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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeals of)
WALLINGFORD COMMUNITY)
COUNCIL, ET AL.)
Of Adequacy of FEIS Issued by the)
Director, Office of Planning and)
Community Development)

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

FRIENDS OF RAVENNA-COWEN'S RESPONSE TO CITY'S CLOSING BRIEF

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1 INTRODUCTION¹

2 The City's Closing Brief maintains that the MHA FEIS was reasonable, used standard methods
3 of experts in their fields and the level of detail for a nonproject EIS that covers the entire city [six urban
4 hub villages – 1,232 acres, 18 residential urban villages – 2,631 acres, parcel-by-parcel zoning,
5 expansion areas, and certain commercial areas peppered throughout the city²] is adequate. City Br., p 1
6

7 In this parcel-by-parcel upzone, the City ignores the law, which requires the City to discuss
8 impacts and alternatives in the level of detail appropriate to the scope of the nonproject proposal.
9 WAC 197-11-442 (2); SMC 25.05.402B.

10 The City also states that because there is "normally less detailed information available" (SMC
11 25.02.442A) for a nonproject EIS, its analysis can be less detailed. *Id.*, p. 2. Here, however, the City,
12 has ample, detailed data with respect to tree canopy and historic resources. This failure to provide
13 available detailed information, coupled with obfuscation in the presentation – no over-lays on urban
14 village-by-urban village zoning maps, even though the City has the data and can easily provide this
15 information - makes it difficult, if not impossible, for a decision-maker to understand the impacts from
16 the proposed upzones.
17

18 The City makes assertions that are denied by its own witnesses. One example – The City states
19 that appellants are incorrect to suggest, "[T]he EIS did not consider areas that will be rezoned outside
20 the urban villages and expansion areas." *Id.*, p. 4. "Each of the chapters analyzed the entirety of that
21 study area." *Id.*, p. 5, fn. omitted. Mike Leech, the City's expert, testified, however, that with respect
22 to Chapter 3.6, the tree canopy analysis, no such analysis ever occurred. "To my knowledge, we didn't
23
24

25 ¹ SCALE's attorneys are submitting transcripts for Eugenia Woo, Lawrence Kresiman, Lorne McConachie,
26 Spencer Howard, Tom Veith, as well as others. Appellant will not separately file transcripts for those witnesses. Transcripts
were received from the City on Friday, Oct. 5 and on Monday, Oct. 7, 2018. To the extent possible, given the short time
frame, Appellant will try to include cites to transcripts. These may also include excerpts prepared by volunteers.

² Ex. 2, Chapter 3.2, pp 3.106-07.

1 do an evaluation of those areas...³

2 This response next examines in greater detail the issues raised by the City and the law and
3 evidence in rebuttal.

4
5 **ARGUMENT**

6 **I. THE CITY'S ANALYSIS OF ENVIRONMENTALLY CRITICAL AREAS, WHICH FAILS**
7 **TO CONSIDER THE CUMULATIVE IMPACTS FROM UPZONING, IS INADEQUATE;**
8 **AND THE CITY'S TREE-LOSS ANALYSIS WAS BOTH INADEQUATE AND**
9 **UNREASONABLE.**

10 **A. The City Raises A Spurious Argument in Defense Of Its Inadequate Tree-Loss**
11 **Analysis, But There Is Compelling Evidence From The City's Own Expert That The**
12 **Analysis Is Flawed, Incomplete, Inadequate, And Unreasonable.**

13 As if to excuse the inadequacy of its tree loss analysis due to upzoning, the City gives a
14 remarkable *post-hoc* justification for the flaws - that a nonproject EIS typically does not include any
15 tree canopy analysis. City Br. p. 52. Yet, the City spent \$40,000 for a LIDAR analysis, paid for at least
16 three consultants (Ilon Logan, Mike Leech, and Sharese Graham) to testify about tree loss, and the
17 City's Arborist, Nolan Rundquist, testified about SDOT street trees.

18 The City then makes several assertions rebutted by its own exhibit and by its own expert, Mike
19 Leech. In addition to the incorrect statement that the City analyzed tree loss outside urban villages
20 (p. 1, *supra*), the City states that the data provided by the Spatial Analysis Lab was on a City-wide level
21 only. *Id.*, p. 53. The SAL proposal (Ex. 215, p. 21, 3-f), however, specifically states that
22 "neighborhoods" are included in the "deliverables." The City contends (City Br. p. 53), "analyzing the
23 impacts for each urban village would have required additional research, requiring calculations for each
24 urban village." But, Mr. Leech stated, in response to Mr. Thayer's question that the calculation could
25
26

³ Tr. 7/26, day 9, p. 156:24-25, p. 157:1-25, p. 1-17.

1 have been made for each urban village⁴ And in response to Br. Bricklin, Mr. Leech testified, "It'd be
2 very easy to run the calculation" for each urban village.⁵

3 The City's states, (Br., p.52), "Appellants failed to demonstrate why that level of effort is
4 required, especially in light of the uncontroverted testimony that tree canopy assessments at any level
5 are not commonly included in nonproject EISs." First, the City fails to state what these particular
6 "nonproject EIS's" entailed, but the appellants were under no obligation to rebut the City's
7 "uncontroverted testimony" because the FEIS itself states in Chapter 3.6 why the City is required to
8 analyze potential tree-canopy loss. FEIS, Chapter 3.6 (pp. 3.315 – 3.316) states, "Trees in the City are
9 specifically valued and legally protected...and *specific environmental regulations (SMC 25.05.675)*
10 [emphasis added] ... implement the goals and policies of the Seattle 2035 Comprehensive
11 Plan for protection of the urban forest." The FEIS could not be clearer. The City Code requires the
12 analysis. Implementation of the Urban Forest Management Plan (UFSP) is a priority. The City
13 "created a framework for City departments, non-profit organizations, residents, and the community as a
14 whole to support efforts to maintain the urban forest." *Id.* The FEIS identifies the USFP's four goals:
15 create the ethic of tree stewardship; strive to achieve a net increase in urban forest functions, expand
16 canopy to 30% by 2037; and "remove invasive species and improve species and age diversity to
17 increase the health and longevity of the City's urban forest..." *Id.*, p. 3.316. There was substantial
18 evidence by Appellant's witnesses, Prof. Kern Ewing and Woodrow Wheeler, as well as other
19 witnesses,⁶ that tree protection is an environmental necessity. *See*, also, Ex. 189, *Seattle's Forest*
20 *Ecosystem Values*, pp. 1-3, 14-15.

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26 ⁴ *Id.*, p. 158:17-19

⁵ Transcript excerpts, last page, p.12

⁶ Carl Guess, Steve Zemke and Michael Oxman, as well as the City Arborist, Nolan Rundquist.

