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THE HEARING EXAMINER OF THE CITY OF PORT TOWNSEND

IN RE:

Nirvair LLC Hotel
SEPA Appeal
ADM25-001

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND FINAL DECISION

I. SUMMARY

The SEPA¹ appeal is upheld in part. A mitigation measure is added requiring the proposed hotel to provide shuttle or similar carrier service to transport hotel guests from the Haines Park-and-Ride when public shuttle service is not available. The mitigation measure also requires hotel guests to be notified that parking in the Appellant’s lot or any other private parking area is not allowed except as authorized by the parking area owner.

The subject SEPA appeal alleges that the parking and traffic impacts of the proposed 50-room hotel are not sufficiently assessed or mitigated. The central legal issue of this appeal is whether that assessment and mitigation is already sufficiently baked into

¹ “SEPA” is the State Environmental Policy Act, Chapter 43.21C RCW.

1 existing City policies and regulations, such that no further analysis or assessment is
2 required.

3 In most respects the City and Applicant are correct – the City Council has already made
4 the hard choices on parking and traffic impacts for the historic downtown area. Those
5 choices are based upon a well-documented and extensive assessment of parking and
6 traffic impacts. In short, the work and decisions have already been done. Under such
7 circumstances the Examiner is prohibited from undoing the policy choices set by the
Port Townsend City Council.

8 The one alleged impact that is still open for review is the narrow issue of parking
9 trespass. There is nothing in the extensive documentation presented by the parties that
10 identifies that parking trespass was ever considered by the City Council in its adoption
11 of parking regulations for the downtown area. Under typical conditions it would be
12 reasonable to assume that private property owners had adequate recourse to prevent
13 parking trespass. However, uncontested testimony from the Appellant revealed that tow
14 trucks are not available in the downtown area to enforce private parking restrictions. It's
15 largely uncontested in this proceeding that private property owners don't have any
16 effective means to prevent parking trespass. The Appellant's situation is particularly
vulnerable since it owns the largest private parking area in City's historic downtown.
To exacerbate matters the Appellant's parking is located directly across the street from
the proposed hotel.

17 Since parking trespass is not an impact that was considered in the City's adoption of
18 downtown parking regulations, it is an impact that still must be addressed in the SEPA
19 review. Requiring the Applicant to provide a shuttle service to the Haines Park-and-
20 Ride should substantially reduce the incentive to park on the Appellant's lot or any other
21 private property. As mitigated, the trespass impact is no longer significant. No further
assessment or mitigation is necessary.

22 **II. TESTIMONY**

23 A computer-generated transcript accompanies this decision as Appendix A. The
24 transcript is only approximately accurate and provided for informational purposes only.

25 **III. EXHIBITS**

26 All of the exhibits identified in the August 18, 2025 witness and exhibit lists from the
27 City, Appellant and Applicant and the August 21, 2024 rebuttal witness and exhibit lists
28 of the Appellant were admitted into the record during the appeal hearing.
29
30

1 The City's August 25, 2025 staff report was admitted post-hearing since it was
2 distributed to all parties a week in advance of the appeal hearing and staff reports are
3 designated as part of the hearing record pursuant to Section IVH of the Examiner Rules
4 of Procedure.

5 FINDINGS OF FACT

6 Procedural:

- 7 1. Applicant. Nirvair LLC, 905 20th St. Anacortes, WA 98221.
8
9 2. SEPA Appellants and Applicant. The Appellant is Shadelands Land
10 Partners, c/o Hall Equities Group, Authorized Agent, 150 No. Wiget Lane, Site 250,
11 Walnut Creek, CA 94598. The Applicant is Nirvair LLC, 905 20th St., Anacortes, WA
12 98221.
13 3. Hearing. A virtual hearing on the appeal was conducted on August 25,
14 2025 and continued to September 10, 2025.

15 Substantive:

- 16 4. Project Description. Nirvair LLC has applied for several administrative
17 land use and building permits to demolish and replace a single-story office building with
18 a new 4-story, 50 guest room hotel. The site is located at the NE corner of Water and
19 Filmore Streets. The project includes a 10-stall on-site vehicle parking area. The hotel
20 will include a café that seats 49 people.
21
22 6. Surrounding Uses. The City's downtown historical core area is located to
23 the east of the project site along Water Street. The project site is located directly across
24 the street from the Appellant's property. The Appellant's property is a large strip mall.
25 A Washington State ferry terminal located is on the west side of the strip mall. See Ex.
26 A10, p. 1. The ferry terminal accommodates a regular ferry run from Keystone.
27
28 7. Parking. Historic downtown parking along Water Street is limited. It is a
29 significant source of frustration for Port Townsend residents and visitors. The Haines
30 Park-and-Ride serves as an ample source of alternative parking that mitigates the limited
parking. However, the Haines Park-and-Ride is located a mile and a half from the Water
Street downtown area. The park-and-ride has half-hourly shuttle service available
during daylight hours between the park-and-ride and historic downtown. A condition of
approval requires the Applicant to provide shuttle service to hotel patrons to and from
the park-and-ride when the shuttle is not available.

1 The current mayor, Mayor Faber, noted that persons who access downtown have
2 expressed “*deep frustration and anger*” about downtown parking. Ex. A21, p.1. The
3 Washington State Department of Transportation has warned ferry riders at its website
4 that “*Port Townsend is a fairly small town with extremely limited parking in the*
5 *downtown area.*” Ex. A13, p. 3. The City’s own comprehensive plan acknowledges that
6 there is a significant parking shortage. See Comprehensive Plan, Transportation
7 Element, Parking Goals and Policies, Commercial Historic District (“[p]arking
8 problems are most apparent in the Downtown. It is unlikely that enough parking can be
9 supplied to meet future demand.”).

