BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In Re: Appeal by Seniors United for Neighborhoods (SUN) of the City of Seattle Citywide Implementation of Mandatory Housing Affordability (MHA) Final Environmental Impact Statement	Hearing Examiner File No. W-17-011 SUN'S CLOSING ARGUMENT

I. The FEIS Fails to Adequately Address Environmental Impacts

The City Has Shown It Is Able to Produce a Thorough MHA (Mandatory Housing Affordability) Environmental Impact Analysis, But Did Not In The Citywide FEIS

The City of Seattle has shown that it can create a thorough and detailed MHA analysis on a neighborhood level that could effectively meet Seattle Municipal Code (SMC) and SEPA (State Environmental Policy Act) requirements with its Uptown EIS (which in a single neighborhood was a

similar length to the 27 urban village citywide EIS) and its University District EIS. A similar level of EIS analysis and detail is necessary to address the environmental impacts for the neighborhoods in the citywide EIS covering the range of Seattle neighborhoods and the multifamily and commercial areas outside the urban villages to meet SMC 25.05.402 B: "Agencies shall prepare environmental impact statements as follows: B. The level of detail shall be commensurate with the importance of the impact."

Failure to Provide Adequate Environmental Information, Even When the Environmental Information Was Known or Easily Available

SMC 25.05.640 says "the SEPA process shall be combined with the existing planning, review, and project approval processes being used by each agency with jurisdiction," yet these documents were often not included, or were included in a manner that would not allow decisionmakers to make a fully informed decision.

Redevelopable Parcels

One example, is the redevelopable parcels information. On page 50 of Appendix A (the May 2016 Growth and Equity analysis) is an 8.5" x 11" map with over 10,000 green dots representing different parcels that the City considers could be redeveloped. The information in that form is incomprehensible for attaining any detailed information, but the file the City used to create the map has extensive and detailed parcel by parcel information in every area of the study area and beyond in Seattle. Ward day 19, part 3, 9:08, 12:10, 12:57. Exhibit 310.

This parcel by parcel information was already available at the time of both the DEIS and the FEIS and its use would have provided the ability to perform an analysis down to the parcel by parcel level, or broader out to the census tract or neighborhood level.

To provide sufficient impact analysis for the FEIS, this information could have presented or assisted environmental analysis on a variety of issues in a variety of ways.

For instance, because they have current building and lot square footage and MHA building maximum heights and units, these files could be used to show what development from MHA would look like compared to today—not just the current zoning, but the current buildings, which are often much lower than the zoning, making it visible to the public how the new MHA developments could look in the neighborhood. Making this information available would allow a more detailed understanding of the likely impacts MHA would have on neighborhoods as they currently exist in terms of land use, height/bulk/scale (esthetics), and potentially other environmental impacts.

This redevelopment information includes the number of units on the lot and the number of potential and capacity units under MHA, meaning it could inform decisionmakers on a parcel by parcel level, a Census tract level or a neighborhood level. And it could better show impacts on issues pertaining to land use, aesthetics, historic buildings, open space and recreation, public service and utilities, transportation and housing an socioeconomics than the current FEIS.

The information is categorized by urban village or outside an urban village, and gives a PIN number and usually also a street address, so organizing by neighborhood, and seeing the impact on that neighborhood would be available if the parcels where organized in neighborhoods, either on a map or listed.

Historic Resources

Another example is historic resources. There was extensive historic resources information which the City had in their databases (http://www.seattle.gov/neighborhoods/programs-and-services/historic-preservation/historic-resources-survey) in addition to easily available state and federal historic information that would have shown a significant environmental impact to historic

resources in many areas of the City had the information been included, but it did not appear in the EIS for decisionmakers or the public to examine. Additionally, Spencer Howard was able not only to find the information, but to produce it in a readable map format with extensive information showing historic resources distribution.

