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THE HEARING EXAMINER OF BAINBRIDGE ISLAND

RE:

Dawn Janow

SEPA Appeal of Ordinance No. 2025-21

ORDER GRANTING CITY’S MOTION  
FOR SUMMARY JUDGMENT

The City’s motion for dismissal is granted. As pertinent, RCW 43.21C.495(4) prohibits City administrative appeals of the SEPA<sup>1</sup> review assessing the environmental impacts of the adoption of ordinances that implement the housing element of the City’s comprehensive plan. The Appellant’s appeal falls squarely within that prohibition.

The Appellant has made a valiant effort to render the plain and clear terms of a statute ambiguous. No such ambiguity is found. There is no question that the SEPA review under appeal assesses the environmental impacts of the adoption of Ordinance 2025-21. There is no question that Ordinance 2025-21 implements the housing element of the City’s comprehensive plan.

**Evidence Relied Upon**

1. City’s February 18, 2026 Motion for Dismissal.
2. Appellant’s February 25, 2026 response.
3. City’s February 27, 2026 reply.
4. March 10, 2025 Oral Argument

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

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**Analysis**

43.21C.495(4) mandates dismissal appeal 43.21C.495(4) prohibits City-level administrative SEPA appeals of ordinances that implement the housing element of City comprehensive plans. The Appellant’s appeal qualifies as such an appeal.

RCW 43.21C.495(4) provides as follows:

*(4) Adoption of ordinances, development regulations and amendments to such regulations, and other nonproject actions by a city or county to implement the housing element requirements set forth in RCW 36.70A.070(2) are not subject to administrative or judicial appeals under this chapter.*

The Appellant’s opposition to the City’s motion is premised upon three factors: (1) for an ordinances, RCW 43.21C.495(4) only applies to administrative appeals filed after adoption of the ordinance; (2) Ordinance 2025-21 is a project specific decision; and (3) the RCW 43.21C.495(4) exemption doesn’t apply to development in critical areas. These three issues will be addressed after addressing the timing of the motion and whether Ordinance 2025-21 implements the housing element of the City’s comprehensive plan.

***Timing of City’s Motion***

The Appellant does not contest the timing of the City’s motion to dismiss. As briefed by the City, subject matter jurisdiction can be brought up at any time. Case law is clear that a party may raise a lack of subject matter jurisdiction at any time during a proceeding, including on appeal. *Skagit Surveyors & Eng’rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 556, 958 P.2d 962 (1998). While ideally the City would have filed its motion earlier, the timing of the motion is not so restricted. The City has properly brought its dismissal motion for consideration at this time.

***Implementation of Housing Element***

Ordinance No. 2025-21 clearly implements the housing element of the City’s comprehensive plan.

The affordable housing objectives of Ordinance 2025-21 are clearly expressed in the first three whereas clauses of the ordinance as follows:

***WHEREAS***, *the Bainbridge Island City Council has identified affordable housing as a City priority and is committed to expanding the supply*

1 of housing on the Island that serves lower income households, particularly  
2 families with children, employees of Bainbridge Island businesses and public  
3 agencies, and seniors who might otherwise be displaced from the community;  
4 and

5 **WHEREAS**, amending the City’s applicable floor area ratio (FAR)  
6 requirements, height requirements, and parking requirements to align the same  
7 with the financial realities of affordable housing development is an important  
8 step toward meeting the City’s obligation under the Growth Management Act  
9 to plan for and accommodate housing that is affordable to all economic  
10 segments of the population; and

11 **WHEREAS**, the City staff presented draft amendments to the  
12 Bainbridge Island Planning Commission on August 14, 2025 which, among  
13 other things, would have increased the FAR for properties in the Ferry and  
14 Core zoning districts to 3.0, increased building height to 65 feet, and set the  
15 minimum parking requirements at 0.5 spaces per unit, for development projects  
16 with 100% of the residential dwelling units designated as affordable; and

17 Code amendments designed to facilitate affordable housing projects are expressly  
18 encouraged in the housing element of the City’s comprehensive plan. The following  
19 housing element goals and policies are directly implemented by Ordinance No. 2025-21:

