and operated a farm in Section 30 of Vancouver Township, Clark County, Washington for more than 100 years. Clerk's Papers ("CP") at 636, 1840; Opinion at A-2. The English family now grows grapes and makes and sells wine on that farm. CP 1509; Opinion at A-6.

In 2008 and 2009, the City adopted the Section 30 Urban Employment Center subarea plan (the "Subarea Plan") as part of its Comprehensive Plan and adopted Vancouver Municipal Code (VMC) chapter 20.690 to implement it. CP 20, 857-930. Relevant portions of the VMC are provided at Appendix pages C-1 and D-1 through 17.

Master planning is mandatory for all Section 30 developments. *See* Appendix at C-1 (VMC 20.440.020(D), and also D-1 and D-5 (VMC 20.690.010 & .050)); Opinion at A-2.

The Subarea Plan identifies the Winery as a "key property" that "is important to the character of the overall [Section 30] development and provides an aesthetic amenity to the community." Opinion at A-2 to A-3; CP 867, 875, 885, 911.

HP Inc. proposes to build 1.5 million square feet of buildings and roughly 30 acres of parking lots immediately adjacent to the Winery. CP at 770, 800; Opinion A-13.

HP's archaeologist acknowledged that the Washington State Department of Archaeology and Historic Preservation recommends the Winery be included on the National Register of Historic Places. CP 1521; Opinion at A-4. HP reassured the City that its development will have "no effect, directly or indirectly, to English Farm," because "development proposed in the Master Plan is to be conducted below the elevation of [the Winery]." CP 1772. *See also* Opinion at A-4 (""[p]lanned development is 40

to 50 feet below the adjoining properties") (citing HP's SEPA checklist). Accordingly, HP's archaeologist stated "no further archaeological work is recommended." CP 1772.

Based on these representations, the City issued HP a preliminary Determination of Nonsignificance ("DNS"). CP 1129; Opinion at A-5.

HP's Master Plan, dated November 3, 2020, illustrated 15 buildings, east and northeast of the Winery, that are up to 93 feet tall. CP 770, 800, 1720. HP's Master Plan also illustrated four large parking lots due north of the Winery's vineyard. *See id.*

The Winery objected that the Master Plan was inconsistent with the SEPA checklist and the proposed development may harm the Winery and its vineyard. Opinion at A-5, A-15, A-16.

Over the Winery's objections, the City Council approved HP's Master Plan, imposing two relevant conditions of approval requiring future HP site plans to:

> 1. Demonstrate compliance with the provisions of VMC 20.690 and all applicable sections of the Section 30 Plan and Design Guidelines as modified

> by the 2019 Development Agreement and provided in the Master Plan.
>
> 2. Show compliance with the Master Plan SEPA checklist or amend or submit a new SEPA checklist to include any unexpected impacts or project changes.

Opinion at A-7 to A-8.

The Winery timely appealed, arguing (among other things) that HP's Master Plan did not contain the information required by VMC 20.690.050(B)(7), (B)(12), (C)(1), and (C)(4)(i). *See e.g.* Opinion at A-6 (the Winery "argued HP's master plan did not substantively analyze…the Section 30 requirements for a master plan").

The Opinion affirms the City's approval, noting that a "proposed land use decision need only generally conform to the comprehensive plan." Opinion at A-10 *citing Spokane County v. E. Wash. Growth Mgmt. Hrg's Bd.*, 176 Wn. App. 555, 574-75, 309 P.3d 673 (2013); *Woods v. Kittitas County*, 162 Wn.2d 597, 613, 174 P.3d 25 (2007).

The Opinion then finds HP's Master Plan "generally conform[s]" to the City's development regulations because letters HP wrote six months after publishing its Master Plan and oral testimony of HP's attorney more than two years after HP published the Master Plan contained analyses of impacts on neighboring land owners (as is required in a master plan by subsection (B)(7)). Opinion at A-4 (HP's Master Plan, dated November 3, 2020); *id*. at A-14 to A-15 (citing May 2021 letters and January 2023 testimony).

The Opinion also holds that HP's testimony at a public hearing on May 17, 2021, sufficiently addressed economic impacts on the Winery (as is required in a master plan by subsection (B)(12)). Opinion at A-6.

The Opinion does not analyze VMC 20.690.050(B)(7), (B)(12), (C)(1) or (C)(4)(i) and does not address the Winery's objection that those development regulations require the missing information to be ***in*** the Master Plan itself.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This case squarely meets three criteria for this Court's discretionary review under RAP 13.4. The Opinion contains erroneous interpretations of the GMA and SEPA that: (1) conflict with decisions of this Court; (2) conflict with a published Court of Appeal decision; and (3) involve issues of substantial public interest that should be resolved by this Court. RAP 13.4(b)(1), (2), & (4). The Opinion also is not supported by substantial evidence and reflects a clearly erroneous application of the law to the facts. RCW 36.70C.130(1)(b), (c), and (d).

Although the Opinion is unpublished, Washington State Court General Rule ("GR") 14.1 allows parties to cite it and allows Washington appellate courts to rely upon it "as necessary for a reasoned opinion." GR 14.1 (a) and (c). As such, this Court's review and reversal of the Opinion is crucial to ensure the errors in the Opinion do not improperly influence future courts, litigants, and municipalities.

1. May a court affirm a city land use decision by stretching the "general conformity" standard of review beyond comprehensive plans and plan amendments – as recited in Woods and Spokane County respectively – and extending it to land use development regulations, without analyzing the development regulations' expressly stated compliance requirements?

The Court should accept review of Issue #1 under RAP 13.4(b)(1), (2), & (4) because it improperly interprets and extends *Woods* and *Spokane County* and because this Court previously held "the purposes of the GMA and the implementation of that act by local government" are "unquestionably" "serious" issues of "public importance." *King County v. Wash. State Boundary Review Bd.*, 122 Wn.2d 648, 668, 860 P.2d 1024 (1993), hereinafter "*King County.*"

(a) The Opinion Conflates GMA Terms, Causing it to Misapply *Woods* and *Spokane County*

In the Opinion, Division II erroneously concluded the City "adopted the Subarea Plan as part of its comprehensive plan under new chapter 20.690 of the Vancouver Municipal Code

(VMC)." Opinion at A-2. This conclusion misapplies the GMA. It treats the Subarea Plan and VMC chapter 20.690 as synonyms. They are not.

The GMA requires certain cities to adopt generalized land use policy statements called comprehensive plans. RCW 36.70A.030(5) & .040(3). *See also* RCW 36.70A.080(2) (comprehensive plans may contain a subarea plan).

The GMA also requires cities to adopt land use controls called "development regulations" to implement their comprehensive plans. RCW 36.70A.030(8) & .040(3); WAC 365-196-800(1) ("Development regulations … implement comprehensive plans.").

Because VMC chapter 20.690 *implements* the Subarea Plan (CP 20) it is *not* the same thing as the Subarea Plan and the legal analyses and standards of review for the two are different.

As this Court held in *Woods*, "a proposed land use decision must only generally conform, rather than strictly conform, to the comprehensive plan." 162 Wn.2d at 613, *citing Citizens for*

Mount Vernon v. City of Mount Vernon, 133 Wn.2d 861, 873, 947 P.2d 1208 (1997) (hereinafter "*Mount Vernon*") and *Viking Props., Inc. v. Holm*, 155 Wn.2d 112, 126, ¶ 31, 118 P.3d 322 (2005). This is because "[a] comprehensive plan does not directly regulate site-specific land use decisions." *Id.* (Citations omitted). "Instead, local development regulations" do. *Id.* (Citations omitted).

WAC 365-196-800(1) confirms the word "implement" in this context has "a more affirmative meaning" than merely being "consistent with" the comprehensive plan. *Id.* The word "connotes not only a lack of conflict but also" requires the regulation to be sufficiently scoped "to fully carry out the goals, policies, standards and directions contained in the comprehensive plan." *Id.*

Given that a comprehensive plan is a policy statement and development regulations are supposed to implement and control development consistent with that guidance, development regulations are typically more prescriptive. Thus, if a court is

faced with "conflicts between a general comprehensive plan and a specific zoning code," the court must enforce the specific zoning code. *Mount Vernon*, 133 Wn.2d at 874. *See also* RCW 36.70A.030(8) (zoning ordinances are development regulations).

Division II's erroneous conclusion that the Subarea Plan (part of the City's comprehensive plan) and VMC chapter 20.690 (development regulations) are the same thing, therefore, caused it to inappropriately extend *Woods* beyond this Court's ruling and contrary to the basic tenants of the GMA, outlined above.

The Opinion also erroneously extends the holding in *Spokane County* beyond that Court of Appeals Division III's express intent. *See* Opinion at A-10. In *Spokane County,* Division III held that a comprehensive plan or development regulation amendment need only generally conform to the comprehensive plan. 176 Wn. App. at 574-575. In so doing, the court expressly analyzed the distinction between appeals of comprehensive plan and development regulation amendments and appeals of specific land use or "project permit" applications.

Id. at 572. The former are appealed under the GMA to the Growth Management Hearings Board. The latter are appealed under the Land Use Petition Act ("LUPA") to the superior courts. Both the substantive and the procedural analyses are different. *Id*.

As explained below, the Opinion's failure to recognize these distinctions caused it to extend both *Woods* and *Spokane County* farther than either issuing court intended, to a disastrous effect.

(b) The Opinion Allows Municipalities to Disregard GMA Planning Requirements

The Legislature adopted the GMA in 1990 because "uncoordinated and unplanned growth," poses a threat to "sustainable economic development…and [the] high quality of life enjoyed by residents of this state." RCW 36.70A.010. The GMA requires certain cities to adopt development regulations to implement comprehensive plan goals and to "control land use development." RCW 36.70A.030(8) & .040.

Here, to avoid uncoordinated and unplanned growth in the newly annexed Section 30, the City chose to expressly require all developers to submit a master plan "prior to all development." CP 892 (Subarea Plan Policies MS-2 and MS-3); Appendix at A-28 (VMC 20.690.050(A) ("[a]n approved master plan…is required…to ensure development is consistent with the [Subarea Plan]")), and at A-23 (VMC 20.440.020(D) ("[m]andatory master planning" is required "to ensure" developments are "well-integrated")); Opinion at A-3, A-11.

The City's development regulations then provide a list of analyses and information each master plan "shall" contain in VMC 20.690.050(B). *See also* Appendix at D-5 to D-6 (VMC 20.690.050(A) ("[a]n approved master plan *as described herein* is required") (emphasis added), at D-7 (VMC 20.690.050(C)(1) (requiring compliance with "this chapter" as a criterion of master plan approval)).

Specific to this case, VMC 20.690.050(B)(7) and (B)(12) require all Section 30 master plans to analyze and mitigate

impacts on neighboring properties and demonstrate consistency with Subarea Plan policies. Appendix D-6.

The Opinion does not identify any pages of the HP Master Plan that satisfy these requirements. Instead, the Opinion concludes HP "generally conformed with VMC 20.690.060(D)(1)" (an undisputed section relating to full site utilization plans) and "generally conformed to the…related provisions of the VMC." Opinion at A-14, A-15. *See* Appendix D-8 to D-9 (VMC 20.690.060(D)(1))

Rather than cite to pages of the Master Plan, the Opinion cites to HP's May 4 and May 17, 2021 letters (nearly six months after publishing the Master Plan) and HP's oral argument before Division II, more than two years after publishing its Master Plan as evidence that HP "generally conformed" to the requirement that it analyze impacts of its development on the Winery. Opinion at A-14, A-15.

The Opinion acknowledges Subarea Plan land use policy LU-21 requires developers to "[e]ncourage the preservation and

economic vitality of the English Vineyard and Winery," but does not analyze or decide whether HP's declaration in the Master Plan that LU-21 is "not applicable" adequately demonstrates consistency with policy LU-21, as required by subsection (B)(12). Opinion at A-11; Appendix D-6 (VMC 20.690.050(B)(12)).

Instead, the Opinion looks outside the Master Plan to HP testimony at a public hearing, to find HP "generally conformed" with the requirement to consider the preservation and economic vitality of the Winery. Opinion at A-6 to A-7.

These findings are inadequate. The Opinion's misapplication of the "generally conforms" standard of review caused it to ignore the express development regulation requirement that all master plans "shall" contain the information required by subsections (B)(7) and (B)(12). Under the GMA, the word "shall" requires compliance; "shall" means the same thing as "must." WAC 365-196-210(32).

The error is not a matter of form over substance. In the future, the City will review HP's site plans for consistency with HP's approved Master Plan. *See* Appendix at D-6 and D-8 (VMC 20.690.050(B)(8) and (D)(1)(a)(ii)). If the required analyses of impacts on neighboring properties, and mitigation for those impacts, and consistency with the Subarea Plan are not *in the Master Plan*, that review is pointless. The opportunity to ensure the developments are "well-integrated," "fair to all," and "fit[] well with [] neighbors" will be lost. CP 891; Appendix at C-1 (VMC 20.440.020(D)) and D-1 (VMC 20.690.010).

(c) Condition of Approval #1 Does Not Solve Anything

The City and Division II contend condition of approval #1 resolves these concerns because ***it*** requires site plans to demonstrate compliance with VMC chapter 20.690. This argument proves too much.

VMC chapter 20.690 does not regulate the content of site plans or require them to analyze their impacts on neighbors. It only requires site plans to be consistent with the approved master plan.

Because the required information is not in the approved Master Plan, perhaps the City will have to review HP's future site plans for consistency with HP's May 4, 2021, May 17, 2021, and January 24, 2023 letters and oral statements? That seems unwieldy.

The Court should accept review of Issue #1 because it erroneously interprets the GMA, causing it to extend this Court's decision in *Woods*, and Division III's published decision in *Spokane County* beyond their intended boundaries. The result interferes with municipalities' proper implementation of the GMA.

> *2. May a court affirm a city decision that imposes a land use condition of approval authorizing serial SEPA reviews, which are otherwise prohibited by this Court's decision in King County?*

The Court should accept review of Issue #2 because: (a) the Opinion erroneously concludes the Winery waived any SEPA appeal, contrary to the express holding of *King County*; (b) the Opinion erroneously uses land use law to circumvent controlling SEPA authorities; and (c) the Opinion's clear errors interfere with the integrated implementation of the GMA and SEPA by local government.

(a) The Opinion Erroneously Concludes the Winery Waived any SEPA Appeal

The Opinion finds the Winery "challenged the approval of the HP master plan in superior court under…[LUPA, the GMA] and SEPA"). Opinion at A-8.

Nevertheless, the Opinion concludes the Winery waived all SEPA appeals because it failed to exhaust administrative remedies by not appealing the City's DNS before the "SEPA appeal deadline expired." Opinion at A-16.

The Opinion fails to acknowledge this Court's ruling in *King County* which is directly on point. In that case, appellants claimed King County had not appealed the DNS and therefore,

had waived all SEPA appeals. This Court rejected the argument, explaining there is no separate SEPA appeal process. 122 Wn2d. at 659. "[W]ithout exception," RCW 43.21C.075(6)(c) expressly requires SEPA appeals to "be made in conjunction with an appeal of the underlying government action." *Id.*; RCW 43.21C.075(6)(c).