8 Project specific comments reflected that continuing frustration. Several written SEPA
9 comments expressed concern over the proposal’s parking impacts. See City Ex. E at 33,
10 35, 37; Appellant Ex. A4. At the appeal hearing, Port Townsend resident Barney Burke
11 provided extensive testimony describing the parking problem as it exists today. See, e.g.,
12 Tr. at 153 (describing 91% occupancy of downtown parking spaces on Water Street at
13 11:45 a.m. on a “normal weekday”). See also Appellant Ex. A8 46 (“Saturday parking
14 appears to be at its effective capacity”).

14 According to data provided in a 2024 City Council workshop, there are 1,190² parking
15 spaces in the downtown parking area. 552 of those spaces are private. As shown in Ex.
16 A11, p.9, this parking area is bounded by Water Street from the ferry terminal to Jackson
17 Street and extends into the southern half of Jefferson Street. Institute of Traffic
18 Engineers (ITE) parking data identifies a national average demand of one parking space
19 per guest room for hotels. See Ex. A18, hotels. According to the testimony of an
20 Appellant expert in the hotel business (John Henry, president and CEO of a company
21 that owns 53 hotels), the bare minimum hotel parking standard is one stall per guest
22 room. Tr. 145. Mr. Haynes, an Appellant traffic engineer, testified that in his estimation
23 using the ITE parking rates, the parking demand created by the proposal would take up
24 three blocks of public parking along Water Street. Tr. 182.

22 The City did not contest any of the parking testimony or data outlined in this finding.
23 However, it’s unclear whether Mr. Hayne’s factored the Haines Park-and-Ride into his
24 estimate of three blocks of parking impact. Mr. Haynes testified that a complete parking
25 study would include a survey of other hotels to see how many people use the park-and-
26 ride and/or take the ferry as foot passengers. Tr. 181. Since he didn’t do this himself it
27 appears that his three-block estimate does not include the Haines mitigation factor.

29 ² An annotation to this data identifies that the number of spaces has changed slightly since this inventory
30 of parking spaces with 7 stalls removed due a development project and the addition of 15 minutes spaces.

1 The Haines Park-and-Ride is located about a mile and a half from downtown. Tr.18.
2 The potential role of the park-and-ride was well summarized in the City's 2004 parking
3 management plan, Ex. A8. The plan provides as follows at p. 34:

4 *There are approximately 270 spaces at the Jefferson Transit park-and-*
5 *ride lot. Increased use of the lot is a goal expressed in the 1996*
6 *Comprehensive Plan and nearly every other document that was reviewed*
7 *related to parking and other downtown transportation matters. Currently,*
8 *the park-and-ride lot serves as an important resource during major*
9 *events. For the largest events, shuttle service frequency is increased.*
10 *However, under typical non-event conditions, the facility gets very little*
11 *use. Recent observations revealed approximately 20 vehicles parked at*
12 *the site at 8:30 a.m. and 4 p.m. during a typical weekday in August.*
13 *According to Jefferson Transit managers, this is consistent with normal*
14 *operations.*

15 As indicated, the parking plan was adopted in 2004. Its findings are more than 20 years
16 old. Ms. Bolin testified that the shuttle service linking the park-and-ride to downtown
17 is still in use and operates every half hour during daylight hours except for Sundays. Tr
18 80. Given the extremely low usage rate of the park-and-ride in 2004 and the absence of
19 any evidence to the contrary³, it is reasonable to conclude that the park-and-ride still has
20 adequate capacity to accommodate the proposal's hotel guests. Whether required or not,
21 it would certainly be in the hotel's interest to advise guests of the park-and-ride option,
22 especially if the parking problem exacerbates. Other visitors to downtown would also
23 be more inclined to use the park-and-ride as parking impacts become more severe. In
24 this regard the park-and-ride option would serve to increasingly moderate anticipated
25 parking impacts as those impacts worsen.

26 The primary and self-evident impact from limited parking supply is inconvenience to
27 tourists, employees and shoppers who visit the downtown area. Parking availability can
28 increase traffic by those circling around looking for a parking spot. That impact is not
29 found significant for the reasons identified in Finding of Fact No. 8 below.

30 One impact that doesn't appear to have been considered in the City's on-going review
of parking impacts is parking trespass. The proposal is uniquely situated to exacerbate
the trespass impact to the Appellant's strip mall located across Water Street from the
proposal. The testimony of Mark Hall was very compelling on this issue. Mr. Hall's
company, the Appellant Shadeland Partners, owns the strip mall across Water Street.

³ As testified by Mr. King, traffic counts decreased at the project site along Water Street in 2019 compared to the previous counts taken in 2006. See City Ex. M. This reduction in traffic provides further evidence that usage of the Haines Park-and-Ride has not significantly increased since 2004.

1 When Shadeland purchased the strip mall in 2022 the prior owner and tenants identified
2 that the mall's extensive private parking was often used by persons who were not strip
3 mall patrons. This despite extensive signing prohibiting noncustomer parking. Tr. 130.
4 The tenants continue to complain about the illegal parking to this day. Tr. 131. At
5 purchase Mr. Hall believed that his company could resolve the problem through better
6 signage and towing. However no towing company is available in the area to enforce the
7 no parking restrictions of the private lot. Tr. 131. Mr. Hall believes that the City's
8 parking policy adversely affects the Shadeland property more than most because of its
9 location adjacent to the ferry terminal and its large size. The Shadeland property
approaches three city blocks and has the most private parking by far in the downtown
area. The proximity and size make it an attractive place to park for people visiting by
ferry. Tr. 132.

