



On July 29, 1999, the Board held a hearing on the merits in Suite 1022 of the Financial Center, 1215 4<sup>th</sup> Avenue, Seattle, Washington. Board members Joseph W. Tovar, Presiding Officer, and Edward G. McGuire were present for the Board. Petitioner Sound Transit was represented by John Keegan, Jim Greenfield, and Kate Lehman. Respondent City of Tukwila was represented by Robert D. Johns. Court reporting services were provided by Cynthia LaRose of Robert H. Lewis & Associates, Tacoma.

## **II. Findings of fact**

1. In 1996, voters of Pierce, King, and Snohomish counties approved a regional transit plan known as *Sound Move*. This plan included an electric light rail system connecting north Seattle and South King County, including the City of Tukwila. Sound Transit was created to implement *Sound Move*.

2. The light-rail system is a regional transportation facility and, consequently, an essential public facility as set out in RCW 36.70A.200.

3. Sound Transit is considering four light-rail route alternatives for the Tukwila segment:

E1.1 – Pacific Highway South, at Grade

E1.2 – Pacific Highway South, Elevated

E2 – Interurban Avenue South

E3 – Martin Luther King, Jr. Way South

*See* DEIS, at S-13.

4. Sound Transit has identified the Pacific Highway South, at Grade alternative as the preferred alternative for the FEIS. However, a final decision has not yet been made.

5. Tukwila amended components of its comprehensive plan and zoning regulations that relate to light rail. No amended plan policy or zoning regulation expressly requires the City to preclude any of the light-rail alignments being considered by Sound Transit. No amended plan policy or zoning regulation obligates the City to require additional environmental review of the light-rail alignments being considered by Sound Transit.

## **iii. discussion**

### **A. Introduction**

*Sound Move*, a regional transportation plan, was approved by voters of Pierce, King, and Snohomish counties in 1996. *Sound Move* included an electric light rail system connecting north Seattle and South King County, including the City of Tukwila. Sound Transit was created to

implement *Sound Move*.

Sound Transit is considering four light-rail route alternatives for the Tukwila segment:

- E1.1 – Pacific Highway South, at Grade
- E1.2 – Pacific Highway South, Elevated
- E2 – Interurban Avenue South
- E3 – Martin Luther King, Jr. Way South

*See* Petitioner’s Ex. 50 (DEIS at S-13). Sound Transit has identified the “Pacific Highway South, at Grade” alternative as the preferred alternative for the FEIS. Tukwila supports routing light rail through the Tukwila Urban Center (Southcenter area) and opposes routing light rail on Pacific Highway. Respondent’s Ex. 26 (October 15, 1998 letter from Steve Lancaster to Mayor Rants). A final decision has not yet been made.

Tukwila amended components of its comprehensive plan and zoning regulations that relate to light rail. Sound Transit opposes portions of these amendments, asserting that the amendments will effectively preclude the alternative of siting light rail along the Pacific Highway alignment. The specific policies and zoning regulations opposed by Sound Transit are:

#### Plan Policies

8.1.16. In the event that a light rail system is developed in either the Tukwila International Boulevard (formerly known as Pacific Highway), Martin Luther King, or Interurban corridor, such a system should be designed and constructed to achieve the following objectives:

...

3. For the Tukwila International Boulevard corridor, City preference shall be given to locating rail lines and stations at-grade or below grade as necessary to minimize interference with existing traffic patterns.

13.4.14. The development of any light rail or commuter rail system shall meet the following objectives:

1. Any commuter or light rail system serving Tukwila, Seattle, South King County and/or Sea-Tac Airport should be located in a manner which promotes the coordinated short-term and long-term use of alternative transportation systems, such as carpools, buses, commuter rail, and light rail.

2. Such systems shall be located so as to allow for future extensions to commuter and/or light rail service to East King County and Southeast King County.

3. Such systems shall be located in a manner that serves the Tukwila Urban

Center, so as to encourage the development of that Center in the manner contemplated by this Plan and the Countywide Planning Policies.