1 Second, with respect to "the level of effort," Mr. Leech stated, in response to Mr. Bricklin's
2 question, "It'd be very easy to run the calculation."⁷ If the City had done the overlays for each urban
3 village in the first place, decision-makers would have had some idea of the impacts on a parcel-by-
4 parcel basis.⁸

5
6 Contrary to the City's assertion, the tree-loss analysis is inadequate and unreasonable in several
7 different respects. First, the FEIS did not include any data on "tree" loss within the "study area" but
8 outside urban villages. Second, the "tree" loss analysis is unusable because the data include street trees
9 and shrubs, greatly inflating the number of "trees" per parcel. The actual tree loss per parcel simply
10 cannot be determined unless these street trees and shrubs are removed from the calculation and actual
11 tree loss per parcel is recalculated. Third, even if the data were valid, which they are not, data
12 aggregation into four groups makes it impossible for decision-makers to understand the impacts from
13 upzoning in each urban village and areas outside urban villages. Thus, the City's analysis of tree loss
14 was both unreasonable and inadequate.

15
16 **B. The Significant Adverse Impacts To Ravenna Park From Proposed Upzoning In the**
17 **Buffer Area Were Not Rebutted Or Disputed by the City, And the City's Impact Analysis**
18 **Is Inadequate Because It Did Not Address These Cumulative Impacts.**

19 Ravenna Park has three environmentally critical areas (steep slopes, wetlands, and a riparian
20 corridor), but the City dismissively states there were no inadequacies "because the park is not within
21 the study area, and the FEIS discloses potential impacts to ECAs outside the study area."⁹ City Br.,
22
23
24

25 ⁷ Tr. 7/26, day 9, see p. 12 at end of excerpts.

26 ⁸ Additionally, as Appellant's Opening Argument (pp.22-27) discusses in detail, the City's "tree" loss analysis was
flawed and inadequate as is summarized above.

⁹Ftn. 286, citing "FEIS at 3.323-3.324 (describing potential indirect and cumulative impacts)."

1 p. 51. The buffer area for Ravenna Park, directly north of the park beginning at NE 62nd St., is entirely
2 within the "study area." The wildlife corridor¹⁰ is wholly within the "study area." Testimony of Prof.
3 Ewing and Mr. Wheeler. The City's witnesses never rebutted that testimony. And, as Ms. Ilon Logan
4 conceded, there was no discussion in the FEIS of the cumulative impact to Ravenna Park of the loss of
5 groundcover from proposed upzoning, whereas Prof. Ewing described these significant adverse impacts
6 in great detail.¹¹ See Appellant's Closing Argument, pp. 12 – 19.

8 The City's references to the FEIS, Chapter 3.6, pp. 3.323-3.324, are not germane. The impact
9 discussed at p. 3.323 applies only to impacts from a project and illegal activity – landscaping involving
10 earth movement, improper tree cutting, or inappropriate storm water control. The discussion at pp.
11 3.323– 3.324 pertains to impacts to streams from pollution runoff from street surfaces due to changes
12 in zoning and increased density. But the FEIS then denies that will occur because "future development
13 would in most cases is expected to lead to net increases of protection due to ... on-site systems." *Id.*
14 The City and the FEIS do not address at all the impact of overflow from an at-capacity sewer line
15 abutting the park, built in 1912– an eight-inch combined wastewater/groundwater sewer pipe (Ex.
16 113).

18 SMC 25.05.790B(3)(c) requires the City to analyze three types of impacts - direct, indirect
19 and cumulative. Prof. Ewing agreed that there would be impacts described at pp. 3.323 – 3.234. He
20 disagreed that these were the only impacts. The cumulative significant adverse impacts from upzoning
21 in the buffer area due north of Ravenna Park, however, were never discussed in the FEIS nor rebutted
22 by the City's witnesses:

24 _____
25 ¹⁰ See SMC 25.05.675N-1.b.: "Local wildlife populations are threatened by habitat loss through destruction and
26 fragmentation of living and breeding areas and travelways, and by the reduction of habitat diversity. Mr. Wheeler's
testimony described the importance of the buffer area to over 80 bird species, including migratory birds, which use this area
in their travels. See Ex. 120

¹¹ WAC 197-11-060(4)(a) states the EIS must address "impacts," which are defined at both WAC-11-752 and
SMC 25.05.752: "Impacts' are the *effects or consequence* of actions." (Emphasis added.)

1 1. Increased rise in temperatures due to greater building mass; the Ravenna Park ecosystem,
2 which is based on a unique microsite humidity and temperatures, would be modified resulting in loss
3 of vegetation and animal diversity.¹²

4 2. Cumulative reduced tree canopy, reduced shrubs and groundcover in the RUV expansion
5 area north of Ravenna Park, all of which are essential buffers for Ravenna Park and all of which help
6 reduce pollution.

7 3. Greater runoff from rain due to reduced tree canopy, shrubbery, and groundcover resulting
8 in (a) greater pollution in Ravenna Creek, (b) erosion of the steep banks and (c) sediment in Ravenna
9 Creek.

10 4. Greater runoff due to an old and inadequate combined wastewater/groundwater sewer line
11 that cannot handle the increased density due to upzoning, and which will result in the adverse impacts
12 as in 3 above.

13 In summary, the City's contention that the FEIS discussion of ECA's is adequate because
14 Ravenna Park "is not within the study area" is specious. The wildlife corridor and the Ravenna Park
15 buffer area, north of the park, which starts at the abutting NE 62nd Street and extends north, are entirely
16 within the Roosevelt Urban Village proposed expansion area. The at-capacity eight-inch 1912
17 combined wastewater/groundwater sewer line is within the proposed expansion area. Changes to the
18 tree canopy, shrub and ground cover caused by cumulative impacts from upzoning in the expansion
19 area, and the increased temperatures due to greater building mass, will have significant adverse
20 impacts to Ravenna Park's steep slopes, wetlands and riparian corridor. None of these significant
21 adverse impacts are disclosed in the FEIS. The FEIS is, therefore, inadequate.

22 **II. THE FEIS SECTION ON HISTORIC RESOURCES IS INADEQUATE AND UNREASON-**
23 **ABLE AND DOES NOT PROVIDE A DECISION-MAKER WITH AN ADEQUATE BASIS**
24 **TO MAKE DECISIONS AS TO WHETHER AND WHERE TO UPZONE.**

25 **A. Introduction – The City's Contentions.**

26 ¹² The restoration projects Prof. Ewing supervised (e.g., Ex. 111) involved removal of invasive species in order to restore native plants and trees, which in turn would restore a mature forest ecosystem and maintain Ravenna Creek's water purity. Thus, the purpose, stated in the FEIS (p. 3.316) to protect the ecosystem, "to remove invasive species and improve species and age diversity to increase the health and longevity of the City's urban forest..." would be defeated by the proposed upzoning to the Ravenna Park buffer area because the Ravenna Park ecosystem would be destroyed.

