IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

NO. 882287

WHIDBEY ENVIRONMENTAL ACTION NETWORK,

Appellant,

v.

CITY OF OAK HARBOR,

Respondent.

APPELLANT'S REPLY BRIEF

Bryan Telegin, WSBA No. 46686
Abigail McCeney, WSBA No. 63974
TELEGIN LAW PLLC
216 6th Street
Bremerton, WA 98337
(206) 453-2884
bryan@teleginlaw.com
abigail@teleginlaw.com

Attorneys for Appellant Whidbey Environmental Action Network

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Washington Administrative Code

Oak Harbor Municipal Code

INTRODUCTION

The City's response brief is filled with distractions that do not address the SEPA[1] issues raised in this appeal, and which paint a decidedly false narrative of the facts of this case. For example, the City continues to assert that the passage of Ordinance 1999 was not related to any particular development project or effort to develop Hal Ramaley Memorial Park.[2] In reality, the record shows plainly that Ordinance 1999 was passed specifically to advance the Hilton Hotel project discussed in WEAN's opening brief—to remove the "roadblock" imposed by the public vote requirement of Ordinance 1110. *See* Op. Br. at 19–22; CP 420.

As in *Friends of Sammamish Valley*, Ordinance 1999 was designed specifically to "create opportunities" for development that did not previously exist—specifically, an opportunity for the

---

[1] SEPA refers to the State Environmental Policy Act, chapter 43.21C RCW.

[2] *See, e.g.,* City Resp. at 1 (arguing that any linkage between the new ordinance and the hotel project "misses the mark" because no formal permit application has been submitted).

City to convey a portion of Hal Ramaley Memorial Park to the hotel developer, so that the hotel developer can pave it over for a parking lot. *See King Cnty. v. Friends of Sammamish Valley*, 3 Wn.3d 793, 821, 556 P.3d 132 (2024). Not only does the new ordinance create a clear pathway for development, but the hotel project was also already well developed when the new ordinance was adopted, leaving little doubt as to exactly what the ordinance was designed to enable.

The City also argues that its general authority to repeal or amend an ordinance defeats the applicability of SEPA, as if SEPA only applies to actions that are beyond the City's authority to take. City Resp. at 33–35. But the whole point of SEPA is to require environmental review of actions that are otherwise legal. The relevant question here is not whether the City can or cannot amend Ordinance 1110 as a general matter, but whether the new ordinance (Ordinance 1999) qualifies as a nonproject action under SEPA by amending or adopting standards that control the use or modification of the environment. WAC 197-11-

704(2)(b)(i). By restoring the City Council's unilateral authority to approve parkland conversion without a citizen vote—and by specifying the substantive standards under which that authority will be exercised—the City enacted a substantive, nonproject action under WAC 197-11-704(2)(b)(i), triggering SEPA.

In the end, the City's response turns on a single flawed premise: that the public voting requirement subverted by Ordinance 1999 was nothing more than a revocable "governmental procedure," and that the new ordinance merely changed "the manner in which [the City] transfers park land." City Resp. at 28. That premise is incorrect. The voting requirement adopted in 1997 through the passage of Ordinance 1110 was not a governmental procedure or administrative step in the City's decision-making process, but a substantive restriction on the City's authority to sell, lease, or otherwise dispose of public parkland for private commercial development. The City's contrary position relies on a false equivocation between (1)

internal governmental procedures and (2) legal mechanisms that allocate decision-making power and control land use outcomes.

Ordinance 1110 provided, in relevant part, that "[d]eveloped City park property shall not be disposed of in any manner without citizen approval in an election." CP 95. This provision completely stripped the City itself of any power to sell, lease, or otherwise dispose of public parklands for private commercial development, vesting that substantive decision-making authority entirely in the citizens of the City of Oak Harbor.

