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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In re: Appeal by

WALLINGFORD COMMUNITY
COUNCIL, ET AL.

of the City of Seattle Citywide Implementation of
Mandatory Housing Affordability (MHA) Final
Environmental Impact Statement,

Hearing Examiner File:
W-17-006 through
W-17-014

JUNCTION NEIGHBORHOOD
ORGANIZATION'S CLOSING BRIEF

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I. INTRODUCTION

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JuNO is a community organization of residents and business owners from the West Seattle peninsula who are interested in the vitality and livability of the West Seattle Junction Urban Village (“WSJ Urban Village”) and its surrounding area. JuNO has asserted multiple claims as to the inadequacy of the Final Environmental Impact Statement (FEIS) for the Citywide Implementation of Mandatory Housing Affordability (“MHA EIS”) and its Alternative 2, Alternative 3 or the Preferred Alternative (“Action Alternatives”). Each claim is valid in its own right, supported by the weight of evidence, testimony and the State Environmental Policy Act (SEPA), RCW 43.21C. These claims fall into broad categories:

1 1. **The MHA EIS Failed to Incorporate the WSJ Urban Village Neighborhood**
2 **Plan.** Contrary to its own policy, the City omitted neighborhood plans as a relevant planning
3 document, veering away from the urban growth strategy that was the stated objective of the
4 MHA program’s prior-phase EIS. This omission leaves decision-makers unaware of
5 conflicts and the potential for better alternatives.

6 2. **The Action Alternatives Conflict With Comprehensive Plan.** The City ignored
7 multiple, significant conflicts between the Action Alternatives and the City of Seattle 2035
8 Comprehensive Plan (“Comprehensive Plan”) and failed to resolve them.

9 3. **Several MHA EIS Study Areas Were Flawed In Multiple Ways** including:

10 **Inadequate Analysis.** The City did not study the WSJ Urban Village in adequate
11 depth. Its superficial analyses used overly broad generalizations in place of specific, available,
12 data; drew conclusions based on standards that do not exist; and led to missed impacts, incorrect
13 baselines and faulty conclusions.

14 **Faulty, Unverifiable Methodologies.** The City applied faulty or unverifiable
15 methodologies, leading to missed impacts and faulty conclusions.

16 **Factual Errors & Critical Omissions.** The MHA EIS contains factual errors and critical
17 omissions and errors that render it incomplete.

18 **Inadequate Mitigation.** Many of the MHA EIS mitigations are as deficient as the
19 inadequate analyses, faulty and unverifiable methodologies, plan conflicts and errors and
20 omissions from which they flow.

21 A. **MHA EIS Fails To Comply With SEPA**

22 The purpose of SEPA is “[t]o provide consideration of environmental factors at the
23 earliest possible stage to allow decisions to be based on complete disclosure of environmental
24 consequences.” *King County v. Boundary Review Board*, 122 Wn.2d 648, 664, 860 P.2d 1024
25 (1993).¹ Under SEPA, the City has an affirmative duty to obtain the information reasonably
26 necessary to understand the significant impacts of a proposal and to make a reasoned choice
27 among alternatives:

28 If information on significant adverse impacts essential to a reasoned choice
29 among alternatives is not known, and the cost to obtain it are not exorbitant,

¹ Although a DNS, not an EIS, was at issue in *King County v. Boundary Review Board*, the principle that government action must be based upon adequately disclosed environmental impacts *before* decisions have a snowballing effect is applicable here.

1 **agencies shall obtain and include the information in their environmental**
2 **documents.** WAC 197-11-080(1) (emphasis added).

3 However, the MHA EIS fails to provide an accurate description of the affected WSJ
4 Urban Village environment as required under WAC 197-11-440(6); fails to provide an accurate
5 or complete analysis of the impacts thereto as required under WAC 197-11-030(2)(c) and WAC
6 197-11-400; and fails to discuss the proper mitigation to offset these impacts as required under
7 WAC 197-11-440(6)(b)(iv) and in a manner consistent with the “hard look” requirements
8 established by the courts.²

9 Without this information, decision makers do not have the knowledge necessary to
10 evaluate whether the purported benefits of the MHA proposal outweigh the negative impacts
11 thereof – and are left without an accurate, complete and objective set of facts with which to
12 debate *future* actions.

13 **B. MHA EIS Requires Meaningful Environmental Review**

14 The City’s central response to JuNO’s complaints has been to assert that MHA is a
15 citywide program, programmatic in scope, and that any gaps in its content and analyses can and
16 will be addressed when individual projects are proposed. Yet as state and federal courts have
17 made clear, a programmatic EIS is not an excuse to escape the fundamental responsibility under

² A “perfunctory description” is “inconsistent with the ‘hard look’” required by law. *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir. 1998). “Mitigation must ‘be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated.’” *Id.* (internal citation omitted). Repeatedly, the courts have made clear that a “mere listing” of possible mitigation measures is “insufficient to qualify as the reasoned discussion” required by WAC 197-11-440(6)(b)(iv). *Id.* (quoting and citing cases).

1 SEPA for early and meaningful environmental review.^{3 4} At multiple turns within the MHA EIS,
2 the City to fails to live up to this responsibility. Furthermore, the City mischaracterizes the role
3 of project-level review:

4 Project review shall be used to identify specific project design and conditions
5 relating to the character of development, such as the details of site plans, curb
6 cuts, drainage swales, transportation demand management, the payment of
7 impact fees, or other measures to mitigate a proposal's probable adverse
8 environmental impacts, if applicable. RCW 36.70B.030(5).

9 Placing curb cuts and drainage swales is a far cry from measuring canopy, analyzing
10 traffic impacts, evaluating infrastructure, or any of the other responsibilities SEPA requires of
11 the City, that it failed to undertake in the MHA EIS and are documented in this complaint.

12 Furthermore, the errors documented in this appeal are material *even at the programmatic*
13 *level of the action*. If considered properly, they could substantially alter Action Alternatives and
14 mitigation strategies in the MHA EIS.⁵ If left to stand, they will lead to suboptimal
15 programmatic actions that cannot later be rectified at the project level.

³ “Once an agency has an obligation to prepare an EIS, the scope of its analysis of environmental consequences in that EIS must be appropriate to the action in question. *Pacific Rivers Council v. U.S. Forest Serv.*, 689 F.3d 1012, 1026–27 (9th Cir. 2012) (emphasis in original), *vacated as moot*, 570 U.S. 901, 133 S. Ct. 2843, 186 L. Ed. 2d 881 (2013).

⁴ “SEPA calls for a level of detail commensurate with the importance of the environmental impacts and the plausibility of alternatives.” *Klickitat Cty. Citizens Against Imported Waste v. Klickitat Cty.*, *supra*, 122 Wn.2d at 641 (emphasis added).

⁵ For example, an alternative that proposes RSL zoning in the SFR of the WSJ Urban Village areas and which concentrates growth in The Triangle – the area bounded by the intersections of Fauntleroy Way and Alaska St; Fauntleroy Way and 35th Ave SW; and Alaska St and 35th Ave SW – could have met the City’s affordable-housing and livability objectives while minimizing impacts to canopy, parks and open space, transportation, infrastructure, cultural assets and aesthetics – and been better aligned to the WSJ Neighborhood Plan. The EIS omitted information that would allow a reader to identify and support an alternative of this nature during future legislative action, even if it were not formally proposed by the lead agency. Further, some missed impacts such as the worsening state of Corridor 7 and WSJ Urban Village internal traffic should have been noted and discussed. These omissions fail to alert the reader of focus areas that should be part of the discussion of future legislative action.

1 Furthermore, the MHA EIS and its Action Alternatives must be consistent with the
2 policies of its planning context and those that are decided in the prior phase under Phased
3 Review. The MHA EIS specifically refers to the Seattle 2035 Comprehensive Plan and its EIS
4 for policy guidance. But the City has turned that requirement upside down: it has developed a
5 detailed, citywide rezone proposal that is not guided by the Comprehensive Plan and our
6 Neighborhood Plan. Rather, it makes a major departure from its urban village strategy by
7 disregarding our Neighborhood Plan *and requiring amendments to it.*

8 Of particular concern is that the City has adopted the SEPA infill exemption
9 recommended by the Comprehensive Plan EIS. This allows, without SEPA review, housing
10 projects in the WSJ Urban Village to proceed at densities that are 6x greater than current zoning
11 allows, limiting the neighborhood from addressing cumulative upzoning impacts or revisiting
12 flawed initial planning decisions in sensitive single-family areas.⁶ The future of livability in the
13 WSJ Urban Village lies in remanding the MHA EIS for the proper description of the affected
14 environment, accurate and complete analyses of it and proper mitigation as required under SEPA.

15 **C. JuNO's Specific Claims**

16 The City of Seattle Office of Planning and Community Development's decision that the
17 MHA FEIS is adequate was made in error and was made in violation of the State Environmental
18 Policy Act (SEPA), RCW 43.21C. JuNO affirms claims 1, 2, 5, 7, 9 and 11 made in its notice of
19 appeal filed on November 27, 2017 ("JuNO Claims"). JuNO also affirms claims 1-10, 16-18, 20,
20 22-23, 24-38, 40 and 42 made in the notice of appeal filed on November 27, 2017 by the Seattle
21 Coalition for Affordability, Livability, and Equity (SCALE) and incorporated by reference into

⁶ SMC 25.05.800 (Table A). Single-Family areas have current use of 1 housing unit. This proposal includes rezoning of those areas to LR2, allowing up to 6 units of housing without SEPA review.

1 the JuNO appeal of November 27, 2017 (“SCALE Claims”).

2 The weight of the testimony and evidence below support JuNO’s claims in detail.

3 **II. MHA EIS FAILED TO INCORPORATE NEIGHBORHOOD PLANNING**
4 **POLICY AND CONTEXT**

5 WAC 197-11-060(5) describes the use of Phased Review, noting, “if used, phased review
6 assists agencies and the public to focus on issues that are ready for decision and exclude from
7 consideration issues already decided or not yet ready. Broader environmental documents may be
8 followed by narrower documents, for example, that incorporate prior general discussion by
9 reference and concentrate solely on the issues specific to that phase of the proposal.” It further
10 notes that Phased Review is not appropriate when “the sequence is from a narrower document to
11 a broad policy document”. *Id.*

12 The City has chosen to apply Phased Review for the preparation of the MHA EIS. Ex. 2
13 at ix. *The prior phase is the Comprehensive Plan 2035 EIS. Properly utilized phased review*
14 *assists agencies and the public focus on issues that are “ready for decision” and exclude from*
15 *consideration “issues already decided.” WAC 197-11-060(5). This allows the City to narrow*
16 *the scope of the MHA EIS and limit the range of alternatives considered. It does not, however,*
17 *permit the City to revisit the conclusions or policy direction of the prior phase.*

18 Further, the City claims that under WAC 197-11-442(4) and SMC 24.05.442.D it may
19 limit the MHA EIS study and development of alternatives to that which have been “formally
20 proposed,” stating, “[t]he test is not whether the FEIS analyzed all alternative means of
21 addressing housing affordability, but rather, whether the City chose reasonable alternatives that
22 achieve the objectives set forth in the City’s legislation and policy decisions.”⁷

⁷ City of Seattle’s Motion for Partial Dismissal, 4/7/18 at 19, line 13.

1 WAC 197-11-440(6) describes the required contents of an EIS with regards to the
2 affected environment, significant impacts and mitigation measures. One such requirement is “[a]
3 summary of existing plans (for example: Land use and shoreline plans) and zoning regulations
4 applicable to the proposal, and how the proposal is consistent and inconsistent with them.”