15.2.4. Public capital facilities of a countywide or statewide nature shall be sited to support the countywide land use pattern, support economic activities, mitigate environmental impacts, provide amenities or incentives, and minimize public costs. Amenities or incentives shall be provided to neighborhoods/jurisdictions in which facilities are sited.

### Zoning Regulations

#### 18.66.060. Criteria

The City Council shall be guided by the following criteria in granting an unclassified use permit:

1. Where appropriate and feasible, all facilities shall be undergrounded.

...

6. The proposed unclassified use shall, to the maximum extent feasible, mitigate all significant adverse environmental impacts on public and private properties.

Full consideration shall be given to:

a. alternative locations and/or routes that reduce or eliminate adverse impacts; and

b. alternative designs that reduce or eliminate adverse impacts.

7. In the event that a proposed essential public facility of a countywide or statewide nature creates an unavoidable significant adverse environmental or economic impact on the community, compensatory mitigation shall be required. Compensatory mitigation shall include public amenities, incentives or other public benefits which offset otherwise unmitigated adverse impacts of the essential public facility. Where appropriate, compensatory mitigation shall be provided as close to the affected area as possible.

### **B. Standard of Review**

Sound Transit challenges Tukwila's adoption of Ordinances 1864 and 1865, amending its comprehensive plan and zoning regulations. Pursuant to RCW 36.70A.320(1), Tukwila's ordinances are presumed valid. The burden is on petitioner Sound Transit to demonstrate that the actions taken by Tukwila are not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board "shall find compliance unless it determines that the action[s] taken by [Tukwila] [are] clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." For the Board to find Tukwila's actions

clearly erroneous, the Board must be “left with the firm and definite conviction that a mistake has been made.” *Dep’t of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993). This standard of review also applies to the Board’s evaluation of SEPA compliance pursuant to RCW 36.70A.280(1)(a). See *Cougar Mt. Assocs. v. King Cy.*, 111 Wn.2d 742, 747 (1988).

### C. Legal Issues 1, 5, and 6

***Legal Issue 1: Do City of Tukwila Ordinance No. 1864 (the plan amendment) and Ordinance No. 1865 (the zoning amendment) fail to comply with RCW 36.70A.200 because they effectively preclude the siting of essential public facilities?***

***Legal Issue 5: Do the plan amendment and the zoning amendment fail to comply with the limits of the City’s authority under the GMA to plan for and regulate regional transportation facilities, specifically as such authority is limited by RCW 81.104.070, .080, .100, and .140, and chapter 81.112 RCW?***

***Legal Issue 6: Do the plan amendment and the zoning amendment fail to comply with the limits of the City’s authority under the GMA to plan for and regulate regional transportation facilities, specifically as such authority is limited by regional transportation planning conducted under chapter 47.80 RCW?***

Legal Issues 1, 5, and 6 are inextricably linked. Each turns on the extent of the City’s authority to regulate regional transportation facilities, i.e., light rail facilities through the City. Sound Transit argues that the amendments “allow the City to disallow Sound Transit’s chosen alignment or to impose permitting and mitigation requirements that could make Sound Transit’s identified route prohibitively expensive,” thus precluding the siting of light rail along Sound Transit’s chosen route in violation of RCW 36.70A.200(2). Sound Transit’s PHB, at 20.

As a preliminary matter, the light-rail system is a regional transportation facility and, consequently, an essential public facility as set out in RCW 36.70A.200, which provides:

(1) The comprehensive plan of each county and city that is planning under this chapter shall include a process for identifying and siting essential public facilities. Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities

<sup>[1]</sup> as defined in RCW 47.06.140, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, and group homes.

(2) The office of financial management shall maintain a list of those essential state public facilities that are required or likely to be built within the next six years. The

office of financial management may at any time add facilities to the list.No local comprehensive plan or development regulation may preclude the siting of essential public facilities.

(Emphasis added.)

