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The opinion that begins on the next page is a slip opinion. Slip opinions are the written opinions that are originally filed by the court.

A slip opinion is not necessarily the court's final written decision. Slip opinions can be changed by subsequent court orders. For example, a court may issue an order making substantive changes to a slip opinion or publishing for precedential purposes a previously "unpublished" opinion. Additionally, nonsubstantive edits (for style, grammar, citation, format, punctuation, etc.) are made before the opinions that have precedential value are published in the official reports of court decisions: the Washington Reports 2d and the Washington Appellate Reports. An opinion in the official reports replaces the slip opinion as the official opinion of the court.

The slip opinion that begins on the next page is for a published opinion, and it has since been revised for publication in the printed official reports. The official text of the court's opinion is found in the advance sheets and the bound volumes of the official reports. Also, an electronic version (intended to mirror the language found in the official reports) of the revised opinion can be found, free of charge, at this website: https://www.lexisnexis.com/clients/wareports.

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Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SOUND FORD, INC., a Washington corporation Petitioner, v. CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY d/b/a SOUND TRANSIT, a municipal corporation, Respondent.	No. 85904-8-I DIVISION ONE OPINION PUBLISHED IN PART

BIRK, J. — Sound Ford, Inc. challenges an administrative decision denying certain reimbursement claims stemming from a business relocation. In connection with its South Renton transit station project, Central Puget Sound Regional Transit Authority (Sound Transit) acquired real property leased to Sound Ford, displacing the business and making it eligible for relocation benefits under federal and Washington law. 49 C.F.R. § 24.301(a)(1); RCW 8.26.035(1). After being denied certain relocation claims, Sound Ford administratively appealed and requested a hearing before Sound Transit's hearing examiner. The hearing examiner equated his role to that of a court reviewing an agency action under the Administrative Procedure Act (APA), chapter 34.05 RCW, and denied Sound Ford's appeal based on a determination that substantial evidence supported the agency's decision. Sound Ford petitioned for judicial review. In the published portion of this opinion,

we clarify that the hearing examiner was sitting as a trier of fact and was tasked with determining the appropriate disposition of Sound Ford's reimbursement claims on their merits and not in an appellate review capacity. In the unpublished portion of this opinion, consistent with the hearing examiner's indication he would have reached the same result had he understood he was sitting as a trier of fact, we conclude that Sound Ford does not show under the APA that Sound Transit misapplied the law, lacked substantial evidence, or acted in an arbitrary and capricious manner. We affirm.

I

Sound Transit acquired real property leased to Sound Ford to implement its South Renton transit station I-405 bus rapid transit project. Sound Ford leased replacement sites to reestablish its automobile body shop and service center and submitted a series of claims to Sound Transit for reimbursement of costs associated with relocating.

In a July 2, 2021 letter and July 23, 2021 supplemental e-mail, Sound Transit issued a final claim determination, approving certain claims and denying others. On August 26, 2021, Sound Ford appealed the claims Sound Transit denied, and added three claims not addressed in the final claim determination. On October 8, 2021, Faith Roland, Sound Transit's director of real property, issued a director's review determination. Roland provided additional reimbursement for certain claims, and denied others. Sound Ford appealed the director's review determination and requested a formal hearing to appeal the portions that did not result in additional payment.

The hearing was conducted before a hearing examiner, whose written decision constitutes Sound Transit's final decision. On the first day of the hearing, the hearing examiner heard testimony from Richard Snyder, Sound Ford's owner, and Martyn Daniel, Sound Ford's consultant. On the second day, Mike Bulzomi, Sound Transit's deputy real property director, Jeanne Jorgenson, Sound Transit's relocation manager, and Roland each testified concerning how Sound Transit determined which expenses were eligible for reimbursement.

Sound Transit argued that because it is charged with implementing the relocation benefits provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601-4655 (the Act), its interpretation of the Act is entitled to deference and thus the hearing examiner must uphold the director's review determination unless it is unsupported by substantial evidence. In contrast, Sound Ford argued the appropriate standard for a fact-finding hearing is for the hearing examiner to determine the facts by a preponderance of the evidence. The hearing examiner concluded that he had been delegated authority by Sound Transit to conduct an independent adjudicative hearing to determine whether the director's decision was legally sound and supported by evidence in the record. He likened his role to that of a court reviewing an agency action under the APA, and determined the substantial evidence standard of review applied. The hearing examiner noted that applying the preponderance of the evidence standard of proof would not change his decision. The hearing examiner entered findings, conclusions, and decision, denying Sound Ford's appeal, determining there was substantial evidence to support the director's

decision. This became the final agency action. Sound Ford filed a petition for judicial review in King County Superior Court. On the parties' stipulation, the superior court ordered the petition transferred to this court pursuant to RCW 34.05.518.

II

The APA governs appellate review of agency decisions. Utter v. Dep't of Soc. & Health Servs., 140 Wn. App. 293, 299, 165 P.3d 399 (2007). The party asserting the invalidity of an agency's decision has the burden of demonstrating invalidity. RCW 34.05.570(1)(a); PacifiCorp v. Wash. Utils. & Transp. Comm'n, 194 Wn. App. 571, 586, 376 P.3d 389 (2016). Sound Ford challenges Sound Transit's determination on three grounds. It argues the hearing examiner misapplied the law, the hearing examiner's factual findings were not supported by substantial evidence, and the hearing examiner's decision was arbitrary and capricious. RCW 34.05.570(3)(d), (e), (i).

