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KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE #: 26-2-00637-7 KNT

The Honorable Joe Campagna

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

CITIZENS FOR THE PROTECTION OF DES
MOINES HISTORIC RESOURCES,

Petitioner,

v.

CITY OF DES MOINES and ZENITH
PROPERTIES, LLC,

Respondents.

No. 26-2-00637-7 KNT

ORDER AND JUDGMENT DISMISSING
LAND USE PETITION ACT APPEAL

[Clerk's action required]

This matter came before the Court on the Land Use Petition Act (“LUPA”) appeal (“Petition”) brought by Citizens for the Protection of Des Moines Historic Resources (“Petitioner”). The appeal challenges the State Environmental Policy Act (“SEPA”) review of the proposed demolition of structures by Zenith Properties, LLC (“Applicant” or “Zenith”) on a property (“Property”) that it owns in the City of Des Moines (“City”). The Petition seeks review of the October 15, 2025 order (“Summary Judgment Order”) by the City’s Hearing Examiner (“Examiner”) granting partial summary judgment in favor of the Applicant and City (collectively, “Respondents”) on Petitioner’s claim that the Environmental Impact Statement

1 (“EIS”) prepared for the proposed demolition was deficient for not discussing the impacts of
2 future development on the Property.

3 The Court has reviewed relevant portions of the record and transcript submitted pursuant
4 to RCW 36.70C.110. The Court has also fully considered the arguments of counsel as set forth in
5 the Petition; Petitioner’s Opening Brief; the Respondents’ Joint Response; Petitioner’s Reply;
6 and in oral argument on May 22, 2026.
7

8 Based on the foregoing, the Court concludes:

- 9 1. This action is brought under LUPA, Ch. 36.70C RCW. The Court sits in an appellate
10 posture and need not make specific findings of fact. *Durland v. San Juan Cnty.*, 182
11 Wn.2d 55, 64, 340 P.3d 191, 196 (2014); *Wellington River Hollow, LLC v. King*
12 *Cnty.*, 121 Wn. App. 224, 230 n.3, 54 P.3d 213 (2002).
- 13 2. Petitioner has not challenged the Examiner’s December 11, 2025 Findings,
14 Conclusions, and Decision (“Final Decision”). Petitioner challenges only the
15 Summary Judgment Order. Petitioner’s Revised Land Use Petition states that the
16 Examiner “erred in dismissing on summary judgment, prior to an evidentiary hearing,
17 Citizens’ claim that the city’s SEPA EIS was inadequate for failing to consider future
18 development of the property following demolition of [the] historic Masonic Home.”
19 Dkt. #31, ¶ 7.2.
- 20 3. Appellate review of a summary judgment ruling is de novo. *Messenger v.*
21 *Whitemarsh*, 13 Wn. App. 2d 206, 210, 462 P.3d 861, 863 (2020). Here, de novo
22 review of the Examiner’s decision means the Court stands in the Examiner’s shoes
23 and reviews the adequacy determination of the City’s responsible official. The de
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1 novo summary judgment standard does not preclude the substantial weight that the
2 Court must afford to that determination under RCW 43.21C.090.