This Court analyzed whether the notice of appeal must specifically identify the DNS. The Court said no. *King County*, 122 Wn2d. at 660. Where the notice of appeal mentioned SEPA and the parties had "fully briefed, argued, and decided" the validity of the DNS during the proceedings below, the notice of appeal served its purpose. It adequately notified the parties of the issues on appeal and the DNS was "properly before this Court for review." *Id.*

The same facts are present here. As discussed above, the Opinion finds the Winery "challenged the approval of the HP master plan in superior court under... SEPA." Opinion at A-8. The parties have fully briefed and the courts have fully analyzed

the sufficiency of HP's SEPA checklist and the City's SEPA condition of approval #2. Opinion at A-4, A-5, A-7, A-15, A-16, A-18. There is no doubt all parties and all courts have had notice the Winery raised a SEPA challenge.

Furthermore, as explained below, at least two of the City's SEPA-related decisions on appeal were not final at the time the City issued its DNS. The City entered its final decisions (a) finding the Master Plan met SEPA requirements (as required by VMC 20.690.050(C)(4)(i)) and (b) imposing a SEPA-related condition of approval #2 when the City approved the Master Plan at least five months later. Those decisions violate this Court's directive regarding serial, snowballing, SEPA analyses, as outlined in *King County*.

(b) The Opinion Improperly Authorizes Snowball SEPA Analyses, which *King County* Prohibits

There is no dispute that under SEPA "parts of proposals that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same

environmental document." WAC 197-11-060(3)(b). Proposals are considered to be "closely related" if they "[a]re interdependent parts of a larger proposal and depend on the larger proposal as their justification or for their implementation." WAC 197-11-060(3)(b)(ii).

Each of HP's future site plans are an "interdependent part" of HP's Master Plan. They must be evaluated for consistency with the Master Plan and they could not be approved without HP first securing City approval of HP's Master Plan. *See* Appendix at D-5 (VMC 20.690.050(A) ("[a]n approved master plan…is required prior to development")), D-6 and D-8 ((VMC 20.690.050(B)(8) and (D)(1)(a)(ii)).

There is also no dispute that, while phased environmental reviews are sometimes permissible, phased review is inappropriate if it divides a development plan into "exempted fragments" or "avoid[s] discussion of cumulative impacts" of the various site plans. WAC 197-11-060(5)(d)(ii).

Phased review is also inappropriate when it segments and avoids "present consideration of proposals and their impacts that are [otherwise] required to be evaluated in a single environmental document." WAC 197-11-060(5)(d)(ii).

Here, condition of approval #2 requires HP to submit an amendment or a new SEPA checklist if a site plan is inconsistent with the currently-approved Master Plan SEPA checklist. In other words, condition of approval #2 does not require HP to analyze the cumulative impacts of the site plans that will carry out the development contemplated in the Master Plan. Instead, it fragments SEPA review into discrete site plan analyses should any deviations be discovered later. This is precisely what the SEPA authorities quoted above seek to prevent.

HP previously argued and the Opinion concludes because there are no "specific, proposed structures" at this point in the process, HP's SEPA analyses ought to be reserved for "the site planning stage." Opinion at A-19. This Court expressly ruled on this question 30 years ago. In *King County*, this Court held

the lack of a specific development plan is not conclusive of whether an adverse environmental impact is likely. 122 Wn.2d at 663. Where, as here, the likelihood of development is "unquestionable," environmental review should not be delayed. *Id*. at 666. The Court explained – even seemingly administrative decisions

> may begin a process of government action which can "snowball" and acquire virtually unstoppable administrative inertia. *See* Rodgers, *The Washington Environmental Policy Act*, 60 WASH. L. REV. 33, 54 (1984) (the risk of postponing environmental review is "a dangerous incrementalism where the obligation to decide is postponed successively while project momentum builds").

Id. at 664.

Rather than analyze these controlling authorities, the Opinion found condition of approval #2; HP's agreement to perform additional SEPA analyses when more specific, site plans are submitted; and oral argument of HP's counsel on January 24, 2023, to be sufficient guarantees of future SEPA compliance. Opinion at A-15.

The Opinion completely disregards *King County*'s instruction. The Opinion also disregards VMC 20.690.050(C)(4)(i) which requires the City and the court to find the Master Plan meets SEPA requirements *now*. Appendix D-7.

The failure of the Opinion to properly integrate land use and SEPA procedural and substantive analyses not only disregards this Court's instructions, it also interferes with the proper implementation of the GMA – which the *King County* court recognized to be a "serious" issue of "public importance." 122 Wn.2d at 668.

(c) <u>The Opinion Interferes with Proper Implementation of the GMA and SEPA</u>

The GMA "is a fundamental building block of regulatory reform. The state and local government have invested considerable resources in [it and it] should serve as the integrating framework for other land use related laws." WAC 365-196-010(1)(j). *See also* WAC 365-197-030 (same). To that end, the GMA and SEPA administrative regulations require integrated, consistent project reviews. *See* WAC 365-197-030

("Integration of permit review and environmental review is intended to eliminate duplication in processes and requirements."); WAC 197-11-210(1) (SEPA analyses shall SEPA "occur concurrently with and as an integral part of the planning and opinion making under GMA").

Division II's failure to acknowledge and integrate its land use/GMA and SEPA substantive and procedural analyses interferes with the Legislature's express intent and municipalities' faithful implementation of both laws. *See King County*, 122 Wn.2d at 668 (identifying both as "unquestionably" "serious" issues of "public importance"). This Court should accept review to correct Division II's errors.

F. CONCLUSION

The Winery respectfully requests the Court grant review of two issues on appeal pursuant to RAP 13.4(b)(1), (2), and (4)

to ensure the Opinion does not interfere with the purpose and proper implementation of the GMA and SEPA.

Ultimately, the Winery respectfully requests the Court find (1) the Opinion's extension of *Woods* and *Spokane County* was improper; cities must comply with the express content requirements and decision review criteria of their development regulations, and (2) land use conditions of approval cannot circumvent this Court's directives in *King County* or SEPA authorities. Accordingly, the Winery will request the Court reverse the Opinions of the lower courts and the City; find HP's Master Plan does not meet the Section 30 master plan content requirements and decision criteria; and provide such other and further relief as the Court declares just and proper.

This document contains 3909 words, excluding parts of the document exempted from the word count by RAP 18.17.

Dated: June 16, 2023

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APPENDIX A

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

ENGLISH FARM LLC and JENNIFER ENGLISH WALLENBERG, Appellants, v. CITY OF VANCOUVER; and HP INC., Respondents, JLL; JENNIFER BAKER; MARIAN ENGLISH-HUSE; and DON JENNINGS, Defendants.	No. 56890-0-II UNPUBLISHED OPINION

BIRK, J.* – The City of Vancouver (City) approved HP Inc.'s master plan for future development in an area the parties refer to as "Section 30" of Vancouver. Neighboring parties, English Farm LLC and its owner and operator Jennifer English Wallenberg (collectively, the Winery), argue the approval violated Washington land use law, a development agreement (DA) between the City and the Winery, and due process. The superior court rejected the Winery's claims and dismissed its complaint. We affirm.

* Judge Birk is serving in Division II of this court pursuant to RCW 2.06.040.

I

A

Jennifer English Wallenberg's family owns and operates the Winery located in the southwest corner of Section 30 in Vancouver, Washington. In 2006, at the request of several property owners, the City prepared to annex Section 30 and apply a comprehensive development plan and zoning designations. Before the annexation, the English family and the City signed a DA in 2007, allowing the Winery to continue as a preexisting nonconforming use. The DA acknowledged the existence of a 2003 to 2004 "Section 30 Subarea Master Plan" (Subarea Plan) that had been developed "in cooperation with area property owners and residents." The DA stated the City planned to "further refine" the plan in 2007 to 2008 and "[t]he elements of this development agreement will be taken into consideration as the refinement efforts are undertaken."

In 2008, the City annexed Section 30. In 2009, the City enacted Ordinance M-3930, which adopted the Subarea Plan as part of its comprehensive plan under new chapter 20.690 of the Vancouver Municipal Code (VMC). The Subarea Plan contains a number of aspirational and mandatory provisions. Its purpose "recognizes and respects existing property owner development agreements, while proposing a long term vision with flexible plan implementation approaches that reflect market conditions and interests" within the next 20 to 30 years. The Winery was identified as one of 18 key properties of existing use that will likely remain over the life of the 20 to 30 year plan. The Subarea Plan recognized that the Winery "contribute[s] to the character and economic base of Section 30" and that there are no plans for redevelopment. "[T]he retention of a small vineyard on the site is

important to the character of the overall development and provides an aesthetic amenity to the community."

The Subarea Plan also set out master plan policies to ensure a cohesive and integrated employment center. Master plan policies MS-2 and MS-3 state that it is the policy to "[u]se master planning to direct development proposals over time, consistent with the goals and policies of this plan" and to "[r]equire a master plan development approach that supports development of all properties by ensuring compatible development, appropriate buffers or screening, transitional grades," respectively. The Subarea Plan envisioned light and "tech/flex" industrial buildings that would have ceilings over 20 feet. Office buildings expected to be built in Section 30 would be at least three to four stories in height. Chapter 20.690 VMC implements and adopts the Subarea Plan, and VMC 20.690.050 requires the approval of a master plan before development in the plan district and that the master plan be consistent with the Subarea Plan.

The neighboring area was used for gravel mining and other mining related activities for more than four decades. Because of the mining activity, some areas of Section 30 vary in elevation creating substantial side slopes. The western boundary of Section 30 has quarry slopes that are as tall as 70 feet or more. With buildings built into the side of the slope, the design guide recommends that "[c]are should be taken to consider the impact of the proposed construction within 500 feet of homes adjacent to the southwest quarry slope on existing views of Mt. Hood."[1]

[1] The Design Guidelines do not reference Mount St. Helens views visible from certain parts of the Winery property.

B

HP has been involved in the Vancouver community for over 35 years. HP owns property adjacent to the Winery property in Section 30. Both properties are zoned to have no height restrictions. HP intends to develop its site. The Winery sold eight acres of its property to HP for the development of HP's project. HP's project included an October 2020 archaeological predetermination survey. The survey found that

> [t]he nearest historic resource is the English Farm. HP Master Plan efforts will have No Effect, directly or indirectly, to English Farm. The development proposed in the Master Plan is to be conduct[ed] below the elevation of English Farm and will not impinge upon the viewshed of this resource.

HP completed a State Environmental Policy Act (SEPA), chapter 43.21C RCW, environmental checklist dated November 3, 2020. Final building heights were not yet determined but the checklist stated that the building heights would take into consideration mountain views for residential neighbors to the west. It also stated that "[p]lanned development is 40 to 50 feet below the adjoining properties with low lying vegetation planned on slopes to screen but not block views." The Winery was listed for historic and cultural preservation and the checklist stated that the Winery would not be directly or indirectly impacted by the project.

HP submitted a master plan dated November 3, 2020. The master plan included building footprints in the full site utilization plan but did not include any heights. The plan recognized that while Section 30 has no height or floor area limits, the building heights would take into consideration mountain views for the neighborhoods to the west. The City ruled the application fully complete on December 4, 2020. It sent a notice of application,

remote public hearing, and optional SEPA determination of nonsignificance (DNS) to surrounding property owners. Comments on the project received by January 18, 2021 would be incorporated into the staff report and comments received after would be addressed at the public hearing. Subsequently, the City issued a DNS.

English e-mailed her concerns about the master plan on January 18, 2021 stating that the buildings "appear to be 90 feet tall" and that this would obstruct views of Mount St. Helens from the Winery. This assessment was ostensibly based on a portion of the HP master plan including diagrams meant to show that views from other, residential areas to the west would suffer only limited impact from potential buildings on the site, in a section otherwise discussing utility access to the site. English's reference to potential 90 foot buildings was ostensibly extrapolated from a sketch included in the master plan. The Winery later argued that the HP master plan was described "publicly" four months after the December 2020 SEPA checklist leading to the DNS, apparently referring to the public hearing in April 2021. But it is clear from English's January e-mails that English had the master plan, reviewed it, and identified the building height issue in January 2021.

English and her counsel participated and spoke in numerous hearings, wrote letters, and provided testimony for public hearings.

At an April 19, 2021 public hearing, the City Council asked for more information "to better understand the view standards that are already in the plan, how those translate into regulatory standards." HP responded to this request and addressed the Winery's concerns about views in two letters addressed on May 4 and May 17, 2021. In its May 4, 2021 letter, HP asserted that view impacts to the Winery from its master plan were not

significant. HP stressed that its master plan was not required to have the heights included and that its proposal complied with the design guidelines. HP's letter stated that even if it built infinitely tall buildings, the Winery would still have "a significant portion of its northern frontage that would provide a view of [Mount] St. Helens for visitors to walk and observe."

Legal counsel for the Winery responded with a letter dated May 13, 2021 opposing the approval of HP's master plan. The letter argued that HP's master plan did not substantively analyze whether the application met the Section 30 requirements for a master plan. It argued that the buildings outlined in the master plan and HP's new letter were likely to block or change wind patterns, which could detrimentally affect the Winery's ability to grow grapes. In a May 17, 2021 letter, HP reiterated that in the design phase, it will take into consideration building heights and consider its neighbors. HP asserted the master plan's scale was not meant to be used to calculate heights. Once site planning started, HP would consider the Winery and other comments that were raised in the public review process. The letter argued none of the concerns the Winery raised—reduction of wind flow, historic resource protection, shadows on the vineyard, or damage to grapes from reflective material—could be assessed because no site plan had been proposed yet.

The last public hearing concerning HP's master plan was held on May 17, 2021. The Winery argued that HP's proposed building locations and orientations threaten the economic vitality of the Winery, and the master plan does not address the ways HP plans to mitigate those harms. The City asked HP to address the differing opinions on the view of Mount St. Helens. HP explained that the Subarea Plan, various policies, and the DA

discuss encouraging the preservation and economic vitality of the Winery and the Winery continuing as a nonconforming use. HP also noted consideration of views of Mount St. Helens would come into consideration at the site planning stage when considering the actual siting of buildings, their orientation, and any direct impact on a particular use. HP argued Winery visitors were already required to walk to specific sites on the Winery property to view Mount St. Helens. HP argued there were other ways for the Winery to adapt to the changing development patterns.

C

The City had prepared a staff report on the HP master plan to determine if it should be approved. The report analyzed the HP master plan for compliance with regulations, code criteria, and SEPA, and to determine whether potential impacts were mitigated. The staff report noted that there are no building height restrictions within the ECX (employment center mixed-use) zone and that the HP master plan does not contain any heights, but states that the height of the buildings will be a minimum of 24 feet. It also reported that "[b]uilding height will be reviewed for adherence to the Section 30 Design Guidelines at the time of site plan submittal." The staff report recommended conditioning approval on three criteria that must be met before any future site plans are approved. The City approved the HP master plan subject to conditions recommended in the staff report. The conditions of approval were:

> 1. Demonstrate compliance with the provisions of VMC 20.690 and all applicable sections of the Section 30 Plan and Design Guidelines as modified by the 2019 Development Agreement and provided in the Master Plan.