20 *Policy HO 4.2 ...[R]evise development standards for the High School Road  
21 and Ferry Terminal districts and other portions of the Winslow Area Master  
22 Plan to encourage the transformation of these areas from auto-oriented,  
23 low-rise, homogeneous commercial land use districts into walkable, transit-  
24 served, mid-rise, mixed-use areas with affordable housing.*

25 *Policy HO 4.5: Remove barriers to the creation of new multifamily housing,  
26 particularly affordable housing through a variety of actions such as the  
27 adoption of regulations that “right-size” parking requirements, reduce  
28 certain impact fees and encourage the use of parking management  
29 programs to enable the more efficient use of parking.*

30 *Goal HO-6: Facilitate the provision of a diverse affordable housing stock  
in all geographic areas of the community.*

*HO Action #2: Amend the City’s development code to facilitate an increase  
in the diversity of housing types and supply of affordable housing.*

1 As noted in the whereas clauses quoted above, Ordinance No. 2025-21 relaxes the City’s  
2 floor area ratios, parking and height standards to make affordable housing projects more  
3 feasible and thus facilitates their construction. That type of action directly implements  
4 the HO 4.2 goal to revise development standards to transform areas with more affordable  
5 housing; the HO 4.5 goal to remove development standards to affordable housing; the  
6 HO-6 goal to facilitate the provision of affordable housing stack; and the HO Action #2  
7 to amend development standards to facilitate the supply of affordable housing.

8 ***RCW 43.21C.495(4) Applies to City Administrative SEPA Appeals***

9 The Appellant asserts that RCW 43.21C.495(4) doesn’t apply to the environmental  
10 review of Ordinance No. 2025-21 because the ordinance hasn’t been adopted yet. No such  
11 limitation is found in RCW 43.21C.495(4). RCW 43.21C.495(4) applies to the  
12 environmental review of the adoption of Ordinance No. 2025-21, not the adoption of the  
13 ordinance itself.

14 The Appellant bases her position on the fact that RCW 43.21C.495(4) only applies to the  
15 “adoption” of ordinances. Based upon this, the Appellant argues that the statute only  
16 applies to SEPA appeals of ordinances that have already been adopted. That is a strained  
17 interpretation of “adoption.” In addressing the “adoption” term it’s important to  
18 recognize that RCW 43.21C.495(4) doesn’t address appeal of the adoption of ordinances,  
19 but rather as discussed below appeals of the environmental review that assesses the  
20 environmental impacts of those prospective adoptions. SEPA review addresses the  
21 environmental impacts of prospective decision making. RCW 43.21C.495(4) simply  
22 identifies the types of environmental review not subject to appeal by the type of  
23 prospective decision they are evaluating. The reference to “adoption” in RCW  
24 43.21C.495(4) refers to the City action that the City’s SEPA review is assessing.

25 In this case the SEPA review under appeal evaluates the environmental impacts of the  
26 “adoption” of Ordinance 2025-21. SEPA review is designed to create informed decision  
27 making on the environmental impacts of prospective City decisions. As well summarized  
28 by one court, “*SEPA was enacted in 1971 to ‘promote the policy of fully **informed***  
29 ***decision making** by government bodies when undertaking ‘major actions significantly*  
30 ***affecting the quality of the environment.’” Moss v. City of Bellingham, 109 Wash. App.***  
31 *6, 14 (2001)(emphasis added).* SEPA is all about evaluating environmental impacts  
32 before a decision is made. RCW 43.21C.495(4) simply identifies the types of such  
33 decisions under SEPA review that are exempt from SEPA appeals. The Appellant is  
34 appealing the SEPA review that evaluates the environmental consequences of the  
35 “adoption” of Ordinance No. 2025-21. RCW 43.21C.495(4) directly and expressly  
36 prohibits that type of SEPA appeal.

