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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In Re: Appeal by
Seattle Coalition for Affordability,
Livability, and Equity
of the City of Seattle Citywide
Implementation of Mandatory Housing
Affordability (MHA) Final Environmental
Impact Statement

Hearing Examiner File No. W-17-010

SCALE’S CLOSING ARGUMENT -
AMENDED

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I. THE FLAWS IN THE MHA EIS WILL NOT BE CURED BY SUBSEQUENT ENVIROMENTAL REVIEW

The City repeatedly invokes the possibility of subsequent, project-specific SEPA review as a defense to claims that the EIS fails to address issues in sufficient detail. This argument suffers multiple flaws. First and foremost, site by site SEPA review, to the extent that it may occur later, will be too little, too late to inform the consequential and largely irreversible decisions to be made now. Indeed, state law precludes local governments from re-examining fundamental land use decisions, like a zoning code’s establishment of allowed uses and density, when reviewing individual project applications. Second, deferring review runs counter to SEPA’s repeated exhortations to complete review as early in the process as possible. Third, for a variety of reasons, an EIS will not be prepared for most individual projects and, in the very few instances in which an EIS might be prepared, that EIS will not include an assessment of the cumulative impacts of the zoning decisions being made now. For all of these reasons, the City’s reliance on later EISs to salvage the MHA EIS should fail.

A. Any Subsequent Review will be “Too Little, Too Late” to Inform the Decisions Being Made Now.

The character of Seattle’s neighborhoods is threatened by “death by a thousand cuts.” Most often, a neighborhood loses it character over time, through a progression of development. Analyzing impacts at the project level precludes consideration of the “big picture,” cumulative impacts wrought by neighborhood-wide rezones. This EIS is wrong to suggest that later project-level review (in the limited situations when it occurs) can take the place of the review needed now, before these sweeping changes are adopted. As the City’s EIS preparation expert, Richard Weinman acknowledged:

1 Question: If we are talking about aesthetics and density - those issues
2 are being decided now, they're not going to be decided at the project
3 stage?

4 Weinman: That's correct.

5 Weinman 19/2 1:20:26.¹

6 There are several reasons why an EIS for a specific project will not address the cumulative
7 impacts caused by MHA's rezone of whole blocks and whole neighborhoods. One, when an
8 individual project is evaluated, it is the impacts of that individual project, not the impacts of an
9 earlier rezone, that are to be addressed. Thus, a latter EIS is to describe the project's consistency
10 or inconsistency with *adopted* zoning regulations, but it does not address the impacts the zoning
11 has on the entire neighborhood. SMC 25.05.440.E.4.a.

12
13 Second, when a project EIS has been preceded by a programmatic EIS (such as this MHA
14 EIS), the project EIS does not re-assess the impacts addressed in the earlier non-project EIS:

15 A nonproject proposal may be approved based on an EIS assessing its
16 broad impacts. When a project is then proposed that is consistent with
17 the approved nonproject action, the EIS on such a project shall focus
18 on the impacts and alternatives including mitigation measures specific
19 to the subsequent project and not analyzed in the nonproject EIS. The
20 scope shall be limited accordingly. Procedures for use of existing
21 documents shall be used as appropriate, see Subchapter VI.

22 SMC 25.05.443.B.

23 Even fifteen years later, the MHA EIS might still be used to justify no further analysis of
24 environmental impacts stemming from major projects on grounds that the impacts were all
25 addressed in the MHA EIS. *See, e.g., In Re Escala Owners' Ass'n*, H.E. File No. MUP 17-035
(Findings and Decision (May 2, 2018)).

26 ¹ SCALE volunteers have prepared transcripts from the Examiner's digital recordings. We cite them by name of witness, day and part of the Examiner's recording, and approximate time stamp (when available). Relevant testimony often extends for some duration beyond the initial time stamp cited.

1 Third, State law prohibits reconsidering planning level decisions when individual projects
2 are proposed:

3 (1) Fundamental land use planning choices made in adopted
4 comprehensive plans and development regulations shall serve as the
5 foundation for project review. The review of a proposed project's
6 consistency with applicable development regulations, or in the
7 absence of applicable regulations the adopted comprehensive plan,
under RCW 36.70B.040 shall incorporate the determinations under
this section.

8 (2) During project review, a local government or any subsequent
9 reviewing body shall determine whether the items listed in this
10 subsection are defined in the development regulations applicable to
11 the proposed project or, in the absence of applicable regulations the
adopted comprehensive plan. At a minimum, such applicable
regulations or plans shall be determinative of the:

12 (a) **Type of land use permitted at the site**, including uses
13 that may be allowed under certain circumstances, such as
14 planned unit developments and conditional and special uses,
if the criteria for their approval have been satisfied;

15 (b) **Density of residential development in urban growth
areas**; and

16 (c) Availability and adequacy of public facilities identified in
17 the comprehensive plan, if the plan or development
regulations provide for funding of these facilities as required
by chapter 36.70A RCW.