2. Show compliance with the Master Plan SEPA checklist or amend or submit a new SEPA checklist to include any unexpected impacts or project changes.

3. Include this note on Civil Plans:
   Trees and Shrubs in Sight Distance Triangles:
   All shrubs within sight distance triangles shall be maintained so that foliage height above pavement does not exceed 2.5 feet. Street trees within sight distance triangles shall be limbed up to a height of 10 feet consistent with ANSI A300 standards to provide for sight distance visibility.

The Winery challenged the approval of the HP master plan in superior court under the Land Use Petition Act (LUPA), chapter 36.70C RCW, the Growth Management Act (GMA), chapter 36.70A RCW, and SEPA. Additionally, the Winery asserted that the City's approval of the HP master plan violated its due process rights and was a breach of the DA. The superior court dismissed the Winery's claims in two orders, one dismissing the Winery's breach of contract claim pursuant to CR 12(b)(6), and another dismissing the remainder of its claims on summary judgment. The Winery appeals.

II

A

LUPA is the exclusive means, with limited exceptions, by which superior courts obtain authority to provide judicial review of local land use decisions. *Cave Props. v. City of Bainbridge Island*, 199 Wn. App. 651, 656, 401 P.3d 327 (2017). On review of a superior court's decision under LUPA, we sit in the same position as the superior court and review the same record that was created before the hearings examiner. *Miller v. City of Sammamish*, 9 Wn. App. 2d 861, 870, 447 P.3d 593 (2019); *see also* RCW 36.70C.120(1). On appeal, the party who filed the LUPA petition has the burden of establishing that the

land use decision was erroneous. *Fuller Style, Inc. v. City of Seattle*, 11 Wn. App. 2d 501, 507, 454 P.3d 883 (2019). We view the facts and inferences in a light most favorable to the party that prevailed below. *Fams. of Manito v. City of Spokane*, 172 Wn. App. 727, 739-40, 291 P.3d 930 (2013).

The Winery rests its GMA challenge on three grounds under RCW 36.70C.130(1), which affords relief if the Winery establishes:

> (b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;
>
> (c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court; [or]
>
> (d) The land use decision is a clearly erroneous application of the law to the facts.

We review an issue under subparagraph (b) de novo. *Whatcom County Fire Dist. No. 21 v. Whatcom County*, 171 Wn.2d 421, 426-27, 256 P.3d 295 (2011). We review an issue under subparagraph (c) for substantial evidence. *Phoenix Dev. Inc. v. City of Woodinville*, 171 Wn.2d 820, 828-29, 256 P.3d 1150 (2011). Under this standard, facts and inferences are viewed in a light most favorable to the party that prevailed in the forum with the highest fact-finding authority. *Id.* Substantial evidence is supported if there is "a sufficient quantum of evidence in the record to persuade a reasonable person that the declared premise is true." *Id.* at 829. And we review an issue under subparagraph (d) using the clearly erroneous standard. *Id.* A finding is clearly erroneous when the reviewing court "is left with a definite and firm conviction that a mistake has been committed." *Id.* We

defer to factual determinations made the highest body that exercised fact finding authority under this standard. *Fams. of Manito*, 172 Wn. App. at 740.

B

Under the GMA, cities and counties with certain specified populations must adopt comprehensive plans. *Futurewise v. Spokane County*, 23 Wn. App. 2d 690, 694, 517 P.3d 519 (2022), *review denied*, ___ Wn.2d ___, ___ P.3d ___, 2023 WL 2809542; Former RCW 36.70A.040 (2014). The comprehensive plan is the core of the GMA and must contain detailed policies that aid in the growth of public facilities and the development and use of land as prescribed by the statute. *Futurewise*, 517 P.3d at 694. A proposed land use decision need only generally conform to the comprehensive plan. *Spokane County v. E. Wash. Growth Mgmt. Hrg's Bd.*, 176 Wn. App. 555, 574-75, 309 P.3d 673 (2013); *Woods v. Kittitas County*, 162 Wn.2d 597, 613, 174 P.3d 25 (2007).

Under the GMA, city actions are presumed compliant but the deference afforded is bound within the goals and requirements of the statute. *Whatcom County v. Hirst*, 186 Wn.2d 648, 666-67, 381 P.3d 1 (2016). A city's action will be found compliant unless the action is " 'clearly erroneous in view of the entire record . . . and in light of the goals and requirements of [the GMA].' " *Id.* at 667 (second alteration in original) (quoting RCW 36.70A.320(1), (3)). Goals set forth in a comprehensive plan may be mutually competitive at times and the weighing of those competing goals is a "fundamental planning responsibility of the local government." *Spokane County v. E. Wash. Growth Mgmt. Hrg's Bd.*, 173 Wn. App. 310, 333, 293 P.3d 1248 (2013). When "[a]ny policies or goals" in a

comprehensive plan are "hortatory, not mandatory," the responsibility to weigh competing goals and policies is that of the county commissioners. *Id.* at 342.

The Winery contends HP's master plan does not generally conform to the planning principles established in the Subarea Plan and the provisions of the Vancouver Municipal Code implementing it. We conclude the City's approval of the master plan is not clearly erroneous because of a failure to generally conform to the Subarea Plan and corresponding code provisions.

1

Subarea Plan land use policy LU-21 states its purposes include to "[e]ncourage the preservation and economic vitality of the English Vineyard and Winery." The Subarea Plan sets out six master plan policies to "balance predictability with flexibility, be fair to all, and promote desired development." These policies are as follows:

> MS-1 Create a Section 30 Plan District to address the plan area's unique circumstances and to ensure cohesive development.
>
> MS-2 Use master planning to direct development proposals over time, consistent with the goals and policies of this plan
>
> MS-3 Require a master plan development approach that supports development of all properties by ensuring compatible development, appropriate buffers or screening, transitional grades, efficient extension of public utility services, and effective transportation and pedestrian connectivity.
>
> MS-4 Allow existing mining activities to continue under the review of the Vancouver zoning standards
>
> MS-5 Recognizing that market dynamics create new development, the implementation strategy should afford a reasonable degree of flexibility while addressing important public policy issues.

MS-6 Establish design standards and guidelines to direct new development in a way that is consistent with the Section 30 Plan vision.

VMC 20.690.010 states that the purpose of the Subarea Plan is to "provide clear objectives for those proposing to develop in the Section 30 Plan area; maintain and enhance property values; promote economic provision of public services; and ensure that each development or project fits with its neighbors and within the Subarea." VMC 20.690.050(B)(7) states that master plans must include an "[a]nalysis of impacts to the adjacent properties and mitigation proposed to achieve development envisioned in the Section 30 Employment Center Plan including future streets, roundabouts, grading, utility service, site drainage, trails and open space and land use location." VMC 20.690.060(D)(1) states that the planning official shall approve a site utilization plan based on demonstration of "a realistic assessment of future building types and sizes, and future parking needs."

Neither the Subarea Plan nor the VMC expressly protect a view from the Winery's property of Mount St. Helens. The only Section 30 guideline regarding height states that "[c]are should be taken to consider the impact of proposed construction within 500 feet of homes adjacent to the southwest quarry slope on existing views of Mt. Hood." VMC 20.690.040(B) explicitly states that "[b]uilding heights *shall not* be restricted within the ECX zoned properties of the Plan District." (Emphasis added.) The Winery has no common law right to a view. *Asche v. Bloomquist*, 132 Wn. App. 784, 797, 133 P.3d 475 (2006). The Winery has no right to a view conferred to it by statute, ordinance, or a restrictive easement. *Id.* at 797-98. The Winery's sale of eight acres to HP did not include a restrictive covenant or easement guaranteeing the right to an unobstructed view of Mount St. Helens. Specifically concerning the view of Mount St. Helens from parts of its property,

the Winery is protected only to the extent development standards incorporate as a consideration "the preservation and economic vitality" of the Winery. The record developed below is unclear as to the importance of any view of Mount St. Helens to the preservation and economic vitality of the Winery.

2

HP's master plan considered elevations and grading. It considered streets and traffic impacts stemming from future growth. It analyzed different types of parking lots and stated it would undertake a parking study after Phase 1 development was operational. The master plan looked at open spaces and public facilities. It analyzed public utilities and services. The master plan demonstrated that there would be adequate buffers and screening, utility services, and plenty of pedestrian and traffic connectivity. The master plan included a proposed drawing of potential building locations and the area of each but no heights.

VMC 20.690.060(D)(1) required only the demonstration of "a realistic assessment of future building types and sizes, and future parking needs." HP complied with these requirements. The master plan included an assessment of the approximate area of the the buildings, building types, proposed streets, and three different layouts for parking lots. There is no indication of building heights, but specific heights were not required.

The Winery argues that the master plan failed to analyze the impact that wind, glare, view obstructions, and "heat sinks" from parking lots would have on the Winery. But HP responded to each of the Winery's concerns and possible ways to mitigate any harm. In its May 17, 2021 letter, HP provided an extensive response concerning the potential change

in wind patterns on the Winery. It cited studies and articles that a change in wind may either have a detrimental or beneficial effect on the grapes. The master plan stated that it would choose design materials for the buildings during the site planning stage, and therefore it could not address potential glare at this stage, but that it would likely be minimal because of the depression and the planned development below the grade of the Winery site. The master plan addressed the potential heat sink problem by proposing the parking lot be interspersed with trees that would reduce heat buildup. HP addressed ways to mitigate the concerns raised by the Winery. The City could validly conclude the master plan and HP generally conformed with VMC 20.690.060(D)(1) and the Subarea Plan goals. Approval of the master plan was not clearly erroneous.

The Winery also argues that the master plan failed adhere to the "Elevations and Grading" (GE) element GE-1 in the Subarea Plan, which states that "[m]aster plans for individual developments should include an analysis of grade transitions on development sites and potential impacts on adjacent properties." HP's master plan addresses this policy directly. In addition, to gain approval, the master plan was required to "[e]stablish[] property grades and finished elevations that allow for balanced grade transitions between properties." VMC 20.690.050(C)(4)(f). The master plan includes such an analysis.

In proceedings before the City, HP repeatedly told the Winery that it would consider views when it was considering heights for its buildings in the site planning stage, and the master plan states that it would take views into consideration. At oral argument in

this court, when asked whether the statement about building heights in the checklist would apply in evaluation of future site plans, HP answered,

> Of course it will, because you have to do SEPA at every site plan application. And so if there's a change, then the views will have to be taken into consideration against the checklist, and it will have to be modified, and HP would definitely do that. We're not going to skirt SEPA.

Wash. Court of Appeals oral argument, *English Farms LLC v. City of Vancouver*, No. 56890-0-II (Jan. 24, 2023), at 18 mın, 34 sec. to 18 mın, 52 sec., https://tvw.org/video/division-2-court-of-appeals-2023011379/?eventID=2023011379.

This is consistent with the conditions of approval the City imposed, under which development under the master plan must "[s]how compliance with the Master Plan SEPA checklist or amend or submit a new SEPA checklist to include any unexpected impacts or project changes."

The HP master plan and the correspondence by the Winery and HP before the City show that there were ample grounds for the City to conclude that the HP master plan generally conformed to the principles of the Subarea Plan and related provisions of the VMC. The Winery does not show that the City was required, in order to comply with the GMA and SEPA, to insist on a given height limitation of HP's buildings. This is especially so where HP agrees that at the site planning stage the City must consider the environmental impact of specific, proposed structures, including on the Winery and other adjacent properties. We conclude the City's approval of the HP Master Plan is not "clearly erroneous" and thus entitled to the presumption of compliance. For the same reasons, and to the extent other standards of review are implicated in the Winery's challenge, the Winery

has not shown that the City made an error of law or that its approval of the HP master plan was not supported by substantial evidence.

III

The Winery argues that the City's decision violated SEPA and the City should have withdrawn its DNS. We conclude the Winery waived this claim.

Before a plaintiff can file a SEPA action alleging noncompliance, the plaintiff must exhaust available administrative remedies. *CLEAN v. City of Spokane*, 133 Wn.2d 455, 465, 947 P.2d 1169 (1997). If appeal procedures are in place, the party is required to use those procedures before seeking judicial review. *Id.* If a plaintiff fails to allege or prove that administrative remedies were exhausted, we will consider no appeal was made. *Id.*

The Winery concedes it did not appeal the City's DNS. The SEPA appeal process ended on February 8, 2021 and no appeals were made. The Winery argues that the SEPA checklist and associated January 2021 DNS were later belied by HP's public discussion of its master plan in April 2021, which the Winery contends forecasts taller buildings that, contrary to the DNS, would affect the Winery. Therefore, the Winery reasons, the assumptions underlying the DNS changed and the DNS must be withdrawn based on the new disclosure. However, the record does not bear out this argument. The Winery inferred an intent by HP to build to a given height based on the Winery's review of the master plan sometime in December 2020 and January 2021—well before the SEPA appeal deadline expired. HP, for its part, disavowed that the section of the plan relied on by the Winery was meant to describe, let alone commit to, building to a given height. The record does

not bear out the Winery's argument that the baseline conditions originally supporting the DNS changed. The Winery waived any SEPA noncompliance claim.

IV

The Winery argues that the City denied it due process and failed to follow established procedures. We disagree.

Due process requires that a person must be provided with notice and an opportunity to be heard before the government can deprive them of their life, liberty, or property. *Samuel's Furniture Inc. v. Dep't of Ecology*, 147 Wn.2d 440, 462-63, 54 P.3d 1194 (2002); U.S. CONST. amend. XIV, § 1. This requires the opportunity to be heard and notice reasonably calculated, under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Matter of Deming*, 108 Wn.2d 82, 96, 736 P.2d 639, 744 P.2d 340 (1987) (quoting *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S. Ct. 779, 58 L. Ed. 1363 (1914)). We review constitutional issues involving land use and ordinance decisions de novo. *Griffen v. Thurston County*, 137 Wn. App. 609, 620, 154 P.3d 296 (2007), *aff'd*, 165 Wn.2d 50, 196 P.3d 141 (2008). To assert a due process claim under LUPA, a person must show that they have a constitutionally protected property interest. *See Durland v. San Juan County*, 182 Wn.2d 55, 69, 340 P.3d 191 (2014). "A constitutionally protected property interest exists when a plaintiff demonstrates that [they] possess[] a 'legitimate claim of entitlement' under the law." *Id.* (quoting *Bd. of Regents v. Roth*, 408 U.S. 564, 577, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972)).

The Winery knew of the City's development agreement with HP and sold HP eight acres of its land to help the project. The Winery received the notice of application, remote public hearing, and optional SEPA DNS. The Winery sent e-mails to Councilmembers, submitted multiple pieces of written testimony for public hearings, and English and her attorney spoke on behalf of the Winery at the hearings. The Winery admits that the City never limited the length of its written testimony. Instead, the Winery points to the fact that it was given three minutes to present at the last public hearing as evidence that its due process rights were violated. The Winery contrasts this with the approximately 40 minutes it says HP spent presenting its master plan. The Winery's argument is misleading. The Winery and its lawyer and several aligned speakers *each* were given three minutes, which was allowed for any member of the public wishing to address the master plan at the public meeting. The Winery fails to demonstrate or allege that the City violated VMC 20.210.120(B)(9)(a), which allows "[t]he Hearings Examiner or Planning Commission [to] set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant or personally derogatory testimony."

