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BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE

In the Matter of the Appeal of:

**WALLINGFORD COMMUNITY  
COUNCIL, ET AL.,**

of the adequacy of the FEIS issued by the  
Director, Office of Planning and  
Community Development.

Hearing Examiner File

W-17-006 through W-17-014

**CITY OF SEATTLE’S CLOSING BRIEF**

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## I. INTRODUCTION

The City’s Final Environmental Impact Statement (“FEIS”)<sup>1</sup> that is the subject of this appeal is a thorough document that uses reasonable and standard methods of experts in their fields to fully analyze the environmental impacts of the proposal to the degree appropriate for a non-project action. Despite 19 days of hearing and hundreds of exhibits, Appellants have failed to meet their heavy burden of proving the FEIS is inadequate. To the contrary, much of the contested evidence and argument that Appellants advance goes to their fundamental disagreement with the proposal and is unrelated to the adequacy of the environmental review and therefore outside the Hearing Examiner’s jurisdiction. In many instances, Appellants ignore substantial portions of the FEIS to falsely assert that the document lacks analysis. In other instances, the Appellants advance approaches that are unreasonable because they demand a level of detail that is misleading, unavailable or inappropriate for a non-project action. Even in those limited instances in which Appellants have advanced another possible reasonable approach, they have not met their burden of proving that the City’s approach was unreasonable. Accordingly, the Examiner should deny their appeals and affirm the City’s conclusion that the FEIS is adequate.

## II. APPELLANTS’ CORE ARGUMENTS ARE INCONSISTENT WITH BASIC SEPA PRINCIPLES THAT GOVERN THIS APPEAL

### A. SEPA requires deferential review of EIS adequacy.

SEPA requires that the Hearing Examiner give substantial weight to the City’s determination that the FEIS satisfies all legal and technical requirements and, as such, is adequate.<sup>2</sup> Appellants bear the heavy burden to establish otherwise.<sup>3</sup>

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<sup>1</sup> Hr’g Ex. 2 (hereinafter, “FEIS”).

<sup>2</sup> RCW 43.21.090; 43.21C.075(3)(d)

<sup>3</sup> Seattle Municipal Code (SMC) 25.05.680; SMC 23.76.022.C.7 and SMC 23.76.006.C.1.b.

1 EIS adequacy is reviewed under the “rule of reason,” a “broad, flexible cost-  
2 effectiveness standard” that requires that the EIS include a reasonably thorough discussion  
3 of the significant aspects of the probable environmental consequences of an agency  
4 decision.<sup>4</sup> When impacts are disclosed at a general level of detail, the rule of reason is  
5 satisfied and additional detail is not required.<sup>5</sup>

6 For nonproject actions, such as this one, the agency is given even more discretion  
7 and deference. SEPA accords the lead agency “more flexibility in preparing [nonproject]  
8 EISs” because “there is normally less detailed information available on their  
9 environmental impacts and on any subsequent project proposals.”<sup>6</sup> The SEPA Rules’  
10 special provisions for nonproject proposals create flexibility for the lead agency by  
11 allowing appropriate deviation from the general EIS content requirements.<sup>7</sup> These rules  
12 set a high bar for challenges to a nonproject EIS.

13 Moreover, to prevail in their appeal, Appellants must establish that the FEIS’s  
14 analysis is unreasonable.<sup>8</sup> The mere existence of a different reasonable approach or  
15 methodology is legally insufficient to support the conclusion that an EIS is inadequate.<sup>9</sup>  
16 An opponent can almost always argue that an EIS should have contained more or different  
17 analysis. Hence, the deferential “rule of reason” governs EIS adequacy and allows the

18 <sup>4</sup> *Citizens All. To Protect Our Wetlands v. City of Auburn*, 126 Wn.2d 356, 362, 894 P.2d 1300 (1995)  
19 (“CAPOW”); SMC 25.05.402.A.

20 <sup>5</sup> See *CAPOW*, 126 Wn.2d at 368–69 (rejecting challenge to traffic analysis as “one of detail” that “does not  
21 survive the rule of reason.”). See also *Cathcart-Maltby-Clearview Cmty. Council v. Snohomish Cty.*, 96  
22 Wn.2d 201, 208, 634 P.2d 853, 858 (1981) (upholding the adequacy of an EIS the Court described as “bare  
23 bones” for a proposed rezone to accommodate a waterfront hotel, recognizing that the rezone was causally  
24 independent of any actual development approvals).

25 <sup>6</sup> WAC 197-11-442; SMC 25.05.442.D.

<sup>7</sup> Richard L. Settle, *The Washington State Environmental Policy Act: A Legal and Policy Analysis*, §  
14.01[3] at 14–73 (2016).

<sup>8</sup> *Org. to Pres. Agric. Lands v. Adams Cty.*, 128 Wn.2d 869, 881, 913 P.2d 793, 801 (1996) (affirming  
adequacy of EIS where appellant’s expert witness “did not testify definitively that studies were  
inadequate”).

<sup>9</sup> E.g., Findings and Decision of the Hearing Examiner for the City of Seattle, MUP-14-016(DR,W)/S-14-  
001, at p. 15 (rejecting appellants’ experts’ critiques of EIS analysis and noting, “It is not unusual for  
experts to disagree on the appropriate analytical approach to a given assignment.”).

1 agency to choose from a range of different, reasonable approaches. When an agency is  
2 presented with different expert opinions, “it is the agency’s job, and not the job of the  
3 reviewing appellate body, to resolve those differences.”<sup>10</sup> Therefore, Appellants must do  
4 more than simply provide other reasonable approaches or conflicting opinions—rather,  
5 Appellants must establish that the FEIS’s analysis is unreasonable. As discussed below,  
6 Appellants have failed to meet their burden.

7 **B. The Examiner lacks jurisdiction to rule on the wisdom of the proposal.**

8 In this adequacy appeal, the Examiner and the courts do not “rule on the wisdom  
9 of the proposed development,” but only on whether the EIS provides the decision-maker  
10 with sufficient information to make a reasoned decision.<sup>11</sup> Despite the narrow focus on  
11 the adequacy of the FEIS, much of Appellants’ testimony was misdirected at the merits of  
12 changing single family zoning in the urban villages and expanding urban villages, rather  
13 than the adequacy of the environmental review of those changes.

14 As a preliminary matter, these underlying allegations are wrong. Contrary to  
15 Appellants’ assertions, MHA will not eliminate single family zoning in urban villages.<sup>12</sup>  
16 While the proposal will rezone single family properties in the urban villages, a significant  
17 portion of those rezones will be to “Residential Small Lot,”<sup>13</sup> which is another type of  
18 single family zone.<sup>14</sup> Similarly, Appellants erroneously contend that the City Council  
19 either previously rejected urban village expansions or should be prevented from  
20

21 <sup>10</sup> *City of Des Moines v. Puget Sound Reg’l Council*, 98 Wn. App. 23, 852, 988 P.2d 27, 37 (1999).

22 <sup>11</sup> *CAPOW*, 126 Wn.2d at 362. *See also* Settle, *supra* note 9, at 14–9.

23 <sup>12</sup> Tr. vol. 1, 43:9–15, June 25, 2018 (Steinbrueck). The City has attached excerpts of verbatim transcripts prepared by a court reporter from the audio recordings. Each volume corresponds to a day of hearing. For ease of reference, the City cites to both the volume of the transcript as well as the hearing date.

24 <sup>13</sup> The rezones are quantified by acreage in App. H at H.2–H.4. *See also* FEIS at 3.116

25 <sup>14</sup> RSL allows single family development and other housing types allowed in RSL that are not allowed in the remaining single family zones are consistent with the scale and character of single family housing areas. *See* Tr. vol. 14, 141:1–12, Aug. 23, 2018 (Wentlandt); Tr. vol. 18, 89:14–92:4, Sept. 4, 2018 (Gifford). *See also* FEIS App. F., Urban Design and Neighborhood Character Study at 16.

1 undertaking expansions now.<sup>15</sup> In fact, the City never eliminated the expansions from  
2 future consideration and they are consistent with the City’s urban village strategy.<sup>16</sup>

3 Perhaps most importantly, these arguments are irrelevant in this EIS adequacy  
4 appeal because they go to the wisdom of the proposal. The only relevant question before  
5 the Examiner in this appeal is whether the EIS analyzed the impact of the challenged  
6 aspects of the proposal. It does. The City reviewed the rezones of single family lots in a  
7 combination of both generalized discussion in tables and text and in express detail in maps  
8 and paragraphs describing each urban village.<sup>17</sup> Similarly, the EIS clearly and repeatedly  
9 analyzes potential impacts of the urban village expansion areas.<sup>18</sup> The Examiner should  
10 reject challenges to the proposal’s merits.

11 **III. THE GEOGRAPHIC SCOPE OF THE EIS IS REASONABLE**

12 **A. The FEIS analyzes impacts of the entire study area including areas**  
13 **outside urban villages.**

14 Appellants confuse the geographic scope of the study area and suggest the EIS did  
15 not consider areas that will be rezoned outside urban villages and expansion areas.<sup>19</sup>  
16 Appellants’ witnesses are simply incorrect. Contrary to their assertions, the FEIS’s study  
17 area includes areas both within and outside urban villages. In its description of the study  
18 area, the FEIS states that the study area includes not only areas in existing urban villages,  
19 but also multifamily—and commercial-zoned areas that are outside of urban villages and

20 <sup>15</sup> Tr. vol. 1, 116:13–117:9, June 25, 2018 (Steinbrueck). *See also* Tr. vol. 3, 56:17–61:1, June 27, 2018  
(Steinbrueck).

21 <sup>16</sup> Tr. vol. 14, 61:8–73:14 Aug. 23, 2018 (Wentlandt).

22 <sup>17</sup> *See, e.g.*, Section V.A.1 and V.A.2, below. *See also* Tr. vol. 14, 237:18–238:5, Aug. 23, 2018  
(Wentlandt); Tr. vol. 18, 92:4–93:6, Sept. 4, 2018 (Gifford); FEIS at 3.174; FEIS at 3.178-3.179; FEIS at  
23 3.116; FEIS at 3.113, Ex. 3.2-3 .

24 <sup>18</sup> *See, e.g.*, FEIS at 3.117 (general paragraph describing impacts, with reference to discussion of specific  
25 expansion areas in neighborhood-specific paragraphs on subsequent pages).

<sup>19</sup> For example, Mr. Steinbrueck erroneously claimed the FEIS has “no analysis” of impacts outside the  
urban villages. Tr. vol. 3, 87:16–99:6, 113:21–114:11, June 27, 2018. Similarly, David Moehring testified  
that the FEIS “does not cover what’s outside of the urban village.” Tr. vol. 11, 202:17–18, 216:2-18, Aug.  
20, 2018.

1 expansion areas.<sup>20</sup> FEIS at Ex. 2-1 shows both the study area and the urban villages, and  
2 visibly shows that the study area includes areas outside of urban villages.<sup>21</sup> FEIS at App H  
3 provides maps of all urban villages, proposed expansion areas, and areas outside of urban  
4 villages and urban centers, with depictions of the proposed zoning changes.<sup>22</sup>  
5 Additionally, the webmap that accompanies the FEIS includes those areas.<sup>23</sup> Each of the  
6 chapters analyzed the entirety of that study area.<sup>24</sup> For example, Mr. Gifford examined  
7 how the combination of text in the EIS and the details provided in the maps allow a  
8 decision-maker to adequately understand the impacts of the rezones in areas outside urban  
9 village expansion areas.<sup>25</sup> Appellants' claims that the EIS omits the full geographic range  
10 of the proposal are incorrect.

11 **B. The EIS analyzes the full extent of the impact, even when it exceeds the**  
12 **bounds of the study area.**

13 The FEIS's impacts analysis is not limited solely to the defined study area. For  
14 multiple subjects, the FEIS analyzed impacts to properties adjacent to the study area when  
15 an impact was anticipated to exceed the boundaries of the study area.

16 For example, contrary to Appellants' assertions,<sup>26</sup> the FEIS includes extensive  
17 analysis of land use and aesthetic impacts to areas adjacent to the study area. The FEIS  
18

19 <sup>20</sup> FEIS at 2.2

20 <sup>21</sup> *Id.* at 2.3. Mr. Moehring did not read chapter 2. Tr. vol. 11, 218:20–219:6, Aug. 20, 2018 (Moehring).  
Moreover, Mr. Moehring misread the key for map 3.2-2 upon which he relied to reach his incorrect  
21 conclusion. *Id.* See also Tr. vol. 14, 74:18–78:4, Aug. 23, 2018 (Wentlandt).

22 <sup>22</sup> See Tr. vol. 14, 73:15–78:6, Aug. 23, 2018 (Wentlandt).

23 <sup>23</sup> Ex. 291.

24 <sup>24</sup> See, e.g., FEIS at 3.113-115 (including discussion of impacts of zoning changes shown in maps); FEIS at  
3.186 (discussion of transition condition); FEIS at 3.187, Ex. 3.3-20 (graphic depicts the relationship that  
25 would exist in “areas with transitions between NC zones on mixed use corridors”).

26 <sup>25</sup> Tr. vol. 18, 93:7–96:11, Sept. 4, 2018 (Gifford).

27 <sup>26</sup> See, e.g., Tr. vol. 3, 62:3–8, June 27, 2018 (Steinbrueck) (asserting that the EIS “in no way identifies or  
addresses edge conditions in the various areas that are proposed for upzones.”); Tr. vol. 11, 210:12–211:10  
(Moehring) (claiming that EIS only talks about edge effects in two paragraphs).



1 looks at edge effect, generally.<sup>27</sup> It also specifically identifies the impact in several precise  
2 locations, including those the Appellants identified. For example, an Appellant witness  
3 who testified about impacts of increased heights in the Greenwood-Phinney Urban Village  
4 on adjacent single family homes outside the urban village ignored the precise discussion  
5 of that impact in that Urban Village.<sup>28</sup> Another Appellant witness’s testimony specific to  
6 the Queen Anne Urban Village ignores the general and specific discussion of the precise  
7 impact she suggested was missing.<sup>29</sup>

8 Similarly, other impact analyses look beyond the study area. The analyses for  
9 transportation and air quality and greenhouse gas emissions are inherently comprehensive  
10 and encompass the entire city or region.<sup>30</sup> The public services and utilities analysis  
11 addresses the impacts that will accrue to service geographies not confined to the study  
12 area, such as school attendance areas.<sup>31</sup> Thus, Appellants’ claim that the FEIS fails to  
13 analyze areas outside the study area is incorrect.

#### 14 **IV. SEPA DOES NOT REQUIRE MORE GRANULAR ANALYSIS**

15 A central theme underlying nearly all of Appellants’ criticisms of the FEIS is their  
16 belief that the FEIS should have analyzed impacts on a more “granular” level. To support  
17 this theory, Appellants seek to distinguish this proposal from other nonproject actions,  
18 mischaracterizing the proposal as being akin to a project action on a grand scale because  
19 the proposal will change zoning “parcel-by-parcel.”<sup>32</sup> Appellants’ theory fails to recognize  
20

21 <sup>27</sup> FEIS at 3.117 (describing edge effect); FEIS at 3.186–3.1879.

22 <sup>28</sup> Compare Tr. vol. 11, 206:11–207:11, Aug. 20, 2018 (Moehring) with FEIS at 3.148. See also Tr. vol. 18,  
30:21–31:20, Sept. 4, 2018 (Gifford).

23 <sup>29</sup> Compare Tr. vol. 12, 213:23–214:15, Aug. 21, 2018 (Derr) with FEIS at 3.147-148. See also Tr. vol. 18,  
32:6–33:1, Sept. 4, 2018 (Gifford).

24 <sup>30</sup> Tr. vol. 16, 114:2–22, Aug. 30, 2018 (Davis); Tr. vol. 17, 155:13–156:8, Aug. 31, 2018 (Graham). See  
also, e.g., FEIS at 3.216; FEIS at 3.387.

25 <sup>31</sup> See, e.g., FEIS at 3.365, Ex. 3.8-1.

<sup>32</sup> See, e.g., Tr. vol. 3, 246:18–247:2, June 27, 2018 (Ross).

1 that an area-wide rezone, even a city-wide rezone, is a prototypical nonproject action,<sup>33</sup>  
2 and any area-wide rezone entails “parcel-by-parcel” zoning changes on a large scale.<sup>34</sup>  
3 Moreover, in the context of nonproject actions, SEPA explicitly states that site-specific  
4 analyses are not required, even when the proposal concerns a specific geographic area.<sup>35</sup>  
5 Nevertheless, the FEIS provided some detailed information and analysis at the parcel level  
6 of the kind Appellants assert is missing. Specifically, the land use analysis provides  
7 mapping and accompanying text that provides detailed information at a parcel-level.<sup>36</sup>

8 Another related and similarly specious theme of Appellants’ case is their belief  
9 that the City should have prepared a separate EIS for each urban village. As a preliminary  
10 matter, Appellants ignore the fact that the FEIS is replete with analyses of specific urban  
11 villages, when such analysis was appropriate and practically attainable. For example, in  
12 the land use analysis, each urban village has a dedicated section describing potential  
13 impacts under each alternative.<sup>37</sup> The parks and open space analysis identified parks and  
14 open space availability for each urban village under existing conditions, the no action  
15 alternative, and all action alternatives.<sup>38</sup> The biological resources analysis provides maps  
16 showing critical areas in every urban village.<sup>39</sup> And in sections where the FEIS did not  
17 analyze every urban village in detail, the FEIS identified specific urban villages with  
18 specialized conditions or a higher potential for impacts.<sup>40</sup>

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<sup>33</sup> See WAC 197-11-442; SMC 25.05.442.D (characterizing area-wide zoning as a nonproject action).

21 <sup>34</sup> Tr. vol. 19, 33:4–19, September 7, 2018 (Weinman).

22 <sup>35</sup> WAC 197-11-442(3); SMC 25.05.442.C.

23 <sup>36</sup> Tr. vol. 19, 33:4–35:21, September 7, 2018 (Weinman).

24 <sup>37</sup> FEIS at Chapter 3.2.

25 <sup>38</sup> FEIS at 3.350 (exhibit summarizing data).