The hearing examiner indicated he believed his role was to review the record for substantial evidence supporting the director's earlier decision. The APA provides for agency review of an order following a hearing, stating, "The officer reviewing the initial order . . . is . . . termed the reviewing officer." RCW 34.05.464(4). "The reviewing officer shall exercise all the decision-making power that the reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing," except insofar as applicable law or the reviewing officer limits review. RCW 34.05.464(4). In reviewing findings of fact by presiding officers, the reviewing officer must give "due regard to the

presiding officer's opportunity to observe the witnesses." Id. However, the hearing examiner here was not acting as an APA reviewing officer. As RCW 34.05.464(4) indicates, a reviewing officer is someone other than the officer who presided over an adjudicatory hearing. Here, the hearing examiner presided over the adjudicatory hearing. A reviewing officer reviews "the whole record or such portions of it as may be cited by the parties." RCW 34.05.464(5). The statute does not provide that the reviewing officer may go outside the record or take additional evidence. Towle v. Dept. of Fish and Wildlife, 94 Wn. App. 196, 205, 971 P.2d 591 (1999). Here, the hearing examiner took evidence and made findings of fact. Thus, the hearing examiner did not act as an APA reviewing officer.

Instead, the hearing examiner was the presiding officer. The APA provides that a presiding officer may be a person other than the agency head designated by the agency to make the final decision and enter the final order. RCW 34.05.425(1)(b). Rather than reviewing the record, the presiding officer takes evidence, hears argument, and issues findings and conclusions. RCW 34.05.449(2), .461(3). The presiding officer conducts hearings de novo. WAC 246-10-602(2)(a). Here, the hearing examiner possessed all the decision-making power and was the agency's fact finder.

An APA presiding officer is tasked with making findings reflecting the facts established by evidence, which "shall be based exclusively on the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding." RCW 34.05.461(4). A presiding officer weighs the credibility of the evidence. See RCW 34.05.461(3) ("Any findings based substantially on credibility

of evidence or demeanor of witnesses shall be so identified."). In contrast, a court reviewing an agency finding for substantial evidence does not make an independent evaluation of the credibility of the evidence, but asks more narrowly whether there exists within the administrative record evidence " 'sufficient to persuade a fair-minded person of the truth of the declared premises.' " Alaska Airlines, Inc. v. Dep't of Labor & Indus., 1 Wn.3d 666, 685-86, 531 P.3d 252 (2023) (internal quotation marks omitted) (quoting Ames v. Dep't of Health, 166 Wn.2d 255, 261, 208 P.3d 549 (2009)). To the extent the hearing examiner applied the substantial evidence standard rather than independently making findings of fact based on the evidence, the hearing examiner erred.[1]

Sound Ford presents this error by arguing that the hearing examiner improperly deferred to Sound Transit's legal determinations. In support of its argument, Sound Ford cites ER 704, Washington State Physicians Insurance Exchange & Association v. Fisons, Corp., 122 Wn.2d 299, 344, 858 P.2d 1054 (1993), and State v. Olmedo, 112 Wn. App. 525, 532, 49 P.3d 960 (2002), which indicate that legal opinions on the ultimate issue before the court are generally not admissible.

Sound Ford's argument overlooks the evidence standards that apply to administrative hearings, which are broader than the Evidence Rules. Sound Transit's internal policies and procedures allow its hearing examiner to "consider

[1] Because the hearing examiner acted as an APA presiding officer, it is not necessary to examine the extent to which an APA reviewing officer's role shares commonality with appellate standards of review. Cf. RCW 34.05.464(4) with RCW 34.05.464(7).

all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal." SOUND TRANSIT'S REAL PROPERTY ACQUISITIONS AND RELOCATION POLICY, PROCEDURES AND GUIDELINES § 14.6, at 58 (Revision 4, Nov. 2017), https://www.soundtransit.org/sites/default/files/real-property-acquisition-relocation-policy-procedures-guidelines.pdf [https://perma.cc/4RXY-3XA5]. Sound Transit's regulations incorporate chapter 468-10 WAC. Id. at § 14.9, at 59. WAC 468-10-510(1) states that presiding officers "may admit and give probative effect to other evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs." These standards are consistent with the APA, which states that "[e]vidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs." RCW 34.05.452(1); see also RCW 34.05.461(4) (support for findings of fact).

Sound Ford does not argue that the hearing examiner failed to follow a prescribed procedure, which, if established, would be an independent basis for relief under the APA. RCW 34.05.570(3)(c). The hearing examiner entered a reasoned, 45 page order stating he would have reached the same resolution of Sound Ford's claims if he had acted as a fact finder determining the facts established by a preponderance of the evidence. As a result, the record allows this court to independently determine whether the hearing examiner's order "erroneously interpreted or applied the law," whether "[t]he order is not supported by evidence that is substantial," or whether it is arbitrary and capricious. RCW

34.05.570(3)(d), (e), (i). Thus, in this case, the hearing examiner's use of an erroneous standard does not support relief under the APA.

We have determined that the remainder of this opinion has no precedential value. Therefore, it will be filed for public record in accordance with the rules governing unpublished opinions. See RCW 2.06.040.

UNPUBLISHED TEXT FOLLOWS

III

Sound Ford argues the hearing examiner erred in denying Sound Ford's reimbursement claims discussed below. We disagree.

Determining whether particular facts meet a legal definition is a mixed question of law and fact. Pac. Coast Shredding, LLC v. Port of Vancouver, USA, 14 Wn. App. 2d 484, 502, 471 P.3d 934 (2020). A mixed question of law and fact requires the application of legal precepts to factual circumstances. Tapper v. Emp't Sec. Dep't, 122 Wn.2d 397, 402-03, 858 P.2d 494 (1993). "Analytically, resolving a mixed question of law and fact requires establishing the relevant facts, determining the applicable law, and then applying that law to the facts." Id. at 403. We review the hearing examiner's factual findings for substantial evidence, asking whether the record contains evidence sufficient to convince a rational, fair-minded person that the finding is true. B&R Sales, Inc. v. Dep't of Labor & Indus., 186 Wn. App. 367, 375, 344 P.3d 741 (2015). We review the hearing examiner's legal

conclusions de novo. Id. "The process of applying the law to the facts. . . is a question of law and is subject to de novo review."[2] Tapper, 122 Wn.2d at 403.

