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BEFORE THE HEARING EXAMINER  
FOR THE CITY OF SEATTLE

In the Matter of the Appeal of:

**INDUSTRIAL INNOVATION NETWORK**

From a Decision of the Director of the Office of Planning and Community Development.

**Hearing Examiner File:**

**DPD Reference:**

Determination of Nonsignificance for 2021 Amendments to the Seattle Comprehensive Plan Related to Industrial and Maritime Lands Strategies

**NOTICE OF APPEAL**

**I. INTRODUCTION**

The City of Seattle (“City”) Office of Planning and Community Development (“OPCD”) proposed an amendment to the City’s Comprehensive Plan to add a new land use policy LU 10.3 (“Proposal”). The Proposal prohibits private applications to remove land from Manufacturing Industrial Centers (“MICs”). This will have a profound effect on the built environment of industrial areas in Seattle. Among other things, the new policy would prohibit landowner proposals to remove land from the MICs to allow the development of housing, including affordable housing. This results in significant adverse impacts to land use, relationship to existing land use plans, housing (including the prevention of affordable housing development), aesthetics and transportation.

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1 Yet the City issued a Determination of Nonsignificance (“DNS”) for the Proposal that  
2 steadfastly ignores these outcomes, asserting that the Proposal has no significant impacts on the  
3 built environment – despite the fact that any subsequent development regulations will need to  
4 implement the new policy adopted by the Proposal. The City’s approach turns a blind eye to  
5 reality and ignores the requirements of the State Environmental Policy Act (“SEPA”). The City  
6 may not take the major and consequential step of amending its Comprehensive Plan without a  
7 full analysis of the environmental effects of the Proposal.  
8

9 The Industrial Innovation Network (“IIN”) appeals the DNS because the City’s approach  
10 seeks improperly to avoid review of the environmental consequences of its action. The DNS  
11 must be reversed and remanded with instructions to analyze the impacts of the Proposal in  
12 compliance with SEPA.  
13

## 14 **II. IDENTIFICATION OF MATTER BEING APPEALED**

15 IIN appeals the DNS for the Proposal. Notice of the DNS was published on July 8, 2021.  
16 The DNS is attached as Exhibit A. The notice of the DNS is attached as Exhibit B. The  
17 associated SEPA Checklist (“Checklist”) is attached as Exhibit C.  
18

## 19 **III. APPELLANT’S INTEREST**

20 IIN is an unincorporated association with members who own and use property in MICs in  
21 Seattle. IIN submitted timely comments on the DNS. Members of IIN are adversely affected by  
22 the Proposal because they own and use property within MICs which they cannot seek to have  
23 reclassified to another land use category if the Proposal is adopted. IIN members have pending  
24 applications to remove their properties from MICs in order to develop projects that would  
25 increase the supply of housing, including affordable housing, and would redevelop existing  
26 vacant or underdeveloped properties with new buildings that are aesthetically pleasing and  
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1 consistent with the City’s land use goals and policies. These applications would be denied due to  
2 the restrictions imposed by the Proposal. The Proposal will cause specific and perceptible harm  
3 to IIN members’ ability to contribute to Seattle’s housing supply and develop property consistent  
4 with the City’s goals and policies. The severe restriction on allowed uses on their properties will  
5 also cause these properties to fall into neglect, causing blight. These interests are squarely within  
6 the zone of interests protected by SEPA.  
7

#### 8 **IV. ISSUES ON APPEAL**

##### 9 **A. The DNS is Based on Inadequate Information**

10 A threshold determination must be “based upon information reasonably sufficient to  
11 evaluate the environmental impact of a proposal.” WAC 197-11-335. The DNS for the Proposal  
12 fails to satisfy this requirement.  
13

14 The DNS and the SEPA Checklist insist that the proposed amendments by definition  
15 cannot have any environmental impact because they will not independently have the force of  
16 law. Comprehensive Plan amendments, however, necessarily set the stage for future  
17 development regulations, which must implement and be consistent with the Plan as amended.  
18 Based on the unequivocal language of the Proposal, privately-initiated industrial land  
19 reclassifications – which are now allowed – will be prohibited if the Proposal is adopted.  
20

21 Specifically, the Proposal is to adopt a new land use policy LU-10.3 providing:

22 Ensure predictability and permanence for industrial activities in industrial areas by  
23 limiting removal of land from a designated manufacturing / industrial center. There  
24 should be no reclassification or industrial land to a non-industrial land use category  
25 except as part of a City-initiated comprehensive study and review of industrial land use  
policies or as part of a major update to the Comprehensive Plan.