5 The MHA EIS references three planning documents as context to the proposed action.
6 This centrally includes the Seattle 2035 Comprehensive Plan, which governs Seattle’s growth
7 plans and policies and was the subject of the prior phase EIS. Ex. 2 at 1.3 and 2.4.⁸ Objectives
8 and policy decisions related to the MHA EIS are to be drawn from them.

9 It is therefore worthwhile to examine the policy and the objectives of the Comprehensive
10 Plan EIS and the Comprehensive Plan to ensure they were properly summarized and applied.

11 **A. City Policy and the Objective of the Prior Phase EIS is to Implement the**
12 **Urban Village Strategy, which Includes Neighborhood Plans**

13 The first objective of the proposal of the Comprehensive Plan EIS is, “retaining the urban
14 village strategy and achieving a development pattern in line with it.” Ex. 5 at.1 and 2. The
15 urban village strategy is defined in the Comprehensive Plan. Ex. 3 10-13. It opens with:

16 The foundation of Seattle’s Comprehensive Plan is the urban village strategy.
17 It is the City’s unique approach to meeting the state GMA requirement, and it
18 is similar to Vision 2040’s growth centers approach. This strategy encourages
19 most future job and housing growth to occur in specific areas in the city that
20 are best able to absorb and capitalize on that growth. These are also the best
21 places for efficiently providing essential public services and making amenities
22 available to residents. These areas include designated urban centers, such as
23 Downtown and the five others (First Hill/Capitol Hill, South Lake Union,
24 Uptown, University District, and Northgate) recognized in the regional plan. In
25 addition, this Plan designates twenty-four urban villages throughout the city.

26

⁸ The other two documents are the Growth and Equity Analysis, which focuses on policies related to equity calculation; and the MHA Framework, which describes the framework under which the City would purport to offer zoning incentives in exchange for affordability obligations.

1 Ex. 3 at 10. The City’s choice to focus its MHA land use actions in urban villages, as it
2 began in the U District and Uptown neighborhoods, is consistent with this strategy.

3 Building on this, the urban village strategy definition notes, “[o]f course urban villages
4 are more than just the fulfillment of the regional growth strategy. They are neighborhoods where
5 Seattle residents, live, work, learn, shop, play, and socialize.” Ex. 3 at 13. It goes on to
6 introduce and define the importance of Neighborhood Plans as a part of the implementation of
7 the urban village strategy, to retain and address the unique characteristics of each urban center
8 and village.

9 The Neighborhood Plans are an integral part of the implementation of City policy, equal
10 to the Comprehensive Plan and Capital Plan, and flowing into implementation tools including
11 land use code. Ex. 3 at 20. As depicted in the Comprehensive Plan, this includes land use tools.
12 The MHA proposal’s zoning action is one such example.

13 The definition of the urban village strategy continues later, noting that, “[i]t will pay
14 special attention to the urban centers and villages where the majority of the new housing and jobs
15 is expected. The policies in this plan provide direction for that change and growth.” Ex. 3 at 23.
16 And also, “[t]he urban village strategy takes the unique character of the city’s neighborhoods
17 into account when planning for future growth.” *Id.*

18 The importance of the Neighborhood Plans is again cited in the Community Planning
19 section of the Comprehensive Plan. Ex. 3 at 105.

20 **B. MHA EIS Omits WSJ Neighborhood Plan from Practical Consideration,**
21 **Diverging from the Urban Village Strategy**

22 The Neighborhood Plans are a major component of the Comprehensive Plan and its urban
23 village strategy. They are an essential element of the City’s growth policy and are inherent to the
24 first objective of the Comprehensive Plan EIS. The Comprehensive Plan EIS explicitly stated

1 that no changes to the neighborhood plans were proposed, thereby affirming their continuation.
2 Ex.5 at 1-2.

3 The Comprehensive Plan EIS raised the WSJ Urban Village growth estimates (Ex. 5 at 2-
4 28.) and proposed SEPA infill exemption levels (Ex. 5 at 2-43.) claiming that, “[t]he range of
5 identified environmental impacts would be able to be addressed through the implementation of
6 the city’s development regulations, other applicable requirements of the city’s Comprehensive
7 Plan.” Ex. 5 at 2-42. Reading this statement in the context of the urban village strategy leads
8 *one to conclude that the WSJ Neighborhood Plan is an important means to address the*
9 *environmental impacts that the Comprehensive Plan EIS identified, and cannot be disregarded*
10 *without diverging from its scope of study and conclusions.*

11 Neighborhood Plans do not appear in the MHA EIS Planning Context sections. Their
12 goals and policies do not appear in the MHA EIS summary of related plans and policies. Rather,
13 *the City has chosen to highlight and list only policies of the core Comprehensive Plan.* Ex. 2 at
14 2.23.

15 This stands in stark contrast to the EIS that the City prepared for the University District
16 Urban Center. That document, prepared in Jan. 2015, studied the impacts of programmatic
17 zoning changes proposed there, making it comparable to the MHA EIS and to MHA proposal.
18 *The University District EIS referenced the University District Neighborhood Plan as a part of its*
19 *relevant planning context, with summary bullet points of its policies and goals.* Ex. 62 at 2-6. Yet
20 *the WSJ Neighborhood Plan is entirely omitted from the MHA EIS as a means to inform*
21 *alternatives and is virtually ignored as a subject of study.*

1 **C. MHA EIS and Action Alternatives Neglect Important Policies and Goals of**
2 **the WSJ Neighborhood Plan**

3 The MHA EIS does not name the WSJ Neighborhood Plan, let alone explore potential
4 conflicts with goals and policies such as these:

5 WSJ G-1: A small town community with its own distinct identity comprised of
6 a strong single family residential community and a vibrant mixed use business
7 district serving the surrounding residential core. Ex. 3 at 403.

8 WSJ P-1: Seek to maintain and enhance a compact mixed use commercial core
9 with small town character located between 41st and 44th Avenue SW and SW
10 Genesee street and SW Edmonds St. by encouraging improved traffic flow,
11 pedestrian safety, and amenities and architectural image. Id.

12 The WSJ Design Guidelines stipulate details about the interpretation of this policy and
13 how best to support it. They address small-town character and the definition of the commercial
14 core. Ex. 163 at iii. The small-town character, for example, is described as best met through the
15 inclusion of architectural features. Ex. 163 at iii-iv, parts 2&3. However, witness testimony
16 shows the cost burden of MHA requirements within the WSJ Urban Village may make such
17 neighborhood-sensitive considerations infeasible. *Jack Miller Testimony, Hearing Day 8*
18 *(“Miller Testimony”), Part 2 at 0:39:00 – 0:43:00.* The MHA EIS takes no notice of the
19 commercial core and fails to acknowledge it as an element of Action Alternatives planning. We
20 will further address this issue in the Historical and Cultural section. The MHA proposal runs
21 contrary to policy WSJ P-1 and puts goal WSJ G-1 at risk, and does not explore them.

22 WSJ P-13: Maintain the character and integrity of the existing single family
23 areas. Ex. 3 at 405.

24 The MHA EIS is in clear and direct conflict with this WSJ Neighborhood Plan policy.
25 The City claims MHA EIS contains enough information for the reader to infer how the WSJ
26 Neighborhood Plan would have consistencies or inconsistencies. It relies on a single, vague
27 statement deep in its appendix to alert the reader of potential inconsistencies with neighborhood

1 plans. The only place where the MHA EIS mentions *any* inconsistency with *any* Neighborhood
2 Plan is in Appendix F and the entire discussion is as follows:

3 “Several policies in individual urban villages contained in the Neighborhood
4 Plan policies section of the Comprehensive Plan may conflict with elements of
5 the proposed action concerning changes to single family zones within urban
6 villages. Amendments to these policies ~~will be~~ are docketed and the policies
7 would be modified to remove potential inconsistencies. The potential impacts
8 of these policy amendments is considered in this EIS.” Ex. 2 at F.11.

9 This language is wholly inadequate to advise decision makers that the MHA proposal
10 would essentially render the WSJ Urban Village’s community planning efforts – a purported
11 hallmark of the urban village strategy – entirely inconsequential and eviscerate its central goals.

12 Moreover, the discussion is factually inaccurate. No amendments to the WSJ
13 Neighborhood Plan have been docketed by the City.⁹ *Tobin-Presser Testimony, Part 3 at*
14 *1:09:05-1:18:12*; Exs. 243 and 244.

15 **D. Specific Legal Issues**

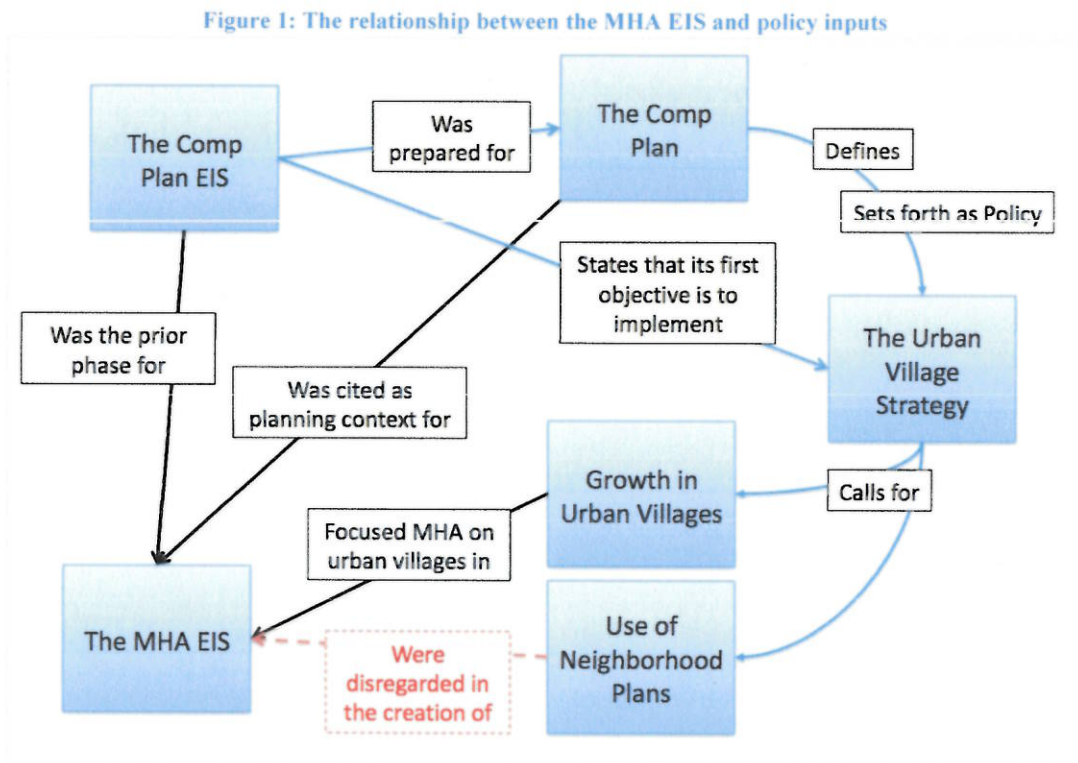
16 As noted above, the City failed to meet the requirement of WAC 197-11-440, by failing
17 to name the WSJ Neighborhood Plan as a relevant plan and then summarize its
18 consistency/inconsistencies. This failure interferes with the reader’s ability to identify or discuss
19 alternatives that are less impactful to the WSJ Urban Village during future legislative action. For
20 example, an alternative that concentrates zoning changes in The Triangle area could limit
21 impacts to the single-family areas, to the small-town character, and to the commercial core
22 referred to in the Neighborhood Plan. *Miller Testimony, Part 2 at 0:45:00 – 0:46:00.*

⁹ There is, however, a JuNO-proposed amendment docketed for consideration by the City that would exclude the single-family areas from the WSJ Urban Village boundary. Notwithstanding that the amendment has been docketed since before the release of the draft MHA EIS (“DEIS”), the MHA EIS does not reference it. *Tobin-Presser Testimony, Part 3 at 1:14:15-1:16:09*; Exs. 233 and 234.