10 Parking trespass impacts caused by the guests of the proposed 50-unit hotel could be
11 severe given the proximity of the Appellant's parking lot just across the street and the
12 limited parking in the downtown core area. Substantial weight is due to Ms. Bolin's the
13 determination that the proposal will not create any significant parking impacts.
14 However, Ms. Bolin never considered parking trespass, concluding instead that all
15 parking impacts are adequately addressed by the City's plans and development
standards. Parking trespass has not been assessed or mitigated in the SEPA review of
this project.

16 Concern over impacts to private parking is exacerbated by the fact that the SEPA
17 checklist contains unfounded information pertinent to parking trespass. Specifically,
18 14e of the checklist asserts that "[t]he majority of 50 room hotel guests are expected to
19 arrive via the ferry without a vehicle." Ms. Bolin was not aware of any evidence to
20 substantiate this assertion. Tr. 48. Mr. Burke, a planner by training, volunteered to
21 testify. He owns a few tenant properties in town and commuted on the ferry for a year.
22 He saw no basis for concluding that most hotel guests would arrive to the hotel without
23 a vehicle. Tr. 159. As he noted, many people visit Port Townsend by driving using the
24 Hood Canal bridge instead of the local ferry. Id. Further, there is nothing in the record
25 identifying whether there's any parking available at the Keystone terminal where people
26 would feel comfortable leaving their vehicle unattended all evening. The accuracy of
information on hotel guest vehicle use is significant. A high percentage of vehicle use
reasonably correlates with a high incidence of parking trespass on the Appellant's strip
mall.

27 The incentive to park on private property should be substantially reduced if hotel guests
28 are advised of the Haines Park-and-Ride and use of the facility is made convenient. The
29 half-hour shuttle service testified by Ms. Bolin should provide that convenience.
30 However, that service is only available during the weekday. Hotel patrons, of course,
often check in at night. To address night use a mitigation measure will be added to

1 require the Applicant to make a shuttle service or other passenger service available when
2 public shuttle service is not available. The mitigation measure will require that hotel
3 guests are made aware of the service and that parking on the Appellant's property and
4 other private lots is prohibited.

5 8. City Opted to Use Existing Plans/Policies to Address Parking and Traffic. Ms.
6 Bolin clearly based her SEPA analysis and mitigation upon existing development
7 standards and policies as authorized by WAC 197-11-158(1).

8 Mitigation Measure No. 3 of the MDNS expressly identified that under "city code" the
9 proposal is exempt from parking if a No Protest agreement is signed. The staff report to
10 the Examiner also expressly stated that reliance was made upon existing plans and
11 policies for both parking and traffic impacts:

12 *Concerns regarding parking and transportation are addressed through the*
13 *City's adopted policies, resolutions, ordinances, plans, and codes under*
14 *previously completed SEPA analysis undertaken by the City upon the*
15 *adoption of the off-street parking exemption as adopted for the 1996 Port*
16 *Townsend Comprehensive Plan with a FEIS issued July 3, 1996 (Exhibit J),*
17 *and its implementing ordinances such as Ordinance No. 2571 adopted in the*
18 *year 1997 (Exhibit K) and Ordinance No. 2893 adopted in the year 2005*
(Exhibit K) with additional SEPA review (Exhibit L). The SEPA Responsible
Official's threshold determination may use existing plans, regulations, and
laws for analysis and mitigation of likely impacts. Moss v. City of
Bellingham, 109 Wn. App. 6, 22, 31 P.3d 703 (2001).

19 Ms. Bolin confirmed during the hearing that she had relied upon existing plans and
20 policies to address parking and traffic impacts. See, e.g. Tr. 14.

21 9. Parking and Traffic Impacts Assessed and Mitigated in City Regulations/Policies.
22 Except for parking trespass, the proposal's parking and traffic impacts have already been
23 assessed and mitigated in the City's policies and development standards and the
24 associated adoption process associated with that legislation.

25 The parking impacts of the hotel are within the range of impacts contemplated as far
26 back as 2004 in the parking management plan. As previously noted, the plan
27 contemplates that some downtown visitors will need to use the Haines Park-and-Ride in
28 lieu of downtown parking. As noted in the parking plan, "[t]he most significant
29 opportunity to reduce parking demand in downtown is to shift demand to the park-and-
30 ride." Comprehensive Plan Policy 7.1 encourages developers to use the park-and-ride
facility. As determined in Finding of Fact No. 7, the information in the plan reasonably

1 establishes that the Park-and-Ride has sufficient current capacity to address downtown
2 parking demand.

3 The 2004 parking management plan was drafted in response to Comprehensive Plan
4 Policy 9.6 of the Transportation Element, which requires a parking plan to address
5 “short-term and long-term parking needs in the Commercial Historic District and other
6 commercial areas.” Further, the parking exemption for the CIII district was first adopted
7 by Ordinance No. 2893 in 2005, shortly after release of the 2004 parking management
8 plan. Given the extensive analysis of downtown parking conducted by the City’s
9 Planning Commission and City Council as reflected in the whereas clauses of Ordinance
2893, it is more likely than not that the 2004 parking management plan was considered
a part of the Ordinance 2893 planning and environmental review process as well.