1 The FEIS, Chapter 3.5, addresses historic resources. The City's Closing Brief states its analysis
2 satisfies the rule of reason (City Br., p. 40), that its estimated growth rate (50%) was reasonable
3 (*id.* p. 42), its general statement in the FEIS that redevelopment could result in significant impacts to
4 historic resources and potential landmarks (FEIS, p. 3.305) is adequate to inform a decision-maker
5 (City Br., p. 43), proposed mitigation solves all problems (*id.* p. 44), that the limited money for the
6 FEIS Chapter 3.5 and predetermined outcome - to support the City's view that there would be no
7 significant adverse impacts to historic resources - was rebutted [by the person with the least authority
8 in the ESA consulting firm] (*id.*, p. 47 and fn.261), that minor clerical errors do not matter (*id.*, p. 47-
9 49), and Appellants' reliance on another EIS [Uptown EIS] is insufficient to satisfy Appellants' burden
10 of proof.
11

12 Each of these assertions is addressed below.

13
14 **B. The City's Premise - Presenting Only NRHP Locations On City Maps As "Information That Was Available for All Neighborhoods," to "Describe the Affected Environment In An Equal Way Across the Study Area," to "Provide a Similar Level of Detail Across Neighbor-hoods" - Is Not Only Unreasonable And Inadequate In Light Of Parcel-By-Parcel Zoning In The MHA FEIS, But Is Also False.**

15
16
17
18 The entire premise of the City's historic resources analysis, which is never divulged in the
19 FEIS,¹³ is that there needed to be the same level of detail across all neighborhoods - to compare
20 "apples-to-apples" - and the only way to do that was to use data from DAHP's¹⁴ WISAARD database
21 containing National Register of Historic Places (NRHP) sites. Few Seattle historic resources exist in
22 that database,¹⁵ however, and the historic resources included in WISAARD are not distributed evenly
23
24

25
26 ¹³ Katherine Wilson; Paula Johnson. An EIS is supposed to be "concise, *clear*, and to the point" SMC 25.05.030A(3). (Emphasis added.)

¹⁴ Washington State Department of Archaeology and Historic Preservation.

¹⁵ Spencer Howard. Tr. 8/31, day 17, p. 222:5-9.

1 throughout the City. See maps at FEIS, Chapter 3.5, pp. 3.300-3.301, Ex.s 3.5-2 and 3.5-2. The grand
2 total of these NRHP historic resources is 111. Chapter 3.5, p. 3.298.

3 As background, the National Historic Preservation Act, 54 U.S.C. 300101 *et seq.*, recognizes
4 the importance of our shared history.¹⁶ Section 1 states:

5 The Congress finds and declares that —

- 6 (1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;
7 (2) the historical and cultural foundations of the Nation should be preserved as a living part of our
8 community life and development in order to give a sense of orientation to the American people;
9 (3) historic properties significant to the Nation's heritage are being lost or substantially altered, often
10 inadvertently, with increasing frequency;
11 (4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural,
12 educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for
13 future generations of Americans;
14 (5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and
15 industrial developments, the present governmental and nongovernmental historic preservation programs and
16 activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich
17 heritage of our Nation...

18 The Act requires, as several witnesses explained,¹⁷ that when federal funding is involved in a
19 project, federal law requires the governmental agency to conduct an inventory of possibly eligible
20 historic resources within the project area.¹⁸ Thus, for example, along the route of the current and
21 proposed light rail route — Roosevelt, the University District, Eastlake, Capitol Hill and Downtown —
22 there are clusters of NRHP historic resources. See, FEIS Chapter 3.5, pp. 3.300 – 3.301, Ex.s 3.5-2 and
23 3.5-2. Historic resources, inventoried as part of projects receiving federal funds, receive some
24 protection under federal law.¹⁹ Historic Preservation Act, §106. Additionally, there are occasional
25 historic resources in WISAARD that were specifically nominated for the Washington State or National
26 Historic Registers, and in some instances a City Landmark winds up in that database. But there is
nothing about the WISAARD dataset that makes it representative of all neighborhoods nor does it

¹⁶ The 2035 Comprehensive Plan echoes many of the same values. Ex. 3, pp. 66 – 68. See also SMC 25.05.675H-
1. a: "The preservation of these buildings, districts and sites is important to the retention of a living sense of the past."

¹⁷ E.b., Spencer Howard, Tr., 8/31, day 17, p. 222: 5-12.

¹⁸ Eugenia Woo; Katherine Wilson

¹⁹ Katherine Wilson; Lawrence Kreisman; Eugenia Woo.

1 provide "the same level of detail across all neighborhoods," nor does it provide an "apples-to-apples"
2 analysis. And, as Mr. Howard pointed out, the City did not even include all the Seattle historic
3 resources data that are in the WISAARD database.²⁰

4 SMC 25.05.402B states: "[T]he level of detail [in the EIS] should be commensurate with the
5 importance of the impact with less important material consolidate or referenced." The MHA FEIS,
6 turns this code provision on its head. FEIS Chapter 3.5 is a shining example of the inverse. The least
7 important material, 111 NRHP historic resources, are identified by neighborhood and mapped.
8 Decision-makers can clearly see NRHP sites in each neighborhood and where these are located. By
9 contrast, the inventoried Seattle historic resources in the Department of Neighborhoods (DON) data-
10 base (inventories from the year 2000 and later), which number in the thousands throughout Seattle, are
11 consolidated on a chart, marked by an "X" next to a neighborhood name (except for Beacon Hill which
12 was omitted²¹). Chapter 3.5, p. 3.302. There are no maps or overlays on urban village maps showing
13 where these historic resources exist. Seattle Landmarks total between 400 – 450 historic buildings but
14 are omitted in their entirety.
15
16

17 Two witnesses (Sarah Sodt and Katherine Wilson) maintained that the DON data were
18 unreliable because inventories were greater than five years old because a building may have been
19 altered or demolished. Mr. Howard disagreed. Mr. Howard was the City's historic resources
20 consultant and author of the historic resources chapter of the nonproject/programmatic University
21 District EIS. Ex. 304. The U. District EIS used Seattle DON inventory data from 2002, and the EIS
22
23

24 ²⁰ Spencer Howard; Katherine Wilson agrees. See App.'s Closing Br., p. 35, fn.33

25 ²¹ Eugenia Woo pointed out that the Beacon Hill omission, which Ms. Wilson testified was a clerical; immaterial
26 error. See fn. 33, pp. 35-36, in App.'s closing brief. Ms. Wilson testified, "Yes, although there is one error. I also
reviewed the North Beacon Hill context statement, and I apologize if there was some clerical error. *This was checked off in
an internal draft prior to publication, so I'm not sure why that's not listed here.*" (Emphasis added.) Beacon Hill was
omitted from the May 5, 2017 preliminary draft (Ex. 238, p. COS0034826), from the DEIS, Ex. 1, Chap. 3.5, p.3.248, and
the FEIS, Ex. 2, Chap. 3.5, p. 3.302.