1 The City misapplied its use of Phased Review and failed to follow proposed policy when
 2 it neglected to incorporate neighborhood-level planning and the use of Neighborhood Plans in
 3 the development of alternatives for the MHA proposal. It diverged from the urban village
 4 growth strategy, leading to an overly-broad and generic study, with inadequately developed
 5 alternatives, and an inaccurate portrayal of their consistency with stated policy. An approach
 6 that is consistent with adopted policy would have placed more emphasis on individual analysis of
 7 neighborhoods and incorporated Neighborhood Plans into their alternatives, as the city had
 8 begun with the U District and Uptown neighborhoods.

9 Figure 1 illustrates our outline above as to the relationships between the MHA EIS and its
 10 cited City policy documents. It shows how the focus on the urban village is supported by prior
 11 policy, but also they connect to the failure of the MHA EIS to apply neighborhood-level
 12 planning and the Neighborhood Plans.

13



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1 **III. THE ACTION ALTERNATIVES AND SECTION 3.1 (LAND USE)**
2 **CONFLICT WITH THE COMPREHENSIVE PLAN**

3 **A. The Action Alternatives Affect Single-Family Areas**

4 The Preferred Alternative of the MHA EIS would upzone all single-family parcels within
5 the WSJ Urban Village. Ex. 240; *Tobin-Presser Testimony, Hearing Day 11* (“*Tobin-Presser*
6 *Testimony*”), *Part 3 at 46:45-47:41*. The parcels are each located within one of four distinct
7 residential areas, each of which has its own character and surrounding development context. *Id.*
8 Approximately 171 of the over 400 hundred single-family parcels within the WSJ Urban Village
9 would be upzoned to Lowrise 2 (40-foot apartment buildings (“LR2”)), approximately 192
10 would be upzoned to Lowrise 1 (30-foot apartments and townhomes (“LR1”)) and approximately
11 41 would be upzoned to Residential Small Lot (“RSL”). Exs. 240 and 242.

12 **B. Comprehensive Plan Section Land Use Policies**

13 The Comprehensive Plan makes clear that programs and initiatives purporting to
14 implement its citywide goals and policies and neighborhood goals and policies are to flow
15 directly from the provisions of the Comprehensive Plan. Ex. 3 at 20 (flowchart) and 23 (“[t]he
16 policies in **this plan** provide direction for that change and growth”) (emphasis added). The
17 MHA EIS fails to advise decision makers that the Preferred Alternative is, in fact, *contrary* to
18 relevant Comprehensive Plan Land Use policies and instead attempts to characterize it as
19 consistent with such policies. *Tobin-Presser Testimony, Part 3 at 56:15- 1:01:44*.

20 The Land Use Section of the Comprehensive Plan contains a specific subsection devoted
21 to Single Family Areas, including those within urban villages such as the WSJ Urban Village,
22 comprised of Land Use Goal 7 and Land Use Policies 7.1-7.12. Ex. 3 at 51-52. This is the only
23 area of the Comprehensive Plan providing guidance for redevelopment of existing single-family
24 areas. The Comprehensive Plan is explicit that any new types of housing in these areas be “low

1 height and low bulk.” It is clear that the reference to “low” height and bulk in this section is not
 2 to be confused with “lowrise” zoning of the MHA EIS, as the Comprehensive Plan goes on to
 3 cite the specific examples of low height and low bulk development as “detached accessory
 4 dwelling units, cottage developments or **small** duplexes or triplexes.” Ex. 3 at 51 (Land Use
 5 Policy 7.3) (emphasis added).

6 The City suggests that the upzones of the MHA EIS to RSL are consistent with
 7 Comprehensive Plan Land Use Policy 7.2. *Wentlandt Testimony, Day 14, Part 3 at 0:03:00 –*
 8 *0:04:40.* ¹⁰ However, under MHA only approximately 10% of WSJ Urban Village single-family
 9 upzones involve RSL zoning. The City failed to address the fact that the remaining 90% of the
 10 upzones would be to LR1 and LR2, neither of which are consistent with the Comprehensive
 11 Plan’s policies. The relevant policies are as follows: ¹¹

| Land Use Policy Number | Policy |
|------------------------|--|
| LU 7.2 | Use a range of single-family zones to <ul style="list-style-type: none"> • maintain the current low-height and low-bulk character of designated single-family areas; • limit development in single-family areas or that have environmental or infrastructure constraints; • allow different densities that reflect historical development patterns; and • respond to neighborhood plans calling for redevelopment or infill development that |

¹⁰ Mr. Wentlandt testified as follows (emphasis added): “Looking at the first page, lets look at LU 7.2. I think this is a good example of a policy that supports the proposed action strongly. Policy says use a range of single-family SF zones. And then it has several bullets. A couple of the bullets allow different densities that reflect historical development patterns and respond to Neighborhood Plans calling for development or infill development that maintains single-family character, but also allow for a greater range of housing types. And the proposal does just that. And really the key way that it does that is by dramatically expanding the use of the **residential small lot zone**, which is technically, as proposed, a SF zone. It has the same scale and proportions as other SF zones but would allow more housing units, more variety of housing types. Those are described in the EIS, but, to put a finer point on it, a lot of those housing types would be much more consistent than the historical development patterns in some of the older neighborhoods like Wallingford, Green Lake. You have small, very small lots, smaller than 5,000 sf. And you know, this basic concept of diversifying the housing stock within SF zones in urban villages is kind of a key component of the proposal that’s strongly supported by this policy.”

¹¹ Ex. 3 at 51-52.

| Land Use Policy Number | Policy |
|------------------------|---|
| | maintains the single-family character of the area but also allows for a greater range of housing types. |
| LU 7.3 | Consider allowing redevelopment or infill development of single-family areas inside urban centers and villages, <i>where new development would maintain the low height and bulk that characterize the single-family area, while allowing a wider range of housing types such as detached accessory units, cottage developments or small duplexes or triplexes.</i> |
| LU 7.5 | Encourage accessory dwelling units, family-sized units, and other housing types that are attractive and affordable, and that are compatible with the development pattern and building scale in single-family areas in order to make the opportunity in single-family areas more accessible to a broad range of households and incomes, including lower-income households. |

1 None of the Comprehensive Plan policies imply consistency with the conversion of
2 single-family areas to MHA LR1 lot-filling townhomes or MHA LR-2 40-foot apartments that
3 comprise the majority of the Preferred Alternative upzones for the WSJ Urban Village. These
4 are not the less intensive Residential Small Lot (RSL) that the witness refers to evidence that his
5 citation of land use policy LU7.2 “strongly supports” the Action Alternatives. The witness’
6 claim undermines the City’s own proposal.

7 **C. Specific Legal Issues**

8 The City has, by its own admission, misapplied policy LU7.2 in the formulation of its
9 proposed zoning Alternatives for single-family areas. LU7.2 should have been one of the
10 relevant policies cited in the MHA EIS. The City also failed to apply LU7.3 and LU7.5, and did
11 not cite this inconsistency. It should have led to the conclusion that the use of RSL zoning in the
12 WSJ Urban Village single-family areas was more consistent with Comprehensive Plan policy for
13 those areas. The City failed to meet the requirement of WAC 197-11-440 by failing to apply
14 them compatibly at the WSJ Urban Village or, failing that, name these as relevant and
15 inconsistent with the Action Alternatives.

1 **IV. MHA EIS SECTION 3.4 (TRANSPORTATION) IS DEFICIENT**

2 WAC 197-11-440(6) requires that an EIS “[s]hall describe the existing environment that
3 will be affected by the proposal, analyze significant impacts of alternatives including the
4 proposed action, and discuss reasonable mitigation measures that would significantly mitigate
5 these impacts.” The City’s analysis of the transportation baseline and impacts within the WSJ
6 Urban Village and for transportation Corridor 7 is inadequate. Its faulty methodology and
7 incomplete analysis led to an incomplete picture of the existing environment. It missed impacts
8 and risk areas. This foreclosed the opportunity to discuss mitigation methods and seek
9 programmatic zoning alternatives that minimize these impacts.

10 **A. MHA EIS did not Present any Parking Occupancy Data for the WSJ**

11 A resident witness, Rich Koehler, testified to the parking conditions at the WSJ Urban
12 Village. As a transit hub, the area attracts commuters from outside the area. They drive and park
13 near the bus route, congesting residential streets. *Rich Koehler Testimony, Hearing Day 8*
14 (*“Koehler Testimony”*), *Part 1 at 1:12:23 - 1:12:33*. However, the MHA EIS omitted parking
15 occupancy data for the WSJ Urban Village. Ex 2 at 3.237.

16 **B. The Analysis of Corridor 7 Failed to Capture the Peak Level of Service**
17 **because it Relied on PM Peak Only**

18 Corridor 7 refers to a transit segment known as the West Seattle Bridge from 35th Ave
19 SW to I-5. The entry/exit to Corridor 7 is located within the West Seattle Junction, at the
20 intersection of Fauntleroy Way SW and 35th Ave SW. Corridor 7 is among Seattle’s most
21 trafficked, with the 4th highest traffic volume of any street studied by the City in 2016-2017.
22 Ex.178. It is the primary commuting route to off-peninsula employment for West Seattle as a
23 whole, carrying more than 55,000 vehicles daily during a study in Dec 2017. *Id.*

1 Mr. Koehler testified he sets aside 30 minutes in his commute time for this Corridor.
2 *Koehler Testimony, Part 1 at 01:14:00 – 01:15:00.* He presented photographic evidence of the
3 SDOT traffic advisory sign for Corridor 7 displaying transit times of 15 and 18 minutes,
4 respectively, on dates in November 2017 at times between 7:00 and 8:00 AM. Ex. 171. He
5 replicated the methodology employed by the MHA EIS to determine corridor transit times,
6 except in the morning between 8:00 and 9:00 AM rather than in the afternoon. Eastbound transit
7 times ranged from 16 to 21 minutes. Ex. 172. This analysis resulted in an afternoon eastbound
8 transit time of 20 minutes, corresponding to a level of service (LOS) of F, the lowest possible
9 grade and lower than any other corridor studied. *Koehler Testimony, Part 1 at 01:17:00 –*
10 *01:21:00.*

11 A grade of E is considered “approaching intolerable delay” while F is considered
12 “jammed”.¹² While the MHA EIS claims that no standard exists for determining a significant
13 impact to a Corridor, the U District EIS found it possible to define one. It defined a significant
14 impact as one that causes, “[t]ravel time on a transit analysis corridor to increase by more than
15 10% compared to the No Action Alternative, **or cause any increase on a transit analysis**
16 **corridor already operating at LOS F under the No Action Alternative.**” Ex. 162 at 3-21.
17 (emphasis added)

18 The MHA EIS evaluated Corridor 7 only at afternoon times. Its analysis led to the MHA
19 EIS presenting a transit time of 8.5 minutes and LOS grade of D for the eastbound peak. Ex. 2 at
20 3.254. The City went on to conclude that the proposed action would degrade Corridor 7 but not
21 to a degree that it found significant, leading to a finding of no significant impact. This is a
22 clearly faulty analysis leading to an incorrect conclusion.

¹² Ex. 180, Terminal 5 EIS, referencing *Highway Capacity Manual*.