Ordinance 1999 later amended that provision and added new, substantive criteria allowing the City Council to convey public parklands for private development whenever the Council finds, *inter alia*, that there is a 1:1 property exchange ratio of land or greater in benefit to the City, that the privately owned land is of equal or greater market value than the publicly owned land, and that the privately owned land is an "appropriate replacement" for the park property to be conveyed. OHMC

1.30.010(2)(a). In short, the City went from having zero power to convey public parklands for private commercial development under Ordinance 1110, to having such authority under Ordinance 1999 so long as specific substantive standards are met. The change was not merely "procedural." It was entirely substantive.

Because Ordinance 1999 amended the public voting requirement in Ordinance 1110 and replaced it with new, substantive standards authorizing conversion of public parkland to non-park use, it constitutes a nonproject action subject to SEPA and is not categorically exempt as a purely "procedural" amendment.

ARGUMENT

A. Ordinance 1999 was adopted specifically to advance a private hotel project at Hal Ramaley Memorial Park.

The City continues to assert that Ordinance 1999 is not related to the Hilton Hotel project and that, because no "development regulation" is at issue, SEPA does not apply. City Resp. at 26–28. But it is not reasonably debatable whether

Ordinance 1999 had its genesis in the City's pursuit of development adjacent to Hal Ramaley Memorial Park.

The record includes clear evidence of the preapplication proposal for the Hilton project, including submissions of iterative versions of detailed plans, floor layouts, façade details, and project renderings. *See* CP 300–309. The record also shows ongoing discussions between the City and developer regarding the "roadblock" presented by the public vote requirement of Ordinance 1110, and how Ordinance 1999 was designed to eliminate that roadblock. CP 311, 319. The evidence confirms that Ordinance 1999 was adopted specifically to facilitate a private development proposal that was already being actively explored. Indeed, the City even asked the developer to expand the project, to make it more "impactful" with "more urban density, pedestrian activity, and business activity for downtown Oak Harbor." CP 45.

The City's attempt to distinguish *Friends of Sammamish Valley* and *Clark County*—on the basis that Ordinance 1999 is not

a "development regulation"—fails. SEPA does not require that a challenged action itself *approve* development or take the form of a zoning regulation. Rather, it is enough that the action creates a predictable pathway for environmentally significant land-use change. *See Friends of Sammamish Valley*, 3 Wn.3d at 821–22. Nothing in the *Friends of Sammamish* decision—or in *Clark County*—limits SEPA's reach specifically to formal development regulations. *Id. See also Clark Cnty. v. Western Growth Mgmt. Hrgs. Bd.*, 33 Wn. App. 2d 1093, 2025 WL 752009, *4 (Mar. 10, 2025; unpublished).

Here, the City's passage of Ordinance 1999 is undeniably intended to advance development at Hal Ramaley Memorial Park by eliminating the public vote barrier and replacing it with new, substantive criteria for land swaps between the City and private developers—a necessary prerequisite to the private development of any City-owned parkland. Even if no formal permit application has been submitted for the Hilton Hotel project, "[a]mple evidence exists in the record showing what businesses are likely to operate

in this area, which is sufficient to inform an environmental review." *Friends of Sammamish Valley,* 3 Wn.3d at 822.

As emphasized in WEAN's opening brief, the point of SEPA is not to conduct environmental review only when a potential project is certain to succeed, or when a formal permit application has been submitted. Instead, SEPA review is required "at the *earliest possible time* to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and to seek to resolve potential problems." WAC 197-11-055 (emphasis added). Thus, when an agency has taken steps towards facilitating a certain project—as the City did in this case—the environmental impacts of that project must be considered early to avoid the snowballing effect of administrative inertia. *Int'l Longshore & Warehouse Union, Loc. 19 v. City of Seattle*, 176 Wn. App. 512, 521, 309 P.3d 654 (2013) (citing Rodgers, The Washington Environmental Policy Act, 60 Wash.L.Rev. 33, 54 (1984)).

The City's actions fall squarely within this principle, and the City cannot argue that it is immune from SEPA simply because there is no zoning regulation at issue and no formal permit application on the table.

