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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In Re: Appeal by

SAVE MADISON VALLEY

of Decisions Re Land Use Application, Design
Review, and Code Interpretation for 2925 East
Madison Street, Projects 3020338 and 3028345

Nos. S-18-011; MUP-18-020

APPLICANT’S MOTION TO DISMISS

I. INTRODUCTION AND RELIEF REQUEST

On July 23, 2018, the City issued the Director’s MUP Decision and Director’s Code Interpretation for Applicant TVC Madison Co LLC’s (“Velmeir’s”) mixed-use development of a PCC grocery store, townhomes and residential apartment units. The project is located along E. Madison St. in Seattle’s Madison Valley neighborhood.

Save Madison Valley’s (“SMV’s”) administrative appeal of the MUP Decision and Code Interpretation is limited by the Code, which restricts the allowable content of SMV’s appeal and the Hearing Examiner’s jurisdiction to SDCI Type II decisions and issues raised in a Director’s Code Interpretation.

The MUP Decision included three components: (1) design review conditions and approval under Chapter 23.41 SMC, (2) the City’s procedural compliance with SEPA and (3) the imposition of SEPA conditions. The Code Interpretation explained the project’s code compliance with the Code on three issues: (1) the project meets the criteria for steep slope relief because the embankment that the property is located upon was created by man-made fill in association with

1 City of Seattle street improvements and lawful prior grading (SMC 25.09.180.B.2); (2) because
2 the project qualifies for steep slope relief, the critical areas requirements for vegetation retention
3 are not applicable (25.09.060.B, 25.09.180.D, 29.05.320.A.3.b and 25.09.320.A.3.d), and (3) the
4 Code allows selection of the height measurement methodology at the applicant's discretion and
5 the architect's height calculations were correct and confirmed by SDCI (23.86.006.A.2).

6 Only these issues are subject to appeal. All other issues are outside of the Hearing
7 Examiner's jurisdiction. This dispositive motion requests that the Hearing Examiner dismiss the
8 SMV appeal issues that are outside of the Hearing Examiner's jurisdiction, or otherwise not
9 appropriate for appeal.

10 II. LEGAL AUTHORITY

11 Rule 3.02(a) of the Hearing Examiner Rules of Practice and Procedure (HER) provides
12 that an appeal "*may be dismissed without a hearing if the Hearing Examiner determines that it*
13 *fails to state a claim for which the Hearing Examiner has jurisdiction to grant relief or is without*
14 *merit on its face, frivolous, or brought merely to secure delay.*" A motion to dismiss is treated as
15 a motion for summary judgment when matters outside the pleadings are included with the motion
16 and considered by the decision maker. *Sea-Pac v. United Food and Commercial Workers Local*
17 *Union 44*, 103 Wn.2d 800, 802, 699 P.2d 217 (1985).

18 Quasi-judicial bodies, like the Hearing Examiner, may dispose of an issue summarily
19 where there is no genuine issue of material fact. *Kettle Range Conservation Grp. v. Department*
20 *of Natural Res.*, 120 Wn.App. 434, 456, 85 P.3d 894 (2003). HER 1.03(c) states that for
21 questions of practice and procedure not covered by the HERs, the Examiner "may look to the
22 Superior Court Civil Rules for guidance." Civil Rule 56(c) provides that a motion for summary
23 judgment is properly granted where "there is no genuine issue as to any material fact and ... the
24 moving party is entitled to a judgment as a matter of law." The moving party must demonstrate
25 the absence of a dispute over an issue of material fact. *City of Lakewood v. Pierce Cty.*, 144
26 Wn.2d 118, 125, 30 P.2d 446 (2001) (citations omitted). Once the moving party demonstrates

1 the absence of an issue of material fact, the burden shifts to the nonmoving party to “set forth
2 specific facts showing that there is a genuine issue for [hearing].” *Young v. Key Pharm, Inc.*, 112
3 Wn.2d 216, 225-226, 770 P.2d 182 (1989).¹

4 III. ARGUMENT

5 A. Appeal Issues 2(a), 2(c), 2(d), 2(e), 2(f), and 4(a) Should Be Dismissed Because They 6 Are Not Appealable Decisions That Fall Within the Examiner’s Jurisdiction.

7 The Hearing Examiner does not have jurisdiction over appeal issues 2(a), 2(c), 2(d), 2(e),
8 2(f), and 4(a) because they are not administratively appealable decisions. *Chaussee v.*
9 *Snohomish County Council*, 38 Wn. App. 630, 636, 689 P.2d 1084 (1984) (hearing examiner
10 jurisdiction limited to that which is statutorily conferred). SMC 23.76.022.A restricts
11 administrative appeals to Type II decisions listed in 23.76.006.C and Type I decisions that
12 become administratively appealable through a land use interpretation. *End the Prison Industrial*
13 *Complex et al. v. King County et al.*, 2018 Wash. App. LEXIS 1277, p. 13 (unpublished May 29,
14 2018) (upholding Seattle Hearing Examiner’s determination that “SMC 23.76.006.C set forth the
15 exclusive list of Type II decisions subject to administrative appeal to the Examiner”).

16 The Director’s Design Review *decision* is appealable. The Design Review Board’s
17 (“DRB’s”) process for making the recommendations that informed the Director’s decision is not
18 appealable. SMC 23.76.006.C.2.e. The Hearing Examiner does not have jurisdiction to review
19 the DRB’s procedures, deliberations, or recommendation, because these iterative steps are not
20 appealable Type II decisions.

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25 ¹ See, *In the Matter of the Appeal of Mid-Eastlake Neighbors, et al.*, “Order on Applicant’s and Appellant’s
26 Dispositive Motions,” Hearing Examiner File MUP-15-027(DR), November 11, 2015 (articulating standards for
motions to dismiss and motions for summary judgment before the Hearing Examiner).

1 The Seattle Hearing Examiner has already decided this issue in a prior appeal brought by
2 SMV's attorney:

3 Contrary to the Appellant's assertions, the DRB does not have decision-making
4 authority. Instead, it is a recommending body, and the Director retains final
5 decision making authority with regard to design review and to SEPA.

6 *In re Appeal by Escala Owners Association of Decisions Re Land Use Application for 1933 5th*
7 *Avenue, Project 3019699*, at p. 20, ("*Escala*").²

8 Thus, SMV may not administratively appeal the DRB's purported procedural and
9 substantive shortcomings that resulted in a recommendation to the Director who, in turn,
10 reviewed the DRB recommendation and made the final, appealable Director's MUP decision and
11 SEPA determination. See, SMC 23.76.022.A (identifying appealable decisions); SMC
12 23.76.006.C (enumerating appealable Type II decisions).

13 Appeal issue 2(a) argues that the Design Review "process" violated SEPA for certain
14 enumerated reasons. SMV Appeal, p. 5:4. Issue 2(a) argues that "[t]o the extent the Seattle
15 Code requires [the codified design review process], we challenge the legality of those provisions
16 as well." *Id.*, p. 5:12-13.

17 Again, for reasons of subject matter jurisdiction, the design review "process" cannot be
18 administratively appealed because it does not result in any final appealable decision. The design
19 review process results in a recommendation to the Director. In addition, SMV cannot challenge
20 the codified design review process before the Hearing Examiner. This is an impermissible
21 collateral attack on the Code. *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 4
22 P.3d 123 (2000) (petitioner barred from collaterally attacking rezone decision).

23 Appeal issue 2(c) argues that the proposal is inconsistent with the DRB's "direction and
24 requirements." SMV Appeal, p. 5: 18-20. The Director's decision imposes direction and
25 requirements; the DRB only makes a recommendation to the Director. *Tugwell v. Kittitas*

26 ² A copy of the *Escala* decision is appended as Exhibit A.

1 County, 90 Wn. App. 1, 8, 951 P.2d 272 (1997) (planning commission's recommendation on
2 rezone was not a final land use decision).

3 Appeal issue 2(d) argues that the Design Review recommendation was in error because
4 the DRB "process did not allow for meaningful public participation" and the DRB "may have
5 violated SMC 23.41.014 to the extent that members of the Board did not review the written
6 public comments ..." SMV Appeal. P. 5:18-20 (emphasis added). Again, issues regarding DRB
7 public participation or review of public comments should be dismissed because these aspects of
8 the DRB's process are not a Type II decision that is within the Examiner's jurisdiction.

9 Appeal issue 2(e) argues that the Design Review recommendation was in error "because
10 they were not informed by environmental review as required by SEPA." SMV Appeal p. 5:26.
11 SEPA applies to a governmental decision maker's final decision on a project. WAC 197-11-
12 055(2)(a)(ii)("[p]reliminary steps or decisions are sometimes needed before an action is
13 sufficiently definite to allow meaningful environmental analysis); WAC 197-11-050(4)(c)
14 (timing of SEPA process "does not preclude agencies or applicants from preliminary discussions
15 or exploration of ideas and options prior to commencing formal environmental review"); WAC
16 197-11-655(2) (agency should consider comments and environmental documents in making a
17 SEPA final decision).

18 As the Hearing Examiner found in the *Escala* case, the Code establishes the DRB as a
19 recommending body with the Director retaining "final decision making authority with regard to
20 design review and to SEPA." *Escala*, p. 20, ¶23. Thus, Issue 2(e) must be dismissed because
21 the DRB's recommendations and procedures are not appealable Type II decisions.

