



- Friends and Neighbors of York and Jewel Roads Community (**FNYJC**) on behalf of Petitioners Mill Creek and Bothell.

The Prehearing Conference (**PHC**) was convened on April 19, 2007, at the Board's offices in Seattle. The Board issued its Corrected Prehearing Order, Order of Consolidation, and Order on Intervention (**PHO**) on May 7, 2007.

At the PHC, the Board received Snohomish County's Index to the Administrative Record. An Amended Index was submitted on April 26, 2007, and Snohomish County's Second Amended Index to the Administrative Record (hereafter, **Index**) was submitted on May 14, 2007.

Timely dispositive motions and motions to supplement the record were filed in April and May, 2007, as set forth below. The Board did not hold a hearing on motions.

## **II. DISPOSITIVE MOTIONS**

On April 30, 2007, the Board received:

- Snohomish County's Dispositive Motions (**County Motion – Dismiss**) with 14 exhibits and Declarations of John R. Moffat and Kris Davis.
- Scriber Creek Investments' Motion to Dismiss the City of Lynnwood's SEPA Claims for Lack of Standing and its Site-Specific Rezone Claims for Lack of Jurisdiction (**Scriber Motion – Dismiss**), with the Declaration of Stephen J. Crane.

On May 14, 2007, the Board received City of Lynnwood's Response to Scriber Creek and Snohomish County's Dispositive Motions (**Lynnwood Response – Dismiss**), with the Declaration of Keith Maw.

On May 25, 2007, the Board received:

- Snohomish County's Reply Re: Dispositive Motions and Motion to Strike Portions of Declaration of Keith Maw and Attachments Thereto (**County Reply – Dismiss**).
- Scriber Creek Investments' Reply to City of Lynnwood Response to Motion to dismiss SEPA Issues; Motion to Strike Maw Declaration (**Scriber Reply – Dismiss**).

### **A. County Motion To Dismiss Luschen, *Et Al***

Snohomish County moved to dismiss Petitioners Luschen, *et al*, on various grounds. County Motion – Dismiss, at 2-13.<sup>1</sup> On May 2, 2007, Petitioner Luschen, *et al* filed a

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<sup>1</sup> The 14 exhibits to the County Motion – Dismiss and the Declarations of John R. Moffat and Kris Davis all relate to the Luschen matter.

Notice of Voluntary Withdrawal. On May 7, 2007, the Board issued an Order of Dismissal Re: Petition of Luschen, *et al.*, dismissing the PFR with prejudice and rendering the County's motion **moot**.

### **B. Motions To Dismiss Lynnwood SEPA Issue**

Both Snohomish County and Intervenor Scriber move to dismiss Lynnwood's SEPA claim for lack of SEPA standing.

Lynnwood's Legal Issue No. 3, as restated in the PHO, reads:

*Did the County's adoption of Ordinance Nos. 06-102 and 06-104, specifically as they relate to map amendment SW-23 (Crane) fail to comply with the environmental review requirements of RCW 43.21C.030, and .031 the State Environmental Policy Act (SEPA), because the environmental review was inadequate? [Intended to reflect PFR Legal Issue 3.]*

#### Legal Standard

The two-part SEPA standing analysis used by the Board<sup>2</sup> is based on *Trepanier v. Everett*, 64 Wn. App 380, 382-83, 824 P.2d 524 (1992). As set forth by the Board:

First, the plaintiff's supposedly endangered interest must be arguably within the zone of interests protected by SEPA. Second, the plaintiff must allege an injury in fact, that is, the plaintiff must present sufficient evidentiary facts to show that the challenged SEPA determination will cause him or her specific and perceptible harm. The plaintiff who alleges a threatened injury rather than an existing injury must also show that the injury will be "immediate, concrete, and specific"; a conjectural or hypothetical injury will not confer standing.

*Master Builders and Brink, et al. v. Pierce County*, CPSGMHB Case No. 02-3-0010, Order on Motion to Dismiss SEPA Claims (Oct. 21, 2002), at 2.

In the present case, only the second prong of the two-part standing test – "injury-in-fact" – is questioned.