Transportation

The FEIS transportation analysis examined traffic on freeways and major state routes it did not include the traffic impacts in their analysis: "the City has not adopted any formal standards for these metrics [major state facilities] and they are not used to identify deficiencies or impacts within this environmental document." 3.246

These are just a few of the examples that would show that the EIS frequently failed to include information that the City had, knew about and could easily obtain, and could produce in the EIS that would follow SMC and SEPA requirements. Doing this would show the significant impacts of the proposal and allow decisionmakers to understand those impacts and make decisions based on those impacts.

Relevant SMCs Related to This Section:

"Devote sufficiently detailed analysis to each reasonable alternative to permit a comparative evaluation of the alternatives including the proposed action." SMC 25.05.440 D.3(e)

"SEPA's procedural provisions require the consideration of "environmental" impacts … with attention to impacts that are likely, not merely speculative." SMC 25.05.060-D.1. The EIS removes solid, concrete, definitive information and replaces it with less firm, more speculative, vague, general, and forecasted information.

"Agencies shall to the fullest extent possible: Find ways to make the SEPA process more useful to decision makers and the public; promote certainty regarding the requirements of the act; and emphasize important environmental impacts and alternatives." SMC 25.05.030 B.2.

"If information on significant adverse impacts essential to a reasoned choice among alternatives is not known, and the costs of obtaining it are not exorbitant, agencies shall obtain and include the information in their environmental documents." SMC 25.05.080 A. The costs of obtaining the information counted nothing toward the EIS because the information was already available, yet the information did not appear, or did not appear fully, in the EIS—leaving decisionmakers with less of the critical information needed to decide on policies with on environmental impacts.

"For some proposals, it may be impossible to forecast the environmental impacts with precision, often because some variables cannot be predicted or values cannot be quantified." SMC 25.05.330.4. In the cases in this section, had the full information been provided, many values would have quantified and many variables would have been more than predicted, providing a more thorough analysis of impacts and better informing Seattle City Council and the public.

In summary, the EIS either ignored or otherwise failed to us extensive, definitive, and concrete information that would show significant impacts, instead relying on forecast data that was less clear or reliable or simply not providing any data to those who would be making the decisions.

II. The FEIS Fails to Meet Its Stated Objectives

The FEIS fails to meet any of its four stated objectives. Below are the Objectives as stated in the FEIS followed by how the FEIS doesn't meet those objectives.

Objectives (p. 1.3)

- Address the pressing need for housing affordable and available to a broad range of households.
- Increase overall production of housing to help meet current and projected high demand.
- Leverage development to create at least 6,200 net new rent- and income restricted housing units serving households at 60 percent of the area median income (AMI) in the study area over a 20-year period.
- Distribute the benefits and burdens of growth equitably.

How The FEIS Fails to Meet Its Stated Objectives

Need for Affordable Housing

The FEIS does not address "the pressing need for housing affordable and available to a broad range of households." MHA is only creating primarily 5-7% "affordable housing"—a minimal amount of affordable housing that does not represent "a broad range of households," either for the number of people served compared to the need: one in seven pays more than half their income (p. 1.1), or for the range of people's incomes or races: 60% of Area Median Income (AMI) is beyond "affordable" for large numbers of Seattle residents.

Current & Projected Demand

While the alternatives in the FEIS may "increase overall production of housing to help meet current and projected high demand," that housing is, and will continue to be, almost exclusively luxury housing far beyond the affordability of the majority of people (92% of market rate units are luxury units: Seattle Times 6/10/17). There is a current and projected high demand for *affordable* housing, which should be the key objective, but nowhere are solutions to that high demand for affordable housing addressed in the FEIS.

6,200 Net New Units

This FEIS does not show how to "create 6,200 net new rent- and income-restricted housing units," because the number of units demolished is not adequately or sufficiently accounted for to attain those units (see below under Displacement), nor does it establish solutions like one-for-one replacement of those demolished units, which would lay the groundwork necessary to achieve those numbers.