18 (3) **During project review, the local government or any**
19 **subsequent reviewing body shall not reexamine alternatives to or**
20 **hear appeals on the items identified in subsection (2) of this**
section, except for issues of code interpretation. . . .

21 RCW 36.70B.030 (emphasis supplied). Thus, the “fundamental” issues of “type of land use
22 permitted” and “density” are not to re-evaluated at the project stage. The die is cast if/when MHA
23 is adopted. The neighborhood-wide impacts it generates will not be “reexamined” during
24 subsequent project review.
25
26

1 Indeed, under our State’s vesting laws, the day a developer applies for a subdivision or
2 building permit, the City’s MHA zoning decisions are locked in and cannot be changed as to that
3 proposal. RCW 19.27.095(1); RCW 58.17.033; SMC 23.76.026.A.3; -B. Environmental review
4 at the project stage is simply incapable of addressing the fundamental land use issues at play now.
5

6 In sum, the City’s claim that gaps in the MHA EIS can and will be addressed when
7 individual projects are proposed is a sham. “Project review shall be used to identify specific project
8 design and conditions relating to the character of development, such as the details of site plans, curb
9 cuts, drainage swales, transportation demand management, the payment of impact fees, or other
10 measures to mitigate a proposal’s probable adverse environmental impacts, if applicable.” RCW
11 36.70B.030(5). Project-specific analysis of “curb cuts,” “drainage swales,” and the “details of site
12 plans” will not cure the neighborhood-wide flaws in the MHA EIS.
13

14 B. The Impacts of Most Individual Projects will Not be Analyzed in an EIS.

15 Even if cumulative impacts of an area-wide rezone were to be considered in an EIS for a
16 later project, very few individual projects are analyzed with an EIS. SEPA exemptions and
17 negative threshold determinations block the preparation of an EIS for most projects.
18

19 The City has adopted regulations that exempt most housing and many commercial projects
20 from SEPA review. New homes, duplexes, triplexes and quadplexes are all exempt from SEPA in
21 all single family and LR 1 zones throughout the City. SMC 25.05.800 (Table A). In the LR 2 and
22 LR 3 zone, the exemptions rises to six and eight units, respectively. *Id.* Mixed use commercial
23 projects as large as 30,000 square feet are exempt in the LR 2, LR 3 and all NC zones. *Id.* (Table
24 B). Thus, in many cases, the second step of the city’s two-step SEPA process will never occur. It
25 is now or never for SEPA review for the impacts stemming from all of those projects, individually
26 and collectively.

1 Even if a project is not exempt, an EIS will not necessarily be prepared to fill the gap left
2 by the current EIS. The lack of an exemption simply moves the project to a threshold
3 determination. At that stage, few projects receive a “determination of significance” with its
4 attendant EIS. The record here does not reflect the number or percentage of projects for which an
5 EIS is prepared, but the Examiner is probably well aware that most projects proceed without one.
6 In any event, to the extent that the city’s defense is that subsequent EISs will fill the gap left by this
7 EIS, the city had the burden to demonstrate the frequency with which EISs will likely be prepared
8 for future projects. The city has provided no such evidence.

9
10 C. There Will Be No “Neighborhood Level” Environmental Review to Fill-in the Gaps
11 of this EIS.

12 Some of the Examiner’s questions suggested that perhaps gaps in the MHA EIS analysis of
13 impacts at the neighborhood level would be addressed in subsequent neighborhood level review.
14 The City does not claim that there will be any additional SEPA review at a neighborhood scale.
15 The next level of SEPA review will be project level (which is extremely limited, per the above).

16
17 D. Delaying Environmental Review is Contrary to SEPA’s Requirements to Complete
18 Environmental Review as Early as Possible So That the Information it Generates is
19 Available in Time to Inform Decisions to be Made Now.