#### Positions of the Parties

Snohomish County argues that Lynnwood cannot show the injury-in-fact that is necessary to satisfy the second prong of the *Trepanier* test. County Motion – Dismiss, at

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<sup>2</sup> The Western Washington Growth Management Hearings Board applies a GMA participation standing standard for SEPA issues. *Whidbey Environmental Action Council v. Island County*, WWGMHB Case No. 03-2-0008, Final Decision and Order (Aug. 23, 2003). The Eastern Washington Growth Management Hearings Board has applied the *Trepanier* test (*Spokane County Fire District No. 10 v. City of Airway Heights*, EWGMHB 02-1-0019, Final Decision and Order (July 31, 2003)), or has applied GMA participation standing for SEPA issues (*Cascade Columbia Alliance v. Kittitas County*, EWGMHB Case No. 98-1-0007, Order on Motions (March 1, 1999)).

15. The challenged action “redesignated land that was already earmarked for urban development to what the City argues is a more intense urban designation.” *Id.* at 16. The County cites *Hensley VI v. Snohomish County*, CPSGMHB Case No. 03-3-0009c, Order on Motions (May 19, 2003), for the proposition that allowing intensification of urban uses within an urban area is within the County’s discretion and does not cause “immediate concrete and specific injuries.” *Id.* at 16.

Scriber also argues that Lynnwood fails to meet the injury-in-fact requirement of *Trepanier*. Scriber Motion – Dismiss, at 8. Scriber contends that the possible environmental impacts of concern to the City, as listed in the PFR, are properly addressed through project-specific SEPA review. *Id.* at 9. Such impacts are merely speculative at this point, Scriber asserts. *Id.* Further, Scriber points out that its project application has been filed and is already vested as of March 1, 2007, so that the City’s alleged injury could not in any event be redressed by a decision by the Board. *Id.*; Scriber Response – Dismiss, at 6-7.

In response, Lynnwood states that the rezoned property is within 700 feet of the existing city limits and thus nearly adjacent to the area designated as the Lynnwood Urban Center by the Puget Sound Regional Council (**PSRC**). Lynnwood Response – Dismiss, at 3. Lynnwood contends that the County’s environmental review for its zoning for the Scriber parcel was seriously deficient.<sup>3</sup> *Id.* at 5. Lynnwood argues that its role as “a municipality charged with the responsibility to engage in comprehensive planning and provide critical public services” makes it a “somewhat unique SEPA petitioner.” *Id.* at 9. Lynnwood relies on *SAVE v. Bothell*, 89 Wn.2d 862, 576 P.2d 401 (1978), a pre-GMA decision, to show that SEPA requires consideration of impacts on areas outside the zoning body’s jurisdiction. *Id.* Lynnwood contends that the capacity of its streets, surface water management systems, and other public infrastructure and services are immediately impacted by the County’s action because it must now plan and size facilities for ultimate buildout. *Id.* at 13. Lynnwood asserts that the injury to the city is real, immediate and not speculative, because Lynnwood must now revisit its planning processes for its Urban Center and infrastructure. *Id.* For example, planned capital improvements in the Scriber Creek basin, where flooding is already an issue, must be revisited. Further, Lynnwood claims that plans and permitting for further development within Lynnwood are impeded as the County’s “urban center” absorbs Lynnwood’s street and infrastructure capacity. *Id.* Finally, Lynnwood points out that Scriber has already submitted a complete application for its “urban center” proposal, eliminating the argument that Lynnwood’s injury is merely “conjectural or hypothetical.” *Id.* at 16.

In response, both the County and Scriber move to strike the Maw Declaration or certain portions.<sup>4</sup> County Reply – Dismiss, at 4; Scriber Reply – Dismiss, at 7. The County and Scriber argue that Lynnwood can provide no legal authority for the proposition that a City does not have to meet the “injury-in-fact” test for SEPA standing. *Id.* The County contends that Lynnwood’s concerns about traffic, noise, increase of impervious surface,

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<sup>3</sup> For example, Lynnwood states that the County SEIS estimated 31 new evening peak trips per day while Scriber’s March 1, 2007 application shows 191 new evening peak trips.