<sup>39</sup> *Id.* at 3.326–3.327, 3.332–3.333.

<sup>40</sup> *E.g., id.* at 3.360–3.362 (identifying urban villages that could be affected by increased demand for police, fire, or emergency medical services); *Id.* at 3.403–3.404 (identifying urban villages within 200 meters of major pollutant sources (a major highway, rail line, or port terminal)).

1 More fundamentally, Appellants have not demonstrated that the “city-wide”  
2 approach is unreasonable. While Appellants might prefer an EIS for each urban village,  
3 neither SEPA nor the City’s neighborhood planning strategy dictate that result. The fact  
4 that the City has previously analyzed MHA implementation in two neighborhood-specific  
5 EISs does not require the same outcome here. The City initiated those EISs for reasons  
6 unrelated to MHA and nothing about MHA prompted the City to conduct neighborhood-  
7 specific EISs in those instances.<sup>41</sup> And, as explained above, a reasonable approach in one  
8 instance does not preclude other reasonable approaches. Moreover, the logical outcome  
9 of Appellants’ argument would be exorbitantly expensive and could total as much as \$13  
10 million dollars to implement MHA throughout the City.<sup>42</sup> SEPA does not require that  
11 outcome because it defies the cost-effectiveness component of the rule of reason.<sup>43</sup>

12 **V. THE FEIS EVALUATED A REASONABLE RANGE OF ALTERNATIVES**

13 **A. SEPA expressly allows the City to limit its alternatives to those that**  
14 **achieve a proposal that was “formally proposed.”**

15 In the nonproject context the SEPA rules expressly allow the City to limit its  
16 alternatives to those that achieve a proposal that was “formally proposed.”<sup>44</sup> The choice  
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21 <sup>41</sup> Tr. vol. 14, 128:15–131:24, Aug. 23, 2018 (Wentlandt).

22 <sup>42</sup> Tr. vol. 19, 40:17–41:11, September 7, 2018 (Weinman).

23 <sup>43</sup> *Kiewit Constr. Grp. Inc. v. Clark Cty.*, 83 Wn. App. 133, 140, 920 P.2d 1207, 1211 (1996) (characterizing  
24 the rule of reason as a “broad, flexible cost-effectiveness standard”). *See also Solid Waste Alternative*  
25 *Proponents v. Okanogan County*, 66 Wn. App. 439, 446, 832 P.2d 503, 507, *review denied*, 120 Wn.2d  
1012 (1992) (“SWAP”) (upholding Okanogan County’s decision to exclude two other reasonable alternative  
sites, based on the cost of the additional analysis).

26 <sup>44</sup> SMC 25.05.442.D. *See also* WAC 197-11-442(4). The Washington courts have recognized that the state  
analogue to SMC 25.05.442.D applies broadly. *See Citizens All. To Protect Our Wetlands v. City of*  
*Auburn*, 126 Wn.2d 356, 365, 894 P.2d 1300 (1995) (characterizing zoning code text amendment as being  
“formally proposed” for purposes of WAC 197-11-442(4)).

1 of proposals is a policy decision, not an environmental decision.<sup>45</sup> Courts generally defer  
2 to the agency’s reasonable definition of its objective and of its alternatives.<sup>46</sup>

3 Here, the key elements of the proposal—including the mandate to build (or pay to  
4 support) rent- and income-restricted housing, changes to zoning and land use to increase  
5 development capacity, and the production goal for developer-leveraged affordable  
6 homes—were formally proposed by the City through a lengthy public process culminating  
7 in a series of City Council enactments. That process included:

8 • HALA Committee recommendations.<sup>47</sup> Among the highest impact  
9 recommendations was imposing affordable housing requirements with an associated  
10 upzone or floor area ratio increase.<sup>48</sup> This strategy involved boosting market capacity by  
11 extensive citywide upzoning of residential and commercial zones and matching this  
12 increased capacity with a mandate that new development either build, or make an in-lieu  
13 payment to support, the development of rent- and income-restricted housing.<sup>49</sup>

14 • Mayor’s action plan<sup>50</sup> embracing the Committee’s key recommendations.  
15 • Resolution 31622<sup>51</sup> declared the Council’s intent to consider the HALA  
16 Advisory Committee’s recommendations and attached a work plan incorporating many of  
17 the Committee’s recommendations, including the one referenced above.

18 \_\_\_\_\_  
19 <sup>45</sup> *SWAP*, 66 Wn. App. at 443–445 (decision to narrow choice to in-county sites and not include regional  
landfill alternative was a policy decision, not an environmental decision).

20 <sup>46</sup> *Theodore Roosevelt Conservation P’ship v. Salazar*, 661 F.3d 66, 73 (D.C. Cir. 2011); *see also SWAP*, 66  
21 Wn. App. at 445 (giving “great weight” to the agency’s alternatives decision). Thus, for example, in two  
22 cases where the agencies had established, as a matter of policy, the objectives of an in-county landfill and a  
four-lane bypass highway, the courts upheld exclusion of alternatives that would not have attained the  
agencies objectives, such as an out-of-county landfill or a two-lane bypass highway. *Id.* at 444–45;  
*Concerned Taxpayers Opposed to Modified Mid-S. Sequim Bypass v. State, Dep’t of Transp.*, 90 Wn. App.  
225, 230–31, 951 P.2d 812, 815 (1998) (“*Concerned Taxpayers*”) (upholding the State’s commitment to  
building a four-lane bypass highway).

23 <sup>47</sup> Hr’g Ex. 265.

24 <sup>48</sup> Hr’g Ex. 265, p. 7.

25 <sup>49</sup> *Id.* at 15; FEIS, App. E.

<sup>50</sup> Hr’g Ex. 266.

<sup>51</sup> Hr’g Ex. 267.

1           •       Resolution 31612,<sup>52</sup> in which the Council stated its intent to consider  
2 changes to zoning and land use regulations to implement affordable housing requirements  
3 on both residential and commercial development. The Resolution committed to the goal  
4 of producing 6,000 development-driven affordable units and endorsed MHA’s key tenets,  
5 including increasing development capacity and providing a payment in-lieu option.<sup>53</sup> The  
6 Council endorsed implementation in mixed-use and multifamily zones, as well as in  
7 limited single family zoned areas whose zoning would be changed, and attached a map to  
8 the resolution showing the general areas intended for implementation of MHA citywide.<sup>54</sup>

9           •       Ordinance 125108<sup>55</sup> established the framework for MHA in the residential  
10 context, setting forth the payment-or-performance structure and addressing program  
11 mechanics such as duration of affordability and requirements for permit document, but not  
12 establishing amounts for affordable housing requirements or effectuating upzones.<sup>56</sup>

13           Under the SEPA rules, the FEIS was not required to consider the various  
14 alternatives suggested by Appellants that do not involve the key elements of the proposal  
15 as set forth in the preceding series of enactments.<sup>57</sup> The City’s expert, Mr. Weinman, who  
16 has worked on over 200 EISs including at least 50 non-project EISs, confirmed based on  
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<sup>52</sup> Hr’g Ex. 268, pp. 1-4 of Resolution.

20 <sup>53</sup> *Id.*

21 <sup>54</sup> *Id.* and Attachment A.

22 <sup>55</sup> Hr’g Ex. 269.

23 <sup>56</sup> Tr. vol. 14, 37:15–38:25, Aug. 23, 2018 (Wentlandt).

24 <sup>57</sup> See SMC 25.05.442. See also *In the Matter of the Appeal of Citizens for Livability in Ballard*, W-16-003,  
25 Sept. 7, 2016, Conclusions 6–7. In *Citizens for Livability in Ballard*, the Examiner addressed the adequacy  
of an EIS regarding proposed amendments to the Seattle Comprehensive Plan. Like the subject FEIS, the  
Comprehensive Plan EIS’s alternatives each provided different patterns of growth based on factors such as  
proximity to transit, risk of displacement, and access to opportunity. *Id.*, Findings 4–5. Because the  
alternatives had been “formally proposed by the Mayor and OPCD” as ways to distribute the City’s  
projected growth, the Examiner rejected the appellant’s claim that the EIS should have studied different  
proposals. *Id.*, Conclusions 6–7 (citing SMC 25.05.442.D).

1 his experience that the foregoing series of enactments circumscribe the alternatives that  
2 must be considered in the FEIS.<sup>58</sup>

3 Thus, the FEIS was not required to consider the alternatives suggested by  
4 Appellants that do not involve increases in development capacity—such as simply  
5 requiring developers to provide or pay a fee for affordable housing without the city  
6 changing zoning (as suggested by various Appellant witnesses including Mr. Sherrard), or  
7 the strategies for increasing affordable housing outlined in the report by the Community  
8 Housing Caucus.<sup>59</sup> Nor was the FEIS required to consider approaches that encourage  
9 developers to provide affordable housing voluntarily (rather than imposing mandatory  
10 affordable housing requirements), approaches that require on-site performance alone  
11 (rather than providing a payment option), or approaches that would only apply in certain  
12 neighborhoods—all as suggested by Mr. Levitus. In essence, the foregoing “alternatives”  
13 are simply different proposals. SEPA does not require the City to consider entirely  
14 different legislative proposals under the guise of an “alternatives analysis.”<sup>60</sup>

15 **B. The FEIS evaluated a reasonable range of alternatives.**

16 Within the context of the “formally proposed” proposal, the FEIS evaluated a  
17 reasonable range of alternatives. The required discussion of alternatives is important  
18 because it provides a basis for a reasoned decision among alternatives having differing  
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21 <sup>58</sup> Tr. vol. 19, 8:5–8:9, 9:5–9:13, 12:20–13:6, Sept. 7, 2018 (Weinman). Moreover, case law under NEPA  
22 confirms that legislative enactments are a reasonable basis for defining the range of alternatives. *See, e.g.,*  
23 *League of Wilderness Defs.-Blue Mountains Biodiversity Project v. U.S. Forest Serv.*, 689 F.3d 1060, 1070-  
72 (9th Cir. 2012) (where statute established project area as experimental forest, that “necessarily narrowed  
consideration of alternatives”).

24 <sup>59</sup> Hr’g Ex. 258.

25 <sup>60</sup> While testimony could not change the law in any event, it should be noted that Appellants’ key witness on  
the alternatives issue, Mr. Sherrard, lacked any credibility on SEPA issues given that he asserted that “the  
statement formally proposed doesn’t appear in the SEPA rules.” Tr. vol. 4, 16:18–16:21, June 28, 2018  
(Sherrard).

1 environmental impacts.<sup>61</sup> Under the SEPA rules, “[r]easonable alternatives shall include  
2 actions that could feasibly attain or approximate a proposal’s objectives, but at a lower  
3 environmental cost or decreased level of environmental degradation.”<sup>62</sup> Crucially, SEPA  
4 does not require that the FEIS consider every conceivable alternative.<sup>63</sup> The word  
5 “reasonable” is intended to limit the number and range of alternatives.<sup>64</sup> The sufficiency  
6 of the discussion of alternatives is assessed under the “rule of reason.”<sup>65</sup>

7 1. The range of alternatives satisfies the “rule of reason.”

8 The alternatives evaluated in the FEIS differ in the intensity and location of  
9 development capacity increases and the pattern and amounts of housing growth across the  
10 city that could result.<sup>66</sup> There are also differences between the alternatives in their  
11 approach to the size of urban village expansions.<sup>67</sup>

12 Contrary to the suggestions by Appellants, the differences between the alternatives  
13 in this regard are quite meaningful. Exhibits 2-9, 2-10, and 2-11 of the FEIS describe the  
14 different approaches to development capacity increases and urban village expansions in  
15 narrative form; Exhibits 2-12 through 2-15 of the FEIS demonstrate graphically the  
16 differences between the alternatives in terms of the overall amounts of development  
17 capacity increases of different intensity; and Exhibits 3.3-23, 3.3-25, and 3.3-27 of the  
18 FEIS show the differences between the alternatives in terms of the locations of  
19

20 \_\_\_\_\_  
21 <sup>61</sup> *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 38, 873 P.2d 498 (1994); *Brinnon Group v. Jefferson*  
*County*, 159 Wn. App. 446, 481, 245 P.3d 789 (2011).

22 <sup>62</sup> SMC 25.05.440.D.2 (emphasis added); *see also* WAC 197-11-440(5)(b).

23 <sup>63</sup> *SWAP*, 66 Wn. App. at 446.

24 <sup>64</sup> SMC 25.05.440.D.2.a.

25 <sup>65</sup> *Weyerhaeuser*, 124 W.2d at 41; *Brinnon Group*, 159 Wn. App. at 480.

<sup>66</sup> FEIS at 2.15. Mr. Weinman opined that differences in the intensity and location of development capacity increases is an acceptable and reasonable basis for creating meaningful alternatives. Tr. vol. 19, 13:22–14:7, Sept. 7, 2018 (Weinman).

<sup>67</sup> FEIS at 2.16.

1 development capacity increases of different intensities.<sup>68</sup> In his testimony, Mr. Wentlandt  
2 walked through the proposed zoning maps for the action alternatives for four particular  
3 urban villages and explained the substantial differences between the alternatives in the  
4 allocation of development capacity increases as well as the extent of urban village  
5 expansions.<sup>69</sup> He testified that similar differences between the alternatives exist for other  
6 urban villages.<sup>70</sup>

7 The alternatives differ in their impacts with respect to numerous elements of the  
8 environment, including but not limited to:

9 • The different land use impacts that the alternatives would have in particular  
10 areas are described at pages 3.121–3.130 of the FEIS for Alternative 2; pages 3.131–3.140  
11 for alternative 3; and pages 3.141–3.154 for the Preferred Alternative.<sup>71</sup>

12 • Similarly, with respect to aesthetics, the (M), (M1), and (M2) tiers are  
13 useful for describing potential aesthetic impacts of zoning changes, and increase  
14 maximum height are another way to evaluate the degree of aesthetic impact that could  
15 occur. The maps at FEIS Exs. 3.323, 3.3-25, and 3.3-27 display the varied distributions of  
16 the (M), (M1) and (M2) zone changes in locations across the city, while the maps at  
17 exhibits 3.3-24, 3.3-26, and 3.3-28 show the varied distribution of height limit changes.<sup>72</sup>

18 Both sets of maps are different for Alternative 2, 3 and Preferred.<sup>73</sup>

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<sup>68</sup> FEIS at 2.30-2.35, 2.26-2.39, and 3.194-204.

23

<sup>69</sup> Tr. vol. 14, 87:10–99:10, Aug. 23, 2018 (Wentlandt).

24

<sup>70</sup> Tr. vol. 14, 99:11–99:27, Aug. 23, 2018 (Wentlandt).

25

<sup>71</sup> See also Tr. vol. 18, 27:3–29:22, Sept. 4, 2018 (Gifford); FEIS at 3.120, Ex. 3.2-6.

<sup>72</sup> FEIS at 3.194–3.205.

<sup>73</sup> See also Tr. vol. 18, 85:24–87:9. Sept. 4, 2018 (Gifford).



1           •       With respect to environmentally critical areas, the alternatives differ as to  
2 the acreage of environmentally critical areas that would be impacted by inclusion in urban  
3 village expansions.<sup>74</sup>

4           •       With respect to open space and recreation, the alternatives differ in terms  
5 of impacts to parks and open space availability in particular urban villages.<sup>75</sup>

6           •       With respect to physical displacement, the FEIS explains that there are  
7 differences in the geographical pattern of physical displacement between the action  
8 alternatives.<sup>76</sup>

9           The foregoing differences amply satisfy the directive of SMC 25.05.440.D.2 that  
10 alternatives include actions with a “lower environmental cost or decreased level of  
11 environmental degradation.” Washington courts have interpreted the foregoing provision  
12 to require that alternatives present greater impacts in some impact areas, and fewer  
13 impacts in other impact areas.<sup>77</sup>

14           There are many other alternatives that could have been constructed to locate  
15 different intensities of development capacity in different ways than was done in the  
16 FEIS.<sup>78</sup> However, SEPA does not require that the FEIS consider every conceivable  
17 alternative. The alternatives evaluated in the FEIS give decision-makers the information  
18 needed to make choices about other combinations of zoning changes.<sup>79</sup> The FEIS contains  
19 a “no action” alternative for decision-makers to consider not implementing MHA at all,  
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22 <sup>74</sup> See FEIS at 3.324-3.337, Ex. 3.6-1 (Alt. 2); Ex. 3.6-7 (Alt. 3); and Ex. 3.6-13 (Preferred).

23 <sup>75</sup> See FEIS at 3.353 (Alt. 2), 3.354 (Alt. 3), and 3.355-3.356 (Preferred); Tr. vol. 17, 138:18-138:20 (Graham).

24 <sup>76</sup> FEIS at 3.86, 3.88, and 3.91.

25 <sup>77</sup> *King Cty. v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.*, 138 Wn.2d 161, 185, 979 P.2d 374 (1999).

<sup>78</sup> Tr. vol. 14, 107:15–108:1, Aug. 23, 2018 (Wentlandt).

<sup>79</sup> Tr. vol. 14, 109:9–109:19, Aug. 23, 2018 (Wentlandt).

1 and that information in the FEIS was available for decision-makers to consider not  
2 implementing zoning changes in certain areas.<sup>80</sup>

3 Moreover, there is no legal requirement that alternatives be crafted specifically to  
4 mitigate impacts of a given type (for example, an alternative designed to address impacts  
5 to historic resources). In suggesting such a requirement, Appellants' witness Mr. Sherrard  
6 misread WAC 197-11-792.<sup>81</sup> WAC 197-11-792(2)(b) actually says that alternatives may  
7 be "i. No action; ii. Other reasonable courses of action; *or* iii. Mitigation measures (not in  
8 the proposed action)." (Emphasis added.). Mr. Weinman testified that in his experience  
9 non-project EIS's do not typically include alternatives that are designed around each of  
10 the types of impacts evaluated in an EIS, nor are they required to do so.<sup>82</sup>

11 Finally, as explained in the FEIS, in framing the alternatives the City considered  
12 the Growth and Equity Analysis prepared in connection with the Seattle 2035  
13 Comprehensive Plan. Alternative 2 in the FEIS assigns specific zoning map changes  
14 based on basic planning concepts, Comprehensive Plan policies, and implementation  
15 principles developed during community engagement.<sup>83</sup> Alternative 3 uses the same  
16 guiding concepts but allocates more or less development capacity based on each urban  
17 village's relative level of displacement risk and access to opportunity as identified in the  
18 Growth and Equity analysis.<sup>84</sup> The preferred alternative implements MHA with  
19 distinctions for displacement risk and access to opportunity, but includes a different  
20 emphasis based other factors.<sup>85</sup>

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22 <sup>80</sup> Tr. vol. 14, 110:8–110:10, Aug. 23, 2018 (Wentlandt).