- 3
4 4. However, the ruling under review was not a summary judgment under CR 56. Rather,
5 the matter appears to have been determined under Chapter 18.240 of the Des Moines
6 Municipal Code and Rule 2.3.1 of the Des Moines Hearing Examiner Rules of
7 Procedure.
- 8 5. The Hearing Examiner's Rules of Procedure do not incorporate the civil rules. The
9 Examiner dismissed Petitioner's future-development claim on Respondents' motion
10 under Rule 2.3.2 of the Hearing Examiner's Rules of Procedure, which permits a
11 party to "request dismissal of all or part of an appeal." Such a motion is governed by
12 the standard set out in Rule 2.3.1, under which an appeal or claim may be dismissed if
13 it "fails to state a claim for which the Hearing Examiner has jurisdiction to grant
14 relief" or "is without merit on its face."
- 15
16 6. This characterization is consistent with how the matter was litigated and decided
17 below. The motion was resolved on written briefs without an evidentiary hearing on
18 this claim. The parties did not submit competing declarations or develop a factual
19 record on the future-development issue, because the governing standard did not call
20 for one. And the Examiner did not find that future development was improbable as a
21 factual matter. The Examiner instead dismissed the claim as a matter of law,
22 concluding that the impacts of hypothetical future development need not be analyzed
23 in the EIS for the demolition regardless of how likely that development may be.
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- 1 7. Because the dispositive question is legal and the relevant facts are accepted as
2 alleged, the Court resolves the claim on its merits rather than remanding for factual
3 development. Neither party argues that further factual development is necessary.
4 Petitioner does not seek to reopen the administrative record.
5
- 6 8. Petitioner’s challenge to the adequacy of the EIS is a procedural challenge. WAC
7 197-11-680(3)(a)(iii) (“Appeals on SEPA procedures shall be limited to review of a
8 final threshold determination and final EIS.”). In the context of an EIS, the relevant
9 procedural determination is the issuance of the EIS by the responsible official for the
10 (City) agency as the final, adequate environmental document for the proposal. WAC
11 197-11-460; see WAC 197-11-714; WAC 197-11-788. In any appeal of this
12 determination, whether before the Examiner or before this Court, “the decision of the
13 governmental agency shall be accorded substantial weight.” RCW 43.21C.090; see
14 RCW 43.21C.075(d) (administrative appeal procedures “shall provide that procedural
15 determinations made by the responsible official shall be entitled to substantial
16 weight.”).
17
- 18 9. “EIS adequacy involves the legal sufficiency of the data in the EIS.” *Weyerhaeuser v.*
19 *Pierce Cnty.*, 124 Wn.2d 26, 38, 873 P.2d 498, 504 (1994). The adequacy of an EIS is
20 subject to de novo review. *Id.* “Although review is de novo, the court must give
21 ‘substantial weight’ to the governmental agency's determination that an EIS is
22 adequate under SEPA.” *Klickitat Cnty. Citizens Against Imported Waste v. Klickitat*
23 *Cnty.*, 122 Wn.2d 619, 633, 860 P.2d 390, 398 (1993).
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1 10. Deferential review is also required by LUPA. Under RCW 36.70C.130(1)(b),
2 questions of law are reviewed de novo “after allowing for such deference as is due the
3 construction of a law by a local jurisdiction with expertise.” Under RCW
4 36.70C.130(1)(d), the application of law to fact is reviewed under the clearly
5 erroneous standard. Both standards are consistent with the “substantial weight”
6 required by RCW 43.21C.090.
7

8 11. The adequacy of an EIS is determined using the “rule of reason,” “which requires the
9 EIS to contain a ‘reasonably thorough discussion of the significant aspects of the
10 probable environmental consequences’ of the agency’s decision.” *Weyerhaeuser*, 124
11 Wn.2d at 38 (quoting *Klickitat*, 122 Wn.2d at 633). “The rule of reason is ‘in large
12 part a broad, flexible cost-effectiveness standard’, in which the adequacy of an EIS is
13 best determined ‘on a case-by-case basis guided by all of the policy and factual
14 considerations reasonably related to SEPA’s terse directives.’” *Klickitat*, 122 Wn.2d
15 at 633 (quoting R. Settle, *The Washington State Environmental Policy Act: A Legal
16 and Policy Analysis* § 14(a)(i) (4th ed. 1993), at 156, 155). The court “do[es] not rule
17 on the wisdom of the proposed [demolition] but rather on whether the EIS gave the
18 City [agency] sufficient information to make a reasoned decision.” *Citizens Alliance
19 to Protect Our Wetlands v. City of Auburn*, 126 Wn.2d 356, 362 (1995).
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22 12. The Examiner’s Dismissal Order analyzed the indirect impacts and piecemealing
23 questions primarily under WAC 197-11-060(3), which governs whether related
24 proposals must be reviewed in the same environmental document. The Examiner did
25 not separately address WAC 197-11-060(4)(d), which independently requires analysis
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1 of indirect impacts caused by a proposal. Those are distinct requirements, and
2 analyzing one without the other is an incomplete application of the SEPA framework.