1 There's no reason to twist the simple and clear meaning of "adoption" within RCW  
2 43.21C.495(4) to render it inapplicable to City administrative SEPA appeals. Such a  
3 reading subverts the purpose of the statute. RCW 43.21C.495(4) was adopted as part of  
4 Engrossed Second Substitute House Bil 1110 (2023). Section 1 of the bill identified that  
5 its purpose was to increase affordable housing options in response to an unprecedented  
6 housing crises. On its face, RCW 43.21C.495 was designed to help meet that objective  
7 by exempting several types of actions from SEPA appeals. Elimination of SEPA appeals  
8 reduces costs and delay due to the inherently long and costly processes associated with  
9 such appeals. The time and expense of this appeal is an excellent example of the time  
10 and expense involved in such appeals. The Appellant's interpretation of "adoption"  
11 results in the exclusion of city and county SEPA appeals from the purvey of the statute.  
12 There's no reason to differentiate the time and expense involved in local appeals from  
13 those involved in other types of administrative appeals such as those in front of the  
14 Growth Management Hearings Board. Both types of administrative review processes can  
15 significantly add to delays and expense in creating affordable housing.

16 The Appellant differentiates city and county administrative SEPA appeals from the RCW  
17 43.21C.495 exemptions for state level<sup>2</sup> administrative appeals as a matter of local option<sup>3</sup>.  
18 There's no basis to differentiate local appeals in that manner from the plain terms of RCW  
19 43.21C.495. Further, the findings of an unprecedented housing crises cited from  
20 Engrossed Second Substitute House Bill 1110 above was for the State of Washington as  
21 a whole. There's nothing in RCW 43.21C.495 that suggests that the state legislature had  
22 any intention to make its SEPA appeal cost cutting measures an option of local choice.

23 The Appellant also attempts to link the "adoption" term of RCW 43.21C.495 to state  
24 mandates that prohibit "orphan" SEPA appeals. Orphan appeal impacts are irrelevant to  
25 the application of RCW 43.21C.495. The Appellant describes a prohibited orphan appeal  
26 as a SEPA appeal that's brought by itself to a state administrative board or a judicial  
27 forum without the prospective action subject to the SEPA review. However, subjecting  
28 city and county SEPA administrative appeals to the RCW 43.21C.495 exemptions has no  
29 impact on the potential for orphan SEPA appeals. RCW 43.21C.075(2)(a) already  
30 prohibits orphan SEPA appeals to courts or state administrative agencies. That  
prohibition is unaffected by any appeal restrictions created by RCW 43.21C.495. Orphan  
appeals won't be happening with or without RCW 43.21C.495 applying to city and  
county adopted administrative appeals.

### ***RCW 43.21C.495(4) Exemption Applies to Ordinances***

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<sup>2</sup> "State-level" appeals are intended to mean administrative appeals before state administrative appeal bodies such as the Growth Management Hearings Board or the Shoreline Hearings Board.

<sup>3</sup> RCW 43.21C.075(3) allows cities and counties to adopt SEPA administrative appeal processes at their option.

1  
2 The Appellant asserts that ordinances that are project specific don't qualify as ordinances  
3 subject to RCW 43.21C.495(4). There is no basis for making that distinction.

4 Counsel for both parties have focused heavily upon whether Ordinance No. 2025-21 is a  
5 non-project action. That issue is irrelevant to the applicability of RCW 43.21C.495(4).  
6 As previously noted, RCW 43.21C.495(4) applies to “[a]doption of ordinances,  
7 development regulations and amendments to such regulations, and other nonproject  
8 actions...” Under the last antecedent rule, the reference to “nonproject actions” only  
9 modifies the “other” term of the quoted language, not the other types of actions contained  
10 in the list (i.e. ordinances, development regulations and amendment to regulations). The  
11 reference to “nonproject” in RCW 43.21C.495(4) doesn't restrict ordinances to  
12 nonproject ordinances.

13 The last antecedent rule has been judicially delineated as follows:

14 *When evaluating the language of a statute, we apply the last antecedent*  
15 *rule: unless a contrary intention appears in the statute, qualifying words*  
16 *and phrases refer to the last antecedent. Yet the presence of a comma before*  
17 *the qualifying phrase is evidence the qualifier is intended to apply to all*  
18 *antecedents instead of only the immediately preceding one.*

19 *City of Spokane v. Cnty. of Spokane*, 158 Wash. 2d 661, 673, 146 P.3d 893, 899  
20 (2006)(citations and quotations omitted).