1 Ariel Davis, a City transportation expert, testified she applied the PM Peak as a citywide
2 practice, believing it the most conservative based on assumed AM/PM volume trends. However,
3 she admitted under cross-examination this general assumption does not necessarily hold true in
4 all cases. *Ariel Davis Testimony, Hearing Day 16 (“Davis Testimony”), Part 2 at 0:15:00 –*
5 *0:16:00.* This approach fails to acknowledge that traffic conditions could be affected by
6 morning rush-hour conditions not also found in the evening. Further, peak *volume* does not
7 necessarily equate to worst *transit time and flow* performance, which was the data presented in
8 the MHA EIS.

9 Corridor 7 is one such case where local conditions lead to a AM peak transit time that is
10 worse than the PM peak. Morning rush-hour into the downtown employment center and the
11 heart of downtown/I-5 congestion creates a AM peak transit time worse than the PM peak, when
12 traffic is headed back to the West Seattle Peninsula. Mr. Koehler showed that transit times
13 across Corridor 7 reflect significant congestion on connections to northbound I-5 and SR-99
14 during morning commute hours. Ex. 173. This morning congestion could be caused by
15 bottlenecks on I-5 northbound (i.e. the I-5 express lanes operate southbound in the morning, and
16 northbound in the evening) and SR-99 that are not present in the evening and which do not affect
17 travel on Corridor 7 in the westbound direction.

18 The City applied an overly broad analysis, making general assumptions about morning vs.
19 afternoon transit patterns, which led it to an inaccurate conclusion about Corridor 7. The City’s
20 desire to rely on broad and general simplifications such as PM peak transit performance cannot
21 be honored when the results are so inaccurate.

1 **C. MHA EIS Omitted Study of Streets and Intersections Internal to the WSJ**

2 The MHA EIS did not engage in a street traffic study of the interior of the West Seattle
3 Junction. Witness testimony and exhibits show that the streets interior to the WSJ have baseline
4 congestion and are liable to significant impacts as traffic patterns degrade their LOS, and due to
5 street widths that do not support increased traffic density. Bear in mind that traffic across the
6 West Seattle peninsula flows through the WSJ en route to Corridor 7, potentially exacerbating
7 internal congestion.

8 **1. LOS issues.**

9 It is worthwhile to consider the U District EIS treatment of interior streets for
10 comparative purposes. Its study included interior streets, their existing LOS and the LOS
11 anticipated under each action alternative. This approach allowed the City to identify four streets
12 with significant impacts. Ex.162 at 3-22. The MHA EIS for the WSJ Urban Village contained
13 no such analysis.

14 Mr. Koehler presented evidence that potential LOS risks exist within the WSJ Urban
15 Village. *Koehler Testimony, Day 8, Part 1 at 1:19:30 – 1:19:59, and 1:24:00 – 1:28:00.* He
16 showed that internal congestion is already present in the existing environment. *Ex. 176.* He also
17 showed that due to congestion on Corridor 7, re-routes to I-5 through local streets become
18 preferable to Corridor 7 in the morning, leading to further internal congestion on Avalon Way
19 SW and in the vicinity of the West Seattle Bridge and lower (swing) bridge alternative route. *Ex.*
20 *172.* He referred to the results of the Terminal 5 EIS, which anticipates serious degradation to
21 street LOS in this same vicinity within the study period, to LOS E and F. *Ex. 181.*

22 Mr. Koehler showed that among all the streets studied by the City between 2016 and
23 2017, three of the top 25 streets in terms of volume are located in the WSJ Urban Village. *Ex.*
24 *178.* They include Fauntleroy Way SW and 35th Ave SW, which were not studied in the MHA

1 EIS. Mr. Koeler showed City traffic study data for the entrance to the West Seattle Bridge,
2 which is the location where these two streets intersect. *Ex. 179*. Volume at this point increased
3 by more than 12% in average weekday volume between 2016 and 2017. *Id.* Further, the data
4 show seasonal effects that can magnify volume on these streets (and Corridor 7) during Nov/Dec.
5 *Id.* The MHA EIS did not consider seasonal effects.

6 The witness testimony and exhibits shows that internal LOS should have been a concern
7 for the MHA EIS, as indicators for potential impacts abound. Ms. Davis believed an internal
8 street study would not be typical for a programmatic EIS. But she admitted the U District EIS
9 contained exactly such a study, and that it was also a programmatic EIS. *Davis Testimony,*
10 *Day16, Part 2 at 0:12:00 – 0:15:00.*

11 **2. Street-width issues.**

12 Witness testimony and exhibits highlighted the concern that some streets within the WSJ
13 Urban Village may not be of adequate width to support baseline or increased traffic volume.
14 These issues were not studied or identified in the MHA EIS, despite the availability of width
15 standards such as SMC 23.53.015 and the urban village street classification system in the SDOT
16 Streets Illustrated guidelines. *Ex. 182.*

17 Mr. Koehler pointed out that, as an example, Edmunds St west of California is narrower
18 than SMC 23.53.015 allows for the adjacent zoning. *Koehler Testimony, Day 8, Part 2 at*
19 *0:06:00 – 0:08:00; Ex. 183.* He also described how streets in Fairmount Springs, a single-family
20 area, are not wide enough to allow the passage of cars headed in the opposite directions. *Koehler*
21 *Testimony, Day 8, Part 2 at 0:07:00 – 0:11:00; Ex. 184.* These kinds of issues should have been
22 a subject of study, considering the proposed change of this area from SF to multifamily LR. The
23 use of multifamily zoning in this area could permit redevelopment to 6-unit lots without a SEPA

1 review due to the infill exemption. Multiple such projects could be carried out without SEPA
2 review, multiplying vehicular traffic with no opportunity for study.

3 **3. Safety issues.**

4 JuNO raised a concern that traffic-safety issues were not studied at the street and
5 intersection level in the draft MHA EIS (“DEIS”). Ex. 287 at Section 3.4. The MHA EIS
6 includes no such analysis. However, by way of comparison, such a study *was* done in the U
7 District EIS and led to the recommendation that a particular intersection (Brooklyn/NE 45th) be
8 prioritized for mitigation due to increased vehicle/pedestrian interaction. Ex. 162 at 3-23. JuNO
9 is likewise concerned about intersections along high-volume streets at locations where
10 significant new housing and pedestrian density has and will take place (e.g., the intersection of
11 Fauntleroy Way SW and Alaska St.).

12 **D. Specific Legal Issues**

13 The City failed to meet the requirement of WAC 197-11-440(6) by failing to document
14 the existing environmental conditions for parking occupancy in the West Seattle Junction.

15 The City failed to meet the requirement of WAC 197-11-440(6) by failing to accurately
16 document the existing environmental conditions for transportation on Corridor 7. This led to an
17 inaccurate appraisal of the presence and potential for impact on this corridor and a lack of
18 discussion of mitigation. The City’s choice to rely on PM Peak analysis led to this oversight, as
19 peak transit conditions on Corridor 7 actually occur in the morning.

20 The City failed to meet the requirement of WAC 197-11-440(6) when it did not study
21 internal streets and intersections as an aspect of the environment. The study should have
22 included LOS, street width, and safety considerations. In light of the warning indicators, JuNO
23 believes that significant impacts would have been found. In consideration of the urban village

1 strategy’s emphasis on neighborhood-level interests, and considering that the U District EIS
2 included an internal street study, such analyses would have been an appropriate and necessary.

3 **V. MHA EIS SECTION 3.5 (HISTORIC RESOURCES) IS DEFICIENT**

4 WAC 197-11-440(6) requires that the EIS “[s]hall describe the existing environment that
5 will be affected by the proposal, analyze significant impacts of alternatives including the
6 proposed action, and discuss reasonable mitigation measures that would significantly mitigate
7 these impacts.” The City’s analysis of historic and cultural assets and impacts in the WSJ Urban
8 Village is inadequate. Its faulty methodology and incomplete analysis led to an incomplete
9 picture of the existing environment. It missed impacts and risk areas. This foreclosed the
10 opportunity to discuss mitigation methods and seek programmatic zoning alternatives that
11 minimize these impacts.

12 **A. Methodology to Assess Historic and Cultural Risk By Relative Growth Rate**
13 **Increase is Flawed**

14 The MHA EIS declares its methodology to identify urban villages with potential
15 significant historic and cultural risks, stating, “[f]or this analysis potential significant impacts
16 will be defined as potential growth rates fifty percent or greater than the potential growth rates
17 under the no action alternative.” Ex. 2 at 3.304. This methodology fails to account for the
18 already-present risk to historic assets that the no action alternative carries. A proper analysis
19 would have first considered the existing environment – in this case the growth rate of the WSJ
20 Urban Village and the risk to historic assets that this carries – and then assessed the degree to
21 which the proposed action further exacerbates it.

22 The WSJ Urban Village experienced a growth rate of 111% between 1995 and 2015, the
23 highest of any urban village in the city. Ex. 2 at 3.24. The forecast growth rate for the “no

1 action” alternative is a further growth of 2,300 beyond the baseline of 3,880 units. Ex. 2 at 2.26.
2 This is a no-action growth rate baseline of 59%. Again, this is one of the highest growth rates of
3 any urban village in the city. *Id.*

4 Supporting the importance of growth rate as a measure of risk, City documents reveal
5 that historic and cultural asset loss in the WSJ Urban Village is already an issue of concern. The
6 analysis by the City Landmark Preservation Board of the historic Campbell building in the area’s
7 commercial core, for example, noted that the rate of change as a reason for landmark action. The
8 analysis more specifically stated, “[i]n recent years multistory buildings have begun to replace
9 the smaller earlier and early and mid-20th century structures disrupting the district’s pedestrian
10 and early automobile-oriented massing and scale. Examples of this trend could be found on the
11 east edges of the district on 42nd Avenue on in the 4700 block of California Avenue. Even the
12 prime southeast corner of the Junction’s main intersection now features a new six story mixed
13 use building.” Ex. 165 at 3.

14 The preferred action alternative of the MHA EIS raises the growth estimate of the WSJ
15 Urban Village to 3,133 units. Ex. 2 at 2.26. While incrementally 36% more than the no-action
16 baseline the aggregate growth rate after the no-action baseline is included is 81%.¹³ Compare
17 this growth, for example, to Fremont, which has an aggregate growth rate of 63%.¹⁴ *Id.*
18 Despite a lower aggregate growth rate, Fremont is noted as an area of potential significant impact,
19 while the WSJ Urban Village is not. Ex. 2 at 3.310.

¹³ The WSJ Urban Village baseline of 3,880 units, with growth by 3,133 units under the preferred alternative, nets an aggregate growth rate of 81%.

¹⁴ The Fremont Urban Village baseline of 3,200 units, with growth by 2,003 units under the preferred alternative, nets an aggregate growth rate of 63%.

1 **B. MHA EIS failed to identify the WSJ Urban Village historic landmarks**
2 **located on California Avenue SW.**

3 Two City of Seattle historic landmarks, the Hamm and Campbell buildings, are located
4 across from each other at the key intersection of SW Alaska Street and California Avenue SW in
5 the WSJ Urban Village. *Koehler Testimony, Day 8, Part 1 at 0:38 – 0:43.* They are not
6 included in the MHA EIS.

7 **C. MHA EIS fails to identify the WSJ Urban Village unreinforced masonry**
8 **buildings, which are concentrated on and near California Avenue SW.**

9 The MHA EIS notes the special sensitivity of unreinforced masonry buildings (URM) to
10 impact. The WSJ Urban Village has URMs and they are especially concentrated on California
11 Avenue SW. *Koehler Testimony, Day 8, Part 1 at 0:57 – 0:59; Exs. 164 and 166.* They are not
12 included in the MHA EIS .