23 <sup>81</sup> Tr. vol. 4, 14:18–14:22, June 28, 2018 (Sherrard).

24 <sup>82</sup> Tr. vol. 19, 22:4–23:25, Sept. 7, 2018 (Weinman).

24 <sup>83</sup> FEIS at 2.17.

24 <sup>84</sup> *Id.*

25 <sup>85</sup> *Id.*

1 Contrary to Appellants’ contention, use of the Growth and Equity Analysis in this  
2 way is appropriate under SEPA. Mr. Weinman opined that it was reasonable to  
3 differentiate the alternatives on the basis of major city policies such as those on equity and  
4 displacement.<sup>86</sup> In sum, the FEIS’s discussion of alternatives provides a basis for a  
5 reasoned decision among alternatives having differing environmental impacts and satisfies  
6 the “rule of reason.”

7 2. The FEIS was not required to consider alternatives that used  
8 neighborhood planning to allocate development capacity or that  
9 avored on-site performance.

10 As noted above, an EIS need not evaluate every conceivable alternative, and there  
11 is no requirement that an EIS contain alternatives with different impacts of any particular  
12 type. Thus, the mere fact that Appellants postulate additional alternatives that differ from  
13 those included in the FEIS does not mean that the FEIS did not consider a reasonable  
14 range of alternatives. For example, Mr. Levitus’s suggestion that the FEIS should have an  
15 alternative that allowed neighborhood planning to drive the allocation of development  
16 capacity, allegedly reducing impacts, does not mean the FEIS’s range of alternatives was  
17 deficient.

18 Mr. Levitus also suggested that an alternative that favored on-site performance as  
19 opposed to in-lieu payments would do *a better job* of furthering the FEIS’s objective of  
20 “distribut[ing] the benefits and burdens of growth more equitably.”<sup>87</sup> But whether a  
21 suggested alternative would better achieve the proposal’s objectives is irrelevant to  
22 whether reasonable alternatives have been evaluated under SMC 25.05.440.D.2. The

23 <sup>86</sup> Tr. vol. 19, 14:16–15:7, Sept. 7, 2018 (Weinman). Similarly, Mr. Welch testified that the EIS’s use of the  
24 Growth and Equity displacement risk/access to opportunity typology directly responded to public comments  
25 and concerns and direction by the City Council. Tr. vol. 16, 190:12–191:6, Aug 30, 2018. However,  
contrary to Mr. Steinbrueck’s contention, the typology was not the only consideration used in crafting the  
alternatives. Tr. vol. 16, 191:7–192:14, Aug, 30, 2018 (Welch).

<sup>87</sup> Tr. vol. 7, 70:3-71:5, July 24, 2018 (Levitus).

1 wisdom and effectiveness of different strategies for achieving the objectives is not subject  
2 of an EIS and is outside the scope of an EIS adequacy appeal.<sup>88</sup>

3 While Mr. Levitus misunderstands the applicable legal standard, his argument is  
4 also factually unsupported. Mr. Levitus' key contention regarding the need for an  
5 alternative favoring on-site performance is that affordable housing built with in-lieu  
6 payments will be built in low-income areas accentuating inequality, displacement and  
7 segregation.<sup>89</sup> On the contrary, the overwhelming evidence presented at hearing  
8 demonstrates that payment-funded units are unlikely to be concentrated in a manner  
9 contrary to social equity.

10 Emily Alvarado testified that the Office of Housing has a long track record of  
11 investing in areas with high risk of displacement, high access to opportunity, and high  
12 land costs.<sup>90</sup> Ms. Alvarado also explained the City policies that would preclude  
13 concentration of units in low cost areas, as well as the tools available to the City to obtain  
14 well-located land less expensively than private developers could.<sup>91</sup> Mr. Jacobus, a  
15 national housing expert, confirmed the City's prior success in locating payment-funded  
16 projects in high-cost locations, explained that the City's strong affordable housing  
17 production infrastructure reduced the concern that might arise in other cities about  
18 concentrating payment units in low cost areas, and expressed confidence the City could  
19 continue its track record as to appropriately locating payment units.<sup>92</sup> Indeed, Mr. Jacobus

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21 <sup>88</sup> Mr. Weinman confirmed that, while the City could have included an alternative that more strongly  
22 favored on-site performance, it was not required to do so—even if such an alternative would have been better  
23 in achieving the proposal's equity objective. Tr. vol. 19, 21:15–22:3, Sept. 7, 2018 (Weinman).

24 <sup>89</sup> The FEIS assumed that 50% of developers would perform on-site and 50% would pay in-lieu fees, and  
25 Mr. Mefford's uncontroverted expert testimony was that this was a reasonable assumption given how the  
City established the relative economic burden of the performance and payment requirements. Tr. vol. 10,  
118:18–119:17, July 27, 2018 (Mefford).

<sup>90</sup> Tr. vol. 15, 66:1–66:10, Aug. 24, 2018 (Alvarado); *see also* Hr'g Ex. 276, Maps F and G (showing that  
2017 investments were concentrated in areas with high displacement risk and high access to opportunity).

<sup>91</sup> Tr. vol. 15, 73:25–77:13, Aug. 24, 2018 (Alvarado).

<sup>92</sup> Tr. vol. 15, 118:16–118:21; 119:9–119:22; 133:10–133:17, Aug. 24, 2018 (Jacobus).

1 testified that, in the context of Seattle, the mixed performance/payment approach would  
2 better achieve the social equity objective than an approach favoring on-site performance,  
3 because (among other reasons) the City is able to leverage payments to create more  
4 affordable units than would be possible through performance.<sup>93</sup> Payments also allow the  
5 City to achieve other goals like development of family sized units.<sup>94</sup>

6 3. The FEIS was not required to consider alternatives with higher  
7 affordable housing requirements.

8 The proposed action evaluated in the FEIS contained affordable housing  
9 requirements of up to 11% (for performance) and \$32.75 (for payment).<sup>95</sup> While  
10 Appellants suggest that alternatives with higher requirements should have been  
11 considered, Geoff Wentlandt testified that the City did not evaluate alternatives with  
12 higher requirements because that could lead to development becoming economically  
13 infeasible which would potentially decrease overall housing production and jeopardize the  
14 goal of creating the target number of affordable units, contrary to the City's objectives.<sup>96</sup>  
15 The City felt the highest requirements being proposed were at or near the limit of what  
16 would be broadly feasible.<sup>97</sup>

17 Based on the report at Hr'g Ex. 229, the City's expert, Chris Mefford of CAI,  
18 testified that, in terms of effect on economic feasibility, the proposed requirements were  
19 "a very good middle-of-the-road approach."<sup>98</sup> The City also tested a 25% requirement and  
20

21 <sup>93</sup> Tr. vol. 15, 115:2–115:20; 122:21–123:17; 130:17–134:5, Aug. 24, 2018 (Jacobus). Emily Alvarado and  
22 Rick Jacobus both testified that the City's assumption as to the level of leverage it could achieve with  
23 payment funds was reasonable. Tr. vol. 15, 60:11–60:16, 61:10–63:2, Aug. 24, 2018 (Alvarado); Tr. vol. 15,  
24 121:16–122:9, Aug. 24, 2018 (Jacobus).

25 <sup>94</sup> Tr. vol. 15, 80:25–83:8, Aug. 24, 2018 (Alvarado).

<sup>95</sup> FEIS at 2.19.

<sup>96</sup> Tr. vol. 14, 50:12–50:23, 51:7–51:10, 54:3–54:8, Aug. 23, 2018 (Wentlandt).

<sup>97</sup> Tr. vol. 14, 51:14–51:19, Aug. 23, 2018 (Wentlandt).

<sup>98</sup> Tr. vol. 10, 109:19–109:25, July 27, 2018 (Mefford).

1 found it rendered most prototypes in high and medium markets infeasible.<sup>99</sup> Mr. Mefford  
2 testified that increasing requirements from 11% towards 25% would result in decreasing  
3 feasibility along a continuum.<sup>100</sup>

4 In this situation, the City’s determination that higher requirements would not be  
5 consistent with meeting the objectives satisfied the “rule of reason.” Mr. Mefford  
6 explained the risks of pushing requirements too high and leaving few developers  
7 interested in building, particularly given fluctuations in real estate market conditions.<sup>101</sup>  
8 The City also considered input from other stakeholders that requirements at an even lower  
9 level were appropriate.<sup>102</sup> Ultimately, the City was required to make a judgment about  
10 how to weigh the risk that higher requirements would impair attaining the objectives.  
11 Based on the evidence, the City’s approach was reasonable. Courts have upheld exclusion  
12 of alternatives that would not have attained the agency’s objectives and give substantial  
13 weight to the agency’s determination on that score.<sup>103</sup>

14 Moreover, the FEIS was not deficient for failure to explain why requirements  
15 between 11% and 25% were not evaluated based on feasibility considerations. Section 2.4  
16 of the EIS explained that a requirement of 25% was tested and found to be infeasible in  
17 most cases, and the trend of gradually increasing infeasibility for requirements between 11  
18 and 25% is clear.<sup>104</sup> Equally important, there is no SEPA requirement that an EIS provide  
19 a comprehensive explanation of why alternatives were excluded. SMC 25.05.440.D.3.e

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20 <sup>99</sup> FEIS at 2.65.

21 <sup>100</sup> Tr. vol. 10, 112:6-112:19, July 27, 2018 (Mefford).

22 <sup>101</sup> Tr. vol. 10, 107:23-108:20, 113:4-113:21, July 27, 2018. Mr. Mefford also explained why appellants’  
23 witness Mr. Sherrard, who is not an economist, was incorrect in suggesting that one could substantially  
24 increase requirements for certain, highly profitable prototypes without risking driving developers out of  
25 Seattle to other jurisdictions. Tr. vol. 10, 114:6-115:9, July 27, 2018 (Mefford).

<sup>102</sup> Tr. vol. 14, 51:25-52:11, Aug. 23, 2018 (Wentlandt).

<sup>103</sup> *Concerned Taxpayers*, 90 Wn. App. at 229-31.

<sup>104</sup> FEIS at 2.65; Tr. vol. 14, 53:18-54:2, Aug. 23, 2018 (Wentlandt); Tr. vol. 10, 112:14-112:19, July 27,  
2018 (Mefford).

1 states only that “The EIS *may* indicate the *main reasons* for eliminating alternatives from  
2 detailed study.” (Emphasis added.) For the foregoing reasons, the EIS evaluated a  
3 reasonable range of alternatives.<sup>105</sup>

4 **VI. THE FEIS’S IMPACTS ANALYSIS IS REASONABLE AND ADEQUATE**

5 As explained in detail in the following sections, Appellants challenges to the  
6 adequacy of the impact analyses fail.

7 **A. Land use and aesthetics analysis meets the rule of reason.**

8 The analysis of land use and aesthetics impacts is extensive, detailed, and satisfies  
9 the rule of reason.<sup>106</sup> Both utilize reasonable and standard methods that are typical of  
10 experts in their respective fields to assess and disclose the potential land use and aesthetic  
11 impacts of the proposal.<sup>107</sup> The level of analysis is at least typical of non-project actions,  
12 in some cases, exceeds the level of analysis that is standard for non-project actions.<sup>108</sup>

13 **1. The Land Use Impact Analysis Is Reasonable.**

14 The land use analysis identified categories of land use impacts based on a standard  
15 methodology, including intensification of use, density increase, and scale change.<sup>109</sup> The  
16 FEIS also looked at other types of impacts, including edge effect, pressure for further  
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18 <sup>105</sup> Finally, Mr. Sherrard erred in suggesting that the alternatives were not clearly presented in the maps for  
19 the EIS, Mr. Wentlandt explained and demonstrated how the maps (both in Appendix H and the interactive  
20 online map) clearly and comprehensively conveyed the information as to the proposed development  
21 capacity increases on a parcel-by-parcel basis. Mr. Sherrard alleged that the City should have prepared a  
22 map like that prepared by the Seattle Times showing the relative change in development intensity. Tr. vol.  
23 4, 107:9–107:13, June 28, 2018. In fact, the EIS contains a map for each alternative that provides the same  
24 information in essentially the same manner that the Seattle Times map did. Tr. vol. 14, 112:17–112:24,  
25 114:12–114:19, Aug. 23, 2018 (Wentlandt).

<sup>106</sup> While the EIS addressed land use and aesthetics in different chapters, we address them together because  
they are interrelated topics, as is explained in the EIS, itself, and in witness testimony. *See, e.g.*, Tr. vol. 18,  
50:19–51:18, Sept. 4, 2018 (Gifford). More importantly, we address them together because Appellants’  
allegations related to both overlap and can be addressed jointly.

<sup>107</sup> Tr. vol. 18, 12:1–13, 41:18–42:6, 50:16–19, 54:4–55:16, 58:13–59:15, 89:8–11, 104:9–19, 108:13–16,  
Sept. 4, 2018 (Gifford).

<sup>108</sup> *See also* Tr. vol. 18, 99:8–17, 233:7–235:15, Sept. 4, 2018 (Gifford); Tr. vol. 19, 36:14–37:3,  
(Weinman).

<sup>109</sup> *See* FEIS at 3.110; Tr. vol. 18, 11:10–17:16, Sept. 4, 2018 (Gifford).

1 zoning changes, and topography, among others.<sup>110</sup> This general categorization of impacts  
2 is typical for a non-project action, and allows decision-makers to generally understand the  
3 potential nature of a non-project actions potential land use impact.<sup>111</sup>

4 The EIS then assessed the various specific zoning changes contemplated by the  
5 proposal. Zoning changes that create more than one category of impact (e.g., density  
6 increase, scale change, or intensification of use) are more likely to create a land use  
7 impact of greater significance than those which involve only one category.<sup>112</sup> Based on  
8 that fundamental premise, the EIS categorizes the significance of specific proposed zoning  
9 changes based on degree, using three tiers of “rezone suffixes”: (M), (M1), and (M2).<sup>113</sup>  
10 In general, these suffixes approximate the severity of the potential land use impacts, and  
11 increase as the MHA tier increases from (M) to (M1) and (M2). By way of example, a  
12 rezone from Single Family to Residential Small Lot is an (M) tier change and it would  
13 increase density, but does not alter the allowed scale of development or change the  
14 permitted uses.<sup>114</sup> By contrast, a rezone from Single Family to Lowrise 3 is an (M2)  
15 change as it involves changes to all three categories of density, use and scale.<sup>115</sup>

16 The FEIS then assigns impacts thresholds of minor moderate and significant,  
17 which roughly correspond to the (M) tier categorization, but also incorporate location-  
18 specific issues.<sup>116</sup> Thus, (M) tier changes typically result in minor impacts, but could  
19 result in moderate impacts in specific locations depending on proposed height limit  
20 increases, the existing land use pattern, presence of absence of transition to lower scale

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22 <sup>110</sup> See, FEIS at 3.117–3.118.

<sup>111</sup> See Tr. vol. 18, 12:1–13, Sept. 4, 2018 (Gifford).

23 <sup>112</sup> FEIS at 3.112. See also Tr. vol. 18, 21:6–19, Sept. 4, 2018 (Gifford).

<sup>113</sup> See FEIS at 3.113, Ex. 3.2-3; FEIS at 3.114, Ex. 3.2-4; FEIS at 3.115, Ex. 3.2-5.

24 <sup>114</sup> FEIS at 3.113, Ex. 3.2-3.

<sup>115</sup> FEIS at 3.115, Ex. 3.2-5.

25 <sup>116</sup> FEIS at 3.115–3.116.



1 areas and other existing conditions.<sup>117</sup> Similarly, many (M1) changes would be moderate,  
2 but could be significant depending on location-specific factors.<sup>118</sup>

3 Because each of the three alternatives varies the amount and distribution of these  
4 types of zoning changes, the extent of the land use impacts varies among the three  
5 alternatives.<sup>119</sup> To further analyze and depict the location of these potential land use  
6 impacts, the FEIS applies this typology and the tiers of changes to specific locations using  
7 detailed maps prepared for all three alternatives.<sup>120</sup> The FEIS also includes an interactive  
8 map online.<sup>121</sup> Both the maps included in the EIS and the accompanying webmap, give  
9 the public and decision-makers the ability to zoom in or out to specific neighborhoods or  
10 properties and compare both current zoning as well as proposed zoning the impacts of  
11 which can then can be understood in a specific location using the text in the FEIS.

12 Finally, the FEIS includes analysis of neighborhood-specific land-use impacts by  
13 urban village that provide specific examples of impacts that are increased or moderated by  
14 location-specific factors.<sup>122</sup> This analysis of each urban village prepared for each  
15 alternative compares the relative land use impacts in that urban village under the  
16 alternatives. While these paragraphs are not exhaustive, they are meant to supplement the  
17 more generalized discussion in the EIS and the detailed mapping by highlighting specific  
18 issues of importance.<sup>123</sup> This combination of generalized land use impact and analysis,

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<sup>117</sup> FEIS at 3.115.

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<sup>118</sup> *Id.*

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<sup>119</sup> Tr. vol. 18, 27:3–29:22, Sept. 4, 2018 (Gifford). *See also* FEIS at 3.120, Ex. 3.2-6.

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<sup>120</sup> FEIS at App. H.

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<sup>121</sup> Ex. 291; Tr. vol. 14, 36:21–37:5, 115:13–117:4, Aug. 23, 2018 (Wentlandt); Hr’g Ex. 69; FEIS at 3.204; Tr. Vol. 18, 94:6–96:11, Sept. 4, 2018 (Gifford).

<sup>122</sup> Tr. vol. 18, 40:15–42:6, Sept. 4, 2018 (Gifford); FEIS at 3.119-3.155.