22 Appeal issue 2(f) argues that "the [DRB] recommendation conflicted with the conditions
23 and mitigation that should have been applied by SDCI pursuant to SEPA and because the
24 *recommendation* itself violated SEPA." SMV Appeal, p. 6:3-5 (emphasis added). Issue 2(f)
25 must be dismissed because the DRB's recommendation is not an appealable Type II decision.
26

1 In Issue 2(f), SMV also argues that SDCI should have imposed SEPA conditions during
2 the project review, which includes design review. This argument is inconsistent with the Code's
3 consolidated review permit process. See e.g., SMC 23.76.002 and .004 (City issues integrated
4 SEPA and land use decisions). It is also inconsistent with state law. See e.g., RCW 36.70B.060
5 and WAC 365-196-845. Finally, the argument amounts to a non-appealable challenge to the
6 Code's integrated project review procedures, which is an independently sufficient reason to
7 dismiss Issue 2(f).

8 Appeal issue 4(a) raises issues regarding the City's Tree Protection Ordinance, Ch. 25.11
9 SMC. On October 25, 2016, following extensive analysis by the project arborist and site visits
10 by City staff, SDCI determined that Velmeir's project complied with the Tree Protection
11 Ordinance.³

12 There is no Code provision that transforms this technical administrative decision on the
13 applicability of Ch. 25.11 SMC into a decision that is subject to appeal. The Tree Protection
14 Ordinance (Ch. 25.11 SMC) is not enumerated as an appealable Type II decision under SMC
15 23.76.004.C. and Ch. 25.11 SMC is not subject to code interpretation. SMC 23.88.020
16 (restricting interpretation to development regulations in Title 23 or Chapter 25.09). Therefore,
17 because the Code does not authorize the Hearing Examiner to hear appeals related to the
18 application of Ch. 25.11 SMC, SMV's Tree Protection Ordinance issues should be dismissed for
19 lack of subject matter jurisdiction.

20 In summary, appeal issues 2(a), 2(c), 2(d), 2(e), 2(f), and 4(a) should be dismissed as a
21 matter of law because they are not administratively appealable. SMC 3.02.115.B (restricting the
22 Hearing Examiner's authority to appeals as authorized by Code); SMC 23.76.022.A (restricting
23 administrative appeals to Type II decisions listed in 23.76.006.C and Type I decisions that
24 become administratively appealable through a land use interpretation).

25
26 ³ A copy of SDCI's decision on the applicability of Ch. 25.11 SMC is appended as Exhibit B.

1 **B. Appeal Issue 2(b) Should Be Dismissed for Failure to State a Claim Upon Which**
2 **Relief Can Be Granted and Because SMV's Appeal is Insufficient on These Issues.**

3 SMV's "clarified" appeal Issue 2(b) ("Revised Issue 2(b)") now provides an even longer
4 laundry list of allegedly violated design guidelines, and it again attacks the DRB's actions in
5 making its recommendation to the Director:

6 The East Madison Street Proposal is inconsistent with the Citywide Design
7 Guidelines CS1-B2, CS1-B3, CS1-C1, CS1-C2, CS1-D1, CS1-D2, CS1-E2, CS2-
8 A1, CS2-A2, CS2-B1, CS2-B2, CS2-B3, CS2-D1, CS2-D2, CS2-D3, CS2-D4,
9 CS2-D5, CS3-A1, CS3-A3, PL1-A1, PL1-As, DC1-B1, DC1-C4, DC2-A1, DC2-
10 A2, DC2-C3, and DC3-B3, DC3-C1, DC3-C3. SDCI and the Design Review
11 Board and misapplied and misconstrued these Design Guidelines when it
12 recommended approval of the Proposal. SDCI erred when it concluded that the
13 decision and recommendation of the Design Review Board was consistent with
14 the Design Guidelines.

15 SMV Clarification of Issues, p. 5:21-26 (emphasis added).

16 The portion of Revised Issue 2(b) that relates to the DRB's application or construction of
17 the Design Guidelines in its recommendation is subject to dismissal, because these DRB actions
18 do not constitute an appealable Type II decision. SMC 23.76.022.A (limiting appeals to Type II
19 decisions and issues raised in a land use interpretation).

20 The Hearing Examiner should also dismiss the remainder of Revised Issue 2(b), which
21 provides that "SDCI erred when it concluded that the decision and recommendation of the
22 Design Review Board was consistent with the Design Guidelines."

23 As the Examiner correctly pointed out in her September 28, 2018 Order on Motion for
24 Clarification, SMC 25.05.680.B.2 requires that SEPA appeals "set forth in a clear and concise
25 manner the alleged errors in the decision" and both SMC 23.76.022.C.3.a and Hearing Examiner
26 Rule 3.01(d)(3) required that SMV's appeal set forth the appellant's "specific objections" to the
27 challenged decision. Order, p. 1.

28 Here, SMV lists 29 Design Guidelines that the project allegedly violates without
29 providing any factual explanation of the project's alleged inconsistencies with each of the 29

1 enumerated guidelines. Despite having had two opportunities to get it right, this laundry list
2 approach does not give Velmeir the fair notice that is required by Washington law. *Pacific*
3 *Shooting Park Ass'n v. City of Sequim*, 158 Wn.2d 342, 352-3, 144 P.3d 276 (2006) (insufficient
4 pleadings cannot survive summary judgment).

5 In *Dewey v. Tacoma Sch. Dist.*, 95 Wn. App. 18, 23, 974 P.2d 847 (1999) the court
6 explained that “[a]lthough inexpert pleading is permitted, insufficient pleading is not” citing
7 *Lewis v. Bell*, 45 Wn. App. 192, 197, 724 P.2d 425 (1986). “A pleading is insufficient when it
8 does not give the opposing party fair notice of what the claim is and the ground upon which it
9 rests.” *Lewis*, 45 Wn. App. at 197.

10 The portion of Revised Issue 2(b) related to the Director’s determination that the DRB
11 acted inconsistent with the Design Guidelines is insufficient and therefore ripe for summary
12 dismissal.

13 **C. Appeal Issue 1(e) Should be Dismissed Because SDCI’s Exercise of Substantive**
14 **SEPA Authority Is Discretionary.**

15 Issue 1(e) alleges that SDCI failed to exercise its substantive SEPA authority to mitigate
16 alleged project impacts. This issue fails because SDCI’s exercise of substantive SEPA authority
17 is discretionary. *Escala*, at 17, ¶14 (“[t]he Department’s substantive authority to mitigate the
18 height, bulk and scale impacts is discretionary. . . .”).⁴ See, SMC 25.05.660.A (“Any
19 governmental action on public or private proposals that are not exempt *may* be conditioned or
20 denied under SEPA to mitigate the environmental impacts..”) (emphasis added). See also
21 RCW 43.21C.060 (“any action *may* be conditioned or denied pursuant to this chapter”); *United*
22 *States Dist. Court for the E. Dist. of Wash. v. Kaiser Aluminum & Chem. Corp.*, 118 Wn.2d 46,
23 55-56, 821 P.2d 18 (1991) citing *Scannell v. Seattle*, 97 Wn.2d 701, 704, 648 P.2d 435 (1982)
24 (construing “may” as permissive and “shall” as mandatory); *Petrarca v. Halligan*, 83 Wn.2d

25 _____
26 ⁴ As noted previously, SMV’s attorney also represented the appellant in the *Escala* appeal. SMV appeal items 1(e)
and 2(e) are nearly identical to the appeal issues raised and rejected in the Examiner’s *Escala* Decision.

1 773, 522 P.2d 827 (1974) (construing “may” as permissive). Appeal issue 1(e) must be
2 dismissed because SDCI was under no obligation to exercise its discretionary substantive SEPA.

3 **D. Appeal issue 1(d) Is Ripe for Dismissal as a Collateral Attack on an Adopted Code**
4 **Provision.**

5 Appeal issue 1(d) argues that an enacted code provision, “SMC 25.05.675.G[,] violates
6 SEPA as it was applied to this project.” SMV Appeal, p. 4:22-2. Issue 1(d) is subject to
7 dismissal because it presents a collateral attack on an adopted code provision and it is not a
8 Type II decision or code interpretation that falls within the Hearing Examiner’s jurisdiction.
9 SMC 3.02.115.B.

10 **E. Appeal Issue 3(c) Is Subject to Dismissal Because the Selection of Height Calculation**
11 **Methodology is at the Applicant’s Election.**

12 In Issue 3(c) SMV alleges that “[t]he applicant’s methodology is inconsistent with the
13 spirit and intent of [SMC 23.86.006.A.2].” SMV Appeal, p. 7: 14-19. As Land Use Planner
14 Supervisor William Mills correctly explained in SDCI’s July 23, 2018 Code Interpretation No.
15 17-004, p. 13-14, ¶7-9, both SMC 23.86.006.A.2 and Director’s Rule 4-2012 provide the
16 applicant with the discretion to select between the allowed height calculation methodologies.
17 Here, Velmeir was entitled to utilize the height calculation methodology in SMC 23.86.006.A.2,
18 and while SMV might not like the result, Velmeir’s election between approved calculation
19 methodologies is not an appealable issue. Therefore, Issue 3(c) should be dismissed.