1 was done in 2014.²² Mr. Howard explained that even though the data were 12-years old, and even if
2 some of the sites were degraded, if land use changes are proposed, it is critical to identify potential
3 historic resources:

4 I think it - for us, it ends up being a difference between a programmatic and a project-based EIS. But the
5 programmatic using the - all of the available data sets is key to be able to at least understand the probability
6 of their being potential historic resources in the areas that are going to be affected by the land use changes or
7 whatever the policy changes are happening as part of that programmatic EIS. I think the data degrades over
8 time, but it's not that substantial to where from data that's five years of age or older is being excised from the
9 database by the city; it's kept in there.

10 The state Department of Archaeology and Historic Preservation, when they created their online database,
11 WISAARD, they went back through their legacy records from the '70s and the '80s. And they actively
12 scanned in those records and then pushed them into GIS, and located them because that data they felt was
13 relevant as a planning tool. And I think I would feel the same in approaching a programmatic EIS, that the
14 more information that you can have that's available there, the better it helps you to understand when you're
15 looking at the potential impacts decisions might have and the effects of those decisions could be.²³

16 Mr. Howard stressed using "all available data sets." As Appellants learned only in discovery,
17 the City has complete information in its own database of the year-built for every address of
18 every parcel in the "study area." Ex. 310. The year-built was the sole basis used to identify
19 potentially eligible historic resources for the Uptown EIS, which Paula Johnson authored. The

20 ²² Tr. 8/31, day 17, p. 219: 5 -- 7.

21 ²³ Tr. 8/31, p. 219, lines 7-25, p.220, 1-4. Other experts agreed with Mr. Howard. The evidence presented by
22 multiple witnesses shows the remarkable staying power of historic resources. Mr. Kreisman, a Landmark Preservation
23 Board member for eight years, testified that in addition to the DON database, 1979 survey records of 34 Seattle
24 neighborhoods should have been included. This survey includes Landmark recommendations. (Ex.s 46, 47, and 48) He
25 said, "A map would have been great." Mr. Kreisman also testified about the Ravenna-Cowen North Historic District
26 application, which includes 443 existing homes, 300 of which are pre-1930 (*id.*, p.5), and includes comparator 1937 and
2018 photos for each home in the proposed RUV expansion area. These homes are in excellent condition [save two owned
by the "slum lord," Anne McGowan testimony]. (Examples are at Ex. 92, excerpts from the DAHP application, pp. 29, 30,
61, 62, 78, 85, 86; see also Ex.s 154, 158; Ex. 210, p. 1) Mr. Kreisman testified only a few homes needed rehabilitation. Ms.
Woo (Historic Seattle) similarly testified about the need to include Seattle Department of Neighborhoods survey and
inventory data on map overlays. Mr. Veith, a consultant for the City and also a former Landmark Preservation Board
member, showed photos of Wallingford historic resources that had been inventoried in a DON survey and he had photos of
these, including Landmarked buildings (Ex. 120). He placed the sites on a map and drew the outline of the Wallingford UV
where the upzones are proposed. (Ex. 119). He described the good condition of buildings along and near NE 45th St., as
well as identifying Seattle Landmarks that would be impacted by upzones. Mr. Howard described the pending National
Historic Register application in the North Rainier Urban Village, Mt. Baker (Ex.s 23, 29). Mr. Kasperzyk described a
recent Ballard historic resources survey (Ex. 38). Lay witnesses described the excellent condition of buildings, some over
100-years old: Beacon Hill (Frederica Merrell, Ex.s 191, 195); South Park (Jennifer Scarlett, Ex. 260); West Seattle
Junction (Rich Koehler and Jack Miller, Ex.s 164 [Landmark Campbell Building], 165, 166 [Landmark Hamm Building],
167, 168); Ravenna-Cowen (Lorne McConachie, also a former Landmark Preservation Board member).

1 Uptown FEIS (Ex. 262, p. 3.84, Ex. 3.5-2) and DEIS (Ex. 261, p. 3.187, Ex. 3-5-7) display these
2 parcels clearly,²⁴ overlaying them on the Uptown map.²⁵ The FEIS specifically identifies Landmarks,
3 Ex. 263, p.3.83, Ex. 3.5-1, with the caption, "Locations of Historic Properties on Blocks Proposed for
4 Increased Height Limits Under the Preferred Alternative," and includes these on the map. The
5 University District EIS identified DON inventoried sites resources on a map, including Landmarks. Ex.
6 304, p. 3.4-14, figure 3.4-34. The decision-maker can immediately see where upzoning conflicts with
7 Landmarks and potentially eligible historic resources.
8

9 This year-built criterion is "information that was available for all neighborhoods," compares
10 "apples-to-apples," and provides a similar level of detail across all neighborhoods. With the
11 PIN (parcel identification number) already in the City's database, these sites could have easily been
12 overlaid onto urban village maps. (Mr. Howard used the same City excel data set make his maps.²⁶)
13

14 Similarly, Seattle Landmarks, totaling 400 to 450 historic sites in the city,²⁷ could have been
15 identified and mapped. Instead, they are nowhere to be found in the FEIS even though an interactive
16 index and map exist at the DON on-line website.²⁸ "The decision was not to map the Landmarks,"
17 Katherine Wilson.

18 SMC 25.05.055B(2) states, "A major purpose of the environmental process is to provide
19 environmental information to government decision makers for consideration *prior* to their making their
20

21
22 ²⁴ Ms. Johnson agreed, on a question by Ms. Newman, after denying it twice, once on direct and once on cross by
23 Appellant's counsel, that the age-built historic resources shown on the Uptown UV map did include "seventy-some"
inventoried historic resources that are in the DON database.

24 ²⁵ Ms. Johnson's contention that it "would have been a significant number crunch to try to make sense of that data
25 to make the 27 different urban villages have comparable sets of data," is in fact false. Not only do all these data exist, but
because the data also have an associated PIN, each address can be easily overlaid to an urban village or other "study area"
map. Spencer Howard testified he used the PIN and address to create overlay maps using Department of Neighborhoods
inventoried historic resources.

26 ²⁶ Tr. 8/31, day 17, p. 213: 18-25; Ex.s 21, 22.

²⁷ Testimony by Tom Veith and Katherine Wilson.

²⁸ Katherine Wilson testimony.

1 decision on any action." (Emphasis added.) It is ironic and galling that the FEIS itself calls out the
2 importance of identifying historic-aged buildings. Among the mitigation measures listed in the FEIS
3 (p. 3.311) is "to prepare and fund neighborhood historic context statements and identify historic-aged
4 building and potential historic districts." (Underlying in original shows new text not in the DEIS;
5 italics added.) This identification of "historic-aged buildings and potential historic districts" is already
6 known to the City and could have and should have been done from the get-go and overlaid on urban
7 village maps, just as in Uptown and the University District EIS.

