

BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeal of
WASHINGTON STATE MAJOR
LEAGUE BASEBALL STADIUM
PUBLIC FACILITIES DISTRICT; and
SEATTLE BUILDING &
CONSTRUCTION TRADES COUNCIL,

from an FEIS and FEIS addendum for the
Greater Duwamish MIC, issued by the
Director, Seattle Office of Planning and
Community Development

Hearing Examiner File: W-26-001

**APPELLANTS' RESPONSE TO
PORT OF SEATTLE'S MOTION
TO INTERVENE**

INTRODUCTION

Rule 5.09(b) of the Hearing Examiner's Rules of Practice and Procedure provides that a motion to intervene must "*demonstrate a substantial interest that the existing parties do not adequately represent*" (emphasis added). Citing this rule, the Port of Seattle seeks to intervene in this appeal, asserting that it "would be directly affected by the allowance of housing" in the Duwamish Manufacturing and Industrial Center or "MIC." Port of Seattle's Motion to Intervene at 2:9-10 (June 24, 2026) (herein, "Mot.").

But that asserted interest has nothing to do with the case at hand. This case is about the adequacy of an environmental document prepared by the City of Seattle. Because the Port's asserted interests are speculative, beyond the scope of this appeal, are not implicated by the relief sought, and

1 because the City’s interests are adequately represented by the City attorney’s office, the Port of
2 Seattle’s motion to intervene should be denied.

3 OVERVIEW OF THE CASE

4 This appeal challenges the City of Seattle’s environmental review of the proposed Greater
5 Duwamish Manufacturing and Industrial Center Subarea Plan (the “Duwamish MIC Plan” or
6 “Plan”) under Washington’s State Environmental Policy Act (“SEPA”), chapter 43.21C RCW.¹ As
7 the Port explains in its motion, the Duwamish MIC includes the Stadium Transition Area Overlay
8 District (“STAOD”), which has been the subject of recent litigation concerning the allowance of
9 housing in that area (the recent ordinance that would have allowed housing in that area has now
10 been repealed, *see* Mot. at 2:12). However, while the proposed Plan governs many aspects of the
11 MIC, and while the City’s FEIS and FEIS Addendum evaluate many potential environmental
12 impacts and concerns, the claims in this appeal are exceedingly narrow and do not seek to allow
13 housing within the MIC.

14 Currently, housing is not an allowed use within the Duwamish MIC or STAOD, and the
15 City’s recently adopted “One Seattle Plan” Comprehensive Plan Update makes clear that housing
16 should not be allowed in the MIC except upon future contingencies which have yet to materialize.²
17 Specifically, Policy LU 13.3 of the One Seattle Plan provides that “[t]here should be no
18 reclassification of industrial land to a non-industrial land use category *except as part of a City-*
19 *initiated comprehensive study and review of industrial land use policies or as part of a major*
20 *update to the Comprehensive Plan.*” One Seattle Plan at 52 (emphasis added). Relatedly, Policy LU
21 13.8 provides that “within the Stadium Area Transition Overlay District,” the City should “only
22 allow residential uses east of First Avenue S and [should] not expand that area.” *Id.* at 53. Together

24 ¹ The City’s proposed Greater Duwamish Manufacturing and Industrial Center Subarea Plan may be
25 found online at
26 <https://www.seattle.gov/documents/departments/opcd/ongoinginitiatives/industrialmaritimestrategy/opcdraftgreaterduwamishmanufacturingindustrialcentersubareaplan.pdf>.

² The City’s One Seattle Plan Comprehensive Plan Update may be found online at
<https://www.seattle.gov/documents/Departments/OPCD/SeattlePlan/OneSeattlePlanCitywidePoliciesUpdate.pdf>.

1 these comprehensive plan policies clarify that within the MIC and STAOD, housing is only a
2 potential future use (not a currently allowed use), and that housing may only be allowed in those
3 areas (a) after a city-initiated comprehensive study and review of industrial land use policies or as
4 part of a future major update to the Comprehensive Plan, and (b) only east of First Avenue South.
5 To our knowledge, the Port of Seattle has not challenged these policies of the One Seattle Plan. Nor,
6 to our knowledge, have the prerequisites for allowing housing in the MIC and STAOD been
7 fulfilled.

