

1 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
2 CENTRAL PUGET SOUND REGION
3 STATE OF WASHINGTON
4

5 BRANDI BLAIR, MATTHEW BLAIR, BRETT
6 BLAIR, JAMES BLAIR, LOWELL
7 ANDERSON, DOUGLAS HAMAR, AND
8 CHAD MCCAMMON,

9 Petitioners,

10 v.

11
12 CITY OF MONROE,

13 Respondent,

14
15 and

16 HERITAGE BAPTIST CHURCH,
17

18 Compliance Participant.
19

CASE No. 14-3-0006c

**ORDER FINDING CONTINUING NON-
COMPLIANCE**

20
21 **SYNOPSIS**

22 Petitioners alleged the City's reclassification and rezone of 43 acres within the UGA
23 from Limited Open Space to General Commercial was noncompliant with the Growth
24 Management Act (GMA), inconsistent with the Snohomish County Countywide Planning
25 Policy (CPP), inconsistent with the City of Monroe's Comprehensive Plan (MCP), and
26 noncompliant with SEPA guidelines. The Board found the City's SEPA review failed to
27 comply with RCW 43.21C.030(c) and that the Ordinances substantially interfere with GMA
28 Planning Goal 10. The Board entered a determination of invalidity and the Ordinances were
29 remanded to the City.
30

31 On compliance, the City coordinated with consultants hired by the Intervenor to issue
32 a Supplemental Environmental Impact Statement (SEIS) and adopted a Comprehensive

1 Plan amendment re-adopting the reclassification and rezone of the Property. The Board
2 found the SEIS failed to provide the City Council with full disclosure of the environmental
3 consequences of the action and entered an order of Continued Noncompliance and
4 invalidated the new ordinances.

6 I. PROCEDURAL BACKGROUND

7 On August 26, 2014, the Board issued its Final Decision and Order (FDO) in this
8 case. The Board found the City's SEPA review failed to comply with RCW 43.21C.030(c)¹
9 and the Ordinances were remanded to the City to correct the error. Finding that the
10 Ordinances substantially interfered with the Growth Management Act (GMA), Planning Goal
11 10, the Board entered a determination of invalidity.

12 Following a finding of noncompliance, the jurisdiction is given a period of time to
13 adopt legislation to achieve compliance.² After the period for compliance has expired, the
14 Board is required to hold a hearing to determine whether the local jurisdiction has achieved
15 compliance.³ In this case, the FDO allowed the City six months to take appropriate
16 legislative action.

17 On September 23, 2014, the City Council voted to rescind the "offending portions of
18 Ordinance 022/2013 and 024/2014" in order to come into compliance⁴ but did not move for
19 an expedited finding of compliance from the Board. The City later explained that the Council
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24 ¹ RCW 43.21C.030(c) requires that cities shall:

25 Include in every recommendation or report on proposals for legislation and other major actions
26 significantly affecting the quality of the environment, a detailed statement by the responsible official
27 on:

- 28 (i) the environmental impact of the proposed action;
29 (ii) any adverse environmental effects which cannot be avoided should the proposal be
30 implemented;
31 (iii) alternatives to the proposed action;
32 (iv) the relationship between local short-term uses of the environment and the maintenance and
enhancement of long-term productivity; and
(v) any irreversible and ir retrievable commitments of resources which would be involved in the
proposed action should it be implemented;

² RCW 36.70A.300(3)(b).

³ RCW 36.70A.330(1) and (2).

⁴ Order On Motions, (January 2, 2015) at 6 (citing Petitioners' Response to Motion for Extension (December 24, 2014) at 2).

1 debated whether to abandon the rezone effort or to proceed with a process to correct the
2 deficiencies of the 2013 FEIS.⁵ In December 2014, the owner of the Property filed a motion
3 for intervention with the Board asserting that it had worked closely with the City and the
4 engineering firm (PACE) which prepared the 2013 FEIS, but now found its position “no
5 longer consistent with that of the City.”⁶ A week after Heritage Baptist Church (Heritage)
6 moved to intervene, the City moved for extension of the compliance calendar, explaining
7 that “the City Council ultimately voted on December 9, 2014, to achieve compliance by
8 remedying the Board’s identified concerns with the original FEIS.”⁷ In the intervening week,
9 staff discussion and coordination with PACE had produced a Scope of Work⁸ that identified
10 the following tasks:⁹

- 12 • Develop a “No Action – No Development” alternative with further analysis of the
13 baseline conditions of the property and a comparative analysis between the
14 baseline condition and other alternatives;
- 15 • Analyze environmental impacts on the entire 43-acre rezone;
- 16 • Update the wetland analysis to include environmental impacts if the entire site
17 were developed to the maximum extent possible, including impacts to salmon
18 habitat and a detailed discussion of mitigation measures;
- 19 • Assess the effects of potential floodplain fill and effectiveness of flood volume
20 mitigation via a hydraulic flood rise analysis;
- 21 • Fully evaluate the effect of floodplain cut and fill on flow velocity and volume of
22 surface and groundwater on the site;
- 23 • Identify the flood hazard risk of developing the site, including impacts to the toe of
24 the steep slope lying north of the slough;
- 25 • Identify potential mitigation measures to maintain stream velocities and prevent
26 stream erosion; and
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30 ⁵ City’s [First] Motion to Extend Compliance (December 16, 2014) at 3.

31 ⁶ Heritage Motion to Intervene (December 9, 2014) at 6-7.

32 ⁷ Respondent’s [First] Motion for Extension of Compliance (December 16, 2014) at 3.

⁸ See Exhibit A to the Declaration of Melissa Place, the City’s SEPA Responsible Official in December of 2014.

⁹ Respondent’s [First] Motion for Extension of Compliance (December 16, 2014) at 3-5; Declaration of Melissa Place (December 16, 2015)

- 1
- 2 • Perform additional geotechnical analyses to evaluate the baseline condition of the
 - 3 steep slope lying north of the slough and provide a comparative analysis to
 - 4 determine the risk of landslides for each alternative.

5 The Board granted Heritage status as a Compliance Participant pursuant to RCW
6 36.70A.330(2). In late August 2015, the Board granted the City's Second Motion for
7 Extension of the Compliance Schedule.¹⁰

8 The Board subsequently received the parties' briefs and exhibits as follows:

- 9
- 10 • The City of Monroe (City) filed its Statement of Compliance Actions Taken,
 - 11 providing a copy of the Compliance Ordinance and attached exhibits. The City
 - 12 also filed the compliance index.¹¹
 - 13 • Petitioner Douglas Hamar filed a Response to City of Monroe's Statement of
 - 14 Compliance Actions Taken.¹²
 - 15 • Petitioners Blair/Anderson also filed a Response and a Motion to Supplement the
 - 16 Compliance Index Record.¹³
 - 17 • The City replied to the objections and the motion to supplement.¹⁴

18

19 The Board granted Petitioners' Motion to Supplement.¹⁵ Pursuant to RCW
20 36.70A.330(1) and (2), the Board conducted a compliance hearing on January 20, 2016.
21 Board members Cheryl Pflug, Margaret Pageler, and Raymond Paoella attended the
22 hearing. Brandi Blair and Douglas Hamar appeared on behalf of the Petitioners. Also
23 present was Petitioner Lowell Anderson. Respondent City of Monroe was represented by its
24 attorneys J. Zachary Lell and Kristin Eick. Also present with the City were David Osaki, the
25 City's SEPA responsible official, and the City's Senior Planner, Melissa Place. Heritage was
26 represented by its attorney, Duana Kolouskova, who was accompanied by her associate,
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29 ¹⁰ Order on Motions (August 27, 2015)

30 ¹¹ December 15, 2015.

31 ¹² January 4, 2016.

32 ¹³ January 4, 2016.

¹⁴ January 12, 2016.

¹⁵ January 15, 2016. The requested documents were a letter from Heritage's counsel to the City with an attached response matrix.

1 Trisna Tanus. Also present with Intervenors were Susan Boyd and Eileen Davis of PACE
2 Engineers, and Pastor Minnick of Heritage Baptist Church. Mary Ann Pennington provided
3 court reporting services. The hearing provided the Board an opportunity to ask questions to
4 clarify important facts in the case and provide a clearer understanding of the legal
5 arguments of the parties.
6

7 II. STANDARD OF COMPLIANCE REVIEW UNDER GMA AND SEPA

8 It is important that the Board's determination that the underlying SEPA review was
9 inadequate led it to remand the City's action. Finding that the City's action substantially
10 interfered with, the fulfillment of GMA Planning Goal 10, the Board also entered a
11 determination of invalidity.
12

13 Following a finding of noncompliance, the jurisdiction is given a period of time to
14 adopt legislation to achieve compliance.¹⁶ After the period for compliance has expired, the
15 Board is required to hold a hearing to determine whether the local jurisdiction has achieved
16 compliance.¹⁷
17

18 *Deference to the City*

19 Within the framework of state goals and requirements, the Board must grant
20 deference to local governments in how they plan for growth.¹⁸ However, the Board's role in
21 compliance proceedings is not identical to its role during initial consideration of a Petition for
22 Review. When the Board has identified non-complying provisions of a local jurisdiction's
23 plan or regulations, the jurisdiction is under an obligation to bring those provisions into
24 compliance and the Board is required to make a determination as to compliance.¹⁹
25 Consequently, the Board reviews all of the City's actions regarding the remanded issues.
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29 ¹⁶ RCW 36.70A.300(3)(b).

30 ¹⁷ RCW 36.70A.330(1) and (2).

31 ¹⁸ RCW 36.70A.3201, in part: "The legislature intends that the board applies a more deferential standard of
32 review to actions of counties and cities than the preponderance of the evidence standard provided for under
existing law. . . Local comprehensive plans and development regulations require counties and cities to
balance priorities and options for action in full consideration of local circumstances."

¹⁹ See RCW 36.70A.300(3)(b) and RCW 36.70A.330; "The issue in compliance proceedings is somewhat
different than it is during an original adoption. In compliance proceedings, the Board has identified an area of

1 For purposes of Board review of the comprehensive plans and development
2 regulations adopted by local governments in response to a finding of noncompliance, the
3 presumption of validity applies and the burden is on the challenger to establish that the new
4 adoption is clearly erroneous.²⁰ Petitioners thus usually bear the burden to establish the
5 City's compliance action is clearly erroneous.²¹

6 RCW 36.70A.320(4) declares that a city "subject to a determination of invalidity made
7 under RCW 36.70A.300 or 36.70A.302 has the burden of demonstrating that the ordinance
8 or resolution it has enacted in response to the determination of invalidity will no longer
9 substantially interfere with the fulfillment of the goals" of the GMA. As the court held in
10 *Wells*,²² "[w]here there has been an invalidity determination ... the exception found in
11 subsection (4) *shifts the burden*, on those provisions only, to the local government."
12 (emphasis added).
13

14
15 *Purpose of SEPA Review*

16 SEPA is concerned with "broad questions of environmental impact, identification of
17 unavoidable adverse environmental effects, choices between long and short term
18 environmental uses, and identification of the commitment of environmental resources."²³

19 "SEPA policy is to ensure through a detailed environmental impact statement (EIS)
20 the full disclosure of environmental information so that it can be considered during decision
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24 the local jurisdiction's comprehensive plan or development regulations that do not comply with the GMA. The
25 local jurisdiction is under an obligation to bring those areas into compliance and demonstrate that fact to the
26 Board . . . While the ordinance that is adopted to cure non-compliance is entitled to a presumption of validity,
27 nevertheless, the local jurisdiction must still demonstrate to the Board that it has addressed the area of
28 noncompliance identified in the FDO." *Abenroth, et al. v. Skagit County*, Case No. 97-2-0060c, coordinated
29 with *Skagit County Growthwatch, et al v. Skagit County*, Case No. 07-2-0002, Order on Reconsideration, at 4-
30 6 (January 21, 2009). (Emphasis added).

31 ²⁰ RCW 36.70A.330(1), (2) and (3).

32 ²¹ In order to find the City's action clearly erroneous, the Board must be "left with the firm and definite
conviction that a mistake has been made". *Department of Ecology v. PUD1*, 121 Wn.2d 179, 201, 849 P.2d
646 (1993).

²² *Wells v. Western Washington Growth Mgmt. Hearings Bd.*, 100 Wn. App. 657, 667- 669, 997 P.2d
445 (2000).

²³ *Snohomish County Property Rights Alliance v. Snohomish County*, 76 Wn. App. 44, 52-53, 882 P.2d 807
(1994). (quoting *DeWeese v. City of Port Townsend*, 39 Wn. App. 369, 375, 693 P.2d 726 (1984))

1 making."²⁴ An environmental impact statement is required to analyze ... *probable adverse*
2 environmental impacts which are significant. Beneficial environmental impacts *may* be
3 discussed.²⁵ "Probable" means likely or reasonably likely to occur, as in "a reasonable
4 probability of more than a moderate effect on the quality of the environment."²⁶ The
5 environmental impact statement is the *basis* upon which the responsible agency and
6 officials can make the balancing judgment mandated by SEPA between the benefits to be
7 gained by the proposed "major action" and its impact upon the environment.²⁷

8
9 To be adequate, the EIS must present decision makers with a "reasonably thorough
10 discussion of the significant aspects of the probable environmental consequences" of the
11 agency's decision.²⁸ That is, an EIS must provide sufficient information to allow officials to
12 make a reasoned choice among alternatives.²⁹

13 "SEPA does not demand any particular substantive result in governmental decision
14 making ... "³⁰ Thus, as discussed *supra*, the Board grants deference to a legislative body's
15 balancing judgment but reviews the environmental analysis that *informs* that judgment for
16 adequacy. Adequacy of the environmental review is judged by the "rule of reason."³¹
17 Professor Settle characterizes this rule as "'a broad, flexible cost-effectiveness standard,'"
18 similar to the reasonableness inquiry in a negligence claim.³² Under the rule of reason,
19 agencies are not required to review "every remote and speculative consequence of an
20 action."³³ WAC 197-11-060(4) reads, in pertinent part:

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24 ²⁴ *Barrie v. Kitsap County*, 93 Wn.2d 843, 854 613 P.2d 1148, 1980 Wash. LEXIS 1331, 10 ELR 20791 (Wash.
1980).

25 ²⁵ RCW 43.21C.031(2). (Emphasis added)

26 ²⁶ WAC 197-11-782.

27 ²⁷ *Asarco Inc. v. Air Quality Coalition*, 92 Wn.2d 685, 714, 601 P.2d 501 (1979) (quoting *Norway Hill Preservation*
& *Protection Ass'n v. King County Council*, 87 Wn.2d 267, 272-73, 552 P.2d 674 (1976)). (Emphasis added)

28 ²⁸ *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 866 P.2d 1256 (1993)
at 633.

29 ²⁹ *Solid Waste Alternative Proponents v. Okanogan County*, 66 Wn. App. 439, 442, 832 P.2d 503 (1992).

30 ³⁰ *Stempel v. Department of Water Resources*, 82 Wn.2d 109, 118, 508 P.2d 166 (1973); see *Eastlake*
Community Council v. Roanoke Associates, Inc., *supra* at 497 & n.6.

31 ³¹ *Org. to Preserve Agric. Lands [OPAL] v. Adams County*, 128 Wn.2d 869, 875, 913 P.2d 793 (1996) at 875.

32 ³² *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 633, 860 P.2d 390,
122 Wn.2d 619, 866 P.2d 1256 (1993) (quoting Richard L. Settle, *The Washington State Environmental Policy*
Act: A Legal and Policy Analysis § 14(a)(i), at 156 (4th ed. 1993)).

33 ³³ *Cheney v. City of Mountlake Terrace*, 87 Wn.2d 338, 344, 552 P.2d 184 (1976).