<sup>4</sup> Specifically, Ex. C, D, E, and F, and the narrative in paragraphs 8 and 9.

and the like are “threatened future injury” to be addressed in project-specific review. *Id.* at 7. The County cites *SOS v. Kent*, CPSGMHB No. 04-3-0019, Final Decision and Order (Dec. 16, 2004), at 5: “[T]he amendment to the City’s comprehensive plan does not give rise to the alleged environmental harms, rather it is the hypothetical proposed development that will lead to environmental impacts.” County Reply – Dismiss, at 7.

### Board Discussion

The Board notes that the County conducted only a planning-level analysis of the environmental impacts of all the proposals in its 2006 GMA docket, including the Urban Center redesignation and rezone at issue in Lynnwood’s PFR. Scriber Reply - Dismiss, at 3. Environmental review of an urban center that could be developed as a result of this redesignation and rezone was not undertaken. *Id.* The City of Lynnwood argues that the inadequacy of SEPA review at this level causes the City immediate injury because, for the whole range of possible projects within the new designation, the City is required to provide urban services and infrastructure. Lynnwood’s own urban center plan, transit center plan, and capital facilities plans must now be revisited in light of new demands on its capacity. Further, it is undisputed that Scriber’s application for the additional allowed development has vested. With a vested application, the Board finds that the “conjectural or hypothetical” aspects of the proposal are substantially diminished if not removed.

Additionally, the Board is persuaded that Lynnwood, as a municipality directly impacted and as a primary provider of urban services, has made a *prima facie* case for injury in fact. The injury is immediate and not speculative, inasmuch as the Scriber Urban Center application has vested. The Board finds and concludes that the City of Lynnwood has standing to pursue its SEPA challenge. The motions of the County and Scriber to dismiss Lynnwood Legal Issue 3 are **denied**. Resolution of Lynnwood’s Legal Issue No. 3 is reserved for hearing on the merits.

In light of the Board’s decision regarding Lynnwood’s SEPA standing, the Board **denies** the motions of the County and Scriber to strike the Keith Maw declaration. Lynnwood is cautioned that its use in its case on the merits of any documents not in the record must be supported by a motion to supplement.

### Conclusion

The Board finds and concludes that Petitioner City of Lynnwood has demonstrated injury-in-fact, meeting the requirements of the *Trepanier* SEPA standing test, and has standing pursuant to RCW 36.70A.280(2)(b) to bring a claim under SEPA. The motions of Snohomish County and Intervenor Scriber Creek Investments to dismiss Petitioner’s Legal Issue No. 3 for lack of SEPA standing are **denied**. The City of Lynnwood’s Legal Issue No. 3 is **reserved** for briefing and hearing on the merits.

## **C. Scriber Motion To Dismiss Lynnwood Site-Specific Issues**

Intervenor Scriber moves to dismiss all or part of Lynnwood Legal Issue 2.c on the grounds that the Board lacks jurisdiction over the City's claims.

Lynnwood's Legal Issue No. 2, as restated in the PHO, reads:

*Did the County's adoption of Ordinance Nos. 06-102 and 06-104, specifically as they relate to the map amendment SW-23 (Crane) and rezone,*

- a. *Fail to comply with the consistency and implementation requirements of RCW 36.70A.070(preamble), .120 and .130(1)(d)? [Specific GPP provisions are cited in the PFR]*
- b. *Fail to be guided by Goals 5, 7, 9, 10, and 12 of the Act [RCW 36.70A.020(5), (7), (9), (10) and (12)?]*
- c. *Fail to comply with the County's criteria governing Plan amendments, specifically Chapters 30.72 Snohomish County Code (SCC), 30.74 and 30.42A?*

*[Each intended to reflect PFR Legal Issue 2.]*

Scriber's Motion seeks to dismiss certain of Lynnwood's challenges for being beyond the jurisdiction of the Board, in particular, the reference in Legal Issue 2.c to "Chapters 30.72 ... and 30.42 SCC and the common law governing such amendments and rezones." Scriber Motion – Dismiss, at 11. Scriber points out that the ordinances challenged by Lynnwood, although they deal with only 7 acres under a single ownership, were adopted under the County's annual docket process, while chapter 30.72 SCC governs Type II permits and chapter 30.42A governs site-specific rezones: the Board lacks jurisdiction over these project-specific processes. *Id.*

