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BEFORE THE HEARING EXAMINER  
FOR THE CITY OF SEATTLE

In Re: Appeal by  
Seniors United For Neighborhoods  
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 REBUTTAL  
ARGUMENT

**I. INTRODUCTION**

Throughout the closing brief and the hearings the City has defended the MHA FEIS’s limited use of alternatives and limited level of information the EIS provided to decisionmakers and the public. It also has tried to defend against any alternatives that included elements that would provide more information for the public and decisionmakers, even when those elements of alternatives would meet the City’s MHA EIS objectives and create fewer environmental impacts, both critical bases for SEPA alternatives.

*Defending Less Information*

1 One major example of defending less information concerns historic resources where the City  
2 talks about the “peril of too much detail.” (at 44) and “Virtually the entire city ...is shrouded in a  
3 series of colored dots.” (at 44) These colored dots represent the thousands of historic resources in  
4 Seattle that would be impacted by the City’s proposal (and historic resources is an essential part of  
5 SEPA analysis), so the impacts should be clearly shown so that decisionmakers have the information  
6 needed to make a fully informed decision. Instead the City is essentially saying “Don’t look at the  
7 full environmental impact on historic resources throughout the City” and they are saying “only look  
8 at a fair more restricted group of historic resources that is many times smaller than the impact on all  
9 historic resources.”

11 It is also ironic that the City rejects “a series of colored dots,” because that is exactly what  
12 they did on page 50 of Appendix A, where they showed redevelopable parcels.

14 While it is true that showing over 20,000 colored dots on about two thirds of an 8.5” x 11”  
15 paper is difficult to discern enough detail, both the historic resources and the redevelopable parcels  
16 examples show how essential it is not only to provide the information, but to see the impacts at a  
17 sufficiently detailed scale as to determine what the impacts are. The City’s EIS has failed on both  
18 counts.

20  
21 *Not Presenting Essential Information The City Already Had*

22 Though the City showed the location of redevelopable parcels in a method that didn’t allow any  
23 ability to distinguish where exactly those parcels were, it failed, at any level, to present any other  
24 information in the EIS from the vast store of data it had about parcels that were likely to redevelop.  
25 This included over 30 columns of different specific data on over 10,000 single family parcels and  
26 over 13,000 non single family parcels in the Preferred Alternative and similar amounts in

1 Alternatives 3 and 2. This failure to provide essential data necessary to make decisions about the  
2 impacts of this proposal is an egregious omission.

## 3 4 **II. ALTERNATIVES**

### 5 6 7 **OVERVIEW OF LEGAL REBUTTAL**

8 Rather than be limited to the alternatives in the City’s specific proposal, as the City insists,  
9 SEPA requires the City to describe proposals in terms of objectives, not specific solutions. SMC  
10 25.05.060.C.1.c. Then, following those objectives, alternatives should “attain or approximate the  
11 objectives of the proposal.” SMC 25.05.440.D.2.

12  
13 While the City’ quotes SMC 25.05.442.D in a way that limits alternatives by quoting only  
14 up to the section that says a nonproject EIS “may be limited to a discussion of alternatives which  
15 have been formally proposed, it fails to quote the full the full section which concludes “or which are,  
16 while not formally proposed, reasonably related to the proposed plan.” The elements of the appellants  
17 alternatives fit with being reasonably related to the proposed plan by meeting the objectives of the  
18 plan.

### 19 20 21 **SPECIFIC REBUTTALS TO THE CITY’S CLOSING ARGUMENTS**

#### 22 23 **Inadequacy of Current Proposal**

##### 24 *Nonproject Flexibility Due to Less Information Does Not Apply*

25 The EIS states that SEPA accords the lead agency “more flexibility in preparing [nonproject]  
26 EISs because “there is normally less detailed information available on their environmental impacts”

1 and allows special provisions for nonproject proposals to deviate from the general EIS content  
2 requirements as a result of that less detailed information. (at 2)

3 *Rebuttal:* The situation of “less detailed information,” does not apply here because the City not only  
4 had significant detailed information about the redevelopable parcels, but also had information about  
5 projects that have been permitted. Unfortunately, the City did not present the information they had to  
6 inform decisionmakers and the public of their impacts.  
7