The record also does not bear out the Winery's claim that the City never received its May 17, 2021 testimony. The day of the hearing, the Winery's attorney requested that the full testimony be included in the record and the City responded that it would be in time for the meeting. The Winery's attorney mentioned to the Councilmembers during her testimony that the Winery submitted written testimony because its presentation time was limited. The content of the May 17, 2021 written comment is substantially reflected in the Winery's counsel's oral presentation on May 17, 2021. Therefore, even if the City did not

receive the written testimony in time, it cannot be said that the Winery's opportunity to be heard was violated. Moreover, the record as a whole shows the City held a public comment period, multiple Planning Commission workshops, and two public hearings. The Winery submitted extensive comment, and the City and HP responded to the Winery's questions and concerns through hearings, letters, and e-mails. The Winery does not show a due process violation.

V

The Winery argues that the trial court erroneously dismissed its breach of contract claim. We disagree.

We review de novo a trial court's ruling on a motion to dismiss under CR 12(b)(6). *FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 180 Wn.2d 954, 962, 331 P.3d 29 (2014). Dismissal is appropriate where it appears beyond a reasonable doubt that a plaintiff will be unable to prove any set of facts that would justify recovery. *Id.* We assume the truth of the allegations in the plaintiff's complaint as well as hypothetical facts consistent with the allegations. *Id.* at 962-63. The court may consider any written instrument attached as an exhibit to the complaint, which is "a part thereof for all purposes." CR 10(c); *Trujillo v. Nw. Tr. Servs., Inc.*, 183 Wn.2d 820, 830 n.7, 355 P.3d 1100 (2015) (consideration of documents only *alleged* in the complaint). We are not required to accept legal conclusions as true. *Jackson v. Quality Loan Serv. Corp.*, 186 Wn. App. 838, 843, 347 P.3d 487 (2015). Here, the Winery attached the DA to its complaint, so it may be considered in deciding the City's CR 12(b)(6) motion.

In order to prevail on a breach of contract claim, the plaintiff must show a valid contract, breach of a duty arising under that contract, and resulting damage. *Silvey v. Numerica Credit Union*, 23 Wn. App. 2d 535, 544, 519 P.3d 920 (2022). We give the words in a contract their ordinary, plain, and popular meaning. *134th St. Lofts LLC v. iCap Nw. Opportunity Fund LLC*, 15 Wn. App. 2d 549, 563, 479 P.3d 367 (2020). The focus is on the parties' intent by looking to their " 'objective manifestations of the agreement' " that correspond to " 'reasonable meaning of the words used.' " *Id.* at 562 (quoting *Hearst Commc'ns Inc v. Seattle Times Co.*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005)). We conclude the Winery's allegations and hypothetical facts that may be drawn consistent with them fail to allege a breach of the DA.

The DA states, "The City hereby agrees to recognize the English Family's existing uses as legal nonconforming uses." Other terms of the DA provide that the listed preexisting uses of the Winery properties "shall not be subject to any land use laws, regulations, or ordinances enacted after said Uses became vested," and that "[t]he elements of this development agreement will be taken into consideration as the refinement efforts are undertaken" in the development of the Subarea Plan. We accept as part of the CR 12(b)(6) analysis that the City agreed not to make the Winery's nonconforming use "subject to" future land use ordinances and to "take[] into consideration" the DA in developing the Subarea Plan. But the Winery falls short of alleging factual circumstances permitting the conclusion that the City has failed to perform these promises. The Winery continued as a legal nonconforming use on its own property unaffected by the City's approval of a master plan for future development of a neighboring property. The Winery's

allegations do not show the City failed to take the DA into consideration, and the master plan requires that future development on the HP site will take the Winery into consideration. Because the Winery did not adequately allege a breach of the DA, we affirm the trial court's dismissal of its breach of contract claim.[2]

VI

HP requests attorney fees on appeal pursuant to RCW 4.84.370. Under this statute,

> reasonable attorneys' fees and costs shall be awarded to the prevailing party or substantially prevailing party on appeal before the court of appeals . . . of a decision by a . . . city . . . to issue, condition, or deny a development permit involving a site-specific rezone, zoning, plat, conditional use, variance, shoreline permit, building permit, site plan, or similar land use approval or decision.

RCW 4.84.370(1). An award of attorney fees is required under this statute if the prevailing party was the prevailing or substantially prevailing party before the city, and was the prevailing or substantially prevailing party in all prior judicial proceedings. RCW 4.84.370(1)(a)-(b). HP meets these statutory requirements, and we accordingly award HP its attorney fees subject to its further compliance with RAP 18.1(d). The City did not comply with RAP 18.1(b), and therefore is not entitled to and is not awarded attorney fees or other expenses. HP and the City are awarded statutory costs as prevailing parties under RAP 14.2.

Affirmed.

[2] Because our analysis of breach is dispositive of the Winery's breach of contract claim, we do not reach the parties' arguments on this claim regarding standing, the duty of good faith and fair dealing, causation, or damages.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Birk, J.

BIRK, J.

We concur:

Glasgow, CJ

GLASGOW, C.J.

Che, J

CHE, J.

APPENDIX B

Rev. Code Wash. (ARCW) § 36.70A.010

Statutes current with legislation from the 2023 Regular and 1st Special Sessions effective through July 1, 2023

Annotated Revised Code of Washington > Title 36 Counties (Chs. 36.01 — 36.900) > Chapter 36.70A Growth Management — Planning by Selected Counties and Cities (§§ 36.70A.010 — 36.70A.904)

36.70A.010. Legislative findings.

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

History

1990 1st ex.s. c 17 § 1.

Annotated Revised Code of Washington
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Rev. Code Wash. (ARCW) § 36.70A.030

Statutes current with legislation from the 2023 Regular and 1st Special Sessions effective through July 1, 2023

Annotated Revised Code of Washington > Title 36 Counties (Chs. 36.01 — 36.900) > Chapter 36.70A Growth Management — Planning by Selected Counties and Cities (§§ 36.70A.010 — 36.70A.904)

Notice

This section has more than one version with varying effective dates.

36.70A.030. Definitions. (Effective until July 23, 2023)

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

(1) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

(2) "Affordable housing" means, unless the context clearly indicates otherwise, residential housing whose monthly costs, including utilities other than telephone, do not exceed thirty percent of the monthly income of a household whose income is:

(a) For rental housing, sixty percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development; or

(b) For owner-occupied housing, eighty percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

(3) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by *RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

(4) "City" means any city or town, including a code city.

(5) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

(6) "Critical areas" include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas. "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.

(7) "Department" means the department of commerce.

(8) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

(9) "Emergency housing" means temporary indoor accommodations for individuals or families who are homeless or at imminent risk of becoming homeless that is intended to address the basic health, food, clothing, and personal hygiene needs of individuals or families. Emergency housing may or may not require occupants to enter into a lease or an occupancy agreement.

(10) "Emergency shelter" means a facility that provides a temporary shelter for individuals or families who are currently homeless. Emergency shelter may not require occupants to enter into a lease or an occupancy agreement. Emergency shelter facilities may include day and warming centers that do not provide overnight accommodations.

(11) "Extremely low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below thirty percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

(12) "Forestland" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under *RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. In determining whether forestland is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity of the land to urban, suburban, and rural settlements; (b) surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forestland to other uses.

(13) "Freight rail dependent uses" means buildings and other infrastructure that are used in the fabrication, processing, storage, and transport of goods where the use is dependent on and makes use of an adjacent short line railroad. Such facilities are both urban and rural development for purposes of this chapter. "Freight rail dependent uses" does not include buildings and other infrastructure that are used in the fabrication, processing, storage, and transport of coal, liquefied natural gas, or "crude oil" as defined in RCW 90.56.010.

(14) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

(15) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

(16) "Low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below eighty percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

(17) "Minerals" include gravel, sand, and valuable metallic substances.

(18) "Moderate-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below 120 percent of the median household income adjusted for

household size, for the county where the household is located, as reported by the United States department of housing and urban development.

(19) "Permanent supportive housing" is subsidized, leased housing with no limit on length of stay that prioritizes people who need comprehensive support services to retain tenancy and utilizes admissions practices designed to use lower barriers to entry than would be typical for other subsidized or unsubsidized rental housing, especially related to rental history, criminal history, and personal behaviors. Permanent supportive housing is paired with on-site or off-site voluntary services designed to support a person living with a complex and disabling behavioral health or physical health condition who was experiencing homelessness or was at imminent risk of homelessness prior to moving into housing to retain their housing and be a successful tenant in a housing arrangement, improve the resident's health status, and connect the resident of the housing with community-based health care, treatment, or employment services. Permanent supportive housing is subject to all of the rights and responsibilities defined in chapter 59.18 RCW.

(20) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(21) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(22) "Recreational land" means land so designated under **RCW 36.70A.1701 and that, immediately prior to this designation, was designated as agricultural land of long-term commercial significance under RCW 36.70A.170. Recreational land must have playing fields and supporting facilities existing before July 1, 2004, for sports played on grass playing fields.

(23) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

(24) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

(25) "Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural

services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

(26) "Short line railroad" means those railroad lines designated class II or class III by the United States surface transportation board.

(27) "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

(28) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(29) "Urban growth areas" means those areas designated by a county pursuant to RCW 36.70A.110.

(30) "Very low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below fifty percent of the median household income adjusted for household size, for the county where the household is located, as reported by the United States department of housing and urban development.

(31) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

History

2021 c 254, § 6, effective July 25, 2021; 2020 c 173, § 4, effective June 11, 2020; 2019 c 348, § 2, effective July 28, 2019; 2017 3rd sp.s. c 18 § 2; 2012 c 21 § 1. Prior: 2009 c 565 § 22; 2005 c 423 § 2; 1997 c 429 § 3; 1995 c 382 § 9; prior: 1994 c 307 § 2; 1994 c 257 § 5; 1990 1st ex.s. c 17 § 3.

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Rev. Code Wash. (ARCW) § 36.70A.080

Statutes current with legislation from the 2023 Regular and 1st Special Sessions effective through July 1, 2023

Annotated Revised Code of Washington > Title 36 Counties (Chs. 36.01 — 36.900) > Chapter 36.70A Growth Management — Planning by Selected Counties and Cities (§§ 36.70A.010 — 36.70A.904)

36.70A.080. Comprehensive plans — Optional elements.

(1) A comprehensive plan may include additional elements, items, or studies dealing with other subjects relating to the physical development within its jurisdiction, including, but not limited to:

(a) Conservation;

(b) Solar energy; and

(c) Recreation.

(2) A comprehensive plan may include, where appropriate, subarea plans, each of which is consistent with the comprehensive plan.

(3)

(a) Cities that qualify as a receiving city may adopt a comprehensive plan element and associated development regulations that apply within receiving areas under chapter 39.108 RCW.

(b) For purposes of this subsection, the terms "receiving city" and "receiving area" have the same meanings as provided in RCW 39.108.010.

History

2011 c 318 § 801; 1990 1st ex.s. c 17 § 8.

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Rev. Code Wash. (ARCW) § 36.70C.130

Statutes current with legislation from the 2023 Regular and 1st Special Sessions effective through July 1, 2023

Annotated Revised Code of Washington > Title 36 Counties (Chs. 36.01 — 36.900) > Chapter 36.70C Judicial Review of Land Use Decisions (§§ 36.70C.005 — 36.70C.900)

36.70C.130. Standards for granting relief — Renewable resource projects within energy overlay zones.

(1) The superior court, acting without a jury, shall review the record and such supplemental evidence as is permitted under RCW 36.70C.120. The court may grant relief only if the party seeking relief has carried the burden of establishing that one of the standards set forth in (a) through (f) of this subsection has been met. The standards are:

(a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;

(b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;

(c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;

(d) The land use decision is a clearly erroneous application of the law to the facts;

(e) The land use decision is outside the authority or jurisdiction of the body or officer making the decision; or

(f) The land use decision violates the constitutional rights of the party seeking relief.

(2) In order to grant relief under this chapter, it is not necessary for the court to find that the local jurisdiction engaged in arbitrary and capricious conduct. A grant of relief by itself may not be deemed to establish liability for monetary damages or compensation.

(3) Land use decisions made by a local jurisdiction concerning renewable resource projects within a county energy overlay zone are presumed to be reasonable if they are in compliance with the requirements and standards established by local ordinance for that zone. However, for land use decisions concerning wind power generation projects, either:

(a) The local ordinance for that zone is consistent with the department of fish and wildlife's wind power guidelines; or

(b) The local jurisdiction prepared an environmental impact statement under chapter 43.21C RCW on the energy overlay zone; and

(i) The local ordinance for that zone requires project mitigation, as addressed in the environmental impact statement and consistent with local, state, and federal law;

(ii) The local ordinance for that zone requires site specific fish and wildlife and cultural resources analysis; and

(iii) The local jurisdiction has adopted an ordinance that addresses critical areas under chapter 36.70A RCW.

(4) If a local jurisdiction has taken action and adopted local ordinances consistent with subsection (3)(b) of this section, then wind power generation projects permitted consistently with the energy overlay zone are

deemed to have adequately addressed their environmental impacts as required under chapter 43.21C RCW.

History

2009 c 419 § 2; 1995 c 347 § 714.

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Rev. Code Wash. (ARCW) § 43.21C.075

Statutes current with legislation from the 2023 Regular and 1st Special Sessions effective through July 1, 2023

Annotated Revised Code of Washington > Title 43 State Government — Executive (Chs. 43.01 — 43.950) > Chapter 43.21C State Environmental Policy (§§ 43.21C.010 — 43.21C.914)

43.21C.075. Appeals.

(1) Because a major purpose of this chapter is to combine environmental considerations with public decisions, any appeal brought under this chapter shall be linked to a specific governmental action. The State Environmental Policy Act provides a basis for challenging whether governmental action is in compliance with the substantive and procedural provisions of this chapter. The State Environmental Policy Act is not intended to create a cause of action unrelated to a specific governmental action.

(2) Unless otherwise provided by this section:

(a) Appeals under this chapter shall be of the governmental action together with its accompanying environmental determinations.

(b) Appeals of environmental determinations made (or lacking) under this chapter shall be commenced within the time required to appeal the governmental action which is subject to environmental review.