10 As noted in the staff report, the SEPA checklist for Ordinance 2893 specifically
11 addressed the impacts of the historic district exemption as well, providing as follows:

12 *The City’s commercial historic district is most likely to be affected by the*
13 *proposed Code changes. It is proposed that the entire National register*
14 *Historic District be exempted from the off-street parking requirements of*
15 *the Code. Currently, changes of use, and adaptive reuse or renovation*
16 *within listed historic structures in the CHD are exempt. The proposal would*
17 *extend this exemption to new development as well. Over time this could*
18 *result in some off-street parking spaces being eliminated in favor of infill*
19 *development. As of January 2004, an estimated 885 off-street parking*
20 *spaces existed within the CHD. The potential elimination of these spaces*
21 *could be mitigated by combination of strategies, some of which the City is*
22 *already actively pursuing, including: better enforcement and management*
23 *of on-street parking spaces; establishment of modified on-street parking*
24 *time zones to encourage parking turnover within the CHD, as opposed to*
25 *long-term use; pricing on-street parking; more efficient and convenient*
26 *transit shuttle service between the Haines Place Park and Ride Facility and*
27 *the CHD; non-motorized improvements in the CHD to facilitate pedestrian*
28 *and bicycle use, and perhaps eventually, construction of additional public*
29 *off-street parking facilities.*

30 The exemption was a major point of review and debate in adoption of Ordinance No.
2893. Finding of Fact No. 7 of the ordinance identified that the exemption was of
particular importance to the Planning Commission and that the Commission directed
City staff to solicit additional input from the City’s Downtown Parking Advisory Board.

One parking impact that doesn’t appear to have been addressed in the City’s adoption
process for parking standards was parking trespass. Private parking trespass is not an

1 impact addressed in any of the legislative documents submitted into the record of this
2 proceeding. Parking trespass isn't an impact addressed in the FEIS for the City's
3 comprehensive plan, the comprehensive plan itself, the 2004 parking management plan
4 or the City's development standards. It's likely that such an impact wasn't considered
5 because it was reasonably assumed that private property owners had effective recourse
6 against trespassers, i.e. towing. However, as testified by Mr. Hall, that's not an option
7 available in Port Townsend.

8 The adequacy of traffic impact review is much more straightforward than parking
9 impacts. As required in detail by the Growth Management Act, the transportation
10 element of the City's comprehensive plan projects future traffic levels, adopts level of
11 service ("LOS," congestion) standards and identifies funding needs for maintaining that
12 level of service. Transportation impacts are comprehensively and fully addressed in the
13 City's Comprehensive Plan and implementing regulations.

14 10. SEPA Responsible Official Assessed Parking and Traffic Impacts. With the
15 exception of parking trespass, Ms. Bolin reasonably assessed the parking and traffic
16 impacts of the proposal.

17 Ms. Bolin testified that she has extensive personal knowledge of the parking situation at
18 the project site since she has lived, worked and driven her vehicle to the downtown area
19 for several years. Tr. 19. She also referenced knowledge of the City's comprehensive
20 plan and 2004 parking study as it relates to parking. Tr. 17 and 20. The parking plan
21 determined parking utilization rates and compared them to other jurisdictions. It also
22 included parking satisfaction surveys of local residents and tourists. Appellant Ex. 8.
23 Ms. Bolin had reviewed the checklist and asked for more information on parking due to
24 SEPA comments regarding parking challenges. Tr. 30, 73, 89, 223. She conferred with
25 a prior planner on parking issues and was informed about another hotel project where
26 parking was not required. Id. Ms. Bolin also testified about her knowledge of existing
27 bus service that could take persons to and from the Haines Park-and-Ride. Tr. 73.

28 Ms. Bolin relied upon the City's public works director, Steve King, for information on
29 traffic impacts. The conclusions of Mr. King's June 11, 2025 memo, City Ex. M, were
30 shared with Ms. Bolin prior to issuance of the MDNS. Tr. 69. The June 11, 2025 memo
identified the number of trips that the proposal would generate and that this trip
generation would not exceed level of service standards.

11. Traffic. The proposal will not create any significant adverse traffic
impacts. The trip generation of the proposal will not result in any affected intersection
violating the City's LOS D standard.

1 The Comprehensive Plan clearly designates the trip generation of the proposal within
2 acceptable levels. Policy 10.4 of the Transportation Element of the City's
3 Comprehensive Plan adopts level of service D as acceptable traffic congestion. As
4 noted in Steven King's traffic assessment memo, City Ex. M, the most directly affected
5 intersection operates at Level of Service A; the peak hour for the hotel isn't at the same
6 peak hour as the surrounding road network; and the proposal is a "*relatively small project*
7 *scale project.*" Given all these factors Mr. King concluded the proposal was nowhere
8 close to creating a level of service problem. Tr. 125. Even Mr. Hall, an Appellant
9 witness, testified that the "*level of service on Water Street is very manageable. And we*
10 *agree, we believe that downtown Port Townsend can handle addition traffic.*" Tr. 132.

11 The Appellant's primary line of attack on the City's traffic impact assessment was the
12 absence of a traffic impact analysis (TIA) coupled with LOS B and C traffic on a couple
13 intersections within the vicinity of the project site. Mr. King acknowledged that "*if you*
14 *were starting to see level of service C or greater thresholds, you might do some modeling*
15 *to see where that is.*" Tr. 125. The LOS for the Water Street Quincy Street intersection
16 is LOS C. Tr. 187. That intersection is located about four blocks east up Water Street.
17 See Ex. A11, p. 9. The LOS for the Washington and Quincy intersection is LOS B. Tr.
18 187. That intersection is located one block north of the Quincy and Water Street
19 intersection. See Ex. A11, p. 9.

20 The traffic impacts of the proposal met one and potentially two discretionary grounds
21 listed in the City's Engineering Design Standards (EDS) as justifying a traffic impact
22 study. Based upon these types of discretionary factors, the Appellant's traffic engineer,
23 Mr. Haynes, testified that he would be "uncomfortable" evaluating traffic impacts
24 without a traffic impact analysis. Tr. 191.

25 The most directly applicable of the EDS triggers for a TIA is that traffic data for the area
26 is more than two years old. EDS, Ch. 6, App. F, par. 3a. The City's traffic counts were
27 taken in 2006 and 2019. Tr. 234. Daily traffic counts along the ferry/Water Street
28 intersection went down from 7,100 vehicles per day in 2006 to 6,200 vehicles per day in
29 2019. Ex. M, p. 1. Even under the higher 2006 counts, the Ferry/Water Street
30 intersection was still projected to operate at LOS A in 2026. Id.