9 Decision-makers should not be required to do a second process - after the fact, requiring
10 additional delays and more money - when the FEIS itself could have included "historic-aged buildings"
11 in the first place. Had the FEIS presented buildings by year-built on overlay maps for each urban-
12 village, the City would have complied with SMC 25.05.402B, "The level of detail should be
13 commensurate with the importance of the impact." Decision-makers would easily see the impacts
14 before proposed upzones were enacted. Decision-makers could then decide beforehand whether or not
15 to inventory these potential historic buildings and districts.²⁹

17 None of the rationales stated by the City's witnesses -- to map only NRHP sites - make any
18 sense. These data were not available for all neighborhoods. These data do not provide a similar level
19 of detail across neighborhoods. Vast swaths of Seattle have no NRHP sites. The NRHP does not
20 compare apples-to-apples. Some inventoried historic resources are in the WISAARD database because
21 federal funds were used for a City or State project. Some resources are in WISAARD due to
22 independent nominations or applications for state or federal historic register status, such as Mt. Baker
23 and now Ravenna-Cowen. A few City Landmarked buildings may be in WISAARD because they
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25

26 ²⁹ As noted in Appellant's Opening Argument, the FEIS does not state as a mitigation measure the need for
decision-makers to postpone enacting upzoning pending enactment of mitigation measures. Once upzoned, because
developers have a vested right to use the property at its highest zoned use, a subsequent survey and inventory is too late.

1 have status as a City Landmark but may also meet other criteria. In actuality, the stated reasons for the
2 decision to map only NRHP properties have no rational basis.

3 One can posit reasons why this approach was done -- money. ESA was not getting paid very
4 much, and was directed by OPCD to find a justification to support the City's predetermination that
5 there were no significant adverse impacts to historic resources from upzoning. Ex. 237. Another
6 possible explanation is intentional obfuscation -- simply make it impossible for decision-makers to
7 easily visualize the impacts on a parcel-by-parcel basis. Ignore SMC 25.05.402B. Leave decision-
8 makers in the dark. Confuse them or make it so difficult to figure out that they will just approve all the
9 upzoning proposals.

11 It is inadequate to check a box that historic resources exist in South Park without showing
12 decision-makers where these resources are so that they know a two-story Landmark building will be
13 sited next to a 55-foot upzone.³⁰ Decision-makers or their staff cannot be expected to go to the FEIS
14 interactive website, or the DON website, and view every entry to figure out where the historic resource
15 is located on the urban village map, or check King County Assessor records to find out the year built of
16 the buildings on each parcel.

18 The City and its consultants could have easily and visually provided overlay maps showing this
19 information for every urban village, expansion area, and other "study" areas. The City used this
20 approach at least twice before for Uptown and University District programmatic EIS's. It did not take
21 much money or time.³¹

25 ³⁰ Tom Veith presented photos of Landmarks within the Wallingford UV. Ex 120. The three-story Landmarked
26 Wallingford Police and Fire Station (*id.*, p. 3) will be dwarfed by proposed upzoning to 65-feet. FEIS App. H, pp. H-79, H-80.

³¹ Spencer Howard testified that setting up the database to include NRHP and DON data took about 40 hours. One then runs the program using the City's PINs to place the properties on a map. Tr., 8/31, day 17, p. 216: 15-25

1 It is troubling that the City has all the year-built data for every parcel, added a mitigation
2 measure in the FEIS that was not in the DEIS -- to identify historic-aged buildings - but did not reveal
3 that the City's existing database contains all these historic-aged buildings by year-built and address.

4
5 For the reasons stated above and in Appellant's and others' closing arguments, FEIS
6 Chapter 3.5 was inadequate and unreasonable.

7 This Response next addresses the City's other arguments.

8 **C. The City's Remaining Contentions are Meritless.**

9 1. The estimated growth rate was not reasonable.

10 The City predicated its analysis on a 50% base growth rate threshold that would cause
11 destruction of historic resources. This threshold was criticized by Richard Weinman on his review of
12 the May 5, 2017 draft Chapter 3.5, p. COS0034827, Comment [RW 3]. He wrote, "The locations of
13 surveyed buildings, on the other hand are known, and could be compared to parcels being rezoned.
14 Rezoning would seem to be a stronger indicator of likelihood of demo or redevelopment and a better
15 measure of significant impact."
16

17 The City says that Ms. Wilson and Mr. Weinman explained "the issue was ultimately addressed
18 by altering the analysis and adding clarifying information to the discussion of historic resources." City's
19 Br., p. 43, fn. 238. Ms. Wilson, in fact, had no idea what an appropriate rate was. She testified the
20 50% was suggested by Paula Johnson and she had no idea whether it was reasonable or not.³² She was
21 not able to answer whether using an assumed growth rate was a common approach in determining
22 significant impacts. Wilson: "I wouldn't be able to answer that. It was appropriate for this; it was
23 decided in consultation with Sharese Graham and Paula Johnson." Neither Ms. Graham or Paula
24 Johnson testified about the growth rate. The 50% figure appears to be plucked from thin air. What was
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26

³² Tr. 7/27, day 10, p. 75:4-13.

1 | informative was Ms. Wilson's response to Mr. Bricklin's question, You didn't analyze, well "looked at
2 | growth rates," you didn't analyze the impacts of that combined development on the fabric of these
3 | historic communities? Ms. Wilson answered, "No." ³³

4 |
5 | Notwithstanding its other inadequacies, failure to assess the cumulative impact (from both
6 | growth assumptions and proposed upzoning) on historic resources renders Chapter 3.5 inadequate.
7 | SMC 25.05.790B(3)(c).

8 | 2. With respect to potential Landmarks, the City states that while the current regulatory
9 | process (such as below the SEPA threshold for review) does not require consideration of the
10 | potential Landmark, the mitigation measure would, and therefore the FEIS is adequate, but
11 | that mitigation measure does not solve the problem – the need to know is before upzoning is
12 | adopted, not after.

13 | The City's brief, p. 43, points out, as many witnesses testified, that development of a parcel can
14 | fall below the SEPA threshold and a potential Landmark would be exempt from review. The City
15 | states its proposed mitigation measure would solve the problem – "Requiring project proponents to
16 | nominate buildings for landmark review when demolition of properties that are over 50 years old is
17 | proposed, regardless of City permitting requirements..." FEIS, Chapter 3.5, p. 3.312. The problem
18 | with this mitigation, as with other proposed mitigation measures, is that they are all *after-the-fact*, post-
19 | upzoning. Using the old Wallingford Fire and Police Station as an example,³⁴ assuming it had not yet
20 | been landmarked, the developer bought this parcel, zoned for 65-feet, and files for a permit application
21 | for a seven-story apartment building. At that point, the developer has a vested right to use the land to
22 | its highest zoned use. *Town of Woodway v. Snoh. Co.*, 180 Wn. 2d 165, 1 (2014). Requiring the
23 | developer to go through the steps to nominate a building for landmark review may slow down the
24 | process, but will not stop it. Once the Landmark Preservation Board approves the nomination and the
25 | City Council concurs, SMC 25.11.535 permits the owner to object to the nomination and appeal to the
26 |

³³ Tr. 7/27, day 10, p. 240:10-25, p. 241:1-21.