3 13. This Court therefore addresses the indirect impacts question under the correct legal
4 standard. That standard is WAC 197-11-060(4)(d) and the fact-sensitive approach
5 adopted by the Supreme Court in *King County v. Washington State Boundary Review*
6 *Board*, 122 Wn.2d 648, 860 P.2d 1024 (1993). Using that standard, the Court affirms
7 the Examiner’s conclusion that the EIS was not required to analyze future development
8 impacts. Accepting Petitioner’s factual allegations as true, and applying the correct
9 legal framework, the Examiner reached the right result. Any error in the analytical
10 framework employed below is therefore harmless.

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13 14. An EIS must discuss the probable, significant, adverse impacts of an action. WAC
14 197-11-402(1). Petitioner asserts that future development is “reasonably foreseeable,”
15 i.e., probable. Even if assumed true, that would not establish that future development
16 impacts are “impacts” of demolition that SEPA required the EIS to address.

17
18 15. SEPA requires an EIS to analyze “impacts,” defined as “the effects or consequences
19 of actions.” WAC 197-11-752. WAC 197-11-060(4)(d) further provides that “[a]
20 proposal’s effects include direct and indirect impacts caused by a proposal. Impacts
21 include those effects resulting from growth caused by a proposal, as well as the
22 likelihood that the present proposal will serve as a precedent for future actions. For
23 example, adoption of a zoning ordinance will encourage or tend to cause particular
24 types of projects or extension of sewer lines would tend to encourage development in
25 previously unsewered areas.” (Emphasis added.)
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1 16. The impacts of possible future development are not impacts of demolition because they
2 are not effects or consequences caused by demolition. Future development will not be
3 permitted, authorized, or compelled by permitting demolition. Demolition does not
4 change the zoning applicable to the Property, extend infrastructure, alter development
5 capacity, or otherwise affirmatively create development potential that did not already
6 exist.
7

8 17. Petitioner argues that future development impacts are “indirect impacts,” but even
9 indirect impacts must be “caused by a proposal” in order for the EIS to be required to
10 analyze them. WAC 197-11-060(4)(d). The word “indirect” does not eliminate the
11 causation requirement. Probability of future development and causation are distinct
12 inquiries. High probability of a future event does not establish that the current proposed
13 action causes that event.
14

15 18. The causation problem is most clearly illustrated by examining what the record
16 actually establishes about development probability. If redevelopment of this 30.3-acre
17 site is probable, that probability existed before Zenith applied for the demolition
18 permit, before Zenith purchased the Property, and independently of any government
19 action relating to demolition. The probability of future development is a function of
20 the site's location, zoning, size, and market conditions, none of which are created or
21 altered by the demolition permit.
22

23 19. The EIS itself confirms this. The City's own SEPA review analyzed development of
24 the eastern approximately 18.45 acres of the site as an independent development
25 opportunity that did not depend on demolition of the existing historic structures. Expert
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1 testimony discussed developing 35 to 45 units per acre on those eastern acres. This
2 analysis proceeded on the assumption that the historic structures were preserved, not
3 demolished. The development trajectory Petitioner invokes was already present,
4 already analyzed in the EIS, and entirely independent of what happens to the existing
5 buildings.
6

7 20. Moreover, the demolition permit is not what makes development of the site probable.
8 Under all three alternatives analyzed in the EIS (demolition, no action, and historic
9 preservation), the long-term outcome is the same vacant developable site. The EIS itself
10 concluded that under the no-action alternative the structures would deteriorate and be
11 lost over time (referred to as “demolition through neglect”). A vacant developable site
12 results whether the structures are demolished by permit or allowed to deteriorate. The
13 permit is therefore not the driver in the causal chain Petitioner describes.
14

15 21. This demonstrates that the demolition permit does not cause the development
16 probability. That probability exists equally under the no-action alternative that involves
17 no SEPA triggering event. It would be an odd result to require an EIS analyzing the
18 development probability for the demolition permit that is the same result as an
19 alternative that does not require a permit.
20

21 22. Petitioner relies heavily on *King County v. Washington State Boundary Review*
22 *Board*, 122 Wn.2d 648, 860 P.2d 1024 (1993), which adopted a fact-sensitive
23 approach and held that “the absence of specific development plans should not be
24 conclusive of whether an adverse environmental impact is likely.” *Id.* at 663. This
25 Court applies that fact-sensitive approach. However, *King County* does not eliminate
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1 the causation requirement. Rather, it addresses the standard for assessing probability
2 once a causal relationship is established.