A

Sound Ford's claims for compensation arise under the Act and its corresponding regulations under 49 C.F.R. §§ 24.1-24.306. Sound Ford's claims also arise under parallel Washington authority, chapter 8.26 RCW and its corresponding regulations in chapter 468-100 WAC.[3] Both the federal and state statutes indicate that their primary purpose is to minimize the hardship of displacement for individuals and businesses affected by public projects by setting out uniform procedures for providing relocation assistance. 42 U.S.C. § 4621(b); RCW 8.26.010(1)(a).

Under 42 U.S.C. § 4622(a), whenever a project undertaken by a displacing agency causes the displacement of a person, the displacing agency must pay for

> (1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;
>
> . . . .
>
> (4) actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, in accordance with criteria established by the lead agency, but not to exceed $25,000.[4]

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[2] In Washington, "The extent of deference we give to administrative agency interpretations of statutes is a matter of ongoing debate." Alaska Airlines, 1 Wn.3d at 674. We conclude it is unnecessary in this case to decide whether deference is due to Sound Transit in the interpretation of the legal standards governing Sound Ford's claims.

[3] The state statutes and regulations contain substantially the same language as the federal statutes and regulations.

[4] RCW 8.26.035(1)(d) allows payment of reestablishment expenses of up to $50,000.00.

Federal regulations define "actual moving and related expenses" in 49 C.F.R. § 24.301(g) to include the following items relevant to Sound Ford's appeal:

> (1) Transportation of the displaced person and personal property . . . .
>
> . . . .
>
> (3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property. For businesses, farms or nonprofit organizations this includes machinery, equipment, substitute personal property, and connections to utilities available within the building; it also includes modifications to the personal property, including those mandated by Federal, State or local law, code or ordinance, necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.
>
> . . . .
>
> (11) Any license, permit, fees or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, fees or certification.
>
> (12) Professional services as the Agency determines to be actual, reasonable and necessary for:
>
> (i) Planning the move of the personal property;
>
> (ii) Moving the personal property; and
>
> (iii) Installing the relocated personal property at the replacement location
>
> . . . .
>
> (16) *Purchase of substitute personal property*. If an item of personal property, which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the

> replacement site, the displaced person is entitled to payment of the lesser of:
>
> (i) The cost of the substitute item, including installation costs of the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or
>
> (ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(Boldface omitted.)

Additionally, 49 C.F.R. § 24.303 requires payment of the following moving expenses if the agency determines they are actual, reasonable, and necessary:

> (a) Connection to available nearby utilities from the right of way to improvements at the replacement site.
>
> (b) Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including, but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site). At the discretion of the Agency a reasonable preapproved hourly rate may be established. . . .
>
> (c) Impact fees or one-time assessments for anticipated heavy utility usage, as determined necessary by the Agency.

Unlike moving expenses, which do not have a monetary limit, expenses incurred in relocating and reestablishing a business are subject to a $50,000.00 limit. WAC 468-100-301; WAC 468-100-306. Eligible reestablishment expenses include repairs or improvements to the replacement property as required by Federal, State or local law, code or ordinance, and modifications to the replacement property to accommodate the business operation or make

replacements structures suitable for conducting business. 49 C.F.R. § 24.304(a)(1)-(2). Ineligible reestablishment expenses include purchase of capital assets, purchase of items used in the normal course of the business operation, interest on money borrowed to make the move or purchase the replacement property, or payment to a part-time business in the home which does not contribute materially to the household income. 49 C.F.R. § 24.304(b)(1)-(4).

B

Sound Ford argues the hearing examiner erred in deferring to Sound Transit's position that it need not follow the Washington State Department of Transportation (WSDOT) Right of Way Manual. WASH. STATE DEP'T OF TRANSP., RIGHT OF WAY MANUAL (Sept. 2020) [https://perma.cc/SJL4-EL6X]. We disagree.

Section 12-8.2.3(A)(2)(c) of the 2020 Right of Way Manual reflects WSDOT's interpretation of 49 C.F.R. § 24.301(g)(3) and states,

> When a replacement property already contains a structure, costs for structure modifications necessary to accommodate the business operation (e.g. moving walls, changing doors, modifying lighting) are eligible [reestablishment expenses]. An exception occurs if specific modifications are required to promote the proper operation of the relocated personalty (these costs are included as moving costs under Allowable Moving Expenses)[.] Reasonable and necessary are the determining criteria.

Sound Ford argues, "Items like vehicle access doors and ramps to make personal property accessible, fire alarm and suppression systems, inspections, and makeup air systems to make the use of personal property (like paint and aluminum booths) safe, and substitute racking to store personal property" fall within the WSDOT's definition of allowable moving expenses. Thus, Sound Ford contends that the

hearing examiner's conclusion that these costs were not moving expenses was erroneous.

WSDOT was named the lead agency for Washington's uniform relocation act to provide guidance and assistance to the state government agencies. RCW § 8.26.020(12). RCW 8.26.085(1)(a) allows the lead agency to adopt rules and establish procedures to assure "[t]hat the payments and assistance authorized by this chapter are administered in a manner that is fair and reasonable and as uniform as practicable." WSDOT provides such guidance by publishing a Right of Way Manual on statewide policies and standards for real estate transactions, including relocation processes. RIGHT OF WAY MANUAL, CH. 12.