1 (a) SEPA's procedural provisions require the consideration of "environmental"
2 impacts ..., with attention to impacts that are likely, not merely speculative.
3 (See definition of "probable" in WAC 197-11-782 ...)

4 ***

5 (c) Agencies shall *carefully consider the range of probable impacts*, including
6 short-term and long-term effects. Impacts *shall include those that are likely*
7 *to arise or exist over the lifetime of a proposal or*, depending on the
8 particular proposal, *longer*.

9 (d) A proposal's effects include direct and indirect impacts caused by a
10 proposal. *Impacts include those effects resulting from growth caused by a*
11 *proposal, as well as the likelihood that the present proposal will serve as a*
12 *precedent for future actions. For example, adoption of a zoning ordinance*
13 *will encourage or tend to cause particular types of projects or extension of*
14 *sewer lines would tend to encourage development in previously*
15 *unsewered areas.*

16 (e) The *range of impacts to be analyzed* in an EIS (direct, indirect, and
17 *cumulative impacts, WAC 197-11-792) may be wider than the impacts for*
18 *which mitigation measures are required of applicants (WAC 197-11-660).*
19 This will depend upon the specific impacts, the extent to which the
20 adverse impacts are attributable to the applicant's proposal, and the
21 capability of applicants or agencies to control the impacts in each
22 situation.³⁴

23 Thus "range of impacts" refers to short term, long term, and cumulative impacts.

24 *Nonproject Action*

25 The challenged action at issue in this case is an area-wide rezone affecting 5 parcels
26 of land. It is undisputed that a specific development project has not been proposed.

27 Therefore, the environmental impact statement is a review of a nonproject action. WAC 197-
28 11-442(2) articulates the expectations for environmental review of nonproject actions:

29 The lead agency shall discuss impacts and alternatives in the level of detail
30 appropriate to the scope of the nonproject proposal and to the level of
31 planning for the proposal. Alternatives should be emphasized. In particular,
32 agencies are encouraged to describe the proposal in terms of alternative
means of accomplishing a stated objective (see WAC 197-11-060(3)).
Alternatives including the proposed action should be analyzed at a roughly
comparable level of detail, sufficient to evaluate their comparative merits (this

³⁴ WAC 197-11-060(4). (Emphasis added)

1 does not require devoting the same number of pages in an EIS to each
2 alternative).

3 Thus, the law encourages the City to describe the proposal in terms of a goal and
4 then analyze alternative ways to accomplish that goal. Here, the goal is purported to be
5 general commercial development on the eastern boundary of the City.³⁵
6

7 WAC 197-11-442(4) explains that:

8 The EIS's discussion of alternatives for ... areawide zoning ... shall be limited
9 to a general discussion of the impacts of alternate proposals ... and for
10 implementation measures. The lead agency is not required under SEPA to
11 examine all conceivable ... designations, or implementation measures but
12 should cover a range of such topics. The EIS content may be limited to a
13 discussion of alternatives which have been formally proposed or which are ...
14 reasonably related to the proposed action.

15 The City could reasonably limit its analysis to comparing a range of development
16 alternatives likely under GC zoning with the baseline condition of the property. However, our
17 Supreme Court held that an alternative means of attaining the objective refers to another
18 means of achieving the jurisdiction's objective, not a rezone applicant's objective, such that
19 a non-project action requires analysis of alternative sites that could meet the jurisdiction's
20 goal.³⁶

21 Further, WAC 197-11-442(3) states:

22 If the nonproject proposal concerns a specific geographic area, site specific
23 analyses are not required, but may be included for areas of specific concern.
24 The EIS should identify subsequent actions that would be undertaken by
25 other agencies as a result of the nonproject proposal, such as transportation
26 and utility systems.
27

28 ³⁵ After the 2015 Supplemental was issued, the City Council voted to amend its Comp Plan to identify locating
29 a Commercial Gateway to the City at the eastern edge of the City as the goal of the rezone. Had this been
30 done prior to any of the three environmental analyses, it might have sufficed as a description of the project
31 goal. As is, it appears to represent an ad hoc justification for the rezone rather than an underlying purpose for
32 the action.

³⁶ See, e.g., *Barrie v. Kitsap County*, 93 Wn.2d 843, 855-57, 613 P.2d 1148, 1980 Wash. LEXIS 1331, 10 ELR
20791 (Wash. 1980) (holding that where the County's goal for an area-wide rezone was a regional shopping
center the County was required to discuss alternative sites); *Davidson Serles v. Kirkland*, Final Decision and
Order, GMHB 09-3-0007 (October 5, 2009) at 19.

1 This means that, while the EIS might not analyze impacts specific to as-yet-
2 unproposed projects, it *should* identify areas of analysis that will be required in the future,
3 such as traffic studies, sewer extensions, etc. It *must* analyze offsite alternatives that could
4 accomplish its goals.³⁷

5 Thus, to be adequate, the Supplemental EIS must fulfill SEPA's requirement that
6 "environmental amenities and values will be given *appropriate consideration* ... along with
7 economic and technical considerations."³⁸ *Probable adverse* environmental impacts which
8 are significant *must be disclosed* and the EIS must provide sufficient information to allow
9 officials to make a reasoned choice among alternatives.³⁹

11 Under the specific facts of this case, an EIS for rezoning the East Monroe area to
12 GC must (1) quantify existing environmental amenities and functions on the Property; (2)
13 identify alternative ways to allow commercial development of the Property; (3) identify offsite
14 alternatives for commercial development; (4) analyze the range of adverse environmental
15 impacts that are reasonably likely to occur as a result of each commercial development
16 alternative, and (5) compare the adverse impacts of each alternative to the baseline
17 condition of the property. Under WAC 197-11-442, the environmental impact statement
18 should also identify subsequent analysis that will be necessary at the project level.
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23 III. MOTION TO STRIKE EXHIBITS

24 The City and Compliance Participant Heritage Baptist Church move to strike
25 Hamar/McCammon Petitioners' Exhibits DH1 to DH12 attached to their Response to
26 Statement of Compliance Action Taken. The moving parties point out these exhibits were
27 not part of the City's compliance index and were not provided to the City for consideration
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31 ³⁷ *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 41, 873 P.2d 498 (1994); *Citizens' Alliance v. City of*
32 *Auburn*, 126 Wn.2d 356, 365, 894 P. 2d 1300 (1995).

³⁸ RCW 43.21C.030(2)(b).

³⁹ *Solid Waste Alternative Proponents v. Okanogan County*, 66 Wn. App. 439, 442, 832 P.2d 503 (1992).

1 during the comment period for the draft SEIS. The motion to strike is granted in part and
2 denied in part, as set forth below.

3 Mr. Hamar's proposed exhibits were attached to his brief in response to the City's
4 statement of compliance actions. Mr. Hamar also presented the exhibits as illustrative
5 exhibits at the hearing on the merits. The respondents had an opportunity to respond to
6 them in their Reply (City Reply at 24-29 and Heritage Reply at 15-23) as well as at the
7 hearing on the merits.
8

9 The Board's rules allow illustrative exhibits if circulated by the parties prior to the
10 hearing, as these were.⁴⁰ In the Board's practice, illustrative exhibits frequently are materials
11 from the record marked up or annotated by the proponent in order to demonstrate a point.
12 Proposed DH1, DH11, and DH 12 are such exhibits, and the Board **admits** them.⁴¹

13 WAC 242-03-620(4)(c) also makes allowance for exhibits submitted in rebuttal.
14 Documentary evidence "not submitted with the briefs and not in the record or supported by
15 a timely filed motion to supplement the record" is not generally admitted "unless it is
16 submitted for ... rebuttal purposes." Although Hamar's proposed exhibits were not
17 supported by a timely motion to supplement, the materials clearly were submitted in rebuttal.
18

19 The Board notes the photographs in DH8, DH9, and DH10, and the WSDOT
20 document of DH2 tend to rebut the City's no-through-flow assertion. Proposed DH4, as
21 explained by Mr. Hamar, was presented because "I thought the exhibit would be of
22 substantial assistance to the board in understanding just how large the discrepancy in flood
23 volumes pointed out by the Department of Ecology really was."⁴² Proposed DH5, from a
24 2010 R2 Resource Consultant study, is offered to show the flow and peak volumes of the
25 Skykomish River in rebuttal of claims made in the FEIS and the City's Statement of Actions
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27

28 ⁴⁰ WAC 242-03-610(4).

29 ⁴¹ Hamar's proposed DH 1 and DH 12 are enlargements of a Google Earth map that appears virtually identical
30 to the map attached by GeoEngineers to their report in the 2015 SEIS (Compliance Ex. 51, Appendix D,
31 Attachment A, Aerial photographs). Hamar also uses this view to explain viewing angles of photos in proposed
32 DH9 and DH10. Proposed DH11 appears to be taken from the 2013 FEIS (Ex. 32) cross-section in Figure 11,
with Mr. Hamar's annotation.

⁴² HOM Transcript at p. 11. Mr. Hamar suggests DH4 became part of the record by reference when PACE
claimed the upper and lower Skykomish FEMA studies authored by Mr. Karpack were evidence of his authority
on the subject.

1 Taken.⁴³ The Board finds Exhibits DH4, DH5, DH8, DH9, and DH 10, submitted in rebuttal,
2 are necessary or of substantial assistance to the Board's decision; these exhibits are
3 **admitted.**

4 Proposed Exhibits DH3, DH6, and DH7 provide additional rebuttal analysis
5 concerning flows, including effect of the Haskell Slough Dam, but the Board does not find
6 these exhibits useful. The motion to strike is **granted** as to DH3, DH6, and DH7.
7

8 IV. DISCUSSION

9 The Remanded Issues

10 The challenged action was the City of Monroe's adoption of Ordinance No. 024/2013,
11 rezoning 43 acres within the UGA from Limited Open Space (LOS) to General Commercial
12 (GC), and Ordinance No. 022/2013, amending Comprehensive Plan text for the 2015
13 Comprehensive Plan Update and Land Use Mapping Designations necessary to
14 accommodate Ordinance 024/2013.
15

16 To recap the setting, the East Monroe area (the Property) at issue in this case is
17 made up of five parcels totaling 43 acres under the single ownership of the Heritage Baptist
18 Fellowship and located on the City's eastern boundary adjacent to, and immediately north
19 of, SR 2.⁴⁴ Located within the drainage basin and floodplain of the Skykomish River,⁴⁵ a
20 relatively flat 11-acre portion of the Property⁴⁶ is bounded by the slough of an oxbow (fed by
21 and designated a Type I stream) and the river, which all previous studies describe as
22 connecting via a series of box culverts under the highway.⁴⁷ The Property also
23 encompasses three wetlands, comprising approximately 8.2 acres, nearly all of which is a
24 Category II wetland bordering the slough/stream.⁴⁸ The slough/stream lies within shoreline
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28 ⁴³ HOM Transcript p. 11. This study is not in the record but Hamar explains it is compiled by experts using the
29 HEC-RAS files from the 2006 study authored by Mr. Karpack which is foundational to the 2015 Supplemental
30 EIS.

31 ⁴⁴ Respondent's Prehearing Brief at 3; Ex. 54: SEPA Appeal of the FEIS for the East Monroe Comprehensive
32 Plan Amendment and Rezone, File No. 13-APHE-0001 at 1.

⁴⁵ Respondent's Prehearing Brief at 3; Ex. 32: FEIS (September 26, 2013) at 4.

⁴⁶ Ex. 49: FEIS Ex. M3 at 88, Figure 3: Estimated Developable Area.

⁴⁷ Respondent's Prehearing Brief at 3; Ex. 32: FEIS (September 26, 2013) at 4, 17.

⁴⁸ Respondent's Prehearing Brief at 3; Ex. 32: FEIS (September 26, 2013) at 38.

1 jurisdiction and is designated as Urban Conservancy (UC) under the City's Shoreline Master
2 Program.⁴⁹ A Native Growth Protection Easement (NGPE) is associated with at least some
3 of the area covered by the slough/stream and associated wetlands.⁵⁰ To the north and west
4 of the slough/stream lie steep slopes greater than 40% and approximately 150-180 feet high
5 atop which perch many single-family residences.⁵¹

6
7 Before the Board in determining compliance is a third (Supplemental) attempt at an
8 EIS adequate to provide the City of Monroe with information necessary to understand the
9 environmental impacts associated with reclassifying the Property for commercial use.

10 The first EIS was a Phased Environmental Impact Statement (2012 PEIS) issued in
11 April 2012. The 2012 PEIS was appealed and the Monroe Hearing Examiner concluded that
12 the 2012 PEIS was inadequate as a matter of law⁵² because its phased nature put off all
13 impact analysis until specific development proposals were applied for at some future date.
14 Thus the 2012 PEIS contained no environmental analysis, no consideration of alternatives
15 to changing the zoning from Limited Open Space (LOS) to General Commercial (GC), and
16 no consideration of indirect or cumulative impacts.⁵³ Specifically, the Examiner found "[t]he
17 best available evidence is that the majority of the developable portion of the Project area is
18 subject to up to about eight feet of flood inundation during the 100-year flood event; the best
19 available science is that SR 2 does not function as a levee to protect the Project area from
20 flood inundation (it is punctured by two, three-foot-plus culverts associated with the oxbow
21 slough)."⁵⁴ The City responded by terminating its contract with the Hearing Examiner and
22 retaining a professional consultant, PACE Engineers, to prepare a second EIS.⁵⁵

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27 ⁴⁹ Respondent's Prehearing Brief at 3-4; Ex. 32: FEIS (September 26, 2013) at 52.

28 ⁵⁰ Respondent's Prehearing Brief at 4; Ex. 3: Rezone Application, Appendix H.

29 ⁵¹ Ex. 49: SEPA Appeal Public Hearing, Exhibit M3: Cover Photo. FDO Order Nunc Pro Tunc, p. 32.
Elevations revised per SEIS Appendix D, p. 9.

30 ⁵² Ex. 32: 2013 FEIS (September 26, 2013) at 3.

31 ⁵³ Hearing examiner Decision – Revis'd after Reconsideration, RE: AP2012-01, *Anderson v. Monroe* (August
8, 2012) at 14-15.

32 ⁵⁴ HEARING EXAMINER DECISION – REVISED AFTER RECONSIDERATION, RE: AP2012-01, *Anderson v.*
Monroe (August 8, 2012) at 17.

⁵⁵ Respondent's Prehearing Brief at 5; Ex. 32: FEIS (September 26, 2013) at 3.

1 The second EIS (2013 EIS) was also appealed. The new Hearing Examiner denied
2 the appeal and appellants' request for reconsideration, and Petitioners brought the instant
3 challenge. The Board invalidated the City's reclassification and rezoning of the Property
4 because the 2013 EIS failed to consider a reasonable range of alternatives and failed to
5 adequately analyze environmental impacts on the entire 43-acre rezone - specifically,
6 analysis of impacts related to the stream (slough), wetlands, and salmon habitat on the site,
7 landslide risks, and flood hazards.⁵⁶

8
9 The third EIS is a Supplement to the 2013 EIS and was prepared consequent to the
10 City of Monroe's decision to proceed with a Supplemental (2015 Supplemental EIS)
11 addressing the identified SEPA deficiencies. The City's declared intent was "re-adopting the
12 previously invalidated amendments"⁵⁷ rezoning and reclassifying the property.⁵⁸

13 14 **The City's Compliance Action**

15 Though the Board was concerned by the appearance that the re-adoption of
16 invalidated amendments was a foregone conclusion well in advance of any consideration of
17 additional environmental information,⁵⁹ the Board granted compliance participation to
18 Heritage and granted the City's request to extend the compliance schedule to allow the City
19 to prepare and issue a Supplemental EIS.⁶⁰ Heritage, owner of the property in question,
20 retained PACE Engineers at its expense⁶¹ "to analyze the FDO and identify the precise
21 remedial actions necessary to correct the deficiencies identified by the Board."⁶²

22
23
24
25 ⁵⁶ Order Nunc Pro Tunc Correcting FDO (Sept 19, 2014) at 33.