Lynnwood responds that the Board's restatement of issues in the PHO eliminated the reference to common law in Legal Issue 12.c. Lynnwood Response – Dismiss, at 17. Lynnwood proposes a further refinement of Legal Issue 2.c:

- c. *fail to comply with the County's criteria governing plan amendments, specifically Chapters ~~30.72 Snohomish County Code, 30.74 and 30.42A~~ SCC?*

The Board notes that both parties agree that the Board (and not the Superior Court) has jurisdiction over the rezone, because it was processed as part of the County's annual comprehensive plan amendments docket, to implement a FLUM amendment granted as part of that docket. Scriber Motion – Dismiss, at 11-12; Lynnwood Response – Dismiss, at 18.

### Conclusion

Lynnwood's Legal Issue 2.c is restated as set forth above.

### **III. MOTIONS TO SUPPLEMENT THE RECORD**

In May, 2007, the Board received motions to supplement the record, and briefs in response and reply, as follows:

- Petitioner City of Lynnwood's Motion to Supplement the Record (**Lynnwood Motion – Supplement**) with 9 exhibits and the Declaration of Keith Maw
- Petitioner City of Bothell's Motion to Complete and/or Supplement Snohomish County's Amended Index Pursuant to RCW 36.70A.290(4) (**Bothell Motion – Supplement**) with three exhibits
- The McNaughton Group's Motion to Supplement the Record (**McNaughton Motion – Supplement**) with two exhibits
- Snohomish County's Response to Motions to Supplement the Record (**County Response – Supplement**)
- Scriber Creek Investments' Objection to City of Lynnwood's Motion to Supplement the Record (**Scriber Response – Lynnwood Supplement**) with Declaration of Matthew Gardner
- Petitioner City of Bothell Opposition to McNaughton Group's Motion to Supplement Record (**Bothell Response – McNaughton Supplement**)
- FNYJC's Motion in Response to McNaughton Group's Motion to Supplement the Record (**FNYJC Response – McNaughton Supplement**) with 7 exhibits
- City of Lynnwood's Reply to Responses to Lynnwood's Motion to Supplement the Record (**Lynnwood Reply – Supplement**) with Declaration of David Kleitsch in Support of City of Lynnwood's Motion to Supplement
- The McNaughton Group's Reply RE Motion to Supplement the Record (**McNaughton Reply – Supplement**)

#### **A. Applicable Law**

RCW 36.70A.290(4) provides:

The board shall base its decision on the record developed by the city, county, or the state and supplemented with additional evidence if the board determines that such additional evidence would be necessary or of substantial assistance to the board in reaching its decision.

The Board's Rules of Practice and Procedure state at WAC 242-02-540:

Generally, a board will review only the record developed by the city, county, or state in taking the action that is the subject of review by the board. A party by motion may request that a board allow such additional evidence as would be necessary or of substantial assistance to the board in reaching its decision, and shall state its reasons. A board may order, at any time, that new or supplemental evidence be provided.

WAC 242-02-660 and 242-02-670 permit the Board to take official notice of matters of law such as federal and state laws and ordinances, resolutions, or motions of counties and cities, and of material facts, such as technical or notorious facts.

### **B. Lynnwood's Motion to Supplement**

The City of Lynnwood moves to supplement the record with nine documents:

- PSE-1 City of Lynnwood City Center Sub-Area Plan (March 2005)
- PSE -2 Central Puget Sound Regional Growth Centers – 2002 (PSRC 2002)
- PSE-3 Puget Sound Regional Council 2002 Regional Growth Centers Report, Lynnwood Regional Growth Center (PSRC 2002)
- PSE-4 Map entitled “Proximity of Proposed Urban Center to Lynnwood Transit Center”
- PSE-5 Map entitled “Proximity of SW 23 to PSRC Regional Center and Lynnwood City Center”
- PSE-6 “Summary of Alternatives, Environmental Impacts and Mitigation Measures,” Lynnwood City Center Plan Final SEIS
- PSE-7 Section C, “Plans, Policies and Regulations,” Lynnwood City Center Plan Draft SEIS
- PSE-8 Section D, “Population, Housing and Employment,” Lynnwood City Center Plan Draft SEIS
- PSE-9 Market Analysis and Absorption Study – City Center (prepared for City of Lynnwood by Johnson/Gardner, April 2007)