B. The City's authority to convey real property is still subject to SEPA.

The City argues that it holds express power to transfer property under RCW 35A.11.010 and therefore adopting an ordinance related to such authority is not subject to SEPA review. City Resp. at 33. WEAN does not dispute that the City has general authority to convey real property, or to adopt and repeal ordinances related to those powers. *See* RCW 35A.11.010. But the relevant question is not whether the City has such authority. The question is whether the exercise of that authority triggers SEPA.

In this case, the answer to that question depends on whether the City's adoption of Ordinance 1999 is a substantive nonproject action. The City's general authority to pass an ordinance and to covey real property under RCW 35A.11.010 does not negate its

obligation to assess the environmental impacts of legislative actions that amend or impose controls on the use or modification of the environment. WAC 197-11-704(2)(b)(i). *See also Donwood, Inc. v. Spokane County*, 90 Wn. App. 389, 398, 957 P.2d 775 (1998) ("SEPA itself overlays and supplements all other state laws.") (citing RCW 43.21C.120(3)). Indeed, the whole point of SEPA is to require environmental review of government actions that are otherwise entirely illegal. If SEPA only applied to illegal actions, it would not apply at all.

For the reasons discussed in our opening brief and in more detail below, the City's adoption of Ordinance 1999 *is* a nonproject action that is subject to SEPA review, specifically because it represents the "adoption or amendment of legislation . . . that contain[s] standards controlling use or modification of the environment." WAC 197-11-704(2)(b)(i).

/ / /

/ / /

/ / /

C. The City's representation of Ordinance 1999 as purely procedural is a false narrative.

The City's response repeatedly mischaracterizes Ordinance 1999 as a procedural amendment that merely tinkers with the "manner" in which City conveys real property. City Resp. at 28, 33. In reality, the passage of Ordinance 1999 claws back a substantive limitation on the City's ability to convey park property to other, outside interests, including land developers.

While it is true that the City has statutory authority to convey real property, the passage of Ordinance 1110 granted the people of Oak Harbor the substantive authority to disapprove of the disposal of public parklands for any other use. CP 95; CP 120 (Lindenburg Decl., Ex. F at 1). The City Council has even admitted that the purpose of the voting requirement "was to ensure that developed park property would not be sold or transferred to private parties for private use or economic gain." CP 102 (Lindenburg Decl., Ex. F at 1 (emphasis added)). That is clearly a

substantive restriction on the private development of city-owned parklands.

The City's reliance on *International Longshore* to argue that the ordinance is simply about "process" is misguided. The City argues that the language in both Ordinance 1110 and Ordinance 1999 merely specifies permissible processes to transfer park property, and that a "decision about the process that will be used to make a decision" is not subject to SEPA. *See* City Resp. at 21 (citing *International Longshore,* 176 Wn. App. at 521–22). What the City misses is that under Ordinance 1110, it had *no* authority to make *any* decision about the sale, lease, or transfer of public park property for private commercial development. Only the public held that authority, and the City is now attempting to claw that authority back specifically to advance a private development project at Hal Ramaley Memorial Park, without evaluating the environmental impacts of its action under SEPA.

The City also asserts that it has substantive authority to convey real property under RCW 35A.11.010. That is true. But through the passage of Ordinance 1110, the City transferred that authority to the people of Oak Harbor, giving them the substantive authority to approve or reject the conveyance of public parklands for private development. The City cannot rationally argue that when *it* holds decision-making authority over parklands it is substantive, but when the people hold such authority, it is merely "procedural." It is substantive in both instances, and it is substantive to take it away as the City did through the passage of Ordinance 1999.