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<sup>123</sup> *Id.*

1 coupled with site-specific mapping, and specific neighborhood discussion is a reasonable  
2 approach and adequately informs decision-makers of the potential impacts.<sup>124</sup>

3 2. The Aesthetic Impact Analysis Is Reasonable.

4 The analysis of aesthetic impacts is closely related to the land use impact analysis.  
5 One analysis informs the other precisely because the discussion of land use impacts to  
6 scale, in particular, addresses issues that also affect aesthetics, like shading, height, and  
7 bulk.<sup>125</sup> In fact, it is common for non-project EISs to incorporate analysis of aesthetic  
8 impacts in the land use chapter.<sup>126</sup> However, in this case, the City created an entirely  
9 different chapter to facilitate more detailed analysis of aesthetics than is typically  
10 completed for non-project actions.<sup>127</sup> The full perspective of potential aesthetic impacts is  
11 explained in the combination of chapters, with some aesthetic discussion included in the  
12 land use chapter.<sup>128</sup>

13 Like the land use analysis, the analysis of aesthetic impacts utilizes typical and  
14 standardized methodology and typology of impacts. The FEIS assesses the potential  
15 development intensity based on the built form, including heights and floor area ratio  
16 (FAR). The FEIS includes analysis at a level of specificity that is appropriate given the  
17 indirect nature of the potential impacts and the uncertainty of the location, timing and  
18 specifics of future development.<sup>129</sup> The approach is consistent with SEPA case law in  
19 which courts have recognized that a rezone is causally independent of any actual  
20 development proposals, and that project-level impacts are “impracticable” to address at

21 <sup>124</sup> Tr. vol. 18, 41:18–42:6, Sept. 4, 2018 (Gifford).

22 <sup>125</sup> Tr. vol. 18, 50:19–51:15, Sept. 4, 2018 (Gifford).

23 <sup>126</sup> Tr. vol. 18, 50:25–51:5, Sept. 4, 2018 (Gifford).

24 <sup>127</sup> Tr. vol. 18, 50:25–51:18, Sept. 4, 2018 (Gifford); Tr. vol. 19, 36:14–37:3, 99:8–17, Sept. 7, 2018  
(Weinman).

25 <sup>128</sup> See, e.g., FEIS at 3.206-3.208 (aesthetic impact analysis of height increases in First Hill); FEIS at 3.152-  
3.153 (land use impacts analysis of height increases in First Hill).

<sup>129</sup> FEIS at 3.169; Tr. vol. 18, 67:7–71:5, Sept. 4, 2018 (Gifford).

1 the rezone stage.<sup>130</sup> Despite the uncertainty about these project-specific details, the city  
2 made informed and reasonable assumptions for a qualitative impact analysis. The City  
3 identified representative examples of changes to urban form for each of the zoning  
4 districts and created visual depictions in the Urban Design and Neighborhood Character  
5 Study that are accurate and complete.<sup>131</sup> The City analyzed and characterized the potential  
6 aesthetic impacts based on the tier zoning change, using the same typology described in  
7 the land use chapter.<sup>132</sup> This extensive analysis is accompanied by graphics that take the  
8 building forms depicted in the Urban Design and Neighborhood Character Study and  
9 place them in representations of the built environment.<sup>133</sup> These graphics show current  
10 environment (white buildings), development potential under no action (blue buildings),  
11 and development under action alternatives (gold buildings).<sup>134</sup> For the action alternatives,  
12 these graphics depict two conditions—distributed and concentrated.<sup>135</sup> “Distributed”  
13 condition depicts development under new regulations at the outset when only a few  
14 buildings are constructed under the new zoning, but the majority of existing conditions  
15 remain. By contrast, the “concentrated” condition shown in the graphics depicts when  
16 more of the immediate area is built pursuant to the new zoning. Finally, for each pair of  
17 graphics, the FEIS identifies to which specific urban villages the drawings are relevant.

18 Just as in the land use chapter, the EIS also includes specific analysis of the  
19 impacts of the three alternatives that takes into consideration the varying allocation of  
20 development capacity that causes different potential aesthetic impacts. This analysis

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22 <sup>130</sup> *Cathcart-Malby-Clearview Cmty. Council*, 96 Wn.2d at 208–210 (upholding the adequacy of an EIS for  
a rezone application to accommodate residential development).

23 <sup>131</sup> FEIS at App. F; Tr. vol. 18, 71:6–72:12, Sept. 4, 2018 (Gifford); Tr. vol. 14, 123:13–127:25, Aug. 23,  
2018 (Wentlandt).

24 <sup>132</sup> FEIS at 3.173–3.190. *See also* Tr. vol. 18, 75:1–83:9, Sept. 4, 2018 (Gifford).

25 <sup>133</sup> FEIS at 3.178–3.188, Exs. 3.3-10–3.3-22. Tr. vol. 14, 123:13–127:25, Aug. 23, 2018 (Wentlandt).

<sup>134</sup> *Id.*

<sup>135</sup> Tr. vol. 18, 79:13–81:4, Sept. 4, 2018 (Gifford).

1 includes neighborhood-specific details. The EIS includes maps depicting the specific  
2 location of the three tiers of zoning changes as well as the allocation of the height limit  
3 changes throughout the city for each alternative.<sup>136</sup> The EIS includes paragraphs that  
4 describe specific urban villages with the most significant allocations of tiers of zoning  
5 changes that can be read in conjunction with the maps in App. H or the webmap to  
6 ascertain neighborhood-specific impacts.<sup>137</sup> The text in the aesthetics chapter can be read  
7 in conjunction with the text in the land use chapter that is specific to urban villages that  
8 also address aesthetic impacts.<sup>138</sup> This multi-faceted approach that combines specific  
9 maps, with EIS text and specific neighborhood description in both the land use and  
10 aesthetics chapter exceeds what the typical level of analysis of aesthetic impacts for a non-  
11 project action.<sup>139</sup> It is a reasonable approach and adequately informs decision-makers of  
12 the impacts of the non-project action.

13 Finally, in addition to the focus on impacts to height, scale, and character, the  
14 aesthetics analysis also discusses view impacts at a level of detail appropriate in light of  
15 the indirect nature of the impacts of the non-project action and the uncertainty that exists  
16 about any specific development proposals that could be built pursuant to the zoning  
17 changes. The EIS identifies the relevant policies and protections for public view corridors  
18 and public view preservation, and the appropriate process for implementing those  
19 protections during project-specific SEPA review and design review.<sup>140</sup> The aesthetics

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<sup>136</sup> FEIS at 3.194–3.195; FEIS at 3.200–3.201; FEIS at 3.204–3.205.

21 <sup>137</sup> Ex. 69; FEIS at 3.204.

22 <sup>138</sup> As just one example, the discussion of aesthetic impacts for Greenwood Phinney is closely related to, and  
23 informed by, the discussion of land use impacts. *See, e.g.*, FEIS at 3.203 (aesthetic impact analysis for the  
24 preferred alternative identifies, specifically, the areas of (M2) zoning in “Greenwood near Greenwood Ave  
25 N and NW 85<sup>th</sup> St” which could result in construction of larger multifamily structures and different building  
types); FEIS at 3.148 (EIS identifies potential for moderate impacts on single family zones adjacent to those  
areas where height increases within the urban village could “increase shadowing onto adjacent single family  
areas, or create increased density or activity in close proximity to single family homes.”).

<sup>139</sup> *See* n. 108, *infra*.

<sup>140</sup> FEIS at 3.168–3.169. *See also* Tr. vol. 18, 84:19–86:21, Sept. 4, 2018 (Gifford).

1 impact analysis also describes potential impacts to views for each of the alternatives.<sup>141</sup>

2 This approach to view impacts is reasonable.

3 3. Appellants’ incorrectly assert that there is “no analysis” of specific  
4 land use or aesthetic issues.

5 Contrary to the Appellants’ assertions, the EIS includes discussion of the land use  
6 impacts they purport are missing. As explained in section III.A, above, the Appellants are  
7 simply incorrect when they assert that the EIS did not look at areas outside of the urban  
8 villages or at impacts to areas adjacent to the study area. Additionally, the EIS analyzes  
9 impacts of all the proposed zoning changes, whether characterized by Appellants as “text  
10 upzones,” “map upzones” or “double upzones.”<sup>142</sup> The EIS does not use Appellants’  
11 vernacular, but very clearly addressed all categories of zoning changes. Specifically, each  
12 of the (M) tiers of zoning changes capture all the proposed changes, including: those  
13 where the mapped zoning district for a parcel does not change, but text amendments will  
14 expand development capacity; and those where the underlying zoning district applied to a  
15 property changes, including when the proposal will amend the newly applied zoning  
16 district.<sup>143</sup> These amendments are described in both charts and maps and analyzed as part  
17 of the impact analysis, including neighborhood specific discussion of those changes.<sup>144</sup>  
18 Appellants’ arguments that the EIS did not review the full extent of the text and map  
19 rezones is categorically false.

21 <sup>141</sup> See, e.g., FEIS at 3.209 (describing potential impacts of preferred alternative to view). See also Tr. vol.  
22 18, 84:19–86:21, Sept. 4, 2018 (Gifford).

23 <sup>142</sup> Tr. vol. 6, 49:3–9, Jul 23, 2018 (Thaler testifies that he did not see any discussion of impacts of what he  
24 characterized as a text upzone); Tr. vol. 12, 76:6–23, Aug. 21, 2018 (Hill testifies that there is no discussion  
in the EIS to the “double upzone” in Wallingford). See also Tr. vol. 6, 28:19–29:19, Jul 23, 2018 (Thaler  
25 testimony describing difference between “text upzone,” “map upzone,” and “double upzone.”); Tr. vol. 12,  
63:7–20, Aug. 21, 2018 (Hill).

<sup>143</sup> Tr. vol. 14, 47:1–49:2, Aug. 23, 2018 (Wentlandt).

<sup>144</sup> See Section V.A.1 and V.A.2, above.

1 Appellants similarly ignore analysis of other miscellaneous neighborhood-specific  
2 issues in the EIS they purported at hearing to be missing:

3 • Contrary to Appellants’ allegations, the City addressed potential impacts  
4 on an area of consistent, established architectural character and form in the vicinity of the  
5 Roosevelt Urban Village in the area between Ravenna Park and 65<sup>th</sup> Street NE.<sup>145</sup>

6 • Another witness testified that the proposed NC-75 zoning near Queen  
7 Anne Avenue N. and West Galer Street was not analyzed, despite referring to the map that  
8 depicted the change and despite the neighborhood-specific text describing impacts of that  
9 rezone.<sup>146</sup>

10 • While one Appellant representative asserted a purported “error” or  
11 “gotcha” related to a rezone to LR3 in Wallingford,<sup>147</sup> there is no “error” because the EIS  
12 identifies the specific impact the witness purported to be missing in the complete  
13 discussion in the EIS of the differences between the alternatives for Wallingford.<sup>148</sup>

14 • Another Appellant representative testified that “nowhere in the EIS is there  
15 a description of the changing to West Seattle Junction Urban Village” and specifically  
16 asserted that the EIS failed to address the presence of a nursing home in that Urban  
17 Village.<sup>149</sup> The witness ignored the various paragraphs addressing land use impacts to that  
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20 <sup>145</sup> FEIS at 3.134-3.135; FEIS at 3.145; Tr. vol. 18, 39:19–40:14, Sept. 4, 2018 (Gifford).

21 <sup>146</sup> Compare Tr. vol. 12, 195:1–196:6, Aug. 21, 2018 (Derr) with FEIS, App. H at H.77 and H.76; FEIS at  
22 3.147 (“The extent of proposed NC-75 zoning near the intersection of Queen Anne Ave. N and W Galer St.  
23 would be extended one parcel to the east, and could create increased scale and density impacts. However,  
24 the location of existing multifamily zoning would provide a transition.”). See also Tr. vol. 18, 35:25–36:18,  
25 Sept. 4, 2018 (Gifford).

<sup>147</sup> Tr. vol. 18, 217:21–220:11, Sept. 4, 2018 (Thaler questions of Gifford implying “gotcha” and “error”).

<sup>148</sup> Tr. vol. 18, 235:22–242:5, Sept. 4, 2018 (Gifford). See also FEIS at 3.134 (describing alternative 3 as  
including “changes from Single Family to the LR2 and LR3 zone, and noting, in particular, that the change  
would be located “along the frontages of Midvale Ave N...”); FEIS at 3.146 (observing that the preferred  
alternative would continue to rezone all areas of single family zoning to Lowrise zones, but would reduce  
the extent of changes from SF to LR3, noting that “most... would be to LR1 zones.”).

<sup>149</sup> Tr. vol. 11, 86:9–87:7, Aug. 20, 2018 (Tobin-Presser).

1 specific urban village, one of which describes the senior housing complex and how its  
2 presence informs the impact analysis.<sup>150</sup>

3 • Another Appellant witness incorrectly testified that the EIS does not  
4 identify the differences in aesthetic impacts that might be experienced at the outset of a  
5 zoning change, when there is very little new development, compared to the impacts that  
6 could occur when there is more new development under new zoning<sup>151</sup> The witness  
7 ignores the depictions of the distributed and concentrated development conditions and  
8 accompanying text, discussed above, that address that very topic.<sup>152</sup>

9 • In another representative example, an Appellant witness testified  
10 incorrectly that the EIS is missing analysis on impacts from height increases in 23<sup>rd</sup> &  
11 Union-Jackson. The witness even asserted the EIS was misleading because an example  
12 on page 3.111 of a scale change addresses only small increases in building height and  
13 does not address more significant height increases he expected to see in his  
14 neighborhood.<sup>153</sup> However, the witness ignored the text that immediately follows on the  
15 same page which specifically addresses impacts of larger building height increases as well  
16 as other extensive discussion in the EIS on that topic, including neighborhood-specific  
17 descriptions for the urban village that was the specific subject of his testimony which  
18 specifically identify potential impacts from increases in height.<sup>154</sup>

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<sup>150</sup> FEIS at 3.124 (“One portion of the urban village expansion at the southeast of the village would be rezoned to Lowrise, however this area is almost completely bounded by an existing senior housing complex and lowrise and neighborhood commercial zoned lands, which mitigate potential transitions conflicts.”). *See also* FEIS at 3.136; FEIS at 3.148-3.149.

<sup>151</sup> Tr. vol. 12, 77:11–78:11, Aug. 21, 2018 (Hill).

<sup>152</sup> *See* Section V.A.2, above. *See also* Tr. vol. 18, 79:13–81:4, Sept. 4, 2018 (Gifford).

<sup>153</sup> Tr. vol. 11, 257:4–16, Aug. 20, 2018 (Bradburd).

<sup>154</sup> FEIS at 3.111; FEIS 3.206-208; FEIS at 3.152 (Discussion of impacts of Preferred Alternative 2 on 23<sup>rd</sup> & Union-Jackson specifically includes discussion of “increased heights” including the impacts of heights up to 75 feet in certain zones); FEIS at 3.127 (Impacts of alternative 2 on 23<sup>rd</sup> & Union-Jackson include “increased height impacts”).

1 The EIS includes the very analysis of impacts Appellants purport to be missing.  
2 Because their challenges were based on a purported absence of any analysis on those  
3 issues, the EIS discussion of those topics vitiates Appellants' claims.

4 4. The Land Use and Aesthetics Analyses Sufficiently Characterized  
5 Existing Conditions.

6 Several witnesses challenged the sufficiency of the description of existing  
7 conditions, arguing that more detail was required.<sup>155</sup> Appellants' claims are without merit.  
8 The land use chapter expressly incorporates the very specific, city-wide analysis of  
9 existing conditions that was recently completed with the environmental review for Seattle  
10 2035.<sup>156</sup> As explained at hearing, the incorporated pages from the Seattle 2035  
11 Comprehensive Plan EIS include the information Appellants purport to be missing.<sup>157</sup>  
12 Moreover, the understanding of existing conditions in specific neighborhoods is also  
13 informed by the neighborhood-specific discussion in the FEIS impact analysis, many of  
14 which describe "existing" conditions before explaining changes.<sup>158</sup> This level of detail of  
15 baseline conditions is comparable to other non-project EISs.<sup>159</sup>

16 Appellants' specific challenges to the photographs depicting representative  
17 existing built form in the aesthetic chapter fail for similar reasons.<sup>160</sup> Appellants focused  
18 on hyper-specific details to try to distinguish their respective urban villages from the  
19 photos and accompanying descriptions. For example, one witness suggested that the

20 <sup>155</sup> Tr. vol. 11, 76:5–79:20, Aug. 20, 2018 (Tobin-Presser); Tr. vol. 12, 74:25–75:8, 76:6–76:25, Aug. 21,  
21 2018 (Hill).

22 <sup>156</sup> See FEIS at 3.99 (in the section describing "Affected Environment" the EIS indicates that "This Chapter  
relies primarily on the background information contained in" the Seattle 2036 Comprehensive Plan EIS.).

23 <sup>157</sup> See Tr. vol. 18, 99:5–101:16, Sept. 4, 2018 (Gifford); Ex. 4 at 3.4-1 through 3.4-14.

24 <sup>158</sup> See, e.g., Tr. vol. 18, 101:17–104:19, Sept. 4, 2018 (Gifford); FEIS at 3.122.

25 <sup>159</sup> See Tr. vol. 18, 104:2–104:19, Sept. 4, 2018 (Gifford); Tr. vol. 18, 249:14–250:23, Sept. 4, 2018  
(Gifford) (testifying that analysis of baseline conditions in MHA EIS is comparable to Uptown and  
University District EISs).

<sup>160</sup> Tr. vol. 11, 100:18–100:21, Aug. 20, 2018 (Tobin-Presser); Tr. vol. 12, 140:10–141:18, Sept. 4, 2018  
(Hill).