8  
9 *Unreasonable Equates to Inadequate*

10 The City states “Moreover, to prevail in their appeal, Appellants must establish that the  
11 FEIS’s analysis is unreasonable,” then cites defends this statement about unreasonableness by the  
12 footnote saying that “appellant’s expert witness “did not testify definitively that studies were  
13 inadequate”.” (at 2, footnote 8)  
14

15 *Rebuttal:* The City’s equates reasonableness with adequacy (or unreasonableness with inadequacy),  
16 thereby establishing inadequacy/adequacy as a basis to establish unreasonableness/reasonableness.  
17

18 The City states that the proposal requires that the EIS include a reasonably thorough  
19 discussion of the significant aspects of the probable environmental consequences of an agency  
20 decision. When impacts are disclosed at a general level of detail, the rule of reason is satisfied and  
21 additional detail is not required. (at 2)  
22

23 *Rebuttal:* The City fails to acknowledge that the level of detail required is based on the  
24 nature of the proposal and the extent of the impacts. Since the impacts of this proposal are large,  
25 there should be greater detail to reflect that. Also if the discussion is inadequate to provide the  
26

1 necessary information about impacts to decisionmakers, then it is not a “reasonably thorough  
2 discussion.

3  
4 *Residential Small Lot Is Not the Same as Single Family*

5 MHA will not eliminate single family zoning in urban villages. While the proposal will rezone  
6 single family properties in the urban villages, a significant portion of those rezones will be to  
7 “Residential Small Lot,” which is another type of single family zone. (at 3)

8  
9 *Rebuttal:* p3.128 says “Residential Small Lots (RSL) zones are broken out from Single Family zones  
10 due to some differences in character, although RSL is technically a single family land use and zone.”

11 As is partially recognized in this statement, RSL significantly differs from current single family  
12 zoning in that it will allow more buildings on a lot, much taller buildings, townhouses or rowhouses  
13 that differ significantly in character than the rest of the single family neighborhoods where they  
14 would be built. An even more significant issue that appellants with RSL is that RSL units risk  
15 demolishing single family homes that would likely be the only affordable homes for low income  
16 immigrants and families of color and would replace them with unaffordable units.

17  
18  
19 *Impacts on Areas Outside Urban Villages*

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21 The City attempts to say that the FEIS analyzes impacts of the entire study area including  
22 areas outside urban villages, in multifamily and commercial zones. (at 4)

23 *Rebuttal:* While only a few EIS pages show the general locations of areas outside urban  
24 villages on maps, the analysis, already limited for the urban villages, is far more limited for the areas  
25 outside those urban villages. This is despite the fact that 30% of units will be outside of urban  
26

1 villages (Exhibit 2-16, FEIS page 2.40)., a major portion of all units, and does not include the most  
2 essential information about those areas outside urban villages.

3 It also does not address either what area the development is expected to go nor where the affordable  
4 housing is expected to be. For instance, the FEIS does not show whether the housing will likely be  
5 built in significant numbers along Rainier Ave, in West Seattle, in Lake City or not near any urban  
6 village—all of which would make a large difference in impacts on many levels.  
7

### 8 9 *The Necessity of Greater Granularity*

10 The EIS states at 1 that “the Appellants advance approaches that are unreasonable because they  
11 demand a level of detail that is misleading, unavailable or inappropriate for a non-project action.”  
12

13 *Rebuttal:* As stated above, it is the absence of information that can be misleading, not the  
14 inclusion of accurate data. Also as stated above, there was tremendous information available in the  
15 redevelopable parcel files, but the information was not used, though it would have provided essential  
16 information for decisionmakers to make fully informed decisions. Additionally the information  
17 would be appropriate for fully informed decisions, while leaving the information out of the EIS  
18 would be inappropriate. Given these circumstances, an alternative that included this information  
19 would be more reasonable/adequate than an alternative such as the current one, that neglected to  
20 include that information.  
21

### 22 23 *Analysis of Urban Villages Was Sparse*

24 Appellants ignore the fact that the FEIS is replete with analyses of specific urban villages,  
25 when such analysis was appropriate and practically attainable. For example, in the land use analysis,  
26 each urban village has a dedicated section describing potential impacts under each alternative. The

1 parks and open space analysis identified parks and open space availability for each urban village  
2 under existing conditions, the no action alternative, and all action alternatives. The biological  
3 resources analysis provides maps showing critical areas in every urban village. And in sections  
4 where the FEIS did not analyze every urban village in detail, the FEIS identified specific urban  
5 villages with specialized conditions or a higher potential for impacts.  
6