Through the adoption of Ordinance 1999, the City also established new substantive standards as an alternative to the public vote requirement. Under the new ordinance, a developer can bypass the vote requirement and take ownership of public parklands for private commercial development by offering a 1:1 property exchange (or "replacement") of equal or lesser value, and where the Council determines that the new land conveyed to the

City is an "appropriate replacement" and "beneficial to the city based on park needs, location, environmental standards and accessibility to park users." CP 105–06 (Lindenburg Decl., Ex. G at 1–2); OHMC 1.30.010(2)(a). These requirements are not merely procedural but represent substantive standards governing the conveyance of public parklands for private commercial development.

In all, Ordinance 1999 does not merely tinker with the City's procedure for conveying public parks. Instead, it replaces the substantive authority that was given to the citizens of Oak Harbor in Ordinance 1110 with new work-around exceptions that allow private developers to bypass the citizen approval requirement by complying with new, substantive standards for the conveyance of city parks. The City's representation of the public voting requirement as purely procedural is false.

/ / /

/ / /

/ / /

D. The City's adoption of Ordinance 1999 is a nonproject action subject to SEPA.

In making the argument that the Ordinance 1999 is not an action triggering SEPA review, the City relies on its false equivocation between the substantive and procedural nature of the ordinance. The City argues that the new ordinance merely describes the "procedure" for the sale of real property. City Resp. at 19–20. But in reality, Ordinance 1999 fundamentally changes who has authority to approve the sale, exchange, or replacement of public parklands for private development. The ordinance also creates new, substantive standards that the City Council will employ when deciding whether to convey public land for private development. In these ways, Ordinance 1999 clearly meets the description of a nonproject action under SEPA, specifically by "amending" or "adopting" legislation that "contain[s] standards controlling use or modification of the environment." WAC 197-11-704(2)(b)(i).

1. Ordinance 1999 amends OHMC Chapter 1.30, which contains standards controlling use or modification of the environment.

The City argues that "Ordinance 1999 does not enact a regulation that controls the use or modification of the environment," but instead concerns only the conveyance of real property. City Resp. at 18–20. In making this argument, the City imagines that the conveyance of city-owned parklands is entirely divorced from the subsequent development of those lands for private commercial gain. But the two are inherently and intrinsically linked.

In order for public parklands to be privately developed for a non-park use, they must, of necessity, be sold, leased, exchanged, replaced, or otherwise disposed of within the meaning of Ordinance 1110. It is for this reason that the City itself has described the public vote requirement of that ordinance as a substantive restriction on the private development of public parks. *See* CP 102 (explaining that the purpose of the vote requirement "was to ensure that developed park property would not be sold or

transferred to private parties for private use or economic gain"). In essence, the public vote requirement of Ordinance 1110 served as a substantive restriction on land development precisely by restricting the City's power to convey public parklands for that purpose. The "standard" imposed by Ordinance 1110 was that no public parklands could be conveyed for private development unless the same was deemed to be acceptable by the public at large.

In turn, by narrowing the public vote requirement in Ordinance 1999, the City is necessarily weakening the very requirement that the City itself imposed as a substantive restriction on the private development of public parks. Such a change falls squarely within the definition of a nonproject action under SEPA, which includes not just the enactment, but also the "amendment" of any legislation that "contain[s] standards controlling use or modification of the environment." WAC 197-11-704(2)(b)(i). By amending and weakening the public vote requirement—which was itself enacted as a substantive control on the private development

of public parks—the City undertook a nonproject action under SEPA.

Indeed, there is no better illustration of the fact that Ordinance 1999 was designed specifically to remove a substantive restriction on the private development of Hal Ramaley Memorial Park than the overwhelming amount of public comments in opposition to the new ordinance. *See* CP 497 (Jackson Decl. ¶ 11). Members of the public clearly understood the purpose of Ordinance 1999 as a means to suppress the public approval requirement and to facilitate the Hilton hotel project, in particular. *Id*. City officials themselves recognized this, repeatedly describing the new ordinance as paving the way for the new hotel project. *See* Op. Br. at 19–21 (collecting citations).