31 A much more debatable trigger in the EDS is adding 20 or more trips to peak hour traffic.
32 EDS Ch. 6, App. F, par. 3a. The 11th edition of the Institute of Traffic Engineers (ITE)
33 manual provides that hotels have a typical peak hour trip generation of 30 trips. Tr. 115.
34 However, the peak hour for the hotel doesn't overlap with the peak hour of Water Street.
35 Id. It is uncontested that the current peak hour for Water Street is between 11 and 2 pm.
36 City Ex. M, p. 1. The peak hour for hotels according to the ITE Manual is between 4
37 and 6 pm.

1 The Appellant cites two reasons they believe that the 20 trip factor applies. First, they
2 note that the average daily number of trips according to the ITE Manual is 8.7 trips per
3 room, or 453 for the proposed 50 room hotel. Tr. 114. Consequently, even though 30
4 of those 453 trips may not occur during the Water Street peak hour, 20 of the remaining
453 trips may still be generated during that time.

5 The second reason why the 20-trip factor may apply according to the Appellant is that
6 the proposal generates sufficient additional traffic to shift the peak hour over to hotel
7 peak hour. As shown in the 2019 trip generation data of Ex. M, the average peak hour
8 trip tally for the 1-2 pm peak hour for Water Street is 581 trips. The average peak hour
9 trip tally for the 4-5 pm hotel peak hour is 551 trips. Adding the peak hour trips to the
4-5 pm trip tally results in the 4-5 pm traffic level matching that of the 1-2 pm

10 It must be understood that whether to require such a TIA is a matter of professional
11 judgment. The EDS does not mandate a TIA study if any of the TIA triggers are met.
12 Rather, it provides that a TIA “*may be required*” if any of the triggers are met. EDS Ch.
13 6, App. F, par. 3. Further, it is also determinative that the primary reason for requiring
14 such a study is to ascertain whether the proposal will conform to the City’s adopted LOS
standards, i.e. LOS D. As noted in Conclusion of Law No. 9, whether LOS is met is
determinative as to whether additional SEPA review was required for the proposal.

15 Overall, Mr. King’s exercise of professional judgment is more compelling than that of
16 Mr. Haynes, with or without substantial weight afforded by WAC 197-11-680.
17 Although the most recent traffic data relied upon by Mr. King is six years old, it shows
18 a significant downward trend in traffic volume. Mr. King reasonably postulated that this
19 decrease may be attributable to factors such as decreasing parking availability on Water
20 Street, increase in average resident age and decreases in commuting. Tr. 126. Unlike
21 Mr. Haynes, Mr. King is highly familiar with the traffic patterns of Water Street. The
22 public works office is located off of Water Street a block east of the Quincy/Water Street
23 intersection. See Ex. M (address), Ex. A11, p. 9. Mr. King has served as the Port
24 Townsend Public Works Director since 2020. Tr. 110. The downward trend in trip
volumes and the LOS A of the most directly affected intersection strongly support Mr.
King’s conclusion that traffic impacts are “nowhere near” violating the adopted LOS D
standard.

25 One point raised by Mr. Haynes worthy of note is that the Quincy/Water Street
26 intersection is operating at LOS C. As testified by Mr. Haynes, under the 2006 traffic
27 counts the added 30-hour peak hour trips of the proposal would result in the 4 pm traffic
28 counts matching the 1 pm Water Street peak hour count of 581 trips. The 1 pm peak hour
29 of Quincy/Water Street in 2006 was the LOS C as cited by Mr. Haynes. Consequently
30 if current trip volumes are the same as those in 2006, the LOS of the Quincy/Water Street
intersection at the hotel 4 pm peak hour would be LOS C or less (since the 4 pm total

1 Water Street traffic was less than at 1 pm). For the relatively modest increase in total
2 traffic volume of about 10%, that 10% increase would have to be significant enough to
3 both exceed the LOS C and LOS D volume maximums. This result is further dependent
4 upon the unlikely premise that all peak hour trips generated by the proposal would go
5 through the Quincy/Water Street intersection. It is possible that despite the downward
6 traffic trend between 2006 and 2019 that traffic volumes could have increased since
7 2019. Despite this, in the absence of any additional information it is too implausible to
8 conclude that the moderate increase in total traffic volume generated by the proposal
9 could result in a change in LOS from LOS C to LOS E.

10 Other factors identified by the Appellant was that Mr. King's traffic analysis didn't
11 include the proposed café or traffic from persons searching for parking stalls. The café
12 will seat 49 people. Appellant Ex. A1, p. 13. Mr. King appeared to testify that the trip
13 generation from the café is already factored into the hotel trip generation estimates from
14 the ITE manual.⁴ Mr. King noted that restaurants open and close all the time along Water
15 Street and that traffic studies aren't required because there's no LOS problem on Water
16 Street. Tr. 122. As to searching for parking spots, Mr. King didn't find that to be a
17 factor because it's already included in the 2006 and 2019 traffic counts that show no
18 LOS problem. Tr. 123⁵. Again, in the absence of any hard data or other clear evidence
19 suggesting a material increase in traffic, the impact of these additional factors is an issue
20 of professional judgment. Mr. King's familiarity with Water Street traffic and the
21 currently high operating LOS render Mr. King's conclusions on the issue determinative,

22 ⁴ Per the exchange at Tr. 122:

23 *Mr. Telegin: (00:52:45):*
24 *How many trips is the cafe going to generate?*

25 *Mr. King: (00:52:47):*
26 *The ITE manual qualified, I believe that was a hotel full service. So hotel.*