8 In this case, Appellants recognize that under Policies LU 13.3 and 13.8 of the One Seattle
9 Plan, it may be many years before housing is allowed in the Duwamish MIC and STAOD, and that
10 if housing ever is allowed in those areas, the City must first undertake a comprehensive study and
11 review of industrial land use policies or do so as part of a major update to the Comprehensive Plan.
12 It is no secret that Appellants wish to see some form of housing allowed at some future date within
13 the STAOD. But today is not that day and Appellants do not seek, though this appeal, to upset the
14 status quo—the status quo being that housing is not currently allowed, and that if it ever is to be
15 allowed in the future, it will first need to be studied and evaluated consistent with Policies LU 13.3
16 and 13.8 of the One Seattle Plan.

17 What Appellants *do* challenge in this appeal is the City’s environmental review of Policy
18 DLU 5.1 of the proposed Duwamish MIC Plan, which, in contrast to Policies LU 13.3 and 13.8 of
19 the One Seattle Plan, would purport to place a blanket prohibition on the City *ever* allowing housing
20 within the MIC and STAOD, under any circumstances whatsoever. Specifically, Policy DLU 5.1 of
21 the proposed Duwamish MIC Plan provides that the City should “[e]ncourage a broader mix of uses
22 and a stronger orientation to retail and entertainment uses within the STAOD than in other parts of
23 the MIC, including lodging,” but that it may “*not allow any residential uses and [will] not amend*
24 *codes to enable even limited residential uses or residential uses under conditions.*” Duwamish MIC
25 Plan at 25 (emphasis added). It is Appellants’ view that this blanket prohibition—expressed in the
26 italicized language above—has been proposed without a thorough evaluation of its environmental
impacts under Washington’s State Environmental Policy Act (“SEPA”).

Ultimately, Appellants do not seek through this appeal to allow housing in the MIC or STAOD. They also understand that under Policies LU 13.3 and 13.8 of the One Seattle Plan, if housing ever is allowed, there will need to be a comprehensive review and evaluation process prior to making that decision. Instead, Appellants' position in the current appeal is this: Just as the City acknowledges that it needs to perform a comprehensive evaluation and assessment prior to actually allowing housing in the MIC and STAOD (as stated in Policies LU 13.3 and 13.8 of the One Seattle Plan), so too should there be a comprehensive evaluation and assessment before the City closes the door entirely on that possibility. The City should not decide either way prior to undertaking a comprehensive study not just of industrial land use policies, but also of potential environmental impacts under SEPA. Through this appeal, Appellants seek only to ensure that whatever decision the City makes in the future, such decision is informed by an adequate review of the environmental impacts under SEPA. The City should not prematurely close the door (as it has done here) without evaluating the environmental consequences of such a decision. This appeal only seeks to achieve City decision-making fully informed by appropriate environmental analysis.

ARGUMENT

In Washington, the standard rule for intervention is that “[t]he interest which the intervenor seeks to protect must be one recognized by law” and must “*be of such a direct and immediate character that the intervener will either gain or lose by the direct legal operation and effect of the judgment.*” *Westerman v. Cary*, 125 Wn.2d 277, 303, 892 P.2d 1067, 1081 (1994) (emphasis added; quoting *In re J.H.*, 117 Wash.2d 460, 468, 815 P.2d 1380 (1991) and *State v. Roff*, 178 Wash. 311, 314, 34 P.2d 899 (1934) (quoting *State ex rel. Williams v. Superior Court*, 91 Wash. 40, 157 P. 28 (1916)). See also *State ex rel. Williams v. Superior Court*, 91 Wash. 40, 44, 157 P. 28 (1916) (same). Intervention is properly denied when, although the intervenor’s interest could theoretically be affected, “its interest is not direct.” *Spokane Cnty. v. State*, 136 Wn.2d 644, 650, 966 P.2d 305 (1998). This general rule under CR 24 is echoed in Rule 5.09(b) of the Hearing Examiner’s Rules of Practice and Procedure, which requires a proposed intervenor to “demonstrate”

1 a “substantial interest” in the appeal “that the existing parties do not”—not just “may not”—
2 “adequately represent.”

3 Here, rather than demonstrate a substantial, direct interest in the outcome of this appeal, the
4 Port of Seattle has identified only speculative, tangential interests that are not sufficient to support
5 intervention.