1 acknowledgment in the EIS that single family homes in single family zoning districts  
2 could exceed 50 years of age, was insufficient to describe homes in his neighborhood that  
3 are 100 years of age.<sup>161</sup> The failure to acknowledge the accuracy of the statement in the  
4 EIS (a hundred years exceeds 50) and their picayune distinctions, more generally, suggest  
5 a level of specificity that defies the rule of reason. The purpose of the baseline conditions  
6 section is not to describe each and every home or neighborhood precisely.<sup>162</sup> Even the  
7 EISs to which they cite favorably do not go through the same exercise and include only a  
8 handful of photographs that are not used to define the representative built form.<sup>163</sup> The  
9 level of discussion is sufficient for purposes of the analysis.<sup>164</sup> This approach of  
10 describing baseline conditions is adequate to inform the reader of the existing conditions  
11 for purposes of understanding impacts.

12 5. The Summary of Comprehensive Plan Consistency is Adequate.

13 Appellants incorrectly argue that SEPA requires a very specific policy-by-policy  
14 analysis to determine whether the proposal is consistent with the comprehensive plan.<sup>165</sup>  
15 As a preliminary matter, the City disputes Appellants' argument that the proposal is  
16 inconsistent with the specific policies Appellants have identified. In fact, twelve of the  
17 policies on Appellants' list strongly support MHA, and the vast majority are agnostic.<sup>166</sup>  
18 Only 7 of the listed policies would require amendment to implement MHA (the same  
19 seven neighborhood policies that the City proposes to amend).<sup>167</sup>

21 <sup>161</sup> Tr. vol. 12, 140:10–141:18, Sept. 4, 2018 (Hill).

22 <sup>162</sup> Tr. vol. 18, 55:17–59:15, Sept. 4, 2018 (Gifford).

23 <sup>163</sup> Tr. vol. 18, 250:24–251:12, Sept. 4, 2018 (Gifford). *See also* Hr'g Exs. 306 and 307.

24 <sup>164</sup> Tr. vol. 18, 59:12–15, Sept. 4, 2018 (Gifford).

25 <sup>165</sup> Hr'g Ex. 8.

<sup>166</sup> Tr. vol. 14, 139:20–143:5, 145:23–150:1, Aug. 23, 2018 (Wentlandt)(describing Hr'g Exs. 244).

<sup>167</sup> Tr. vol. 14, 142:13–143:5, Aug. 23, 2018 (Wentlandt); Tr. vol. 15, 181:5–24, Aug. 24, 2018 (Jacobus).  
*See also* Hr'g Ex. 244 (listing seven policies that are inconsistent and require amendment).

1 More importantly, SEPA does not require extensive policy-by-policy analysis. For  
2 both project and non-project actions, SEPA requires, only “when appropriate,” a  
3 “summary of existing plans (for example: Land use and shoreline plans) and zoning  
4 regulations applicable to the proposal, and how the proposal is consistent and inconsistent  
5 with them.”<sup>168</sup> On its face, the SEPA regulations do not support the Appellants’ demands.  
6 In the context of non-project actions lead agencies have even more flexibility when  
7 preparing that “summary.”<sup>169</sup> Simply put, Appellants’ assertions that the EIS must include  
8 the very precise policy-by-policy analysis is not supported by the SEPA rules.<sup>170</sup>

9 The City’s approach in the FEIS is consistent with the City’s past practice and  
10 satisfies SEPA requirements.<sup>171</sup> The City included summary of particularly relevant  
11 comprehensive plan policies and also concluded the analysis of land use impacts of each  
12 of the alternatives with a summary of the consistency or inconsistency with the  
13 comprehensive plan.<sup>172</sup> More importantly, the EIS describes the consistency of the MHA  
14 proposal with broader Comprehensive Plan themes and strategies throughout the  
15 document.<sup>173</sup> The EIS also includes metrics that provide quantitative comparisons of the  
16 20-year growth scenario under the alternatives compared to the no action alternative that

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18 <sup>168</sup> WAC 197-11-440(6)(d)(i); SMC 25.05.440.E.4.

19 <sup>169</sup> WAC 197-11-442(1); SMC 25.05.442.A. The greater flexibility for nonproject actions makes sense –  
when amending the comprehensive plan, the proposal’s “consistency” is less important precisely because it  
is anticipated that the proposal will change policies with which the proposal is inconsistent.

20 <sup>170</sup> Ultimately, the gravamen of Appellants’ argument is not a proper subject for a SEPA appeal. Whether  
the proposal that the City ultimately adopts is consistent with the comprehensive plan (those portions that  
are not amended by the proposal) is a question of “internal consistency” that is the purview of the Growth  
Management Hearings Board, and not within the scope of this EIS adequacy appeal. The appellants should  
not be allowed to turn a substantive GMA challenge into a SEPA issue.

21 <sup>171</sup> Tr. vol. 14, 133:9–24, Aug. 23, 2018 (Wentlandt).

22 <sup>172</sup> See FEIS at 3.107-108.

23 <sup>173</sup> Tr. Vol. 14, 135:2–137:16, Aug. 23, 2018 (Wentlandt). For example, the EIS uses the same overall  
structure, metrics and approach for assessing growth and impacts as the Seattle 2035 Comprehensive Plan,  
which allows for quantitative comparison and more informative assessment of consistency than mere policy  
evaluation. *Id.* at 135:6–136:9. Additionally, the EIS repeatedly acknowledges that the overall pattern of  
growth pursuant to the proposal follows the City’s comprehensive plan growth strategy that centers on urban  
villages. *Id.* at 136:9–137:3.

1 closely parallels the recently prepared Seattle 2035 Comprehensive Plan scenario.<sup>174</sup> That  
2 more holistic approach to summarizing consistency with the comprehensive plan is within  
3 the range of discretion and, from the City’s perspective, accomplishes the regulatory  
4 objective better than the exhaustive “policy-by-policy” approach demanded by the  
5 Appellants.<sup>175</sup>

6 6. The City’s Consideration of Design Review is Reasonable.

7 Appellants assert that the proposal would circumvent neighborhood design  
8 guidelines or that the EIS ignored limitations in the design review process. Appellants are  
9 incorrect. The land use and aesthetics analysis incorporates and discusses the City’s  
10 design review process, including neighborhood design guidelines.<sup>176</sup> Indeed, the City’s  
11 mitigation expressly acknowledges chapter 23.41 SMC, which specifically incorporates  
12 design guidelines for each of the neighborhoods.<sup>177</sup> Thus, nothing about this proposal  
13 would eliminate or impair neighborhood design review.

14 Yet other Appellant witnesses argued that design review may not be present for all  
15 projects.<sup>178</sup> At most, those witnesses point out existing thresholds, below which projects  
16 are exempt from review. The EIS clearly discloses the design review thresholds and  
17 acknowledges situations when design review would not be available.<sup>179</sup> Moreover,  
18 Appellants ignore measures incorporated into the proposal that mitigate the potential  
19 impact of projects proceeding under the design review threshold. First, the proposal  
20 incorporates changes to design regulations that would be required whether or not the  
21 project is subject to design review, including, for example, upper level setbacks to reduce

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22 <sup>174</sup> *Id.*

23 <sup>175</sup> FEIS 3.164-3.167.

24 <sup>176</sup> FEIS 3.164-3.167.

25 <sup>177</sup> FEIS at 3.157; SMC 23.41.010.

<sup>178</sup> *See, e.g.*, Tr. vol. 12, 53:3–55:2, Aug. 21, 2018 (Bradburd).

<sup>179</sup> FEIS at 3.164-3.167.

1 bulk and scale impacts and maximum dwelling unit sizes in RSL and tree planting  
2 requirements.<sup>180</sup> The upper-level setback requirements will mitigate the potential of large  
3 structure and call into question the accuracy of photographs shown by Ms. Tobin-Presser  
4 of an existing structure built under NC zoning, or the mock-ups prepared by Mr. Hill.<sup>181</sup>  
5 In addition, the proposal specifically incorporates changes to the thresholds for design  
6 review to ensure more projects within urban villages that would be exempt would have to  
7 conduct design review for a period of five years following adoption of the proposal.<sup>182</sup>

8 Perhaps most importantly, the Appellants' arguments about design review are  
9 outside the scope of this EIS appeal. Whether or not a project is subject to design review  
10 is not relevant. Rather, the relevant question for the Examiner of whether the City's  
11 analysis addresses the land use and aesthetic impacts of the proposal. The EIS clearly  
12 addresses those impacts and notes, when available, how design review could mitigate  
13 those impacts.<sup>183</sup>

14 **B. The FEIS's housing and socioeconomics impact analysis exceeds SEPA**  
15 **requirements and meets the rule of reason.**

16 Appellants' challenge to the FEIS's analysis of socioeconomic impacts focuses  
17 primarily on displacement impacts, both physical displacement and economic  
18 displacement. It bears emphasis that the FEIS's analysis of displacement is  
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21 <sup>180</sup> FEIS at 3.210; Tr. vol. 18, 46:1–17, Sept. 4, 2018 (Gifford).

22 <sup>181</sup> See Tr. vol. 18, 105:4–108:7, Sept. 4, 2018 (Gifford).

23 <sup>182</sup> FEIS at 3.210.

24 <sup>183</sup> See, e.g., FEIS at 3.210 (identifying as mitigation measures parts of proposal that require upper level  
25 setbacks in new Lowrise, Midrise, Highrise, and Neighborhood Commercial zones and building modulation  
requirements for certain buildings in Commercial and Neighborhood Commercial zones); FEIS at 3.188 (“In  
both the (M) and (M1) zones, the upper-story setbacks mitigate the appearance of bulk to the buildings’  
upper stories as viewed from the street level. Façade modulation requirements add variety to the buildings’  
façades. These design standards may be necessary to mitigate the effects of increased height and bulk on  
neighborhood character...”).

1 unprecedented. Mr. Weinman testified that the FEIS’s analysis of displacement of low-  
2 income populations was more detailed than anything he had seen done.<sup>184</sup>

3 1. The FEIS adequately analyzed physical displacement impacts.

4 The FEIS used two methods to estimate the demolitions that would result from the  
5 proposal: the “parcel allocation” approach and the “historic trends” approach.<sup>185</sup> The  
6 “parcel allocation” approach involved a parcel-by-parcel analysis that examined the  
7 likelihood of redevelopment of individual parcels and took into account the increased  
8 development capacity under the proposal.<sup>186</sup> The “historic trends” approach estimated  
9 demolitions based on a continuation of the ratio of net new housing units permitted to  
10 units demolished for the period 2010-2016 (e.g., up to the time of the FEIS analysis), and  
11 resulted in a higher estimate of demolitions.<sup>187</sup> As Mr. Ramsey explained, the “historic  
12 trends” approach did not take into account the increased development capacity under the  
13 proposal, but this means that the “historic trends” approach *overstated* the amount of  
14 demolition that would occur in the future, since the increased capacity would allow more  
15 new units to be built for each demolished unit.<sup>188</sup>

16 The FEIS then estimated the number of physically displaced low-income  
17 households that would result from demolitions under the proposal.<sup>189</sup> As Mr. Ramsey  
18 explained, not all demolitions result in physical displacement and complete data does not  
19 exist on every household that was physically displaced.<sup>190</sup> The EIS used data from  
20 demolitions that were subject to the City’s Tenant Relocation Assistance Ordinance,

21 <sup>184</sup> Tr. vol. 19, 27:9–27:21, Sept. 7, 2018 (Weinman).

22 <sup>185</sup> Detailed description of the two approaches is contained in FEIS at App. G, p. 10–12, as well as in the  
body of the FEIS at 3.69-3.70. The results of the two approaches are shown in the FEIS at 3.71, Ex. 3.1-41.

23 <sup>186</sup> Tr. vol. 15, 201:16–204:2, Aug. 24, 2018 (Ramsey).

24 <sup>187</sup> Tr. vol. 15, 204:16–205:8, Aug. 24, 2018 (Ramsey).

25 <sup>188</sup> Tr. vol. 15, 205:20–206:16, Aug. 24, 2018 (Ramsey).

<sup>189</sup> The results are shown in FEIS at 3.73, Ex. 3.1-42.

<sup>190</sup> Tr. vol. 15, 210:9–211:8, Aug. 24, 2018 (Ramsey).

1 which applies to residents with 50 percent or less of AMI to estimate how many low-  
2 income households would be displaced by demolitions.<sup>191</sup>

3 Mr. Ramsey rejected the suggestion that the FEIS should have analyzed physical  
4 displacement in terms of the rent level of the buildings being demolished (rather than in  
5 terms of displaced low-income households). Mr. Ramsey testified that there is no data on  
6 the rent levels of every building being demolished, and no guarantee that the rent for  
7 currently inexpensive buildings would not increase.<sup>192</sup> In addition, he pointed out that the  
8 FEIS recognizes that older buildings tend to have lower rents, the parcel allocation  
9 approach captures the greater likelihood of older buildings being demolished as opposed  
10 to newer buildings, and the FEIS provides specific estimates of demolitions for all of the  
11 alternatives.<sup>193</sup> In sum, Mr. Ramsey opined that the FEIS sufficiently and appropriately  
12 analyzed physical displacement impacts.<sup>194</sup>

13 2. The FEIS's analysis of economic displacement impacts cannot be  
14 challenged in this appeal, but the analysis was sufficient in any event.

15 a. **SEPA did not require the FEIS to analyze economic displacement**  
16 **and the FEIS's analysis on that score is not subject to appeal.**

17 Economic displacement occurs when a household is compelled to relocate due to  
18 the economic pressures of increased housing costs.<sup>195</sup> SEPA did not require the FEIS to  
19 analyze economic displacement. While the City opted to include such analysis, any defect  
20 in that analysis cannot be the basis for a challenge to EIS adequacy.

21 \_\_\_\_\_  
22 <sup>191</sup> FEIS at 3.40-3.42, 3.72. As Mr. Ramsey testified, the EIS acknowledged the TRAO data had limitations,  
23 but as noted above there was an absence of other data, the TRAO data allowed an effective comparison  
24 between alternatives, and the historic trends approach provided an overstated, high end estimate that  
25 compensated if the TRAO analysis was low. Tr. vol. 15, 210:5-212:14, 217:7-218:20, Aug. 24, 2018.

<sup>192</sup> Tr. vol. 15, 214:6-215:21, Aug. 24, 2018 (Ramsey).

<sup>193</sup> Tr. vol. 15, 215:22-216:25, Aug. 24, 2018 (Ramsey).

<sup>194</sup> Tr. vol. 15, 227:14-227:17, Aug. 24, 2018 (Ramsey).

<sup>195</sup> FEIS at 3.43.

1 Neither the state nor Seattle’s SEPA rules identify economics as an element of the  
2 environment.<sup>196</sup> Seattle’s SEPA rules list “economic competition, profits and personal  
3 income and wages, and social policy analysis such as fiscal and welfare policies” among  
4 “[e]xamples of information that are not required to be discussed in an EIS.”<sup>197</sup> Economic  
5 displacement is conceptually similar to these examples.<sup>198</sup> Unsurprisingly, Mr. Weinman  
6 testified that it is not typical to find analysis of economic displacement impacts in a non-  
7 project EIS.<sup>199</sup>

8 Seattle’s SEPA rules do call for analysis of “[e]conomic factors, including but not  
9 limited to employment, public investment, and taxation where appropriate” in an EIS  
10 unless eliminated by the scoping process.<sup>200</sup> However, even if one interpreted economic  
11 displacement to be an “economic factor” covered by SMC 25.05.440.E.6.a, that section  
12 gives the City the choice (through the scoping process) whether to include analysis of  
13 economic displacement. In this case, the City opted to do so.<sup>201</sup>

14 In this situation, the adequacy of the FEIS’s economic displacement analysis is not  
15 subject to appeal. Specifically, Seattle’s SEPA rules specify that adequacy of optional  
16 analysis included in an EIS, like the economic displacement impact analysis, “shall not be  
17 used in determining whether an EIS meets the requirements of SEPA.”<sup>202</sup> Thus the  
18 adequacy of the FEIS’s discussion of economic displacement cannot be the subject of an  
19

20  
21 <sup>196</sup> See SMC 25.05.444; WAC 197-11-444.

22 <sup>197</sup> SMC 25.05.448.C.

23 <sup>198</sup> As noted above, economic displacement results from “the economic pressures of increased housing  
24 costs.” FEIS at 3.43.

25 <sup>199</sup> Tr. vol. 19, 48:9–48:11, Sept. 7, 2018 (Weinman).

<sup>200</sup> SMC 25.05.440.E.6.a (emphasis added).

<sup>201</sup> The City stated in the scoping summary that “[t]he analysis will include discussion of the potential for  
economic displacement in addition to discussion of direct physical displacement.” FEIS at App. D, p. 8.

<sup>202</sup> SMC 25.05.440(G); see also WAC 197-11-440(8).

1 EIS adequacy challenge and the Examiner lacks jurisdiction to evaluate the adequacy of  
2 that analysis.

3 **b. The FEIS adequately analyzed economic displacement impacts.**

4 Notwithstanding the limits on the Examiner’s jurisdiction, the FEIS adequately  
5 analyzed such impacts. As Mr. Ramsey testified, economic displacement is difficult to  
6 measure.<sup>203</sup> The FEIS contains a detailed discussion of general trends in changes in  
7 households at different income levels in Seattle – trends to which economic displacement  
8 might contribute.<sup>204</sup> With respect to the relationship between new development and  
9 economic displacement, based on research literature and rent/vacancy data, the FEIS  
10 discussed that increased housing supply is likely to reduce upward pressure on market-rate  
11 housing costs and reduce economic displacement in the city and region overall relative to  
12 the “no action” alternative.<sup>205</sup>

13 However, the FEIS went further and did a statistical analysis to attempt to quantify  
14 the relationship between new development and economic displacement at the local  
15 neighborhood level.<sup>206</sup> This was unusual for an FEIS. Mr. Ramsey stated that he could  
16 not find any examples of EISs that tried to do a quantitative analysis of economic  
17 displacement impacts.<sup>207</sup>

18 The quantitative analysis of the relationship between new development and  
19 economic displacement (often referred to as the correlation analysis) compared change in  
20 the number of households at various incomes versus housing production and was done at  
21

22  
23 <sup>203</sup> Tr. vol. 15, 228:25–229:15, Aug. 24, 2018 (Ramsey).

24 <sup>204</sup> FEIS at 3.43-3.46.

25 <sup>205</sup> FEIS at 3.75-3.76; FEIS App. I.

<sup>206</sup> FEIS at 3.48-3.53 and App. M; Tr. vol. 15, 237:15–238:5, Aug. 24, 2018 (Ramsey).