Additionally, the FEIS could create far more than 6,200 net new affordable units if it chose a higher required affordable unit threshold among many other policies. The City has refused to do this, both during the HALA negotiations and during the scoping for the FEIS itself (see notably Solutions to Seattle's Housing Emergency, which was developed by housing activists, religious leaders and City Council aides, which provided more than 50 solutions to create more affordable housing than offered in the FEIS).

[New housing is "greatly skewed" towards demolition of lower-priced housing stock and replaced with more expensive homes. This increase the number of units, but decreases the supply of affordable housing. Levitus day 7, part 3, 4:53. Also, "new development can contribute to economic displacement at the neighborhood scale" due to amenities and higher cost units driving up rents and house prices. EIS 3.48]

Distribute Benefits & Burdens Equitably

The FEIS absolutely does not "distribute the benefits and burdens of growth equitably." In actuality, it does just the opposite: it increases the burden on low income people and people of color, while benefitting wealthier white people.

[Testimony from Reid day 2, part 2, 9:00; Levitus day 7, part 3, 18:44; and Mefford day 10, part 3 29:45 that the largest economic displacement impacts are by the Black population also addresses this point.] Exhibit 255 except between brackets

III. How a Different Alternatives Analysis Can Better Meet the Objectives of the FEIS, While Creating Less Environmental Impact—And More Affordable Housing

There should be an analysis that provides less environmental impact than the other alternatives, but the alternatives in the current MHA FEIS are so similar that there is less than 1% difference in many elements of the analysis.

Other alternatives can create more affordable housing with less environmental impact on every level. One example of an alternative and how it would have less environmental impact is to use the report "Solutions to Seattle's Housing Emergency" as the basis for accomplishing the FEIS objectives.

Solutions to Seattle's Housing Emergency

This report documented more than 50 policies that would create substantially more affordable housing in Seattle.

Using the recommendations in this report would:

- Create more affordable housing
- Provide multiple ways to generate more money for affordable housing
- Establishes more affordable housing option
- Limits where housing is built, providing less air and noise pollution, less impact on infrastructure, more protection for open space historic buildings
- Little or no displacement because of one for one replacement and right of first refusal policies through one for one replacement
- Greater housing preservation
- Create more affordable housing without doing upzones. Exhibit 258

Mr. Levitus described alternatives that had much in common with the alternatives in the above report that also could address the proposal's objectives with fewer negative impacts:

- Higher in lieu fees or a tiered system of in lieu fees with higher fees for units constructed further away. This could create incentives for more on-site units and thereby increase integration and social equity.
- Higher affordability requirements to increase the number of affordable units overall, both on- and off-site.
- Affordability requirements that would be required without upzones (e.g., inclusionary zoning and/or linkage fees) to provide more affordable housing without the adverse impact of the upzones.

Mr. Levitus provided testimony that each of these alternatives is feasible and have been used successfully in other cities around the country and Mr. Sherrard also testified that the third option had been used and was effective in Bellevue.

IV. The FEIS Does Not Adequately Address Displacement

University District Displacement Analysis

In analyzing development in the University District, the City determined parcels that they thought would be developed. The City also hired the Heartland Institute to determine what parcels would be developed in the University District.

For the University District EIS, the City determined that only 40-275 units would be displaced. The Displacement Coalition surveyed the properties that were included in those two reports and estimated that 500 people would be displaced in the near future and up to 1,250 would be displaced in the longterm.

Councilmember Herbold then asked City staffers how many units would be displaced if there was full buildout in the U District and City staffer Aly Pennucci said 1,100 units would be displaced, comparable to what the Displacement Coalition found and 6-20 times what the FEIS found. Exhibit 256

MHA Displaces More From Older Affordable Apartments Than It Creates With MHA

The analysis that the City staffer did in the University District is not an anomaly. Many of the same factors that push displacement in the U District, exist throughout other areas of the City. Just as demolishing older apartments in the University District creates a significant destruction of low income housing, so does demolishing older projects in other areas of the City.