20 **IV. CONCLUSION**

21 Velmeir’s Motion to Dismiss addresses aspects of SMV’s appeal that are outside the
22 Examiner’s jurisdiction; are insufficiently pled; or are discretionary elections that are allowed by
23 the Code. Velmeir respectfully requests that the Examiner grant its motion and dismiss these
24 issues from SMV’s appeal.

25 // // //

1 DATED this 19th day of October, 2018.

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4 _____
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DECLARATION OF SERVICE

The undersigned certifies that I am a citizen of the United States of America and a resident of the State of Washington, I am over the age of twenty-one years, I am not a party to this action, and I am competent to be a witness herein.

The undersigned declares that on October 19, 2018, I caused to be served:

1. APPLICANT’S MOTION TO DISMISS.

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and accurate.

DATED this 19th day of October, 2018, at Seattle, Washington.



Nikea Smedley, Legal Assistant

EXHIBIT - A

**FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE**

In the Matter of the Appeal of
ESCALA OWNERS ASSOCIATION
of a decision, and adequacy of the FEIS
and Addendum issued by the Director,
Department of Construction and Inspections

Hearing Examiner Files:
MUP-17-035 (DR, W)

Department Reference:
3019699

Introduction

The Director (“Director”) of the Department of Construction and Inspections (“Department”) issued a State Environmental Policy Act (“SEPA”) Determination of Significance (“DS”) and design review approval for construction of a forty eight-story structure (“Decision”). The DS was followed by the adoption of a Final Environmental Impact Statement (“FEIS”) and issuing an associated Addendum. The Appellant exercised its right to appeal the Decision and the FEIS.

The appeal hearing was held on March 5, 6, 7, and 8, 2018, before the Hearing Examiner. The Appellant, the Escala Owners Association (“Appellant”), was represented by Claudia M. Newman and David A. Bricklin, attorneys-at-law; the Applicant, Jodi-Patterson O’Hare (“Applicant”), was represented by John C. McCullough, and Ian S. Morrison, attorneys-at-law; and the Director was represented by Elizabeth E. Anderson, attorney-at-law. The Hearing Examiner subsequently visited the site. The parties submitted written closing arguments on March 20, 2018, and the record closed on that date.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code (“SMC” or “Code”) unless otherwise indicated. After considering the evidence in the record and reviewing the site, the Hearing Examiner enters the following findings of fact, conclusions and decision on the appeal.

Findings of Fact

Site and Vicinity

1. The subject site is addressed as 1933 5th Avenue, and is located on the southwest corner of the intersection of Virginia Street and 5th Avenue. The site is approximately 16,200 square feet in size and is currently utilized by commercial spaces.
2. The site is currently occupied by three commercial buildings that are two to three stories tall.
3. The site is zoned Downtown Office Core 2 with a maximum height dependent on the proposed use.

4. A six-level parking structure occupies the site immediately adjacent to the south, and a surface parking lot occupies the remainder of the half-block to the south ending at Stewart Street. The thirty story Escala Condominium residential tower (“Escala”) is located across an existing alley to the west. The twin towers of the Westin hotel occupy the block to the east across 5th Avenue, and a seven-story parking structure is located diagonally across the Virginia Street and 5th Avenue intersection to the northeast. A four-story commercial building, and nine story hotel occupy the property to the north across Virginia Street. The elevated Seattle Monorail runs along 5th Avenue, in the center of the street right-of-way.
5. Pedestrian access is from the adjacent street, Virginia Street and 5th Avenue. Vehicle access is from the adjacent streets, and the adjacent through-block improved alley.

Proposal

6. The proposal is for a forty eight-story structure containing 1,000 square feet of retail space and 13,500 square feet of restaurant space on the first two levels. In addition, the proposal includes 155 hotel rooms, and 431 apartments. Parking for 239 vehicles is proposed to be located below grade, along with a loading dock on the west side of the structure at ground level with access for the parking and loading dock to be via an alley that fronts the property on the west side. The alley is accessed from both Virginia Street to the northwest and Stewart Street to the southeast.

Design Review

7. The Downtown Design Review Board (“Board” or “DRB”) held an Early Design Guidance (“EDG”) meeting on the proposal on July 7, 2015, at which it heard the Applicant's analysis of the site and proposal as well as comments from the public. The written and oral public comments included concerns about the project's height and mass compared to nearby existing structures, potential for the proposal to block light to the Escala tower, proximity of the proposal to the Escala tower, privacy of Escala residents, appropriateness of proposed design and materials in consideration of neighborhood character, and other issues.
8. The Board's discussion at the July 7, 2015 EDG meeting focused on specific issues including the following items: (1) massing of the proposal relative to the Escala tower, and specifically asked the applicant to address tower shaping, setbacks and additional massing mitigation; (2) the Board agreed that the “jewel” element of the proposal constricted light and air to both the proposal and Escala, and requested different design considerations; (3) the Board agreed that the proposal created privacy concerns with its proximity to the Escala tower, and requested design adjustments including placement of living quarter windows; (4) the Board sought further analysis of the shaping of the proposal relative to the alley to address concerns regarding ambient lighting and air penetration for both the proposal and Escala; (5) composition of materials and façades needed additional revision; and (6) the Board requested various ground floor and streetscape design improvements.

9. The Board held a second EDG meeting on November 3, 2015. Additional public comments were received; these reiterated concerns expressed at the first EDG meeting and raised additional issues related to street access to the retail floor and sidewalk setbacks, blank walls at the alley corner and visibility of the loading dock areas, and other issues. The Board's deliberations at the November 3, 2015 EDG meeting included guidance for the Applicant concerning (1) the need to continue efforts to resolve façade and materials design issues; and (2) the need to improve privacy between the proposal and Escala. The Board also had a positive response to the Applicant's (1) elimination of above-grade parking; (2) efforts to improve light and air access for the alley, but also highlighted that more work was needed to address these issues; (3) adjustments to the design to meet street level and ground floor design needs (but again called for more effort to address concerns raised); and (4) efforts to respond to the Board's requests for changes to composition and materials.
10. The Board held a first Recommendation meeting on June 28, 2016. The Board took public comment, which expressed similar concerns to those raised in the EDG meetings including issues related to building scale, massing, access to light and air, privacy, and materials. The Board also received comments in support of the proposal. The Board provided at this meeting additional revisions to the façades on the west of the proposal to address design differentiation and proximity of Escala, revisions to the east façade on floors 3-11, along with additional feedback for the Applicant. The Board also expressed support for the changes made by the Applicant in response to public comment and Board recommendations, and specifically endorsed the proposed forms and massing with no further recommendations for any further shaping, setbacks, or reduction of floorplates.
11. The Board's Final Recommendation meeting took place on December 20, 2016. The Board again took public comment and reviewed the Applicant's design packet. The Board expressed satisfaction that the design had been responsive to their earlier recommendations. The Board voted unanimously to recommend approval of the project moving forward with some conditions that it identified.
12. The Board also recommended approval of two requested development standard departures including: an increased setback along 5th Avenue, and canopy extensions.

Director's Review and Decision

13. The Director reviewed the Board's recommendations and determined that they did not conflict with applicable regulatory requirements and law, were within the Board's authority, and were consistent with the design review guidelines. The Director therefore issued design review approval for the proposal with the Board's recommended conditions.
14. Following a public comment period, the Director reviewed the environmental impacts of the proposal and issued a determination of significance ("DS") pursuant to SEPA.
15. The site of the proposal is within the geographic area analyzed in the Final Environmental Impact Statement that was published for the Seattle Downtown Height and Density Changes in January 2005 ("FEIS"). The FEIS evaluated the probable significant

environmental impacts that could result from the development following a change in zoning to allow additional height and density in the Downtown area. The Director determined that the subject proposal would have potential significant impacts that were within the range of significant impacts that were evaluated in the FEIS. As a result, the Department adopted the FEIS. In addition, an Addendum to the Final Environmental Impact Statement for the Downtown and Density Changes EIS prepared for the 5th and Virginia Development Master Use Permit No. 3019699 (“Addendum”) was prepared to review more project specific information. The Department’s analysis determined that the project would produce no probable, significant, adverse environmental impacts that were not already reviewed in the FEIS. The Addendum addressed the following areas of environmental impact: Energy/Greenhouse Gas Emissions; Construction; Environmental Health; Historic and Cultural Resources; Land Use; Height, Bulk and Scale; Light and Glare; Parking; Plants and Animals; Views; Shadows; and Transportation.

16. Notice of the DS was originally issued on December 15, 2016. However, a new notice was issued on July 3, 2017. Exhibit 89. The July 3, 2017 notice indicates that the Director of the Department:

has determined that the referenced proposals could have probable significant adverse environmental impacts under the State Environmental Policy Act (SEPA) on the **land use; environmental health; energy/greenhouse gas emissions; aesthetics (height, bulk and scale; light, glare and shadows; views); wind; historic and cultural resources; transportation and parking; and construction** elements of the environment.

SDCI has identified and adopts the City of Seattle’s Final Environmental Impact Statement (FEIS) dated January 2005 Downtown Height and Density Changes. Seattle DCI has determined that the proposal’s impacts for the current Master Use Permit application have been adequately analyzed in the referenced FEIS. The FEIS was prepared by the city of Seattle. That document meets SDCI’s SEPA responsibilities and needs for the current proposal and will accompany the proposal to the decision-maker.