The Right of Way Manual does not support Sound Ford's contentions. Instead, the Right of Way Manual parallels the language of the Act. The first sentence of the Right of Way Manual § 12-8.2.3(A)(2)(c) reinforces 49 C.F.R. § 24.304(a)(2), which states that "[m]odifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business" are classified as reestablishment expenses. The second sentence of the Right of Way Manual § 12-8.2.3(A)(2)(c) directly relates to 49 C.F.R. § 24.301(g)(3), which classifies moving expenses to include "modifications to the personal property . . . necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property." The Right of Way Manual does not materially alter standards for distinguishing

between moving and reestablishment expenses that are already provided for in the Act.

C

Each of Sound Transit's determinations of Sound Ford's individual claims are supported under the APA.

Claim 8 contained three City of Renton (City) invoices. Sound Transit reimbursed the first two invoices, but denied the third, invoice 106024. Invoice 106024 contained a transportation impact fee, a building permit fee, a technology fee, and a building state code fee. The City charged a transportation mitigation fee for additional vehicle trips by the general public due to the business being established at the replacement site. Jorgenson testified Sound Transit denied the portion of claim 8 that was "related to the transportation impact fees." She clarified that "transportation impact fees are not eligible for reimbursement."

There is substantial evidence in the record to show the claim was classified as a transportation impact fee. Under the Act, impact fees or one-time assessments for anticipated heavy utility usage are eligible for reimbursement as a moving expense. 49 C.F.R. § 24.303(c). The Federal Highway Administration Office of Planning, Environment, and Realty provides external guidance on the Act and its regulations, through a Uniform Act Frequently Asked Questions (FAQ) webpage. *Uniform Act Frequently Asked Questions*, U.S. DEP'T OF TRANSP. FED. HIGHWAY ADMIN., (updated June 8, 2020), https://www.fhwa.dot.gov/real_estate/policy_guidance/uafaqs.cfm [https://perma.cc/N54T-WWYR]. FAQ 75 clarifies that "[t]he regulation limits impact fees or one-time assessments for anticipated

heavy utility usage to utilities, i.e., water, sewer, gas, and electric. Impact fees for other major infrastructure such as roads, fire stations, regional drainage improvements and parks, for example, are not eligible." The language of the regulation providing reimbursement only for impact fees related to anticipated heavy utility usage is clear and unambiguous. Thus, the hearing examiner did not misapply the law by denying claim 8.

Claim 13 sought reimbursement for a traffic impact study conducted by Transportation Engineering NorthWest (TENW) and installation of public notice sign required by the City's permitting procedures. TENW quantified the vehicle traffic generated by the use of the personal property at Sound Ford's new location to lower the City's transportation mitigation fee. Sound Transit originally denied the entire claim because "the claim was determined to be related to a traffic impact study." However, on appeal, Roland reimbursed Sound Ford for the public notice sign.

Daniel testified that Sound Ford hired TENW

> to do a study for Sound Ford, to figure out and decide what kind of traffic there is, that they were going to create with their vehicles, their personal property, by moving to the replacement site.
>
> And so they did the study, spent the $22,000 on the study, to reduce the mitigation fee from $296,000 down to the 80 or $90,000 that they ended up with. And so these are the fees for that consulting firm.

The hearing examiner ruled the claim ineligible for reimbursement because it related to the transportation impact fee.

As stated above, FAQ 75 clarifies that "[i]mpact fees for other major infrastructure such as roads, fire stations, regional drainage improvements and parks, for example, are not eligible [for reimbursement]." The language of the regulation providing reimbursement only for impact fees related to anticipated heavy utility usage is clear and unambiguous. Therefore, the hearing examiner did not misapply the law by denying claim 13.

Claim 15 requested reimbursement for an invoice from 9th Floor Design LLC. The invoice was for design, structural, and engineering services in relation to new truck ramps, enlarged door openings, vehicle circulation and parking plans, demolition plans for existing men's restroom, and details for Americans with Disabilities Act of 1990[5] (ADA) unisex restroom. Sound Transit determined these were reestablishment expenses under 49 C.F.R. §24.304(a)(1), for which Sound Ford had already received its maximum reimbursement. Daniel testified the claim was for reimbursement for enlarging the replacement property's doors to allow vehicles to fit inside. Daniel explained,

> [T]he original replacement property before Sound Ford moved in had roll-up doors that were dock high and too low to fit their relocated vehicles. Many of their vehicles were taller than the doors.
>
> So, for the paint booth and prep and all their personal property to function properly, you have to re-enlarge those doors for the vehicles to fit inside. So that's what this design, was to make the doors functional.

Daniel agreed the claim was a modification of replacement property to accommodate the business operation or to make the replacement structure suitable for conducting the business. He further agreed that none of the expenses

[5] 42 U.S.C. §§ 12101–12213.

in the claim were claims for modifications necessary to adapt the utilities at the replacement site to personal property. There is substantial evidence in the record to support the hearing examiner's conclusion that the claim was a modification of replacement property to accommodate the business operation. Because modifications to accommodate a business are categorized as reestablishment expenses, the hearing examiner did not misapply the law.

Claim 19 requested reimbursement for costs for a make-up air system that was associated with a paint booth at the relocated property. Sound Ford said this work was necessary for meeting building codes for operating vehicles within the building. Sound Transit denied the claim. Daniel testified the body shop makeup air system was required by city code before Sound Ford could receive an occupancy permit for the building. He agreed that the claim fell within the definition of modifications to the replacement property to accommodate the business operation or to make replacement structure suitable for conducting the business. Similarly, Roland testified Sound Transit categorized the claim as a reestablishment expense because it was necessary to meet the building code. There is substantial evidence in the record to support the hearing examiner's conclusion that the claim was a modification of replacement property to accommodate the business operation. Because modifications to accommodate a business are categorized as reestablishment expenses, the hearing examiner did not misapply the law.