TRAO as Inadequate Method for Analyzing Displacement

The FEIS uses TRAO (Tenant Relocation Assistance Ordinance) to estimate the number of low-income households who are and could be displaced due to demolitions, yet the 17 percent of units that they use as the definitive number for this estimate is woefully inadequate, even as the FEIS mentions, but then ignores. Since displacement is a core component of the FEIS, failing to adequately address displacement is a fatal flaw in the FEIS. (See pages 3.30-32 and 3.56-58, among others)

Below are the elements that the FEIS and others mention as limiting factors to the accuracy of 17 displacements per 100 as the full extent of displacements:

- Language barriers or mental health
- The rate TRAO-eligible households complete the application is not available
- TRAO data does not include all instances of eviction.

- TRAO records don't cover every instance of physical displacement caused by demolition
- Does not track households with incomes greater than 50% AMI
- Until recently, there were no mechanisms to deter developers from evicting tenants to avoid paying relocation benefits.
- Do not reflect displacement of households with incomes above 50 percent of AMI or households who should have received TRAO but did not for various reasons.
- All low-income tenants on a lease are treated as members of one household and granted only one quota of relocation assistance, even if they are roommates who do not intend to seek housing together again.
- Not mentioned but relevant is that both many landlords and many tenants are unaware of the TRAO law. Exhibit 257
- Uses only under 50% AMI, and does not further break out those making under 30% AMI where the greatest affordable housing need exists. Exhibit 52, p.3.

Provide an Accurate Inventory of Affordable Housing

To determine an accurate amount of displacement requires an accurate inventory of affordable units housing low income residents. The City successfully conducted its first survey in 1979 and found that one in five Seattle households had been displaced involuntarily over a four year period. And that over a two year period 20% of rental housing was sold and refinanced and that generally this turnover affected older, lower rent properties. Exhibit 52, p. 5

Displacement

Loss of Low Income, People of Color Housing Near Transit

The FEIS recognizes there is a strong displacement risk from living near current or future Link light rail (Appendix A, page 44), and also recognizes that new development can contribute to economic displacement at the neighborhood scale. (p. 3.37). The FEIS also recognizes that several [high displacement risk/low access to opportunity areas] have light rail service that is beginning to attract private market investment. (Appendix A, p. 23) While the FEIS recognizes that these problems exist, there is no analysis of how many low-income people and people of color will be displaced by this proximity and further increased with expansions due to supposed "5 and 10 minute walksheds."

Already hundreds of African-American families have lost their homes near good transit in south Seattle (3.7, exhibit 3.1-2 [note: this exhibit only shows to 2010 and the impact now is significantly worse now]), affecting not only each family personally, but the community as a whole. African-American homeownership has plummeted from 49% to 28% in King County (Seattle Times, 6/12/17), much of it from the Central District and other communities in the south end near good transit.

The proposed MHA upzones will exacerbate that displacement immensely due to numerous factors:

- The increased property values around light rail stations, *without upzones*, has *already* pushed out many low income and People of Color families when they could not afford the higher taxes due to the increased property and land values. The City has done little or nothing to mitigate this through their policies and the FEIS also does nothing to address this issue.
- The FEIS does no analysis of the broad displacement of low-income people and People of Color that will occur around light rail stations due to the further increased property and land values *from the MHA upzones which allow for more and larger buildings and Urban*

Villages expansions, the increased taxes stemming from the larger valuations, and the displacement from the inability to pay the higher taxes caused by the new valuations.