The current Addendum has been prepared to add specific information on **land use; environmental health; energy/greenhouse gas emissions; aesthetics (height, bulk and scale; light, glare and shadows; views); wind; historic and cultural resources; transportation and parking; and construction** impacts from the current proposal and discusses changes in the analysis in the referenced FEIS. Pursuant to SMC 25.05.625-630, this current Addendum does not substantially change analysis of the significant impacts and alternatives in the FEIS.

17. Concerning height, bulk, and scale the Director’s SEPA analysis states:

The height, bulk and scale of the proposed development have been addressed during the Design Review process for the project proposed on the site. Per the Overview policies in SMC 25.05.665.D, the existing City Codes, and regulations to mitigate impacts to height, bulk and scale are presumed to be sufficient. Further, the project size does not present unusual circumstances such as substantially different site size or shape, or topography anticipated by applicable codes or zoning; the development proposal does not present unusual features, or unforeseen design; and the project is not located at the edge of a less intensive zone, which could result in substantial problems of transition in scale. The project is located in an area of downtown Seattle that was intentionally zoned to allow and encourage greater density and additional high-rise residential and commercial towers. Additional mitigation is not warranted under SMC 25.05.675.G.

18. With regard to land use impacts the Director's analysis states:

The FEIS included a discussion of land use impacts that were anticipated as a result of height and density changes in the various EIS alternatives, but concluded that the change was consistent with the Comprehensive Plan and neighborhood plans and was not a significant unavoidable adverse impact. The FEIS described potential mitigation including rezones of some areas to promote residential uses, tools to encourage retention and expansion of human service agencies, and using incentives to encourage landmark preservation.

The Addendum noted that the proposed development is consistent with development expected at this site in the Belltown Neighborhood and the Downtown Urban Center. The Addendum did not identify mitigation for this item.

Pursuant to the SEPA Land Use Policy, SMC 25.05.675.J, no significant adverse land use impacts are anticipated from the proposal and no mitigation is necessary.

19. In reviewing potential light and glare impacts the Director's analysis states:

The FEIS did not specifically address light and glare-related impacts or mitigation.

The Addendum described project-specific impacts related to light and glare. The building material reflectivity and angled facades are anticipated to have minimal glare impacts. The Addendum identified potential mitigation, including compliance with Design Review Guidelines, not using excessively-reflective surfaces, street trees to disrupt glare, pedestrian scale lighting with cut-off fixtures, and the presence of nearby buildings that will shade the proposed structure and disrupt glare. Headlights from vehicles

entering and exiting the garage are also anticipated to have minimal impacts, and the Addendum did not identify mitigation for this item.

Pursuant to the SEPA Light and Glare Policy, SMC 25.05.675.K, no significant adverse impacts are anticipated from the proposal and no mitigation is necessary.

20. The Director's analysis reviewed the FEIS and Addendum transportation analyses, and in relevant part stated the following:

The FEIS analysis considered the direct, indirect and cumulative impacts of the EIS alternatives as they relate to the overall transportation system and parking demand. The subject site is within the area analyzed in the FEIS and the proposed development is within the range of actions and impacts evaluated in the FEIS.

The transportation analysis conducted for the 5th & Virginia project, as described in the Addendum and the transportation impact analysis prepared by the TranspoGroup, estimated that the project would generate a total of 1,650 new daily vehicle trips. Of these, 104 would occur during the morning peak hour, and 138 would occur during the afternoon peak hour. The study evaluated traffic operations at nearby intersections and roadway segments and on the alley adjacent to the site to determine the likely level of impact of the additional project traffic. Future-year conditions assume traffic from other developments in the vicinity of the project, including the planned development at the corner of 5th Avenue and Stewart Street.

The transportation impact analysis determined that the project's likely transportation impacts were consistent with the analysis in the FEIS. Specifically, traffic operations during the afternoon peak hour were evaluated at seven nearby intersections, including 5th/Virginia, 5th/Stewart, 4th/Virginia, and 4th/Stewart. The project is not expected to noticeably increase delay at any of the intersections, and all are forecast to operate at Level of Service (LOS) C or better. Queuing analyses were conducted at the intersections mentioned above, and indicate little increased queuing due to project traffic. Traffic operations also were evaluated on segments of Stewart Street and Olive Way near the project site. Traffic speeds and levels of service on these arterial corridors are not expected to be noticeably impacted by project traffic in either the AM or PM peak hour.

Project traffic will impact alley operations at the alley intersections with Stewart Street and Virginia Street. During the morning peak hour, the most noticeable impact will be at the alley/Virginia intersection, with a shift from LOS D to LOS F. During the afternoon peak hour, the alley/Virginia intersection will degrade from LOS E to F, and the alley/Stewart intersection will continue to operate at LOS F with an increase in delay of

about eight seconds per vehicle. These impacts reflect increased delay for traffic on the alley; additional delay is not expected for traffic on Virginia and Stewart streets.

Queuing on the alley at its intersection with Virginia also will increase with project traffic. During the morning peak hour, the 95th percentile queue length is estimated to increase from 65' to 200', while in the afternoon peak hour, the 95th percentile queue length is estimated to increase from 60' to 155'. (The 95th percentile queue length represents the queue that would be exceeded only five percent of the time, and serves as a reasonable worst-case queuing condition.) Queues on Virginia Street, Stewart Street, and the alley approaching Stewart Street would not noticeably change due to traffic from the project.

Project access is proposed from the alley on the west side of the site. The width of the alley varies between approximately 16' and 22'. In some parts of the alley, garbage containers constrain the alley to as narrow as 14'. With the development of the proposed project and a nearby project at 1903 5th Avenue, portions of the alley will be widened.

Loading and unloading activity in the alley currently block traffic. Observations over two days documented a range of delays, most of them under 25 minutes but one for over three hours. Some of the alley blockage was associated with the Icon Grill, which will be removed with the project. Delivery and loading for both the proposed project and the future development at 1903 5th Avenue would occur from access via the alley and could result in increased loading activity in the alley or potential short-term blockages. The proposed loading bays for both projects would accommodate the expected loading demand and truck lengths without blocking the alley, resulting in less long-term alley blockage. Loading docks at the project site are designed to accommodate an SU-30 vehicle. Turning templates demonstrate that two SU-30 vehicles could be accommodated side-by-side in the loading dock. In the occasional circumstance where a larger vehicle (such as a residential moving van) needs to access the site, they would be directed to obtain a street use permit from SDOT so that the truck could be parked on the adjacent street during move-in or move-out.

To mitigate potential impacts from increased delivery activity on the alley, a dock management plan will be required. The objective of the management plan will be to coordinate deliveries among the residential and the commercial tenants. The management plan will provide protocols on the scheduling and timing of deliveries to minimize alley impacts of trucks waiting to access loading berths. If dock management plans are developed for other projects taking access from the segment of the alley bounded by 4th Avenue, 5th Avenue, Virginia Street, and Stewart Street, these plans shall be taken into consideration by the dock management plan prepared for

this project, with goals of avoiding delivery schedule conflicts and minimizing waiting times for trucks accessing loading berths from the alley. The Addendum and the Transportation Impact Analysis (TIA) listed a dock management plan to coordinate deliveries for the proposed project, to minimize alley impacts of trucks waiting to access loading berths. No other mitigation was listed in the Addendum.

The SDCI Transportation Planner reviewed the information in the TIA and determined that a dock management plan is warranted to mitigate potential traffic impacts from alley blockages, consistent with per SMC 25.05.675.R.

21. The City has not adopted any traffic level of service standards for alleys, and vehicular mobility is not considered a function of alley access. Instead, alleys are intended to primarily serve the functions of access for parking, freight loading, and utility services (including waste and recycling services).
22. The Applicant analyzed transportation impacts of the proposal on the alley adjacent to the proposal. The Applicant's analysis included a review of: current alley operations; existing alley conditions; peak hour level of service for existing alley operations and for future level of service with the proposal; anticipated queuing of vehicles; and AutoTurn analysis of access to the proposal's loading dock.
23. In considering the impacts of the proposal on parking, the Director's representative testified that he reviewed the traffic study and considered the opinion of the Department's Senior Transportation Planner, and public comments concerning the project's potential traffic and parking impacts. The Department's Senior Transportation Planner testified that he reviewed the traffic study, and other information provided in the record.
24. The Director's determination identified a dock management plan as a condition on the proposal to minimize potential impacts of the proposal.
25. Following review of the FEIS, the SEPA checklist, and the Addendum and its supporting information, the Department determined that the proposal would have no new probable significant negative impacts to the environment, including but not limited to impacts related light, transportation and land use.

Appeal

26. The Appellant filed a timely appeal of the Director's Decision, and the DS. Appellant's notice of appeal raised a list of twenty-three issues, one of which was dismissed by prehearing motion.¹ The following appeal issues were addressed at the hearing:
 - a. The FEIS is not adequate to address new significant impacts created by the proposal. (Notice of Appeal Issue 1a). Including the following sub-issues raised in closing:

¹ Notice of Appeal Issue b.