2. Ordinance 1999 itself contains new standards controlling use or modification of the environment.

The passage of Ordinance 1999 also qualifies as a nonproject action because it contains new, substantive standards under which private developers can obtain public parklands for

their own private development projects. *See* WAC 197-11-704(2)(b)(i) (defining "nonproject action" as the "adoption *or* amendment of legislation . . . that contain[s] standards controlling use or modification of the environment") (emphasis added).

Specifically, under the new ordinance, they City can now convey public parklands to private developers when the conveyance is supported by a 1:1 exchange of land of equal or greater monetary value, where the City Council itself determines that the replacement property is "beneficial to the city based on park needs, location, environmental standards and accessibility to park users," and where these elements of the exchange are embodied in a "development agreement between the city and private entity." CP 105–06 (Lindenburg Decl., Ex. G at 1–2); OHMC 1.30.010(2)(a). These standards are clearly substantive, not procedural, even if they do not fully encompass every consideration that would be relevant in determining the public value of a particular park (for example, they do not include

historical value, which would be relevant to Hal Ramaley Memorial Park as the home of one of the Nation's first food forests, *see* Op. Br. at 12–13).

In turn, these new substantive standards control the use or modification of the environment insofar as the conveyance, lease, or other disposal of public parklands is an obvious prerequisite to developing those lands for private commercial gain. Any argument to the contrary ignores the logical connection between conveying such lands to a private entity and later developing them. The former is a necessary prerequisite for the latter, as evidenced by the fact that the property exchange is to be evaluated on the basis of a proposed "development agreement" with the "private entity" to which the parklands will be conveyed. CP 105–06; OHMC 1.30.010(2)(a). Under Ordinance 1999 and the new, substantive standards of OHMC 1.30.010(2)(a), the whole point of conveying public parklands is to develop and convert them to a non-park use.

By (a) weakening the public vote requirement of Ordinance 1110 (a requirement that the City itself intended as a substantive restriction on the private development of public parklands) and (b) adopting new, substantive standards for the conveyance of public parklands for non-park purposes (a necessary prerequisite to any private development of City-owned parklands), the City's passage of Ordinance 1999 fits the plain-language definition of a nonproject action under SEPA. The superior court erred in holding otherwise.

E. Ordinance 1999 is not categorically exempt from SEPA as a "procedural action."

In addition to disputing that Ordinance 1999 is a nonproject action under SEPA, the City also argues that, even if it were a nonproject action, it is "categorically exempt" from SEPA under WAC 197-11-800(19). *See* City Resp. at 31. That provision of the State SEPA code exempts so-called "procedural actions" that "[r]elat[e] *solely* to governmental procedures" and that "contain[] *no* substantive standards respecting use or

modification of the environment" (emphasis added). That SEPA exemption does not apply here.

As discussed above, the amendment of the public vote requirement adopted in Ordinance 1999 does not relate "solely to governmental procedures." It does not simply rearrange or amend internal steps or timelines in the government's internal decision-making process or even re-allocate who (within the City) gets to make the decision. Instead, it fundamentally takes away the power of the people to decide the fate of public parklands—a power that, under Ordinance 1110, rested *outside* the government—and places that decision-making authority *within* the City government itself. In this way, Ordinance 1999 does not relate to "governmental procedures." At best, it can be described as eliminating an *extra*- or *non*-governmental procedure—designed to stand as a bulwark against the exploitation of public parklands for private commercial gain—and replacing that extra-governmental procedure with a new procedure internal to the government itself.

In short, Ordinance 1999 does not relate "solely to governmental procedures" precisely because the thing it takes away—the public vote requirement of Ordinance 1110—is not a governmental procedure. There may, of course, be governmental procedures associated with administering, conducting, and counting the vote. But the right to vote itself is not a governmental procedure. It is a right of the people (not the government) to restrain their government from acting in the first place.