27 ⁵ One point Mr. King didn't expressly address was that the hotel was reducing parking availability and
28 thereby increasing trip generation of people looking for parking spaces. The correlation between parking
29 space availability and added trip generation is likely not linear. It may increase substantially as available
30 parking stalls approach zero. Such a potentially large increase in search traffic may not already be factored
into the 2006 and 2019 traffic counts. Nonetheless, there is no data in the record to reasonably suggest that
the parking demand created by the hotel proposal is anywhere near triggering a material increase in the
traffic of people searching for parking stalls. Mr. King doesn't believe that to be the situation. Mr. Haynes
never identified how much of a difference this traffic would make. However, his testimony that it should
be factored in a traffic report implies that it could be significant. In the absence of any data that suggests
that the added traffic could be material, the issue is a matter of professional judgment between Mr. Haynes
and Mr. King. As previously noted, Mr. King is more familiar with the dynamics of Water Street traffic
than Mr. Haynes. Substantial weight is also required for the SEPA responsible officials assessment of Mr.
King's findings. For these reasons, the added traffic from parking searches is not found to jeopardize
conformance to the City's LOS D standard.

1 i.e. substantial evidence supports the finding that the café and parking search traffic will
2 not result in traffic that exceeds LOS D.

3 Related to the added traffic caused by people searching for parking, Mr. Haynes also
4 testified that this added movement increased pedestrian and vehicular safety risks. Tr.
5 188. Mr. King noted that the City made considerable Water Street improvements in
6 2018 in the reconstruction of sidewalks, parallel parking and street scape improvements.
7 These improvements would have been made in conformance to the City's EDS. The
8 EDS are designed in detail to specify street design for safety and efficiency. The historic
9 downtown, as its name suggests, may very well still have outdated infrastructure
10 improvements that are vulnerable to increases in traffic created by the proposal.
11 However, none have been identified by the Appellant and none are identified in the
12 record. In the absence of any such unlikely defects, Mr. King's familiarity with the area
13 again is determinative in supporting Ms. Bolin's determination that the proposal will
14 create no significant adverse impacts, including traffic safety impacts.

12. Cumulative Impacts. Cumulative impacts have been addressed for both parking
13 and traffic.

14 As to parking, parking impacts are adequately mitigated by the use of the Haynes Park
15 and Ride. The worse traffic gets along Water Street, the more the park and ride will
16 serve as a viable option. As previously noted the park and ride has 270 parking spaces
17 and at least historically the park and ride has been significantly underutilized. The park
18 and ride should likely accommodate excess parking needs for the reasonably foreseeable
19 future. If it doesn't, then the City has an additional mitigation fallback with its parking
20 no protest requirement. If all fails the City can exercise the funding available through
21 that mechanism to develop additional parking resources for the Water Street area.

21 Cumulative impacts for traffic are fully addressed in the City's comprehensive plan and
22 development regulations. The Transportation Element of the City's comprehensive plan
23 assesses the City's transportation needs over the next 20 years from adoption and
24 identifies what areas of the City's road network will need to be improved to maintain the
25 City's adopted level of service. The City's TIA requirements in the EDS (App. F, p. 3)
26 require traffic impacts to be assessed in the context of "on-line" projects and estimate
27 future trip increase rates. As applied in Finding of Fact No. 10, the EDS provides
28 guidelines of what triggers necessitate TIAs and hence the associated cumulative impact
29 analysis involved in estimating future traffic levels. Within this cumulative impact
30 analysis framework, the proposal is not found to create significant enough cumulative
impacts to warrant a TIA cumulative impact analysis.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. PTMC 19.04.280(1) authorizes the hearing examiner to hear and issue final decisions on SEPA appeals.

Substantive:

2. Zoning Designation. Historic Commercial (C-III)

3. SEPA Review Adequately Based Upon Existing Policies and Standards. As conditioned by this decision, the SEPA parking and traffic review and mitigation conforms to SEPA review standards. The SEPA responsible official correctly determined that existing development standards and the City's comprehensive plan adequately assessed and mitigated parking impacts. Use of existing regulations and policies for SEPA review is governed by WAC 197-11-158. As outlined in detail below, the City has established compliance with those standards with one exception for parking trespass.

There is no disagreement amongst the parties as to any material questions of fact related to parking. The City and Applicant have not disputed the Appellant's contention that parking is in short supply in the downtown area. They have not disputed any of the facts presented by the Appellant showing that parking is a problem in downtown Port Townsend. The City and Applicant have not disputed that only limited project specific parking analysis was prepared for the proposal.

Rather than having any significant differences of opinion on the facts related to parking, the primary disagreement between the parties is whether those facts require more SEPA review. The City and Applicant contend that no parking impact assessment is necessary because City plans and development standards have already done that work. The Appellant contends those standards and plans were not designed or intended to substitute for project specific parking review.

The use of regulations and adopted plans to substitute for environmental review was first expressly legislatively sanctioned in 1995 in the Regulatory Reform Act, Chapter 36.70B RCW. The legislature intended the Act to make project review more efficient and less confusing to the public⁶. In this regard the legislature adopted RCW 36.70B.030 to require that "[f]undamental land use planning choices made in adopted comprehensive

⁶ RCW 36.70B.010(3) found that increasing regulation of land use "...has significantly added to the cost and time needed to obtain local and state land use permits and has made it difficult for the public to know how and when to provide timely comments..."

1 *plans and development regulations shall serve as the foundation for project review.”*
2 RCW 36.70B.030(1).

3 RCW 36.70B.030(2)(c) specifically requires cities and counties to ascertain whether their
4 existing development standards and comprehensive plan address the availability and
5 adequacy of public facilities, if the plan or standards provide funding for those facilities
6 as required by the Growth Management Act. RCW 36.70B.030(3) further provides that
7 if the comprehensive plan or development standards do adequately address a public
8 facility that is funded, then the city or county “*shall not reexamine alternatives to or hear
9 appeals*” on the adequacy of that facility.