13 **D. MHA EIS fails to identify the WSJ Urban Village cultural events and assets,**
14 **which are concentrated on and near California Avenue SW.**

15 The WSJ Urban Village has a concentration of cultural events and assets on and near
16 California Avenue SW. These events and assets include the West Seattle outdoor mural
17 collection, the West Seattle Grand Parade, the Farmer’s Market, WestFest, SummerFest,
18 Halloween at the Junction and the Junction winter holiday events, to name a few. *Koehler*
19 *Testimony, Day 8, Part 1 at 0:43 – 0:56; Exs. 167 and 168.* They are not included in the MHA
20 EIS.

21 **E. MHA EIS fails to identify WSJ Urban Village small and historic business**
22 **concentration, which is located on and near California Avenue SW.**

23 Mr. Miller, owner of the historic Husky Deli (est. 1932), explained and presented an
24 exhibit offered by Councilmember Herbold that introduced a Legacy Business Preservation

1 Program. He noted that his business was one of a concentration of small businesses located on
2 and near California Avenue SW. He read from CM Herbold’s article that, “[i]ndependent small
3 businesses often define a neighborhood and they need our help as they become the most recent
4 victims of displacement as the economy booms.” *Miller Testimony, Day 8, Part 2 at 0:29:00 –*
5 *0:33:00; Ex. 87.*

6 The MHA EIS acknowledges the risk of small-business displacement, but makes no
7 effort to identify concentrations of small businesses like those on California Avenue SW.
8 *Without this data, the risks to small businesses are difficult to understand and mitigate and*
9 *therefore could play no role in the formulation of the Action Alternatives.*

10 **F. Specific Legal Issues**

11 The City failed to meet the requirement of WAC 197-11-440(6) by failing to accurately
12 document the existing environmental conditions of historic and cultural assets at the WSJ Urban
13 Village. The MHA EIS failed to identify a concentration of assets on and near California
14 Avenue SW, coincidentally known in the Neighborhood Plan as the “Commercial Core”. This
15 failure interferes with the reader’s ability to identify or discuss alternatives that are less impactful
16 to the WSJ during future legislative action. For example, an alternative that concentrates zoning
17 changes in *The Triangle area of the WSJ Urban Village could limit impacts to the historic and*
18 *cultural assets that were identified by witnesses and in exhibits.*

19 The City failed to meet the requirement of WAC 197-11-440(6) by failing to apply a
20 reasonable methodology to identify potential significant impacts to historic and cultural assets.
21 The methodology chosen misapplied the existing environmental condition of “growth rate” in a
22 manner that *diminishes the understanding of the aggregate risk.* The methodology fails to
23 acknowledge that the baseline growth rate already presents a risk that the MHA action

1 alternatives exacerbate, rather than create. A correctly applied methodology would have
2 identified the WSJ Urban Village as having potential significant risks of historic and cultural
3 asset loss, and would have discussed *mitigations thereto*.

4 **VI. MHA EIS SECTION 3.6 (BIOLOGICAL DIVERSITY) IS DEFICIENT**

5 **A. MHA EIS Fails to Identify Tree Canopy Gaps Citywide.**

6 WAC 197-11-440(6) requires that an EIS “[s]hall describe the existing environment that
7 will be affected by the proposal, analyze significant impacts of alternatives including the
8 proposed action, and discuss reasonable mitigation measures that would significantly mitigate
9 these impacts.” The City’s analysis of the canopy and canopy-related impacts within the WSJ
10 Urban Village and for transportation Corridor 7 is inadequate.

11 The City has set a citywide canopy coverage goal of 30% by 2037. Ex. 2 at 3.316. That
12 coverage stands at 28 percent, according to the 2016 Seattle Tree Canopy Assessment. Ex. 79.
13 Yet not all neighborhoods enjoy the same levels of canopy.

14 JuNO established, in documents independent of the MHA EIS, that the City recognizes
15 canopy gaps in single-family neighborhoods. Ex. 104 at 1. These gaps are important because
16 the majority of trees in Seattle are located in residential zones, representing 67 percent of the
17 City’s land and 72 percent of its canopy. Ex 2 at 3.316 and 3.317.

18 JuNO also established, in documents independent of the MHA EIS, that the City
19 recognizes canopy-coverage gaps with respect to people of color and the economically
20 marginalized. These gaps are important because “[t]here is a statistically significant inverse
21 relationship between tree canopy and both people of color and people within 200% of the
22 poverty level.” Ex. 105.

1 **B. MHA EIS Fails to Analyze Canopy Distribution Citywide**

2 The MHA EIS reflects the aggregated quantity of canopy citywide. Ex. 2 at 3.329, 3.335
3 and 3.339. In testimony, Sharese Graham justified using this aggregated quantity as an
4 appropriate analytical approach because it factors in any coverage gaps. *Sharese Graham*
5 *Testimony, Hearing Day 17 (“Graham Testimony”), Part 3 at 12:05 – 13:15.* However, both
6 this testimony and the MHA EIS fail to acknowledge the analytical intent of the 2016 Seattle
7 Tree Canopy Assessment:

8 The assessment provides the foundation for understanding the quantity,
9 **distribution**, and configuration of tree canopy in Seattle. The true value of this study
10 will be realized when the results are used to guide urban forestry policy and
11 management efforts such as **establishing localized canopy goals** and targeted
12 planting and conservation efforts to maximize limited resources. Ex. 79 at 1,
13 (emphasis added).
14

15 Ms. Graham’s testimony also fails to acknowledge the City’s pre-existing parcel-level
16 analysis related to canopy gaps regarding people of color and the economically marginalized –
17 and the City’s stated intent to mitigate these gaps. As JuNO established, in documents
18 independent of the MHA EIS, the City found, “in census tracts with high numbers of people of
19 color, tree canopy is as low as 11%.” Ex. 105. JuNO also established that, in documents
20 independent of the MHA EIS, the City intends to propose a Director’s Rule or legislation for
21 replanting and reforestation that prioritizes “addressing racial and economic disparities in
22 accessing and enjoying the benefits of urban trees.” Ex. 104 at 3.

23 **C. MHA EIS Fails to Analyze Canopy Distribution At The Urban Village Level.**

24 The MHA EIS fails to analyze the distribution of tree canopy by urban village. The
25 importance of such an analysis is illustrated by examining the WSJ Urban Village. Using data
26 found outside the MHA EIS, JuNO established that the WSJ Urban Village has a tree canopy –

1 prior to development – of 16.26%. *Carl Guess Testimony, Hearing Day 5, (“Guess Testimony”)*
2 *on “Biological Resources” at 8; Exs. 107 and 114* ¹⁵. Basic math shows this figure is 45% less
3 than the City’s 2037 canopy goal.

4 JuNO also established that, using data found outside the MHA EIS, between 410 and 484
5 single-family zoned parcels in the WSJ UV would be upzoned to multi-family, depending on the
6 Action Alternative. Exs. 97 and 98. As noted previously, the majority of trees in Seattle are
7 located in residential zones; the development of these parcels, therefore, would reduce an
8 already-degraded canopy. ¹⁶

9 Section 3.6 fails to provide the decision makers with an accurate description of the WSJ
10 Urban Village environment affected by the MHA proposal with respect to canopy. It also fails to
11 provide an accurate or complete analysis of the impacts to the environment of the WSJ Urban
12 Village, particularly to single-family home areas.

13 This failure stands in contrast to the Open Space & Recreation section of the MHA EIS
14 which not only details the parks and open space for every urban village to be upzoned, but which
15 of those villages are underserved with respect to parks and open space. Ex. 2 at 3.347.

16 The MHA EIS purports to justify the lack of disclosure of canopy gaps by relying on the
17 fact that MHA is a citywide program and programmatic in nature. However, as previously
18 discussed, a programmatic EIS is not an excuse to escape the fundamental responsibility under

¹⁵ JuNO’s analytical process was nearly identical to that of the City’s for environmentally critical areas as described by Ms. Graham (*Graham Testimony, Part 3, at 13:50 to 14:30*): the use of publicly data to characterize and quantify the study areas for each Action Alternative and the overlaying of those areas with parcel-level canopy data. *Guess Testimony on “Biological Diversity” at 5-8; Ex. 114.*

¹⁶ The City made a similar finding in its EIS for the University District upzone: “It should be noted that much of the U District does not comply with today’s standards for street trees or landscaping on private property.” Ex. 162, at 4-70, Letter 43, Comment 4.

1 SEPA for early and meaningful environmental review, including the disclosure of profound
2 impacts that already exist at the neighborhood level.

3 Perhaps the best case for disclosing of these distribution gaps in the MHA EIS is that the
4 City has failed, repeatedly, to do so in urban villages *already upzoned* as part of the MHA
5 program when it had the opportunity – and despite numerous and explicit requests to do so. The
6 comment in the Uptown Rezone Center EIS could not have been clearer: “There is no mention of
7 how the tree canopy coverage will be impacted by this proposal.” Ex. 70 at 5.502, *Letter: Gold,*
8 *Morgan -2.*¹⁷ Similar concerns regarding canopy were raised in the U District Urban Design EIS.
9 Ex. 162.¹⁸ Yet neither the Uptown EIS nor the U District EIS discloses a precise distribution of
10 tree canopy.¹⁹

11 The MHA EIS should be remanded for a parcel-level analysis of citywide tree canopy
12 distribution and localized canopy goals to guide conservation and decision-makers in their work.

13 **D. MHA EIS Improperly Asserts Finding Of Non-Significance With Respect To**
14 **Changes In Tree Canopy.**

15 The MHA EIS admits the City has no threshold for determining the significance of tree
16 loss. Ex. 2 at 3.328, 3.334 and 3.338. It also claims the change in canopy under any of the
17 Action Alternatives is “not considered a significant impact.” Ex. 2 at 3.328, 3.334 and 3.338.

¹⁷ See also, *Id.* at 5.353, Letter: Cassin, Jan; 5.379, Letter: Conroy, Kathleen; and 5.661, Letter: Krane, Bjorn.

¹⁸ See Ex. 162 Letter 5, Mark Griffin, Roosevelt Neighbors Alliance; Letter 43, Grafious, Mary; Letter 44, Grafious, Mary; Letter 87: Schmitt, Michael; and Letter 96: Wilkins, Steve. See also U District Design DEIS Public Hearing testimony at 15, 45-49, and 59.

¹⁹ The statement that “[m]uch of the tree canopy in the Uptown area is found along the street rights of way, and would be retained” is both imprecise and lacks a standard for significant tree loss against which it can be evaluated. Ex 70 at 5.106, Comment 4.

1 These statements are the very definition of circular reasoning: the City cannot claim
2 insignificance when it has no yardstick for measuring significance.

3 In testimony, Ms. Graham attempted to inject an unofficial threshold into the record. She
4 stated the MHA EIS shows a one-half percent reduction in citywide canopy coverage over the
5 study period then opined that the size of this reduction is such that the impact of all Action
6 Alternatives on canopy should be considered insignificant. *Graham Testimony, Day 17, Part 3*
7 *at 9:00 to 10:05*. An opinion, however, is not a legally established measurement with a
8 scientifically rigorous, transparent, and well-understood methodology; cannot be used by citizens
9 to interpret, or challenge, proposed land-use actions; and cannot be applied consistently by
10 decision makers. Only an official measurement meets these criteria.

11 As Section 3.6 does not provide an officially sanctioned threshold for determining the
12 significance of tree loss, the MHA EIS cannot logically claim a non-significant impact with
13 respect to changes in canopy. The MHA EIS should be remanded for the creation of such a
14 standard and an urban-village level measurement against it.