- i. As a Programmatic EIS, the FEIS does not satisfy SEPA requirements for the proposal.
- ii. The FEIS does not meet SEPA requirements for the proposal, because:
 1. It does not contain a detailed analysis of alternatives to the proposal (Notice of Appeal Issue 1p);
 2. it does not contain a detailed analysis of the existing environment, the environmental impacts, or mitigation for the proposal;
 3. the FEIS fact sheet and summary are inadequate (Notice of Appeal Issue 1i);
 4. the FEIS transportation analysis is inadequate;
 5. the FEIS land use analysis is not accurate;
 6. the FEIS and Addendum did not adequately identify mitigation measures for the proposal (Notice of Appeal Issue 1e); and
 7. the FEIS height, bulk, and scale impacts including light impacts is inadequate.
- b. The Design Review process did not result in sufficient review and mitigation of height, bulk, and scale impacts of the proposal. (Notice of Appeal Issue 1c).
- c. The Design Review process violates SEPA regulatory and case law requirements that disclosure and analysis of environmental impacts must occur before a decision maker commits a particular action (Notice of Appeal Issue 1k and 2d).
- d. The Addendum cannot substitute for an EIS or an SEIS (Notice of Appeal Issue 1l).
- e. The Design Review decision was made without meaningful public input, and was inconsistent with specific Design Guidelines (Notice of Appeal Issues 2a and 2c).
- f. Improper SEPA review and design review foreclosed consideration of mitigation necessary to address the probable significant adverse impacts of the proposal (Notice of Appeal Issue 2b and 2g).
- g. SDCI erred in its exercise of its substantive authority under SEPA issues, including failure to adequately mitigate the significant adverse impacts described above pursuant to SMC 25.05.675 and other SEPA regulations. SDCI erred when it failed to consider and/or exercise its authority under those provisions to mitigate the proposal. The City has the authority and should have exercised the authority to place an increased limitation on lot coverage, require a greater alley setback, and/or modify the bulk and scale of this project to address the significant adverse impacts to Escala (Notice of Appeal Issue 1j).
- h. SDCI cannot rely the 2003 DEIS and 2005 FEIS for environmental review of the 5th and Virginia Proposal because they do not adequately address environmental considerations for the 5th and Virginia Proposal set forth in SEPA as is explicitly required by RCW 43.21.030 and .034 (Notice of Appeal Issue 1m).
- i. The Department should have issued a Supplemental Environmental Impact Statement, and not an Addendum.
- j. SDCI erred when it concluded that the decision and recommendation of the Design Review Board was consistent with the Downtown and Belltown Design Review Guidelines (Notice of Appeal Issue 2f).
- k. SDCI erred when it approved the Design Review Board recommendation because the recommendation conflicted with conditions and mitigation that should have

been applied by SDCI pursuant to SEPA and because the recommendation itself violated SEPA (Notice of Appeal Issue 2g).

27. Some of the Appellant's issues listed in its notice of appeal were not addressed in its closing argument except by reference which stated:

Due to time limitations for preparing this closing argument, some legal arguments and issues that apply to this matter may not have been raised or discussed in this Closing brief. Appellant does not intend to waive those issues. For the purpose of reserving all of the issues presented in the Notice of Appeal, Appellant incorporates herein the arguments and points made in the comment letters that were submitted on behalf of Escala throughout the land use review process that were included as exhibits in the Hearing Examiner appeal record.

Appellant's Closing Argument at 36 fn. 4.

The following issues in the notice of appeal were not addressed by the Appellant's closing arguments:

- a. SMC 25.05.675.G violates SEPA as it was applied to the proposal (Notice of Appeal Issue 1d);
 - b. The Design Review Board violated SMC 23.41.014 because the members of the Board did not review the written public comments that were submitted regarding design review issues (Notice of Appeal Issue 2e).
 - c. The Addendum's statement that the substantive SEPA policies in SMC 25.05.675 limit the scope of procedural disclosure and analysis of environmental impacts is incorrect. The scope of procedural disclosure and analysis of impacts that is required under SEPA is broader than and goes beyond substantive limitations in SMC 25.05.675 (Notice of Appeal Issue 1f).
 - d. The scope of impacts that were addressed by the Addendum and FEIS was incomplete. SDCI failed to follow the proper scoping process for a proposal that receives a determination of significance (Notice of Appeal Issue 1g).
 - e. SDCI failed to adequately analyze, disclose and mitigate the cumulative impacts (Notice of Appeal Issue 1h).
 - f. SDCI cannot rely the 2003 DEIS and the 2005 FEIS for environmental review of the 5th and Virginia Proposal because they are not accurate and are not reasonably up to date as is required by SMC 25.05.600. The information in the old review is 15 years old. It is outdated and no longer accurate (Notice of Appeal Issue 1n).
28. At the hearing the Appellant presented testimony concerning transportation impacts related to the proposal by Ross Tilghman. Mr. Tilghman prepared comments on the Addendum (Exhibit 47), graphics of existing and potential future conditions, and additional comments on the proposal (Exhibits 48-52, 55, 56, 59, and 60). Mr. Tilghman's analysis of the proposal's transportation impacts was wide ranging, and included: an analysis of the Applicant's traffic reporting; the proposal's loading dock operations; ques developing from

vehicles utilizing the alley especially for parking access purposes; AutoTurn analysis, and existing conditions in the alley.

29. The Appellant presented testimony and evidence at the hearing regarding light impacts through its expert Joel Loveland. Mr. Loveland testified concerning loss of daylight in residential units in Escala. He prepared reports concerning his findings. Exhibit 43 and 44. A copy of Mr. Loveland's report was submitted at a meeting of the Design Review Board, and he also testified as to his findings and concern regarding daylight levels in Escala residential units following development of the proposal. His findings included an indication that at the fifth floor of Escala facing the alley between Escala and the proposal, residential units would see daylight reductions in the range of 75% or more. His findings indicated some units would experience adequate daylight conditions for only 12% of daytime hours, and that in winter months there would be less. Mr. Loveland's testimony did not demonstrate the level of health impacts that might or might not result from loss of light from the proposal, and did not exclusively measure for light upon which humans depend for health.

Applicable Law

30. SMC 23.76.022 provides that appeals of Type II MUP decisions are to be considered de novo, and that the Hearing Examiner "shall entertain issues cited in the appeal *that relate to compliance with procedures for Type II decisions as required in this Chapter 23.76, compliance with substantive criteria,*" (emphasis added) and various determinations under SEPA.
31. In an appeal of an FEIS "the decision of the governmental agency shall be accorded substantial weight." RCW 43.21C.090.
32. "The requirement that only reasonable alternatives be discussed in an EIS is intended to limit the number of alternatives considered, as well as the detailed analysis required for each alternative. WAC 197-11-440(5)(b)(i). The discussion of alternatives in an EIS need not be exhaustive if the impact statement presents sufficient information for a reasoned choice of alternatives." *Solid Waste Alternative Proponents v. Okanogan County*, 66 Wn.App. 439, 446, 832 P.2d 503 (1992).
33. SMC Chapter 25.05 details the City's environmental policies and procedures, and SMC Chapter 25.05 Subchapter IV identifies requirements for an Environmental Impact Statement.
34. SEPA provides that a threshold determination shall be prepared "at the earliest possible point in the planning and decision making process, when the principal features of a proposal and its environmental impacts can be reasonably identified." SMC 25.05.055 B. "A proposal exists ... when an agency has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal, and the environmental effects *can be meaningfully evaluated.*" SMC 25.05.055.B.1 (emphasis added). "The fact that proposals may require future agency approvals or environmental

review shall not preclude current consideration, as long as proposed future activities are specific enough to allow some evaluation of their probable environmental impacts." SMC 25.05.055.B.1.a.

35. SMC 25.05.330 directs that, in making a threshold determination under SEPA, the responsible official shall determine "if the proposal is likely to have a probable significant adverse environmental impact" "Probable" means "likely or reasonably likely to occur..." SMC 25.05.782. "Significant" means "a reasonable likelihood of *more than a moderate adverse impact* on environmental quality." SMC 25.05.794 (emphasis added). "If the responsible official determines that a proposal **may** have a probable significant adverse environmental impact, the responsible official shall prepare and issue a determination of significance (DS) substantially in the form provided in Section 25.05.980." SMC 25.05.360.A (emphasis added).
36. SMC 25.05.335 directs the lead agency to "make its threshold determination based upon information reasonably sufficient to evaluate the environmental impact of a proposal," and where "the agency concludes that there is insufficient information to make its threshold determination" calls for the lead agency to take additional steps that may include seeking additional information from the applicant, or making its own further study.

37. SMC 25.05.402 calls for the following in EIS preparation:

EISs need analyze only the reasonable alternatives and probable adverse environmental impacts that are significant. Beneficial environmental impacts or other impacts may be discussed.

The level of detail shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or referenced.

Description of the existing environment and the nature of environmental impacts shall be limited to the affected environment and shall be no longer than is necessary to understand the environmental consequences of the alternatives, including the proposal.

SMC 25.05.402 A, B and D.

38. The SEPA policy on height, bulk and scale explains that the City's adopted land use regulations are intended to provide "for a smooth transition between industrial, commercial, and residential areas," and to preserve neighborhood character and reinforce natural topography by controlling development's height, bulk and scale. The policy acknowledges that "zoning designations cannot always provide a reasonable transition in height bulk and scale between development in adjacent zones," SMC 25.05.675.G.1, and affords limited authority for requiring mitigation of height, bulk and scale impacts. SMC 25.05.675.G.2. However, the policy concludes by stating that a project approved through the design review process is presumed to comply with the SEPA policy on height, bulk and scale, and that the presumption may be rebutted "only by clear and convincing evidence

that height, bulk and scale impacts documented through environmental review have not been adequately mitigated." SMC 25.05.675.G.2.c.