(3) If an agency has a procedure for appeals of agency environmental determinations made under this chapter, such procedure:

(a) Shall allow no more than one agency appeal proceeding on each procedural determination (the adequacy of a determination of significance/nonsignificance or of a final environmental impact statement);

(b) Shall consolidate an appeal of procedural issues and of substantive determinations made under this chapter (such as a decision to require particular mitigation measures or to deny a proposal) with a hearing or appeal on the underlying governmental action by providing for a single simultaneous hearing before one hearing officer or body to consider the agency decision or recommendation on a proposal and any environmental determinations made under this chapter, with the exception of:

(i) An appeal of a determination of significance;

(ii) An appeal of a procedural determination made by an agency when the agency is a project proponent, or is funding a project, and chooses to conduct its review under this chapter, including any appeals of its procedural determinations, prior to submitting an application for a project permit;

(iii) An appeal of a procedural determination made by an agency on a nonproject action; or

(iv) An appeal to the local legislative authority under RCW 43.21C.060 or other applicable state statutes;

(c) Shall provide for the preparation of a record for use in any subsequent appeal proceedings, and shall provide for any subsequent appeal proceedings to be conducted on the record, consistent with other applicable law. An adequate record consists of findings and conclusions, testimony under oath, and taped or written transcript. An electronically recorded transcript will suffice for purposes of review under this subsection; and

(d) Shall provide that procedural determinations made by the responsible official shall be entitled to substantial weight.

(4) If a person aggrieved by an agency action has the right to judicial appeal and if an agency has an administrative appeal procedure, such person shall, prior to seeking any judicial review, use such agency procedure if any such procedure is available, unless expressly provided otherwise by state statute.

(5) Some statutes and ordinances contain time periods for challenging governmental actions which are subject to review under this chapter, such as various local land use approvals (the "underlying governmental action"). RCW 43.21C.080 establishes an optional "notice of action" procedure which, if used, imposes a time period for appealing decisions under this chapter. This subsection does not modify any such time periods. In this subsection, the term "appeal" refers to a judicial appeal only.

(a) If there is a time period for appealing the underlying governmental action, appeals under this chapter shall be commenced within such time period. The agency shall give official notice stating the date and place for commencing an appeal.

(b) If there is no time period for appealing the underlying governmental action, and a notice of action under RCW 43.21C.080 is used, appeals shall be commenced within the time period specified by RCW 43.21C.080.

(6)

(a) Judicial review under subsection (5) of this section of an appeal decision made by an agency under subsection (3) of this section shall be on the record, consistent with other applicable law.

(b) A taped or written transcript may be used. If a taped transcript is to be reviewed, a record shall identify the location on the taped transcript of testimony and evidence to be reviewed. Parties are encouraged to designate only those portions of the testimony necessary to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence relevant to the disputed finding. Any other party may designate additional portions of the taped transcript relating to issues raised on review. A party may provide a written transcript of portions of the testimony at the party's own expense or apply to that court for an order requiring the party seeking review to pay for additional portions of the written transcript.

(c) Judicial review under this chapter shall without exception be of the governmental action together with its accompanying environmental determinations.

(7) Jurisdiction over the review of determinations under this chapter in an appeal before an agency or superior court shall upon consent of the parties be transferred in whole or part to the shorelines hearings board. The shorelines hearings board shall hear the matter and sign the final order expeditiously. The superior court shall certify the final order of the shorelines hearings board and the certified final order may only be appealed to an appellate court. In the case of an appeal under this chapter regarding a project or other matter that is also the subject of an appeal to the shorelines hearings board under chapter 90.58 RCW, the shorelines hearings board shall have sole jurisdiction over both the appeal under this section and the appeal under chapter 90.58 RCW, shall consider them together, and shall issue a final order within one hundred eighty days as provided in RCW 90.58.180.

(8) For purposes of this section and RCW 43.21C.080, the words "action", "decision", and "determination" mean substantive agency action including any accompanying procedural determinations under this chapter (except where the word "action" means "appeal" in RCW 43.21C.080(2)). The word "action" in this section and RCW 43.21C.080 does not mean a procedural determination by itself made under this chapter. The word "determination" includes any environmental document required by this chapter and state or local implementing rules. The word "agency" refers to any state or local unit of government. Except as provided in subsection (5) of this section, the word "appeal" refers to administrative, legislative, or judicial appeals.

(9) The court in its discretion may award reasonable attorneys' fees of up to one thousand dollars in the aggregate to the prevailing party, including a governmental agency, on issues arising out of this chapter if the court makes specific findings that the legal position of a party is frivolous and without reasonable basis.

History

1997 c 429 § 49; 1995 c 347 § 204; 1994 c 253 § 4; 1983 c 117 § 4.

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This file includes all rules adopted and filed through the 23-09 Washington State Register (WSR), April 19, 2023

WAC 197-11-060. Content of environmental review.

(1) Environmental review consists of the range of proposed activities, alternatives, and impacts to be analyzed in an environmental document, in accordance with SEPA's goals and policies. This section specifies the content of environmental review common to a*ll* environmental documents required under SEPA.

(2) The content of environmental review:

(a) Depends on each particular proposal, on an agency's existing planning and decision-making processes, and on the time when alternatives and impacts can be most meaningfully evaluated;

(b) For the purpose of deciding whether an EIS is required, is specified in the environmental checklist, in WAC 197-11-330 and 197-11-444;

(c) For an environmental impact statement, is considered its "scope" (WAC 197-11-792 and Part Four of these rules);

(d) For any supplemental environmental review, is specified in Part Six.

(3) Proposals.

(a) Agencies shall make certain that the proposal that is the subject of environmental review is properly defined.

(i) Proposals include public projects or proposals by agencies, proposals by applicants, if any, and proposed actions and regulatory decisions of agencies in response to proposals by applicants.

(ii) A proposal by a lead agency or applicant may be put forward as an objective, as several alternative means of accomplishing a goal, or as a particular or preferred course of action.

(iii) Proposals should be described in ways that encourage considering and comparing alternatives. Agencies are encouraged to describe public or nonproject proposals in terms of objectives rather than preferred solutions. A proposal could be described, for example, as "reducing flood damage and achieving better flood control by one or a combination of the following means: Building a new dam; maintenance dredging; use of shoreline and land use controls; purchase of floodprone areas; or relocation assistance."

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

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

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

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

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

(ii) When preparing environmental documents on similar actions, agencies may find it useful to define the proposals in one of the following ways: (A) Geographically, which may include actions occurring in the same general location, such as a body of water, region, or metropolitan area; or (B) generically, which may include actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, environmental media, or subject matter.

(4) Impacts.

(a) SEPA's procedural provisions require the consideration of "environmental" impacts (see definition of "environment" in WAC 197-11-740 and of "impacts" in WAC 197-11-752), with attention to impacts that are likely, not merely speculative. (See definition of "probable" in WAC 197-11-782 and 197-11-080 on incomplete or unavailable information.)

(b) In 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 (see WAC 197-11-330(3) also).

(c) Agencies shall carefully consider the range of probable impacts, including short-term and long-term effects. Impacts shall include those that are likely to arise or exist over the lifetime of a proposal or, depending on the particular proposal, longer.

(d) A proposal's effects include direct and indirect impacts caused by a proposal. Impacts include those effects resulting from growth caused by a proposal, as well as the likelihood that the present proposal will serve as a precedent for future actions. For example, adoption of a zoning ordinance will encourage or tend to cause particular types of projects or extension of sewer lines would tend to encourage development in previously unsewered areas.

(e) The range of impacts to be analyzed in an EIS (direct, indirect, and cumulative impacts, WAC 197-11-792) may be wider than the impacts for which mitigation measures are required of applicants (WAC 197-11-660). This will depend upon the specific impacts, the extent to which the adverse impacts are attributable to the applicant's proposal, and the capability of applicants or agencies to control the impacts in each situation.

(5) Phased review.

(a) Lead agencies shall determine the appropriate scope and level of detail of environmental review to coincide with meaningful points in their planning and decision-making processes. (See WAC 197-11-055 on timing of environmental review.)

(b) Environmental review may be phased. If used, phased review assists agencies and the public to focus on issues that are ready for decision and exclude from consideration issues already decided or not yet ready. Broader environmental documents may be followed by narrower documents, for example, that incorporate prior general discussion by reference and concentrate solely on the issues specific to that phase of the proposal.

(c) Phased review is appropriate when:

(I) The sequence Is from a nonproject document to a document of narrower scope such as a site specific analysis (see, for example, WAC 197-11-443); or

(ii) 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).

(d) Phased review is not appropriate when:

(i) The sequence is from a narrow project document to a broad policy document;

(ii) It would merely divide a larger system into exempted fragments or avoid discussion of cumulative impacts; or

(iii) It would segment and avoid present consideration of proposals and their impacts that are required to be evaluated in a single environmental document under WAC 197-11-060 (3)(b) or 197-11-305(1); however, the level of detail and type of environmental review may vary with the nature and timing of proposals and their component parts.

(e) When a lead agency knows it is using phased review, it shall so state in its environmental document.

(f) Agencies shall use the environmental checklist, scoping process, nonproject EISs, incorporation by reference, adoption, and supplemental EISs, and addenda, as appropriate, to avoid duplication and excess paperwork.

(g) Where proposals are related to a large existing or planned network, such as highways, streets, pipelines, or utility lines or systems, the lead agency may analyze in detail the overall network as the present proposal or may select some of the future elements for present detailed consideration. Any phased review shall be logical in relation to the design of the overall system or network, and shall be consistent with this section and WAC 197-11-070.

History

Statutory Authority: 1995 c 347 (ESHB 1724) and RCW 43.21C.110. 97-21-030 (Order 95-16), § 197-11-060, filed 10/10/97, effective 11/10/97. Statutory Authority: RCW 43.21C.110. 84-05-020 (Order DE 83-39), § 197-11-060, filed 2/10/84, effective 4/4/84.

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WAC § 197-11-210

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WA - Washington Administrative Code > TITLE 197. ECOLOGY, DEPARTMENT OF (ENVIRONMENTAL POLICY, COUNCIL ON) > CHAPTER 11. SEPA RULES > PART TWO - GENERAL REQUIREMENTS

WAC 197-11-210. SEPA/GMA integration.

(1) The purpose of WAC 197-11-210 through 197-11-235 is to authorize GMA counties/cities to integrate the requirements of SEPA and the Growth Management Act (GMA) to ensure that environmental analyses under SEPA can occur concurrently with and as an integral part of the planning and decision making under GMA. Nothing in these sections is intended to jeopardize the adequacy or require the revision of any SEPA or GMA processes, analyses or document deadlines specified in GMA.

(2) GMA counties/cities may use the procedures of these rules to satisfy the requirements of SEPA for GMA actions. Other jurisdictions planning under GMA may also use these integration procedures.

(3) Environmental analysis at each stage of the GMA planning process should, at a minimum, address the environmental impacts associated with planning decisions at that stage of the planning process. Impacts associated with later planning stages may also be addressed. Environmental analysis that analyzes environmental impacts in the GMA planning process can:

(a) Result in better-informed GMA planning decisions;

(b) Avoid delays, duplication and paperwork in project-level environmental analysis; and

(c) Narrow the scope of environmental review and mitigation under SEPA at the project level.

History

Statutory Authority: 1995 c 347 (ESHB 1724) and RCW 43.21C.110. 97-21-030 (Order 95-16), § 197-11-210, filed 10/10/97, effective 11/10/97. Statutory Authority: RCW 43.21C.110. 95-07-023 (Order 94-22), § 197-11-210, filed 3/6/95, effective 4/6/95.

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WAC § 365-196-010

This file includes all rules adopted and filed through the 23-09 Washington State Register (WSR), April 19, 2023

WAC 365-196-010. Background.

Through the Growth Management Act, the legislature provided a new framework for land use planning and the regulation of development in Washington state. The act was enacted in response to problems associated with uncoordinated and unplanned growth and a lack of common goals in the conservation and the wise use of our lands. The problems included increased traffic congestion, pollution, school overcrowding, urban sprawl, and the loss of rural lands.

(1) Major features of the act's framework include:

(a) A requirement that counties with specified populations and rates of growth and the cities within them adopt comprehensive plans and development regulations under the act. Other counties can choose to be covered by this requirement, thereby including the cities they contain.

(b) A set of common goals to guide the development of comprehensive plans and development regulations.

(c) The concept that the process should be a "bottom up" effort, involving early and continuous public participation, with the central locus of decision-making at the local level, bounded by the goals and requirements of the act.

(d) Requirements for the locally developed plans to be internally consistent, consistent with county-wide planning policies and multicounty planning policies, and consistent with the plans of other counties and cities where there are common borders or related regional issues.

(e) A requirement that development regulations adopted to implement the comprehensive plans be consistent with such plans.

(f) The principle that development and the providing of public facilities and services needed to support development should occur concurrently.

(g) A determination that planning and plan implementation actions should address difficult issues that have resisted resolution in the past, such as:

(i) The timely financing of needed infrastructure;

(ii) Providing adequate and affordable housing for all economic segments of the population;

(iii) Concentrating growth in urban areas, provided with adequate urban services;

(iv) The siting of essential public facilities;

(v) The designation and conservation of agricultural, forest, and mineral resource lands;

(vi) The designation and protection of environmentally critical areas.

(h) A determination that comprehensive planning can simultaneously address these multiple issues by focusing on the land development process as a common underlying factor.

(i) An intention that economic development be encouraged and fostered within the planning and regulatory scheme established for managing growth.

(j) A recognition that the act is a fundamental building block of regulatory reform. The state and local government have invested considerable resources in an act that should serve as the integrating framework for other land use related laws.

(k) A desire to recognize the importance of rural areas and provide for rural economic development.

(l) A requirement that counties and cities must periodically review and update their comprehensive plans and development regulations to ensure continued compliance with the goals and requirements of the act.

(2) The pattern of development established in the act. The act calls for a pattern of development that consists of different types of land uses existing on the landscape. These types generally include urban land, rural land, resource lands, and critical areas. Critical areas exist in rural, urban, and resource lands. Counties and cities must designate lands in these categories and develop policies governing development consistent with these designations. The act establishes criteria to guide the designation process and to guide the character of development in these lands.

(3) How the act applies to existing developed areas. The act is prospective in nature. It establishes a framework for how counties and cities plan for future growth. In many areas, the pattern called for in the act is a departure from the pattern that existed prior to the act. As a consequence, areas developed prior to the act may not clearly fit into the pattern of development established in the act. In rural areas, comprehensive plans developed under the act should find locally appropriate ways to recognize these areas without allowing these patterns to spread into new undeveloped areas. In urban areas, comprehensive plans should find locally appropriate ways to encourage redevelopment of these areas in a manner consistent with the pattern of development envisioned by the act.

History

Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-010, filed 1/19/10, effective 2/19/10.

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WAC § 365-196-210

This file includes all rules adopted and filed through the 23-09 Washington State Register (WSR), April 19, 2023

WAC 365-196-210. Definitions of terms as used in this chapter.

The following are definitions which are not defined in RCW 36.70A.030 but are defined here for purposes of the procedural criteria.

(1) "Act" means the Growth Management Act, as enacted in chapter 17, Laws of 1990 1st ex. sess., and chapter 32, Laws of 1991 sp. sess., state of Washington as amended. The act is codified primarily in chapter 36.70A RCW.

(2) "Achieved density" means the density at which new development occurred in the planning period preceding the analysis required in either RCW 36.70A.130(3) or 36.70A.215.

(3) "Adequate public facilities" means facilities which have the capacity to serve development without decreasing levels of service below locally established minimums.