3 23. In *King County*, the proposed annexation would by force of law bring the property into
4 the urban growth area and trigger a mandatory rezoning process within one year. The
5 annexation affirmatively set in motion a legal process leading to future development.
6 The Court expressly relied on WAC 197-11-442's special provisions for nonproject
7 EISs and noted that "uncertainties in development plans can thereby be dealt with by
8 the lead agency without violating the mandate of SEPA." *Id.* at 664 n.10.

9
10 24. Here, the demolition is not a nonproject action changing land use designations or
11 policy. It does not trigger any legally mandated process leading to future development.
12 The WAC 197-11-442 provisions on which King County relied have no application
13 here.

14
15 25. The contrast with *King County* also highlights the mitigation purpose of SEPA analysis.
16 The *King County* Court reasoned that EIS review of future development impacts was
17 necessary because the scope of the annexation could be adjusted to reduce those
18 impacts. *King County*, 122 Wn.2d at 666-67. Here, there is nothing about the
19 demolition permit that could be conditioned or denied in order to affect or prevent
20 future development impacts. Demolition does not determine what may later be built,
21 where, at what density, or subject to what mitigation. SEPA review "at the earliest
22 possible time" serves the purpose of enabling meaningful mitigation, WAC 197-11-
23 055(1); it does not require analysis of impacts that could not be meaningfully addressed
24 through conditions on the current permit.
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1 26. Further, even assuming future development were a probable consequence of demolition
2 Petitioner offered no evidence showing that any specific future development impact
3 would be probable and significant. WAC 197-11-402(1). No development has been
4 proposed. Nothing about the nature of any future project is known. The likelihood of
5 significant impacts from future development is speculative. See WAC 197-11-
6 060(4)(a); WAC 197-11-782.

7
8 27. Even accepting as true Petitioner's allegation that some development will likely follow
9 demolition, Petitioner's allegations do not establish that any particular future
10 development impact is probable and significant, as distinct from the general statement
11 that some development will occur. No development has been proposed, and the
12 allegations identify no specific project whose impacts could be evaluated. The claim
13 that significant impacts from future development are probable rests on speculation
14 about the nature, scale, and configuration of a project that does not exist.

15
16 28. Requiring analysis of future development impacts would require the invention of a site-
17 specific project that no one has proposed and speculation about its size, design,
18 configuration, and resulting impacts. SEPA does not require such speculation. WAC
19 197-11-060(4)(a); see WAC 197-11-055(2)(a)(i) ("proposed future activities [must be]
20 specific enough to allow some evaluation of their probable environmental impacts").
21 Petitioner never identified what hypothetical project the City should have analyzed, and
22 offered no evidence on what impacts such a project might generate.

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25 29. Petitioner also argues that the City unlawfully piecemealed environmental review by
26 treating demolition as a standalone proposal rather than as one component of a larger
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1 redevelopment project. This claim fails for the reasons stated above and for additional
2 reasons. SEPA prohibits artificially segmenting a single proposal in order to avoid
3 review of the consequences of an entire action. “Proposals or parts of proposals that
4 are related to each other closely enough to be, in effect, a single course of action shall
5 be evaluated in the same environmental document.” WAC 197-11-060(3)(b). Proposals
6 must be reviewed together if they cannot or will not proceed unless the other is
7 implemented simultaneously, or if they are interdependent parts of a larger proposal
8 depending on that larger proposal for their justification. *Id.* The piecemealing doctrine
9 presupposes that there is a whole project that is being artificially divided into pieces.
10 *Indian Trail Prop. Owner's Ass'n v. City of Spokane*, 76 Wn. App. 430, 443, 886 P.2d
11 209 (1994).