In light of the facts presently before the Board, Sound Transit’s challenge under RCW 36.70A.200 fails for two reasons:(1) no regional decision has yet been made selecting the alignment of light rail through Tukwila and (2) no amended plan policy or zoning regulation expressly requires the City to preclude any of the light-rail alignments presently being considered by Sound Transit.In *Port of Seattle v. City of Des Moines*, CPSGMHB Case No. 97-3-0014, Final Decision and Order (Aug. 13, 1997), the Board noted that the City of Des Moines’ duty to comply with RCW 36.70A.200 in the context of the decision to expand an essential public facility was “triggered” when the Puget Sound Regional Council formally decided to expand Sea-Tac International Airport.*Port of Seattle*, at 8.Once that regional decision was made, RCW 36.70A.200 then imposes “a duty requiring the City’s Plan not to preclude essential public facilities, even when the decision regarding the essential public facility was made subsequent to the initial adoption of the Plan.”*Id.*

Cities are not regional decision-making bodies under the GMA and thus may not make decisions regarding system location or design of regional essential public facilities; nevertheless, the Act does contemplate a collaborative role for cities in making and implementing regional decisions. Before a regional decision is made, a city may attempt to influence that choice by means such as providing information to the regional body, commenting on the alternatives under consideration, or expressing its local preference in its comprehensive plan.However, after the regional decision is made, the city then has a **duty to accommodate** the essential public facility, and the exercise of its land use powers <sup>[2]</sup> may only impose reasonable conditions and mitigations that will not effectively preclude the essential public facility by rendering it impracticable.

In the instant case, the City may lobby for Sound Transit to adopt the City’s favored alignment and, to the extent that its comprehensive plan expresses the City’s aspiration for its future development, Tukwila may express its preferences in its plan.However, Sound Transit is the authority vested with the responsibility to make routing and system design decisions for regional light-rail service.It is Sound Transit that makes the final decision selecting route alignment.Sound Transit has developed four alternatives for the Tukwila light-rail segment and, although staff has identified a preferred alternative, a final decision has not yet been made.Once that regional decision is made, the City has a duty not to preclude the light-rail alignment selected by Sound Transit.Likewise, Sound Transit makes the final decision regarding system design, whether all or a portion of a route is elevated, at grade, or underground.Again, once that regional decision has been made, the City has a duty not to preclude the light-rail system design selected by Sound

Transit.

In addition, where comprehensive plan policies and development regulations allow the City a range of discretion in their application, from lawful to unlawful, the Board cannot assume the City will elect to act unlawfully. “Instead, the Board will assume that prospective governmental actions will be taken in good faith in an effort to comply with the Act.” *Pilchuck v. Snohomish County*, CPSGMHB Case No. 95-3-0047, Final Decision and Order (Dec. 6, 1995), at 38. The amendments adopted by Tukwila do not expressly require the City to exercise its municipal authority to preclude any of the light-rail route alignments or system designs being considered by Sound Transit. The language of the amendments allows a range of discretion in reviewing specific permit applications. For example, Policy 8.1.16 contains the phrases “should be designed and constructed to achieve the following objectives” and “City preference shall be given to locating rail lines and stations at-grade or below grade.” (Emphasis added.) This policy expresses the City’s preference; however, this policy does not obligate nor authorize the City to deny necessary permits essential to the route alignment ultimately selected by Sound Transit.

Policy 13.4.14 states that “any light rail or commuter rail system shall meet the following objectives: . . . Such systems shall be located in a manner that serves the Tukwila Urban Center.” (Emphasis added.) The City offers two reasonable applications of this policy:

If the route alignment selected by Sound Transit cannot serve the Tukwila Urban Center by direct rail connection because the circumstances show that such a route alignment would preclude or effectively preclude the light rail system, then the “location objective” policy stated in § 13.4.14(3) could still be met by station site design or location, such as locating or positioning the station to be compatible with nearby streets having direct access to the Tukwila Urban Center. Circumstances may even allow this policy objective to be reasonably addressed by station or rail design/location that would simply accommodate future extensions of the light rail system to East King County and to the Tukwila Urban Center.