15 **E. MHA EIS Fails To Disclose Basis For Change Coefficient Formulae.**

16 The MHA EIS computes tree-canopy changes in each Action Alternative using *change*
17 *coefficients*. Ex. 2 at 3.329, 3.335 and 3.339. These coefficients apply to specific upzoning
18 changes citywide, such as that from single-family to lowrise designations.

19 Two coefficients describe a range at which canopy can change over the study period: a
20 high scenario and a low scenario. The high-scenario formula as, “the difference in percent
21 between the **proposed zone tree cover** and the existing zone tree cover.” Ex. 2 at 3.319
22 (emphasis added). The low scenario as *half of the high-scenario result. Id.*

1 As noted earlier, JuNO was able to calculate the existing tree canopy for the WSJ Urban
2 Village. Yet JuNO could not find any description of the proposed tree cover for any upzoning
3 scenario under any Action Alternative for the WSJ Urban Village, making it impossible to verify
4 the City’s high- and low-scenario calculations. If the MHA EIS is to be a programmatic
5 document and guide development in all upzoning scenarios in all affected urban villages, it
6 should disclose the proposed zone tree cover for all upzoning scenarios in the MHA proposal.

7 **VII. MHA EIS SECTION 3.7 (OPEN SPACE & RECREATION) IS**
8 **DEFICIENT**

9 The MHA EIS measures the allocation of parks and open space against a population-
10 based standard of 8 acres per 1,000 residents or .8 acres per 100 residents and refers to this
11 standard as the Citywide LOS. Ex. 2 at 3.348. This standard is compliant with the requirements
12 of the Washington State Recreation and Conservation Office and with the Washington State
13 Growth Management Act. Ex. 2 at 3.344.

14 The City admits the MHA proposal will create significant, adverse impacts with respect
15 to parks and open space when measured against the Citywide LOS. Ex. 2 at 3.357. It further
16 admits the MHA proposal would result in a shortfall of 434 acres citywide, under all Action
17 Alternatives when measured against the Citywide LOS. Ex. 2 at 3.349.

18 **A. MHA EIS Fails to Mitigate Findings Of Significant, Adverse Impacts**
19 **Citywide.**

20 The MHA EIS states that some combination of its proposed mitigation measures could
21 reduce the significant, adverse impact of the MHA proposal on parks and open space to “a less-
22 than-significant level.” Ex. 2 at 3.357. However, the MHA EIS contains no examples, estimates,
23 guidelines or illustrations showing how *any* combination of mitigation measures would create the

1 434 new acres of parks and open space required to meet the Citywide LOS. *Guess Testimony on*
2 *“Open Space & Recreation” at 3; Ex 114.*

3 The individual mitigation measures are similarly non-specific or not credible. The MHA
4 EIS states the strategies in the Comprehensive Plan EIS would provide the tools necessary to
5 meet the City’s parks and open space goals. Ex. 2 at 3.356. However, the MHA EIS fails to cite
6 which specific strategies would provide those tools, or to estimate the number of acres of parks
7 and open space they would create to mitigate the significant, adverse impact of the MHA EIS on
8 parks and open space. *Guess Testimony on “Open Space & Recreation” at 3; Ex 114.*

9 The MHA EIS states that increasing open space acreage through partnerships with public
10 agencies, including Seattle Public Schools, Seattle Public Utilities, and the Seattle Department of
11 Transportation, would provide mitigation. Ex. 2 at 3.357. However, the MHA EIS fails to
12 estimate the number of acres of parks and open space these partnerships would create to mitigate
13 the significant, adverse impact of the MHA EIS on parks and open space. *Guess Testimony on*
14 *“Open Space & Recreation” at 5; Ex. 114.*

15 The MHA EIS asserts that providing more activities and programs in existing parks and
16 open spaces, extending hours of operation of certain recreational facilities, and working with
17 community groups to provide more activities and programming would provide mitigation. Ex. 2
18 at 3.356. *These activities cannot create acreage and, therefore, are not credible mitigation with*
19 *respect to the Citywide LOS.*

20 Finally, the MHA EIS states the Seattle Parks & Recreation department (“SPR”), in its
21 future planning processes, could modify the Citywide LOS to consider the “quality of facilities
22 and availability of SPR programs and services, in addition to, **or instead of**, a standard based
23 solely on parks acreage per population.” Ex. 2 at 3.357 (*emphasis added*). The fact remains,

1 however, that the only official measurement available *today* with which to evaluate the allocation
2 of parks and open space under the MHA proposal and the mitigations thereto in the MHA EIS is
3 the Citywide LOS. This is not credible mitigation.

4 As previously discussed, the courts have made clear that a “mere listing” of possible
5 mitigation measures is “insufficient to qualify as the reasoned discussion” required by WAC
6 197-11-440(6)(b)(iv).

7 **B. MHA EIS Conflicts With Comprehensive Plan On Provision Of Parks &**
8 **Open Space In Urban Villages**

9 As a matter of policy under the Comprehensive Plan, the City is to, “[c]onsider suitable
10 for urban village designation areas where...[p]ublic and private facilities, services and amenities,
11 such as *parks*, schools, commercial services, and other community services, are available, **or can**
12 **be provided over time.** Ex. 3 at 1.6, UV5 (emphasis added).

13 The WSJ Urban Village falls under the protection of the Comprehensive Plan UV5
14 policy. Yet the MHA EIS fails to demonstrate how the City will provide the parks and open
15 space necessary for these urban villages to meet the Citywide LOS over its study period. This
16 failure creates an inconsistency with the Comprehensive Plan that must be resolved.

17 **C. MHA EIS Fails to Mitigate Findings Of Significant, Adverse Impacts At**
18 **Urban Village Level.**

19 The City considers 16 of the 27 urban villages covered by the MHA proposal to be
20 **underserved** – that is, they do not meet the Citywide LOS for parks and open space. *Guess*
21 *Testimony on “Open Space & Recreation” at 6; Exs. 2 at 3.347 and 114 (emphasis added).* The
22 importance of mitigating the impact of development on parks and open space at the urban village
23 level can be seen in the WSJ Urban Village.

1 The WSJ Urban Village ranks 14th on the list of 16 underserved urban villages. *Guess*
2 *Testimony. Id.* It has .02 acres of parks and open space per 100 people— *only one-fourth* the
3 acreage required by the Citywide LOS. Ex. 2 at 3.347. The MHA EIS would reduce this acreage
4 by *an additional 50%* under all Action Alternatives. Ex. 2 at 3.350.

5 As noted earlier, between 410 and 484 single-family zoned parcels in the WSJ Urban
6 Village would be upzoned to multi-family, depending on the Action Alternative. As also noted
7 earlier, most of the public parkland in Seattle is found in single-family zones. With the
8 development of these parcels, WSJ Urban Village is guaranteed to fall further behind in meeting
9 the Citywide LOS.

10 The MHA EIS details with alarming precision how the WSJ Urban Village fails to meet
11 the Citywide LOS for parks and open space – and will lose even more under the MHA proposal.
12 Yet it fails to mitigate the significant, adverse impact of development on parks and open space,
13 leaving an already-underserved urban village even more so.

14 **D. MHA EIS Fails to Consider Financial Costs Of Parks Acquisition In**
15 **Proposed Mitigation.**

16 The assessed value of Seattle properties – properties whose acquisition could expand the
17 availability of parks and open space – has grown at an annual compound rate of 12.71% in the
18 last five years and is predicted to rise by an annual compound rate of 6.03% in the coming
19 decade. *Guess Testimony at 12; Exs. 99, 100, 101 and 114.* These are facts should have been
20 made clear in the MHA EIS so that decision-makers could assess the advisability of the action,
21 especially because the City was *already aware* of cost issues related parks and open space
22 acquisition at an urban village level as disclosed in the Uptown Rezoning EIS.²⁰

²⁰ “Uptown is a challenging area in which to acquire land, due to a lack of vacant land and **high**

1 **VIII. MHA EIS SECTION 3.3 (AESTHETICS) IS DEFICIENT**

2 **A. MHA EIS fails to describe the WSJ Urban Village as part of the affected**
3 **environment.**

4 For decision makers to evaluate the impacts of the proposed action on the WSJ Urban
5 Village, it is critical that the MHA EIS present them with a clear picture of the existing
6 environment. Section 3.3 of the MHA EIS is wholly deficient in this regard. There is nothing in
7 Section 3.3.1 of the MHA EIS (Aesthetics, Affected Environment) that describes the existing
8 aesthetics of the WSJ Urban Village. Section 3.3.1 fails to even mention WSJ Urban Village, let
9 alone describe its distinctive character, existing development patterns and views, all of which
10 would be impacted by the MHA Proposal. The MHA EIS further fails to describe the existing
11 topography of the WSJ Urban Village, which is necessary to evaluate the impacts of the
12 proposed rezones.

13 **1. Four Distinct Residential Areas**

14 As established at the Hearing, WSJ Urban Village has four distinct single-family
15 residential areas, all of which are proposed to be upzoned under the Preferred Alternative. Ex.
16 240. These areas are Fairmount Park, Edmunds Slope, Oregon-Genessee-Dakota, and 32nd and
17 Genessee. *Tobin-Presser Testimony, Hearing Day 11, Part 2 at 42:43- Part 3 at 5:46.*

18 **Fairmount Park.** Fairmount Park is comprised primarily of homes built 90-plus years
19 ago. Ex. 242. The area is characterized by older, craftsman homes, many of which are two
20 stories, with generous yards filled with grass and trees. *Tobin-Presser Testimony, Hearing Day*
21 *11 (“Tobin-Presser Testimony”), Part 2 at 46:00-48; Exs. 241-1, 241-2, 241-3 and 241-4.*

land acquisition costs.” Ex. 70 at 3.117 (emphasis added).

1 There are many detached accessory dwelling units (“DADUs”) in this single-family
2 neighborhood. *Tobin-Presser Testimony, Part 2 at 46:00-48:00*. Under the Preferred
3 Alternative, all single-family parcels the Fairmount Park area would be upzoned to LR1 (30-foot
4 townhomes) and LR2 (40-foot apartments). Ex. 250.

5 Fairmount Park is adjacent to the southern border of the historic Junction that
6 encapsulates the “small town” character of the WSJ Urban Village. *Tobin-Presser Testimony,*
7 *Part 2 at 42:41-43:44*; Ex. 3 at 401(WSJ Urban Village Neighborhood Plan), WSJ-G1. The
8 only change to Fairmount Park from the draft map initially released by the City in October 2016
9 (the “Initial Map”) and the Preferred Alternative was to eliminate the proposed expansion of the
10 Urban Village from SW Dawson to SW Brandon. Ex. 2 at Appendix B, page 64. All parcels
11 initially proposed for rezone to LR1 and LR2 remain designated for the same rezones. *Id.*

12 **Oregon-Genessee-Dakota.** Oregon-Genessee-Dakota consists primarily of 90-
13 plus year old homes, many of which are single-story structures. *Tobin-Presser Testimony, Part 2*
14 *at 55:47-57:20*; Exs. 241-6, 241-8 and 241-9. Oregon-Genessee Dakota is adjacent to the
15 historic Junction’s northern border. *Tobin-Presser Testimony, Part 2 at 42:41-43:44*; Ex. 240.
16 The only change to Oregon-Genessee-Dakota from the Initial Map to the Preferred Alternative is
17 to alter the proposed zoning on one-half of one block between Genessee and Dakota on 41st
18 Avenue SW from LR2 to Residential Small Lot. Ex. 2 at Appendix B, page 64. The remainder
19 of this area was and is still proposed to be upzoned from single family to LR2. *Id.*

20 **Edmunds Slope.** Edmunds Slope consists of numerous homes built on a
21 significant hill, built primarily either (a) 90-plus years ago or (b) between 1940 and 1960. *Tobin-*
22 *Presser Testimony, Part 2 at 51:05-51:51*; Ex. 240. Mount St. Vincent nursing home is directly
23 south of the Edmunds Slope single-family area. *Tobin-Presser Testimony, Part 3 at 4:55-5:24.*

1 The highly developable “Triangle,” historically characterized by light industrial usage is directly
2 to the north of the Edmunds Slope single-family area. *Tobin-Presser Testimony, Part 3 at 3:52-*
3 *4:45*. There is no change to the Edmunds Slope Area between the Initial Map and the Preferred
4 Option, both of which provide for the rezone of all single-family parcels to LR1. Ex. 2 at
5 Appendix B, page 64.