39. SMC 25.05.440.D.2.f requires an EIS to "Present a comparison of the environmental impacts of the reasonable alternatives, and include the no action alternative. Although graphics may be helpful, a matrix or chart is not required. A range of alternatives or a few representative alternatives, rather than every possible reasonable variation, may be discussed."

40. SMC 25.05.448 provides:

SEPA contemplates that the general welfare, social, economic, and other requirements and essential considerations of state policy will be taken into account in weighing and balancing alternatives and in making final decisions. However, the environmental impact statement is not required to evaluate and document all of the possible effects and considerations of a decision or to contain the balancing judgments that must ultimately be made by the decisionmakers. Rather, an environmental impact statement analyzes environmental impacts and must be used by agency decisionmakers, along with other relevant considerations or documents, in making final decisions on a proposal. The EIS provides a basis upon which the responsible agency and officials can make the balancing judgment mandated by SEPA, because it provides information on the environmental costs and impacts. SEPA does not require that an EIS be an agency's only decisionmaking document.

41. Concerning mitigation measures identified in an EIS, SMC 25.05.660.B provides:

EISs are not required to analyze in detail the environmental impacts of mitigation measures, unless the mitigation measures:

1. Represent substantial changes in the proposal so that the proposal is likely to have significant adverse environmental impacts, or involve significant new information indicating, or on, a proposal's probable significant adverse environmental impacts; and
2. Will not be analyzed in a subsequent environmental document prior to their implementation.

42. SMC 25.05.360.D provides "If at any time after the issuance of a DS a proposal is changed so, in the judgment of the lead agency, there are no probable significant adverse environmental impacts, the DS shall be withdrawn and a DNS issued instead."

43. The purpose of Design Review is to "[e]ncourage better design and site planning to help ensure that new development enhances the character of the city and sensitively fits into neighborhoods while allowing diversity and creativity." SMC 23.41.002.A.

44. The Citywide Guidelines and Council-approved neighborhood design guidelines "provide the basis for Design Review Board recommendations and City design review decisions." SMC 23.41.010.
45. SMC 23.41.014 describes the design review process. "Based on the concerns expressed at the early design guidance public meeting or in writing to the Design Review Board, the applicable guidelines of highest priority to the neighborhood, referred to as the 'guideline priorities,' shall be identified. The Board shall incorporate any community consensus regarding design expressed at the meeting into its guideline priorities, to the extent the consensus is consistent with the design guidelines and reasonable in light of the facts of the proposed development." SMC 23.41.014.C.1.
46. The Director must consider the Board's recommendation. If four or more members of the Board agree to a recommendation, the Director "shall issue a decision that makes compliance with the recommendation of the Design Review Board a condition of permit approval," unless the Director concludes that the recommendation inconsistently applies the design review guidelines, exceeds the Board's authority, conflicts with SEPA conditions or other applicable requirements, or conflicts with state or federal law. SMC 23.41.014.F.3.

Conclusions

1. For the Decision, the Appellant bears the burden of proving that the Director's Decision was "clearly erroneous." *Brown v. Tacoma*, 30 Wn. App. 762, 637 P.2d 1005 (1981). This is a deferential standard of review, under which the Director's decision may be reversed only if the Hearing Examiner, on review of the entire record, and in light of the public policy expressed in the underlying law, is left with the definite and firm conviction that a mistake has been made. *Moss v. Bellingham*, 109 Wn. App. 6, 13, 31 P.3d 703 (2001).
2. The Examiner has jurisdiction over the EIS appeal pursuant to Chapter 23.76 SMC. Appeals are considered de novo, and the Examiner must give substantial weight to the Director's decisions. SMC 25.05.680.B.3. The Appellant bears the burden of proving that the FEIS is legally insufficient within the standards set by SEPA. In reviewing the adequacy of the FEIS the Examiner does "not rule on the wisdom of the proposed development but rather on whether the FEIS [gives] the City . . . sufficient information to make a reasoned decision." *Concerned Taxpayers Opposed to Modified Mid-South Sequim Bypass*, 90 Wn.App. at 362. In this case, the Appellants hold reasonable concerns regarding the proposal, and its impacts on their residences. However, it is not the Examiner's role to determine that such impacts should not be allowed, but only to determine if the City's environmental review of those impacts is adequate under the standards of SEPA in the context of the legal issues raised by the Appellant.
3. "To be adequate, the EIS must present decisionmakers with a 'reasonably thorough discussion of the significant aspects of the probable environmental consequences' of the agency's decision. Adequacy is judged by the 'rule of reason,' a 'broad, flexible cost-effectiveness standard,' and is determined on a case by case basis, considering 'all of the

policy and factual considerations reasonably related to SEPA's terse directives.” *Concerned Taxpayers Opposed to Modified Mid-South Sequim Bypass v. State, Dept. of Transp.*, 90 Wn.App. 225, 229, 951 P.2d 812 (1998) (citations omitted). “In determining whether a particular discussion of environmental factors in an EIS is adequate under the rule of reason, the reviewing court must determine whether the environmental effects of the proposed action are sufficiently disclosed, discussed, and substantiated by supportive opinion and data.” *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 644, 860 P.2d 390 (1993).

4. To meet its burden of proof under SEPA, the Appellant must present actual evidence of probable significant adverse impacts from the proposal. *Boehm v. City of Vancouver*, 111 Wn. App. 711, 719, 47 P.3d 137 (2002); *Moss v. City of Bellingham*, 109 Wn. App. 6, 23, 31 P.3d 703 (2001). As noted above, “significance” is defined as “a reasonable likelihood of more than a moderate adverse impact on environmental quality.” WAC 197-11-794. This burden is not met when an appellant only argues that they have a concern about a potential impact, or an opinion that more study or review is necessary.
5. To the degree Appellant has argued that the City is procedurally barred by SEPA from adopting the FEIS and using the Addendum, the appeal is denied, because the City is permitted to take these actions to fulfill its SEPA procedural requirements. *See e.g.* SMC 25.05 Sub-chapter IV; WAC 197-11-625; and WAC 197-11-630. Courts have consistently upheld SEPA’s rules allowing for reuse of existing environmental documents “[t]o avoid ‘wasteful duplication of environmental analysis and to reduce delay.’” *Thornton Creek Legal Defense Fund v. City of Seattle*, 113 Wn.App. 34, 50, 52 P.3d 522 (2002).

Adoption of an existing EIS is explicitly authorized when “a proposal is substantially similar to one covered in an existing EIS.” If an agency adopts existing documents, it must independently assess the sufficiency of the document, identify the document and state why it is being adopted, make the adopted document readily available, and circulate the statement of adoption.

Id. at 51. (citations omitted).

Generally, there is no procedural error under SEPA simply because an Addendum does not include the items of concern to Appellant where the adopted FEIS the Addendum is supplementing has adequately addressed these issues. The Appellant cites no authority showing that where an EIS is adopted and an Addendum has been issued, that a new alternatives analysis, discussion of WAC 197-11-440 components, scoping process, or comment period are required under SEPA. Finally, the City specifically provides for the use of an Addendum to satisfy SEPA requirements stating “Existing documents may be used for a proposal by employing one (1) or more of the following methods . . . [a]n addendum, that adds analyses or information about a proposal but does not substantially change the analysis of significant impacts and alternatives in the existing environmental document.” SMC 25.05.600.D.3. In addition, for these reasons and the conclusions regarding impacts below, the Appellant’s argument that the City was required to develop

a Supplemental Environmental Impact Statement instead of an Addendum should be denied.

6. The FEIS included an analysis of a no action alternative, and as the lead agency the City may rely on an adopted environmental document for all its procedural requirements under SEPA including the alternatives analysis. Courts have held an EIS to be adequate when it included *no* alternatives other than the no-action alternative. *Coalition for a Sustainable 520 v. U.S. Dep't of Transportation*, 881 F. Supp. 2d 1242, 1258-60 (2012); *Citizens All. to Protect Our Wetlands v. City of Auburn*, 126 Wn.2d 356, 894 P.2d 1300 (1995). Appellant has not demonstrated this was not adequate to meet SEPA's alternative analysis requirement.
7. The Appellant argues that the notice of the DS issued December 15, 2016 indicates that the proposal would have certain probable adverse environmental impacts, and lists the impacts that the City has identified for the DS. See Exhibit 89. The Appellant relies upon this to support its claim that the City has decided any such impacts listed in the notice would occur, and as a result the Appellant can then avoid its burden of proof and need not demonstrate the probability or significance of any such impacts. Appellant's Closing Argument at 7. However, Appellant fails to cite to the final notice for the DS which only identifies certain probable significant negative environmental impacts that *could* occur. Exhibit 89. Appellant's argument assumes that because a DS was issued that the Department found that the proposal would have new probable significant adverse environmental impacts that were not identified in the FEIS, and that these were listed in the notice. This goes explicitly against the Director's determination in the Decision, and the record of the hearing where there is no evidence of any probable significant adverse environmental impacts except those originally addressed in the FEIS. The notice merely lists potential significant impacts that could occur. It is not a definitive listing of probable significant adverse environmental impacts that the Director attributes to the proposal.
8. At no time did the Department determine that there would be no probable significant adverse environmental impacts for purposes of WAC 197-11-340. Instead the Department determined that the proposal could have probable significant adverse environmental impacts as detailed in the FEIS, but that the proposal would have no new probable significant adverse environmental impacts beyond those addressed in the FEIS.
9. Appellant argues that the FEIS as a programmatic EIS cannot substitute for a project specific EIS. Appellant argues that as a programmatic EIS the FEIS has failed to address required SEPA project level analysis. The FEIS provided environmental analysis for the upzone of the Downtown District. The rezone established the zoning under which the project application was submitted - establishing the provisions that specifically allow for the proposal. The FEIS specifically anticipated projects of the type represented by the proposal. The DS reflects the Department's determination that it is probable that the proposal will have certain negative environmental impacts that were identified in the FEIS. The Department did not find that there would be any new probable significant environmental impacts at the project level. In addition, Appellant has not demonstrated that there would be any probable significant environmental impacts caused on the site

specific level, and has therefore failed to meet its burden in demonstrating that the Department's analysis of such impacts was inadequate.