Tukwila’s Response, at 11. Although this policy utilizes the mandatory word “shall,” the policy does not obligate nor authorize the City to deny permits to light-rail route alignments that do not pass through the Tukwila Urban Center.

The zoning regulations pertaining to unclassified uses, including light rail, call for undergrounding of facilities “where appropriate and feasible.” 18.66.060(1). The qualifying language “where appropriate and feasible” clearly provides the City with the discretion to permit light rail “at-grade or below grade”; this regulation does not obligate nor authorize the City to deny permits to light rail routes that are not undergrounded. *See* Policy 8.1.16, discussed *supra*. In addition, the City states: “the use of the term ‘facilities’ was intended to apply only to utilities which will serve the unclassified use” and it “would not oppose direction from the Board to

amend its Zoning Code to clarify this term accordingly.”Tukwila’s Response, at 13.

The plan and zoning regulation amendments require mitigation. Policy 15.2.4 requires facilities such as light rail to be sited to “mitigate environmental impacts, provide amenities or incentives, and minimize public costs.” Zoning regulation 18.66.060(7) requires “compensatory mitigation” for essential public facilities that create “unavoidable significant adverse environmental or economic impact on the community.” The GMA does not prohibit the City from requiring reasonable mitigation. *See Port of Seattle*, at 11, footnote 8. What is “reasonable” mitigation is to be determined in an as-applied challenge before the appropriate court.

Sound Transit has failed to meet its burden to show that the challenged amendments exceed the City’s authority under GMA to plan for and regulate regional transportation facilities. The challenged amendments do not preclude the siting of an essential public facility, in this instance, regional transportation in the form of light rail. Tukwila’s amendments comply with the GMA.

### Conclusion

Sound Transit has failed to meet its burden to show that the challenged amendments exceed the City’s authority under GMA to plan for and regulate regional transportation facilities. The challenged amendments do not preclude the siting of an essential public facility, in this instance, regional transportation in the form of light rail. Tukwila’s amendments comply with the GMA.

Until a regional decision is made, the City may lobby for Sound Transit to adopt the City’s favored alignment and, to the extent that its comprehensive plan expresses the City’s aspiration for its future development, Tukwila may express its preferences in its plan. However, once that regional decision is made, the City has a duty not to preclude the light-rail alignment and system design selected by Sound Transit.

Nonetheless, the City is directed to clarify the meaning of “facilities” in section 18.66.060(1) of its amended zoning regulations during its next GMA amendment process.

### **D. Legal Issue 2**

*Do the plan amendment and the zoning amendment substantially interfere with the fulfillment of RCW 36.70A.020(3) because they effectively preclude the siting of regional transportation facilities?* <sup>[3]</sup>

The GMA transportation planning goal, RCW 36.70A.020(3), provides:

Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

The GMA does not explicitly identify the regional transportation priorities. However, these priorities may be identified by reference to other statutes. Sound Transit points to Chapters 81.104 RCW (High Capacity Transportation Systems) and 81.112 RCW (Regional Transportation Authorities) to identify the regional transportation priorities at issue here. The Board agrees with Sound Transit that these statutes “deal with the process through which regional transportation priorities are identified and enforced.” Sound Transit’s PHB, at 33. Chapters 81.104 RCW and 81.112 RCW give substance to RCW 36.70A.020(3).

Specifically, Sound Transit argues that the light-rail system “represents a regional transportation priority” and the City’s comprehensive plan “must further the goals identified in *Sound Move*.” Sound Transit’s PHB, at 34. Sound Transit states: “If necessary, the City must amend its existing Comprehensive Plan to further the priorities identified in *Sound Move*.” *Id.* (relying on *Port of Seattle v. City of Des Moines*, CPSGMHB Case No. 97-3-0014). The Board agrees that, once a regional decision has been made, comprehensive plan and development regulation provisions inconsistent with achieving the regional decision must be amended to be consistent with the regional decision. Consequently, when Sound Transit makes the decision regarding the alignment and system design of the light rail system through Tukwila, any City comprehensive plan policies or development regulations must be consistent with Sound Transit’s chosen light-rail alignment. However, because a regional decision selecting the alignment of light rail and system design through Tukwila has not yet been made and because the amendments, on their face, do not preclude the siting of light rail through Tukwila, the challenged amendments do not substantially interfere with the fulfillment of RCW 36.70A.020(3).