Claim 24B, Line 9 requested reimbursement for $25,000.00 for the structural engineer cost for the paint booth, ADA ramp, and large door; however,

Sound Transit approved reimbursement for $20,000.00. Daniel testified the structural engineering cost constituted modifications to the replacement site to make the replacement structure suitable for conducting the business or to accommodate the business operation. Thus, there is substantial evidence in the record to support the hearing examiner's conclusion that the enlarged door opening and ADA access ramps were improvement to the replacement property as required by code. Because improvements to the replacement property are categorized as reestablishment expenses, the hearing examiner did not misapply the law.

Claims 24B lines 16, 63-64, 68-74, change order (COR) 7 and COR 13 are fire system-related expenses associated with the relocation of a paint booth. Line 16 requested reimbursement for $81,080.84 for modifications and additions to the replacement building's fire suppression system. Sound Transit did not include this claim in its final claim determination. Lines 63 and 64 requested reimbursement of $6,836.26 for modification of the fire alarm system due to installation of the paint booth. Sound Transit denied the claim, stating it was part of the realty and not personal property. Lines 68-74 requested reimbursement of $20,612.66 for modification of the fire alarm system. Sound Transit denied the claim, stating it was part of the realty and not personal property. COR 7 requested reimbursement of $14,590.00 for fire sprinkler modifications. Sound Transit did not include this claim in its final claim determination. COR 13 requested reimbursement of $6,417.00 for modifications for installing racks, paint booths, and a prep booth. Sound Transit did not include this claim in its final claim determination.

Roland testified the paint booth area was an eligible moving expense based on 49 C.F.R. § 24.301(g)(16), so expenses attributed to the paint booth were eligible for payment. For the relevant fire protection expenses, "[t]he fire system modifications [were] required for the paint booth as well as the rest of the building. So we attributed the square footage for the paint booth at 36 percent and then prorated those items based on that percentage." Daniel agreed lines 16, 63-64, and 68-74 were work required by local code. Regarding COR 7 and 13, Daniel testified that the City required these installations before it would provide an occupancy permit. The hearing examiner concluded, "[I]t was appropriate for Sound Transit to allocate these claimed expenses in proportion to the area of the replacement property housing the paint booth and served by the fire safety improvements" and "[t]he portion of the fire safety improvements serving the remainder of the replacement property are improvements required by code to operate Sound Ford's business." Substantial evidence supported prorating 36 percent of this cost to accommodating the paint booth and the remaining 64 percent to repairs or improvements to replacement property as required by local code, which fall within the reestablishment expenses. 49 C.F.R. §24.304(a)(1). Thus, the hearing examiner did not misapply the law.

Claims 20 and 24B line 8-9, COR 18, COR 19, COR 20, COR 27, and COR 33 all relate to the "mezzanine" structure. Claim 20 sought reimbursement for construction of a mezzanine for substituted racks that held Sound Ford's relocated personal property. Sound Transit denied the claim because it did not meet the definition of a moving expense under 49 C.F.R. §24.301(g)(3), nor a

reestablishment expense under 49 C.F.R. §24.304(a)(1) or (2). Line 8 and 9 requested reimbursement for installation of task lighting for the racking and parts supported by the mezzanine. Sound Transit denied the claim. COR 18 requested reimbursement of $5,368.00 for structural engineer costs for an ADA ramp and large door, of which Sound Transit only approved $3,132.00. COR 19 requested reimbursement expediting the fabrication and delivery of the mezzanine. Sound Transit did not include this claim in its final claim determination. COR 20 requested reimbursement for acquiring permits for installation of the mezzanine. Sound Transit did not include this claim in its final claim determination. COR 33 requested reimbursement for $5,220.00 for architect fees related to the installation of a mezzanine, of which Sound Transit only approved $3,232.00.

Daniel testified the mezzanine was necessary because the replacement property had less floor space to place existing racks with existing personal property and parts. The replacement property "fell well short of what they had at the displacement property. So we had to improvise and put in the mezzanine and things of that nature so we can reinstall as many racks as we could." The racks the mezzanine supported were replacement racks paid for by Sound Transit, and the parts and supplies on the racks were moved from the displacement property. Jorgenson testified the claim was considered a reestablishment expense because Sound Ford did not have a mezzanine at the old location. Similarly, Roland testified it was not a moving expense because "[t]here was not a mezzanine in the prior location. We didn't uninstall, move, and reinstall a mezzanine. That was an addition that the occupant/displacee added to the new location." Roland further

testified that the mezzanine could not be seen as a foundation for the racks because racks could either sit on the ground or the floor and did not require the mezzanine to sit upright.

There is substantial evidence in the record to support the hearing examiner's conclusion that the mezzanine was a modification to the replacement property to accommodate Sound Ford's business. Because modifications to accommodate a business are categorized as reestablishment expenses, the hearing examiner did not misapply the law.

Claim 21 sought reimbursement of $31,898.26 for a Daco racking system. Sound Transit reimbursed $29,592.19 of the total as an eligible moving expense under 49 C.F.R. § 24.301(g)(16), but denied $2,306.07 that was designated for the Quick Lube portion. Claim 21 requested reimbursement for the installation of substitute racks at the replacement location. The quote included a line item titled "Quick Lube Parts Room & Shipping & Receiving Room," which Sound Transit stated was "carved out" and ineligible for reimbursement. Daniel testified the denied portion comes from

> the racking that is labeled as racking for the service shop or for the Quick Lube. So Sound Transit, I think, misunderstood what that racking was, and, with the Quick Lube name on it, assumed it came from the Quick Lube building, which it did not. This was the racking that was in the former service shop, the body shop area, where all the parts and supplies were stored for Sound Ford Body Shop, Service Shop, and Quick Lube.
>
> And so these particular racks were then, because they wanted to be closer to the service shop, they placed them in the replacement service shop and labeled them as Quick Lube racks because they were more specific to that purpose.