9 Alongside adoption of RCW 36.70B.030, the legislature in 1995 also adopted RCW
10 43.21C.240. That statute prohibits SEPA review and mitigation if those objectives have
11 already been adequately addressed in existing development standards and comprehensive
12 plans. Implementation of RCW 43.21C.240 is outlined in more detail in the Department
13 of Ecology’s adoption of WAC 197-11-158. Application of that WAC to this appeal is
14 determinative in assessing whether existing regulations adequately address parking and
15 traffic impacts as asserted by the Applicant and City. The applicable provisions of WAC
16 197-11-158 are quoted below in italics and applied in corresponding conclusions of law.

15 The disagreement between the parties on traffic is somewhat the reverse of those
16 associated with parking. The parties do not disagree that the City’s development
17 standards and comprehensive plan adequately analyze and mitigate traffic impacts.
18 Rather the parties disagree as to whether those development standards are met,
19 specifically the Level of Service D standard for the City’s arterial intersections. Those
20 material questions of fact narrow down to differences of professional judgment exercised
21 by the City’s public works director, Mr. King and the Appellant’s traffic engineer, Mr.
22 Haynes. Mr. King’s judgment is found determinative in this appeal because of his greater
23 familiarity with the traffic conditions of the project site, historical data consistent with
24 LOS conformance and the substantial weight to be given the findings of the SEPA
25 responsible official under WAC 197-11-680.

23 **WAC 197-11-158(1):** *In reviewing the environmental impacts of a project and making
24 a threshold determination, a GMA county/city may, at its option, determine that the
25 requirements for environmental analysis, protection, and mitigation measures in the
26 GMA county/city’s development regulations and comprehensive plan adopted under
27 chapter 36.70A RCW, and in other applicable local, state, or federal laws or rules,
28 provide adequate analysis of and mitigation for some or all of the specific adverse
29 environmental impacts of the project.*

29 4. City Opted to Use Existing Plans/Policies to Address Parking and Traffic. The SEPA
30 responsible official clearly based her SEPA analysis and mitigation upon existing

development standards and policies as authorized by WAC 197-11-158(1). WAC 197-11-158 doesn't require any specific means of notice regarding SEPA reliance upon existing standards and policies. Nonetheless the record is clear that the SEPA responsible official based her review of parking and traffic impacts on existing standards as determined in Finding of Fact No. 8.

WAC 197-11-158(2): *In making the determination under subsection (1) of this section, the GMA county/city shall:*

(a) Review the environmental checklist and other information about the project;

5. Ms. Bolin Reviewed Required Information. Ms. Bolin reviewed the environmental information required by WAC 197-11-158(2)(a) as determined in Finding of Fact No. 10.

WAC 197-11-158(2)(b): *Identify the specific probable adverse environmental impacts of the project and determine whether the impacts have been:*

(i) Identified in the comprehensive plan, subarea plan, or applicable development regulations through the planning and environmental review process under chapter 36.70A RCW or this chapter, or in other local, state, or federal rules or laws; and

6. Parking and Traffic Impacts Properly Identified in Development Standards and Policies. With the exception of parking trespass, parking and traffic impacts are addressed in the City's comprehensive plan, development standards and associated review as identified in Finding of Fact No. 9.

WAC 197-11-158(2)(b): *[determine whether impacts are] (ii) Adequately addressed in the comprehensive plan, subarea plan, applicable development regulations, or other local, state, or federal rules or laws by:*

(A) Avoiding or otherwise mitigating the impacts; or

(B) The legislative body of the GMA county/city designating as acceptable the impacts associated with certain levels of service, land use designations, development standards, or other land use planning required or allowed by chapter 36.70A RCW;

7. Traffic Impacts and Parking Impacts other than Parking Trespass Designated Acceptable. The parking and traffic impacts other than parking trespass are designated as acceptable under city parking and traffic development standards.

Other than parking trespass, the impacts of limited parking are clear. Limited parking causes inconvenience to persons visiting downtown Port Townsend, whether it be tourists, employees or residents. Limited parking could also adversely affect economic

1 development by arguably making downtown Port Townsend less desirable for consumers.
2 However, economic competition is not an element of the environment subject to SEPA
3 review. *Indian Trail Prop. Owner's Ass'n v. City of Spokane*, 76 Wash. App. 430, 444,
4 886 P.2d 209, 218 (1994).

5 The inconvenience and headaches caused by limited parking was well documented in the
6 surveys and usage rates outlined in the 2004 parking management plan. As previously
7 noted, the downtown parking exemption, PTMC 17.72.020B, was adopted by the City
8 Council just months after issuance of the 2004 study by Ordinance 2893 in 2005. Despite
9 the findings of the study, the City Council still limited the exemption of the 2005
10 ordinance to the nonresidential zoning districts of the Historic Overlay District pursuant
11 to PTMC 17.72.020B. No other area in the City was granted such an exemption by the
12 2005 ordinance or any pre-existing parking regulations. With detailed knowledge of the
13 impacts of its actions, the City Council's decision to not require parking in the downtown
14 historic district must be taken as a legislative determination that the parking impacts were
15 acceptable.

16 The Comprehensive Plan clearly designates the trip generation of the proposal within
17 acceptable levels. Policy 10.4 of the Transportation Element of the City's
18 Comprehensive Plan adopts level of service D as acceptable traffic congestion. That
19 LOS standard is met for all potentially affected intersections as determined in Finding of
20 Fact No. 11.