- When taller, wider buildings and more units on properties are built, both will be more expensive than the current small houses throughout the south end and create further high taxes that will be difficult to afford for low income people who have been living in those neighborhoods. These buildings will also change the nature of the neighborhood (both physical nature and the race and class of homeowner/tenant), are too expensive for most current residents to afford and therefore will further displacement.
- Citywide, the MHA upzones will create significant growth which will require large investments in parks (434 acres of new parks at $2.8 billion), transit ($54 billion light rail and Sound Transit, $11.3 billion Metro), police, fire, schools, wastewater and water infrastructure, etc. requiring an additional large increase in taxes, which will be a hardship on low income people and people of color and create further displacement.
- Increase in land and property valuations and taxes will also impact the ability of ethnic businesses to survive and losing large numbers of their neighborhood clientele will further undermine these businesses, disrupt their communities, and also encourage further residential displacement.
- "… new growth also has the potential to attract new amenities that could increase housing demand and potentially increase economic displacement in some neighborhoods. (p. 1.17)
- Displacement can also occur "if new housing brings about amenities that make the neighborhood more attractive to higher-income households, driving up rents and housing prices." (p. 3.37-3.38), yet there is no analysis of this issue either.

- And finally the FEIS does not address the combination of all of these many factors which can compound the problems for People of Color and people with low-incomes.

And yet, City policies call for reducing racial and social disparities … and conducting analyses before taking policy actions (page 1.4), but as shown above, this FEIS is not sufficient analysis to take a policy action. Exhibit 255 (*pages are DEIS page numbers, based on original comment concerning the DEIS*).

Building Many Expensive New Units Has Not Made Seattle Rents More Affordable

The FEIS states that one objective is to increase overall production to meet current and projected demand, and the FEIS states in a number of places (MHA FEIS p.1.15, 3.30, 3.63) says in numerous places that the

Seattle rents have gone up significantly, and they have most significantly gone up in the most expensive areas of the city.

But that's not what's happening in Seattle. Rather than lowering rents, it has done just the opposite. The areas of Seattle that have recently had the greatest development (p.3.24) and are expected to have the greatest development in the future are Downtown, South Lake Union, and Belltown, and yet:

- Rents are *higher* there than any other Urban Village in the City.
- Rents have *risen* more substantially there than anywhere else.
- Those areas are almost single-handedly responsible for the increases in rents around Seattle. These three areas combined are 24% above the average rents for the City while nearly every other area is below average and the few other areas that are above average aren't much above the average.

- These higher rents for new development are shown as one example on page 3.29 where it says: Buildings built 2010 or later rent for $2,077 per month, on average. This is $490 more per month than buildings constructed in the 1980s and 1990s and $760 more than buildings constructed from 1965—1979. This rapid influx of new buildings, in aggregate, can distort the apartment market by pushing up the average of all rents.
- Following that statement in the FEIS is another example of what was mentioned above about the FEIS stating that market rate housing lowers rents when it says: "The new supply reduces upward pressure on rents in the remaining housing stock," but that is not what's is happening in Seattle.
- And while rates have gone up sharply with new development, they've flattened only a little while creating a greater vacancy rate, particularly in the high rent areas. For example, downtown Seattle has a 25% vacancy rate. Exhibit 259

The FEIS Significantly Downplays the Impacts of Upzones on Existing Housing Stock

The information used throughout the FEIS is dated, with most of it from data that is more than four years old—while the last four years has seen Seattle's greatest levels of demolition, displacement and gentrification, so newer data is needed. Exhibit 52, p. 3.

The FEIS also does not separate out very low earners, those earning at or below 30% of AMI from those earning 50% of median income, yet there is a shortage of 30,000-35,000 rental units for those making under 30% AMI, according to the City's Comprehensive Plan EIS. Exhibit 52, p. 3.

The FEIS Does Not Look at Speculative Activity in High Growth Areas

Speculative activity is a major cause of excessive rent increases but the FEIS does not mention this or analyze it, Exhibit 52, p. 3, yet excessive rent increases are the number one cause of homelessness. Mefford day 10, part 3, 29:45.