26 Director’s Report and Analysis on the Mayor’s Recommended Comprehensive Plan 2021

27 Annual Amendments, July 2021, p. 12. According to the City, the Proposal “will advance the  
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1 current goal of preserving industrial land for industrial use.” *Id.* By the City’s own admission,  
2 the intent and effect of the Proposal is to affect the future use of industrial lands. The City had  
3 the obligation to analyze the consequences of that effect in the DNS. Yet, the Checklist and  
4 DNS are devoid of any such analysis. The City failed to prepare or obtain adequate information  
5 to evaluate the impacts of the Proposal.  
6

7 The DNS should be reversed and remanded for additional analysis on this basis alone.

8 **B. The Proposal will have Significant Adverse Environmental Impacts**

9 The City may issue a DNS only when the proposal under consideration will not have  
10 significant adverse environmental impacts. WAC 197-11-340(1); SMC 25.05.340.A. In  
11 contrast, if a proposal will have a significant adverse impact on the environment, the City must  
12 issue a Determination of Significance (“DS”) and prepare an Environmental Impact Statement  
13 (“EIS”). WAC 197-11-360(1); SMC 25.05.360.A.  
14

15 Here, the Proposal will have significant adverse environmental impacts that were not  
16 analyzed in the DNS. “Impacts include . . . the likelihood that the present proposal will serve as  
17 a precedent for future actions.” WAC § 197-11-060(4)(d). The Proposal will have significant  
18 adverse impacts on land use, relationship to existing land use plans, housing, aesthetics, and  
19 transportation. Development projects, including affordable housing, will be rendered infeasible  
20 due to the Proposal’s prohibition of private applications to remove land from the MIC,  
21 preventing development of non-industrial uses, including housing and affordable housing. In  
22 addition, the Proposal’s restriction of land to only industrial uses will cause some properties to  
23 remain vacant or underutilized, with buildings in a state of disrepair, resulting in blight. The  
24 reduction in housing production in Seattle, including near future light rail stations, will cause  
25 additional people to need to commute into Seattle in cars, resulting in significant adverse  
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1 transportation impacts. The Proposal’s refusal to analyze these impacts fails to satisfy the  
2 requirements of SEPA.

3 IIN members have pending Comprehensive Plan amendments to remove land from the  
4 MIC. The purpose of these amendments is to allow development of housing, including  
5 affordable housing, and other uses consistent with the City’s adopted goals and policies. If  
6 adopted, the Proposal will require the City to reject these applications, regardless of consistency  
7 with the City’s goals and policies for housing and affordable housing or their other merits. The  
8 housing that would have been produced will be lost. The properties included in these  
9 applications are unsuitable for industrial use due to a variety of factors, including the proximity  
10 of approved and existing non-industrial uses and physical characteristics of the properties that  
11 make them unsuitable for the current needs of industrial users. These properties will remain  
12 underused, or unused, and will fall into disrepair or continue to do so as a result of the Proposal.  
13 By imposing a blanket prohibition on privately initiated reclassifications of industrial land, the  
14 Proposal improperly elevates one policy (preservation of industrial land) above all others,  
15 including those promoting housing, housing affordability, economic development and transit use.  
16 *See e.g.*, Comprehensive Plan, pp. 17-19, Goal H G2, Policy H 2.4, Policy H 4.6, Goal H G5,  
17 Policy H 5.3, Policy H 5.7, H 5.20, Goal ED G3, Policy ED 3.2, Goal TG3. These are  
18 significant adverse impacts on land use, relationship to existing land use plans, housing,  
19 aesthetics, and transportation.  
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22

23 This provides a separate and independent basis for reversal of the DNS.

24 **C. The City improperly piecemealed environmental review.**

25 SEPA requires environmental analysis “at the earliest possible point in the planning and  
26 decision-making process,” even for proposals that “may require future agency approvals or  
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1 environmental review.” WAC 197-11-055(2). Where a proposal will require a series of related  
2 actions that are reasonably understood at the outset, the checklist must consider the  
3 environmental impacts of all of the actions together, not just the first or second one in isolation.  
4 Specifically, WAC 197-11-060 provides that proposals “related to each other closely enough to  
5 be, in effect, a single course of action” must be considered together under SEPA if they “are  
6 interdependent parts of a larger proposal and depend on the larger proposal as their justification  
7 or for their implementation.” Similarly, WAC 365-196-805(1) provides that when “amendments  
8 to comprehensive plans are adopted, consistent implementing regulations or amendments to  
9 existing regulations should be enacted and put into effect concurrently.” This underscores the  
10 importance of evaluating the Proposal with the anticipated development regulations and  
11 transportation improvement projects as a “single course of action” for SEPA review.  
12