26 ⁵⁷ City's Motion for Extension of Compliance Schedule (December 17, 2014) at 2; Declaration of David Osaki
27 (August 12, 2015) at 3.

28 ⁵⁸ City's SATC (December 15, 2015) at 7; Compliance Ex. 51 2015 SEIS (November 2, 2015). Declaration of
29 Melissa Place (December 16, 2014) at 1-2.

30 ⁵⁹ WAC 197-11-406 reads, in pertinent part:

31 The statement shall be prepared early enough so it can serve practically as an important contribution
32 to the decision making process *and will not be used to rationalize or justify decisions already made.*

Emphasis added.

⁶⁰ Order Granting Compliance Participation And Extending Schedule (January 2, 2015); Order Granting
Second Extension (August 27, 2015).

⁶¹ These consultants also prepared the 2013 FEIS. City's SATC at 7.

⁶² City's SATC at 7.

1 *Timeline and Public Process*

2 In coordination with City staff and subconsultants, PACE prepared a Draft
3 Supplemental EIS which was issued on August 28, 2015.⁶³

4 The City took public comment and held a public hearing September 23, 2015, on the
5 Draft Supplemental EIS.⁶⁴ Along with eighteen public comment letters received between
6 September 1, 2015, and October 23, 2015, the City received a SEPA Comment letter
7 detailing the Department of Ecology's concerns with the Draft SEIS.⁶⁵ Authored by Paul S.
8 Anderson, Professional Wetland Scientist (PWS),⁶⁶ and Wetlands/Federal 401 Water
9 Quality Unity Supervisor at the Department of Ecology (Ecology), the letter (hereafter
10 "Ecology's 2015 Comment") challenged the adequacy of the alternatives assessed and the
11 lack of cumulative impacts analysis, the hydraulic analysis used for flood risk calculations,
12 the presumed absence of hydrological connection with the Skykomish River during high
13 flows, and fish and wildlife analysis conclusions.⁶⁷ These concerns are discussed further
14 below.⁶⁸

17 _____
18 ⁶³ City's SATC at 7.

19 ⁶⁴ Compliance Ex. 47, Minutes of City's Special Public Hearing for East Monroe DEIS (September 23, 2015).

20 ⁶⁵ Compliance Ex 51, 2015 SEIS, Appendix F, Comments and Responses, Ecology Comment dated
21 September 28, 2015 (Nov. 2, 2015) at 185-187. Where the Compliance Index has a bolded section and 4
22 exhibits detailing the correspondence with the Department of Commerce, the City's Index is devoid of any
23 mention of the Department of Ecology. Ecology's 2015 Comment, along with eighteen public comment letters
24 received between September 1, 2015, and October 23, 2015, seem to appear only in the Final SEIS, Appendix
25 F, followed by the Comment Response Matrix. It is difficult to tell whether the Planning Commission or Council
26 were presented with Ecology's letter, other than to have it appear buried on page 184 of Appendix F of the
27 final Supplemental issued Nov. 2, 2015.

28 ⁶⁶ The Society of Wetland Scientists PWS certification requires a Bachelor's degree (including coursework in
29 biological, physical and quantitative sciences plus specialized wetland course work) and a minimum of 5 years
30 of qualifying post-graduate professional experience in the field. <http://www.wetlandcert.org/requirements.html>.

31 ⁶⁷ The Record is unclear as to whether Ecology's 2015 Comment was presented to the Planning Commission.
32 An eight-page "Briefing Summary" with an attached 29-page draft Comment Response Matrix was transmitted
to the City Council Members from Heritage's counsel the same day that Ecology's letter was received. The
Comment Response Matrix did include many, although not all, of Ecology's concerns on pages 21 and 22.
However, that letter was addressed only to the Councilmembers and Mayor, not the Planning Commission,
with the explanation that the information was in preparation for the Council's briefing on the 2015 SEIS
scheduled for the following week. Compliance Exhibit 54. Letter from Johns Monroe Mitsunaga Lolouskova,
PLLC to Mayor and Council (October 23, 2015).

⁶⁸ The City responded to *some* of Ecology's concerns on the last two pages on the Comment Response
Matrix. Where the Compliance Index has a bolded section and 4 exhibits detailing the correspondence with the
Department of Commerce, the City's Index is devoid of any mention of the Department of Ecology. Ecology's
2015 Comment, along with eighteen public comment letters received between September 1, 2015, and

1 On September 28, 2015, a formal presentation of the Draft SEIS was made to the
2 Monroe Planning Commission.⁶⁹ The Planning Commission held a public hearing.⁷⁰
3 Following the public testimony portion of the public hearing, the Planning Commission
4 requested responses to certain questions of its own.⁷¹ As discussed further below, three
5 questions pertained to landslide potential (and municipal liability),⁷² three questions
6 addressed potential bias in the data owing to PACE Engineers' financial interest in an SEIS
7 that would support commercial development,⁷³ one question addressed compensatory flood
8 storage,⁷⁴ three questions pertained to the legality of and need for the rezone,⁷⁵ and one
9 asked whether the Army Corps of Engineers needed to be notified.⁷⁶

11
12 *Planning Commission recommendation against rezone*

13 The next week, written responses to the Commission's questions were presented by
14 City staff⁷⁷ and further clarification was provided by PACE and City staff.⁷⁸ After deliberation,
15 the "Commission ... voted 6/1 against recommending the City move forward" on the
16 Amendment and Rezone.⁷⁹ Finding that, *inter alia*, "[q]uestions regarding landslide hazard,

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20 October 23, 2015, seem to appear only in the Final SEIS, Appendix F, followed by the Comment Response
21 Matrix. It is difficult to tell whether the Planning Commission or Council were presented with Ecology's letter,
22 other than to have it appear buried on page 184 of Appendix F of the final Supplemental issued Nov. 2, 2015.

23 ⁶⁹ Compliance Index 29: Powerpoint by PACE (September 28, 2015).

24 ⁷⁰ Compliance Ex. 38: Planning Commission Minutes (October 19, 2015)

25 ⁷¹ Compliance Ex. 36: Memo to Monroe Planning Commission from Director Osaki RE staff response to
26 questions (October 19, 2015) at 1.

27 ⁷² Compliance Ex. 36: Memo to Monroe Planning Commission from Director Osaki RE staff response to
28 questions (October 19, 2015) at 1-2, 4, and 5-6.

29 ⁷³ Compliance Ex. 36: Memo to Monroe Planning Commission from Director Osaki RE staff response to
30 questions (October 19, 2015) at 4-6. It is uncontested that Heritage compensated PACE in the form of a lien
31 on the Property.

32 ⁷⁴ Compliance Ex. 36: Memo to Monroe Planning Commission from Director Osaki RE staff response to
questions (October 19, 2015) at 3-4.

⁷⁵ Compliance Ex. 36: Memo to Monroe Planning Commission from Director Osaki RE staff response to
questions (October 19, 2015) at 2, 7.

⁷⁶ Compliance Ex. 36: Memo to Monroe Planning Commission from Director Osaki RE staff response to
questions (October 19, 2015) at 5.

⁷⁷ Compliance Ex. 36: Memo to Monroe Planning Commission from Director Osaki RE staff response to
questions (October 19, 2015).

⁷⁸ Compliance Ex. 38: Planning Commission Minutes (October 19, 2015) at 2.

⁷⁹ Compliance Ex. 38: Planning Commission Minutes (October 19, 2015) at 3.

1 sources of water, survey data and flood elevations remain unanswered,”⁸⁰ the Commission
2 concluded that the Amendment and rezone was “not consistent with all relevant provisions
3 of the Comprehensive Plan” without answers to such questions and recommended denial.

4 The next day, October 27, 2015, the City Council received a “detailed presentation
5 from City staff and PACE.”⁸¹ Six days later, the City issued the Final 2015 SEIS.⁸²

6 The 2015 SEIS incorporated the 2013 FEIS by reference and contains three new
7 technical subconsultant reports/memoranda attached as formal appendices to the SEIS,
8 including:
9

- 10 • A GeoEngineers, Inc. report⁸³ addressing the Board’s concerns related to
11 topography, soils and landslide and erosion hazards;
- 12 • A Watershed Science and Engineering hydraulic analysis memorandum⁸⁴
13 addressing potential impacts of proposed fill and compensatory flood storage on
14 the Property, and
- 15 • A Wetland Resources, Inc. report⁸⁵ addressing the Board’s concerns regarding
16 the baseline conditions of critical areas and habitat conservation.⁸⁶
17

18 These reports/memoranda from the subconsultants are identical to those available to
19 the Planning Commission in the draft SEIS. The time elapsed between the Planning
20 Commission’s findings and the issuance of the final Supplemental was 7 days. The record
21 does not reflect any additional studies or new information differentiating the Final SEIS from
22 the Draft reviewed and rejected by the Planning Commission for failure to adequately
23 disclose environmental impacts.
24

25 Eight days after issuance of the Final 2015 SEIS, the Council formally reviewed the
26 Planning Commission’s recommendation and directed City staff to prepare ordinances
27
28

29 ⁸⁰ Compliance Ex 39: Planning Commission Findings and Conclusions, Finding 32(ii) (Oct. 26, 2015) at 7-8.

30 ⁸¹ City’s SATC at 10.

31 ⁸² City’s SATC at 7-8.

32 ⁸³ Compliance Ex. 51: 2015 SEIS, Appendix D.

⁸⁴ Compliance Ex. 51: 2015 SEIS, Appendix C.

⁸⁵ Compliance Ex. 51: Supplemental EIS (November 2, 2015) Appendix B.

⁸⁶ City’s SATC at 8-9.

1 approving the East Monroe amendments.”⁸⁷ On November 24, 2015, the City Council voted
2 4-3 to adopt Ordinances 015/2015 and 016/2015.⁸⁸

3 4 **Board Analysis**

5 The FDO provided that:

- 6 • The City failed to comply with RCW 43.21C.030(c), and the Final Environmental
7 Impact Statement (FEIS) for Ordinance Nos. 022-2013 and 024/2013 is
8 inadequate because it failed to consider a reasonable range of alternatives and
9 failed to adequately analyze environmental impacts on the entire 43-acre rezone.
- 10 • The City’s adoption of the Ordinances was not guided by and substantially
11 interferes with the fulfillment of GMA Planning Goal 10.
- 12 • A determination of invalidity is entered for Ordinance No. 022/2013, Section 3,
13 and related attachments including Exhibit G, and Ordinance No. 024/2013.⁸⁹

14 15 16 *Order of discussion*

17 The Board focuses its analysis on the deficiencies outlined in the FDO:

18 19 A. The 2013 FEIS failed to consider a reasonable range of alternatives.

20 As stated *supra*, the Board determined that the City could reasonably limit its analysis
21 to comparing a range of development alternatives likely under GC zoning with the baseline
22 condition of the property. Because the 2013 FEIS formulated the “no-action” alternative
23 under conditional use provisions rather than permitted uses, the Board concluded that the
24 SEPA analysis did not include a true no-action alternative based on existing conditions and
25 so avoided a true analysis of the environmental impacts of the Rezone.⁹⁰

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29 ⁸⁷ City’s SATC at 10. Although the Board granted two compliance extensions to ensure ample time for
30 exhaustive environmental review (a total of 16 months on compliance), Respondents repeatedly cite the
31 second-extended compliance deadline of December 1, 2015, as necessitating rapid action to issue the 2015
32 SEIS and re-enact the invalidated Ordinances. *Id.*

⁸⁸ Hamar Response (January 4, 2015) at 2; Compliance Ex. 21: Minutes of City Council Meeting (November
24, 2015) at 3-4.

⁸⁹ Order Nunc Pro Tunc Correcting Scrivener’s Errors In FDO (August 26, 2014) at 33.

⁹⁰ Order Nunc Pro Tunc correcting FDO (September 19, 2014) at 24.

1 Additionally, the “three alternatives chosen in the 2013 FEIS all promote intense
2 development”⁹¹ and so failed to “provide alternatives that inform City Council members of
3 the range of environmental impacts of their action.”⁹² Further, the 2013 FEIS assessed the
4 impacts of those alternatives in relation to each other rather than in relation to existing
5 conditions.

6 Ecology similarly criticized the draft Supplemental as only comparing current
7 conditions with no development to relatively similar development proposals:
8

9 The absence of updated drawings of the development proposals for each of
10 the alternatives and the fact that Table 1 only compares the No Action
11 Alternative with the other combined alternatives suggests only two
12 alternatives being assessed (no new development and development).⁹³

13 B. The 2013 FEIS failed to adequately analyze environmental impacts on the entire
14 43-acre rezone.

15 In its remand, the Board found “the FEIS alternatives ... fail to assess the maximum
16 development under GC designation.”⁹⁴

17 The Ordinance rezoned 43 acres of land but the FEIS only analyzed
18 environmental impacts of development on 11 acres of land. **SEPA requires**
19 **adequate analysis of reasonably foreseeable direct, indirect, and**
20 **cumulative impacts.** WAC 197-11-792.⁹⁵

21 Noting that the Ordinance “did not condition the rezone to limit commercial
22 development to only a portion of the property,” the Board said that the FEIS must properly
23 assess the maximum development possible under the GC designation and the resulting
24 impacts related to the stream (slough), wetlands, and salmon habitat on the site, the steep
25 slopes to the west, and the flood hazards were not adequately analyzed and mitigated.⁹⁶
26

27
28
29 ⁹¹ Order Nunc Pro Tunc correcting FDO (September 19, 2014) at 24, citing Ex. 32: FEIS (September 26,
2013) at 17-18.

30 ⁹² Order Nunc Pro Tunc correcting FDO (September 19, 2014) at 25.

31 ⁹³ Compliance Ex. 51: Supplemental EIS (November 2, 2015), Appendix F, Comments and Responses,
32 Ecology Comment dated September 28, 2015 (November 2, 2015) at 185.

⁹⁴ Order Nunc Pro Tunc correcting FDO (September 19, 2014) at 25.

⁹⁵ Order Nunc Pro Tunc correcting FDO (September 19, 2014) at 25. Emphasis original.

⁹⁶ Order Nunc Pro Tunc correcting FDO (September 19, 2014) at 25, 32.

1 *Discussion*

- 2 A. Reasonable Range of Alternatives: A No Action Alternative is required to define a
3 baseline for evaluation of other alternatives.⁹⁷

4 **Establishing baseline conditions**

5 *No Action Alternative*

6 The 2013 FEIS used a “No Action” alternative that assumed development that would
7 require conditional use permits under the current LOS zoning. As Ecology pointed out in its
8 2013 comment letter, the City failed to use the existing, undeveloped site condition as the
9 baseline for environmental review.
10

11 Because the existing undeveloped site condition is not used as the baseline
12 for alternatives comparison, it gives the impression that the DEIS is not a
13 balanced, objective analysis of the alternatives or potential impacts.⁹⁸

14 The Board’s 2014 remand order similarly stated,

15 The assumption that commercial development is the goal, and therefore
16 alternatives for more intensive development should shape the analysis, is
17 inappropriate for a nonproject policy action. The LOS [Limited Open Space]
18 designation allows commercial and more intensive use only as a conditional
19 use, while “[a]t a minimum level, one dwelling unit per five acres is currently
20 allowed.” By formulating a “no-action” alternative under conditional use
21 provisions rather than permitted uses, the FEIS avoided a true analysis of the
22 environmental impacts of the GC designation.⁹⁹

23 For the 2015 Supplemental, a new No Action – No Development Alternative was
24 added to establish baseline conditions for comparative analysis of the other alternatives.¹⁰⁰

25 Commenting on the draft 2015 Supplemental (hereafter, the Draft), Ecology noted:

26 The [Draft] has incorporated a No Action Alternative that describes the existing
27 conditions on the site and updated information related to habitat value (Critical
28 area Study and Habitat Conservation Report; Appendix B) and potential
29 flooding (Hydraulic analysis; appendix C).¹⁰¹

30 ⁹⁷ Order Nunc Pro Tunc at 24-25.