> The racks were at the displacement property. The materials on the racks, the parts and supplies that were on the racks, were paid and moved by Sound Transit to the new location. Now we're just talking about the racks themselves that are being denied because, I think, of the misunderstanding of where they came from.

Snyder provided the following testimony:

> Q . . . Do you see where this is a DACO proposal. It refers to Quick Lube parts room. Is this an expense that you submitted to Sound Transit for payment?
>
> A I don't know. If it says it is, it is. Okay.
>
> Q So the reference to Quick Lube is not something Sound Transit made up, it's actually in documents that you submitted along with your claims for reimbursement, correct?
>
> A Yeah. If you're saying that it's improperly worded, I'll go with that. What they called it isn't necessarily what it was because it was so old ago.

Jorgenson testified Sound Transit carved out certain payments for Quick Lube racks because "[t]he invoice, itself, made reference to Quick Lube" and "Quick Lube was not identified as a displaced person." Sound Ford owned an entity called Quick Lane,[6] which was a stand-alone property that was not condemned. The hearing examiner concluded, "Sound Ford's submitted invoices clearly identified the racking equipment as related to the Quick Lane/Quick Lube service shop and not the property acquired by Sound Transit" and denied the claimed expense. There is substantial evidence to support the hearing examiner's conclusion that the racking equipment was from the Quick Lane service shop. Because only displaced businesses are entitled to payment, the hearing examiner did not misapply the law by denying claim 21.

[6] The entity was previously named Quick Lube.

Claim 24B line 18-21 requested reimbursement for costs associated with substitute task and display lightings on the building's exterior. Sound Transit denied the claim because "[t]he parking lot lights [were] considered real property and paid for as under the real property acquisition, not the business relocation." Daniel testified the "display lighting was moved or actually substituted to be attached and installed on the replacement property." He further stated,

> [T]hey [were] required by code for the parking area, which that might normally be a reestablishment-type of a cost, had we not had these items that were display lighting that were actually personal property. So we simply used those in place of—or to satisfy the needs for—the parking lot lighting. So it was personal property moved and reinstalled.

Roland testified that "parking lot lights don't typically get unhooked and moved to a new location and reinstalled. They did not in this case either. So additional parking lights are not allowable as a move expense." There is substantial evidence in the record to support the hearing examiner's conclusion that the parking lot lighting constituted real property paid for by Sound Transit. Because, under 49 C.F.R. § 24.3, an agency is prohibited from making a payment to a person that would duplicate another payment the person received, the hearing examiner did not misapply the law by denying this line item.

Sound Ford submitted claim 24B, COR 12 for reimbursement for the enlargement of an existing wall opening to meet applicable fire code requirements. Sound Transit did not include this claim in its final claim determination. Daniel testified the claim stemmed from work completed to create an opening within the

replacement building's interior to accommodate the size of the vehicles Sound Ford services. Daniel stated,

> [T]he fire marshal or the building code requires that that opening have a three-hour, fire-rated, roll-up door. So this is the cost of installing that door, to meet the fire code and to protect from fire going from one side to the other.
>
> And so it's required as part of the—it's because of the paint booth on one side and the body shop portions on the other side. They had to separate those or be able to separate them in case of a fire. So because of the personal property that was installed, that we had to have it.
>
> Q So the only way that the City would allow Sound Ford to install a paint booth in the same building as the remaining body shop was to ensure there was a wall between those two functions and a three-hour fire door, allowing access between those two areas. Is that accurate?
>
> A That's accurate.

Daniel testified, "The height [of the partition wall opening] was to accommodate personal property" and the "[t]hree-hour fire door was to accommodate the code." There is substantial evidence in the record to support the hearing examiner's conclusion that enlarging the doors within the replacement property was an improvement to the replacement property as required by the City. Because improvements to the replacement property are categorized as reestablishment expenses, the hearing examiner did not misapply the law.

Claim 24B, COR 23 was an invoice for the structural reinforcement of a 15 foot door opening that Sound Ford needed because the replacement building's access doors were too low. Sound Transit did not include this claim in its final claim determination. In its final claim determination, Sound Transit deemed the

claim ineligible for reimbursement. Sound Ford appealed, arguing the "replacement building's access doors were too low to allow Sound Ford's size of vehicles to access" its personal property and the "work was necessary to enlarge the wall openings for vehicles to have access to the personal property to allow their operations to occur." There is substantial evidence in the record to support the hearing examiner's conclusion that the claim was an improvement to the replacement property as required by the City. Because improvements to the replacement property are categorized as reestablishment expenses, the hearing examiner did not misapply the law.

Sound Ford filed claim 36, which sought $9,495.09 for expenses related to moving and reinstalling a security camera system at the replacement property. Sound Transit paid $7,403.00 directly to Sound Ford as reimbursement for the claim, but did not explain why it denied the remaining $2,092.09. Sound Ford appealed this determination, arguing Sound Transit failed to pay Vital Mechanical Service, Inc.'s 10 percent markup and 6 percent fee, as well as 10 percent sales tax. Sound Ford cited "Attachment 12" as its proof of payment; however, it attached only a spreadsheet that showed various unitemized payments it had made to the vendor Vital Mechanical. The attachment detailed that Sound Ford had paid Vital Mechanical $1,307,733.77 and had received invoices totaling $1,365,219.96. Roland determined there was "no indication this was under the supervision of Vital Mechanical Service and Sound Ford was reimbursed for the amount of $7,403.00 based on a proof of payment." She stated the additional amount was ineligible based on 49 C.F.R. § 24.3, which prohibits Sound Transit

from making a payment to a person that would duplicate another payment the person received.