(4) "Affordable housing" means residential housing that is rented or owned by a person or household whose monthly housing costs, including utilities other than telephone, do not exceed thirty percent of the household's monthly income.

(5) "Allowed densities" means the density, expressed in dwelling units per acre, allowed under a county's or city's development regulations when considering the combined effects of all applicable development regulations.

(6) "Assumed densities" means the density at which future development is expected to occur as specified in the land capacity analysis or the future land use element. Assumed densities are also referred to in RCW 36.70A.110 as densities sufficient to permit the urban growth that is projected to occur.

(7) "Concurrency" means that adequate public facilities are available when the impacts of development occur, or within a specified time thereafter. This definition includes the concept of "adequate public facilities" as defined above.

(8) "Consistency" means that no feature of a plan or regulation is incompatible with any other feature of a plan or regulation. Consistency is indicative of a capacity for orderly integration or operation with other elements in a system.

(9) "Contiguous development" means development of areas immediately adjacent to one another.

(10) "Coordination" means consultation and cooperation among jurisdictions.

(11) "Cultural resources" is a term used interchangeably with "lands, sites, and structures, which have historical or archaeological and traditional cultural significance."

(12) "Demand management strategies" or "transportation demand management strategies" means strategies designed to change travel behavior to make more efficient use of existing facilities to meet travel demand. Examples of demand management strategies can include strategies that:

(a) Shift demand outside of the peak travel time;

(b) Shift demand to other modes of transportation;

(c) Increase the average number of occupants per vehicle;

(d) Decrease the length of trips; and

(e) Avoid the need for vehicle trips.

(13) "Domestic water system" means any system providing a supply of potable water which is deemed adequate pursuant to RCW 19.27.097 for the intended use of a development.

(14) "Family day-care provider" is defined in RCW 43.215.010. It is a person who regularly provides child care and early learning services for not more than twelve children. Children include both the provider's children, close relatives and other children irrespective of whether the provider gets paid to care for them. They provide their services in the family living quarters of the day care provider's home.

(15) "Financial commitment" means that sources of public or private funds or combinations thereof have been identified which will be sufficient to finance public facilities necessary to support development and that there is reasonable assurance that such funds will be timely put to that end.

(16) "Growth Management Act" - see definition of "act."

(17) "Historic preservation" or "preservation" is defined in the National Historic Preservation Act of 1966, as identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities or any combination of the foregoing activities.

(18) "Lands, sites, and structures, that have historical, archaeological, or traditional cultural significance" are the tangible and material evidence of the human past, aged fifty years or older, and include archaeological sites, historic buildings and structures, districts, landscapes, and objects.

(19) "Level of service" means an established minimum capacity of public facilities or services that must be provided per unit of demand or other appropriate measure of need. Level of service standards are synonymous with locally established minimum standards.

(20) "May," as used in this chapter, indicates an option counties and cities can take at their discretion.

(21) "Must," as used in this chapter, indicates a requirement for compliance with the act. It has the same meaning within this chapter as "shall."

(22) "New fully contained community" is a development proposed for location outside of the existing designated urban growth areas which is characterized by urban densities, uses, and services, and meets the criteria of RCW 36.70A.350.

(23) "Planning period" means the twenty-year period following the adoption of a comprehensive plan or such longer period as may have been selected as the initial planning horizon.

(24) "Public service obligations" means obligations imposed by law on utilities to furnish facilities and supply service to all who may apply for and be reasonably entitled to service.

(25) "Regional transportation plan" means the transportation plan for the regionally designated transportation system which is produced by the regional transportation planning organization.

(26) "Regional transportation planning organization (RTPO)" means the voluntary organization conforming to RCW 47.80.020, consisting of counties and cities within a region containing one or more counties which have common transportation interests.

(27) "Rural lands" means all lands which are not within an urban growth area and are not designated as natural resource lands having long-term commercial significance for production of agricultural products, timber, or the extraction of minerals.

(28) "Sanitary sewer systems" means all facilities, including approved on-site disposal facilities, used in the collection, transmission, storage, treatment, or discharge of any waterborne waste, whether domestic in origin or a combination of domestic, commercial, or industrial waste. On-site disposal facilities are only considered sanitary sewer systems if they are designed to serve urban densities.

(29) "Shall," as used in this chapter, indicates a requirement for compliance with the act. It has the same meaning within this chapter as "must."

(30) "Should," as used in this chapter, indicates the advice of the department, but does not indicate a requirement for compliance with the act.

(31) "Solid waste handling facility" means any facility for the transfer or ultimate disposal of solid waste, including land fills and municipal incinerators.

(32) "Sufficient land capacity for development" means that the comprehensive plan and development regulations provide for the capacity necessary to accommodate all the growth in population and employment that is allocated to that jurisdiction through the process outlined in the county-wide planning policies.

(33) "Transportation facilities" includes capital facilities related to air, water, or land transportation.

(34) "Transportation level of service standards" means a measure which describes the operational condition of the travel stream and acceptable adequacy requirements. Such standards may be expressed in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety.

(35) "Transportation system management" means the use of low cost solutions to increase the performance of the transportation system. Transportation system management (TSM) strategies include but are not limited to signalization, channelization, ramp metering, incident response programs, and bus turn-outs.

(36) "Utilities" or "public utilities" means enterprises or facilities serving the public by means of an integrated system of collection, transmission, distribution, and processing facilities through more or less permanent physical connections between the plant of the serving entity and the premises of the customer. Included are systems for the delivery of natural gas, electricity, telecommunications services, and water, and for the disposal of sewage.

(37) "Visioning" means a process of citizen involvement to determine values and ideals for the future of a community and to transform those values and ideals into manageable and feasible community goals.

History

Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-210, filed 1/19/10, effective 2/19/10.

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WAC § 365-196-800

This file includes all rules adopted and filed through the 23-09 Washington State Register (WSR), April 19, 2023

WA - Washington Administrative Code > TITLE 365. COMMERCE, DEPARTMENT OF (COMMUNITY DEVELOPMENT) > CHAPTER 196. GROWTH MANAGEMENT ACT -- PROCEDURAL CRITERIA FOR ADOPTING COMPREHENSIVE PLANS AND DEVELOPMENT REGULATIONS > PART EIGHT. DEVELOPMENT REGULATIONS

WAC 365-196-800. Relationship between development regulations and comprehensive plans.

(1) Development regulations under the act are specific controls placed on development or land use activities by a county or city. Development regulations must be consistent with and implement comprehensive plans adopted pursuant to the act.

"Implement" in this context has a more affirmative meaning than merely "consistent." See WAC 365-196-210. "Implement" connotes not only a lack of conflict but also a sufficient scope to fully carry out the goals, policies, standards and directions contained in the comprehensive plan.

(2) When a county first becomes subject to the full planning requirements of RCW 36.70A.040, it must adopt development regulations designating interim urban growth areas as outlined under RCW 36.70A.110(5). The legislature specifically provided that the designation of interim urban growth areas shall be in the form of development regulations. Such interim designations shall generally precede the adoption of comprehensive plans.

History

Statutory Authority: RCW 36.70A.050 and 36.70A.190. 10-03-085, § 365-196-800, filed 1/19/10, effective 2/19/10.

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WAC § 365-197-030

This file includes all rules adopted and filed through the 23-09 Washington State Register (WSR), April 19, 2023

WAC 365-197-030. Integrated project review--GMA project consistency analysis and environmental review under SEPA.

The GMA is a fundamental building block of regulatory reform. The GMA should serve as an integrating framework for other land use-related laws. (ESHB 1724, Section 1.)

Integration of permit review and environmental review is intended to eliminate duplication in processes and requirements. The legislature recognized that consistency analysis and determinations of whether environmental impacts have been adequately addressed involve many of the same studies and analyses. SEPA substantive authority should not be used to condition or deny a permit for those impacts adequately addressed by the applicable development regulations.

The primary role of environmental review under SEPA at the project level is to focus on those environmental impacts that have not been addressed by a GMA county"s/city's development regulations and/or comprehensive plan adopted under chapter 36.70A RCW, or other local, state, and federal laws and regulations. SEPA substantive authority should only be used when the impacts cannot be adequately addressed by existing laws. As consistency analysis involves the application of development regulations and/or the comprehensive plan to a specific project, it will also help answer the question of whether a project's environmental impacts have been adequately addressed by the regulations and/or plan policies.

During project review, a GMA county/city may determine that some or all of the environmental impacts of the project have been addressed by its development regulations, comprehensive plan, or other applicable local, state, or federal laws or rules (RCW 43.21C.240 and WAC 197-11-158). The GMA county/city may make this determination during the course of environmental review and preparation of a threshold determination (including initial consistency review), if the impacts have been adequately addressed in the applicable regulations, plan policies, or other laws. "Adequately addressed" is defined as having identified the impacts and avoided, otherwise mitigated, or designated as acceptable the impacts associated with certain levels of service, land use designations, development standards, or other land use planning decisions required or allowed under the GMA. Once a determination has been made that an impact has been adequately addressed, the jurisdiction may not require additional mitigation for that impact under its SEPA substantive authority.

Thus, through the project review process:

(1) If the applicable regulations require studies that adequately analyze all of the project's specific probable adverse environmental impacts, additional studies under SEPA will not be necessary on those impacts;

(2) If the applicable regulations require measures that adequately address such environmental impacts, additional measures would likewise not be required under SEPA; and

(3) If the applicable regulations do not adequately analyze or address a proposal's specific probable adverse environmental impacts, SEPA provides the authority and procedures for additional review. (Note to RCW 43.21C.240.)

History

WAC § 365-197-030

Statutory Authority: RCW 36.70B.040. 01-13-039, § 365-197-030, filed 6/13/01, effective 7/14/01.

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APPENDIX C

20.440.020 List of Zoning Districts.

A. OCI: Office Commercial Industrial. The OCI zoning district provides appropriate locations for office, light industrial and small-scale commercial uses (e.g., restaurants, personal services and fitness centers) either singly or in combination. Only those light industrial uses with no off-site impacts, e.g., noise, glare, odor, vibration, outdoor storage, or process visibility are permitted in the OCI zone. In addition to mandatory site plan review, design and development standards in the OCI zone have been adopted to ensure that developments will be well-integrated, attractively landscaped, and pedestrian friendly. The OCI zone combines two zones that were referred to as the Office Campus (OC) and Industrial Commercial (MC) zones prior to March 11, 2004.

B. IL: Light Industrial. The IL zoning district provides appropriate locations for combining light, clean industries including industrial service, manufacturing, research/development, warehousing activities, and general office uses and limited retail. These activities do not require rail or marine access and have limited outdoor storage.

C. IH: Heavy Industrial. The IH zoning district provides appropriate locations for intensive industrial uses including industrial service, manufacturing and production, research and development, warehousing and freight movement, railroad yards, waste-related and wholesale sales activities. Activities in the IH zone include those that involve the use of raw materials, require significant outdoor storage and generate heavy truck and/or rail traffic. Because of these characteristics, IH-zoned property has been carefully located to minimize impacts on established residential, commercial and light industrial areas.

D. ECX: Employment Center Mixed-Use. The ECX zoning district is designed to provide for a concentrated urban mix of office, light industrial and small-scale commercial uses (e.g., restaurants, personal services and fitness centers) either singly or in combination in the Section 30 Employment Center Plan District. Only those light industrial uses with no off-site impacts, e.g., noise, glare, odor, vibration, outdoor storage, or process visibility are permitted in the ECX zone. In addition, the ECX zoning district provides for optional Urban Neighborhood Overlay(s), allowing for two concentrated urban mixed-use commercial/residential neighborhoods. Mandatory master planning and development standards in the ECX zone have been adopted to ensure that developments will be well-integrated, attractively landscaped, and pedestrian friendly. (Ord. M-3930 § 6, 10/05/2009; Ord. M-3730 § 24, 12/19/2005; Ord. M-3643, 01/26/2004)

The Vancouver Municipal Code is current through Ordinance M-4404, passed January 23, 2023.

Disclaimer: The city clerk's office has the official version of the Vancouver Municipal Code. Users should contact the city clerk's office for ordinances passed subsequent to the ordinance cited above.

City Website: www.cityofvancouver.us
City Telephone: (360) 487-8711
Code Publishing Company, A General Code Company

APPENDIX D

Chapter 20.690
SECTION 30 EMPLOYMENT CENTER PLAN DISTRICT

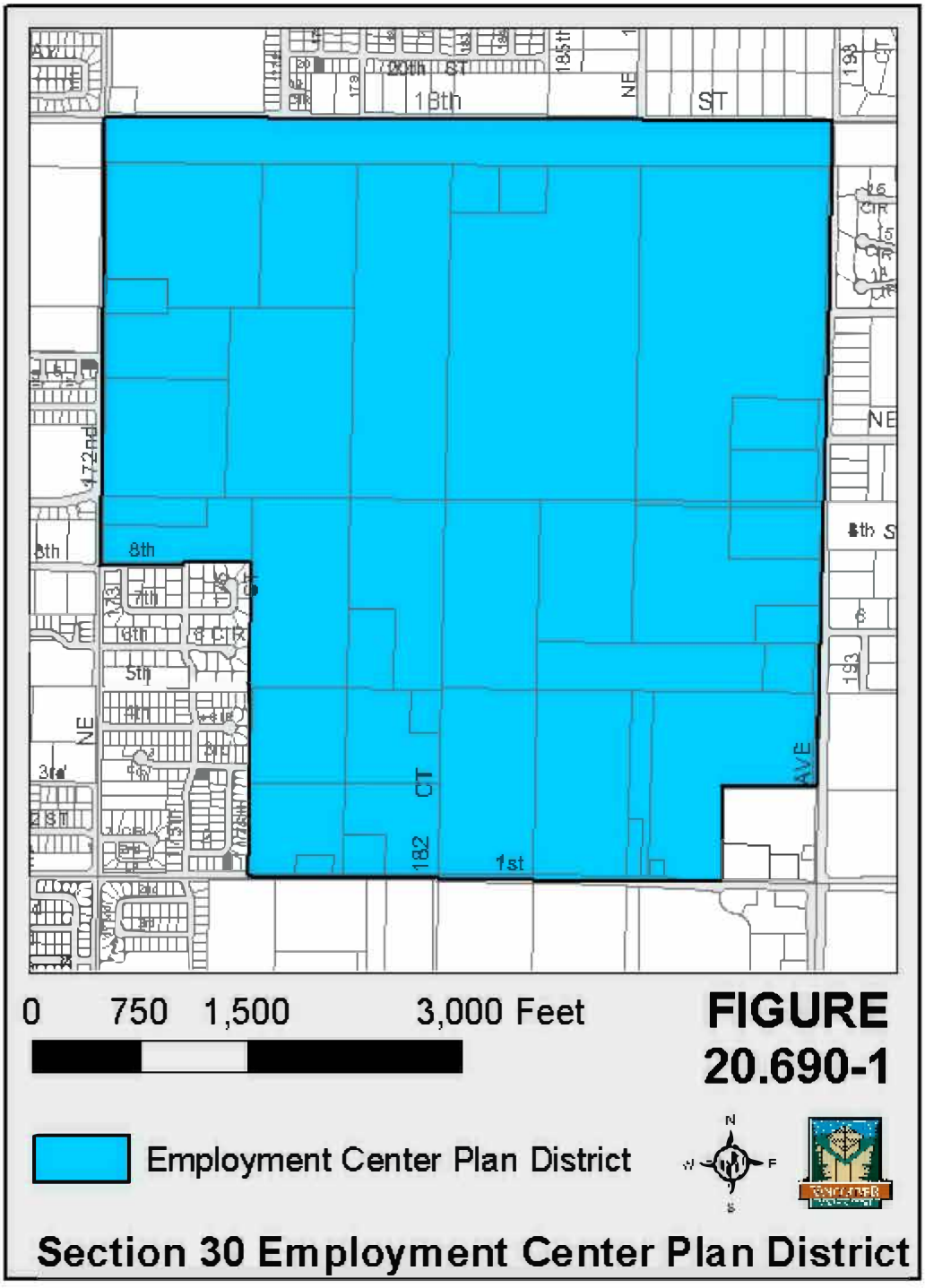
Sections:

20.690.010 Purpose.

The Section 30 Employment Center Plan District (Plan District) intends to promote and guide private development as directed by the vision, goals, and policies of the adopted Section 30 Employment Center Plan (M – _____); provide clear objectives for those proposing to develop in the Section 30 Plan area; maintain and enhance property values; promote economic provision of public services; and ensure that each development or project fits with its neighbors and within the Subarea. (Ord. M-3930, Added, 10/05/2009, Sec 4)

20.690.020 Applicability.

In general, 18th Street to the north, 192nd Avenue to the east, 1st Street to the south, the boundary of an existing subdivision in the southwest corner, and 172nd Avenue to the northwest define the plan area, as illustrated in Figure 20.690-1.