31 ⁹⁸ Ex. 22, Ecology comment letter to 2013 Draft EIS (Sept 13, 2013) at 1.

32 ⁹⁹ Order Nunc Pro Tunc correcting FDO at 24 Footnotes omitted.

¹⁰⁰ Compliance Ex. 51: Supplemental EIS (November 2, 2015) at 6.

¹⁰¹ Compliance Ex 51, 2015 SEIS, Appendix F, Comments and Responses, Ecology Comment dated September 28, 2015 (November 2, 2015) at 185.

1 The Board agrees with Ecology: the draft 2015 Supplemental addressed the need to
2 establish a No-Action baseline.
3

4 **Finding of Fact #1:** The draft 2015 Supplemental established a true No-Action/No
5 Development Alternative.
6

7
8 *No Scoping/ Supplemental Approach*

9 Petitioner Blair asserts that additional scoping was necessary for the Supplemental
10 EIS.¹⁰² The 2015 final Supplemental notes:

11 Certain environmental elements of the September 2013 FEIS that were not
12 found deficient by the Board are not included in this FSEIS as the legal
13 challenges related to these elements were dismissed by the Board. These
14 include Noise, Aesthetics, Light and Glare, Transportation, Public Services,
15 Land Use and Utilities. The Board's Final Decision and Order is provided in
Appendix A.¹⁰³

16 Petitioners protest that, in limiting its scope of work to the "perceived specific issues
17 in the Board's FDO ... [the Supplemental] excluded relevant comments that were perceived
18 as outside the scope of the deficiencies identified by the Board."¹⁰⁴
19

20 While the Board agrees that a public scoping process could have been of benefit,
21 WAC 197-11-620(1) is clear that scoping is optional for a supplemental EIS.

22 A better question might be whether a supplemental process was the appropriate
23 one.¹⁰⁵ WAC 197-11-405 (4) states that supplemental EIS (SEIS) is appropriate when:

- 24 (a) There are substantial changes to a proposal so that the proposal is likely to
25 have significant adverse environmental impacts; or
26 (b) There is significant new information indicating, or on, a proposal's probable
27 significant adverse environmental impacts.
28

29
30
31 ¹⁰² Blair Objection at 5-6.

¹⁰³ Compliance Ex. 51: Supplemental EIS, Introduction (November 2, 2015) at 1.

¹⁰⁴ Blair Objection at 4. The Board agrees with Petitioners that, throughout the process of preparing the 2015 Supplemental, the City has defined its task very narrowly. See concurring opinion of Board Member Pageler.

¹⁰⁵ Blair Objection at 9; Blair testimony at HOM: transcript at 31-32.

1 The Board joins Ecology in criticizing the City for making no discernible changes to
2 the proposed alternatives, and notes that the “significant new information” about
3 environmental impacts was “discovered” on a site visit in June 2015 – seven months after
4 the City decided to proceed with a supplemental statement.¹⁰⁶ Further, the new information,
5 which posits that the slough is a backwater, without through-flow from the Skykomish River,
6 substantially contradicts, rather than supplements, much of the science in the underlying
7 2013 FEIS.¹⁰⁷

8
9 Petitioners also assert that a supplemental statement can only be used to
10 supplement an existing valid FEIS. In response, the City cites several Board decisions
11 affirming the use of a SEIS to remedy a previously invalidated SEPA analysis.¹⁰⁸ The Board
12 concludes that the problem is not so much with employing a supplemental as the method of
13 compliance as it is the continued appearance of a post hoc justification. The Board is not
14 firmly convinced that the City’s choice to do a supplemental EIS was erroneous.

15
16 **Conclusion of Law:** A supplemental EIS was not a clearly erroneous approach to
17 compliance under these facts.

18
19 *Residential Uses*

20
21 Consistent with MMC 18.10.050 zoning land use matrix, a single family dwelling is
22 allowed on each of the lots created with the 2004 short plat.¹⁰⁹ Petitioner Blair complained
23 that the improved No Action alternative did not evaluate the potential for residential
24 development under LOS zoning.¹¹⁰ The City responded by adding that analysis:

25 Based on public comment received during the DSEIS public comment period,
26 the “No Action – No Development” Alternative was expanded to include
27

28
29 ¹⁰⁶ Respondent’s [First] Motion for Extension of Compliance (December 16, 2014) at 3.

30 ¹⁰⁷ Given that the data collection is done by the same scientists responsible for the underlying scientific studies
31 and the 2013 FEIS, the discrepancy begs one to question whether the prior studies and analysis were done
32 negligently, or is the new science outcome-driven?

¹⁰⁸ City’s Reply at 6.

¹⁰⁹ Compliance Ex. 51: Supplemental EIS, Summary (November 2, 2015) at 19.

¹¹⁰ Compliance Ex. 51, 2015 SEIS, Appendix F, Comments and Responses, Comment letter 8 dated Sept. 28,
2015 (November 2, 2015) at 26.

1 discussion of a scenario where each of the existing five lots is developed with
2 a single family dwelling.¹¹¹

3 The Board's expressed concern about the No Action alternative in the 2013 FEIS
4 was that it did not provide an adequate baseline. Here, the City has also responded to
5 public comment and provided additional analysis of potential residential development. In the
6 Board's view, a better reason to add an analysis of residential development potential could
7 have been to examine development under LOS zoning *as an alternative* to development
8 under the proposed GC rezone. Instead, the addition conflated residential development with
9 the existing baseline condition such that the resulting analysis assumes residential
10 development. The effect is that GC development is compared to residential development
11 instead of an undeveloped baseline condition. However, because residential development is
12 allowed under the existing LOS zoning, the Board is not firmly convinced that a mistake has
13 been made with regard to comparing GC development to residential development. The
14 Board defers to the City.
15
16

17
18 **Conclusion of Law:** The City's No Action – No Development/Single-Family Residential
19 baseline is not clearly erroneous.
20

21 *Offsite Alternatives*

22 WAC 197-10-440(12)(a) requires that an EIS include:

23 (a) *A description and objective evaluation of any reasonable alternative action*
24 *which could feasibly attain the objective of the proposal.*

25 (i) Reasonable alternatives shall include any action which might
26 approximate the proposal's objective, but at a lower environmental
27 cost or decreased level of environmental degradation.

28 Emphasis added.

29 As discussed previously, our Supreme Court interprets this to mean offsite
30 alternatives. The 2015 Supplemental adds a brief evaluation of six alternative sites on which
31
32

¹¹¹ Compliance Ex. 51: Supplemental EIS, Summary (November 2, 2015) at 6, 19, 34.

1 commercial development might be feasible.¹¹² Though somewhat cursory, the Board
2 believes it is adequate.

3
4 **Finding of Fact:** The Supplemental discusses alternative sites for general
5 commercial development.

6
7 *Commercial Development Analysis*

8 Based primarily on the new findings concerning water flow in the slough, the
9 Environmental Impacts section of the final 2015 Supplemental offers the following summary
10 comparison of *permanent* impacts resulting from each of the 5 alternatives:
11

12
13 No Action-No Development:

- 14 1. No impacts to wildlife or habitat, but
15 2. Presence of invasive species and lack of plant diversity limit wetlands/stream
16 habitat functions.¹¹³

17 Single-Family Residential:

- 18 1. Construction of homes and driveways would displace habitat in areas of open
19 pasture.¹¹⁴
20 2. Disturbance of critical area buffer vegetation as a result of constructing a driveway
21 to Parcel D.¹¹⁵

22 Alternatives 1, 2, and 3 (General Commercial Zoning):

- 23 1. Improved wildlife habitat due to native plant species enhancement following
24 construction of compensatory storage in critical area buffers.¹¹⁶

25 Impervious Surface
26
27

28 ¹¹² Compliance Ex. 51: Supplemental EIS, Section 2.4 Alternate Sites (November 2, 2015) at 35-37.

29 ¹¹³ Compliance Ex. 51: Supplemental EIS, Section 3.4.2 Environmental Impacts (November 2, 2015) at 64.

30 ¹¹⁴ The Supplemental identifies this pasture area as being the "developable area":

31 Lower pasture – flat area located south of the stream/slough where development could occur outside
32 of critical areas and related protected areas of the property. The southern portions of Parcel A, B, C,
D, and E are included in the lower pasture area.

¹¹⁵ Compliance Ex. 51, 2015 SEIS, Section 3 – Affected Environment (November 2, 2015) at 44.

¹¹⁵ Compliance Ex. 51: Supplemental EIS, Section 3.4.2 Environmental Impacts (November 2, 2015) at 64.

¹¹⁶ Compliance Ex. 51: Supplemental EIS, Section 3.4.2 Environmental Impacts (November 2, 2015) at 64-65.

1 Taken as written, the 2015 Supplemental thus “discloses” that construction of five
2 homes within the “developable area” will displace habitat, whereas commercial development
3 alternatives that cover virtually the entire 11+ acre “developable area” with paved parking
4 and/or commercial structures improve habitat.

5 The Board is convinced a mistake has been made.
6

7 Access Roads

8 Petitioners¹¹⁷ and Ecology¹¹⁸ note that the Supplemental discloses that a residential
9 driveway for access to Parcel D will disturb critical area buffer vegetation. Further,
10 Petitioners point out that there is an existing residential access to parcel D on its
11 Northeastern corner that is sufficient for a single vehicle such that a residence might not
12 require access over the slough.¹¹⁹ The Board can conceive of a gravel driveway being
13 sufficient for access to a single residence, and elsewhere in the Supplemental the
14 consultants seem to concede the point:
15

16 For a No Action – No Development/Single-Family Residential development
17 scenario, use of an existing stream crossing for Parcel D is assumed.¹²⁰
18

19 Yet, as it relates to residential access, the Supplemental concludes:

20 Under a No Action – No Development/Single-Family Residential scenario
21 there would be disturbance of areas for development of the single family
22 home and driveways. ...Impacts to critical area buffer vegetation would occur
23 as a result of providing a driveway to Parcel D.¹²¹

24 On the other hand, the Supplemental makes no mention of necessary road
25 improvements to access the proposed commercial development. The Supplemental
26 discussion of the Affected Environment, stream/slough, commercial development observes:

27 A dirt and gravel road crosses the stream/slough over a 24-in culvert located
28 near the parcel line between parcels C and D and provides access to the
29

30 ¹¹⁷ Blair Response, Transcript at 34.

31 ¹¹⁸ Compliance Ex 51, 2015 SEIS, Appendix F, Comments and Responses, Ecology Comment dated
September 28, 2015 (November 2, 2015) at 186.

32 ¹¹⁹ Blair Response at HOM, Transcript at 34-35.

¹²⁰ Compliance Ex. 51: Supplemental EIS, Section 3.4.2 Environmental Impacts (November 2, 2015) at 59.

¹²¹ Compliance Ex. 51: Supplemental EIS, Section 3.4.2 Environmental Impacts (November 2, 2015) at 64.

1 developable area located on Parcel E in the upper terrace area of the site
2 (See Figure 2).¹²²

3 A one-way driveway and a gravel driveway over a slough subject to flooding would
4 both seem inadequate to support year-round access to a commercial facility. Was the City
5 Council to conclude that construction of a commercial access road sufficient to serve the
6 proposed commercial facility with its supply trucks and customer parking would have less
7 impact on habitat than the single-family driveway to Parcel D?¹²³

8
9 The Comment Response Matrix seems to suggest that residential and commercial
10 access requirements would be identical, then postpones the analysis until the City receives
11 a commercial development permit:

12 According to PACE Engineers, it would be possible to make improvements to
13 the existing access road without disturbing the area of the slough within the
14 OHWM. There would be a need for a driveway to access through a buffer to
15 get to the developable portion of the property (assuming the property were
16 developed and would require vehicular access). This access would be
17 needed for any development of the site, whether under existing zoning or
18 proposed zoning. These options would be addressed when a development
19 proposal was submitted to the City for Approval.¹²⁴

20 The Board is convinced a mistake has been made.

21 Habitat Enhancement

22 Finally, the Supplemental identifies the impact of all three General Commercial
23 development alternatives (including building a big box store on the floodplain and covering
24 all the pasture area with impervious surface) as providing enhanced habitat, whereas
25 leaving the entire area in an undeveloped state will limit "wildlife habitat functions of the
26 wetlands and stream."

27 The culverts, ditches, access road, lack of forested canopy along the banks,
28 and the surrounding urban area have significantly altered the stream/slough

30
31 ¹²² Compliance Ex. 51: Supplemental EIS, Section 3.4.2 Environmental Impacts (November 2, 2015) at 52.

32 ¹²³ Figure 3 clearly shows Parcel D as included in the "developable area." Compliance Ex. 51: Supplemental EIS (November 2, 2015) Figure 3.

¹²⁴ Compliance Ex. 51, 2015, SEIS, Appendix F, Comments Response Matrix ECO-9 (November 2, 2015) at 22.

1 from its natural condition and have lowered the hydraulic and habitat
2 values.¹²⁵

3 Even assuming that this “disclosure” is premised on the idea that all runoff from
4 commercial development will be mitigated and compensatory storage construction will
5 replace invasive species with native plants, the Board fails to see how such a cursory
6 summary of environmental impacts provides a balanced look at the likely impacts of the five
7 alternatives.
8

9 The Board is convinced that a mistake has been made.

10 *Impartiality*

11 WAC 197-11-440(5)(c) states that the EIS shall:

- 12 (v) Devote sufficiently detailed analysis to each reasonable alternative to
13 permit a comparative evaluation of the alternatives including the proposed
14 action. ...
15 (vi) Present a comparison of the environmental impacts of the reasonable
16 alternatives, and include the no action alternative. ...

17 WAC 197-11-400(2) states:

18 “An EIS shall provide *impartial* discussion of significant environmental
19 impacts and shall inform decisionmakers and the public of reasonable
20 alternatives, including mitigation measures that would avoid or minimize
21 adverse impacts or enhance environmental quality.”¹²⁶
22

23 Here, the comparison of alternatives does not provide sufficient detail to allow a
24 comparative evaluation of alternatives and shows a lack of impartiality because it minimizes
25 impacts of commercial development as compared to residential or no action alternatives.

26 The irony is that, as noted previously, SEPA does not require a certain legislative
27 outcome. The purpose of SEPA is to insure that the decision-makers are informed of the
28 consequences of the action. Had the 2015 SEIS provided the requisite “reasonably
29 thorough discussion of the significant aspects of the probable environmental
30

31
32 ¹²⁵ Compliance Ex. 51: Supplemental EIS, Section 3.4.2 Environmental Impacts (November 2, 2015) at 52.

¹²⁶ See *Citizens for Safe & Legal Trails v. King County*, 2003 Wash. App. LEXIS 2092 (Wash. Ct. App. Sept. 22, 2003)

1 consequences¹²⁷ of alternatives required under SEPA, the City Council's legislative
2 decision would be due deference under GMA. The Council is the point at which decisions
3 balancing sometimes conflicting goals (such as a commercial gateway versus habitat
4 protection and public safety) are made.¹²⁸ Those dissatisfied with an informed legislative
5 outcome must find their remedy at the ballot box and not before the Board. What is not
6 subject to deference, particularly in light of a finding of invalidity, is glossing over potential
7 environmental impacts with conflicting science (the 2015 Supplemental EIS incorporates the
8 conflicting conclusions of the 2013 FEIS) such that the legislative body is not provided with
9 the necessary full disclosure upon which to make a reasoned decision.
10

11
12 **Conclusion of Law:** The Supplemental EIS is inadequate because it does not provide an
13 impartial assessment, as required by WAC 197-11-440 and WAC 197-11-400, and fails to
14 provide a "reasonably thorough discussion of the significant aspects of the probable
15 environmental consequences."¹²⁹

16 B. The 2013 FEIS failed to adequately analyze environmental impacts on the entire
17 43-acre rezone.
18

19 SEPA requires adequate analysis of reasonably foreseeable direct, indirect, and
20 cumulative impacts. WAC 197-11-792. In reviewing a proposed up-zoning, the City's SEPA
21 task is to "analyze potential significant environmental impacts of its nonproject action in
22 terms of the *maximum development that might occur* as a result of the nonproject action."
23 *Hood Canal Coalition v Jefferson County*, GMHB 03-2-0006 (Compliance Order, 10-14-04),
24 p. 10. (Emphasis added).
25

26 Predicting that enactment of GMA would "subtly" alter pre-existing SEPA function,
27 Professor Settle explained:
28

29 ¹²⁷ *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 866 P.2d 1256
30 (1993) at 633.