21 Applying the rule above, “nonproject actions” only qualifies “other” since there is no  
22 comma between “other” and “nonproject.” If the legislature had intended to have the  
23 “nonproject” qualifying word to apply to more than the antecedent “other,” RCW would  
24 have been worded as follows: “[a]doption of ordinances, development regulations and  
25 amendments to such regulations, and other, nonproject actions...”

26 Courts also require that statutes should be construed so that no clause, sentence, or word  
27 is made superfluous, void, or insignificant; however, in special cases the court can ignore  
28 statutory language that appears to be surplusage when necessary for a proper  
29 understanding of the provision. *State v. Evergreen Freedom Foundation*, 1 Wash.App.2d  
30 288, 299 (2018). If “nonproject” is construed as applying to all of the listed actions that  
preceded it, the listed actions become superfluous. If RCW 43.21C.495(4) applies to all  
nonproject actions and nothing else, it would have simply been written as applying to  
nonproject actions without any reference to ordinances and development regulations

1 There also is no legislative intent that suggests that ordinances subject to RCW  
2 43.21C.495(4) must be nonproject actions. The face of RCW 43.21C.495(4) exposes a  
3 legislative preference to subject legislative actions to the statute in addition to other  
4 nonproject actions. Practically speaking, the legislative and nonproject classes of  
5 decision making delineated by the statute effectively ensure that project level  
6 environmental impacts of specific projects are still addressed under SEPA. Even the  
7 project level impacts of the 625 Winslow project of this appeal will still be addressed if  
8 development permit applications are submitted for review. Impacts associated with the  
9 less restrictive FAR, parking and height standards adopted by Ordinance No. 2025-21  
may be waived off in project level review as an acceptable impact under RCW  
36.70B.030 and .040. However, that is precisely the result anticipated for any appeal  
exemption authorized by RCW 43.21C.495.

10 The Appellant references the final bill report to E2SSB 5148. The references made by  
11 the Appellant have no relevant bearing on the applicability of RCW 43.21C.495(4) to  
12 this appeal. That bill report addresses new Growth Management Act mandates for the  
13 housing element of City and County comprehensive plans. A section of that report  
14 identifies the appeal procedures that apply to local amendments that implement the new  
15 housing mandates. The section identifies that the amendments are subject to appeal to  
16 the Growth Management Hearings Board. The section further identifies that SEPA  
17 appeals are not allowed to be filed with the Hearings Board for those amendments, likely  
18 based upon RCW 43.21C.495(4). The Appellant construes the reference to RCW  
19 43.21C.495(4) as suggesting that the references to “administrative appeals” in RCW  
43.21C.495(4) only applies to Growth Management Hearings Board appeals. The E2SSB  
5148 suggests no such limitation. It merely identifies how appeals of housing element  
amendments are administered before the Growth Management Hearings Board.

### ***Presence of Critical Areas Irrelevant***

21 It is uncontested that the area of the City subject to Ordinance No. 2025-21 is designated  
22 a Critical Aquifer Recharge Area (CARA) under the City’s Critical Areas Ordinance.  
23 The Appellant asserts that RCW 43.21C.495(4) doesn’t apply to areas encumbered by  
24 critical areas. The presence of critical areas is not found to affect the applicability of  
25 RCW 43.21C.495(4). RCW 43.21C.495(4) still exempts Ordinance No. 2025-21 from a  
SEPA appeal despite the presence of a CARA.

26 The Appellant’s critical areas position is based upon RCW 36.70A.070(2)(h). That  
27 statute, adopted in 2022, prohibits SEPA appeals of as pertinent to this appeal  
28 “*investments in low, very low, extremely low, and moderate-income housing*” and  
29 “*consideration of land that may be used for affordable housing.*” The section goes on to  
provide as follows:

1           *The adoption of ordinances, development regulations and amendments to*  
2           *such regulations, and other nonproject actions taken by a city that is required*  
3           *or chooses to plan under RCW 36.70A.040 that increase housing capacity,*  
4           *increase housing affordability, and mitigate displacement **as required under***  
5           ***this subsection (2)** and that apply outside of critical areas are not subject to*  
6           *administrative or judicial appeal under chapter 43.21C RCW unless the*  
7           *adoption of such ordinances, development regulations and amendments to*  
8           *such regulations, or other nonproject actions has a probable significant*  
9           *adverse impact on fish habitat.*

8 (emphasis added).