(Ord. M-3930, Added, 10/05/2009, Sec 4)

20.690.030 Allowed Uses.

A. Development Agreements in existence on the effective date of this ordinance control the uses and development standards of some of the properties in the Plan District. In order to protect the investments made in reliance upon such agreements, improvements made or site plans approved consistent with these agreements shall not be deemed nonconforming.

B. *Zoning designations.* Property within the Plan District is zoned Employment Center Mixed-use (ECX). Additionally, an Urban Neighborhood Overlay that may be located in two areas of the Plan District is established under VMC 20.690.070, Section 30 Urban Neighborhood Overlay. The zone designations and overlay enable development in accordance with the adopted policies of the Section 30 Employment Center Plan.

C. Properties with recorded Development Agreements, following the provisions of this Plan District related to allowed uses and development standards is optional. Properties with a Development Agreement shall develop under one of the following choices:

1. Under the provisions for uses and standards determined by the recorded Development Agreements, or

2. Under the provisions of the zoning code as it exists on the date of application including uses and standards, or

3. Under the provisions for uses determined by the Development Agreements and code standards existing on the date of application.

D. *Master Planning Required.* All development, including properties with an existing Development Agreement shall be subject to the master plan process contained in VMC 20.690.050, Master Planning. Properties applying for an existing use expansion, VMC 20.690.030(E) are exempt from the Master Plan Process. The Planning Official may at his or her discretion exempt or limit master planning process requirements for individual development proposals whose development has no significant area wide infrastructure or land use implications.

E. *Existing use expansion.* Existing uses established before the time of the adoption of the ordinance codified in this section may expand subject to review criteria contained in VMC 20.690.050(C), Review Criteria and Process, and the review procedures contained in Chapter 20.210 VMC, Decision Making Procedures.

F. Mining and related uses are allowed as specified in Chapter 20.540 VMC, Surface Mining Overlay District, and as permitted in Development Agreements.

G. Future urban uses are allowed as specified in Table 20.440.030-1 for the ECX zone. (Ord. M-4034 § 21, 12/03/2012; Ord. M-3930, Added, 10/05/2009, Sec 4)

20.690.040 Development Standards.

Development within the Plan District shall be subject to the development standards contained in VMC 20.440.040 and 20.440.050 except as modified herein. Urban Neighborhood Overlay development is subject to the development standards contained in VMC 20.690.070, Section 30 Urban Neighborhood Overlay.

A. New Heavy Industrial (IH) land uses allowed by recorded Development Agreements shall not abut an existing Urban Neighborhood Overlay development unless separated by a major physical barrier (such as topographic break, collector street, water feature, or open space) that will reduce impacts to any commercial and residential activity.

B. *Maximum Building Heights.* Building heights shall not be restricted within the ECX zoned properties of the Plan District. Refer to the Section 30 Design Guidelines for proposed development along the southwestern quarry slope.

C. Drive-through uses shall be limited to within parking structures or building.

D. *Building Setbacks.*

1. Any development adjacent to the Principal Arterial streets bordering the Section 30 Plan District shall provide a 20-foot minimum landscaped setback from the back of sidewalk.

2. All other street setbacks shall be a landscaped 10-foot maximum from the back of sidewalk. An exception for up to a 20-foot maximum setback shall be allowed for proposed green street features, publicly accessible plazas, or due to topographic constraints.

3. New Heavy Industrial uses allowed by recorded Development Agreements shall provide a minimum 10-foot landscaped side and rear set back. Landscape shall include shrubs to form a six-foot-high buffer screen 95 percent opaque year-round.

4. All landscaped setbacks shall at a minimum meet the Section 30 Landscape Design Guidelines.

E. Parking spaces provided for individual uses shall be no less than 80 percent of the minimum required indicated in Table 20.945.070-2, and no more than 115 percent to the amount provided in Table 20.945.070-2. The planning official may approve parking beyond the maximum or a parking reduction from the required minimum based on a parking study that justifies the change. Structural parking is permitted subject to the design standards contained in VMC 20.945.060. Structural parking shall count toward the minimum but not the maximum number of parking stalls.

F. A shared use path shall be developed along 192nd Avenue and shall be designed at a minimum similarly to the existing shared use path on 192nd Avenue south of SE 1st Street.

G. *Roadways and Access.*

1. Collector arterial roadway alignment shall be consistent with the conceptual roadway alignments shown in the Section 30 Employment Center Plan document.

2. Connections to streets that border Section 30 Plan District shall be substantially as shown in the Section 30 Employment Center Plan document.

3. All collector arterial to collector arterial intersections internal to the Plan District (excludes the four surrounding arterials) shall be roundabout intersections. Use of roundabouts for local roadway connections is also encouraged to promote system efficiency and create a unique identity.

4. Traffic calming and context sensitive design shall be incorporated into the design of all internal roadways.

5. The maximum block face length within the Plan District shall be 600 feet generally, and 300 feet in the Urban Neighborhood Overlay areas.

6. All new streets and street improvements shall meet the intent of the Section 30 Design Guidelines.

H. For collector arterial streets, street trees that provide a large, wide canopy shall be selected from the Street Tree Selection List found in Appendix A of the city's Street Tree Manual. (Ord. M-3930 § 4, 10/05/2009; Ord. M-3930, Added, 10/05/2009, Sec 4)

20.690.050 Master Planning.

A. *Overall.* An approved Master Plan as described herein is required prior to development in the Plan District in order to ensure development is consistent with the Section 30 Employment Center Plan. Mining activities are expected to continue on portions of this site for several years, but portions may redevelop in the near future. Master plans shall address long term development of the entire Plan District as shown in Figure 20.690-1, and shall include consideration of long term development of the entire plan area, particularly in regard to street and pedestrian connectivity, transitional grades between developments, stormwater management, open space connectivity, utility service and traffic impacts.

B. *Contents.* Master Plans shall address the following:

1. Proposed grading and final elevations for all portions of the site, including transitional grades to adjacent properties.

2. Proposed employment uses, including location, lot size, and floor area ratio for industrial, office and commercial uses.

3. Proposed residential uses including location, number of dwelling units and density.

4. Proposed location of any Urban Neighborhood Overlay areas governed by VMC 20.690.070.

5. Transportation analysis that:

a. Demonstrates consistency with the Section 30 Employment Center Plan and meets the intent of the Section 30 Design Guidelines.

b. Includes a map and narrative of the following:

i. On site public and private roads, alleys, parking and circulation including, an exhibit of roadway functional classifications, typical section, and design parameters, such as street grades, "green" strategies, and traffic calming for local roadways, bicycle and pedestrian facilities.

ii. Future street circulation and connectivity plan covering adjacent properties within 600 feet of subject property.

iii. Traffic Analysis and Mitigation plan.

iv. Trip Reduction and Transportation Demand Management Plan

v. Parking Management plan if variance from parking requirements is proposed.

6. Utility and Facility analysis that includes a map and narrative of the following:

a. Public sewer, water and stormwater systems, demonstrating consistency with the Section 30 Employment Center Plan;

b. Parks, open spaces, plazas, and trails, demonstrating consistency with the Section 30 Employment Center Plan;

c. Private utilities – location; and

d. Schools, if any

7. Analysis of impacts to the adjacent properties and mitigation proposed to achieve development envisioned in the Section 30 Employment Center Plan including future streets, roundabouts, grading, utility service, site drainage, trails and open space and land use location.

8. Full Site Utilization Plan, refer to VMC 20.690.060.

9. A master landscape plan.

10. Anticipated phasing of development, site ownership, or common management provisions, if any.

11. Provisions for buffering adjacent mining or heavy industrial activities if applicable, at a level of detail sufficient to judge adequacy of buffering from adverse noise, dust and visual impacts. Noise attenuation shall meet standards for maximum permissible environmental noise levels contained in WAC 173-60-040 for proposed uses.

12. Consistency between the Master Plan and the Section 30 Employment Center Plan and Plan policies.

13. *Modification.* Modifications to design and development standards may be processed as part of the request for master plan approval if the applicant can demonstrate compliance with the following approval criteria:

a. The modification(s) is warranted given site conditions and/or characteristics of the design; and

b. The proposed change meets the intent of the development standards and Section 30 Employment Center Plan and is consistent with the Design Guidelines; and

c. The proposed change will not result in a substantial impact to transportation, water, sewer, or storm water management systems; and

d. The proposed change is consistent with Vancouver Municipal Code and Vancouver Comprehensive Plan.

C. *Review Criteria and Process.* Master Plans shall be processed as a Type IV application considered initially by the Planning Commission with final decisions made by the City Council. The Master Plan shall be approved, approved with conditions, or denied upon findings that:

1. The Master Plan implements the Section 30 Employment Center Plan and requirements of this chapter.

2. Impacts from ongoing heavy industrial uses on adjacent properties will be buffered and mitigated.

3. The Master Plan is consistent with the Section 30 Design Guidelines or proposes standards that will achieve at least equal quality site development.

4. The Master Plan achieves the following objectives:

a. Provides for the potential of more intense urban development in the future and for compatibility between different land uses by meeting VMC 20.690.060, Full Site Utilization Plan requirements.

b. Provides safe, cohesive and connecting street and sidewalk system that is consistent with the Section 30 Employment Center Plan.

i. Plans and allows for connections to future development in the entire Plan District.

ii. Generally meets the future collector street locations and substantially meets connections to streets outside of Section 30 as shown in the Section 30 Employment Center Plan document.

iii. Provides a logical extension, continuation and interconnection of streets and bike/pedestrian access ways to serve circulation and access needs within the Section 30 Employment Center Plan document and adjoining neighborhoods.

iv. Provides a multi-directional access and circulation to the street system similar to that provided by a traditional street grid with streets intersecting at 90 degree angles at regular intervals of 200 to 600 feet.

v. Provides full multimodal infrastructure and on-site facilities that promote the use of transit, pedestrian, and bike modes, as contemplated in the Section 30 Employment Center Plan.

c. Provides for a cohesive public utility (water, sewer, and stormwater) network that facilitates service to all areas within the Plan District, meets Section 30 Employment Center Plan policies and 20.690.060, Full Size Utilization plan.

d. Provides for an integrated park/open space and trail network that meets the standards of the Vancouver-Clark Parks & Recreation Comprehensive Parks, Recreation & Open Space Plan and substantially meets the intent of the Section 30 Employment Center Plan Open Space, Trails and Public Facility policies.

e. Provides landscaping that includes trees that will create an attractive community, maximize the use of native plant materials and meet the intent of the Section 30 Design Guidelines.

f. Establishes property grades and finished elevations that allow for balanced grade transitions between properties.

g. Retaining walls shall meet the intent of Section 30 Design Guidelines.

h. Provides for shared parking where feasible.

i. Meets SEPA requirement.

D. *Master Plan Modification.*

1. *Process.*

a. No Amendment. Development applications, which differ from adopted Master Plans as follows, require no additional review under Title 20 VMC.

i. Changes to phasing, provided proposed development is fully identified in the Full Site Utilization Plan, 20.690.060 in the adopted Master Plan.

ii. Refinement of building footprint, use mix, access, parking and landscaping provided the resulting site plan is consistent with the Full Site Utilization Plan, adopted Master Plan and the Section 30 Design Guidelines.

iii. Changes in the location and design of trails, so long as they are consistent with the adopted Master Plan, the Section 30 Employment Center Plan and Design Guidelines.

iv. Changes to the buffering provided for new development from adverse impacts of ongoing heavy industrial uses on adjacent properties, provided the result is the same or better attenuation of noise and dust and visual impacts.

v. Changes to the location of uses.

b. Type I Review – Changes to the Master Plan design guidelines provided proposed changes are consistent with the Section 30 Employment Center Plan and Design Guidelines and will not compromise the ability to achieve the overall quality of development proposed in the Master Plan.

c. Type II Review

i. New buildings, so long as the additional development can be accommodated with only minor changes to the transportation, water, sewer, storm drainage systems, or the Full Site Utilization Plan, 20.690.060 in the approved Master Plan.

ii. Significant changes to street locations or capacity.

iii. Significant reduction in the amount of public open space.

d. Type III Review – New buildings that result in the need for a significant change in the transportation, water, sewer, storm drainage systems, or the Full Site Utilization Plan, 20.690.060 in the approved Master Plan.

e. *Interpretation.* The City of Vancouver retains the authority to assign the appropriate review process where application of this chapter is unclear, or inappropriate given the size of the modification involved.

2. *Modification Approval Criteria.*

a. The proposed change meets the intent of the Section 30 Employment Center Plan and is consistent with the Design Guidelines; and

b. The proposed change will not result in a substantial impact to transportation, water, sewer or storm water management systems; and

c. The proposed change will not result in adverse impacts to adjacent properties or uses; and

d. The proposed change is consistent with Vancouver Municipal Code and Vancouver Comprehensive Plan. (Ord. M-3930, Added, 10/05/2009, Sec 4)

20.690.060 Full Site Utilization Plan.

A Purpose: As Section 30 develops over the next 20 to 30 years; careful site design can provide opportunities for additional development including additional buildings and structural parking. To fully realize future development opportunities, thoughtful placement of initial buildings and parking areas is essential. A Full Site Utilization Plan (FSUP) creates a vision of how a site can reach full urban center densities through phasing of development over time or through demonstrating development potentials by showing a “shadow” plat or site plan of future development.