31 ¹²⁸ RCW 36.70A.3201.

32 ¹²⁹ *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 866 P.2d 1256
(1993) at 633.

1 *Counties and cities ... must systematically identify and protectively regulate*
2 *the use of environmentally sensitive areas and natural resource lands, closely*
3 *coordinate private land development with the provision of adequate public*
4 *facilities and services, and determine far into the future where development of*
5 *an urban character may occur. These systematic determinations of*
6 *environmental policy presumably will have been enlightened by nonproject*
7 *environmental impact statements. Thus, the environmental issues which*
8 *typically have been addressed by project-specific environmental impact*
9 *statements and ad hoc substantive conditions or denials, under the GMA*
10 *increasingly will be addressed in comprehensive plans and regulatory codes*
11 *informed by nonproject environmental impact statements. It seems likely that*
12 *environmental analysis under SEPA will be focused less on proposed*
13 *development projects and more on the formulation of comprehensive plan*
14 *policies and environmentally-based land use regulatory systems. A felicitous*
15 *result of this change in emphasis may be fewer disappointed expectations*
16 *and redundant, costly skirmishes for both environmental and development*
17 *interests. If, as contemplated by the GMA, comprehensive consideration of*
18 *environmental values and consequences will be reflected in plan policies and*
19 *regulations governing land development, ad hoc substantive SEPA conditions*
20 *and denials will be imposed less frequently and will be more difficult to justify*
21 *legally and politically.*¹³⁰

17 In sum, Professor Settle viewed the integration of GMA and SEPA as a catalyst for
18 increasing use of nonproject environmental impact assessment to inform land use policies
19 that would ultimately streamline environmental permitting, increase regulatory predictability,
20 and decrease project-specific litigation.

21 **Analyze all 43 acres**

22
23 In its Final Decision and Order, the Board concluded that the 2013 FEIS failed to
24 assess the maximum development under GC designation because it only analyzed
25 environmental impacts of development on 11 acres of land despite rezoning 43 acres (the
26 rezone did not condition the rezone to limit commercial development to only a portion of the
27 property).¹³¹ As one of the bases for its conclusion, the Board agreed with the 2013 hearing
28 Examiner who noted that "Commercial developments that would logically locate along an
29
30
31

32 ¹³⁰ Settle, Richard L., Washington State Environmental Policy Act: A Legal and Policy Analysis, Section 1.27
Introduction to 1991 Supplement (December 2014) at 1-59-1-60.

¹³¹ Order Nun Pro Tunc at 25.

1 arterial highway ... would want to maximize use of the available non-NGPA-restricted
2 portions of the site."¹³²

3 As noted in the Board's FDO, the three general commercial alternatives all promote
4 intense development on the same 11.5 acre footprint:

5 Alternative 1 contemplates a church, fitness center, childcare facility, 550-car
6 parking lot and other uses. Alternative 2 plans for a high-volume discount store,
7 with associated strip-mall retail establishments and 660-car parking lot.
8 Alternative 3 contemplates a rezone to Mixed Use Commercial allowing
9 potential residential, professional office, medical clinic, restaurant, and other
10 retail and commercial uses, with a 680-car parking lot.¹³³

11 The 2013 FEIS concluded that since Property build-out under any of the three
12 alternatives could only be on the limited buildable platform, there would be little habitat loss.
13 Given the assumption of cut and fill under any scenario, the Board found this conclusion
14 lacked credibility.¹³⁴ On compliance, Petitioners again object that the rezone affects 43
15 acres, but the SEIS only examines development of 10-11 acres. Similarly, Ecology's 2015
16 Comment criticized the Draft as still only comparing current conditions (no development) to
17 relatively similar development proposals:

18 The remaining alternatives have not been appreciably revised from those in
19 the [2013 FEIS] ... and Table 1 only compares the No Action Alternative with
20 the other combined alternatives, leaving the impression that there are only
21 two alternatives being assessed (no new development and development).

22 In addition, the proposal is to rezone all five parcels within the 43-acre site,
23 yet the analyses in DSEIS only focus on development of 11.3 acres outside of
24 critical areas and a designated Native Growth Protection Area (NGPA),
25 stressing that this is the only development footprint allowed under the current
26 development regulations.¹³⁵

27 PACE alternatively responds (1) that impacts on all 43 acres are discussed, and (2)
28 that such analysis is unnecessary, because the current code restricts development in the

29
30 ¹³² *Id.*; HEARING EXAMINER DECISION – REVIS'D AFTER RECONSIDERATION, RE AP2012-01, *Anderson*
31 *v. Monroe* (August 8, 2012) at (August 8, 2012) at 17.

32 ¹³³ Order Nunc Pro Tunc at 24.

¹³⁴ Order Nunc Pro Tunc at 27.

¹³⁵ Compliance Ex 51, 2015 SEIS, Appendix F, Comments and Responses, Ecology Comment dated
September 28, 2015 (November 2, 2015), at 185.

1 NGPA easement, wetlands, stream buffers, etc. such that development is only possible on
2 the 10-11 acres of the site.¹³⁶ The City's 2015 final Supplemental again analyzes only
3 development on 11.5 acres of the 43 acre site. The Summary section of the 2015
4 Supplement explains:

5 To provide a comprehensive analysis, conceptual site plans ... were prepared
6 ... taking into consideration site opportunities and constraints. *All alternatives*
7 *recognize that a recorded Native Growth Protection Area (NGPA) and various*
8 *setbacks and buffers associated with critical areas, regulated by the City of*
9 *Monroe Municipal Code (MMC), prohibit certain development such as parking*
10 *areas and buildings on approximately 31.51 acres of the 43 acre site.*¹³⁷

11 Under the Cumulative Impacts, the Supplemental explains:

12 For the purposes of this FSEIS, reasonably foreseeable future actions consist
13 of the potential for development of Alternatives 1, 3, or 3 and other off-site
14 development activities that result in cumulative impacts to elements of the
15 environment.¹³⁸

16 *Reasonable Use Exemptions*

17 The City omitted independent commercial development under reasonable use
18 exemptions from its Comment Response Matrix and provided no response.¹³⁹

19 At the Compliance Hearing, the City Attorney contended:

20 *The Department of Ecology letter and the petitioners' comments today*
21 *suggest that the City could someday possibly grant a reasonable use*
22 *exception to some future applicant that would allow some unspecified part of*
23 *this otherwise inaccessible area of the site to be developed. And that is*
24 *precisely the type of speculative, hypothetical, and conjectural proposition*
25 *that falls well beyond the rule of reason.*

26 Notwithstanding the City's protestation that "the thought that the City would at some
27 point issue a reasonable use exception defies logic, common sense, and ... is simply
28

29 ¹³⁶ Susan Boyd, Compliance Ex. 47, Minutes of City's Public Hearing for East Monroe DEIS (September 23,
30 2015), at 7-9.

31 ¹³⁷ Compliance Ex. 51: Supplemental EIS, Summary (November 2, 2015) at 8, 19.

32 ¹³⁸ Compliance Ex. 51: Supplemental EIS, Section 4.3 Reasonably Foreseeable Future Actions (November 2,
2015) at 67.

¹³⁹ Compliance Ex. 51, 2015 SEIS, Appendix D, East Monroe Rezone Comment Response Matrix. (November
2, 2015) at 20-21.

1 beyond the rule of reason,”¹⁴⁰ the Board takes official notice of MMC 20.05(2) which
2 describes the process and standard for application and granting of reasonable use
3 exemptions.
4

5 **Finding of Fact:** Reasonable use exemption requests are foreseeable enough for the City
6 to have an application process, standard, and evaluation process defined in its Code.

7 Although the Code anticipates that landowners will apply for reasonable use
8 exceptions, the FEIS does not disclose the impact of incursions into habitat and critical
9 areas that may be allowed to enable development on the 11-acre pad or to provide
10 “reasonable use” under GC zoning to other parcels.
11

12 Nevertheless, the 2015 Supplemental contemplates the possibility of development
13 and mitigation activities that will impact areas within the shoreline, wetland, and urban
14 conservancy designations:

15 *If the remaining developable portion of the site were to be developed to its full*
16 *potential as allowed by code, grading within the stream/slough buffer and*
17 *wetland buffers will be required for flood management and protection (i.e.,*
18 *compensatory storage) and would be regulated by Monroe Municipal Code*
19 *(MMC) 19.01 (Shoreline Management), MMC 20.05.080 (Wetland*
20 *Development Standards), MMC 20.05.090 (Stream Development Standards),*
21 *and applicable state and federal requirements.*

22 ... Work would be accomplished in accordance with the goals and policies of
23 the “Urban Conservancy” designation and shoreline regulations pursuant to
24 the City of Monroe’s 208 Shoreline Master Program as well as Chapter 90.58
25 RCW – the Shoreline Management Act.¹⁴¹

26 Similarly, Heritage asserts that the “SEIS explains and clarifies legal and regulatory
27 restrictions present on the property that limit development to approximately one quarter of
28 the site even though there is no affirmative restrictions in the 2015 Ordinances
29 themselves”.¹⁴² However, the Summary suggests that variances and exemptions have not
30 been considered but may be possible:
31

32 ¹⁴⁰ Zach Lell Response on behalf of Monroe, HOM, Transcript at 62-64.

¹⁴¹ Compliance Ex. 51, 2015 SEIS, Summary, Proposed Action (November 2, 2015) at 19. (Italics added)

¹⁴² Heritage Brief (December 15, 2015) at 18.

1 *At this non-project level of analysis, provisions for buffer reductions or other*
2 *provisions in the municipal code have not been considered as such proposals*
3 *require demonstration and compliance with decisional criteria that can only be*
4 *evaluated with case specific proposals.*¹⁴³

5 Petitioners argue that the current code provisions are not prohibitions, allow
6 variances, and may be amended.¹⁴⁴ Ecology's Comment voices similar concerns:

7 Although the proposal is to rezone 43 acres, the analyses in DSEIS only
8 focus on development of 11.3 acres outside of critical areas and a designated
9 Native Growth Protection Area (NGPA), stressing that this is the only
10 development footprint allowed under the current development regulations.
11 However, development within critical areas is not outright prohibited unless
12 there is a recorded NGPA on each parcel, then each new owner could apply
13 for development under a reasonable use exception, but *the cumulative*
14 *impacts analysis did not address the potential for significantly more*
15 *environmental harm as a result of independent development of the five*
16 *parcels.*¹⁴⁵

17 In response, the City indicated that the Boundary Line Adjustment which includes a
18 reference to and identifies the *general* boundary of the NGPA and its limitations is provided
19 in Appendix E.¹⁴⁶ Appendix E is an Unofficial Copy of a boundary line adjustment between
20 Parcels A and B. Regarding an NGPA, MMC 20.05.700 reads, in pertinent part:

21 [A] Native Growth Protection Easement ... imposes ... the obligation ... to
22 leave undisturbed all trees and other vegetation within the easement. The
23 vegetation in the easement may not be cut, pruned, covered by fill, removed,
24 or damaged *without express permission from the City of Monroe*

25 But to the contrary, as is discussed further below, the 2015 Supplemental depends
26 heavily on assumptions that, at a minimum, compensatory storage and habitat
27 enhancement (mostly removal of "invasive" blackberries and canary reed grass and

28 ¹⁴³ Compliance Ex. 51: Supplemental EIS, Summary (November 2, 2015) at 8; see also Compliance Ex 51:
29 2015 SEIS, Appendix F, Comments and Responses, East Monroe Rezone Comment Response Matrix,
30 Response to Comment AS-14 (November 2, 2015) at 21.

31 ¹⁴⁴ Misty Blair, Compliance Ex. 47, Minutes of City's Public Hearing for East Monroe DEIS (September 23,
32 2015) at 13.

¹⁴⁵ Compliance Ex 51, 2015 SEIS, Appendix F, Comments and Responses, Ecology Comment dated
September 28, 2015 (November 2, 2015) at 185-186. (Italics added)

¹⁴⁶ Compliance Ex 51, 2015 SEIS, Appendix F, Comments and Responses, East Monroe Rezone Comment
Response Matrix, Response to Comment AS-14 (November 2, 2015) at 21.

1 replanting with native flora) will be located outside the “developable” acreage – ergo, in
2 those sensitive areas where such activities require “demonstration and compliance with
3 decisional criteria that can only be evaluated with case-specific proposals.”

4 The Comment Response Matrix dismisses Ecology’s request for careful analysis of
5 the applicability of the NGPA and other restrictive regulations:

6 Thank you for the comment. Additional environmental analysis will be
7 conducted when an actual development proposal was submitted to the City
8 for approval.¹⁴⁷

9
10 Regarding Ecology’s query as to whether the NGPA had been recorded against all
11 parcels in the rezone, the City answers by referring the Department to a 2003 plat map
12 submitted for a Boundary Line Adjustment.¹⁴⁸ However, not only is the map’s delineation of
13 the NGPA boundaries vague, Note 1 on Sheet 1 of this 2003 plat map states:

14 All areas identified as Native Growth Protection areas (NGPA) shall remain
15 undisturbed in perpetuity, no filling, grading or construction are permitted
16 within these areas **without the prior written approval of the City of**
17 **Monroe Community Development Department.**

18 This language affirms, more than dispels, concerns raised by Ecology¹⁴⁹ and
19 Petitioners that development outside of the 11.5 acre footprint is not outright prohibited by
20 existing regulations. The Board can find no evidence in the record proving that the NGPA
21 has been recorded for all the critical areas on each of the five parcels.

22
23 **Finding of Fact:** The 2015 Supplemental does not provide the documentation requested by
24 Ecology showing that a Native Growth Protection Easement has been recorded against the
25 titles to each of the 5 parcels affected by the rezone.
26

27
28
29 ¹⁴⁷ Compliance Ex 51, 2015 SEIS, Appendix F, Comments and Responses, East Monroe Rezone Comment
30 Response Matrix, Response to Comment ECO-6 (November 2, 2015) at 21.

31 ¹⁴⁸ Compliance Ex 51, 2015 SEIS, Appendix F, Comments and Responses, East Monroe Rezone Comment
32 Response Matrix, Response to Comment AS-14 (November 2, 2015) at 21; Ordinance Nos. 015/2015 and
016/2015 at 15.

¹⁴⁹ Compliance Ex 51, 2015 SEIS, Appendix F, Comments and Responses, Ecology Comment dated
September 28, 2015 (November 2, 2015) at 186.