7 *Rebuttal:* There were a limited number of situations where the information was provided and  
8 a limited amount of information in those areas where it was provided. Appellants feel the EIS is  
9 inadequate because the essential information needed to make an informed decision is lacking. Often  
10 the information was not only attainable, but available, though it was left out even when it was not  
11 only appropriate, but necessary for making an informed decision.  
12

13  
14 *Weinman Does Not Do A Parcel by Parcel Analysis in Nonproject EISs*

15 The FEIS states: Specifically, the land use analysis provides mapping and accompanying text  
16 that provides detailed information at a parcel-level. (at 7) and refers to Weinman at 7, footnote 36.

17 *Rebuttal:* Weinman’s testimony is exactly the opposite of what the reference to him says.  
18 Weinman states “in my practice I don’t get down to parcel-by-parcel analysis for non-project EISs.”  
19

20  
21 *Uptown and University District Are MHA EISs and Can Be Models for other MHA EISs*

22 The City initiated those EISs for reasons unrelated to MHA and nothing about MHA  
23 prompted the City to conduct neighborhood-specific EISs in those instances. (at 8)

24 *Rebuttal:* These are the EISs that the City did for MHA for these neighborhoods—and the  
25 City recognizes that these areas don’t need to be addressed again because these are the EISs for these  
26 neighborhoods. It isn’t relevant that the reason they were initiated was different, if in fact that is the

1 case. The critical element is that these are MHA EISs—and they also provide a reasonable model for  
2 other MHA EISs.

3  
4 *Alternative MHA EISs Would Be More Adequate and Not Cost Prohibitive*

5  
6 The City states (at 8) that the logical outcome of Appellants’ argument would be exorbitantly  
7 expensive and could total as much as \$13 million dollars to implement MHA throughout the City.

8 *Rebuttal:* The level of detail in the redevelopable parcels file would provide the basis for  
9 much of the information necessary. That information has already been collected so there would be  
10 no additional cost. Also, the \$13 million the City cites as a potential cost does not account for the  
11 possibility of saving money by doing a few similar neighborhoods together.

12  
13  
14 *Appellant Alternatives Are Designed to Meet the Objectives, Not Alternatives That Wouldn’t Attain*

15 *The Objectives*

16 Footnote 46 on page 9 says “Courts upheld exclusion of alternatives that would not have  
17 attained the agencies objectives.” (at 9)

18 *Rebuttal:* It would be reasonable to exclude alternatives that would not have attained the  
19 objectives, but not reasonable to exclude alternatives that *would* obtain the objectives and at less  
20 environmental cost, two of the elements (along with more adequate information) of alternatives  
21 proposed by appellants.

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23  
24 *Alternatives That Could Create Fewer Impacts*

25 The FEIS states that it was not required to consider the alternatives suggested by Appellants  
26 that do not involve increases in development capacity—such as simply requiring developers to



1 provide or pay a fee for affordable housing without the city changing zoning (as suggested by  
2 various Appellant witnesses including Mr. Sherrard), or the strategies for increasing affordable  
3 housing outlined in the report by the Community Housing Caucus. Nor was the FEIS required to  
4 consider approaches that encourage developers to provide affordable housing voluntarily (rather than  
5 imposing mandatory affordable housing requirements), approaches that require on-site performance  
6 alone (rather than providing a payment option), or approaches that would only apply in certain  
7 neighborhoods—all as suggested by Mr. Levitus. (at 11)

9 *Rebuttal:* As the City later acknowledges at page 12 and footnote 62, the City *would* be  
10 required to choose alternatives that would best reach the objectives and with a reduced level of  
11 environmental impacts. Under the SEPA rules, “[r]easonable alternatives shall include actions that  
12 could feasibly attain or approximate a proposal’s objectives, but at a lower environmental cost or  
13 decreased level of environmental degradation.” SMC 25.05.440.D.2 and WAC 197-11-440(5)(b).  
14 All of these elements would apply to the suggested alternatives.  
15

16  
17 *Appellants Don’t Attempt to Ask to Consider “Every Conceivable Alternative”*

18 The FEIS states that: Crucially, SEPA does not require that the FEIS consider every  
19 conceivable alternative. The word “reasonable” is intended to limit the number and range of  
20 alternatives. The alternatives evaluated in the FEIS give decision-makers the information needed to  
21 make choices about other combinations of zoning changes. (at 12)

22  
23 *Rebuttal:* While the City states on pages 12, 14, and 16—and frequently mentioned during  
24 the hearings--that SEPA does not require an FEIS to consider every conceivable alternative,  
25 appellants have never asked the City to consider “every conceivable alternative,” but only to  
26 consider alternatives that they propose that can meet the objectives with reduced environmental

1 impact and that can create more affordable housing with less displacement—exactly what the  
2 alternatives by the appellants were designed to do.