6 First, as discussed above, the Port argues that it would be adversely affected by the
7 allowance of housing in the MIC and STAOD. *See* Mot. at 2:9–10 (arguing that the Port “would be
8 directly affected by the allowance of housing in the Duwamish MIC”); *id.* at 6:10–13 (arguing that
9 “[r]esidential uses in or adjacent to active industrial and freight corridors create foreseeable land use
10 conflicts, including conflicts related to truck traffic, rail and port operations, nighttime activity,
11 noise, emissions, safety, and pressure to limit or modify industrial operations”). The Port may well
12 have an interest in opposing the allowance of housing in the MIC and STAOD, but that interest is
13 entirely speculative and tangential to this appeal. At present, housing is not allowed in the MIC and
14 STAOD. This appeal does not seek to allow housing in those areas but merely challenges the City’s
15 procedural evaluation of environmental impacts under SEPA. And even if housing were to (one
16 day) be proposed as an allowed use in those areas, it is entirely speculative to presume that such
17 housing would be “in or adjacent to active industrial and freight corridors.”

18 In short, should the City of Seattle ever propose to allow housing in the MIC or STAOD by
19 amending the Seattle Municipal Code, then the Port may well have an interest in opposing that
20 change. At present, however, housing is not allowed and this appeal does not seek to allow it. The
21 Port’s interest in opposing housing in the MIC and STAOD is speculative and tangential, not direct.
22 The Port has therefore failed to show that its interest in opposing housing is “of such a direct and
23 immediate character that [it] will either gain or lose by the direct legal operation and effect” of the
24 Examiner’s resolution of this appeal. *Westerman*, 125 Wn.2d at 303.

25 Second, the Port implies—though it does not directly argue—that this appeal will somehow
26 affect its litigation against Seattle Ordinance 127191, an ordinance passed in 2024 to allow limited
housing in the STAOD. *See* Mot. at 2:10–11 (arguing that the allowance of housing is “central to

1 the Port’s ongoing legal appeals regarding Ordinance 127191”). The Port provides scant details
2 about that litigation and fails to explain how this appeal—which does not involve Ordinance
3 127191—could even theoretically affect the Port’s interests in that case. Nor is it clear how the
4 court in that case would even know about this appeal, since that case would naturally be limited to
5 an administrative record pre-dating this appeal by several months.

6 Regardless, the Port admits that Ordinance 127191 has now been repealed by Ordinance
7 127430 on May 12, 2026, just over one month ago. Thus, whatever challenge the Port had against
8 Ordinance 127191 would appear now to be moot, since that ordinance no longer exists and any
9 dispute alleged by the Port about it is purely academic. *See, e.g., Sate ex rel. Evans v. Amusement*
10 *Ass’n of Wash., Inc.*, 7 Wn. App. 305 307, 499 P.2d 906 (1972) (finding appeal to be moot when
11 “the legislature repealed or substantially amended all of the statutes upon which the declaratory
12 judgment and injunction were based”); *Friends of the White Salmon River v. Klickitat County*, 190
13 Wn. App. 1005, 2015 WL 5350287, *3 (Sept. 15, 2015) (unreported; finding that “by repealing the
14 ordinance and resolution on which this litigation is based, Klickitat's arguments pertaining directly
15 to Ordinance O060512–1 are moot”).

16 In short, whatever interest the Port has (or had) in its litigation over Ordinance 127191 is
17 clearly not implicated by this appeal because (a) this appeal does not involve Ordinance 127191,
18 and (b) that ordinance has already been repealed. The Port has no “direct and immediate” interest in
19 this appeal such that it will either “gain or lose” anything by how it is resolved. *Westerman*, 125
20 Wn.2d at 303. It therefore has no substantial interest to support intervention.

21 Finally, even if the Port did have a direct, immediate, and substantial interest sufficient to
22 support intervention, it is unclear how the City would not adequately protect that interest. The City
23 itself repealed Ordinance 127191 and proposed adopting the very language in the Duwamish MIC
24 Plan that Appellants are challenging here. It is presumably those very actions that the Port supports.
25 In addition, the City (not the Port) prepared the environmental documents at issue here. In short, the
26 Port has not demonstrated that it has a substantial interest that the City “do[es] not adequately
represent,” as the Examiner’s Rule 5.09(b) requires.

1 **CONCLUSION**

2 For all the reasons above, the Port of Seattle has not demonstrated that it has a substantial
3 interest in the outcome of this appeal that the existing parties do not adequately represent. The Port's
4 interests are speculative and remote, not direct and immediate. Moreover, the City of Seattle can
5 adequately represent its interest in defending the environmental documents at issue here. The Port's
6 motion to intervene in this appeal should be denied.

7 Dated this 3rd day of July, 2025.

8 Respectfully submitted,

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12 By:



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