Lynnwood contends that these documents will be necessary or of substantial assistance to the Board in reaching its decision. Lynnwood states that the Lynnwood City Center Sub-Area Plan (PSE-1) was adopted by ordinance, and the Board can take official notice of it. Lynnwood Motion – Supplement, at 3. The PSRC documents (PSE-2 and 3) are proffered to show regionally adopted criteria for urban centers, and Lynnwood's City Center in that context. *Id.* at 4. The maps (PSE-4 and 5) indicate proximity of the Scriber property to Lynnwood's City Center. *Id.* The excerpts from Lynnwood's City Center Plan FEIS and SEIS (PSE-6, 7 and 8) provide further information about Lynnwood's urban center plan in the regional context. *Id.* at 5. The Draft Market Analysis and Absorption Study for the City Center (PSE-9) was commissioned by Lynnwood to assess the market for mid-rise housing in the area at issue. *Id.* at 6.

Respondent Snohomish County indicated no objection to PSE-1 through PSE-5. County Response – Supplement, at 3. The County did not object to admission of the environmental documents (PSE-6-8), provided the whole documents were offered, not merely the excerpts submitted by Lynnwood. *Id.* The County objected to admission of the Market Analysis (PSE 9), on the ground that it was produced *after* the County's challenged action. *Id.* at 4.

Intervenor Scriber objected to admission of all Lynnwood's proposed supplementation except the maps (PSE-4, 5). Scriber Response – Supplement, at 2-3. Scriber's theory is

that “[w]hether or not the City plans to create an urban center inside City limits is not relevant” to the question before the Board, which is “whether the County somehow violated the Growth Management Act when it redesignated a 7.19-acre parcel in the unincorporated county from Urban High Density Residential to Urban Center and rezoned it from MR to PCB.” *Id.* Scriber further objects to admission of the Market Analysis (PSE-9) as having been produced challenged action. *Id.* at 4. Scriber also offers the Declaration of Matthew Gardner placing in question the contentions of Lynnwood concerning the report. *Id.*

The Board reads Lynnwood’s Legal Issues as contending that the County’s action violated GMA requirements for coordination and consistency in city and county planning. Lynnwood is entitled to introduce public documents concerning its urban center plan. The Board finds and concludes that Lynnwood’s proffered PSE-1 through PSE-8 are necessary or may be of substantial assistance to the Board in deciding this matter. The documents are **admitted** as set forth in the table below.

The Board will not require submission of the complete Lynnwood City Center FEIS and SEIS. In this case, the Board rules that any party wishing to cite to another section of either the Lynnwood City Center FEIS or SEIS may file the relevant section or excerpt as an attachment to its brief without a separate motion to supplement the record.

The Board agrees with the County and Scriber that the April 2007 Market Analysis (PSE-9) is neither necessary nor of substantial assistance to reaching its decision. Admission of the Market Analysis, a report in draft form and issued *after* the County’s challenged action, is **denied**. Both the Declaration of Matthew Gardner, filed by Scriber in opposition to the Market Analysis, and the Declaration of David Kleitsch, filed by Lynnwood in support, will therefore be **disregarded** by the Board.

### **C. Bothell’s Motion to Supplement**

Bothell’s Motion to Supplement addresses three items that the City seeks to have included in the Board’s record. They are minutes of three meetings of the Snohomish County Tomorrow Steering Committee at which the proposed amendments to Countywide Planning Policy (CPP) UG-14(d) were discussed: September 27, 2006, October 25, 2006, and November 15, 2006. Snohomish County indicated it has no objection to the requested supplementation. County Response – Supplement, at 2. No other party objected or commented on Bothell’s motion.

Snohomish County Tomorrow (SCT) is an interjurisdictional forum which is the policy advisory board for Snohomish County’s CPP’s. Bothell Motion – Supplement, at 3-4. Snohomish County and cities in the County are members of SCT. Matters at issue in this case were discussed and are reflected in the minutes of the SCT meetings provided by Bothell. The Board notes that County Planning Director Craig Ladiser was in attendance at all three meetings.