1 **Finding of Fact:** No evidence has been provided showing the exact boundary of the NGPA
2 protective easement. Knowing the exact boundaries would be prerequisite to any legitimate
3 analysis of areas available for fill or for compensatory storage, as well as to enforce
4 restrictive regulations (which require, inter alia, that the area be fenced off or otherwise
5 clearly delineated).
6

7 **Finding of Fact:** By its terms, an NGPA obliges landowners "... to leave undisturbed all
8 trees and other vegetation within the easement. The vegetation in the easement may not be
9 cut, pruned, covered by fill, removed, or damaged *without express permission from the city*
10 *of Monroe*" Thus, it is not an outright prohibition to development activities.
11

12 In Ordinance Nos. 015/2015 and 016/2015, the City asserts that it responded to the
13 GMHB determination that the SEPA analysis must evaluate the entire 43-acre site through:

14 ... additional fieldwork, review of historical records and survey data involving
15 the entire site. Additional analysis of off-site areas such as the steep hillside
16 to the north and northwest of the [Property], new modeling and hydraulic
17 analysis of flooding across the entire property, grading for compensatory
18 storage outside the "developable area," habitat assessment and erosion
19 impacts from stormwater in the steam/ slough, updated flood elevations on
the entire property.¹⁵⁰

20 The Supplemental comment matrix states:

21 The DSEIS analyzes the entire 43 acre site. Existing topography, habitat,
22 plants and other elements of the environment across the entire 43 acre site
23 are discussed. The FSEIS discusses activities that could take place on the 43
24 acre site, including compensatory storage and discusses mitigation to control
25 impacts such as erosion or removal of invasive species. The development of
26 the 11.3 acres is presented as the buildout scenario with the least impacts on
the critical areas located on-site.¹⁵¹

27 The Board begs to differ. The Supplemental does not present the development of
28 11.3 acres as the buildout scenario with the least impacts but rather as the only possible
29
30

31
32 ¹⁵⁰ Ordinance Nos. 015/2015 and 015/2015, Finding 7 (November 24, 2015) at 34.

¹⁵¹ Compliance Ex. 51, Appendix F, East Monroe Rezone Comment Response Matrix. (November 2, 2015) at 21.

1 buildout scenario. The Board believes Petitioners and Ecology are correct that the rezone
2 does not preclude commercial development on separate parcels.

3 In sum, while the FSEIS continues to assert all development on the 43 acres is
4 limited to an 11.3 “buildable envelope,” in fact substantial development is anticipated
5 outside that footprint, including grading, excavation, fill, and removal of vegetation. Much of
6 this activity is proposed to take place within a Category II wetland and a Type I stream that
7 provides salmon habitat. Thus, although all of the FSEIS conclusions are based on limiting
8 development to the 11-acre building pad, significant incursions into critical areas are
9 presumed to be allowed. Nevertheless, the Rezone ordinance contains nothing to prevent
10 additional development elsewhere on the 43 acres, and the FSEIS analysis ignores the
11 allowances for reasonable use, buffer reductions, and the like which may be available under
12 the code.
13

14
15 **Finding of Fact:** The 2015 Supplemental does not answer concerns raised by Ecology and
16 Petitioners that commercial development could take place outside the 11.5 acres analyzed.
17 The Board determines that the City has failed to provide an analysis of the impact of
18 developing the site to the “maximum extent possible” promised in the City’s proposed Scope
19 of Work.¹⁵²
20

21 For the reasons stated above, the Board is convinced that a mistake has been made.
22

23 **Conclusion of Law:** The SEIS is inadequate because it fails to analyze and disclose
24 foreseeable adverse impacts to the environment on all 43 acres as required by RCW
25 43.21C.031(2), and WAC 197-11-060(4), and fails to provide a “reasonably thorough
26 discussion of the significant aspects of the probable environmental consequences.”¹⁵³
27

28 **Environmental Assessment**

29
30

31 ¹⁵² See Respondent’s [First] Motion for Extension of Compliance (December 16, 2014) at 3-5.

32 ¹⁵³ *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 866 P.2d 1256
(1993) at 633.

1 *Hydraulic connectivity of the slough*

2 In the 2013 FEIS, PACE Engineering describes the Property this way:

3 The site's physical character is derived from its location between a steep
4 hillside to the north and SR-2 to the south. Just south of the highway are the
5 Burlington Northern/Santa Fe Railroad tracks and the Skykomish River. An
6 oxbow stream from the River flows through culverts under SR-2 and BNSFRR
7 tracks and bisects the site. Shoreline, stream, and wetland areas require
8 significant buffers and the location of much of the site in floodplain requires
9 provision of compensatory flood storage to off-set placement of fill. Native
10 Growth Protection Area (NGPA) and Urban Conservancy (UC) shoreline
11 designation exists across portions of the property, as detailed in Section 3
12 and Appendices to this FEIS.¹⁵⁴

11 ***

12 The slough is a Type I stream and is thus frequently referred to as "the stream" in the
13 2013 FEIS.¹⁵⁵

14 An oxbow stream from the Skykomish River bisects the site and is
15 hydraulically **connected to the Skykomish River by box culverts** under
16 SR-2 and the BNSF railroad tracks.¹⁵⁶

17 The 2013 FEIS is unequivocal about the slough's connection to the *Skykomish from*
18 *the east by way of culverts under the railroad tracks*. The importance of the slough's
19 connectivity and identification as a Type 1 fish-bearing water as it relates to anadromous
20 fish habitat was verified during the 2013 inspections:

21 Streams/Slough

22 The subject property is located approximately 400 feet north of the Skykomish
23 River, a Type S water, and shoreline of the state. A slough (Type 1 Stream)
24 extends northeast from the Skykomish River and onto the subject **property**
25 **via a large box culverts** under Highway 2 and the Burlington Northern –
26 Santa Fe (BNSF) railroad tracks. For a detailed description of the on-site
27 critical areas, please see Appendix D, Critical Area Study and Habitat
28 Conservation Report for East Monroe Rezone (Wetland Resources, Inc. June
29 13, 2013).

30
31
32 ¹⁵⁴ Ex. 32: FEIS (September 26, 2013) at 4.

¹⁵⁵ Ex. 32: FEIS (September 26, 2013) at 17.

¹⁵⁶ Ex. 32: FEIS (September 26, 2013) at 17. (Emphasis added)

1 The slough meets the criteria for a Type 1 stream, or fish-bearing water. **Fish**
2 **were observed within the stream/slough during the June 2013**
3 **inspections**, and the stream/slough is connected to the Skykomish River.
4 The Skykomish River contains several anadromous and salmonid fish
5 species, including federally listed and threatened and endangered (T and E)
6 species. Per section 20.05.090(D) of the City of Monroe Municipal Code
7 (MMC) a 200-foot buffer is required from the ordinary high water mark
8 (OHWM) of Type 1 streams.¹⁵⁷

9 At the City's public meeting on the 2015 Supplemental EIS, prepared by the same
10 PACE Engineering using the same studies and analyzed by the very engineer who
11 conducted the 2013 studies and prepared the 2013 FEIS, Susan Boyd asserted:

12 Watershed Science and Engineering ... are the ... engineers that evaluated
13 and determined all the new FEMA-proposed flood plain elevations. They did
14 all the FEMA modeling for the Skykomish River. ... [T]hey got involved in this
15 process by doing a bunch more modeling, a bunch more field and constants
16 (sic) and, uh, just digging deeper and further into how hydraulics on the site
17 were.¹⁵⁸

18 ***

19 **[W]e realized ...there is no direct hydraulic continuity to the Skykomish**
20 **River [at the east end of the slough].** All that's coming into the slough from
21 here is ditch water along ... SR 2. ... [W]e clarified non-direct connection on
22 the east side of the property and limited fish use and fish passage through...
23 the site.¹⁵⁹

24 Ecology expressed significant concerns about some of the "new" information,
25 warning that:

26 **Conclusions in two sections of the [Draft] are not entirely supported by**
27 **available information and Ecology recommends that additional**
28 **information on these sections be provided in the FSEIS.** These two
29 sections include the assessment of existing conditions for surface water and
30 also fish and wildlife habitat.

31 The Surface Water discussion (Section 3.2.1), as well as a statement in the
32 Summary (Section 1.3, p. 9), concludes that because there is no culvert
beneath the railroad at the southeast end of the slough, there is no surface

¹⁵⁷ Ex. 32: FEIS (September 26, 2013) at 38. (Emphasis added)

¹⁵⁸ Compliance Ex. 47, Minutes of City's Public Hearing for East Monroe DEIS (September 23, 2015) at 3.

¹⁵⁹ Compliance Ex. 47, Minutes of City's Public Hearing for East Monroe DEIS (September 23, 2015) at 5. FN
39 added.

1 water connection between the slough and the Skykomish River and that the
2 southeast end of the slough receives water from the State Route 2 roadside
3 ditches. It is my understanding that the railway base is composed of relatively
4 porous rip rap that does have a hydrologic connection with the river during
5 high flows. **The railroad base does preclude fish access to the southeast**
6 **end of the slough, but it is not an impermeable barrier.** Also, wetlands to
7 the east of the site on the north side of State Route 2 appear to drain towards
8 the slough; **input from the ditch system to the southeast end of the**
9 **slough is not simply road runoff.**¹⁶⁰

10 The fish and wildlife analysis concludes that because the slough is not
11 accessible to fish at the upstream end, the in-water habitat value of the
12 slough is greatly diminished. Because the southwest (downstream) end of **the**
13 **slough is fully accessible to Skykomish River fish,** it still has the potential
14 **to provide critical off-channel refugia for fish,** particularly during high flow
15 events. The velocities in the slough would be much lower than in the main
16 channel and would provide resting and foraging areas for fish. **This type of**
17 **habitat has been identified as critical for juvenile Chinook salmon** by the
18 National Marine Fisheries Service (Federal Register, 70:170 52630-52858).
19 **The fact that fish were not observed during a single site visit in June**
20 **and that the slough is not accessible at the upstream end does not**
21 **negate the potential importance of the slough as fish habitat.**¹⁶¹

22 In response, the Final EIS reiterates that "there is no surface hydraulic connection to
23 the river under the railroad embankment, although some seepage may flow through the fill if
24 the Skykomish River remains above flood stage for an extended period of time" but it would
25 be negligible compared to the flow coming from the Skykomish River via the culverts at the
26 west end of the site¹⁶² and that the modeling included contributions from 273 acres of
27 hillside and properties to the east that drain toward the site, including wetlands east of the
28 site.¹⁶³ The Board notes that the City does concede that there is a culvert at the southeast
29 of the property where the slough crosses under SR2 immediately to the north of the location

30 ¹⁶⁰ Compliance Ex 51, 2015 SEIS, Appendix F, Comments and Responses, Ecology Comment dated
31 September 28, 2015 (November 2, 2015) at 186-87.

32 ¹⁶¹ Compliance Ex 51, 2015 SEIS, Appendix F, Comments and Responses, Ecology Comment dated
September 28, 2015 (November 2, 2015) at 185.

¹⁶² Compliance Ex 51, 2015 SEIS, Appendix F, Comments and Responses, East Monroe Rezone Comment
Response Matrix, Response to Comment AS-14 (November 2, 2015) at 20.

¹⁶³ Compliance Ex 51, 2015 SEIS, Appendix F, Comments and Responses, East Monroe Rezone Comment
Response Matrix, Response to Comment AS-14 (November 2, 2015) at 20.

1 where a culvert was assumed to exist.¹⁶⁴ This is puzzling since the aerial photography
2 analyzed by GeoEngineers in Appendix D documents that the railroad predated the first
3 photographs in 1948, but SR 2 was not constructed until after 1948.¹⁶⁵ If there was no water
4 flowing from the Skykomish River under the railway berm to the slough, one wonders why a
5 culvert under SR2 was deemed necessary at the time the highway was built over the
6 slough.
7

8 Examining Figures 2, 3, 4, and 5 in the Summary section of the 2015 Supplemental,
9 the Board finds it very difficult to reconcile these visual depictions, which are overlaid onto
10 actual aerial and satellite photos, with the Supplemental's conclusion that there is no
11 surface water connectivity. For example, Figure 2 (project area map) clearly shows a blue
12 line, which the legend says denotes a stream, flowing under both SR2 and the railway in the
13 historic slough channel.¹⁶⁶ This is overlaid on a 2015 satellite photo¹⁶⁷ in which water is
14 clearly visible in much of the stream channel, particularly on the eastern side of the
15 Property, even though the center section of slough bed appears dry between the west and
16 east portions of the stream bed. This visual doesn't comport with the conclusion that the
17 water in the slough is coming primarily from the west connection, particularly given the
18 larger amount of water visible on the eastern portion of the property. Given that the
19 underlying photo is from an historic drought year, 2015, the Board agrees with Ecology that
20 the water in the eastern side of the slough is not merely runoff from the highway.¹⁶⁸
21
22

23 Reasonable minds can, and apparently do, disagree regarding the presence of a
24 culvert under the railway at the southeastern end of the slough.
25
26

27 ¹⁶⁴ Compliance Ex 51, 2015 SEIS, Appendix F, Comments and Responses, East Monroe Rezone Comment
Response Matrix, Response to Comment AS-14 (November 2, 2015) at 2.

28 ¹⁶⁵ Compliance Ex 51, 2015 SEIS, Appendix D (Nov. 2, 2015) at 6.

29 ¹⁶⁶ Compliance Ex. 51: 2015 SEIS, Summary, Figure 2: Project Area Map (November 2, 2015) at 11.

30 ¹⁶⁷ The Board takes official notice of the notorious fact that 2015 was an historic drought year in the State of
Washington.

31 ¹⁶⁸ The new explanation of "a 273 acre wetland to the east" as a source of water in the slough raises more
32 unanswered questions. If there is surface water contribution from such a vast wetland to the east, where are
the photos and the analyses that account for the source of water in that wetland? How much runoff from the
eastern wetlands would impact the Property during a flood event and what would the impact be? What are the
cumulative effects on fish refugia, erosion at the toe of the slope, and compensatory storage needs?

1 100-year Flood Elevation, Fill, and Compensatory Flood Storage

2 The 2013 FEIS stated that:

3 The biggest impact to topography and soils is the amount of cut and fill
4 required to meet regulatory requirements associated with grading the flood
5 plain, including compensatory flood storage. For each of the alternatives,
6 considerable cut and fill is required to avoid flooding impacts by raising the
7 site above the 100-year floodplain elevation of approximately 67 feet, as
8 designated in the preliminary FEMA FIRMs dated 2007. Raising the elevation
9 of land in a designated floodplain zone requires compensatory flood storage
10 and other mitigation measures in accordance with the National Flood
11 Insurance Program (NFIP) and Endangered Species Act.¹⁶⁹

12 Quoting FEMA's website¹⁷⁰, the 2013 FEIS noted:

13 The NFIP floodway standard in 44 CFR 60.3(d) restricts new development
14 from obstructing the flow of water and increasing flood heights. However, this
15 provision does not address the need to maintain flood storage. *Especially in
16 flat areas, the floodplain provides a valuable function by storing floodwaters.
17 When fill or buildings are placed in the flood fringe, the flood storage areas
18 are lost and flood heights will go up because there is less room for the
19 floodwaters.* This is particularly important in smaller watersheds which
20 respond sooner to changes in the topography.¹⁷¹

21 The 2013 FEIS explained that the necessary compensatory flood storage volume
22 (equal to or larger than the volume displaced by fill or structures below the 100-year flood
23 elevation) would have to be calculated when a specific development is proposed. For the
24 purposes of 2013 FEIS, compensatory storage was projected "within the floodplain,
25 shoreline jurisdiction, wetland and stream buffer, and Native Growth Protection Area
26 (NGPA) on Lots A through E as a means of maximizing developable area of the site."¹⁷²
27 "[E]xcavation would be to a minimum elevation of approximately 59.8" (average ordinary
28 high water mark elevation) in portions of the NGPA and shoreline designation area where
29 the OHWM intersects the existing grade on the inside edge of the stream/slough and
30 continue at a 1% slope to the outer limits of the critical area buffer and then at a 2 to 1 slope

31 ¹⁶⁹ Ex. 32 FEIS at 29.