6 **32nd and Genessee.** 32nd and Genessee is on the outer part of the Urban Village,
7 near Avalon Way SW. *Tobin-Presser Testimony, Part 3 at 0:22-1:36*. Sound Transit has
8 identified this area as the probable location for one of the two proposed WS Junction stations.
9 *Tobin-Presser Testimony*. While the Draft Map proposed to rezone all single-family parcels in
10 the area to LR1 and LR3 (50-foot apartments), the Preferred Alternative reduced the rezones to
11 RSL and LR1. Ex. 2 at Appendix B, page 64. This change may have been in recognition that
12 developers would be unlikely to take advantage of lowrise rezones in an area where a light rail
13 station might be located in the foreseeable future, resulting in either eminent-domain acquisition
14 or far greater development capacity. *Tobin-Presser Testimony, Part 3 at 1:42-3:33*.

15 **2. WSJ Urban Village Topography**

16 Topographically, West Seattle tends to be hilly. *Tobin-Presser Testimony, Part 3 at*
17 *30:52-31:12*. Houses are often set well above the street on one side and set at street level, or
18 below, on the other. *Tobin-Presser Testimony, Part 2 at 48:41-50:48*; Ex. 241-5 and 241-7
19 (west and east sides of 41st Avenue SW between SW Edmunds Street and SW Hudson Street).
20 The MHA EIS fails to note any of the topographical conditions in the WSJ Urban Village.

21 **3. WSJ Urban Village Views**

22 Because the West Seattle area is itself a large hill, with the highest point at “High Point”
23 near 35th Avenue SW and SW Myrtle Street, as well as being a peninsula, many of the homes in

1 the area have views of Puget Sound to the west, downtown Seattle, to the east, and Mount
2 Rainier to the southeast. *Tobin-Presser Testimony, Part 3 at 6:34-7:18*. The MHA EIS fails to
3 describe these views or to offer any mitigation with respect to the impacts to such views as a
4 result of development taller and wider buildings under the MHA proposal. *Tobin-Presser*
5 *Testimony, Part 3 at 31:03-31:06*.

6 **B. MHA EIS' Generic Renderings Do Not Accurately Depict WSJ Urban**
7 **Village Conditions and are Misleading.**

8 Purportedly to allow decision makers to evaluate the aesthetic impact of a gradual
9 replacement of single-family housing to multi-family townhouses and apartments, the MHA EIS
10 provides a series of three photographs, which provide an inaccurate and misleading picture of the
11 aesthetic impacts.

12 MHA EIS Exhibit 3.3-2 purporting to depict Established Single Family Housing is
13 inadequate and does not reflect the typical houses in Fairmount Park, Oregon-Genessee-Dakota,
14 Edmunds Slope or 32nd and Genessee. The picture is taken from an angle such that the houses
15 are barely visible and the sidewalk is the primary focal point.

16 Exhibit 3.3-3 purporting to depict New Infill Single Family Housing does not accurately
17 depict WSJ Urban Village conditions. The picture is of a large, boxy modern home. This style
18 is not typical in the WSJ Urban Village where new development is rare and is equally likely, if
19 not more likely, to be designed to resemble the existing 90-plus year old homes rather than the
20 modern style depicted. *Tobin-Presser Testimony, Part 2 at 58:29-59:02*; Exs. 241-10 ad 242.

21 Exhibit 3.3-4 is a picture of a lowrise multi-family apartment building built in the same
22 boxy modern style as the home in Exhibit 3.3-3. The picture is taken from farther away than the
23 boxy single-family home in the picture directly above which gives the viewer the impression that

1 the two structures are similar in height and bulk and further, that multi-family development will
2 be similar in style to existing housing stock, which is not the case in the WSJ Urban Village.

3 Exhibits 241-12, 241-13 and 24-14 are actual photographs showing a 40-foot apartment
4 building next to a single-family home on 42nd Avenue Southwest between SW Oregon Street and
5 SW Genessee Street. *Tobin-Presser Testimony, Part 2 at 59:13-1:01:19*. These photographs,
6 unlike Exhibits 3.3-2, 3.3-3 and 3.3-4, provide an accurate picture of the dramatic aesthetic
7 impacts of the proposed upzoning.

8 **C. MHA EIS Fails to Adequately Describe Aesthetic Impacts to WSJ Urban**
9 **Village.**

10 Having failed to describe the affected environment specific to the WSJ Urban Village, the
11 MHA EIS also fails to describe the impacts of the MHA proposal to the area. The document
12 itself acknowledges that it “does not provide a detailed or site-specific analysis of aesthetic
13 impacts at any specific location.” *Ex. 2 at page 3.169*. The MHA EIS purports to justify its lack
14 of disclosure by relying on the fact that MHA is a citywide program; however, the fact that the
15 MHA proposal would impact 26 separate neighborhoods does not excuse the City from
16 providing the information necessary for decision makers to evaluate profound impacts to each
17 neighborhood, as well as whether the proposed mitigations, primarily side façade modulation,
18 upper story setbacks and design review serve as mitigation for such impacts. As previously
19 discussed, a programmatic EIS is not an excuse to escape the fundamental responsibility under
20 SEPA for early and meaningful environmental review.

21 Pages 3.179, 3.181 and 3.183 purport to depict the impacts of RSL, LR1 and LR2
22 buildings being developed among existing single-family homes. Each of the renderings serves to
23 mask, rather than highlight the impacts of the proposed MHA rezones. First, they are drawings,

1 not photographs. Second, they are taken from the side, rather than head-on, ensuring that the
2 reader cannot see the side-by-side impact. Comparing MHA EIS Ex. 3.3-15 with (Hearing)
3 Exhibit 241-14 illustrates this point. Third, the RSL, LR1 and LR2 structures are in the
4 background of each picture, so that they are the farthest away and naturally appear smaller in
5 size.

6 Additionally, the renderings fail to take into account the unique conditions of the WSJ
7 Urban Villages. The renderings show flat, level streets with residences a street-level on both
8 sides. As previously discussed, this is not the case in much of the WSJ Urban Village. When
9 actual conditions are depicted, the ineffectual nature of the proposed mitigations becomes clear.
10 By way of example, an upper story setback (the proposed mitigation for shading impacts) would
11 fail to mitigate the shading impacts that a 40-foot apartment building set up off the street would
12 have on a single-story residence directly across the street set at or below street level.

13 The MHA Urban Design and Neighborhood Character Study included in Appendix F to
14 the MHA EIS is equally unhelpful in allowing for any meaningful evaluation of height, bulk and
15 scale impacts of rezoning a single-family neighborhood to RSL, LR1 or LR2. Among other
16 things, the depictions are simply drawings of box-like structures, the depictions of which are
17 aerial such that heights are not meaningfully distinguishable and the topography is flat.

18 Section 3.3 fails to provide the decision makers with an accurate description of the WSJ
19 Urban Village environment affected by the MHA proposal. As such, it also fails to provide an
20 accurate or complete analysis of the impacts to the undescribed affected environment of the WSJ
21 Urban Village. Without this information, decision makers do not have the knowledge necessary
22 to evaluate whether the purported benefits of the MHA proposal outweigh the negative impacts
23 thereof.

1 The City of Seattle has comparatively high crime rates and low crime-resolution rates.
2 *Rees Testimony Hearing Day 8, Part 5 at 52:40, Part 5 at 54:21*; Berkshire Report. Ex. 204 at
3 Appendix D, page 1; Ex. 2 at 3.360.

4 The Seattle Police Department (“SPD”) is not meeting its expected response times to
5 citizen calls. Under the 90th Percentile Response Time Metric, which has replaced the simple
6 average metric, the City’s response times are far longer than the target seven minutes for priority
7 one calls and 15 minutes for priority two calls in every precinct. Berkshire Report (Ex. 204) at
8 Appendix D, page 1. In the WSJ Urban Village, SPD response times for priority one calls are
9 over 14 minutes and for priority two calls are over 40 minutes. *Id.*

10 The Berkshire Report concluded that under the *current population*, the SPD would need
11 to add 175 officers and approximately 250,000 overtime hours above 2015 levels in order to
12 meet the seven-minute response time at the 90th percentile and to meet crime clearance averages.
13 Berkshire Report (Ex. 204) at Ch. 2, page 8. City budget documents, available from the City’s
14 website, show the City has neither added nor budgeted for the full recommended officer increase
15 to serve even the pre-MHA population. *Rees Testimony Hearing Day 8, Part 5 at 1:01:15, Part*
16 *5 at 1:02:42*; Ex. 202 (Police). The MHA EIS fails to advise decision makers of the current
17 officer staffing shortages or describe the impacts of increased population density thereon.

18 JuNO provided all of the relevant data in its comment to the Draft MHA EIS. *See Ex.*
19 202 (Police). Nonetheless, the MHA EIS fails to advise decision makers of the critical existing
20 deficiencies or to identify the impacts of the significantly increased populations in 26 urban
21 villages that would result from implementation of the MHA proposal.

1 **B. Fire Services**

2 The MHA EIS fails to provide decision makers with adequate information as to existing
3 deficient conditions with respect to fire services, by geographical area or otherwise, or to identify
4 the impacts that would attend a significant population increase under the Action Alternatives.

5 With respect to the existing fire service conditions in the area purportedly covered by the
6 MHA EIS, the document advises only that (1) the Comprehensive Plan identified Fire Station 31
7 (serving only five of the 26 impacted urban villages) as one where additional fire resources
8 might be needed to address current and (non-MHA related) projected growth; and, importantly,
9 that the Seattle Fire Department (“SFD”) fails to meet its own standard for arrival at fire and
10 emergency medical incidents - a standard of arriving within 4 minutes 90 % of the time – or
11 those of the National Fire Protection Association (NFPA) *under the existing population*
12 *level*. Ex. 2 at 3.361.

13 Discussion of impacts on fire service under Action Alternatives are limited to several
14 cursory sentences concluding that the growth would result in a greater concentration of people
15 within each battalion area for which fire and emergency services must be provided. Ex. 2 at
16 3.379–3.382.

17 To highlight the critical nature of fire response times, the City’s own (non-MHA)
18 documents conclude that fires can double in size in 60 seconds. Ex. 205. Nonetheless, only the
19 urban villages served by Fire Station 31 are identified as potentially being impacted by
20 “increased service call volumes and potential slower average response times.” Ex. 2 at 3.379–
21 3.382. As to all other urban villages, including the WSJ Urban Village, for which MHA and its
22 broad upzones are proposed, the MHA EIS merely states that “impacts on fire and emergency

1 services as a result of demand increases would be identified and managed during the project
2 approval process.” Ex. 2 at 3.381 and 3.382.