Sound Transit has failed to meet its burden to show that the challenged amendments substantially interfere with the fulfillment of RCW 36.70A.020(3). Tukwila’s amendments comply with the GMA.

### **Conclusion**

Because a regional decision selecting the alignment of light rail and system design through Tukwila has not yet been made and because the amendments, on their face, do not preclude the siting of light rail through Tukwila, the challenged amendments do not substantially interfere with the fulfillment of RCW 36.70A.020(3). Sound Transit has failed to meet its burden to show that the challenged amendments substantially interfere with the fulfillment of RCW 36.70A.020(3). Tukwila’s amendments comply with the GMA.

### **E. Legal Issue 3**

***Do the plan amendment and the zoning amendment fail to comply with the State Environmental Policy Act (SEPA) chapter 43.21C RCW because they require unreasonable and duplicative environmental review?***

Sound Transit argues that the amended zoning regulations violate SEPA because they would “authorize and require the City to choose its own ‘alternative locations and/or routes’ and ‘alternative designs’ for the Light Rail system” and that “such an open-ended authorization is in violation of the provisions of SEPA, which prohibit redundant environmental review and limit Tukwila from going beyond the alternatives that have been set forth and considered in Sound Transit’s EIS for the Light Rail system.” Sound Transit’s PHB, at 27.

The amended zoning regulations provide that a proposed unclassified use “shall, to the maximum extent feasible, mitigate all significant adverse environmental impacts on public and private properties” and “[f]ull consideration shall be given to: a. alternative locations and/or routes that reduce or eliminate adverse impacts; and b. alternative designs that reduce or eliminate adverse impacts.” 18.66.060(6). The City admits that application of this provision is constrained by SEPA rules, which provide:

(1) This section contains criteria for determining whether an environmental document must be used unchanged and describes when existing documents may be used to meet all or part of an agency's responsibilities under SEPA.

...

(3) Any agency acting on the same proposal shall use an environmental document unchanged, except in the following cases: . . .

WAC 197-11-600. The amended plan policies and zoning regulations do not obligate the City to require additional environmental review and the City states that it will apply 18.66.060(6) “consistent with WAC 197-11-600.” Tukwila’s Response, at 18. Again, where comprehensive plan policies and development regulations allow the City a range of discretion in their application, from lawful to unlawful, the Board cannot assume the City will elect to act unlawfully. The amended comprehensive plan policies and zoning regulations do not require unreasonable and duplicative environmental review; the challenged amendments do not violate SEPA, chapter 43.21C RCW.

Sound Transit has failed to meet its burden to show that the challenged amendments fail to comply with SEPA. Tukwila’s amendments comply with SEPA.

### **Conclusion**

The amended comprehensive plan policies and zoning regulations do not require unreasonable and duplicative environmental review; the challenged amendments do not violate SEPA, chapter 43.21C RCW. Sound Transit has failed to meet its burden to show that the challenged amendments fail to comply with SEPA. Tukwila’s amendments comply with SEPA.

### **F. Legal Issue 4**

*Do the plan amendment and the zoning amendment fail to comply with RCW 36.70A.420 and RCW 36.70A.430 because they will result in segmented and sequential decisions by local governments that do not optimally serve all parties and because they will make achieving consistency among plans and actions more difficult?*

RCW 36.70A.420 states legislative findings and legislative intent regarding transportation projects. RCW 36.70A.420 provides:

Transportation projects — Findings — Intent. The legislature recognizes that there are major transportation projects that affect multiple jurisdictions as to economic development, fiscal influence, environmental consequences, land use implications, and mobility of people and goods. The legislature further recognizes that affected jurisdictions have important interests that must be addressed, and that these jurisdictions' present environmental planning and permitting authority may result in multiple local permits and other requirements being specified for the projects.