B. Applicability: All project proposals requiring a Master Plan shall submit an FSUP unless the project proposes urban density equal to or greater than a Floor Area Ratio of one.

C. Submittal Requirements: Show the following using the proposed Master Plan site plan as a base map:

1. Locations of potential future building pads or locations of potential parking structures.

2. Locations of potential future street rights-of-way that would create a more urban street grid.

3. Narrative describing potential building types, mix of uses, density achievements and vehicle parking requirements.

4. Anticipated phasing of development and potential site plan submittal timelines.

D. Review Criteria and Process: In reviewing a proposed FSUP, the planning official shall approve the FSUP upon finding that:

1. The FSUP demonstrates a realistic assessment of future building types and sizes, and future parking needs.

2. The FSUP provides for realistic areas for future building pads and structured parking facilities.

3. The FSUP adequately represents the potential to achieve the street grid and circulation requirements of 20.690.040.

4. The proposal meets the intent of the Section 30 Design Guidelines. (Ord. M-3930, Added, 10/05/2009, Sec 4)

20.690.070 Section 30 Urban Neighborhood Overlay (Optional).

A. *Purpose.* The purpose of the Urban Neighborhood Overlay is to allow for the location of mixed use urban activity centers with quality living, shopping and gathering places for those working and living within the Section 30 urban employment center as described in the Section 30 Employment Center Plan vision, goals, and policies. This urban neighborhood balances livability with auto-oriented accessibility and incorporates design features and uses to encourage active pedestrian environments and a sense of community. The provisions of the urban neighborhood overlay shall determine the size, character and location of a proposed urban neighborhood.

B. *Applicability.* No more than two urban neighborhoods may be proposed and located within the Section 30 Plan District boundary, Figure 20.690-1. The general locations of the overlays depicted in the Section 30 Employment Center Plan document are conceptual. The Urban Neighborhood Overlay is applicable to the entire area shown on Figure 20.690-1.

C. *Urban Neighborhood Form.* The urban neighborhood includes both a mixed use center and an adjacent residential area that is master planned as a cohesive whole. Each urban neighborhood shall be no larger than 50 acres and include no less than 850 housing units. If the minimum average density is not achieved at the outset, the required FSUP included with the Master Plan shall demonstrate how the density can ultimately and realistically be achieved. A variety of unit types shall be provided. The urban neighborhood shall be organized around a commercial and public activity center with traditional neighborhood patterns and design.

1. *Urban Neighborhood Mixed Use Center.* This area is the organizing element and activity center for the urban neighborhood. The mixed use center is built around a focal point, whether it is a main street, or an

amenity such as a plaza, a park or a lake. Multi-story mixed use buildings with commercial or office uses on the ground floor and housing above reinforce the center's character. A minimum of 15 percent of the total urban neighborhood housing units shall be located in the mixed use center.

2. *Urban Neighborhood Residential Area.* This area is organized around the neighborhood mixed use center and includes a mix of housing and densities achieving an average minimum net density of 18 units an acre. A maximum of 85 percent of all housing units shall be substantially clustered within one-quarter mile of the urban neighborhood mixed use center. The one-quarter mile shall be measured in a straight line from the outer boundaries of the neighborhood to the nearest boundary of the mixed use center.

3. Future Urban Uses are allowed as specified in Table 20.430.030 for the MX zone with the following exceptions:

a. Footnotes 2 and 6, subject to provisions of the Mixed Use zone district does not apply instead the future urban uses allowed within a designated Section 30 Urban Neighborhood Overlay are subject to provisions of this chapter.

b. Colleges, as defined in Chapter 20.160 VMC, Use Classifications, are prohibited.

c. Emergency Services, as defined in Chapter 20.160 VMC, Use Classifications, require a conditional use permit governed by Chapter 20.245 VMC, Conditional Uses.

d. Medical Centers as defined in Chapter 20.160 VMC, Use Classifications, are prohibited.

e. Religious Institutions as defined in Chapter 20.160 VMC, Use Classifications, require a conditional use permit governed by Chapter 20.245 VMC, Conditional Uses.

f. Commercial Lodging limited to bed and breakfast establishments, subject to the provisions in Chapter 20.830 VMC and lodging establishments with no more than 50 rooms as defined in Chapter 20.160 VMC, Use Classifications.

g. Bulk Sales as defined in Chapter 20.160 VMC, Use Classifications, is prohibited.

h. Non-Accessory parking surface lots as defined in Chapter 20.160 VMC, Uses Classifications, are prohibited. Non-accessory parking structures are permitted.

i. All uses under Industrial heading, as defined in Chapter 20.160 VMC, Use Classifications, are prohibited.

j. Heliports, as defined in Chapter 20.160 VMC, Uses Classifications, are prohibited.

k. Wireless Communication Facilities are permitted subject to the provisions of VMC 20.890.060(B), Higher-density Residential Districts.

4. No more than 50 percent of the total square footage envisioned by the Master Plan for any one major use type (commercial, office or residential) can be granted site plan approval until site plan approval is provided for at least 25 percent of the total square footage of all remaining use types envisioned in the

Master Plan. This requirement may be waived by the planning official, if the applicant provides a security or other form of binding assurance that the remaining major use types contemplated in the Master Plan will be built.

D. *Development Standards – Urban Neighborhood Mixed Use Center(s).*

1. *Urban Center Focal Point.*

a. Urban Neighborhood Mixed Use Centers shall be organized around a focal point, which could include a main street, town square, plaza, park, or water feature consistent with the Section 30 Urban Employment Center Plan.

b. When a linear Main Street acts as the Mixed-use Center's focal point both sides of the street shall include a mix of uses with 75 percent of the uses within vertical mixed-use buildings.

2. *Density.*

a. An average minimum of 18 units a net acre as measured by total number of residential units divided by the net site acreage of the Urban Neighborhood Overlay area.

b. Residential uses are not allowed on the ground floor.

3. *Building Height.*

a. Mixed-use buildings shall be at least 30 feet in height and shall include a minimum of two useable stories.

b. Ground floor spaces shall be designed to accommodate active pedestrian uses and shall have a minimum floor to ceiling height of 15 feet.

c. Maximum building heights shall not be restricted provided architectural methods are applied to reduce the building scale and mass of at least the first three floors (including ground floor).

4. *Building Setbacks.*

a. All new construction along the street frontages shall extend to the edge of the street right-of-way line for the first two stories. Exception may be given when a public open space such as a courtyard or plaza is provided.

b. Mixed use buildings facing the Urban Center focal point shall comprise 75 percent of the street frontage. Parking garages where the ground floor is commercial or office uses may be counted for this requirement.

5. *Building Orientation.*

a. At least one fully functional and visibly identifiable public entrance shall be provided along a street frontage. Buildings organized around a courtyard may feature entrances facing the courtyard provided there is a clear pedestrian access between the courtyard and the street.

b. Service entrances shall be in the rear of the buildings.

6. *Rain Protection.*

a. Rain protection shall be provided on buildings facing the Urban Center focal point.

b. Rain protection features shall provide cover of at least six feet in depth over the sidewalk or other surfaced pedestrian way, but shall not extend closer than two feet to the curb line.

c. Rain protection features on each building shall be designed to abut or adjoin rain protection features provided or to be provided on adjacent buildings along the same street frontage to the greatest extent possible to ensure a continuous protected pedestrian walkway.

7. *Building Form and Appearance.*

a. Blank walls in excess of 15 lineal feet along sidewalks or other pedestrian areas are not permitted.

b. Transparent windows/doors shall be provided along at least 75 percent of the ground floor façades and the base of the windows shall be between one and three vertical feet above the ground or sidewalk.

8. *Buffering and Landscaping.*

a. All setback areas shall be landscaped consistent with the Section 30 Design Guidelines or developed as hardscape plazas.

b. Street trees that provide a medium to large, wide canopy over the streets of the Mixed-use Center shall be selected from the Street Tree Selection List found in Appendix A of the Street Tree Manual.

9. *Streets and Access.*

a. Context Sensitive Design

i. The block face length shall be at most 300 feet.

ii. All sidewalks shall be at least 12 feet wide.

iii. The street(s) facing or as a part of the focal point of the Mixed-use Center shall include pedestrian amenities such as benches, special plantings, art work.

iv. *Street Lighting.* Pedestrian scale street lighting shall be used to meet minimum lighting standards.

b. Traffic Calming measures to achieve average automobile travel speeds of 25 miles per hour or lower are required as follows:

i. The main commercial street shall be constructed with raised concrete intersections, or

ii. Equivalent traffic calming measures shall be constructed that may include some combination of:

A. Curb extensions to provide short pedestrian crossing distances.

B. Raised crosswalks.

C. Concrete or brick pavers for intersection pedestrian crossings.

D. Speed cushions.

E. Narrow travel lanes.

F. On-street parking.

c. Access

i. Vehicular access to off-street parking behind or within buildings, and to loading docks and service areas shall be through public or private alleys. If structural parking is provided access may be located on the street frontage.

ii. Direct driveway access to the surrounding arterials, SE 1st Street, NE 192nd Avenue, NE 18th Street, and NE 172nd Avenue shall be prohibited.

10. *Parking*.

a. Parking spaces provided for individual uses shall be no less than 60 percent of the minimum required indicated in Table 20.945.070-2, and no more than 115 percent to the amount provided in Table 20.945.070-2. The planning official may approve parking beyond the maximum or a parking reduction from the required minimum based on a parking study that justifies the need.

b. On-street parking spaces immediately, adjoining a property may be counted towards a development's overall parking requirement.

c. Structural parking shall count toward minimum but not the maximum number of parking stalls.

d. Joint parking and parking for mixed use projects shall be governed by VMC 20.945.030(B) and (C).

e. Off-street parking shall be located to the rear of buildings.

f. Parking shall meet the Section 30 Design Guidelines.

E. *Development Standards – Urban Neighborhood Residential Area(s).* – Development within the Urban Neighborhood Residential Area(s)shall be subject to the development standards contained in VMC 20.420.050 for the R-22 zone unless modified as follows.

1. *Density and Location of Uses.* An average minimum density of 18 units a net acre, as measured by total number of residential units divided by the net site acreage of the Urban Neighborhood Overlay area shall be provided.

2. *Open Space for Residential Uses.* Private open space at a minimum of 100 square feet per dwelling unit shall be provided and shall meet the Section 30 Design Guidelines.

3. *Building Height.* Maximum building heights shall not be restricted provided architectural methods are applied to reduce the building scale and mass of at least the first three floors (including ground floor).

4. *Building Setbacks.*

   a. Urban Neighborhood Residential area boundary abutting the ECX zoned area outside of the overlay boundary shall provide a minimum 20-foot landscaped setback that meets the intent of the Design Guidelines.

   b. Street frontage setbacks shall be provided with a 10-foot minimum and 20-foot maximum and meet the intent of the Design Guidelines.

5. *Building Orientation.*

   a. At least one fully functional and visibly identifiable public entrance shall be provided along a street frontage with an exception for buildings organized around a courtyard or plaza with entrances facing the courtyard/plaza provided there is a clear pedestrian access between the courtyard/plaza and the street.

   b. Buildings that are visible from the street shall be oriented to face the street.

   c. Service entrances shall be in the rear of the buildings.

6. *Building Form and Appearance.* Building form and appearance shall be consistent with Section 30 Design Guidelines.

7. *Landscaping and Fencing.*

   a. A minimum four-foot-wide landscape strip shall be provided between garage entrances along the alley applicable for both free standing and attached garages.

   b. Landscaping and fencing shall be consistent with the Section 30 Design Guidelines.

8. *Street Lighting.* Pedestrian scale street lighting shall be used to meet minimum lighting standards.

9. *Streets and Access.*

   a. Vehicular access to off-street parking including garages behind or within buildings, and to service areas shall be through public or private alleys. One access driveway to the alley per block may be provided.

b. Direct driveway access to the surrounding arterials, SE 1st Street, NE 192nd Avenue, NE 18th Street, and NE 172nd Avenue shall be prohibited.

c. The maximum block face length within the Urban Neighborhood Overlay shall be 300 feet.

10. *Parking.*

a. Parking spaces provided for individual uses shall meet the requirements of Table 20.945.070-1. The planning official may approve a parking reduction based on VMC 20.945.070(E). In addition to the reductions allowed in VMC 20.945.070(E), further reductions may be allowed for motorcycle/scooter parking spaces (four feet by eight feet). For every four motorcycle/scooter parking spaces provided, the number of vehicle parking spaces required may be reduced by one.

b. Structural parking shall count toward the minimum but not the maximum number of parking stalls.

c. On street parking spaces immediately, adjoining a property may be counted toward a development's overall parking requirement.

d. Joint parking and parking for mixed use projects shall be governed by VMC 20.945.030(B) and (C).

e. Off-street parking shall be located within or to the rear of buildings.

F. *Master Planning.*

1. *Overall.* Master Plans as described herein are required prior to all development in the Urban Neighborhood Overlay in order to ensure proposed development is consistent with the Section 30 Employment Center Plan. Master plans shall address long term development of the entire Section 30 Employment Plan District as shown in Figure 20.690-1, particularly in regard to street and pedestrian connectivity, transitional grades between developments, stormwater management, open space connectivity, utility services and traffic impacts.

2. *Contents of Submittal.* Master Plans shall include the submittal requirements included in VMC 20.690.050(B) as applicable, with the following additions:

a. *Urban Neighborhood Mixed Use Center.*

i. Location and size of associated land area;

ii. Map and written description of the urban form of the Mixed Use Center's focal point;

iii. Building elevations, including building height;

iv. Identify the number of residential units and density and the square footage of commercial uses.

b. *Urban Neighborhood Residential Area.*

i. Location and size of associated land area;

ii. Identify the number of residential units and density;

iii. Building elevations, including building height;

c. Street, Access, and Circulation Plan.

3. *Review Criteria and Process.* Master Plans shall be subject to VMC 20.690.050(C), Section 30 Employment Plan District, Master Planning with the following revisions:

a. The Master Plan implements the Section 30 Employment Center Plan and the requirements of the Urban Neighborhood Overlay.

b. Provides mixed use buildings of commercial, office and residential uses designed around an urban organizing focal point.

c. Provides a multi-directional access and circulation to the street system similar to that provided by a traditional street grid with streets intersecting at 90 degree angles at regular intervals of 200 to 300 feet, if topography allows.

4. *Master Plan Modification.* Master Plans shall be subject to VMC 20.690.050(D), Section 30 Employment Plan District, Master Plan Modification. (Ord. M-3930, Added, 10/05/2009, Sec 4)

The Vancouver Municipal Code is current through Ordinance M-4404, passed January 23, 2023.

Disclaimer: The city clerk's office has the official version of the Vancouver Municipal Code. Users should contact the city clerk's office for ordinances passed subsequent to the ordinance cited above.

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CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on the 16TH day of June 2023, I arranged for service of the foregoing **AMENDED PETITION FOR REVIEW OF UNPUBLISHED OPINION** to the parties to this action via Electronic Service:

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June 16, 2023 - 3:29 PM

Transmittal Information

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Superior Court Case Number:	21-2-01039-3

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