32 ¹⁷⁰ <http://www.fema.gov/floodplain-management/compensatory-storage>

¹⁷¹ Ex. 32 FEIS at 29. Italics in original.

¹⁷² Ex. 32: FEIS (September 26, 2013) at 29.

1 to an approximate elevation of 68, or 1 foot above floodplain elevation, requiring an
2 estimated 46,500 cubic yards.¹⁷³ The cut area would be replanted with native grasses,
3 bushes, and trees.¹⁷⁴ The Supplemental attributes the habitat enhancement and water
4 quality improvement predicted to result from commercial development of the Property to this
5 replacement of invasive species with native flora:

6 No development, including grading or within the wetlands for Alternatives 1, 2,
7 or 3.

8 ***

9 Excavation and grading is anticipated within certain wetland buffers for
10 compensatory storage and mitigation. Work within the wetland buffers would
11 be permanent and would provide an opportunity to mitigate potential impacts
12 by improving habitat and water quality with buffer plantings, restoration, and
13 enhancement.¹⁷⁵

14 The Board has not entirely understood how the canary reed grass, seen growing *in*
15 the slough in site photos, will be permanently replaced if there is no disturbance below the
16 Ordinary High Water Mark,¹⁷⁶ but this question may be moot in light of the inapplicability of
17 compensatory storage regulations (discussed below).

18
19 **Finding of Fact:** Environmental enhancement anticipated in the 2015 Supplemental is
20 projected to result from activities related to construction of compensatory storage.

21 For the 2015 Supplemental, Watershed Science & Engineering's ("WSE") modelling
22 of surface water hydrology indicates that the 100-year flood elevation, under developed
23 conditions, is at 65.31 feet – 1.7 feet lower than the flood elevation shown on FEMA's
24 Preliminary (unadopted) FIRMs:

25
26 ... [P]rimarily due to the lack of connectivity to the Skykomish River at the
27 eastern (upstream) side of the stream/slough. Reduction of the floodplain
28 elevation, combined with more detailed and topographic information obtained
29 from anticipated additional field work results in an approximately 25 percent

30 ¹⁷³ Ex. 32: FEIS (September 26, 2013) at 29-30.

31 ¹⁷⁴ Ex. 32: FEIS, Typical Enhancement Area/Compensatory Flood Storage Cross Section, Figure 11
(September 26, 2013) at 32-33.

32 ¹⁷⁵ Compliance Ex: 51: SEIS at 60.

¹⁷⁶ "No construction or development activities are proposed within the delineated OHWM of the
stream/slough." Compliance Ex: 51: SEIS at 61.

1 reduction in the anticipated amount of fill required Compensatory flood
2 storage requirements were similarly reduced.¹⁷⁷

3 Lowering the assumed height of the floodplain results in an approximately 25 percent
4 reduction (from 46,500 to 33,000 cubic yards) in fill required to raise the developable area to
5 an elevation 1 foot above the 100-year flood plain.¹⁷⁸ Whether or not this revision is reliable
6 would seem to depend on the accuracy of WSE's new ideas about connectivity of the
7 slough to the Skykomish at the southeastern edge of the property. What is certain is that
8 FEMA has not adopted the Preliminary FIRMS. It is NOT possible for Monroe to amend the
9 2007 FIRMS until the new FIRMS are adopted by FEMA. Also apparent is that the WSE's
10 proposed modification of the preliminary floodplain level is at variance to the underlying
11 science. Although it declines to judge the merits of the competing claims, the Board has
12 reservations about the prudence of basing important analysis on new conclusions which
13 have not been vetted by FEMA. At this juncture, it may be a moot point. The relevance of
14 the floodplain elevation is primarily important in deciding how much fill will be needed to
15 raise development above the floodplain – it is undisputed that the area floods.¹⁷⁹ The
16 projected volume of fill, in turn, is relevant to how much compensatory storage will be
17 necessary to mitigate for the fill. As will be discussed below, the entire discussion of
18 compensatory storage mitigation is little more than an academic exercise given that current
19 development regulations do not require such mitigation.
20
21
22

23 The 2013 FEIS observes that "Much of the southern portion of the site is within the
24 100-year floodplain elevation."¹⁸⁰ Likewise, the 2015 SEIS describe the developable area as
25 being "below the 100-year floodplain."¹⁸¹ Both the 2013 FEIS and the 2015 Supplemental
26 assumed floodplain elevations based on Preliminary FEMA Flood Insurance Rate Maps
27 (FIRMS), issued in 2007.¹⁸² The 2015 Supplemental points out that:
28

29 ¹⁷⁷ Compliance Ex: 51: SEIS at 9.

30 ¹⁷⁸ Compliance Ex: 51: SEIS at 47-48.

31 ¹⁷⁹ Order Nunc Pro Tunc at 27, citing Hearing Examiner Decision – Revised after Reconsideration, RE:
AP2012-01, Anderson v. Monroe (August 8, 2012) at 9.

32 ¹⁸⁰ Ex. 32: FEIS (September 26, 2013) at 17.

¹⁸¹ Compliance Ex: 51: 2015 SEIS at 9

¹⁸² Ex. 32: FEIS (September 26, 2013) at 17.

1 Much of the lower pasture area is within the preliminary FEMA 100-year
2 floodplain (NOTE: the property is not within an effective FEMA 100 year
3 floodplain, but has been identified as a 100-year flood hazard area on
4 preliminary FEMA maps that are not adopted by FEMA). As detailed in
5 Section 3.2 (Surface Water), computerized modelling of surface water
6 hydrology, conducted for this FSEIS, indicates a 65.31 foot 100-year flood
7 elevation under existing conditions. This represents a 1.7 foot difference
8 (lower) in comparison to the 67 foot flood elevation shown in preliminary
9 FEMA mapping and used for analysis in the September 2013 FEIS.

10 The importance of the 100-year flood elevation to topography and soils is that
11 the elevation at flood stage establishes the amount of fill required to develop
12 the site...¹⁸³

13 Importantly, the 2007 FIRMs, which place the property in the 100-year floodplain, are
14 preliminary.¹⁸⁴ They have not been adopted by FEMA or the City of Monroe. Thus the City's
15 regulations are based on the 1999 FIRM maps currently in effect. *In terms of best available*
16 *science*, the Board's FDO noted the dispute in the record concerning the FEMA map to be
17 used and agreed with the 2012 hearing examiner that "in the context of an EIS, the reality of
18 flooding is more important than which regulatory requirements may apply" because the
19 Property is undeniably subject to frequent flood inundation.¹⁸⁵ **But, in terms of the City's**
20 **enforcement of mitigation requirements**, it is crucial to understand that the 1999 Maps
21 currently in effect place the Property in the 500-year floodplain.¹⁸⁶ As a result, the City has
22 no authority to apply the provisions of MMC 14.01 related to development in a 100-year
23 floodplain to the Property.¹⁸⁷

24
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26 ¹⁸³ Compliance Ex. 51: Supplemental EIS (November 2, 2015) at 45.

27 ¹⁸⁴ Compliance Ex. 51: Supplemental EIS (November 2, 2015) at 45; Blair Response at 3.

28 ¹⁸⁵ Order Nunc Pro Tunc at 27, citing Hearing Examiner Decision – Revised after Reconsideration, RE:
AP2012-01, Anderson v. Monroe (August 8, 2012) at 9.

29 ¹⁸⁶ *Id.*

30 ¹⁸⁷ Blair Response at 10; MMC 14.01.040 states, "This chapter shall apply to all areas of special flood hazard
within the jurisdiction of the city of Monroe."

31 MMC 14.01.050 reads in pertinent part:

32 The areas of special flood hazard identified by the Federal Insurance Administration in a
scientific and engineering report entitled "The Flood Insurance Study for Snohomish County,
Washington and Incorporated Areas," dated September 16, 2005, and any revisions thereto,
with accompanying Flood Insurance Rate Maps (FIRMs), are adopted by reference and

1 **Finding of Fact:** The 1999 FIRMs place the Property in a 500-year flood plain.

2
3 **Finding of Fact:** The MMC does not currently require compensatory storage for fill activities
4 in the 500-year floodplain.
5

6 Much of the 2015 Supplemental's environmental analysis of the environmental
7 impacts of commercial development alternatives depends on the provision of compensatory
8 storage (e.g., to mitigate for flood waters, enhance habitat quality by removing invasive
9 species).

10 RCW 43.21C.060 allows a city to condition or deny any governmental action in order
11 to mitigate specific adverse environmental impacts identified in SEPA documents,
12 "PROVIDED, That such conditions shall be based upon policies incorporated into
13 regulations, plans, or codes which are formally designated ... as possible bases for the
14 exercise of authority under SEPA."¹⁸⁸

15
16 In order for the City to require compensatory storage for placement of the fill needed
17 to raise structures and roads above the 100-year flood plain as identified in the Preliminary
18 2007 FIRMs, RCW 43.21C.060 mandates that the City's regulations would have to
19 incorporate the 2007 FIRMs. They do not.¹⁸⁹ As Petitioners point out, this discrepancy is
20 catastrophic to the 2015 SEIS conclusions, which rest on the assumption that development
21 regulations require compensatory storage.¹⁹⁰
22
23

24
25 declared to be a part of this chapter." Presumably the 2007 preliminary FIRMs were not
26 published in the 2005 publication upon which Monroe's code depends.

26 MMC 14.01.090 C &D reads, in pertinent part:

27 "Area of special flood hazard" means the land in the floodplain within a community subject to a
28 one percent or greater chance of flooding in any given year. ... Also referred to as the "one-
29 hundred-year flood."

29 MMC 14.01.130 General standards. A. states, "In all areas of special flood hazards, the
30 following provisions are required: ...

30 ¹⁸⁸ RCW 43.21C.060.

31 ¹⁸⁹ Whether or not the City actually can base its Code on unadopted FEMA maps is unclear. Another approach
32 might have been to amend the MMC to require compensatory mitigation for activities in the 500-year
floodplain, which is where the 1999 FIRMs place the Property.

¹⁹⁰ Blair Response at 10. MMC 14.01.040: This chapter shall apply to all areas of special flood hazard within
the jurisdiction of the city of Monroe.

1 **Finding of Fact:** The conclusions of the 2015 Supplemental depend on requiring
2 compensatory storage as mitigation, but the MMC does not provide the City with the
3 authority to require such mitigation.

4 As a result, the 2015 Supplemental does not provide the required analysis of the
5 significant *probable adverse* environmental impacts as required by RCW 43.21C.031(2).
6 The Board is firmly convinced that a mistake has been made.
7

8 **Conclusion of Law:** The Supplemental EIS is inadequate because it failed to provide a
9 “reasonably thorough discussion of the significant aspects of the probable environmental
10 consequences.”¹⁹¹
11

12 *Ecological Value*

13
14 In its remand, the Board stated that supporting documentation demonstrating habitat
15 value of the site, especially salmon habitat, was required.¹⁹² Petitioners continue to
16 complain that the new assessments downplay the habitat value, and the water quality of the
17 site.¹⁹³

18 The DEIS focuses on flood elevations and flood storage capacity, but still
19 neglects to recognize or analyze this proposal’s potential adverse impacts to
20 the Floodplain habitat, especially as it relates to ESA listed species. The
21 DSEIS fails to recognize the role of ecosystems such as the slough/stream in
22 providing off-channel habitat and flood refuge. The compensatory storage
23 mitigation discussed within the DSEIS does not compensate for lost refuge,
24 recharging, and off-channel habitat functions of the reduced floodplain
25 area.¹⁹⁴

26 And:

27
28 MMC 14.01.090 C &D: “Area of special flood hazard” means the land in the floodplain within a community
29 subject to a one percent or greater chance of flooding in any given year. ... Also referred to as the “on-
30 hundred-year flood.”

31 ¹⁹¹ *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 866 P.2d 1256
32 (1993) at 633.

¹⁹² Order Nunc Pro Tunc Correcting FDO (Sept 19, 2014) at 27.

¹⁹³ Compliance Ex. 47, Minutes of City’s Public Hearing for East Monroe DEIS, Comments of Misty Blair
(September 23, 2015) at 13.

¹⁹⁴ Compliance Index 53, Blair comment letter at 7-8.

1 The City's 2008 SMP Shoreline Restoration Plan (at 113-114) and the 2005
2 *Snohomish River Basin Salmon Conservation Plan* actually identify the
3 subject property as one of four potential salmon recovery sites within
4 Monroe's boundaries.¹⁹⁵

5 Importantly, Ecology contested the fish and wildlife analysis conclusion that the in-
6 water habitat value of the slough is greatly diminished because fish cannot enter from the
7 east end, stressing that even in a no-eastern-culvert scenario the slough remains accessible
8 from the west and provides critical off-channel refugia for fish, including juvenile Chinook
9 salmon, particularly during high flow events.¹⁹⁶ Nevertheless, in Section 3.4 Animals, the
10 Final 2015 Supplemental notes that the June 2015 revelation "that the stream/slough is not
11 connected to the river at the southeast culvert ... presents the possibility of limited fish
12 passage. Fish were not observed during the June 2013 site visits"¹⁹⁷

13
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15
16 **Finding of Fact:** The 2015 Supplemental lacks a discussion of the importance of off-
17 channel refugia for listed anadromous species and the consequences of commercial
18 development at this location to same.

19 **Conclusion of Law:** The 2015 Supplemental is inadequate because it fails to provide a
20 "reasonably thorough discussion of the significant aspects of the probable environmental
21 consequences."¹⁹⁸

22
23 *Landslide hazards.*

24 In its remand of the 2013 FEIS, the Board expressed concern that changed
25 hydrology of the stream/slough from development, including added impervious surfaces,
26 and reconfiguration of the floor of the channel, may influence slope stability by eroding the
27

28
29 ¹⁹⁵ Compliance Index 53, Blair comment letter at 10.

30 ¹⁹⁶ Compliance Ex 51, 2015 SEIS, Appendix F, Comments and Responses, Ecology Comment dated
September 28, 2015 (November 2, 2015) at 187.

31 ¹⁹⁷ Compliance Ex 51, 2015 SEIS, Summary (November 2, 2015) at 64.

32 ¹⁹⁸ *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 866 P.2d 1256
(1993) at 633.

1 toe of the landslide-prone slope bordering the Property on the west and northwest.¹⁹⁹ This
2 bluff is 150-180 feet above the valley floor and has slopes greater than 40%.²⁰⁰ Although the
3 landslide risk posed by many steep slopes is hardly unknown in Snohomish County, the
4 2013 FEIS was completed before the March 2014 collapse of an unstable hill near Oso sent
5 mud and debris across the Stillaguamish River, dammed the river and caused flooding
6 upstream, blocked SR 530 and killed 43 people. This 2015 Supplemental EIS cannot evade
7 responsibility for evaluating risks to persons and property both at the top of the slope and in
8 the commercially developed area.
9

10 SEIS Appendix D is a "Focused Geological Hazards Evaluation" by GeoEngineers
11 (June 10, 2015). GeoEngineers limits its review to the "potential effects that proposed site
12 development [11 acres] may have on an adjacent steep slope and abandoned meander." (p.
13 1) GeoEngineers reported evidence of historic and current slope instability: (p. 9, 12)

- 14 • "hummocky topography" at the base of the slope indicative of slope failures,
- 15 • "small healed failure scars" along the slope,
- 16 • "downslope bowing of the trunks" of evergreen trees,
- 17 • "fan-shaped or chute-like areas" lacking evergreen or older trees,
- 18 • a sagging fence line at the top of the slope above exposed loose soils.