The Board has determined that the requested documents are necessary and may be of substantial assistance to the Board in reaching its decision. The documents are **admitted**.

#### **D. McNaughton's Motion to Supplement and FNYJC Motion**

Intervenor McNaughton seeks admission of two documents:

- Nov. 29, 2006, letter of Brian Holtzclaw to County DPDS
- Dec. 15, 2006, Hearing Examiner's Decision concerning the "Jewell Assemblage" project

McNaughton states that these documents address matters raised in comments by FNYJC in opposition to McNaughton's prior plans for a portion of the property at issue in SW-14. McNaughton Motion - Supplement, at 3-4. McNaughton states that the cities of Bothell and Mill Creek challenge the adequacy of public transportation and other facilities and services in the area and the conservation of fish and wildlife habitat. *Id.* McNaughton contends that when it sought development approval in 2006 under the prior zoning, these same challenges were raised and resolved. *Id.* According to McNaughton, members of FNYJC participated in the case before the Hearing Examiner, and the Holtzclaw letter and Hearing Examiner Decision address the same issues asserted by FNYJC here. Thus, McNaughton asserts, the proffered documents will assist the Board in deciding this case. *Id.* at 6.

The City of Bothell opposes McNaughton's supplementation request. Bothell Response – McNaughton Supplement. Bothell contends that it would be error for the Board to rely on documents imported out of a different process for a different project, and "the parties should not be burdened with having to address them in briefing on the merits." *Id.* at 1.

Intervenor FNYJC also objects to McNaughton's supplementation. FNYJC Response – McNaughton Supplement, at 1. FNYJC points out "the confusion caused by McNaughton's pursuing two courses of action concurrently regarding the zoning and use of their properties," but argues that the area in contention involves a number of other property owners. *Id.* FNYJC requests that, if McNaughton's supplementation is granted, the Board also admit the full record regarding McNaughton's Jewell Assemblage and Jewell Addition applications, including all public notices and public comment and various application documents. *Id.* at 2-3.

FNYJC submits the following seven documents in its request for supplementation:

- Ex. 1. Public comment – Jewel Assemblage
- Ex. 2. Public notices – Jewel Assemblage
- Ex. 3. Public comment – Jewel Addition
- Ex. 4. Public Notice – Jewel Addition
- Ex. 5. 7/31/2006 cover letter for McNaughton 2007 Docket Proposal for Jewel Assemblage

- Ex. 6. County Public Works e-mail 1/24/2006 re: 2004 traffic data in Jewel Assemblage LOS analysis
- Ex. 7. 9/8/2006 McNaughton letter to County Engineer re: Jewell Assemblage traffic impacts

In reply, McNaughton argues that FNYJC’s intervention is “rife with project-specific references” which the Holtzclaw letter and Hearing Examiner Decision will assist the Board in assessing. McNaughton Reply - Supplement, at 3. McNaughton also contends that FNYJC’s request for additional supplementation is untimely and should be dismissed out of hand. *Id.* at 4.

The Board notes, first, that FNYJC’s motion for additional supplementation, filed *in response* to McNaughton’s request to import material from the Hearing Examiner proceeding, cannot be dismissed on a timeliness objection. Additional supplementation may appropriately be sought in rebuttal to an opposing party’s request to admit incomplete information.

Second, the Board notes that materials from related project-specific processes may sometimes be appropriately included in the record of a GMA challenge. Certainly city or county officials developing comprehensive plan amendments aren’t expected to be blind to the specific projects and proposals for the areas under consideration.

In the present case, however, the Board finds the City of Bothell’s reasoning persuasive. McNaughton’s motion to supplement is **denied**; FNYJC’s responsive supplementation motion is also **denied**.

### E. Order On Motions To Supplement

The items admitted as exhibits, as discussed *supra* and noted in the summary table below,<sup>5</sup> have been determined to be necessary or may be of substantial assistance to the Board in reaching its decision.