³⁴ See picture at Ex, 120, p.3

1 Hearing Examiner. The Examiner is in turn limited. SMC 25.11.570 provides that the Hearing
2 Examiner cannot recommend any control "if the effect of such control, incentive or combination
3 thereof would be to prevent the owner from realizing a reasonable return on the site, improvement, or
4 object."
5

6 But if the property had been reviewed before upzoning, such as by year-built criteria, decision-
7 makers could have decided to inventory before upzoning. Under the circumstances proposed
8 in the FEIS mitigation measures, this proposed mitigation measure will delay, but ultimately not
9 mitigate at all.

10 3. The City's position is that it is not required to adopt Appellants' suggested approach to
11 historic resource analysis, but what the City is really arguing is a legal conclusion - that it's
12 analysis meets the "rule of reason" - which it does not.

13 The City's Closing Brief, beginning at p. 44, makes several different arguments. First, the City
14 states that the Appellants argue that "a more 'granular' analysis of historic resources impacts was both
15 possible and necessary and the City should "perhaps even engage in additional on-the-ground survey
16 work where data is not complete." To the contrary, this Appellant argues only that the City Council
17 needs to have adequate, available data in a clear and readable format that it can assess beforehand. The
18 Council can then decide whether or not to conduct a survey a neighborhood before upzoning. The
19 Council could very well decide not to do a survey, but at least, it would have the information (such as
20 year-built information for each parcel) to make that decision. The scant information and presentation of
21 historic resources in the FEIS, which do not even reveal the City has all year-built information, does not
22 make that possible.
23

24 Second, the City states (*id.*) the graphics "demonstrate the peril of too much detail," citing Ex.s
25 19, 20, 22 and 37. "The City... is shrouded in a series of colored dots." This assertion misstates the
26 purpose of those exhibits. Mr. Howard wanted to show that it was easy to extract information from the

1 WISAARD and DON databases and map them, and to illustrate that, he placed City-wide resources
2 (dots) on the entire City map (Ex.s 19, 20 and 22). Similarly, Mr. Kasperzyk's Ex. 37 shows the entire
3 city. But entire city maps are never what the Appellants suggested. Because upzoning here is parcel-
4 by-parcel in each urban village, Appellants suggest that overlay maps be done for each urban village
5 and expansion areas. Such maps are exhibits in this case. Exhibit 45 (also made by Mr. Howard) shows
6 the Mt. Baker historic district (in the N. Rainier Urban Village), color-coded, year-built for each parcel.
7 Ex. 91 similarly is a color-coded map by year-built for each parcel for the Ravenna-Cowen historic
8 district, which includes the areas proposed for upzone in the Cowen section of the Roosevelt Urban
9 Village and the proposed expansion area (between NE. 65th St. and NE. 62nd St. and 15th Ave. NE to
10 17th Ave. NE). Both Ex.s 45 and 91 are very readable, understandable and complete. These maps are
11 similar to the maps Ms. Paula Johnson prepared for the Uptown EIS (Ex. 261, p. 3.182, Ex. 3.5-4; p.
12 3.187, Ex. 3.5-7). A reader can immediately identify the location of Landmarked buildings and
13 potential historic resources from the color coding or the symbol. Ex. 119, Wallingford, prepared by Mr
14 Veith, shows historic resources from the DON database as dots on a map, sited by address, with an
15 outline of the Wallingford Urban Village superimposed, similar to the South Park map (Ex. 234)
16 prepared by Ms. Wilson after the FEIS was published. These maps, too, are clear and easy to read.

17
18
19 The City's Closing Brief, pp. 45-46, goes through the same litany raised earlier in its brief – the
20 DON database does not have inventory information about all neighborhoods and to show only the
21 historic resources inventoried "would lead a reader to mistakenly conclude that the well surveyed
22 neighborhoods contain more resources subject to potential impacts from the MHA and the latter
23 fewer³⁵... [and] [t]he City chose not to map City designated Landmarks for the same reason." Then the
24 City raises its "apples-to-apples" comparison – the *post-hoc* justification, never explained in the EIS,
25

26
³⁵ The FEIS could have cured any potential confusion by simply stating in the FEIS that there are more historic resources in other neighborhoods, but these neighborhoods had not yet been inventoried.

1 for mapping only NRHP sites, which are not "apples-to-apples" at all. Lastly, the City refers to
2 testimony that the age of some surveys make them unreliable and such data makes them of "limited
3 utility for the purposes of the MHA FEIS impact analysis." *Id.*, p. 46 (footnotes omitted). All of these
4 points are rebutted, see *supra* at pp. 6 – 14, and see the Appellant's Closing Opening Argument, pp. 31-
5 40.³⁶ A few points bear repeating with respect to this so-called "unreliable data." For the Uptown
6 programmatic EIS, Paula Johnson used and mapped potential historic resources based solely on the
7 year-built, and she included all Landmarks on the maps. For the University District programmatic EIS,
8 Spencer Howard used DON surveys older than ten years and Landmarks. Witnesses who testified in
9 this case presented evidence, actual facts, including current photos of potential historic resources and
10 Landmarks - not suppositions and generalizations – showing that the vast majority of buildings, some
11 more than 100 years old, are in excellent condition. (*See* fn., 23 *supra*.) These historic resources will
12 be destroyed if upzoning is approved, and City Council members will never know they exist.

13
14
15 4. The City's argument that the City did not predetermine the outcome of the historic
16 resources analysis should be weighed in light of all the evidence, particularly in light of
17 all the information the City failed to include in Chapter 3.5.

18 The City states in its Closing Brief, p. 47, "Appellants implied that this email suggests a
19 predetermination on the part of the City with regard to the lack of significant impacts to historic
20 resources." The email referred to, Ex. 237, dated September 19, 2016, is from Mark Johnson, a Senior
21 Planner at the ESA consulting firm, who is two tiers above Katherine Wilson in the ESA hierarchy.
22 (Tr. 7/27, day 10, p. 225: 4-25, p. 226: 1-8.) The email states:

23 We have a small budget to do a high level analysis for historic resources; open space and recreation,
24 and public service and utilities. The thinking here is that the effects are similar to and likely not much
25 greater than those described in the comp plan EIS... The City's initial take on these topics were that
26 they would not result in significant impacts, but they feel the need to justify that assumption... We
have about \$30K for the whole of our work.