3 The MHA EIS fails to provide decision makers with the information necessary to
4 evaluate the City’s ability to “identify and manage” fire demand increases resulting from
5 significantly increased populations in certain neighborhoods or to explain how the cumulative
6 impact of the upzones could possibly be managed in connection with a single project approval.
7 The MHA EIS also fails to provide decision makers with the City’s own data with respect to
8 emergency response times by fire station and battalion under the existing population or to project
9 increased demand and relative impacts that would result from the projected increased population.
10 *Rees Testimony, Hearing Day 8, Part 5 at 1:13:49, Part 5 at 1:18:25.*

11 External to the MHA EIS, the City describes appropriate fire and emergency medical
12 service response times as four minutes. *Rees Testimony, Hearing Day 8, Part 5 at 1:15:47; Ex.*
13 *205. The SFD reports an average of .7 fires annual per 1000 residents. Rees Testimony, Hearing*
14 *Day 9, Part 1 at 1:44. Ex. 206. The MHA FEIS estimates that during the year prior to its*
15 *publication (2016), approximately 55,000 new residents moved to Seattle. Ex. 2 at 3.3 and 3.4.*
16 *A population increase of 55,000 would increase fires by 38.5 per year (.7 x 55 = 38.5).*
17 *Nonetheless, firefighter staffing has not increased between 2015 and 2018. Ex. 206 at 336.*
18 *Medic 1 staffing has decreased during the same time period. Id. This information is critical to*
19 *decision makers’ ability to evaluate the City’s ability to identify and manage increased demand*
20 *resulting from MHA.*

21 The WSJ Urban Village is served by Fire Station 32. As set forth in JuNO’s comment to
22 the Draft EIS, but omitted from the MHA EIS, Station 32’s fire response time was 25% below
23 the City’s standard and Medic 32 was over 75% slower than the required response time for

1 providing advanced life support. *See* Ex. 202, Comments on DEIS Analysis Section 3.8 Public
2 Services and Utilities, West Seattle Junction Urban Village, Fire/EMS.

3 The MHA FEIS provides decision makers with no information regarding the impacts of
4 an increasing population density in 26 urban villages on the 911-call service center. *Rees*
5 *Testimony, Hearing Day 9, Part 1 at 5:55; Id.*

6 **C. Water and Sewer Services**

7 **1. MHA EIS Fails to Describe Existing Conditions.**

8 The MHA EIS acknowledges that “some areas” of the city are served by sewer pipes less
9 than 12 inches in diameter and that such pipes are likely at or near capacity. Consequently, the
10 MHA states “downstream pipes would need to be upgraded to a minimum 12-inch diameter.”
11 Ex. 2 at 3.368. These statements, however, fail to adequately describe existing conditions or to
12 provide a solution that will address impacts of the Preferred Alternative.

13 In reality, approximately 90% of the sewer lines in the City of Seattle are less than 12
14 inches in diameter. Ex. 201 at Figure 3.9-7. With respect to the WSJ Urban Village, at least 32
15 blocks have sewer pipes less than 12 inches in diameter, and nearly 14 blocks are served entirely
16 or partially by pipes less than 8 inches in diameter. *Rees Testimony, Hearing Day 8, Part 5 at*
17 *17:27, Part 5 at 23:11; Ex. 202 (Sewer-Storm).* Similarly, most of the sewer pipes in the South
18 Park and Wallingford Urban Villages²¹ also have sewer pipes that are less than 12 inches in
19 diameter. *Rees Testimony, Hearing Day 8, Part 5 at 23:16.*

20 The WSJ Urban Village is served by sewers that combine sewage and storm water in the
21 same pipes. *Rees Testimony, Hearing Day 8, Part 5 at 21:57, Part 5 at 23:52; Ex. 201 at Figure*

²¹ These were the only areas studied by JuNO. It is likely many other urban villages have the same issue.

1 3.9-7. In the combined systems (like WSJ Urban Village) and partially combined systems that
2 serve two-thirds of the City of Seattle, heavy rain events can overwhelm these systems. When
3 the system cannot handle the added rainwater, the combined raw sewage and storm water
4 overflows are released at sites referred to as Combined Sewer Overflow sites (each a “CSO”).
5 From there, the overflow storm water and sewage gets dumped into surface waters, including
6 Puget Sound, Lake Washington, Lake Union and the Duwamish Waterway. *Rees Testimony,*
7 *Hearing Day 8, Part 5 at 24:46;* Ex. 202 (Sewer-Storm) (containing citations to the City’s Waste
8 Water System Plan (Ex. 200) and the 2013 Consent Decree between the City and the
9 Environmental Protection Agency (the “EPA”). The City is already under a consent decree with
10 the EPA under which it must annually disclose to the EPA how much sewage it releases to
11 surface water.²² The report for 2017 states that every year there are tens of millions, if not more
12 than one hundred million, gallons of untreated sewage dumped during high rain events.²³

13 In 2011 the City proposed to rezone certain areas in the WSJ Urban Village “Triangle”
14 area. The City’s Determination of Non-Significance noted “[a]n increase in density and/or
15 change in the existing conditions may result in near-capacity or over-capacity flow conditions
16 during intense storm events unless improvements to the combined sewer system are made.”
17 *Rees Testimony, Hearing Day 8, Part 5 at 40:16;*²⁴ Ex. 202 (Sewer-Storm). Improvements have
18 not been made.

22

<http://www.seattle.gov/util/EnvironmentConservation/Projects/SewageOverflowPrevention/ReportsRegulations/index.htm>

²³ Id.

²⁴ Link cited by Ms. Rees in her testimony:

<http://www.seattle.gov/documents/departments/opcd/vault/westseattletriangle/landuseandzoningamendments.pdf>

1 Notwithstanding JuNO's inclusion of the above-information in its comment to the Draft
2 MHA EIS, the City failed to include any of this information in the final MHA EIS.

3 **2. MHA EIS Fails to Analyze or Describe Impacts of Upzones.**

4 The Preferred Alternative in the MHA EIS would upzone over 400 single-family parcels
5 in the WSJ Urban Village to multi-family. Ex. 242. Replacing single-family residences with
6 multi-family structures would result in exponentially increased sewer outflows in pipes that are
7 already undersized and/or at or near capacity. *Rees Testimony, Hearing Day 8, Part 5 at 16:10,*
8 *Part 5 at 24:34.*

9 Similarly, the proposed upzones would increase the amount of rainwater being
10 contributed to the sewer system. In single-family zoned areas where dwelling structures cover
11 one-third or less of each lot, rainwater that gathers on the roofs of homes typically runs directly
12 into yards where it is absorbed into the earth. *Rees Testimony, Hearing Day 8, Part 5 at 30:50.*
13 Replacing these with multi-family structures covering the majority of each lot will no longer
14 allow rainwater to be primarily absorbed on site. The water will collect on the roofs and be
15 plumbed into catch structures that feed into the existing sewer system that is already at or near
16 capacity. *Rees Testimony, Hearing Day 8, Part 5 at 31:30.*

17 While the City is undertaking sewer and storm analysis work (not described in the MHA
18 EIS), no current comprehensive analysis exists from which the City could have analyzed the
19 impacts of the increased density and change in building forms that would result from the upzones
20 under the MHA proposal. *Rees Testimony, Hearing Day 8, Part 5 at 34:46; Ex. 203.*

21 Without an analysis of the impacts, it is not possible to assess whether the mitigation
22 proposed by the City would be effective. Ex. 2 at 3.368. However, it is clear that simply
23 increasing pipes at the site of development projects is not going to address the issue that 90% of
24 the City's sewer pipes are less than 12 inches in diameter or that pipes of less than 12 inches are

1 at or near capacity. Sewage and storm water are an accumulation that travels through the entire
2 system and the City conducted no analysis of the sewer system citywide or urban village-wide to
3 determine the impact of the proposed upzones that will impact the entire system. *Rees Testimony,*
4 *Hearing Day 8, Part 5 at 40:03.*

5 X. ADDITIONAL INADEQUACIES

6 A. 2015/2016 Housing Unit Count and Growth Forecasts for the WSJ are Not 7 Credible

8 Information related to the Housing Affordability and Livability Agenda (“HALA”)
9 provided to JuNO by the City prior to the MHA DEIS claimed that the WSJ Urban Village had a
10 baseline of 3,880 units in 2015. Ex. 70 at 3. A table in the MHA EIS, tabulating growth from
11 1995 and 2015, claims that 2,187 units were built in the WSJ Urban Village during that 20-year
12 period. Ex. 2 at 3.24.

13 The MHA EIS has two seemingly conflicting tables. One table states the 2015 year-end
14 housing units for the WSJ Urban Village was 3,880. Ex. 2 at 3.24. A different table states that
15 the WSJ Urban Village has a 2016 housing baseline of 3,880 units. Ex. 2 at 3.26. It is curious
16 that the City has advanced the baseline by one year, from 2015 to 2016, without updating the
17 total, despite hundreds of units in the pipeline that were scheduled to open in 2016. Ex. 170 at 5.
18 The baseline data is not credible.

19 The housing-unit forecast is similarly not credible. In the interest of verifying the
20 forecast, JuNO collected project data for the WSJ Urban Village development pipeline from
21 online sources that uses link to direct a reader to Seattle SDCI data. The unit count for all
22 projects with addresses inside the WSJ Urban Village between 6/2015 and 2/2017 was 2,194. *Id.*

23 The no-action alternative forecast the addition of 2,300 units in the WSJ Urban Village
24 over the next *twenty years*. Ex. 2 at 2.26. However at the time of JuNO’s study, the

1 development pipeline already included 2,194 units over *two years*. Ex. 170 at 5. The MHA EIS
2 does not include, and the City did not provide, source data that could be used to verify its
3 baseline count of units or its forecasting method. It failed to provide or summarize pipeline data
4 in the MHA EIS as a means to create an accurate forecast.

5 The evidence suggests the baseline and forecast data for the WSJ Urban Village is not
6 credible. The City must provide supporting evidence within or associated to the MHA EIS to
7 support its estimates.

8 **B. City Failed to Provide Compliant Responses to DEIS Comments**

9 WAC 197-11-560 sets forth the range of possible responses to a DEIS comment. JuNO
10 submitted a document with a range of comments to the MHA DEIS during its comment period.
11 Ex. 287. The City provided responses to some of these comments in the MHA EIS, using an
12 index method that did not correspond to the structure of the comments. To the best of JuNO's
13 ability, it matched its comments to the City's responses. JuNO found numerous cases where the
14 City's response did not comply with the requirements of WAC 197-11-560. We listed our
15 comments and the non-compliant responses and provided them to the City. Ex. 185. The City
16 must provide compliant responses to them.

17

18 DATED this 24th day of September, 2018.

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JUNCTION NEIGHBORHOOD
ORGANIZATION

23
24

By 
Richard Koehler, Legal Representative

RECEIVED BY
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HEARING EXAMINER

BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeals of
WALLINGFORD COMMUNITY
COUNCIL, ET AL.

Hearing Examiner File:
W-17-006 through
W-17-014

CERTIFICATE OF SERVICE

Of Adequacy of FEIS Issued by the
Director, Office of Planning and
Community Development

RICHARD T. KOEHLER, states that on September 24, 2018, I caused the following to be
hand-delivered to the Office of the Hearing Examiner and by email to the Office of the City Attorney:

JUNCTION NEIGHBORHOOD ORGANIZATION'S
CLOSING BRIEF

I further caused the same pleading to be electronically mailed to the following:

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CERTIFICATE OF SERVICE - Page 1

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14 Lee Raaen, Wallingford Community Council, lee@lraaen.com; and
15 Richard Koehler, Junction Neighborhood Organization, rkoehler@cool-studio.net

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17 DATED this 24th day of September, 2018.

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19 By 
20 Richard T. Koehler
21 Junction Neighborhood Organization, Legal
22 Representative
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