<sup>207</sup> Tr. vol. 15, 228:2–228:5, Aug. 24, 2018 (Ramsey).



1 the neighborhood scale—specifically at the census tract level.<sup>208</sup> The analysis found net  
2 new housing development is not correlated with areas experiencing a loss of low-income,  
3 moderate-income, or middle-income households and is correlated with areas gaining  
4 households with incomes above 80 percent and 120 percent of AMI.<sup>209</sup>

5 Nonetheless, the FEIS acknowledged that, even though the correlation showed no  
6 systematic relationship between new development and economic displacement, there was  
7 a potential that new development could contribute to economic displacement in a  
8 particular neighborhood, for example by new housing bringing about amenities that made  
9 the neighborhood more attractive.<sup>210</sup> Mr. Ramsey found no inconsistency between the  
10 correlation analysis and this potential for a different result in localized circumstances.<sup>211</sup>  
11 Equally important, he testified that there was no guidance from the research literature as to  
12 additional analysis that the FEIS could have pursued on this score, and there was no need  
13 for the FEIS to do further analysis.<sup>212</sup> Mr. Ramsey opined that the FEIS sufficiently and  
14 appropriately analyzed economic displacement impacts.<sup>213</sup>

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18 <sup>208</sup> FEIS at 3.48, App. M. Mr. Ramsey testified that going to an even smaller geographical unit—the block  
19 group—would increase the margin of error and call the analysis into question; he stated that the census tract  
was a reasonable unit of analysis. Tr. vol. 15, 243:21–244:25, Aug. 24, 2018 (Ramsey).

20 <sup>209</sup> FEIS at 3.52. Mr. Ramsey testified that the correlation analysis covered a twelve-year period, using the  
most recent data available, and that this was a long enough period to capture any anticipatory or lagging  
displacement that might occur. Tr. vol. 16, 13:8–15:16, Aug. 30, 2018.

21 <sup>210</sup> FEIS at 3.48, 3.77; FEIS at App. I, p. I.5.

22 <sup>211</sup> Tr. vol. 16, 24:7–24:11, Aug. 30, 2018 (Ramsey).

23 <sup>212</sup> Tr. vol. 16, 27:9–27:17, Aug. 30, 2018 (Ramsey). Mr. Jacobus testified that he was not aware of a  
research methodology that was available that would do a better job than what was done in the EIS, and he  
disagreed with Mr. Levitus that case studies would resolve the question. Tr. vol. 15, 126:21–127:23, Aug.  
24, 2018 (Jacobus).

24 <sup>213</sup> Tr. vol. 16, 28:12–28:14, Aug. 30, 2018 (Ramsey). Mr. Ramsey also rejected the suggestion by  
Appellants’ witness Mr. Reid that the EIS’s analysis of economic displacement needed to more specifically  
25 address the issue of older, inexpensive units being replaced with newer, more expensive units. Tr. vol. 16,  
28:22–33:8, Aug. 30, 2018 (Ramsey).

1                   3. The FEIS’s assumption as to the distribution of payment units was  
2                   reasonable.

3                   Contrary to Mr. Reid’s and Mr. Levitus’ contentions, the FEIS’s assumption as to  
4                   the distribution of affordable units funded with MHA payments was reasonable. Ms.  
5                   Alvarado testified that assuming a distribution in proportion to each urban village’s share  
6                   of estimated growth was reasonable because it would be speculative to predict on any  
7                   other basis where affordable housing might be built.<sup>214</sup> Moreover, the City’s past practice  
8                   confirms that the City has built units across the City (except in predominantly single  
9                   family areas).<sup>215</sup> While Mr. Reid suggested that payment revenues would not cover the  
10                  cost of building in high cost areas Ms. Alvarado testified that the cost assumptions in the  
11                  FEIS were based on land costs across the city representing low-, medium-, and high-cost  
12                  areas.<sup>216</sup> Moreover, the evidence discussed in section V.B.2 above conclusively rebuts  
13                  Appellants’ contention that payment units will be concentrated in low cost areas.

14                   4. The FEIS adequately addressed ownership housing.

15                  Appellants’ witness Mr. Reid erred in contending that the FEIS was inadequate for  
16                  failing to analyze the effect of the proposal with respect to creation of ownership housing.  
17                  Mr. Reid’s EIS experience was limited to a single EIS for a resort project.<sup>217</sup> Mr. Reid  
18                  contended that the proposal would create more rental units whose residents would  
19                  eventually be looking to buy homes, but “there’s nothing done about new ownership  
20                  opportunity”.<sup>218</sup>

21                  Mr. Wentlandt, a city planner with extensive planning experience and involvement  
22                  in nonproject EIS’s in the City of Seattle, as well as familiarity with how nonproject EIS’s

23                  <sup>214</sup> Tr. vol. 15, 65:18–65:23, Aug. 24, 2018(Alvarado).

24                  <sup>215</sup> Tr. vol. 15, 72:8–73:18, Aug. 24, 2018 (Alvarado).

25                  <sup>216</sup> Tr. vol. 15, 60:23–61:5, Aug. 24, 2018 (Alvarado).

<sup>217</sup> Tr. vol. 2, 110:3–110:9, June 26, 2018 (Reid).

<sup>218</sup> Tr. vol. 2, 80:3–80:25, June 26, 2018 (Reid).

1 in the City analyze growth, testified that the City does not attempt to project whether  
2 growth would be ownership or rental, because the City has no control over whether  
3 housing products would be ownership or rental, and almost all housing could be either  
4 ownership or rental.<sup>219</sup>

5 However, he testified that certain development forms are more likely to be  
6 ownership and more likely to be developed in particular zones, and that the FEIS provided  
7 examples of this in the RSL and Lowrise zones.<sup>220</sup> As he pointed out, the FEIS describes  
8 the portion of the net capacity for housing growth for each alternative that is accounted for  
9 by certain zone categories including RSL and Lowrise.<sup>221</sup> He testified that it would be  
10 extremely unusual to analyze the number of households that would first move into rental  
11 housing and might want to move into ownership later; he had never seen such analysis in  
12 an EIS or any other environmental document.<sup>222</sup>

13 While Mr. Reid faulted the FEIS for focusing its affordability discussion primarily  
14 on affordability of rental housing (rather than ownership housing), the City's economic  
15 expert supported the FEIS's focus on affordable rental units, given that the number one  
16 cause of homelessness is rising rents.<sup>223</sup> The FEIS's treatment of ownership housing was  
17 adequate.

18 **C. The FEIS's historic resources analysis meets the rule of reason.**

19 The FEIS's historic resources analysis satisfies the rule of reason. This analysis  
20 consists of roughly 20 pages including a narrative discussion of the affected environment,  
21

22 <sup>219</sup> Tr. vol. 14, 160:24–161:14, Aug. 23, 2018 (Wentlandt).

23 <sup>220</sup> Tr. vol. 14, 161:15–162:14, Aug. 23, 2018 (Wentlandt).

24 <sup>221</sup> FEIS at 3.61, Ex. 3.1-36 and 3.1-37.

25 <sup>222</sup> Tr. vol. 14, 164:17–165:4, Aug. 23, 2018 (Wentlandt).

<sup>223</sup> Tr. vol. 10, 124:3–124:10, July 27, 2018 (Mefford). That said, the MHA proposal allows affordable performance units to be ownership units, and the Office of Housing can invest MHA payments in affordable homeownership projects. Tr. vol. 15, 93:6–93:12 (Alvarado).

1 impacts, and mitigation measures, supported by various exhibits. As discussed below and  
2 established by the evidence presented at hearing, the City’s approach to assessing and  
3 discussing historic resources was appropriate and reasonable for a city-wide non-project  
4 EIS.<sup>224</sup> The FEIS describes potential impacts to historic resources in a manner that is not  
5 skewed by overreliance on data resulting from the unequal cataloging of historic resources  
6 city wide.<sup>225</sup>

7 1. The City used an appropriate and reasonable level of detail to describe  
8 and assess historic resources.

9 As noted by City witnesses, the City considered a wide range of information  
10 pertaining to Seattle’s historic character and historic resources, including existing  
11 neighborhood-specific historic context statements as well as resources identified in city,  
12 state and federal databases. The City carefully evaluated what data was most appropriate  
13 to rely upon in portraying the affected environment and impacts from the proposal.<sup>226</sup>  
14 Ultimately the City settled on the use of specific information about National Register of  
15 Historic Places eligible properties to illustrate “which urban villages have a higher  
16 likelihood to contain the oldest historic resources.”<sup>227</sup> This is reflected in exhibits that  
17 illustrate the existence of historic resources throughout the City. The City then assessed  
18 the potential impact on historic resources for each of the alternatives and identified and  
19 discussed mitigation measures.

20 The analysis discusses the location of zoning changes in relation to the eight  
21 designated Seattle historic districts and seven National Register historic districts and the

22  
23 <sup>224</sup> Tr. vol. 10, 189:3–17, July. 27, 2018 (Wilson); *Id.*, 224:11–14 (Wilson); Tr. vol. 13, 75:10, Aug. 22,  
2018 (Wilson).

24 <sup>225</sup> Tr. vol. 13, 199:6–201:1, Aug. 22, 2018 (Johnson); Tr. vol. 10, 197:3–205:5, July 27, 2018 (Wilson).

25 <sup>226</sup> Tr. vol. 10, 187:10–22; 195:3–196:15, July 27, 2018 (Wilson).

<sup>227</sup> FEIS at 3.295.

1 nature of those impacts.<sup>228</sup> The FEIS also discusses the nature of the impacts due to  
2 redevelopment adjacent to landmarks and properties that could be eligible for listing.<sup>229</sup>  
3 The FEIS specifically describes the nature of potential impacts to historic and cultural  
4 resources that are significant to racial and ethnic minority populations.<sup>230</sup> And, the FEIS  
5 describes and compares the impacts of each of the alternatives.<sup>231</sup>

6 Appellants' own witness, Mr. Spencer Howard, agreed with many of the  
7 statements contained in the impacts analysis. For example, the FEIS makes clear that  
8 "[a]s a neighborhood's historic fabric decreases, it is less likely to meet local and federal  
9 eligibility criteria for consideration as a historic district."<sup>232</sup> Mr. Howard agreed. He also  
10 acknowledged that the FEIS calls out introduction of higher intensity uses or building  
11 forms into an area of consistent, established architectural character and urban form, such  
12 as a historic district as a location specific factor that could lead to a greater degree of land  
13 use impact.<sup>233</sup> And despite his criticism of the City's approach to addressing potential  
14 impacts in the vicinity of the Mount Baker Historic District, he conceded that the FEIS, in  
15 fact, does discuss impacts in that area.<sup>234</sup> While Mr. Howard or others may prefer that the  
16 City present information differently, such preferences do not render the analysis  
17 inadequate.

18 2. The City established a reasonable threshold for impacts to historic  
19 resources.

20 The City reasonably relied upon estimated growth rates as indicators of potential  
21 impacts to historic resources when comparing alternatives. Applying their experience and

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22 <sup>228</sup> See FEIS at 3.305.

23 <sup>229</sup> *Id.*

24 <sup>230</sup> See FEIS at 3.306.

25 <sup>231</sup> *Id.* at 3.308–3.310. See also Tr. vol. 10, 221:6 – 225:5, July 27, 2018 (Wilson).

<sup>232</sup> Tr. vol. 2, 42:10–21, June 26, 2018 (Howard).

<sup>233</sup> Tr. vol. 2, 43:5–21, June 26, 2018 (Howard).

<sup>234</sup> Tr. vol. 2, 44:6–45:2, June 26, 2018 (Howard).

1 professional judgment, the City’s consultants determined that growth rates of 50 percent  
2 or greater could result in significant impacts to Historic Resources.<sup>235</sup> Although, the  
3 Appellants have criticized the use of this threshold, it is apparent that this simply amounts  
4 to a difference of opinion among experts. Such differences do not render the analysis  
5 inadequate.<sup>236</sup> This approach and level of detail is entirely reasonable for purposes of  
6 assessing potential impacts of this non-project action.<sup>237</sup>

7 3. The FEIS discussed and analyzed gaps in existing protections for  
8 historic resources.

9 Several Appellant witnesses expressed concern about the potential impacts of  
10 eventual development projects (whether subject to SEPA or exempt) on designated  
11 historic resources as well as buildings without landmark status.<sup>238</sup> In fact, the FEIS  
12 specifically addresses this potential impact on historic resources from demolition and  
13 redevelopment that could follow adoption of the proposal.<sup>239</sup> The FEIS specifically  
14 acknowledges that redevelopment (whether subject to or exempt from project-level SEPA  
15 review) could result in significant impacts to: historic resources, including, among other  
16 things, landmarks; a landmark’s setting; and properties that have the potential to be  
17 landmarks.<sup>240</sup> For the last category, the FEIS further clarifies that “[r]edevlopment could  
18 result in significant adverse impact to for properties that have the potential to be

19 <sup>235</sup> FEIS at 3.304. *See also* Tr. vol. 13, 189:5–190:8, Aug. 22, 2018 (Johnson).

20 <sup>236</sup> *City of Des Moines v. Puget Sound Reg'l Council*, 98 Wn. App. 23, 852, 988 P.2d 27, 37 (1999).

21 <sup>237</sup> Declaration of Katherine Wilson (“Wilson Decl.”) and Declaration of Paula Johnson Burke (“Burke  
22 Decl.”) in support of the City of Seattle’s Response to SCALE’s Motion for Summary Judgement dated  
23 May 23, 2018. Appellants’ reliance on a comment by a reviewer related to the use of growth rates is  
24 misguided. Hr’g Ex. 238. Ms. Wilson and Mr. Weinman explained how the issue was ultimately addressed  
25 by altering the analysis and adding clarifying information to the discussion of historic resources. Thus, Mr.  
Weinman’s comment on an earlier draft does not corroborate Appellants’ arguments. Tr. vol. 13, 155:23–  
164:21, Aug. 22, 2018 (Wilson); Tr. vol. 19, 28:17–29:14, Sept. 7, 2018 (Weinman)

<sup>238</sup> *See, e.g., E.g.*, Tr. vol. 5, 62:17–63:3, June 29, 2018 (Kreisman); Tr. vol. 1, 192:12–193:22, June 25,  
2018 (Woo).

<sup>239</sup> FEIS at 3.305; Tr. vol. 16, 102:24–106:23, Aug. 30, 2018 (Johnson).

<sup>240</sup> FEIS at 3.305–3.306. *See also* Tr. vol. 16, 103:2–105:21, Aug. 30, 2018 (Johnson).

1 landmarks if the regulatory process governing the development does not require  
2 consideration of that property’s potential eligibility as a Seattle Landmark, such as  
3 projects exempt from review under SEPA.”<sup>241</sup> The EIS identifies mitigation to address  
4 this specific potential impact <sup>242</sup> Thus the analysis addresses Appellants’ concerns.

5 4. The City is not required to adopt the Appellants’ suggested approach  
6 to historic resource analysis.

7 Both Mr. Howard and Mr. Kasperzyk provided testimony and documentary  
8 evidence to support the argument that a more “granular” analysis of historic resource  
9 impacts was both possible and necessary. Specifically, Appellants suggest the City must  
10 incorporate existing surveys, such as the Ballard survey addressed by Mr. Kasperzyk, of  
11 certain neighborhoods and perhaps even engage in additional on-the-ground survey work  
12 in neighborhoods where data is not complete. It is not apparent that such an approach  
13 would better inform the reader of the FEIS. A review of Appellants’ graphics (Hr’g Exs.  
14 19, 20, 22 and 37), for example, demonstrate the peril of too much detail. Virtually the  
15 entire city (except those areas that have not benefitted from City or locally initiated  
16 historic survey efforts) is shrouded in a series of colored dots. Such an approach is hardly  
17 helpful in objectively assessing impacts of the city-wide zoning proposal.<sup>243</sup> More  
18 importantly, the City is not required to adopt Appellants’ approach.

19 The FEIS acknowledges the existence of the surveys that comprise the data in the  
20 Seattle Historical Sites database (the “City Database”), which contains a listing of  
21

22 \_\_\_\_\_  
23 <sup>241</sup> FEIS at 3.305.

24 <sup>242</sup> FEIS at 3.312 (Additional mitigation includes: “Requiring project proponents to nominate buildings for  
25 landmark review when demolition of properties that are over 50 years old is proposed, regardless of City  
permitting requirements, by modifying the SEPA exemptions thresholds in the Seattle Municipal Code at  
Table A for section 25.05.800, and Table B for section 25.05.800.”).

<sup>243</sup> Tr. Vol 10, 209:20–21, Jul. 27, 2018 (Wilson).

1 surveyed properties.<sup>244</sup> This refutes any suggestion that there was a deliberate effort on  
2 the part of the City to downplay the existence of historic resources throughout the City.  
3 On the contrary, the City deliberately chose to avoid overemphasis on this data because  
4 the limited and incomplete data set would not allow comparison between neighborhoods  
5 for which surveys had been completed and those that had no inventory.<sup>245</sup> Those  
6 neighborhoods for which surveys were completed are identified in the tables included in  
7 the FEIS.<sup>246</sup> To-date, the City does not have surveys for most of the urban villages in the  
8 FEIS study area and the disparate level of information about historic resources throughout  
9 the City render the data contained in the City database misleading for the purpose of  
10 assessing historic resource impacts across the entire City.<sup>247</sup> When placed on a map, the  
11 data in the City database would lead a reader to mistakenly conclude that the well  
12 surveyed neighborhoods contain more resources subject to potential impacts from the  
13 MHA proposal and the latter fewer.<sup>248</sup> This is not the case. The City chose not to map  
14 City designated landmarks for the same reasons.<sup>249</sup> Moreover, as acknowledged by  
15 Appellants' witness Eugenia Woo, designated City landmarks are afforded protection  
16 under the City's Landmark Preservation Ordinance.<sup>250</sup>

17 To avoid misleading readers of the FEIS, the City adopted an “apples to apples”  
18 comparison between neighborhoods that would not be possible using the City Database.