V. SCALE Summary Judgement Brief on Alternatives

While all EIS's involve forecasting, the courts have made clear that the greater uncertainty of forecasting at the nonproject stage is not license to dispense with forecasting altogether. As the Ninth Circuit explained:

> An agency may not avoid an obligation to analyze in an EIS environmental consequences that foreseeably arise from an RMP [a programmatic resource management plan] merely by saying that the consequences are unclear or will be analyzed later when an EA is prepared for a site-specific program proposed pursuant to an RMP. "[T]he purpose of an [EIS] is to evaluate the possibilities in light of current and contemplated plans and to produce an informed estimate of the environmental consequences.... Drafting an [EIS] necessarily involves some degree of forecasting." *City of Davis v. Coleman,* 521 F.2d 661, 676 (9th Cir.1975) (emphasis added). If an agency were to defer analysis ... of environmental consequences in an RMP, based on a promise to perform a comparable analysis in connection with later site-specific projects, no environmental consequences would ever need to be addressed in an EIS at the RMP level if comparable consequences might arise, but on a smaller scale, from a later site-specific action proposed pursuant to the RMP.
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> *Once an agency has an obligation to prepare an EIS, the scope of its analysis of environmental consequences in that EIS must be appropriate to the action in question. NEPA is not designed to postpone analysis of an environmental consequence to the last possible moment. Rather, it is designed to require such analysis as soon as it can reasonably be done. See Save Our Ecosystems v. Clark,* 747 F.2d 1240, 1246 n. 9 (9th Cir.1984) ("Reasonable forecasting and speculation is ... implicit in NEPA, and we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as 'crystal ball inquiry,'" quoting *Scientists' Inst. for Pub. Info., Inc. v. Atomic Energy Comm'n,* 481 F.2d 1079, 1092

> (D.C.Cir.1973)). If it is reasonably possible to analyze the environmental consequences in an EIS for an RMP, the agency is required to perform that analysis. The EIS analysis may be more general than a subsequent EA analysis, and it may turn out that a particular environmental consequence must be analyzed in both the EIS and the EA. But an earlier EIS analysis will not have been wasted effort, for it will guide the EA analysis and, to the extent appropriate, permit "tiering" by the EA to the EIS in order to avoid wasteful duplication.

Pacific Rivers Council v. U.S. Forest Serv., 689 F.3d 1012, 1026–27 (9th Cir. 2012) (emphasis in original), *vacated as moot,* 570 U.S. 901, 133 S. Ct. 2843, 186 L. Ed. 2d 881 (2013).

The programmatic decision at issue in *Pacific Rivers* was a Forest Service plan to increase logging in the Sierras by five billion board feet, to construct 90 more miles of new roads, and to reconstruct 855 more miles of existing roads (compared to the logging and roads contemplated by the existing forest plan). The agency's programmatic EIS failed to analyze the proposal's impact on individual fish species. The Ninth Circuit held the EIS invalid. In doing so, it pointed out that an earlier EIS had provided an analysis of an earlier plan's impact on individual fish species. The court juxtaposed the two EISs and basically said: If the agency could evaluate the impacts three years earlier, it could do it again now:

> What is at issue is the adequacy of the 2004 EIS. Whether or not the analysis in the 2001 EIS was adequate (a question that is not before us), the 2001 EIS shows that an analysis of environmental consequences of the 2004 Framework for individual species of fish was "reasonably possible." There is no explanation in the 2004 EIS of why it was not reasonably possible to provide any analysis whatsoever of environmental consequence for individual species of fish, when an extensive analysis had been provided in the 2001 EIS.

Id. at 1029.