The legislature finds that the present permitting system may result in segmented and sequential decisions by local governments that do not optimally serve all the parties with an interest in the decisions. The present system may also make more difficult achieving the consistency among plans and actions that is an important aspect of this chapter.

It is the intent of the legislature to provide for more efficiency and equity in the decisions of local governments regarding major transportation projects by encouraging coordination or consolidation of the processes for reviewing environmental planning and permitting requirements for those projects. The legislature intends that local governments coordinate their regulatory decisions by considering together the range of local, state, and federal requirements for major transportation projects. Nothing in RCW 36.70A.420 or 36.70A.430 alters the authority of cities or counties under any other planning or permitting statute.

RCW 36.70A.430 requires counties to establish a collaborative review process:

to review and coordinate state and local permits for all transportation projects that cross more than one city or county boundary. This process shall at a minimum, establish a mechanism among affected cities and counties to designate a permit coordinating agency to facilitate multijurisdictional review and approval of such transportation projects.

Although possibly helpful in interpreting other GMA provisions, RCW 36.70A.420 does not impose GMA requirements subject to Board review. RCW 36.70A.420 does provide context for

the application of RCW 36.70A.430. This provision requires counties, not cities, planning under the GMA to establish “a collaborative process to review and coordinate state and local permits for all transportation projects that cross more than one city or county boundary.”

In response to questions at the hearing on the merits, counsel for Sound Transit stated that Petitioner was not arguing non-compliance with RCW 36.70A.420 and .430, but was referring to these statutes as illustrative of the GMA requirement for regionalism in decisionmaking. Although illustrative of GMA intent, RCW 36.70A.420 and .430 do not impose a GMA requirement on the City. Consequently, the Board cannot evaluate the challenged amendments against RCW 36.70A.420 and .430.

### Conclusion

Because RCW 36.70A.420 and .430 do not impose a GMA requirement on the City, the Board cannot evaluate the challenged amendments against RCW 36.70A.420 and .430. Tukwila’s amendments comply with GMA.

### Iv. order

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

The City’s actions and the challenged portions of Ordinances 1864 and 1865 **comply** with the requirements of the Growth Management Act, Chapter 36.70A RCW.

So ORDERED this 15th day of September, 1999.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

---

Joseph W. Tovar, AICP  
Board Member

---

Edward G. McGuire, AICP  
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.

---

[1] RCW 47.06.140 provides:

The legislature declares the following transportation facilities and services to be of state-wide significance: The interstate highway system, interregional state principal arterials including ferry

connections that serve state-wide travel, intercity passenger rail services, intercity high-speed ground transportation, major passenger intermodal terminals excluding all airport facilities and services, the freight railroad system, the Columbia/Snake navigable river system, marine port facilities and services that are related solely to marine activities affecting international and interstate trade, and high-capacity transportation systems serving regions as defined in RCW 81.104.015.

(Emphasis added.)

RCW 81.104.015 provides in part:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

...

(2) "Regional transit system" means a high capacity transportation system under the jurisdiction of one or more transit agencies except where a regional transit authority created under chapter 81.112 RCW exists, in which case "regional transit system" means the high capacity transportation system under the jurisdiction of a regional transit authority.

[2] The Board has previously stated that a city's land use powers include "development regulations and other controls such as right-of-way or street vacation, annexation and environmental review procedures." *City of Snoqualmie v. King County*, CPSGMHB Case No. 92-3-0004, Final Decision and Order (Mar. 1, 1993), at 16.

[3] The language of Legal Issue 2 mirrors the statutory language regarding invalidity. *See* RCW 36.70A.302(1)(b) (Board may make a determination of invalidity if it determines that "continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of [the GMA]"). However, Petitioners are not requesting a determination of invalidity.