21 8. SEPA Mitigation Required for Parking Trespass. As outlined in Conclusions of Law
22 2-6, the City's SEPA review was properly based upon existing comprehensive plan
23 policies and development standards under WAC 197-11-508 for the inconvenience
24 caused by limited parking spaces. However, as noted in Conclusion of Law No. 5,
25 parking trespass was not addressed in the City's adopted policies and development
26 standards. For that reason, the impacts of parking trespass must be mitigated or an
27 environmental impact statement must be prepared. A mitigation measure is adopted by
28 this decision that prevents the need for an environmental impact statement.

29 The primary criteria for assessing the validity of the SEPA threshold absent reliance upon
30 WAC 197-11-158 is whether the proposal has a probable significant environmental
impact. See WAC 197-11-330(1)(b). WAC 197-11-782 defines "probable" as follows:

'Probable' means likely or reasonably likely to occur, as in 'a reasonable probability of more than a moderate effect on the quality of the environment' (see WAC 197-11-794). Probable is used to distinguish likely impacts from those that merely have a possibility of occurring, but are remote or speculative. This is not meant as a strict statistical probability test.

1 If such impacts are created, conditions will have to be added to the DNS to reduce impacts
2 so there are no probable significant adverse environmental impacts. In the alternative, an
3 environmental impact statement would be required for the project. In assessing the
4 validity of a DNS, the determination made by the City's SEPA responsible official shall
be entitled to substantial weight. WAC 197-11-680(3)(a)(viii).

5 As determined in Finding of Fact No. 7, parking trespass is an impact that can
6 significantly and likely affect private property owners, especially the Appellant's strip
7 mall located across Water Street from the proposal. A condition of approval requiring
8 shuttle service to the Haines Park-and-Ride along with notice discouraging parking
trespass should reduce this impact to nonsignificant levels.

9 9. Appeal Issues. The Appellant's seven appeal issues all assert deficiencies in
10 environmental analysis and mitigation. As determined in Conclusions of Law No. 3-8,
11 except for parking trespass the City and Applicant have established conformance to WAC
12 197-11-158. As identified in WAC 197-11-158(1), a city may find that its comprehensive
13 plan and development standards provide for adequate environmental analysis and
14 mitigation. As identified in WAC 197-11-158(5), if the City determines that its
15 comprehensive plan and development standard adequately mitigate and assess
16 environmental impacts, no further mitigation can be required. Since the City has
17 complied with WAC 197-11-158 for all impacts except parking trespass, no additional
18 parking analysis is necessary and no additional mitigation can be imposed except for
parking trespass. Any deficiencies in parking review and mitigation (except for parking
trespass) identified in Appellant's appeal issues are rendered moot by the City's
conformance to WAC 197-11-158.

19 It is also noteworthy that City is prohibited from considering additional mitigation for
20 traffic impacts even if it didn't opt to use WAC 197-11-158. As noted in Conclusion of
21 Law No. 6, RCW 36.70B.030(3) prohibits a reexamination of alternatives for public
22 facilities addressed in comprehensive plans and development standards where funding
23 has been addressed in those plans and standards. As required by the Growth Management
24 Act, the transportation element of the City's comprehensive plan contains a detailed
25 assessment of transportation demand and how the improvements necessary for that
demand are to be funded.

26 GMA transportation planning requirements are likely exactly what the legislature had in
27 mind when adopting RCW 36.70B.030(3). The applicability of RCW 36.70B.030(3) to
28 parking is not as clear, since it's debatable whether City standards and policies address
29 the funding for parking needs. PTMC 17.72.020B requires parking no protest agreements
30 for development subject to that parking exemption. The record identifies no plans for

1 implementing those no protest agreements so it is unclear whether that requirement alone
2 sufficiently conforms to the funding element of RCW 36.70B.030.

3 Issue No. 4 of Appellant's appeal alleges noncompliance with the City's cumulative
4 impacts policy as adopted by PTMC 19.04.270. The City likely doesn't have to comply
5 with PTMC 19.04.270 given that the City can deem its environmental review "adequate"
6 since it conforms to WAC 197-11-158. However, even if the cumulative impact
requirement does still apply, it has been met as outlined in Finding of Fact No. 12.

7 Finally, Issue No. 5 of Appellant's appeal alleges that the SEPA review was based upon
8 incomplete and unavailable information and that as such a worst case analysis should
9 have been conducted. As determined in Finding of Fact No. 7 the one parking and traffic
10 impact that wasn't considered in the City's comprehensive plan and development
11 standards and associated adoption process was parking trespass. However, the mitigation
12 added by this decision should reduce parking trespass impacts to a nonsignificant level.
Consequently, no further assessment or mitigation is necessary.

13 DECISION

14 The SEPA appeal is granted in part. The MDNS of the project is supplemented with the
15 following additional mitigation measure:

16 The hotel shall provide shuttle service to its guests available within a half hour
17 of request between the Haines Park-and-Ride and the project site. The shuttle
18 service shall be made available when public shuttle service is not available.
19 Written notice of the shuttle service shall be provided at check-in or before.
20 The written notice shall also identify that parking on private lots is illegal
21 without consent of the owners. The notice shall specifically identify that
22 parking on the property currently owned by Shadeland is not authorized
except as authorized by the owner.

23 Alternatives to shuttle service can be offered by the hotel provided that the
24 service shall be available within a half hour of request. As an alternative to
25 the park-and-ride the hotel may arrange for other lawful off-site parking.
26 Shuttle service shall be provided for any parking site more than three blocks
from the hotel.

27 Issued this 7th day of October 2025.

28
29 *Phil Olbrechts*

30 City of Port Townsend Hearing Examiner

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Appeal Right and Valuation Notices

This land use decision is final and subject to appeal to superior court as governed by Chapter 36.70C RCW. Appeal deadlines are short, and procedures strictly construed. Anyone wishing to file a judicial appeal of this decision should consult with an attorney to ensure that all procedural requirements are satisfied.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.