The federal cases and the federal Council on Environmental Quality have warned about the "shell game" played by some agencies which use the programmatic label to avoid the requisite environmental review:

> [A]n environmental analysis must "provide 'sufficient detail to foster informed decision-making,'" *Friends of Yosemite Valley,* 348 F.3d at 800 (citation omitted), and so cannot be unreasonably postponed. In 2002, the Council on Environmental Quality ("CEQ") established a Task Force to review agency practices under NEPA. The Task Force wrote in its September 2003 report to CEQ, "Reliance on programmatic NEPA documents has resulted in public and regulatory agency concern that programmatic NEPA documents often play a 'shell game' of when and where deferred issues will be addressed, undermining agency credibility and trust." The NEPA Task Force, Modernizing NEPA Implementation 39 (2003), available at *http://ceq.hss.doe.gov/ntf/report/frontmats.pdf.* An agency's compliance with the "reasonably possible" requirement in a programmatic EIS, resulting in an appropriate level of environmental analysis, ensures that a "shell game" or the appearance of such a game is avoided. Judicial review under the arbitrary and capricious standard of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), in turn ensures that an agency does not improperly evade its responsibility to perform an environmental analysis when such an analysis is "reasonably possible."

Id. at 1029–30. The reasonable possibility of analyzing the environmental impacts of MHA upzones in this case is indisputably apparent from the EIS documents prepared for the MHA proposal in Uptown, and in the University District.

Deferring more detailed review to the project stage also eliminates the possibility to explore the nonproject proposal's cumulative effects. At the project stage, the focus is on the impacts of the specific project. The cumulative effect of many projects in one neighborhood – on tree canopy, traffic, aesthetics, historic fabric – is ignored. Only by studying these impacts at the nonproject stage can the cumulative impacts be adequately assessed and taken into account when policy decisions are made.

Our own Supreme Court has confirmed that programmatic EISs are not an excuse to give scant attention to important issues. In *Klickitat Cty. Citizens Against Imported Waste v. Klickitat Cty., supra,* the Yakama Indian Tribe challenged the adequacy of a programmatic EIS for Klickitat County's solid waste management plan. Among other things, the County's plan contemplated the

future development of a large regional landfill. The Tribe contended the programmatic EIS failed to adequately address the plan's impacts on cultural resources. The Court began by acknowledging that while every conceivable impact need not be addressed, the EIS must give adequate attention to the issues that matter most, stating the "rule of reason" in somewhat more precise terms:

> **SEPA calls for a level of detail commensurate with the importance of the environmental impacts** and the plausibility of alternatives.

Klickitat Cty. Citizens Against Imported Waste v. Klickitat Cty., supra, 122 Wn.2d at 641 (emphasis supplied). The Court then emphasized that the greater flexibility allowed for a programmatic EIS was not an excuse to avoid an adequate discussion of serious impacts:

> "The lead agency shall discuss impacts and alternatives in the level of detail appropriate to the scope of the nonproject proposal and to the level of planning for the proposal". WAC 197–11–442(2). *See Cathcart–Maltby–Clearview Comm'ty Coun. v. Snohomish Cy.,* 96 Wash.2d 201, 211, 634 P.2d 853 (1981) (holding EIS was adequate because it identified "the potential impacts and [provided] a framework for further EIS preparation").
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> Even at this more generalized level, however, "[s]ignificant impacts on both the natural environment and the built environment *must* be analyzed, if relevant," in an environmental impact statement. (Italics ours.) WAC 197–11–440(6)(e). One element of the built environment is "*historic and cultural preservation*." (Italics ours.) WAC 197–11–444(2)(b)(vi).

Id. at 641–42.

The Court then applied these principles to the solid waste plan EIS. The Court reiterated that while a programmatic EIS may have less detail than a project EIS, this does not allow the proposal's proponent to avoid a meaningful analysis of impacts:

> The 1990 Plan Update EIS addresses cultural and historical resources in **a cursory superficial manner**. The only discussion of this impact is limited to a one-half-page discussion in chapter 3 and another one-fourth-page discussion in chapter 12. 1990 Plan Update vol. 1, at 3–7, 12–4. For example, the EIS states in part:

> Native American sites and artifacts occur throughout Klickitat County. Construction of any of the facilities considered in the solid waste management alternatives could result in disruption or loss of historic or cultural artifacts or structures. *It is not possible to meaningfully evaluate all such environmental impacts in a programmatic EIS. Such detailed review is appropriate in site-specific proposals taken to implement any portion of this 1990 Plan Update.*

(Italics ours.) 1990 Plan Update vol. 1, at 12–4.