19  
20 <sup>244</sup> See FEIS at 3.295 (“The City has not conducted historic surveys or prepared historic context statements  
for all neighborhoods within the study area.”); *id.* at 3.302, Ex. 3.5-4 identifies those neighborhoods for  
which a systematic inventory has been conducted).

21 <sup>245</sup> Tr. vol. 10, 193:6–14; 195:9–24, July 27, 2018 (Wilson).

22 <sup>246</sup> FEIS at 3.302.

23 <sup>247</sup> Tr. vol. 13, 182:4–11, Aug. 22, 2018 (Johnson); Tr. vol. 10, 197:3–204:18, Jul. 27, 2018 (Wilson). *See*  
*also* See FEIS at 3.295 (“The City has not conducted historic surveys or prepared historic context statements  
for all neighborhoods within the study area.”); *id.* at 3.302, Ex. 3.5-4 (identifies those neighborhoods for  
which a systematic inventory has been conducted); Wilson Decl., ¶ 8.

24 <sup>248</sup> Tr. vol. 13, 199:6–24, Aug. 22, 2018 (Johnson); Tr. vol. 10, 197:3–204:18, Jul. 27, 2018 (Wilson).

25 <sup>249</sup> Tr. vol. 13, 199:6–24, Aug. 22, 2018 (Johnson); Tr. vol. 10, 197:3–204:18, Jul. 27, 2018 (Wilson).

<sup>250</sup> Tr. Vol 1, 153:2-154:17 (Jun. 25, 2018 (Woo)). *See also* Tr. Vol 10, 210:22–211:7 (Wilson).



1 In keeping with SEPA’s mandate that alternatives “should be analyzed at a roughly  
2 comparable level of detail, sufficient to evaluate their comparative merits,”<sup>251</sup> the FEIS  
3 presented neighborhood data at a comparable level of detail.

4 Moreover, the City chose not to use those surveys because of concerns over their  
5 reliability. The City Database contains survey data from surveys dating to the 1990s.<sup>252</sup>  
6 In the opinion of the City’s experts, the age of some of the surveys makes them even less  
7 reliable because older surveys are less likely to accurately depict the nature of the  
8 resource, given the changes that have likely occurred in those neighborhoods.<sup>253</sup> This is  
9 confirmed by Department of Archaeology and Historic Preservation standards which  
10 recommend updates to historic property inventories every ten years, in order to account  
11 for any changes that may impact a property’s eligibility for listing in a historic register.<sup>254</sup>

12 Additionally, the number of properties included in the survey does not represent  
13 the number of historic resources. To the contrary, it includes many properties that are not  
14 potentially significant historic resources because they require further evaluation, or  
15 because the surveyor evaluated them and rejected them, or because the surveyor failed to  
16 render an opinion.<sup>255</sup> The City’s Seattle Historical Sites database includes the data  
17 collected in the surveys, such that the database is of limited utility for the purposes of the  
18 FEIS impact analysis.<sup>256</sup>

20 \_\_\_\_\_  
21 <sup>251</sup> WAC 197-11-442; SMC 25.05.442.

22 <sup>252</sup> Tr. vol. 2, 246:24–247:25, June 26, 2018 (Sodt testimony describing the City Database).

23 <sup>253</sup> Tr. vol. 2, 261:19–262:13; 276:18–277–5, June 26, 2018 (Sodt testimony regarding reliability of older  
24 survey data); Tr. vol. 13, 182:6–185:6; 196:24–201:1, Aug. 22, 2018 (Johnson testimony addressing how  
25 lack of systematic survey and historic designation data across the City undermines the value of such data  
for assessing historic impacts city-wide); Tr. vol. 10, 195:3–24, July 27, 2018 (Wilson testimony regarding  
decision not to use data contained in City Database).

<sup>254</sup> Tr. vol. 10, 184:13–185:10, July 27, 2018 (Wilson).

<sup>255</sup> Tr. vol. 10, 195:3-24, July 27, 2018 (Wilson).

<sup>256</sup> *Id.*

1           Moreover, any suggestion that the City should complete surveys for all  
2 neighborhoods as part of this EIS effort is patently unreasonable. The scope, scale, and  
3 cost of that level of effort is massive.<sup>257</sup> While the FEIS identifies additional survey work  
4 as potential mitigation,<sup>258</sup> its decision to refrain from completing that effort as part of the  
5 EIS process is reasonable.

6           In summary, the City’s expert’s judgment about which data to use, the reliability  
7 of the data included in the inventory, and its overall approach of assessing baseline  
8 conditions is reasonable. The City’s judgment is entitled to deference.

9           5. The City did not predetermine the outcome of the historic resources  
10 analysis.

11           At hearing Appellants referenced an e-mail sent by Mark Johnson to other ESA  
12 employees pertaining to budget for EIS preparation, which included the historic resources  
13 analysis.<sup>259</sup> Appellants implied that this e-mail suggests a predetermination on the part of  
14 the City with regard to the lack of significant impacts to historic resources.<sup>260</sup> When given  
15 an opportunity to address this assertion on re-direct, Ms. Wilson clearly stated that the  
16 early budget assumptions did not influence the ESA analysis of historic resources.<sup>261</sup>

17           6. Minor clerical errors are not material flaws.

18           Appellants’ witnesses attempted to obscure the underlying soundness of the  
19 historic resources analysis by engaging in classic fly-specking<sup>262</sup>—identifying clerical  
20 errors that are harmless, or simply distracting. Despite months of scorched earth review,  
21 Appellants identified one missing reference to a historic context statement in Exhibit 3.5-

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22 <sup>257</sup> *Id.* at 14.

23 <sup>258</sup> FEIS at 3.311

24 <sup>259</sup> Hr’g Ex. 237.

25 <sup>260</sup> Tr. vol. 10, 226:18–229:1, July 27, 2018 (Wilson).

<sup>261</sup> Tr. vol. 13, 153:5–155:20, Aug. 22, 2018 (Wilson).

<sup>262</sup> *Mentor v. Kitsap Cty.*, 22 Wn. App. 285, 290, 588 P.2d 1226, 1230 (1978).

1 4<sup>263</sup> and three missing dots representing National Register of Historic Places (“NRHP”)  
2 determined eligible properties on Exhibit 3.5-2<sup>264</sup> (some or all of which may not be in the  
3 North Rainier Urban Village Expansion Area).<sup>265</sup>

4 While regrettable, these minor omissions do not render the historic resources  
5 analysis unreasonable or inadequate.<sup>266</sup> Ms. Wilson clarified that the omission of the  
6 reference to the historic context statement for North Beacon Hill was a clerical error. She  
7 testified that she had, nevertheless, reviewed the statement and that the omission of  
8 reference to it in the exhibit did not alter the goal of demonstrating that there are areas  
9 within the EIS study area that do not have historic context statements and that there is an  
10 unequal amount of information across the City.<sup>267</sup> She also explained that the missing  
11 NRHP data near the North Rainier neighborhood did not change the larger description of  
12 the affected environment city-wide.<sup>268</sup>

13 These minor clerical errors are not grounds for an inadequacy determination. An  
14 EIS is not expected to be perfect. Any errors that occur during the EIS process are  
15 reviewed under the rule of reason, and where such errors are not consequential, they must  
16 be dismissed as harmless.<sup>269</sup> The rule of reason recognizes that perfection is an  
17 unreasonable standard. Thus, if an EIS contains errors or non-disclosures that are not  
18 consequential, the errors must be dismissed as harmless.<sup>270</sup> Here, the clerical errors  
19

20 <sup>263</sup> Tr. vol. 1, 213:13–17, June 25, 2018 (Woo).

21 <sup>264</sup> Tr. vol. 2, 17:23–19:23, June 26, 2018 (Howard).

22 <sup>265</sup> Tr. vol. 10, 209:8–16, July 27, 2018 (Wilson).

23 <sup>266</sup> Tr. vol. 10, 208:9–209:7, July 27, 2018 (Wilson).

24 <sup>267</sup> Tr. vol. 10, 192:4–193:5, July 27, 2018 (Wilson).

25 <sup>268</sup> Tr. vol. 10, 208:9–209:15, July 27, 2018 (Wilson).

<sup>269</sup> *Klickitat Cty. Citizens Against Imported Waste v. Klickitat Cty.*, 122 Wn.2d 619, 637–38, 860 P.2d 390, 401 (1993)

<sup>270</sup> *Id.* (concluding that failure to respond to comments on a draft EIS did not render the subsequent final EIS inadequate). *See also Mentor v. Kitsap County*, 22 Wn. App. at 290-91 (where a final EIS failed to discuss the project site’s designation under an applicable urban design study and the comprehensive plan court

1 identified by Appellants are precisely the type of harmless error that does not render the  
2 entire FEIS inadequate.

3 7. Appellants' reliance on another EIS is insufficient to satisfy its burden  
4 of proof.

5 Appellant witnesses argued that the FEIS for the citywide rezone proposal should  
6 mirror the approach undertaken in environmental review of neighborhoods where MHA  
7 has been implemented—primarily in the EIS for the Uptown and University District  
8 neighborhoods<sup>271</sup> and suggest that the City failed to provide the same level of detail in the  
9 FEIS that is the subject of this appeal.

10 The fact that the City took an approach in a different situation does not limit its  
11 ability to choose to do its analysis differently, so long as its approach is reasonable. As  
12 described above, the City's use of data and level of detail is appropriate for this non-  
13 project action. The differences between the analyses are due to the fact that significantly  
14 more detailed, reliable information about historic resources was available for the entire  
15 Uptown neighborhood compared to the information available throughout the MHA study  
16 area.<sup>272</sup> The MHA FEIS was based on information that was available for all  
17 neighborhoods, in order to permit a comparative evaluation across neighborhoods at a  
18 similar level of detail and to avoid overstating or understating the impact on historic  
19 resources in particular neighborhoods. Ms. Johnson worked both on the Uptown EIS and  
20 the MHA FEIS, explained that the use of different approaches and levels of discussion for  
21

22 nevertheless deemed the omissions “unfortunate but not fatal” because the errors did not significantly affect  
23 the environmental analysis); *Thornton Creek Legal Def. Fund v. City of Seattle*, 113 Wn. App. 34, 54-57, 52  
P.3d 522, 531-32 (2002) (failure to formally adopt a prior EIS and circulate an addendum constituted  
harmless error).

24 <sup>271</sup> Tr. vol. 1, 240:21–245:19, June 25, 2018 (Howard testimony regarding discussion of approach in  
University District EIS).

25 <sup>272</sup> Tr. vol. 13, 194:17–201:1, Aug. 22, 2018 (Johnson).

1 the two EISs was reasonable.<sup>273</sup> Accordingly, Appellants' reliance on the Uptown EIS is  
2 insufficient to carry its burden.

3 **D. The transportation and parking analyses meets the rule of reason.**

4 The transportation analysis applies standard and reasonable methodologies. The  
5 transportation analysis uses the same metrics included in the City's two most recent  
6 Comprehensive Plans.<sup>274</sup> Among other things, the analysis looks at the same screenlines  
7 and mode share sectors evaluated for the Comprehensive Plan, and used the same travel  
8 demand forecasting model refined with newer data.<sup>275</sup> Additionally, although the City has  
9 not adopted standards for certain metrics (state facilities and travel time), the FEIS  
10 includes these metrics to provide additional information.<sup>276</sup> The FEIS discloses potential  
11 significant adverse impacts to parking and to certain specific screenlines.<sup>277</sup>

12 Appellants presented testimony about transportation impacts from fact witnesses  
13 only and failed to support their claims. The City's expert addressed all of Appellants'  
14 criticisms and demonstrated that the analysis is adequate:

15 • *Intersection-level analysis:* The FEIS expressly states that the analysis is  
16 not an intersection-level analysis, because such analysis is more appropriate for specific  
17 development proposals.<sup>278</sup> Ms. Davis testified that none of the nonproject analyses she has  
18 done for the City included intersection-level analysis.<sup>279</sup>

19 • *AM peak hour:* Ms. Davis testified that transportation analyses typically  
20 use PM peak hour data, because traffic is generally worse during the PM peak, resulting in  
21

22 <sup>273</sup> Tr. vol. 13, 194:17–201:1, Aug. 22, 2018 (Johnson).

23 <sup>274</sup> FEIS at 3.242.

24 <sup>275</sup> *Id.* at 3.243–3.245; App. J at J.1–J.10; *id.* at 3.257.

25 <sup>276</sup> *Id.* at 3.246.

<sup>277</sup> *Id.* at 3.286 (summarizing impacts).

<sup>278</sup> *Id.* at 3.242, n.2.

<sup>279</sup> Tr. vol. 16, 130:19–131:21 (Aug. 30, 2018) (Davis).

1 a more conservative analysis. DPD Director’s Rule 5-2009 uses only PM peak hour data  
2 to calculate capacity and level of service (LOS) standards.<sup>280</sup>

3 • *ROW widths*: Ms. Davis testified that it would not be reasonable to assess  
4 issues relating ROW widths and the City’s width standards at the nonproject level. Such  
5 should be addressed at the project-level because of the level of specificity needed to apply  
6 the City’s standards.<sup>281</sup>

7 **E. The biological resources analysis meets the rule of reason.**

8 The analysis in the FEIS of ECAs used reasonable and standard methodologies.  
9 The ECAs analysis used geographic information systems and maps to calculate the  
10 amount of ECAs in every urban village under existing conditions and under the  
11 alternatives.<sup>282</sup> Ms. Logan confirmed that she has used the same methodology in other  
12 nonproject EISs.<sup>283</sup>

13 Appellants’ criticisms of the ECA impacts assessment have no merit. Contrary to  
14 Appellants’ testimony,<sup>284</sup> the FEIS’s maps disclose the liquefaction and flood-prone areas  
15 in or near the South Park neighborhood. Similarly, Appellants’ testimony regarding ECAs  
16 in Ravenna Park did not establish any inadequacies, because the park is not within the  
17 study area,<sup>285</sup> and the FEIS discloses potential impacts to ECAs outside the study area.<sup>286</sup>

20 <sup>280</sup> Tr. vol. 16, 131:22–133:3 (Aug. 30, 2018) (Davis). Ms. Davis also reviewed AM and PM peak hour data  
21 for the West Seattle Bridge, where Mr. Koehler anecdotally claimed had worse traffic during the morning.  
22 Ms. Davis testified that existing data indicated worse conditions during the PM peak. Further, even  
assuming certain areas have worse traffic conditions during the AM peak, these anomalies would not  
warrant or require analysis of AM peak data. Tr. vol. 16, 133:4–23 (Aug. 30, 2018) (Davis).

23 <sup>281</sup> Tr. vol. 16, 133:24–134:18 (Aug. 30, 2018) (Davis).

<sup>282</sup> FEIS at 3.319, 3.324–3.327, 3.331–3.333.

<sup>283</sup> Tr. vol. 10, 46:11–22, July 27, 2018 (Logan).

<sup>284</sup> Tr. vol. 13, 11:15–12:2, Aug. 22, 2018 (Scarlett).

<sup>285</sup> Tr. vol. 10, 30:1–20, July 27, 2018 (Logan).

<sup>286</sup> FEIS at 3.323–3.324 (describing potential indirect and cumulative impacts).

1 The FEIS’s analysis of tree canopy coverage is also adequate, particularly for a  
2 nonproject EIS. The City’s experts testified that nonproject EISs typically do not include  
3 any tree canopy analysis.<sup>287</sup> Thus, the FEIS’s analysis of tree canopy impacts is far more  
4 extensive than is typical in a nonproject EIS.<sup>288</sup> The analysis used the most accurate and  
5 reliable data of the tree canopy cover in Seattle provided to the City by the University of  
6 Vermont’s Spatial Analysis Laboratory (SAL), which captured both leaf-on and leaf-off  
7 conditions citywide.<sup>289</sup> Even Appellants’ expert, Jeffrey Richardson, admitted that the  
8 head of SAL, Professor Jarlath O’Neil-Dunne, is an expert with a “very good reputation”  
9 in the field.<sup>290</sup> Mr. Leech confirmed his assessment of the SAL’s data by talking directly  
10 with Mr. O’Neil-Dunne.<sup>291</sup> Mr. Leech and his team used the SAL’s citywide data to  
11 calculate the potential changes in tree canopy cover based on changes in zoning under  
12 each of the alternatives. The FEIS analyzes both a “high scenario,” a “worst-case” based  
13 on full development under proposed zoning, and a “low scenario,” calculated as half of  
14 the change expected under the high scenario.<sup>292</sup> The FEIS’s analysis found that under all  
15 action alternatives, the expected change to tree canopy cover over the 20-year planning  
16 period is less than one percent for both the high and low scenarios.<sup>293</sup>

17 Appellants’ complaints with the tree canopy analysis constitute the type of classic  
18 fly-specking that courts disregard.<sup>294</sup> For example, Appellants argued that the FEIS should  
19 have included an “accuracy assessment,” but failed to establish that such an assessment is

20 \_\_\_\_\_  
21 <sup>287</sup> Tr. vol. 9, 95:12–96:5, July 26, 2018 (Leech); Tr. vol. 17, 118:1-5, Aug. 31, 2018 (Graham). As an  
example, the Seattle 2035 Comprehensive Plan EIS did not include a tree canopy analysis and included only  
a brief, general description of potential impacts. Hr’g Ex.4, p. 3.5-11 to -12.

22 <sup>288</sup> Tr. vol. 9, 124:8–20, July 26, 2018 (Leech).

23 <sup>289</sup> Tr. vol. 9, 101:10–102:12,104:8–17, July 26, 2018 (Leech).

24 <sup>290</sup> Tr. vol. 6, 82:7–16, July 23, 2018 (Richardson).

25 <sup>291</sup> Tr. vol. 9, 100:23–101:9, July 26, 2019 (Leech).

<sup>292</sup> FEIS at 3.319.

<sup>293</sup> *Id.* at 3.319–3.339.

<sup>294</sup> *Mentor*, 22 Wn. App. at 290.