10. The Appellant argues that the proposal's SEPA analysis is inadequate, because it fails to identify mitigation for the types of significant impacts that are listed in the notice for the DS. However, Appellant has not demonstrated that there will be any new probable significant environmental impacts that were not identified, analyzed and mitigated for in the FEIS, therefore there was no requirement for new mitigation to be identified for the proposal.
11. The Appellant argues that the FEIS transportation analysis is inadequate for the current proposal, because it does not adequately describe principal features of the alley, did not summarize significant adverse impacts to the alley that cannot be avoided, and did not identify mitigation measures to address those significant adverse impacts that can be mitigated. The Appellant further argued that "[i]t was not our burden to prove that the proposal would have significant adverse traffic impacts." Appellant's Closing Argument at 20. The Appellant's assertion is not correct. The Appellant must establish that the FEIS failed to adequately consider probable significant adverse impacts related to traffic impacts from the alley, even where all of the parties agree that the FEIS did not analyze any such impacts, it is still the Appellant's burden to demonstrate that such impacts are likely to arise from the proposal, and that the impact would be significant. It is not error for the City to not have considered probable significant impacts that are not significant. SMC 25.05.402.A ("EIS's need analyze only . . . probable adverse environmental impacts that are significant.")
12. The Appellant has not demonstrated that the Department did not adequately analyze transportation impacts. The Applicant completed adequate analysis of project operations in the context of the alley. Much of the Appellant's expert's transportation analysis was based on the Applicant's analysis that was used to support the City's SEPA analysis. The City's SEPA analysis was adequate for purposes of determining if there would be any probable significant impacts, and this analysis and the conclusion that there would be no new transportation impacts other than those analyzed in the FEIS satisfies the rule of reason.
13. Further, the Appellant has not demonstrated that the proposal is likely to have probable significant transportation impacts that were not disclosed in the original FEIS. The Applicant's traffic analysis included the evaluation of traffic operations at nearby intersections and roadway segments and on the alley. The project's likely transportation impacts were consistent with the analysis in the FEIS, and new significant adverse transportation impacts were not shown.
14. The Appellant argues that the Department erred in refusing to exercise its SEPA substantive authority to mitigate the height, bulk and scale impacts. The Department's substantive authority to mitigate the height, bulk and scale impacts is discretionary, and the record demonstrates that the Department fully considered the proposal's height, bulk and scale impacts through its review of the application materials, FEIS, Addendum and

Design Review process. The Appellant did not provide clear and convincing evidence that height, bulk and scale impacts documented through environmental review have not been adequately mitigated. The FEIS analyzed the impacts of increasing building height to 600 feet on the site of the proposal and surrounding areas. The Addendum provides additional site-specific information or analysis that does not substantially change the analysis of significant impacts and alternatives in the FEIS. The proposal's SEPA analysis for height, bulk, and scale impacts satisfies the rule of reason.

15. Appellant alleges that the FEIS analysis is inadequate, because the analysis of the proposal's height, bulk, and scale impacts is incomplete. Appellant incorrectly argues that it did not have the burden of showing that the proposal was likely to have significant adverse height, bulk, and scale impacts. Appellant failed to meet its burden of demonstrating that the project would result in height, bulk, or scale impacts, that such impacts had not been adequately mitigated by the Design Review Process, or that evidence of such impacts was not in the record before the Director.
16. In advance of issuing the DS, the Director made a threshold determination which was required to be "based upon information reasonably sufficient to evaluate the environmental impact of a proposal." SMC 25.05.335. At the time of the threshold determination, the Department lacked sufficient information to evaluate the proposal's impacts as they relate to loss of light within the Escala residential units. As noted, the report from Mr. Loveland raised issues related to significant loss of light to Escala, as did his testimony, both of which were presented at an EDG meeting. Therefore, the Department was alerted to this as an issue at a phase of review in advance of the threshold determination. The record reflects that Design Review process was included in the Director's review and consideration as part of the threshold determination. However, no analysis or request for additional information was executed relating to this potential environmental impact. Even the Applicant's witness, Mr. Meek, agreed that loss of light can have negative health impacts. But there is nothing in the documents reviewed by the responsible official, or in this record, that evaluates the impact to the loss of light as a result of the proposal. The reference to the shadow and view impact analysis in the SEPA analysis is not sufficient, as these consider different impacts.² Therefore, the Director did not have adequate information necessary to make a determination that there were no probable adverse significant impacts arising in this context. Without this information the Director could not have concluded that the proposal presented no new probable adverse significant impacts, and the Director's threshold determination was not based on reasonably sufficient information. The FEIS did not address this impact. This is clear error.
17. Appellant alleged that the EIS analysis is inadequate, because the analysis of the proposal's probable significant negative impacts concerning level of light within residences at Escala is inadequate. Mr. Loveland did not present any definitive evidence concerning level of health impacts resulting from low light in the residences, and therefore the Appellant did

² A viewer may be located within a shadow or have a view removed, and still view visible light (e.g. a viewer sitting in the shade on a sunny day may see ample light, as may a viewer receiving light from a skylight in a room with no view). The absence of light is therefore distinguishable from potential loss of direct solar access, and potential loss of views.

not demonstrate that the loss of light as described by Mr. Loveland would be a probable significant adverse impact on the residents. Mr. Loveland's analysis was not directed at determining or demonstrating adverse health impacts from loss of light, nor was it definitive in determining the actual loss of light from the proposal.

18. Appellant alleged that the EIS analysis is inadequate, because the analysis of the proposal's land use impacts is incomplete. Appellant failed to meet its burden of demonstrating that the project would result in significant land use impacts, that such impacts had not been adequately mitigated, or that evidence of such impacts was not in the record before the Director. Appellant presented no expert testimony to support its argument that the proposal would result in significant negative land use impacts. The FEIS included a discussion of land use impacts that were anticipated as a result of height and density changes in the various EIS alternatives, and concluded that the change was consistent with the Comprehensive Plan and neighborhood plans and was not a significant unavoidable adverse impact. The FEIS and Addendum analysis satisfies the rule of reason as to land use impacts.
19. The condition in the Addendum calling for a dock management plan lacks specificity to adequately minimize potential impacts of the proposal, and should be revised. If revised, this condition effectively mitigates potential impacts to users of the alley by users of the loading dock.
20. The design review process strives to incorporate public comment, while also offering the oversight of experienced design professionals. The public has had the opportunity to provide their comments, and those comments are reflected in the record and in the Board's recommendations. The Appellants have not shown that the Director's Decision accepting the recommendations of the Board, including departures from the development standards, was clearly erroneous.
21. In Notice of Appeal Issue 2e the Appellant asserts that procedural prerequisites for the design review process set forth in Chapter 23.41 SMC were not met. Consequently, according to the Appellant, the Board acted outside its authority in making its recommendation on the proposal. The Appellant questions compliance with the mandatory Board review of written public comments, SMC 23.41.014.E.1.c. However, procedural requirements under Chapter 21.41 are not within the Hearing Examiner's jurisdiction in an appeal of a design review decision. *See* SMC 23.76.022.C.6 (quoted in ¶ 30). Therefore, Notice of Appeal Issue 2e should be dismissed.
22. The Appellant alleges that the proposal does not meet the Design Review Guidelines, specifically A-1, A-2, B-1, B-2, and B-3. However, the Board specifically identified Guidelines A-1, A-2, B-1, B-2, and B-3 as Priority Guidelines for the proposal in its review, and the record reflects conformance of the proposal with the Design Review Guidelines. Exhibit 83 at 6. Similarly, the record demonstrates that the DRB adequately reviewed the proposal in the context of the Downtown and Belltown Design Review Guidelines, and it was not error for the Director to conclude that the proposal was consistent with these

guidelines. The Appellant has not shown that the Director's Decision accepting the recommendations of the Board was clearly erroneous.