12
13
14 30. Demolition and future development do not constitute a single course of action for
15 purposes of SEPA for several reasons. First, there is no existing redevelopment
16 proposal of which demolition is only a part. Second, demolition does not construct or
17 authorize any portion of a future development project. Third, no portion of any
18 hypothetical future development is built or committed by the demolition. And fourth,
19 nothing about the demolition would limit the City’s authority to fully review and
20 condition any future development application.

21
22 31. The piecemealing theory fails on the accepted allegations for the reasons just stated. It
23 fails for an additional and independent reason as well. The Examiner's Final Decision,
24 which Petitioner did not appeal, found that the demolition serves an independent public
25 safety and revitalization purpose. That is, it removes unsafe and deteriorating structures
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1 and cures trespass, vandalism, and safety hazards. Those findings are unchallenged and
2 are verities. Because demolition has an independent justification, it does not depend on
3 redevelopment for its justification. WAC 197-11-060(3)(b)(ii) is therefore not satisfied.
4 To the extent Petitioner's piecemealing theory depends on the premise that demolition
5 has no purpose other than to enable redevelopment, that premise is rebutted by findings
6 Petitioner did not appeal.
7

8 32. The cases cited by Petitioner are distinguishable because demolition does not construct
9 or authorize any portion of a future development project, unlike the first phases in
10 *Juanita Bay Valley Cmty. Ass'n v. City of Kirkland*, 9 Wn. App. 59, 72-73, 510 P.2d
11 1140 (1973) and *Indian Trail, supra*, which involved first construction phases of
12 identified larger development projects.
13

14 33. Petitioner argues that demolition serves no independent purpose and that the existing
15 structures remain usable. Even if these assertions were assumed true, they would not
16 establish that the EIS is inadequate under the rule of reason. Because nothing about
17 demolition determines, requires, begins, or limits review of future development, the
18 two actions are not a single course of action regardless of the purpose for which
19 demolition is sought.
20

21 34. Even if Petitioner's assertions about Zenith's plans were assumed true, they would
22 not establish that the EIS is inadequate under the rule of reason. Because nothing
23 about demolition determines, requires, begins, or limits review of future development,
24 the two actions are not a single course of action and need not be reviewed together.
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1 35. Petitioner’s assertions, however, are contrary to the expert reports contained in the
2 EIS, which were part of the record on summary judgment. Petitioner relies on the
3 Historic Report prepared by David Peterson, which assessed the historic integrity of
4 the Property, i.e. its ability to “convey significance.” AR 206. A separate assessment
5 by a structural engineer determined that tens of millions of dollars would be required
6 to rehabilitate the structural integrity of the buildings and make them safe for reuse.
7 AR 447-48. Economic assessments determined that given these costs, adaptive reuse
8 of the existing structures would not be practically feasible and will not occur. AR
9 381-86. Therefore, the City’s choice was demolition under a demolition permit or
10 eventual “demolition through neglect.” AR 96. The well-documented impacts to
11 historic and cultural resources – i.e. the actual impacts of the action proposed – would
12 be the same in either case. And the EIS gave the City sufficient information to make a
13 reasoned decision regarding the impacts of the proposed demolition as required by
14 *Citizens Alliance*, 126 Wn.2d at 362.
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19 It is hereby ORDERED that for the reasons stated above, the Petition is denied and this action is
20 dismissed with prejudice.
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22 Dated this 22nd day of June 2026.
23

24 electronic signature attached

25 Judge Joe Campagna
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27
28

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that I am employed at the law firm of McCullough Hill PLLC, over the age of eighteen and not a party to the within cause. On the date written below, a true and correct copy of the foregoing document was provided via email to the Court and the following attorneys:

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I declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and that this declaration was executed on the 5th day of June 2026, at Seattle, Washington.

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**King County Superior Court
Judicial Electronic Signature Page**

Case Number: 26-2-00637-7 KNT
Case Title: CITIZENS FOR THE PROTECTION OF DES MOINES HISTORIC RESOURCES
VS CITY OF DES MOINES ET ANO

Document Title: Order

Date Signed: 06/22/2026



Judge: Joe Campagna

Key/ID Number: *386102793*

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