On August 13, 2020, Daniel provided a relocation plan update to Snyder, which provided a quote from Vital Mechanical for work necessary to prepare the replacement property for the incoming business. The plan stated that a 10 percent markup on Vital Mechanical subcontractors was "necessary for Vital to manage the entire project" and the amount was "reasonable within the industry for a general contractor to charge for this management function." Additionally, the plan highlighted a 6 percent markup on project work, which was Vital Mechanical's fee for managing the project.

Before the hearing examiner, Daniel testified,

> Sound Ford had at their displacement property security cameras. So this is the cost to move and reinstall those security cameras, which are personal property, to the replacement property.
>
> Sound Transit acknowledged and paid for direct cost of this work, but did not pay for the markups for Vital Mechanical to manage the work and their profit and then the tax. So Sound Transit only paid the direct costs and none of the markups or tax.

Daniel contended the work was completed by American Electric Washington Inc. and supervised by the Vital Mechanical as the general contractor. But Jorgenson testified the Vital Mechanical contractor markups were denied because Sound Ford did not indicate to Sound Transit there was any kind of markup fee when they presented the invoice. She stated Sound Ford "didn't indicate to us when they—that there was any kind of markup fee. And later when this was raised after the claim was paid, we did not find anywhere in the Vital Mechanical line item certified

invoice" a line item that showed the markup. Furthermore, Jorgenson testified Sound Ford did not present any paperwork showing that Vital Mechanical supervised the work referenced in claim 36. There is substantial evidence to support Sound Transit's assertion that Vital Mechanical was not the general contractor for this specific work. Thus, the hearing examiner did not misapply the law by denying claim 36.

Claim 38 sought reimbursement of $105,050.07 for McCready Remodeling for expenses related to preparing the relocation property for installation of an oil water separator and a paint booth. Sound Transit paid $81,178.90 as an eligible move expense under 49 C.F.R. 24.301(g)(3), but denied McCready's 10 percent overhead charge and Vital Mechanical's 6 percent fee. Sound Ford submitted estimate No. 722 from McCready Remodeling, which listed various task descriptions and included a 10 percent overhead charge and a 10 percent sales tax for a total of $62,097.20. Sound Ford also submitted estimate No. 725 from McCready Remodeling, which again included a 10 percent overhead charge and 10 percent sales tax for a total of $24,587.20. However, estimate No. 725 showed that Sound Transit denied reimbursement for the roll up fire door line item that cost $4,550.00. Sound Transit paid $81,178.90 directly to Vital Mechanical for the claim. Sound Ford appealed this decision, arguing Sound Transit erred in denying McCready Remodeling's 10 percent overhead charge and Vital Mechanical's 6 percent fee, as well as the $4,550.00 for a roll up fire door. Sound Ford contended that "Vital Mechanical was the general contractor and charged 10 percent for managing subcontractors, [and] a 6 percent fee for the project, plus tax." After

reviewing the claim, Roland determined the 10 percent overhead line item charged by McCready Remodeling was ineligible based on 49 C.F.R. § 24.3 policy, which prohibits Sound Transit from making a payment to a person that would duplicate another payment the person received. Roland determined the roll up fire door may be eligible for reimbursement as a reestablishment expense; however, Sound Ford had previously received the maximum reimbursement amount. Finally, she determined while the 10 percent markup on Vital Mechanical subcontractor work and the 10 percent tax was reimbursed on the two invoices, the 6 percent markup on Vital Mechanical subcontractors was not. The 6 percent markup was determined to be eligible for reimbursement. Daniel testified before the hearing examiner that

> Sound Transit is not recognizing that McCready should also have their overhead and profit paid for, which is—every subcontractor does have their overhead and profit paid for. McCready just happens to show it on their paperwork, which makes it more simpler, and it's a little more open-book-type of concept.
>
> So they're entitled to that, but I think that where Sound Transit got confused is, we got overhead from McCready, and then we got overhead for Vital, which seems like it could be duplicative, but it's not. McCready has to manage their project, just like any other subcontractor, so they're entitled to that. And they're entitled to profit, otherwise they wouldn't be in business.

Roland testified the unpaid portion of claim 38 was considered a duplicative charge: "I believe this is one that we paid direct, and—and so therefore we couldn't pay for it twice because we'd already paid it direct."

There is evidence in the record to show that both Vital Mechanical and McCready Remodeling charged a 10 percent overhead fee on estimate Nos. 722

and 725. Sound Ford offered no evidence to prove it was appropriate for Sound Transit to pay both fees. There is sufficient evidence that the two charges were for the same item and thus could not be paid twice. Because an agency is prohibited from making a payment to a person that would duplicate another payment the person received, the hearing examiner did not misapply the law by denying claim 38.[7]

In its appeal of Sound Transit's final claim determination, Sound Ford resubmitted claims for the body shop access ramps and doors and the service shop access ramp that were omitted from Sound Transit's final claim determination. Sound Ford argued, "The replacement property needed ramps and larger doors for vehicle access to the building. The relocated personal property, including the vehicles, paint booths, prep booth, and aluminum booth could not properly operate without the vehicles having access to them."

Daniel testified the body shop ramps were for "the vehicles to get up to that elevated floor, because it was a warehouse before, and so that's the only way that they can get in and out." With regard to the service shop access ramps, Daniel testified they provided the same function as the body shop access ramps. There is substantial evidence to support the hearing examiner's conclusion that Sound Ford installed ramps to its body shop and service shops to allow its vehicles to

[7] Sound Ford assigns error to Sound Transit's denial of claim 24B, specifically its denial of certain 10 percent contractor markups totaling $468.64. Sound Ford provides no argument or explanation of this assigned error in his brief. This prevents us from addressing this assignment of error. RAP 10.3(a)(6) (appellate brief should contain argument supporting issues presented for review, citations to legal authority, and references to relevant parts of the record).

access the relocated property. Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business are classified as reestablishment expenses, thus the hearing examiner did not misapply the law in classifying these claims as such.