³⁶ Appellant also relies on the arguments in other Appellants' briefs, which are incorporated by reference.

1
2 The City says (Br., p. 47), "Miss Wilson clearly stated that the early budget assumptions did
3 not influence the ESA analysis of historic resources." The issue here is credibility, which is within the
4 sole purview of the Hearing Examiner to determine in light of all the evidence.

5 Ms. Wilson was the lowest member of the ESA totem pole. She was not privy to earlier
6 discussions between Sharese Graham, a Senior Planner, and Paula Johnson, Ms. Wilson's supervisor.
7 Ms. Wilson testified that the approach taken, to map only NRHP sites, was not hers alone.³⁷ Ms.
8 Wilson, together with Paula Johnson, decided to use the "apples-to-apples" NRHP approach.
9 Throughout her testimony, Ms. Wilson uses the word "we," and all her work was vetted by her
10 supervisor and others. Any intelligent employee, as Ms. Wilson obviously is, would understand that
11 suggestions made from higher-ups should be followed.³⁸ But certain questions hang in the air. Why,
12 since they would better know the answer, didn't the City question Ms. Graham or Ms. Johnson as to
13 whether the low budget influenced the approach taken in Chapter 3.5? Significantly, Mark Johnson
14 was not called to testify, the one person most knowledgeable about budget restraints. He authored the
15 email, and the City identified him as a witness.³⁹ He's the one who strongly suggested to staff they
16 needed to figure out a way to justify the City's position that there would be no significant adverse
17 impacts to historic resources. Why wasn't he called to testify by the City?
18
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20 But most important is Chapter 3.5's paucity of information and omission of available detail,
21 which prevents a decision-maker from understanding the impacts to historic resources on a parcel-by-
22 parcel basis. SMC 25.05.402B requires the level of detail Appellants suggest. One should not have to
23

24 ³⁷ 8/22, day 13, Tr., p. 71:2-17; Additionally, testifying that Ms. Johnson told Ms. Wilson that she did not think it
would be appropriate to use DON surveyed properties; Tr. p.74:10-17.

25 ³⁸ One also questions credibility based on small details. Ms. Wilson's explanation that the omission of Beacon Hill
(Chapter 3.5, p. 3.302, Ex. 3.5-4) was a clerical error may be true. On the other hand, this was omitted from the May 5,
2017 draft, the DEIS and the FEIS (see fn. 13, *supra*). She may have simply forgotten to include it, but forgetting is not an
26 easy thing to admit.

³⁹ The City's final witness and exhibit list filed 6/10/2018 lists Mark Johnson as a witness, p. 6, and includes his
résumé as an exhibit, p.10.

1
2 file an appeal and propound discovery in order to learn the City has every address and year built for
3 every parcel in the "study" area. The law requires that decision-makers be adequately informed.
4 *Oregon Environmental Council v. Kunzman*, 817 F.2d 484, 492-3 (9th Cir. 1987). "[A]n EIS may be
5 found inadequate under NEPA if it does not " 'reasonably [set] forth sufficient information to enable
6 the decisionmaker to consider the environmental factors and make a reasoned decision.' [Quoting
7 *Adler v. Lewis*, 675 F.2d 1085, 1096.] (9th Cir.1982)). (Emphasis original.) Decision-makers and the
8 public deserve better.^{40 41}
9

10 **III. THE 2035 COMPREHENSIVE PLAN IS THE IS THE EXISTING LAND USE PLAN,**
11 **THE EIS MUST ADDRESS THE PROPOSAL'S RELATIONSHIP WITH EXISTING LAND**
12 **USE PLANS, WHICH THE FEIS FAILED TO DO WTH RESPECT TO THE PROPOSED**
13 **ROOSEVELT EXPANSION AREA.**

14 Appellant's Closing Argument, pp. 41 – 43, explains the legislative history and the City's
15 Council's rejection of expansion of the Roosevelt Village based on the "principal" of a ten-minute walk
16 from a future light rail station. The City's Closing Brief, pp. 3-4, addresses this obliquely, "Appellants
17 erroneously contend that the City council either previously rejected urban village expansions or should
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19

20 ⁴⁰ The City also argues, pp. 47-49, that minor clerical errors are not material flaws and at pp. 47-49 that Appellants'
21 reliance on the Uptown EIS is insufficient to carry its burden of proof. The Appellant does not dispute a decision should not
22 be made on "minor flaws" alone. The 9th Cir. Circuit Court of Appeals explained, in *Oregon Environmental Council v.*
23 *Kunzman*, 817 F.2d 484, 492-3 (9th Cir. 1987): "The reviewing court may not 'fly speck' an EIS and hold it insufficient on
24 the basis of inconsequential, technical deficiencies. Northwest Indian Cemetery Protective Ass'n v. Peterson, 795 F.2d 688,
25 695 (9th Cir.1986) (quoting *Lathan v. Brinegar*, 506 F.2d 677, 693 (9th Cir.1974) (en banc)). But an EIS may be found
26 inadequate under NEPA if it does not " 'reasonably [set] forth sufficient information to enable the decisionmaker to consider
the environmental factors and make a reasoned decision.' " *Id.*

The "fly specks" mentioned in Appellant's Argument, such as Chapter 3.5's omission of Beacon Hill and omission
of NRHP data, are simply indicative of Chapter 3.5's lack of thoroughness. The issue, as the 9th Circuit emphasized, is that
Chapter 3.5 does not reasonably set out sufficient information to enable decision-makers to consider the environmental
factors and make a reasonable decision. See App.'s Closing Argument, p.35-36, fn. 33 (re "minor flaws").

⁴¹ With respect to City's argument re the Uptown EIS, it reflects, as does the University District EIS, that there are
reasonable ways to provide sufficient information so that decision-makers understand the impacts, which did not occur here.
See Appellant's Closing Argument, re the Uptown EIS, pp. 29-30, 35-40 and see pp.12- 13, *supra* (Uptown EIS and U.
District EIS).

1 | be prevented from undertaking expansions now."⁴² The City is incorrect with respect to both
2 | contentions.

3 | An EIS must address a proposal's "relationship to existing land use plans." SMC 25.444A
4 | (2)(a); WAC 197-11-444 (2)(b)(i). The existing land use plan here is the 2035 Comprehensive Plan.
5 | SMC 25.05.440E (4)(a) and WAC 197-11- 440(6)(d)(i) require the proposal to state how the proposal
6 | is consistent and inconsistent with the governing plan. The FEIS does not comply with these
7 | requirements.