13  
14 Since the Proposal is intended to be followed by development regulations, there is no  
15 possible conclusion other than that the Proposal and these future regulations are interdependent  
16 parts of a larger proposal. The City has broken this single course of action into smaller pieces in  
17 order to avoid timely review of the impacts of its actions. SEPA requires the City to conduct  
18 adequate environmental review not only of the Proposal itself, but of the City’s entire course of  
19 action, which includes adoption of the new development regulations.  
20

21 Further, on the same date the City issued its DNS notice for the Proposal, it also issued a  
22 DS for an “updated comprehensive strategy to strengthen and grow Seattle’s industrial and  
23 maritime sectors for the future” and would “update its industrial and maritime policies and  
24 industrial zoning.” The Proposal should be combined and studied in the EIS that will be  
25 completed for the larger industrial lands study. The impacts of the decision to restrict industrial  
26 lands from privately-initiated redesignation is integrally related to the City’s industrial lands  
27

1 strategy as a whole. Following proper environmental review and disclosure, the City Council  
2 may decide that this Comprehensive Plan amendment is a good policy choice, in combination  
3 with other policy choices that result from the EIS process, or it may decide otherwise. However,  
4 until this study is done, the City Council cannot proceed with adequate information to make an  
5 informed choice required by SEPA.  
6

7 This provides a separate and independent basis for reversal of the DNS.

#### 8 **V. SPECIFIC OBJECTIONS TO ANALYSIS AND DECISION**

9 The following are specific objections to the DNS:

10 At pp. 4-5, in the discussion of “Built Environment,” the DNS states that there are no  
11 significant impacts to land use, height/bulk/scale, housing, aesthetics, noise, light/glare, historic  
12 preservation, energy, public view protection, and shadows on open space, because it simply  
13 relates “to the timing of Comprehensive Plan Future Land Use Map amendments and would not  
14 modify regulations regarding the size or use of existing or future development.” This statement  
15 fails to disclose the significant impacts that will result from the Proposal. The current  
16 Comprehensive Plan allows individual owners to petition to remove their properties from the  
17 MICs. As previously discussed, the Proposal will take away the individual right of an owner to  
18 seek removal from the MICs. As a result, properties will not be able to be utilized for housing in  
19 the height of a housing / homelessness crisis or for any other use not allowed in the MICs.  
20 Properties that are currently vacant or underutilized due to restrictive industrial lands regulations  
21 will either continue to be vacant or underutilized or become blighted/continue to be blighted.  
22 Thus, the Proposal results in land use impacts, housing impacts (locking square miles of land out  
23 of consideration for housing), impacts to affordable housing (not allowing affordable housing  
24 development in industrial lands), and aesthetic impacts (underutilization, underdevelopment,  
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1 blight).

2 At p. 5, in the discussion of “Transportation, Parking, Public Services/Facilities,  
3 Utilities,” the DNS states that there are no significant impacts in this area of the environment  
4 because the non-project action “would not modify regulations regarding the size or use of  
5 existing or future development.” This statement fails to disclose the significant impacts that will  
6 result from the Project. As the City knows, Sound Transit is currently making its alignment  
7 decision to determine where the future West Seattle and Ballard Link Extensions will be located  
8 through a large swath of both the Seattle’s Greater Duwamish Manufacturing and Industrial  
9 Center (“Duwamish MIC”) and its Ballard Interbay North Manufacturing Industrial Center  
10 (“BINMIC”). Precluding applications to remove lands from the MICs will prevent development  
11 of housing near new light rail stations, resulting in significant adverse land use and transportation  
12 impacts. In addition, the City failed to study the significant adverse impacts that result from  
13 reduced potential for housing and affordable housing development in Seattle, causing more  
14 people to commute long distances to get to their jobs in the City.  
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18 On p. 5, the DNS determines the Proposal will not have a significant adverse impact on  
19 the environment, which is in error.

## 20 VI. RELIEF REQUESTED

21 The Coalition respectfully asks the Hearing Examiner to withdraw the DNS and remand  
22 to OPCD with instructions to comply with SEPA.

## 23 VII. APPELLANT/REPRESENTATIVE

24 Appellant is the Industrial Innovation Network. Appellant may be contacted c/o its  
25 representative Courtney Kaylor, McCullough Hill Leary P.S., 701 5<sup>th</sup> Avenue, Suite 6600,  
26 Seattle, WA 98104, (206) 812-3388, courtney@mhseattle.com.  
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1 Dated this 29<sup>th</sup> day of July, 2021.

2 Appellant:

3 INDUSTRIAL INNOVATION NETWORK

4 By: /s/ Courtney Kaylor

5 Its: Representative

6 Designated Representative:

7 s/Courtney A. Kaylor, WSBA #27519

8 s/Rachel Mazur, WSBA #58005

9 Attorneys for Industrial Innovation Network

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