### 3 4 **III. AFFORDABILITY, DISPLACEMENT**

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6 The core of the whole EIS is about affordable housing and while the City said it didn't need  
7 to address the issue (at 36) SMC 25.05.444.B.2.b states housing is an “element of the environment”;  
8 SMC 25.05.440.E.5 shows “EIS’s shall also discuss . . .housing”; and SMC 25.05.440.E.6.a  
9 (analysis “in every EIS unless eliminated by the scoping process . . . economic factors”). The “level  
10 of detail . . . shall be proportionate to the impacts the proposal may have if approved.” SMC  
11 25.05.440.E.6.a.  
12

#### 13 14 *50/50 Development or Not*

15 Footnote 89 on page 17 states the “The FEIS assumed that 50% of developers would  
16 perform on-site and 50% would pay in-lieu fees, and Mr. Mefford’s uncontroverted expert testimony  
17 was that this was a reasonable assumption given how the City established the relative economic  
18 burden of the performance and payment requirements. (Tr. vol. 10,  
19 118:18–119:17, July 27, 2018 (Mefford).)  
20

21 *Rebuttal:* Exhibit 3.1-39 on page 3.67 of the EIS shows something very different from 50/50  
22 onsite performance and payment. Instead it shows mostly 4-13 times as many payment units as  
23 performance units.  
24

#### 25 *Social Equity Won't Be Reached If Faulty Analysis of Growth*

26

1 On the contrary, the overwhelming evidence presented at hearing demonstrates that  
2 payment-funded units are unlikely to be concentrated in a manner contrary to social equity. Emily  
3 Alvarado testified that the Office of Housing has a long track record of investing in areas with high  
4 risk of displacement, high access to opportunity, and high land costs. Ms. Alvarado also explained  
5 the City policies that would preclude concentration of units in low cost areas, as well as the tools  
6 available to the City to obtain well-located land less expensively than private developers could. (at  
7 17)  
8

9 *Rebuttal:* If the expectation is 50/50 payment performance, but the payment units are  
10 actually many times that then the City will almost certainly struggle to build that level of housing,  
11 particularly in more expensive areas. Also the increased cost of land, increased cost of housing, and  
12 increased cost of labor, will make the stationary level of income from each unit create dwindling  
13 amount of affordable housing, particularly with the reduced level of Low Income Housing Tax  
14 Credit money and other housing funds.  
15

16  
17 *Only A Tiny Amount of Parcels Are at 11%, All Other Are Less*

18 *Rebuttal:* The City makes a number of references to 11% affordable housing, except for one  
19 passing reference to “up to 11%. It then uses that percentage as an attempt to insinuate that that level  
20 is the standard level of affordable housing (“Mr. Mefford testified that increasing requirements from  
21 11% towards 25% would result in decreasing feasibility along a continuum” [at 19] and “the FEIS  
22 was not deficient for failure to explain why requirements between 11% and 25% were not evaluated  
23 based on feasibility considerations.”) Yet only an infinitesimal amount of parcels would require 11%  
24 affordable units—only 10 parcels along Harrison St in the Madison-Miller neighborhood.  
25  
26 Everything other than those 10 parcels would have less than 11% affordability requirement, often

1 much less, down to 5%. Commercial areas are just one example of that, with only two parcels in the  
2 whole study area exceeding 5% affordability. This lower affordability level also greatly reduces the  
3 income from the in-lieu fees that would be used toward generating affordable units.  
4

5  
6 *The City Considered Lower Requirements, But Not Higher*

7 The FEIS states that: The City also considered input from other stakeholders that  
8 requirements at an even lower level were appropriate. (at 19)

9 *Rebuttal:* By failing to listen only to the stakeholders asking for lower requirements and not  
10 the many stakeholders asking for higher requirements, the City failed to more quickly reach the goal  
11 of more affordable housing and at lesser impacts due to requiring less development.  
12