23. Appellant has failed to support its contention that the DRB holds decision making authority on a proposal such that its failure to consider SEPA impacts as part of its analysis is a violation of SEPA. Contrary to the Appellant's assertions, the DRB does not have decision making authority. Instead, it is a recommending body, and the Director retains final decision making authority with regard to design review and to SEPA. Appellant has failed to demonstrate that the design review process through the DRB violates SEPA, because it does not include a SEPA impacts analysis.
24. On review of the entire record, the Director's design review decision was not shown to be clearly erroneous, and it should therefore be affirmed.
25. The Appellant raised other issues in its appeal that were not addressed in its closing statement (*e.g.* Notice of Appeal Issues 1d, 1f, 1g, 1h, 1n, and 2e). Unless otherwise addressed above (*e.g.* Notice of Appeal Issue 2e), these issues have been preserved for purposes of appeal by reference in the closing argument to the record. See Appellant's Closing Argument at 36. However, without supporting legal argument from the Appellant for these issues the Appellant has not met its burden of proof to demonstrate error on the part of the City under the applicable standard of review – either the rule of reason or clearly erroneous standard as related to the respective issue. The Hearing Examiner therefore finds against the Appellant on these issues.

Decision

The Determination of Significance is (1) **REMANDED** for the purpose of evaluating the proposal's impacts as they relate to loss of light within the Escala residential units, and (2) the following terms shall be incorporated into the dock management plan required in the second SEPA condition of the Director's Decision:

- Applicant shall hire and maintain a "dock master" to manage dock operations;
- The Project's dock master shall be the designated point of contact for ensuring the Project's continuing compliance with the adopted dock management plan;
- Dock master shall ensure that trucks parked in the Project's loading dock do not block the alley and are contained within the loading dock facility;
- Applicant shall provide a portable 5'x 8' dock lift for loading operations within the loading dock. The dock master shall coordinate the use of the dock lift as necessary;
- Project shall participate in the City's Clean-scapes turn-key garbage and recycling access program to allow service collectors to access garbage within the Project, preventing storage of garbage in the alley;

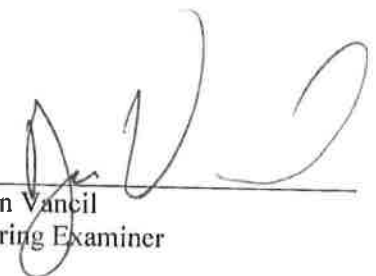
- Applicant shall install video cameras on the Project facing north and south in the alley that are connected to monitors in the Project's loading dock and parking garage access to provide real-time information to drivers exiting the site, regarding potential alley blockages;
- Applicant's dock master shall use best efforts to coordinate with the building official and/or staff for other buildings on the alley regarding alley operations;
- In addition to the signage incorporated by reference in the dock management plan, Applicant shall post signage on the Project's alley façade identifying the City of Seattle regulations regarding time limits for loading and unloading in an alley;
- Dock master (or designee) shall be responsible to keeping the Project's loading dock and exterior alley façade appropriately maintained and safely lit; and
- Dock master shall meet quarterly with the Project's residential and commercial management staff for all tenants to discuss the operations of the dock management plan and identify any issues for improvement or coordination. Additional meetings shall be scheduled as needed for events that may relate to the alley operations, such as road or alley closures, regularly scheduled maintenance, etc.

The Determination of Significance is otherwise **AFFIRMED**, and the remainder of the appeal of the Determination of Significance is **DENIED**.

The appeal of the Director's Decision approving design review is **DENIED**.

The Hearing Examiner does not retain jurisdiction.

Entered this 2 day of May, 2018.



Ryan Vancil
Hearing Examiner

Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

The decision of the Hearing Examiner in this case is the final decision for the City of Seattle. In accordance with RCW 36.70C.040, a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the decision is issued unless a motion for reconsideration is filed, in which case a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the order on the motion for reconsideration is issued.

The person seeking review must arrange for and initially bear the cost of preparing a verbatim transcript of the hearing. Instructions for preparation of the transcript are available from the Office of Hearing Examiner. Please direct all mail to: PO Box 94729, Seattle, Washington 98124-4729. Office address: 700 Fifth Avenue, Suite 4000. Telephone: (206) 684-0521.

Appellant:

Escala Owners Association
c/o Claudia Newman
1424 Fourth Avenue, Suite 500
Seattle, WA 98104

Department Director:

Nathan Torgelson, Director, DCI
700 Fifth Avenue, Suite 1900
Seattle, WA 98104

Applicant:

Jodi Patterson O'Hare
c/o John C. McCullough and
Ian S. Morrison
701 Fifth Avenue, Suite 6600
Seattle, WA 98104


**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached Findings and Decision to each person listed below, or on the attached mailing list, in the matter of Escala Owners Association. Hearing Examiner File: MUP-17-035 (DR, W) in the manner indicated.

Party	Method of Service
Appellant Legal Counsel Claudia Newman newman@bnd-law.com Peggy Cahill cahill@bnd-law.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Applicant Legal Counsel John C. McCullough jack@mhseattle.com Ian S. Morrison imorrison@mhseattle.com laura@mhseattle.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Department Elizabeth Anderson SDCI liza.anderson@seattle.gov Alicia Reise alicia.reise@seattle.gov Shelley Bolser shelly.bolser@seattle.gov	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger

Dated: May 2, 2018



 Alayna Johnson
 Legal Assistant

EXHIBIT - B



City of Seattle
Department of Construction and Inspections
Engineering Services

CHRIS DAVIDSON
 2001 Western Avenue, Ste 200
 Seattle, WA 98121

Re: Project# 3020338

Correction Notice #2

Review Type	POTECH	Date	October 25, 2016
Project Address	2925 E Madison St	Contact Phone	(206) 587-3797
Contact Email	cdavidson@studioms.com	Contact Fax	(206) 587-0588
SDCI Reviewer	Seth Amrhein	Address	Seattle Department of Construction and Inspections 700 5th Ave Suite 2000 PO Box 34019 Seattle, WA 98124-4019
Reviewer Phone	(206) 386-1981		
Reviewer Fax			
Reviewer Email	Seth.Amrhein@seattle.gov		
Owner	LEAP ASSOCIATES		

Please let me know is you have any questions.

Applicant Instructions

Please see the attached flyer to learn "[How to Respond to a SDCI Correction Notice](#)".
 If the 3-step process outlined in the aforementioned document is not followed, it is likely that there will be a delay in permit issuance and there is a potential for penalty fees.

Codes Reviewed

This project has been reviewed for conformance with the applicable development standards of the Tree Protection Code.

Corrections

- SDCI has reviewed the arborist report prepared by the Tree Solutions arborists, dated October 21st, 2016, and agrees with the assessment and conclusions presented for the trees on the 2939 E Madison St site. This report concludes that, pursuant to the risk assessment criteria in SDCI Director’s Rule 16-2008, trees 1103, 1105, 1109, 1111, 1112, and 1114 are not appropriate for consideration as “exceptional trees” for long term retention due to the documented poor structure, disease, and past maintenance practices. We also accept the arborists’ conclusion that, when considering a code compliant development option that would provide full protection to their drip lines, trees 1103, 1105, 1106, 1107, 1109, and 1131 are likely to be adversely impacted from such construction and decline, making them unsuitable for long-term retention. Therefore, based

on the provided analysis, none of the trees analyzed pass the risk assessment criteria in DR 16-2008 to be considered "exceptional trees."

Do note that the tree canopy replacement requirements of SMC 25.11.090 would still be applicable for any removal of trees with trunk diameters of 24 inches or greater associated with this proposal. However, this requirement does not apply to trees that are "...hazardous, dead, diseased, injured or in a declining condition with no reasonable assurance of regaining vigor as determined by a tree care professional."



Step 1: Wait for all reviews to be completed

- You may check the status of any review at the following link:
<http://web6.seattle.gov/dpd/permitstatus>
- All reviews must be completed before the applicant can respond, upload, or submit any correction responses.
- **Electronic Plans:** We will send correction letters to the Seattle DCI Project Portal. We will notify the primary contact for the project when all reviews in the review cycle are complete.
- **Paper Plans:** We will notify the primary contact for the project by email or phone when all reviews in the review cycle are complete and plans are ready to be picked up. Once you have been notified, pick up the plans at Plans Routing in the Applicant Service Center.

Step 2: Make Corrections

Provide a written response for each item on all correction notices. We will not accept corrected plans without written responses. Include the following information for each item:

- Describe the change
- Say where the change can be found in the plan set
- If you have not made a requested change, give a code citation or provide calculations to explain why not
- Coordinate responses to correction items among all designers, architects, engineers, and owners
- If you make voluntary changes to your plans, describe the changes you have made in your response letter

Correct your Plans:

- Cloud or circle all changes
- You may add new sheets to the plan set if you have new information to show

For Electronic Plans:

- Always upload a complete plan set

For Paper Plans:

If you replace sheets in the paper plan sets:

- Remove the old sheets, mark them as "VOID," and include them loose at the back of each plan set
- All original sheets and plan pages must be returned to Plans Routing in the Applicant Service Center
- Insert the new sheets and staple the plan sets

If you make changes to the original paper plan sheets:

- Make all changes with ink (preferably red, waterproof ink). Do not use pencil to make changes
- Do not tape or staple anything to the plan sets

Platting Actions: Provide new copies of the survey when responding to a correction notice for a shortplat, lot boundary adjustment, or other platting action. Provide the same number of copies that were required when you submitted the project.

Step 3: Submit Corrected Plans

Electronic Plans:

Upload your corrected plan set and correction response letter through your Seattle DCI Project Portal.

Paper Plans:

Return your corrected plans and your correction response letter to Plans Routing in the Applicant Services Center.

If you don't follow these instructions:

- **Plans Routing may not accept your corrected plans**
- **We may be delayed in starting corrected plan review, which can delay permit issuance**
- **We may charge a penalty fee**