1 necessary. As Mr. Leech explained, accuracy assessments using data from the SAL that  
2 were published in a peer-reviewed study showed a high degree of accuracy, exceeding  
3 90–99 percent.<sup>295</sup> Thus, rather than conducting an accuracy assessment, Mr. Leech and  
4 Mr. O’Neil-Dunne agreed that manual review of the data is the most cost-effective means  
5 of improving the data and analysis, as opposed to doing more accuracy assessments.<sup>296</sup>

6 Several of Appellants’ witnesses also testified about alleged gaps in the  
7 enforcement of the City’s current tree regulations, but the alleged gaps do not affect the  
8 adequacy of the FEIS. The data of the existing tree canopy reflects any gaps in  
9 enforcement and captures the effects of the City’s tree regulations as the regulations are  
10 being applied.<sup>297</sup> Moreover, the FEIS discusses the efforts to increase enforcement and  
11 strengthen tree protections.<sup>298</sup> Such information adequately informs decision-makers.

12 Appellants’ claim that the FEIS should have included an individualized tree  
13 canopy assessment for every urban village also has no merit. The data SAL provided to  
14 the City was on a citywide level only.<sup>299</sup> Analyzing impacts for each urban village would  
15 have required additional research, including performing calculations for each urban  
16 village.<sup>300</sup> Appellants failed to demonstrate why that level of effort is required, especially  
17 in light of the uncontroverted testimony that tree canopy assessments at any level are not  
18 commonly included in nonproject EISs. Moreover, the City does not have any LOS  
19 standard that requires urban village-specific data.<sup>301</sup> The FEIS’s data further supports the  
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21 <sup>295</sup> Tr. vol. 9, 128:8–132:21, July 26, 2018 (Leech).

22 <sup>296</sup> As Mr. Leech explained, the manual review process entails comparing the data product with high  
23 resolution aerial imagery different from what was used for the data product, and using the aerial imagery to  
24 confirm or refine the data. Tr. vol. 9, 128:8–132:21, 160:14–161:25, July 26, 2018 (Leech).

25 <sup>297</sup> Tr. vol. 17, 122:15–123:3, Aug. 31, 2018 (Graham).

<sup>298</sup> FEIS at 3.340–3.341.

<sup>299</sup> *Id.* at 118:6–18.

<sup>300</sup> Tr. vol. 9, 168:10–16, July 26, 2018 (Leech).

<sup>301</sup> Tr. vol. 17, 122:2–7, Aug. 31, 2018 (Graham).



1 citywide approach. In addition to the citywide analysis that concludes a less than one  
2 percent expected change to tree canopy cover due to the proposal, the FEIS also includes  
3 an analysis of tree cover impacts in the urban villages aggregated based on displacement  
4 risk and access to opportunity.<sup>302</sup> This analysis also shows a less than one percent change  
5 across all action alternatives, while providing decision-makers with information about the  
6 amount of tree coverage in the aggregated urban villages. The members of Mr. Leech and  
7 Ms. Graham's team determined, based on their professional judgment, that a change of  
8 less than one percent is not a significant impact.<sup>303</sup> Given these results, the City's approach  
9 was reasonable.

10 Finally, the clerical error in Exhibit 3.6-15 is harmless. Exhibit 3.6-15 shows the  
11 changes in tree canopy acreage under the Preferred Alternative. As Mr. Leech explained,  
12 the exhibit shows all of the correct figures, but the percentages of tree cover were  
13 transposed incorrectly.<sup>304</sup> However, as Ms. Graham testified, the typo results in a more  
14 conservative analysis, because the FEIS's exhibit shows lower percentages of tree canopy  
15 coverage compared to the coverage that the analysis found.<sup>305</sup> Therefore, the typo is  
16 inconsequential and does not mislead decision-makers.

17 **F. The open space and recreation analysis is reasonable.**

18 The open space and recreation analysis was based on adequate and standard  
19 methodology. The FEIS assesses existing parkland availability and impacts citywide  
20 under each alternative, applying the 2035 Comprehensive Plan's policies and the City's  
21 2017 Parks and Open Space Plan's LOS standard and walkability guidelines and gaps

22 \_\_\_\_\_  
23 <sup>302</sup> FEIS at Exs. 3.6-6, 3.6-8, 3.6-12, and 3.6-16.

24 <sup>303</sup> Tr. vol. 9, at 148:15–149:6, July 26, 2018 (Leech).

25 <sup>304</sup> Tr. vol. 9, at 118:22–119:23, July 26, 2018 (Leech). The FEIS's exhibit shows the high scenario of tree canopy cover percentage as 19.09%, and the low scenario as 19.15%. Mr. Leech testified that the high scenario percentage is 20.09%, and the low scenario is 21%.

<sup>305</sup> Tr. vol. 17, 131:4–14, Aug. 31, 2018 (Graham).

1 analysis.<sup>306</sup> The FEIS discloses that all alternatives are anticipated to fail to meet the  
2 citywide LOS by 2035, and identifies this as a potential significant adverse impact<sup>307</sup> The  
3 FEIS also assesses potential impacts to each urban village. Although the City has a  
4 citywide LOS standard (8 acres of park space per 1,000 residents), the FEIS adapted that  
5 standard to look at individual urban villages based on acres per 100 residents. The FEIS  
6 identifies urban villages that are anticipated to be underserved under the adapted LOS  
7 standard, as well as urban villages that are identified as underserved under the 2017 Parks  
8 and Open Space Plan.<sup>308</sup> The FEIS’s urban village-specific analysis appropriately adapts  
9 the citywide standard to provide additional information.

10 Friends of North Rainier (“FNR”) raised the main challenge to the open space  
11 analysis, arguing that the FEIS should have specifically identified the plans for a  
12 conceptual park called the North Rainier Town Center Park (“Town Center Park”) and  
13 excluded the Town Center Park from the study area. FNR’s criticism is incorrect. As a  
14 preliminary matter, nothing about the MHA proposal precludes or bars future construction  
15 of the Town Center Park. The City does not have specific zoning designations for parks  
16 and open space, and thus zoning changes (under MHA or otherwise) do not preclude  
17 parcels from becoming parkland, once acquired by the City.<sup>309</sup>

18 Moreover, conceptual parks are typically not included in an open space analysis.<sup>310</sup>  
19 Proposed parks are appropriate to include in an open space analysis if there is specific  
20 information regarding the park’s future construction, such as an identified funding source  
21 or a schedule for completion. Inclusion of conceptual parks (that do not have an identified  
22

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23 <sup>306</sup> FEIS at 3.344–3.345.

24 <sup>307</sup> FEIS at 3.357.

25 <sup>308</sup> FEIS at 3.350.

<sup>309</sup> Tr. vol. 17, 140:9–13, Aug. 31, 2018 (Graham); Tr. vol. 14, 167:19–168:1, Aug. 23, 2018 (Wentlandt).

<sup>310</sup> Tr. vol. 17, 138:21–23, Aug. 31, 2018 (Graham).

1 funding source) is not appropriate, because inclusion creates a false positive by adding to  
2 the amount of available parkland without sufficient guarantees that the park will be  
3 acquired. Thus, exclusion of conceptual parks results in a more conservative, “worst-case  
4 scenario” impacts analysis.<sup>311</sup> At the time the FEIS was prepared, there was no funding  
5 source or completion schedule identified for the Town Center Park.<sup>312</sup> Therefore, none of  
6 the evidence about the Town Center Park supports FNR’s claims.

7 Finally, FNR’s argument ignores legal constraints on the City when making  
8 zoning decisions that can depress property values in anticipation of acquiring properties.<sup>313</sup>  
9 FNR would have the City ignore these constraints. SEPA does not require that result.

10 **G. The public services and utilities analysis meets the rule of reason.**

11 The public services and utilities analysis applied reasonable and standard  
12 methodologies, including use of analysis prepared for the Seattle 2035 EIS. SEPA  
13 expressly encourages the uses of existing environmental documents.<sup>314</sup> That analysis was  
14 especially appropriate because of its citywide scope and recent data.<sup>315</sup> For the FEIS, the  
15 City updated the analysis by considering additional data from City departments.<sup>316</sup>

16 Appellant’s testimony fails to establish that the FEIS is unreasonable. Again,  
17 Appellants did not call any expert witnesses to challenge the adequacy of the analysis.  
18 Their fact witness argued the FEIS should have considered additional data regarding

19 \_\_\_\_\_  
20 <sup>311</sup> Tr. vol. 17, 139:4–140:8, Aug. 31, 2018 (Graham). Contrary to FNR’s assertion during hearing, nothing  
21 in the Sammamish Town Center Sub-Area Plan EIS contradicts Ms. Graham’s testimony regarding  
22 exclusion of conceptual parks in an impact analysis. In the Sammamish EIS, the proposed action under  
23 review included a conceptual park. Hr’g Ex. 303, p. 2-8. This distinction is important. An EIS must review  
24 the proposal. Here, the Town Center Park is not part of the City’s underlying proposal. Thus, the  
25 Sammamish EIS’s inclusion of conceptual park as part of its preferred alternative does not bear on the  
adequacy of the parks and open space analysis.

<sup>312</sup> Tr. vol. 17, 139:15–24, Aug. 31, 2018 (Graham); Tr. vol. 14, 166:11–167:12, Aug. 23, 2018 (Wentlandt).

<sup>313</sup> See 83 Am. Jur. 2d Zoning and Planning § 48 (“Zoning to depress property values so that property may  
be acquired for public purposes at a future date is unlawful.”)

<sup>314</sup> WAC 197-11-600.

<sup>315</sup> Tr. vol. 17, 143:2–7, Aug. 31, 2018 (Graham).

<sup>316</sup> Tr. vol. 17, 142:12-18, Aug. 31, 2018 (Graham).

1 police, fire, and emergency medical services, even though that purportedly missing data  
2 may not have been readily available to the City.<sup>317</sup> Instead, the FEIS presented available  
3 data using the same citywide LOS standards as the Comprehensive Plan EIS, which is  
4 reasonable.<sup>318</sup> Appellants similarly fail to establish that the FEIS's analysis of sewer and  
5 stormwater was inadequate. While Appellants expressed concerns over existing conditions  
6 (including capacity issues, the combined sewer system, combined sewer outflows, and the  
7 age of the City's Wastewater System Master Plan), the FEIS discloses these existing  
8 conditions and the potential impact of increased demand.<sup>319</sup>

9 **H. The air quality and greenhouse gas emissions analysis is reasonable.**

10 No expert challenged the adequacy of the FEIS's air quality impacts analysis.  
11 Appellants' sole witness on this subject incorrectly claimed that the FEIS contained no  
12 discussion of South Park's proximity to highways and related air quality and health  
13 issues.<sup>320</sup> The FEIS includes the very analysis the witness claimed was missing. The FEIS  
14 incorporates a health risk assessment regarding proximity to transportation sources, with a  
15 focus on the Georgetown and South Park residential communities.<sup>321</sup> The study found that  
16 health risks drop dramatically 200 meters away from highways. Based on the study, the  
17 FEIS identifies increased exposure as a potential moderate adverse impact in urban  
18 villages within 200 meters of a major transportation source (including South Park).<sup>322</sup>

19 **I. Analysis of small business impacts exceeds SEPA requirements.**

20 Appellants have also failed to prove their challenge to the analysis of impacts to  
21 small businesses. Appellants ignore the limited degree to which SEPA requires analysis

22 <sup>317</sup> Tr. vol. 8, 267:19–268:2, July 26, 2017 (Rees); Tr. vol. 17, 143:14–22, Aug. 31, 2018 (Graham).

23 <sup>318</sup> Tr. vol. 17, 143:23–145:11, Aug. 31, 2018 (Graham); FEIS at 3.360–3.361.

24 <sup>319</sup> FEIS at 3.366–3.369; *id.* at 3.372.

25 <sup>320</sup> Tr. vol. 13, 17:24–18:23, 26:12–18, Aug. 22, 2018 (Scarlett).

<sup>321</sup> FEIS at 3.396.

<sup>322</sup> FEIS at 3.403–3.404.

1 of economic issues. The analysis of impacts on small businesses is directly analogous to  
2 the categories of economic impact analysis that is exempt from SEPA.<sup>323</sup> Additionally, as  
3 explained in section VI.B.2, above, the Examiner is without authority to consider the  
4 Appellants' arguments on impacts to small businesses because the optional analysis "shall  
5 not be used in evaluating EIS adequacy."<sup>324</sup>

6 Even if that were not the case, however, the analysis of impacts to small  
7 businesses is reasonable. As indicated by multiple witnesses, the analysis exceeds  
8 analysis in any other non-project EIS.<sup>325</sup> The FEIS acknowledges potential impacts to  
9 small businesses that could occur when commercial rents increase due to redevelopment  
10 pressures or when customer bases of culturally related businesses are displaced.<sup>326</sup> The  
11 EIS analyzes potential for displacement of small "culturally significant" businesses, and  
12 recognizes that their displacement could also "further destabilize communities of  
13 marginalized populations, particularly racial and ethnic minorities."<sup>327</sup> This analysis is  
14 precisely the discussion that several Appellant witnesses argued is missing.<sup>328</sup> Even if the  
15 Examiner had jurisdiction over the adequacy of that optional analysis, it is sufficient.

## 16 VII. THE FEIS INCLUDES ADEQUATE DISCUSSION OF MITIGATION

17 The Examiner has previously concluded that challenges to the adequacy of  
18 mitigation is not relevant in this appeal.<sup>329</sup> The sole potentially relevant issue is the  
19 adequacy of the FEIS's discussion of the intended benefits of mitigation. The City's

20 <sup>323</sup> See, e.g., *SEAPC v. Cammack II Orchards*, 49 Wn.App. 609, 616, 744 P.2d 1101, 1105 (1987) (a  
21 proposal's adverse impact on surrounding property values is not an environmental impact, and is akin to  
"profits and personal income" that is expressly exempted from EIS analysis).

22 <sup>324</sup> SMC 25.05.440(G); WAC 197-11-440(8).

23 <sup>325</sup> Tr. vol. 14, 157:2–159:10, Aug. 23, 2018 (Wentlandt).

24 <sup>326</sup> FEIS at 3.77–3.80.

25 <sup>327</sup> FEIS at 3.78. Indeed, the EIS acknowledges that the "loss of even a single cultural business... can  
magnify cultural displacement impact because of an increased likelihood of subsequent household relocation  
decisions." *Id.*

<sup>328</sup> See, e.g., Tr. vol. 1, 120:13–17, June 25, 2018 (Steinbrueck).

<sup>329</sup> June 8, 2018 Preliminary Order on Prehearing Motions, at p.3 ¶ 4.

1 experts testified that the FEIS’s discussion of mitigation is at least common or typical,  
2 and, in some instances, exceeds what is typical for a non-project EIS.<sup>330</sup> Contrary to  
3 Appellants’ arguments, the FEIS’s discussion of mitigation and intended benefits is not  
4 limited solely to the bulleted lists under the FEIS’s “Mitigation” headings. The City’s  
5 subject matter experts testified how the understanding of their intended benefit is  
6 informed by all the analysis that precedes it.<sup>331</sup> In numerous instances the mitigation  
7 measure described in the mitigation measures subsection directly and specifically  
8 responds to an impact that is identified in the impact analysis subsection.<sup>332</sup> The FEIS’s  
9 discussion of mitigation is adequate.

#### 10 **VIII. APPLICANTS FAILED TO ALLEGE AN ERROR IN PUBLIC NOTICE**

11 The City engaged in an unprecedented public outreach campaign that far exceeds  
12 its basic SEPA notice requirements.<sup>333</sup> Appellants expressed concerns with specific  
13 aspects of these outreach efforts (e.g., the desire for even more meetings closer to their  
14 specific individual urban villages, for more translations of the EIS, for more email  
15 outreach regarding meetings that are not required under SEPA, distribution of copies at  
16 more public libraries).<sup>334</sup> That contested testimony is irrelevant because Appellants  
17 challenge only aspects of the outreach that exceed what is required by code and did not  
18 allege any failure to satisfy the City’s specific SEPA notice requirements. Appellants  
19 cannot sustain their burden by challenging outreach that exceeds code requirements.

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21  
22 <sup>330</sup> Tr. vol. 19, 31:18–32:13, Sept. 7, 2018 (Weinman); Tr. vol. 13, 189:1–4, Aug. 22, 2018 (Johnson); Tr.  
vol. 18, 45:23–50:19, 89:8–11, Sept. 4, 2018 (Gifford); Tr. vol. 17, 129:9–13, 141:13–17, 152:25–153:3,  
Aug. 31, 2018 (Graham).

23 <sup>331</sup> Tr. vol. 17, 35:3 – 36:3, Aug. 31, 2018 (Welch); Tr. vol. 17, 156:9–158:7 (Graham); Tr. vol. 18, 49:18–  
50:19, 87:22–89:11, Sept. 4, 2018 (Gifford); Tr. vol. 13, 169:22–171:16, Aug. 22, 2018 (Wilson).

24 <sup>332</sup> Tr. vol. 13, 169:22–171:16, Aug. 22, 2018 (Wilson).

25 <sup>333</sup> See FEIS, App. B at 3; Tr. vol. 17, 43:20-25, Aug. 31, 2018 (Brand).

<sup>334</sup> Tr. vol. 17, 59:14–62:23, 84:6-25, 96:8-13, Aug. 31, 2018 (Brand).

1 **IX. CONCLUSION**

2 Appellants have failed to meet their burden and the Examiner should reject their  
3 appeals. The FEIS satisfies the rule of reason.

4 DATED this 24th day of September, 2018.

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BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE

In the Matter of the Appeal of:  
**WALLINGFORD COMMUNITY  
COUCIL, ET AL.,**  
of the adequacy of the FEIS issued by the  
Director, Office of Planning and  
Community Development.

Hearing Examiner File  
W-17-006 through W-17-014  
**CERTIFICATE OF SERVICE**

I, Amanda Kleiss, declare as follows:

That I am over the age of 18 years, not a party to this action, and competent to be a witness herein;

That I, as a legal assistant with the office of Van Ness Feldman LLP, on September 24, 2018, filed the City of Seattle’s Closing Brief, and this Certificate of Service with the Seattle Hearing Examiner using its e-filing system and that on September 24, 2018, I addressed said documents and deposited them for delivery as follows:

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I certify under penalty of perjury under the laws of the State of Washington that  
the foregoing is true and correct.

EXECUTED at Seattle, Washington on this 24th day of September, 2018.

/s/Amanda Kleiss  
Declarant