> Respondents are correct that a lead agency has a certain amount of flexibility in determining the level of detail appropriate for a nonproject EIS, in part because there is usually less detailed information available on its environmental impacts and on any subsequent project proposals. WAC 197–11–442(1). **However, this EIS addresses the cultural and historical impacts in only two locations, for a total of approximately 1 page of text, in a document hundreds of pages long. This is simply inadequate.** Certainly the building of a regional landfill accepting 3 million tons of waste per year will have an impact on the residents of the County, including the Yakima Indian Nation, and impact their use of the County as a cultural and historical resource.

Id. at 642–643 (italics in original; bolding supplied). The Court also rejected the County's argument that more detailed analysis could be provided when specific projects, like the landfill, went through the permitting process:

> The EIS attempts to dodge the issue by stating these impacts can be meaningfully evaluated only in site-specific proposals. We disagree. One of the primary purposes of the 1990 Plan Update is to make an initial evaluation of whether the County wants to build a large regional landfill at all, or whether one of the proposed alternatives would be a better course of action. Postponing discussion of historical and cultural impacts to a later site-specific proposal would prevent the Board from considering these impacts in its evaluation. Although a discussion of historical and cultural impacts need not be at the level of detail needed in a site-specific proposal, we do not think a 1–page discussion is sufficient to adequately inform the Board's decision.

Id. at 643.[1]

Another illustration of the City's misuse of the programmatic EIS is found in *Better Brinnon Coalition v. Jefferson County,* which focused on Jefferson County's proposal for a subarea plan. Washington's Growth Management Hearings Board struck down the plan based on an inadequate SEPA review. While recognizing an agency's discretion in preparing a programmatic EIS, the Board was equally quick to reaffirm that this discretion is not limitless:

> The County directs our attention to WAC 197-11-442 which provides that the County shall have "more flexibility in preparing EISs on nonproject proposals." However, the flexibility afforded the County is not unlimited. All environmental documents prepared under SEPA require consideration of environmental impacts, with attention to impacts that are likely, not merely speculative. WAC 197-11-060(4). Phased review is permissible but it is not appropriate if it would "merely divide a larger system into exempted fragments or avoid discussion of cumulative impacts". WAC 197-11-060(5)(d)(ii). Furthermore, a phased approach may not be used to simply delay SEPA analysis until permitting decisions. *Butler v. Lewis County*, WWGMHB No. 99-2-0027c (Final Decision and Order, June 30, 2000).

Better Brinnon Coalition v. Jefferson Cy., WWGMHB No. 03-2-0007 (Final Decision and Order), 2003 WL 22896402, at 19.

> Simply providing, as Jefferson County has, that any impacts will be addressed on a permit basis fails to assess the cumulative impacts and to fully inform the decision makers of the potential consequences of the designations challenged here.

Id. at 4. Thus, in federal and state jurisdictions, the rule is the same. A programmatic EIS is not an excuse to escape the fundamental responsibility under SEPA for early and meaningful environmental review.

[1] In the end, Klickitat County was saved by a more detailed analysis of cultural resource impacts included in an EIS appendix. *Id.* at 644.

In this case, the importance of this rule is profound. The nonproject proposals involve upzones that are as sweeping as they are specific, setting the stage for City-wide impacts that will forever alter our urban environment in numerous significant areas. The obligation to analyze those impacts based on the level of planning reflected in the proposal cannot be avoided by slapping the "programmatic" label on the document. In several areas the EIS analysis of an area is less than inadequate. It is nonexistent.