8 |
9 | Here, there is specific and extensive legislative history concerning expansion of the Roosevelt
10 | Urban Village. The 2035 Comprehensive Plan language (Ex. 3, p. 25), GS [Growth Strategy]1.12
11 | states, include areas "*generally* within a ten-minute walk of light rail stations or very good bus service
12 | *in village boundaries.*" (Emphasis added.) The Plan does not say "outside" urban villages, but a
13 | discussion of this inconsistency is not found or explained in the FEIS. Importantly, the word,
14 | *generally*, has a context and meaning, which is also not discussed in the FEIS. The Director of DPD,
15 | Diane Sugimura, explained re the 2035 Comprehensive Plan's draft EIS, that "Proposed UV boundary
16 | expansions should follow street grid (preferably arterial), but not divide a cohesive neighborhood or
17 | street;" should consider "topography;" and "physical constraints or barriers that may impede travel by
18 | foot."⁴³ Ex. 50, cover page.

19 |
20 | But the FEIS states, p. vii, the expanded urban village boundaries, "*as studied* in the Seattle
21 | 2035 Comprehensive Plan," serve as the basis for the FEIS proposal. The FEIS nowhere states this
22 | "study" was not adopted and was actually rejected in the 2035 Comprehensive Plan, particularly with
23 | respect to the Roosevelt expansion area. It is a deliberately misleading statement.
24 |

25 | _____
26 | ⁴² Appellant has never argued that the City Council can be prevented from amending its Comprehensive Plan.

⁴³ Geoffrey Wendtland (8/23, day 14, Tr. p. 228:1-12) and Nicholas Welch (8/31, day 17, Tr. p6:15-24) agreed the
Roosevelt expansion area is a cohesive neighborhood. The map of the proposed expansion area shows it is not located along
an arterial, but on a small residential street. FEIS. App. H, pp. 69-71, Ex.s H-68 through H-70.

1 Rather than address this head-on, the City's Closing Brief segues (via fn., 17) to pp. 8-11,
2 discussing at p. 10, Ex. 268, Council Resolution 31612. This Resolution was adopted on November 17,
3 2015 (a year earlier than the adoption of the 2035 Comprehensive Plan). The City states, p.10, "The
4 Council endorsed implementation in mixed-use and multifamily zones, as well as limited *single family*
5 *zoned areas whose zoning would be changed*, and attached a map to the resolution showing the
6 general areas intended for implementation of MHA citywide." (Emphasis added.) The map,
7 attachment A, contains a version of the Roosevelt expansion area, shown by stripes. The expansion,
8 however, was rejected, never adopted in the 2035 Comprehensive Plan, neither within the body of the
9 Plan nor as a FLUM. See, Ex.156, City's Ans. To FRC's First Req. for Admissions, pp. 1-4 and Exs.
10 thereto. Nor was the proposed amendment to permit infill "near" urban villages adopted. *Id.* p. 4, Req.
11 12. The City and the FEIS do not discuss the actual Comprehensive Plan maps, nor the actual
12 Comprehensive Plan FLUM map. These are all inconsistent with the FEIS. The provisions the City
13 Council adopted and rejected are plainly inconsistent. It is one thing to state what the inconsistencies
14 are and explain why these are not valid, but it is not valid to ignore them altogether. The FEIS's failure
15 to discuss the proposal's relationship to the Comprehensive Plan policies addressed above, indeed to
16 the majority of the Comprehensive Plan policies and zoning regulations, violates SMC
17 25.05.440E(4)(a), WAC 197-11-440(6)(d)(i), SMC 25.444A (2)(a), and WAC 197-11-444 (2)(b)(i).⁴⁴
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21 The reason the FEIS does not bother to point out inconsistencies with the 2035 Comprehensive
22 Plan is that the City did not give a whit about the Plan. Its EIS maps were in process in during the
23 summer of 2016 and released as early as mid-October, 2016, *before* the Council's adoption of the 2035
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26

⁴⁴ Appellant adopts and incorporates by reference SCALE's Closing Argument, pp. 47-50, which addresses at greater length the SMC and WAC provisions cited above.

1 Comprehensive Plan in October 28, 2016.⁴⁵ The City went through the motions of public outreach, but
2 completely rejected resident's suggestions where upzoning could occur without impacts, such as
3 impact to historic resources.⁴⁶ The reason – the 10-minute walk was an unshakeable principal,⁴⁷ or, as
4 Mr. Weinman described with regard to other aspects of the EIS, the City's upzones were "baked in the
5 cake" from the beginning.⁴⁸
6

7 As addressed in each section above, the FEIS violates multiple SMC provisions, is inadequate
8 and unreasonable.

9 RELIEF REQUESTED

10 For the reasons stated above, and for the reasons addressed by other Appellants, the
11 MHA FEIS does not provide an adequate study of the environmental impacts to the neighborhoods
12 within the study area, including Ravenna-Cowen and the Roosevelt UV proposed expansion area.
13 Proposed alternatives 2, 3 and Preferred will cause known direct, indirect, and cumulative impacts to
14 the Ravenna-Cowen neighborhood, which are not analyzed in the FEIS. Appellant Friends of
15 Ravenna-Cowen requests the Hearing Examiner to remand the FEIS to the City with instructions to
16 prepare Supplemental EIS(s) as necessary to adequately address the environmental impacts and
17 mitigation for the four alternatives, including an assessment of the impacts and potential mitigations
18 that are associate with each area in the "project area" (urban villages, proposed expansion areas and
19 other areas outside the urban villages). Additionally, the Hearing Examiner is requested to specifically
20 remand the FEIS to the City with instructions to do a reasonable and adequate assessment of
21 environmental impacts, including cumulative impacts in the Roosevelt Urban Village and the
22
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25 ⁴⁵ Alex Gagnon Testimony, Tr. 7/24, day 7, p. 255:13-25, p. 56:1-21, p. of and Ex. 161; Nicholas Welch, 8/31, day
17, p.10:8-21.

26 ⁴⁶ Welch, Tr. p. 24:11:25, p. 25:1-3, p. 32:22-25, p. 33:2-25, p. 34: 1-10. Mr. Weinman testified it would not have
been unreasonable to reshape the lines to avoid clusters of historic resources. 9/7, day 19, Tr. p. 63:,20-25, p.64: 1-17.

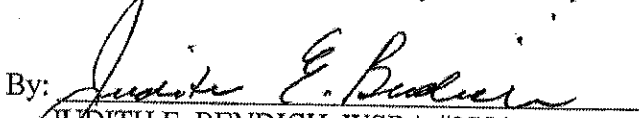
⁴⁷ Welch, Tr. 8/31, day 17, p. 28:18-24; p. 31: 1-14

⁴⁸ Tr. 9/7, day 7, p. 67:21 – 25.

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proposed expansion area of the Roosevelt Urban Village, as well as the impacts, including cumulative impacts, to Ravenna Park.

Respectfully submitted this 10th day of October, 2018.

By: 
JUDITH E. BENDICH, WSBA #3754
Authorized Representative for Appellant
Friends of Ravenna-Cowen