Proposed Exhibit: Documents	Ruling
1. Lynnwood City Center Sub-Area Plan	<i>Admitted – Supp. Ex. No. 1</i>
2. Central Puget Sound Regional Growth Centers – 2002	<i>Admitted – Supp. Exhibit No. 2</i>

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<sup>5</sup> In the summary tables:

- “**Admitted**” means the proposed exhibit becomes a supplemental exhibit. Each new exhibit is assigned a Supplemental Exhibit Number.
- “**Board takes notice**” means that the Board recognizes the existence of a decision, order, statute, ordinance, resolution or document adopted by such instrument. Each is assigned an Index No. However, since the Board may not have access to a copy of such documents, the party offering the exhibit shall provide a complete copy to the Board.
- Exhibits that indicate “**Denied**” do not become supplemental exhibits to the Record. No Index number is assigned.

3. Regional Growth Centers Report, Lynnwood Regional Growth Center (PSRC 2002)	<i>Admitted – Supp. Exhibit No. 3</i>
4. Map “Proximity of Proposed Urban Center to Lynnwood Transit Center”	<i>Admitted – Supp. Exhibit No. 4</i>
5. Map “Proximity of SW 23 to PSRC Regional Center and Lynnwood City Center”	<i>Admitted – Supp. Exhibit No. 5</i>
6. “Summary of Alternatives, Environmental Impacts and Mitigation Measures,” Lynnwood City Center Plan Final SEIS	<i>Admitted – Supp. Exhibit No. 6</i>
7. Sect. C, “Plans, Policies and Regulations,” Lynnwood City Center Plan Draft SEIS	<i>Admitted – Supp. Exhibit No. 7</i>
8. Sect. D, “Population, Housing and Employment,” Lynnwood City Center Plan Draft SEIS	<i>Admitted – Supp. Exhibit No. 8</i>
9. Market Analysis and Absorption Study – Lynnwood City Center – Johnson/Gardner, April 2007	<i>Denied</i>
10. Minutes, Snohomish County Tomorrow Steering Committee, 9-27-06	<i>Admitted – Supp. Exhibit No. 9</i>
11. Minutes, Snohomish County Tomorrow Steering Committee, 10-25-06	<i>Admitted – Supp. Exhibit No. 10</i>
12. Minutes, Snohomish County Tomorrow Steering Committee, 11-15-06	<i>Admitted – Supp. Exhibit No. 11</i>
13. 11/29/2006 letter of Brian Holtzclaw to County DPDS	<i>Denied</i>
14. 12/15/2006 Hearing Examiner’s Decision on Jewell Assemblage project	<i>Denied</i>
Exhibits 15 through 21 FNYJC submittals	<i>Denied</i>

The Record for CPSGMHB Case No. 07-3-0026c consists of the items listed in Snohomish County’s Second Amended Index; the Core Documents; and Supplemental Exhibits No. 1 through 11 as noted in the right hand column of the summary table above. These documents constitute the Record to this proceeding. **Each exhibit filed with the Board shall reference the document numbers as indicated in the Index or as specified above.**

The parties are cautioned that **each exhibit must be relevant** to the issues before the Board. Its listing on the Index as a part of the County’s record, or its admission as a supplemental exhibit, does not necessarily mean that a specific exhibit is relevant to the legal issues, as set forth in the PHO.

## **VI. ORDER**

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the GMA, prior Board Orders and case law, having considered the arguments of the parties, and having deliberated on the matter the Board ORDERS:

1. The documents with which various parties seek to supplement the record are admitted or denied as set forth in the table above.
2. The petition of Luschen, *et al.* was voluntarily dismissed. Snohomish County's motion to dismiss Luschen, *et al* is **moot**.
3. The Board finds and concludes that Petitioner City of Lynnwood has demonstrated injury-in-fact, per the *Trepanier* SEPA standing test and consequently has standing pursuant to RCW 36.70A.280(2)(b) to bring a claim under SEPA. The motions of Snohomish County and Intervenor Scriber Creek Investments to dismiss Petitioner's Legal Issue No. 3 for lack of standing are **denied**. The City of Lynnwood's Legal Issue No. 3 is **reserved** for briefing and hearing on the merits.
4. The City of Lynnwood's Legal Issue No. 2(c) is restated as set forth above. City of Lynnwood Legal Issue No. 2 is **reserved** for briefing and hearing on the merits.

So ORDERED this 1st day of June, 2007.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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David O. Earling  
Board Member

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Edward G. McGuire, AICP  
Board Member

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Margaret A. Pageler  
Board Member