Nor is it true that Ordinance 1999 contains "no substantive standards respecting use or modification of the environment." The whole point of Ordinance 1999 is to replace the public vote requirement with new, substantive standards for the exchange of city-owned parklands for privately owned non-parklands, where (a) the exchange is intended to facilitate private commercial development (i.e., modification) pursuant to a development agreement, and (b) where the exchange would clearly affect the "use" of land since the public parklands conveyed to the "private

entity" will no longer be available for park use (hence the need for a "replacement" of park property in the words of Ordinance 1999). CP 105–06; OHMC 1.30.010(2)(a).

Facilitating these types of land use changes is precisely what Ordinance 1999 was designed to accomplish, specifically by avoiding the "roadblock" of the public voting requirement and establishing new, substantive standards for land exchanges needed for private development. CP 420. That is exactly how it is being used here to facilitate a private hotel project that would pave over a portion of Hal Ramaley Memorial Park.

Because Ordinance 1999 does not relate "solely to governmental procedures" and does, in fact, contain "substantive standards respecting use or modification of the environment," the City's passage of that ordinance is not categorically exempt from SEPA under WAC 197-11-800(19). The superior court erred in holding otherwise.

/ / /

/ / /

CONCLUSION

Ordinance 1999 did far more than adjust internal governmental procedures. It eliminated the public voting requirement that restricted the City's ability to convey public parks for private commercial development, and replaced that requirement with new, substantive standards for conveying public land to private entities, taking those lands entirely out of the City's park system. The City's adoption of Ordinance 1999 therefore constitutes a nonproject action that contains standards controlling the use or modification of the environment. The ordinance is not categorically exempt under WAC 197-11-800(19). The ordinance cannot be passed without the City first evaluating the potential impacts of its actions under SEPA.

WEAN respectfully requests that this Court reverse the superior court's order granting summary judgment to the City and remand with instructions that Ordinance 1999 be set aside unless and until the City complies with SEPA.

Dated this 20th day of January, 2026.

Respectfully submitted,

TELEGIN LAW PLLC

The undersigned certifies that this brief contains 3,961 words, in compliance with RAP 18.17(c)(3).

By: _____

Bryan Telegin, WSBA No. 46686
Abigail McCeney, WSBA No. 63974
216 6th Street
Bremerton, WA 98337
Tel: 1.206.453.2884
E-mail: bryan@teleginlaw.com
abigail@teleginlaw.com

Counsel for Appellant Whidbey Environmental Action Network

CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, I served a copy of the foregoing Appellant's Reply Brief by email on the following persons:

Hillary J. Evans
Robert D. Zeinemann
Kenyon Disend, PLLC
11 Front Street So.
Issaquah, Washington 98027
Via email to *Hillary@KenyonDisend.com*
Robert@KenyonDisend.com
margaret@kenyondisend.com

Dated this 20th day of January, 2026.

TELEGIN LAW PLLC

By: JTelegin
Jamie Telegin, Legal Assistant

TELEGIN LAW PLLC

January 20, 2026 - 10:16 AM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	88228-7
Appellate Court Case Title:	Whidbey Enviromental Action Network, v. City of Oak Harbor
Superior Court Case Number:	24-2-00479-8

The following documents have been uploaded:

- 882287_Briefs_20260120101510D1894895_7121.pdf
  This File Contains:
  Briefs - Appellants Reply
  The Original File Name was 2026 01 20 Reply Brief FINAL.pdf

A copy of the uploaded files will be sent to:

- Margaret@kenyondisend.com
- abigail@teleginlaw.com
- antoinette@kenyondisend.com
- hillary@kenyondisend.com
- robert@kenyondisend.com

Comments:

Sender Name: Jamie Telegin - Email: jamie@teleginlaw.com
Filing on Behalf of: Bryan James Telegin - Email: bryan@teleginlaw.com (Alternate Email: jamie@teleginlaw.com)

Address:
216 6th Street
Bremerton , WA, 98337
Phone: (206) 453-2884 EXT 102

Note: The Filing Id is 20260120101510D1894895