13  
14 The FEIS states: Mr. Wentlandt explained and demonstrated how the maps (both in  
15 Appendix H and the interactiveonline map) clearly and comprehensively conveyed the information  
16 as to the proposed development capacity increases on a parcel-by-parcel basis. (at 20, footnote 105)

17 *Rebuttal:* The maps only show parcel-by-parcel in that they show parcel boundaries within the  
18 online map, but they fail to include the other information about parcels that the City has, which  
19 would be critical for understanding impacts.  
20

21  
22 *The EIS Could Have Provided Redevelopment Information*

23 The EIS includes paragraphs that describe specific urban villages with the most significant  
24 allocations of tiers of zoning changes that can be read in conjunction with the maps in App. H or the  
25 webmap to ascertain neighborhood-specific impacts. It is a reasonable approach and adequately  
26 informs decision-makers of the impacts of the non-project action. (at 15)

1           *Rebuttal:* Providing a map with general zoning changes is very different from providing that  
2 same map with specific parcels that show the likely potential to redevelop. The City could have  
3 created maps in the FEIS or included the information from page 50 of Appendix A on the webmap  
4 to allow the public and decisionmakers to see where the likely redevelopment would be.  
5

6  
7           *Physical Displacement Not accurately Analyzed*

8           The City states that the FEIS adequately analyzed physical displacement impacts by using  
9 two methods: the “parcel allocation” approach and the “historic trends” approach, with the former  
10 being lower and the latter higher—and writing that Mr Ramsey explains that the higher “historic  
11 Trends” number overstates the level of displacement.

12 (at 34)

13           *Rebuttal:* While the EIS does not show a parcel allocation model number for the Preferred  
14 Alternative, page 3.71 shows says that demolition estimates are within the range of alternatives 2  
15 and 3 which are 1,420 and 1,582 respectively. The Historical Trends estimate is 2,980, but  
16 displacement from already permitted projects is 1,234. If displacement from projects was to continue  
17 at the same pace, the higher Historic trends” would be greatly understated, not overstated.  
18  
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21           **EIS Statements About Demolitions/Displacement Are Inadequate**

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23           *TRAO Is Not Adequate to Show All Low-Income Displacement Demolitions*

24           The EIS states that it used data from the Tenant Relocation Assistance Ordinance (TRAO) to  
25 determine the level of displacement of people earning less than 50% of AMI. (at 34)  
26

1           *Rebuttal:* As explained in Mr Ward’s exhibit 52, page 3, there are 10 holes in the “bucket” of  
2 TRAO data, meaning that the TRAO data does not hold water, is not adequate. An absence of other  
3 data does not make the TRAO data any more valid. If data is inadequate, it is inadequate whether or  
4 not there is other data.  
5

6  
7 *Rent Levels of Buildings Could Be Determined*

8           Mr. Ramsey testified that there is no data on the rent levels of every building being  
9 demolished, and no guarantee that the rent for currently inexpensive buildings would not increase.

10 (at 35)

11           *Rebuttal:* The City has done numerous studies over the years to determine rent levels and  
12 displacement. The City could easily do those studies again. In addition there are methods of  
13 determining rent that been requested by activists for many years, but the City has not done them.  
14

15  
16           In addition, he pointed out that the FEIS recognizes that older buildings tend to have lower  
17 rents, the parcel allocation approach captures the greater likelihood of older buildings being  
18 demolished as opposed to newer buildings, and the FEIS provides specific estimates of demolitions  
19 for all of the alternatives. (at 35)

20  
21           *Rebuttal:* Older buildings do tend to have lower rents, but they are also the buildings that  
22 tend to be bought and demolished for new unaffordable buildings. The parcel allocation approach to  
23 demolitions has already been rebutted and also invalidates the specific estimates of demolitions  
24 which it depends on.  
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26 *Increased Housing Supply not Reducing Rents*

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At 37 the EIS states that increased housing supply is likely to reduce upward pressure on market-rate housing costs and reduce economic displacement in the city and region.

*Rebuttal:* The areas that have seen the greatest development (Downtown, South Lake Union, Belltown) are where rents have risen higher and more substantially than other urban villages and have been *a*, if not *the*, major factor in rents rising throughout the City. Exhibit 259