

McCULLOUGH HILL LEARY, PS

July 22, 2021

City of Seattle, OPCD
Attn: Jim Holmes
P.O. Box 34788
700 Fifth Avenue, Suite 2000
Seattle, Washington 98124-7088
Jim.holmes@seattle.gov

Re: Determination of Nonsignificance
Proposed Comprehensive Plan Amendment imposing a new policy limiting the ability of individuals to petition to leave a Manufacturing/Industrial Center

Dear Mr Holmes:

We are writing on behalf the Industrial Innovation Network (“IIN”) to provide comments on the Determination of Nonsignificance (“DNS”) for the proposed Comprehensive Plan Amendment that would end the ability of individual property owners to petition to leave a Manufacturing Industrial Center (“MIC”) (the “Proposed Action”). IIN is a group with members who own property in Manufacturing/Industrial Centers or who otherwise have an interest in industrial lands in Seattle.

A. The DNS is Based on Inadequate or Incorrect Information; the Proposed Action Results in Significant Adverse Impacts.

A threshold determination must be “based upon information reasonably sufficient to evaluate the environmental impact of a proposal.” WAC 197-11-335. Here, the DNS is based on inadequate or inaccurate information contained in the Checklist.

The City may issue a DNS only when the proposal under consideration will not have significant adverse environmental impacts. WAC 197-11-340(1); SMC 25.05.340.A. In contrast, if a proposal will have a significant adverse impact on the environment, the City must issue a Determination of Significance (“DS”) and prepare an Environmental Impact Statement (“EIS”). WAC 197-11-360(1); SMC 25.05.360.A.

Under SEPA, the “built environment” is an element of the environment. WAC 197-11-740; WAC 197-11-444. The “built environment” includes “land and shoreline use,” which in turn includes “relationship to existing land use plans,” “housing” and “aesthetics.” The built environment also includes “transportation.” WAC 197-11-444. During the threshold determination process, an agency must ask, “Is the project consistent with the . . . local development regulations, and the comprehensive plan?” Department of Ecology SEPA Handbook, Section 2.6. “Review of a nonproject proposal should include a consideration of other existing regulations and plans, and any under development.” *Id.* at Section 4.1.

The DNS is inadequate and results in the following significant impacts, in addition to others:

- The response to “Built Environment,” pp. 4-5 of the checklist, states that there are no significant impacts to land use, height/bulk/scale, housing, aesthetics, noise, light/glare, historic preservation, energy, public view protection, shadows on open space, because it simply relates “to the timing of Comprehensive Plan Future Land Use Map amendments and would not modify regulations regarding the size or use of existing or future development.” This statement is incredibly misleading and fails to disclose the significant impacts that will result from the Proposed Action. The current Comprehensive Plan allows individual owners to petition to remove their properties from the MICs/industrial areas. The Proposed Action will take away the individual right of an owner to petition their government, and will also result in properties being unable to remove themselves, possibly in perpetuity, from the MIC/industrial areas. As a result, properties that are currently underutilized due to restrictive industrial lands

policies and regulations will either continue to be underutilized and become blighted/continue to be blighted. The properties will never be able to be utilized for housing in the height of a housing / homelessness crisis. Thus, the Proposed Action results in direct land use impact, direct housing impacts (locking square miles of land out of consideration for housing), impacts to affordable housing (not allowing affordable housing development in industrial lands) direct aesthetic impacts (underutilization, underdevelopment, blight). In addition, the checklist fails to analyze the ways in which this land use decision is entirely inconsistent with the existing Land use Code, the existing Comprehensive Plan, the King County Countywide Planning Policies and VISION 2050, as well as the Growth Management Act and the City's Race and Social Initiative. To our knowledge, no Equity Analysis was completed for this Amendment. The lack of analysis fails to meet the City's required burden under SEPA.

- The response to "Transportation, Parking, Public Services/Facilities, Utilities," p. 5 of the checklist, states that there are no significant impacts in this area of the environment because the non-project action will not impact the size of use in industrial lands. This statement fails to disclose the significant impacts that will result from the Proposed Action. As the City knows, Sound Transit is currently making its alignment decision to determine where light rail will pass through a large swath of both the Duwamish MIC and the BINMIC. Locking industrial lands into non-housing use (required by the MIC) will result in significant land use and transportation impacts. In addition, the City has failed to disclose/failed to study the significant adverse impacts that result from locking industrial lands out of the housing market in terms of the trip generation that occurs due to the fact that people cannot live within Seattle affordably, and so must commute long distances to get to their jobs in the City.

B. The Issuance of a DNS Results in Improper SEPA Piecemealing

SEPA rules require that "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." R. Settle, *Washington State Environmental Policy Act: A Legal and Policy Analysis* ("Settle"), § 11.01[5] (quoting WAC 197-11-060(3)(b)). On the same day the City issued its Determination of Nonsignificance for the Proposed Action, it issued a Determination of Significance for an "updated comprehensive strategy to strengthen and grow Seattle's industrial and maritime sectors for the future" and would "update its industrial and maritime policies and industrial zoning." There is no reason why the Proposed Action could not be combined and studied in the EIS that will be completed for the larger industrial lands study. Indeed, the long ranging impacts of the decision to lock down industrial lands for good should certainly be studied as a part of an EIS proposal that studies industrial lands more broadly. Following proper environmental review and disclosure, the City Council could very well decide that this Comprehensive Plan Amendment is a good policy choice, in combination with other policy choices that result from the EIS process. But until this study is done, the City Council cannot proceed with adequate information to make an informed choice. This is "the fundamental idea of SEPA: to prevent government agencies from approving projects and plans before the environmental impacts of doing so are understood." *Int'l Longshore & Warehouse Union, Local 19, v. City of Seattle*, 176 Wn. App. 512, 522, 309 P.3d 654, 659 (2013).

C. Public Process

The purpose of SEPA is to inform the public and decision makers. The Proposal has numerous significant adverse impacts and unintended consequences that are not addressed in the Checklist. Inadequate outreach was done to property owners in the industrial areas. Indeed, the Mayor's office handpicked "stakeholder groups" to participate in the Industrial and Maritime Strategy that recommended this strategy but no broadscale outreach process was conducted, by design.¹ The Mayor's handpicked "stakeholder" group met behind closed doors, with no public notice, no notes taken of the meetings, and no opportunity for public or outside participation. The members of IIN were not approached to participate in this private stakeholder group. The Checklist fails to take into account information provided by property owners in the industrial areas. IIN requests that OPCD

1

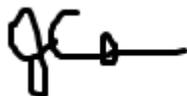
extend the public comment period on the DNS to allow additional public outreach and the ability for the majority of property owners in the MICs that are completely unaware of this significantly impactful amendment to comment on its impacts.

D. Conclusion

The Environmental Checklist lacks crucial information. The Proposed Action will result in significant adverse environmental impacts. The issuance of a DNS results in improper SEPA piecemealing. The City must withdraw the DNS and issue a DS and properly combine its environmental review with the host of other industrial policies it is currently studying in the EIS.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Clawson', with a long horizontal line extending to the right.

Jessica M. Clawson

cc: Client