The "pipe insulation" claim sought reimbursement because "[t]he plumbing code required insulation to be installed on plumbing lines." For this claim, Sound Ford stated the claim was a "code required expense that was necessary for the installation of the personal property, and, to allow the personal property to properly function." The claim was included in Daniel's relocation plan update from August 13, 2020, which stated the work was "necessary [to] meet plumbing codes. The work includes wrapping pipes with insulation for protection." Daniel testified the pipes needed to be insulated because "the City Code required them to insulate these pipes because of the installation of the personal property." He agreed the piping insulation was required in order to get an occupancy permit.

Subject to two exceptions, the regulations state that "[a] displaced person is not entitled to payment for: . . . [p]hysical changes to the real property at the replacement location." 49 C.F.R. § 24.301(h)(10). Two exceptions are for (1) modifications necessary to adapt personal property to the replacement structure, or adapt utilities at the replacement structure to the personal property and (2) modifications, repairs, or improvements to the replacement property as required by federal, state, or local law, or to accommodate the business operation. 49 C.F.R. §§ 24.301(g)(3), .304(a). If the claim is determined to fall into the first category relating to the reinstallation of personal property, then the cost is fully

recoverable as a moving expense. Id. But if the claim is for an improvement to the replacement property, then it is considered a reestablishment cost. Id. There is substantial evidence in the record to support the hearing examiner's conclusion that the piping insulation was an improvement required by code to operate Sound Ford's business. Therefore, the hearing examiner did not misapply the law in classifying the claim as a reestablishment expense.

V

Sound Ford argues that the hearing examiner's "inconsistent application of the relevant relocation laws" and their "universal acceptance of [Sound Transit's] inconsistent decisions highlights the arbitrary and capricious decision-making process." We disagree.

"An agency's action is arbitrary and capricious only if it 'is willful and unreasoning and taken without regard to the attending facts or circumstances.' " PacifiCorp, 194 Wn. App. at 587 (internal quotation marks omitted) (quoting Att'y Gen.'s Office v. Wash. Utils. & Transp. Comm'n, 128 Wn. App. 818, 8`24, 116 P.3d 1064 (2005)). " 'Where there is room for two opinions, an action taken after due consideration is not arbitrary and capricious even though a reviewing court may believe it to be erroneous.' " Id. (internal quotation marks omitted) (quoting Att'y Gen.'s Office, 128 Wn. App. at 824). " 'Neither the existence of contradictory evidence nor the possibility of deriving conflicting conclusions from the evidence renders an agency decision arbitrary and capricious.' " Id. (quoting Att'y Gen.'s Office, 128 Wn. App. at 824).

In support of its claim that Sound Transit arbitrarily reclassified moving expenses as reestablishment expenses, Sound Ford contends that "the installation of plumbing and electrical equipment necessary to reconnect personal property, exhaust fans, larger capacity transformers, and oil-water separators (which were all reimbursed by [Sound Transit] here) are not expressly addressed in the Acts and Regulations," yet were required modifications to the real property to ensure Sound Ford's personal property could function. Under 49 C.F.R. § 24.301(g)(3), eligible actual moving expenses include:

> modifications to the personal property, including those mandated by Federal, State or local law, code or ordinance, necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.

In so treating expenses to modify utilities at the replacement site, the Act provides sufficient justification for Sound Transit to reimburse for installation of plumbing and electrical equipment, but, as Sound Ford argues in its briefing, "deny reimbursement of Sound Ford's other expenses that were similarly reasonably required to allow Sound Ford to effectively access and use its relocated personal property." The hearing examiner did not inconsistently apply the relocation laws and thus did not act in an arbitrary and capricious manner.[8]

At oral argument, Sound Ford argued that Sound Transit inconsistently classified some portions of Sound Ford's costs as reimbursable moving expenses

[8] Sound Ford argues Sound Transit's decision-making process is arbitrary and capricious because within the last 21 years "Sound Ford and every claimant before it that challenged a [Sound Transit] agency action lost their appeals." Sound Ford has failed to adequately brief this argument or support it with an adequate record. Therefore, we do not reach it.

while denying "exactly the same types of costs" because they were reestablishment expenses, thereby acting in an arbitrary and capricious manner. Wash. Court of Appeals oral argument, Sound Ford, Inc. v. Cent. Puget Sound Reg'l Transit Auth., No. 85904-8-I (January 24, 2024), at 2 min., 24 sec. to 2 min., 45 sec., https://tvw.org/video/division-1-court-of-appeals-2024011545/?eventID=2024011545. In support of this contention, Sound Ford points to Sound Transit's payment of 36 percent of the fire suppression system necessary for the relocation of the paint booth, yet denying the remaining 64 percent of the system. Id. at 3 min., 25 sec. to 4 min., 9 sec. Sound Transit determined that moving the paint booth led to eligible moving expenses, so the portion of the fire modification system necessary for the replacement property that was attributable to the paint booth, 36 percent, became an eligible moving expense as well. Sound Transit's allocation of the cost associated with the move was a reasonable interpretation of the regulations, and thus not arbitrary and capricious. Neither Sound Ford's brief nor its explanation at argument identifies any other specific costs that could be considered so comparable to this one that Sound Transit's covering them but not this one shows arbitrary action.

VI

Sound Ford argues this court should award it reasonable attorney fees under the equal access to justice act, RCW 4.84.350 (EAJA). Under the EAJA, "a court shall award a qualified party that prevails in a judicial review of an agency action fees and other expenses, including reasonable attorney fees, unless the court finds that the agency action was substantially justified or that circumstances

make an award unjust." RCW 4.84.350(1). Because Sound Ford is not the prevailing party, we deny its request for attorney fees.

Affirmed.

Birk, J.

WE CONCUR:

Díaz, J.

Brennan, J.