19
20 Field reconnaissance at the base of the slope and review of aerial photographs indicated
21 "multiple shallow slides in the mapped area." (p. 11) One recent landslide was identified as
22 having "directly deposited into the abandoned meander channel," i.e., the Slough. (p. 12)

23
24 Relying in part on PACE's missing culvert assumptions, GeoEngineers concludes
25 development on the 11 acre footprint will not adversely impact slope stability.(p. 11)

26 Landslides will continue to occur but are likely to be shallow, they opine.

27
28 First, the Board again notes that this SEIS reviews a 43-acre area-wide rezone from
29 Limited Open Space to General Commercial, not an 11-acre project application. The Geo-
30 Engineers study construes its assignment narrowly and does not address impacts of GC-

31
32

¹⁹⁹ Order Nunc Pro Tunc at 29.

²⁰⁰ SEIS Appendix D, p. 9.

1 allowed development of any other parcels or of the parts of the Property that constitute the
2 toe of the slope.²⁰¹

3 Second, GeoEngineers confines its analysis to risks and mitigations at the toe of the
4 slope and does not assess hazards arising from conditions at the top. The SEIS
5 acknowledges that top-of-slope conditions may increase slide risks,²⁰² but the record
6 contains no indication the consultants sought City facilitation in accessing properties on the
7 bluff to complete their analysis.²⁰³

8
9 At the City's public meeting, local residents pointed out inconsistencies and
10 inaccuracies in the SEIS mapping of landslides, which they attributed to incomplete
11 investigation:

12 [T]here has been a recent land movement ... not drawn in the right place. ...
13 Because it's a pretty significant movement ... 15-20 feet wide, and ... 2/3 [of
14 the way up the] bluff.²⁰⁴

15 Similar questions were raised in testimony before the Planning Commission.²⁰⁵

16 GeoEngineers is clear that landslide activity is generally expected to occur during
17 periods of extended precipitation or rain on snow events, with or without other factors (such
18 as activities at the top of the slope).²⁰⁶ This reality begs the question, "what would the
19 cumulative impact be if commercial development is allowed in an area with known slide
20 risks?" As intimated by the Planning Commission, what risks exist to public safety and
21
22

23
24 ²⁰¹ Given the 100% lot coverage allowed under the GC designation, one can readily envision a commercial
boardwalk on the Property on the north and west side of the Slough.

25 ²⁰² SEIS, p. 49: "Other factors [other than weather] that would contribute to landslide hazards include tree
26 removal on slopes resulting in loss of root strength and decreases in soil stability. Uncontrolled runoff from
27 properties above the slope could also increase erosion and result in landsliding. Dumping of yard waste or
other materials at the top of the slope or removal of material at the toe of the slope could also trigger slope
movement under existing, baseline conditions."

28 ²⁰³ Compliance Index 53; Blair Comment, Sept. 25, 2015, p. 11: "The geotechnical work added to this DSEIS is
29 only reconnaissance, and did not include actual field data test pits or other site-specific information from the
30 slope itself. ... It was referenced that they did not have access to the slopes..., but access was not requested
from the slope property owners and there is street right-of-way and/or easements on the slope that could be
more extensively investigated."

31 ²⁰⁴ Comment of Ashley Sellers, Compliance Ex. 47, Minutes of City's Public Hearing for East Monroe DEIS
32 (September 23, 2015) at 15-16.

²⁰⁵ Compliance Ex. 36: City Staff response to Planning Commission Questions 4 and 8.

²⁰⁶ Compliance Ex: 51: SEIS at 49.

1 welfare if development is allowed below the slide-prone slope? And what impacts to the
2 environment may be anticipated? For example, where is the alternative course for the Type
3 I stream if 11 acres is covered with pavement or buildings? Where will the salmon refugia
4 be? If a slide obliterates an area being relied upon for compensatory storage, where will the
5 floodwaters go? What are the impacts to water quality if they wash over the developed
6 footprint?
7

8
9 **Finding of Fact:** The 2015 Supplemental does not discuss the consequences to public
10 safety or the environmental consequences of a slide that obliterates part of the slough.
11

12 The Board in prior cases has opined that risk to life and property in geologically
13 hazardous areas is a policy decision reserved to the elected officials.²⁰⁷ However, a City
14 Council cannot make reasoned decision about landslide risks if SEPA analysis does not
15 provide full disclosure. The Monroe Planning Commission found that the 2015 DSEIS did
16 not provide full disclosure of landslide hazards.²⁰⁸ The Board agrees.
17

18
19 **Conclusion of Law:** The Supplemental's analysis of landslide risks was not adequate
20 because it fails to provide a "reasonably thorough discussion of the significant aspects of
21 the probable environmental consequences."²⁰⁹
22

23 V. CONCLUSION

24 Based on the findings and conclusions identified in the foregoing discussion, the
25 Board determines that the 2015 Supplemental is inadequate to provide the requisite
26 disclosure of the probable adverse environmental impacts required under SEPA.
27

28
29 ²⁰⁷ *Friends of Pierce County, et al. v. Pierce County*, GMHB No. 12-3-0002c, Final Decision and Order (July 9,
30 2012), p. 103; *Tahoma Audubon Society, et al. v. Pierce County*, GMHB No. 05-3-0004c, Final Decision and
31 Order (July 12, 2005), p. 25.

32 ²⁰⁸ The Commission's findings followed a meeting where PACE attempted to answer Commission questions.
Compliance Ex. 38: Monroe Planning Commission Agenda and Minutes (October 26, 2015).

²⁰⁹ *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 866 P.2d 1256
(1993) at 633.

1
2 *Invalidity*

3
4 **Finding of Fact:** Development of this area without “reasonably thorough discussion of the
5 significant aspects of the probable environmental consequences” of the action to properly
6 inform the decision-makers would render moot and thwart protection of the environment.
7

8 **Conclusion of Law:** The continued validity of Ordinance 015/2015 and 016.2015 would
9 substantially interfere with the fulfillment of GMA Planning Goal 10. The Board remands the
10 ordinances to the City, establishes a compliance schedule, and enters a determination of
11 invalidity.
12

13
14 **VI. ORDER**

15 Based upon review of the Record, the City’s Statement of Action Taken to Comply,
16 the briefs and exhibits submitted by the parties, the GMA, SEPA, prior Board orders and
17 case law, having considered the arguments of the parties, and having deliberated on the
18 matter, **the Board orders:**

- 19
- 20 • The City of Monroe’s Supplemental Environmental Impact Statement (SEIS) is
21 inadequate and fails to comply with the requirements of the State Environmental
22 Policy Act, RCW Chapter 43.21C
 - 23 • Ordinance Nos. 015/2015 and 016/2015 are remanded to the City to be brought
24 into compliance with GMA and Chapter 43.21C.
 - 25 • Pursuant to RCW 36.70A.302,²¹⁰ the Board enters an order of invalidity with
26 regard to Ordinance Nos. 015/2015 and 016/2015.
27
- 28

29 ²¹⁰ RCW 36.70A.302 states in pertinent part:

30 The board may determine that part or all of a comprehensive plan or development regulations
31 are invalid if the board:

- 32 (a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;
(b) Includes in the final order a determination, supported by findings of fact and conclusions of
law, that the continued validity of part or parts of the plan or regulation would substantially
interfere with the fulfillment of the goals of this chapter; and

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- The Board sets the following schedule for the City's compliance.²¹¹

Item	Date Due
Compliance Due	September 28, 2016
Statement of Actions Taken to Comply and Index to Compliance Record	October 12, 2016
Objections to Finding Compliance	October 26, 2016
Response to Objections	November 2, 2016
Compliance Hearing (Telephonic) Call 1-800-704-9804 and use PIN 4472777#	November 15, 2016 10:00 a.m.

SO ORDERED this first day of April, 2016.


Cheryl Pflug, Board Member


Margaret Pageler, Board Member


Raymond L. Paoletta, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.²¹²

(c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.

²¹¹ Pursuant to WAC 242-03-910, the County may file a motion requesting an expedited compliance hearing if it has taken action to comply with all or part of the Board's order prior to expiration of the time set for compliance.

²¹² Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.

1
2 **Future Vision and Issues**

3 The 1998 Comprehensive Plan and the zoning map for the City of Monroe
4 designated this area as Limited Open Space (LOS), with a residential density of one
5 dwelling unit per five acres due to environmental and traffic issues. More than half of
6 the area is classified as wetlands, subject to seasonal flooding. Allowing development
7 potential at an "urban" density consistent with the GMA (i.e., 4 DUs/acre) on the site
8 would *require construction of access roads across the wetland area* to the buildable
9 portions of the site. Maintaining a density commensurate with a rural environment
10 would not necessarily make the traffic entering US 2 safer, but the *volume and
11 subsequent accident potential would be greatly reduced* in comparison to developing
12 the area at an urban level intensity.

13 In connection with its efforts to rezone the Property, the City has amended its
14 Comprehensive Plan vision for the eastern gateway. Land Use Element (LU-12) now
15 provides, in relevant part:

16 **Eastern City Limits/US-2 and Rivmont Ridge (D)**

17 **Future Vision and Issues**

18 *Allowing potential residential or commercial development at an "urban" density
19 consistent with the GMA on the site would require ... access road construction across
20 wetland areas to the limited buildable portions of the site, and resolving future
21 connections to US-2.*²¹⁴

22 Thus the City's land use policy plan for this area specifies that allowing commercial
23 development requires both access road construction and determining how to connect safely
24 to SR-2. None of the record provided to the Board addresses these obvious requirements or
25 the stark environmental impacts of their disregard. The 2015 FSEIS completely ignores
26 analysis of transportation impacts, including the wetlands impacts of access road
27 construction, as well as trip generation and traffic safety. Therefore, the City's action in
28

29
30 ²¹⁴ The policy continues: "A future roundabout to distribute traffic between existing US-2 and the future US-2
31 bypass west of the property is proposed by WSDOT. The western roundabout may provide an opportunity for
32 an eastern gateway to the city with slower traffic movements, enhanced signage, landscaping and other
elements to create a community entryway and capture some traffic that would otherwise bypass the city. While
impacted by environmental and access issues, with its frontage along US-2 the property has potential for
commercial development. The area is within city limits and could be considered for urban density development
to the extent allowed by land use regulations."

1 redesignating the Property from LOS to CG appears to this Board member to be
2 inconsistent with the criteria in its vision statement.

3 **CONCURRENCE OF BOARD MEMBER PFLUG**

4 I concur with the conclusion that the City's rezone of the Property fails to comply with
5 the requirements of SEPA in the respects identified in the decision above. I write concerning
6 public involvement with the SEPA process.

7
8 Both Ordinance 015/2015 and 016/2015, re-adopting the East Monroe rezone and
9 map amendment, recite identical Findings, including Finding 18, which states:

10 During the course of the SEIS process ... there was no expert testimony that
11 refutes, undermines or otherwise contradicts PACE's supplemental
12 environmental analysis that was received by the City.²¹⁵

13 WAC 197-11-030 states that agencies shall, to the fullest extent possible,
14 "[e]ncourage public involvement in decisions that significantly affect environmental quality."
15 In the Board's view, the City foreclosed an opportunity to achieve an adequate EIS process
16 by dismissing important feedback as inferior to the opinions of its experts. At the
17 Compliance Hearing, the City Attorney was dismissive of the conflicting information
18 presented by Petitioners who have now spent many years studying applicable law and
19 government impact studies:
20

21 That does not change *the professional determination by the City's*
22 *consultants, which is unchallenged by any expert testimony* in this
23 *proceeding, that the actual portions of the East Monroe property that are*
24 *capable, physically and legally, of being developed, reasonably being*
25 *developed, is still limited to 11.3 acres. That's a critical part of this analysis.*
26 *And, again, it's essentially unchallenged with any meaningful opposition.*

27 The Board does not hold up these concerned citizens as experts, but it notes that its
28 findings and conclusions *supra* confirm the validity of many of their concerns. This is likely
29 one reason lawmakers have inserted requirements for public involvement in the SEPA
30 process. Given the significant agency effort necessary to facilitate public involvement, failure
31 to respectfully consider the information and perspectives so gained is puzzling.
32

²¹⁵ Ord. 015/2015, Exhibit B at 42; Ord. 016/2013, Exhibit B at 40.

1 Similarly, both Ordinance 015/2015 and 016/2015, acknowledge the Planning
2 Commission's **2015** recommendation that the rezone be denied. Seven days after the
3 Planning Commission recommended denial of the rezone, the City issued the final 2015
4 Supplemental. Eight days after issuance of the Final 2015 SEIS, the Council formally
5 reviewed the Planning Commission's recommendation and, "having enjoyed the opportunity
6 to carefully review the final version of the SEIS, expressed its disagreement with the
7 Commission's determination and directed City staff to prepare ordinances approving the
8 East Monroe amendments."²¹⁶

9
10 WAC 197-11-402(10) cautions that "EISs shall serve as the means of assessing the
11 environmental impact of proposed agency action, rather than justifying decisions already
12 made." Yet, the re-adoption of the invalidated 2013 Ordinances²¹⁷ rezoning and
13 reclassifying the property²¹⁸ was the identified goal of the 2015 Supplemental process. In
14 fact, after acknowledging the Planning Commission's 2015 findings, both Ordinance Nos.
15 015/2015 and 016/2015 proceed to **adopt the Commission's 2013** findings contained in
16 the invalidated Ordinances:
17

18 In making these findings and conclusions, **the City Council further adopts**
19 **the Planning Commission's Findings and Conclusions dated December**
20 **9, 2013**, (Exhibit H3 to Ordinance no. 022/2013) **and also adopts the City**
21 **Council's additional findings adopted December 26, 2013**, (Exhibit I to
22 Ordinance no. 022/2013) in support of approving the East Monroe
23 Comprehensive Plan Map Amendment and Zoning Map Amendment.²¹⁹

24 The emphasis on justifying the feasibility of commercial development of the Property
25 despite its environmentally sensitive location may have been the underlying cause for a
26 Supplement EIS that ultimately failed to provide the impartial analysis required by WAC 197-

27
28 ²¹⁶ City's SATC at 10. Although the Board granted two compliance extensions to ensure ample time for
29 exhaustive environmental review, Respondents repeatedly cite the second-extended compliance deadline of
30 December 1, 2015, as necessitating rapid action to issue the 2015 SEIS and re-enact the invalidated
31 Ordinances. *Id.*

32 ²¹⁷ City's Motion for Extension of Compliance Schedule (December 17, 2014) at 2; Declaration of David Osaki
(August 12, 2015) at 3.

²¹⁸ City's SATC (December 15, 2015) at 7; Compliance Ex. 51 2015 SEIS (November 2, 2015). Declaration of
Melissa Place (December 16, 2014) at 1-2.

²¹⁹ Ord. 015/2015, Exhibit B at 42; Ord. 016/2013, Exhibit B at 42.

1 11-400(2). In addition to the expenditure of considerable public resources during this
2 lengthy process, I am concerned that the concerns of citizens may not have been afforded
3 due consideration. Given the importance of public participation in government action, care
4 should be taken to insure that citizens are afforded respect.
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1 **BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD**
2 **CENTRAL PUGET SOUND REGION**

3 Case No. 14-3-0006c
4 Blair-Anderson, Douglas Hamar, and Chad McCammon v. City of Monroe
5

6 **DECLARATION OF SERVICE**

7 I, LYNN ECCLES, under penalty of perjury under the laws of the State of
8 Washington, declare as follows:
9

10 I am the Administrative Assistant to the Growth Management Hearings Board. On
11 the date indicated below a copy of the ORDER FINDING CONTINUING NON-
12 COMPLIANCE in the above-entitled case was emailed to the following:
13

14
15 Misty Blair
16 15403 Calhoun Road
17 Monroe WA 98272
18

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19 Douglas Hamar
20 PO Box 1104
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22 Trisna Tanus
23 Johns Monroe Mitsunaga Kolouskova PLLC
24 11201 SE 8th St Ste 120
25 Bellevue WA 98004

26 Hard copies will be sent through the United States postal mail service on Monday,
27 April 6, 2016.
28

29 DATED this 1st day of April, 2016.

30 
31 Lynn Eccles, Administrative Assistant
32