9 The appeal exemption from RCW 36.70A.070(2)(h), along with its inapplicability to  
10 critical areas, is adopted by referenced into RCW 43.21C.495(1). RCW 43.21C.495(4),  
11 the provision relied upon by the City for its dismissal motion, is not subject to the critical  
12 area limitations of RCW 43.21C.495(1) or RCW 36.70A.070(2)(h).

13 Although somewhat unclear, it doesn't appear that RCW 43.21C.495(1) and RCW  
14 36.70A.070(2)(h) apply to this SEPA appeal. The quoted paragraph above broadly  
15 addresses actions that "increase housing capacity, increase housing affordability, and  
16 mitigate displacement" but then limits that set of actions to those "*required under*  
17 *subsection (2).*" The actions "required" under subsection 2 as related to affordable  
18 housing are limited to investments in affordable housing and consideration of land for  
19 affordable housing. If the applicability of RCW 43.21C.495(1) and RCW  
20 36.70A.070(2)(h) is limited to those two items for affordable housing options, then they  
21 don't apply to Ordinance No. 2025-21.

22 If RCW 43.21C.495(1) and RCW 36.70A.070(2)(h) is construed more broadly to include  
23 ordinances that facilitate affordable housing by reducing development restrictions, the  
24 critical area restrictions of those provisions still don't apply to Ordinance No. 2025-21.  
25 That's because the City is relying upon the RCW 43.21C.495(4) exemption. As  
26 previously discussed, that subsection squarely exempts SEPA administrative appeals for  
27 Ordinance No. 2025-21 without limitation due to the presence of critical areas. If RCW  
28 43.21C.495(1) and RCW 36.70A.070(2)(h) are construed as conflicting with RCW  
29 43.21C.495(4) due to the difference in critical area limitations, then RCW 43.21C.495(4)  
30 would have to be construed as superseding standard since it was adopted more recently<sup>4</sup>

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4 RCW 43.21C.495(4) was adopted in 2025 per Section 6, Chapter 269, laws of 2025. RCW 36.70A.070(2)(h) as amended to include critical area limitations was adopted in 2022 per Section 2, Chapter 246, Laws of 2022

1 and is more specific<sup>5</sup> than RCW 43.21C.495(1) and RCW 36.70A.070(2)(h). *See, e.g.*  
2 *O.S.T. ex rel. G.T. v. BlueShield*, 181 Wash. 2d 691, 701, 335 P.3d 416, 421  
3 (2014)(specific statutes prevail over a general statute); *State v. J.P.*, 149 Wash.2d 444,  
4 452, 69 P.3d 318 (holding that provisions of a more specific, more recent statute prevail  
in a conflict with a more general predecessor)

5 **ORDER**

6 The SEPA appeal of Ordinance No. 2025-21 is dismissed as barred by RCW  
7 43.21C.495(4).  
8

9 ORDERED this 25th day of March 2026.

10  
11 *Phil Olbrechts*  
12 Phil Olbrechts  
13 City of Bainbridge Island Hearing Examiner  
14

15 **Appeal Right and Valuation Notices**

16 This decision is a final land use decision of the City of Bainbridge Island and may be  
17 appealed to superior court within 21 days as governed by the Washington State Land Use  
18 Petition Act, Chapter 36.70C RCW.

19 Affected property owners may request a change in valuation for property tax purposes  
20 notwithstanding any program of revaluation.  
21  
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24 \_\_\_\_\_  
25 <sup>5</sup> If RCW 43.21C.495(1) and RCW 36.70A.070(2)(h) are construed as applying to ordinances such as  
26 Ordinance o. 2025-21, that construction would have to conclude that the those statutes apply because of  
27 their reference to any legislative and nonproject actions that increase housing capacity and housing  
28 affordability and mitigate displacement without being limited to affordable housing investment or  
29 consideration of land for affordable housing. If the statutes are construed that broadly, then their scope is  
30 broader than that of RCW 43.21C.495(4). As previously noted, the scope of RCW 43.21C.495(4) is limited  
to legislative and nonproject actions that implement the housing element of the City's comprehensive plan.