20 The City’s reliance on later SEPA review to cure problems with this EIS ignores that later
21 SEPA review will be too late to inform the Council and the public about the impacts of the MHA
22 proposal before the Council takes action on it. What good does it do to assess the MHA’s impacts
23 later in project-level EISs when the fundamental land use decisions like allowed land uses and
24 density are being decided now? The answer: No good at all. As shown above, the City cannot and
25 will not revisit MHA’s neighborhood-wide impacts during subsequent project-level review.
26

1 The tendency of agencies to defer review until it is too late to make a difference is not a
2 new problem. Twenty-five years ago, the Supreme Court made clear SEPA review must be
3 completed as early as possible, not at the last moment, when key decisions have already been made.
4 The purpose of SEPA is “to provide consideration of environmental factors at the earliest possible
5 stage to allow decisions to be based on complete disclosure of environmental consequences.” *King*
6 *County v. Boundary Review Board*, 122 Wn.2d 648, 664, 860 P.2d 1024 (1993).²

8 This fundamental principle is stated repeatedly in the SEPA regulations. *See* SMC
9 25.05.030.B.4; SMC 25.05.055.A and B. These rules serve an important purpose: to ensure that
10 environmental review is not just a make-work exercise, but rather develops information that is used in
11 the decision-making process. As the City Code recognizes: “An environmental impact statement is
12 more than a disclosure document. It shall be used by agency officials in conjunction with other relevant
13 materials and considerations to plan actions and make decisions.” SMC 25.05.400.D. If key decisions
14 have already been made before the environmental review is completed, the review fails to serve its
15 purpose. The earlier decisions are made in the blind.

17 **II. THE EIS FAILS TO ADEQUATELY ADDRESS IMPACTS**

18 **A. SEPA Requires that the MHA EIS Take a “Hard Look” at Environmental Impacts**

19 SEPA, like its federal counterpart (NEPA), requires agencies to take a “hard look” at
20 environmental issues. *PUD No. 1 of Clark County v. PCHB*, 158, 151 P.3d 1067 (2007) (internal
21 citation omitted).³ To comply with the “hard look” requirement, an EIS must “provide a reasonably
22

24 ² Although a DNS, not an EIS, was at issue in *King County v. Boundary Review Board*, the principle that
25 government action must be based upon adequately disclosed environmental impacts before decisions have a snowballing
effect is applicable here.

26 ³ Washington courts regularly rely on NEPA case law in construing SEPA’s requirements. *PUD v.*
PCHB, supra, 137 Wn. App. at 158; *Des Moines v. PSRC*, 98 Wn. App.23, 37 n.28 (1999); *Eastlake Comm. Council*
v. Roanoke Assoc., Inc., 82 Wn.2d 475, 488 n.5 (1973).

1 thorough discussion of the significant aspects of the probable environmental consequences of the
2 proposed action.” *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 37, 873 P.2d 498 (1994). *See*
3 *also PUD No. 1, supra*. “General statements about ‘possible’ effects and ‘some risk’ do not
4 constitute a ‘hard look’ absent a justification regarding why more definitive information could not
5 be provided.” *Neighbors of Cuddy Mt. v. U.S. Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir. 1998).

7 B. The Level of Detail in an EIS is a Function of (1) The Severity of the Anticipated
8 Impacts and (2) The Specificity of the Proposal.

9 Applying SEPA’s requirement for a “reasonably thorough⁴” analysis requires consideration
10 of two factors: (1) the severity of the anticipated impacts and (2) the specificity of the proposal.

11 As to the first factor, SEPA requires “a level of detail commensurate with the importance
12 of the environmental impacts.” *Klickitat County Citizens Against Imported Waste v. Klickitat*
13 *County*, 122 Wn.2d 619, 641, 94 P.3d 961 (1993) *as amended on denial of reconsideration* (Jan.
14 28, 1994), *amended*, 866 P.2d 1256 (1994). As our Supreme Court has explained:

15 **The rule of reason is “in large part a broad, flexible cost-**
16 **effectiveness standard”**, in which the adequacy of an EIS is best
17 determined “on a case-by-case basis guided by all of the policy and
18 factual considerations reasonably related to SEPA's terse directives”.
R. Settle § 14(a)(i), at 156, 155.

19 *Id.* at 633 (emphasis supplied).

20 In applying this “flexible cost-effectiveness” standard, attention must be paid to the
21 magnitude, scope and intensity of the anticipated impacts. *See, e.g.*, Weinman 19/2. Simply put,
22 the bigger the environmental risks, the more thorough the analysis must be. *Id.* (agrees more detail
23 required if 100 acre clearcut than one acre clearcut). The risks this proposal poses to neighborhood
24

25
26 ⁴ *City of Des Moines v. PSRC*, 98 Wn. App. 23, 35 (1999). *See also Weyerhaeuser v. Pierce County*,
supra, 124 Wn.2d at 37; *Gebbers v. Okanogan County PUD*, 144 Wn. App. 371, 379, 183 P.3d 324 (2008); RCW
43.21C.031; WAC 197-11-400(2); SMC 25.05.400.B.

1 fabric, character, displacement, trees, and other resources throughout the City compels more
2 detailed analysis, not less.

3 Another factor influencing the level of detail of the analysis is the nature of the proposal
4 itself. Some proposals do not lend themselves to as much analysis because the proposal is still
5 conceptual or consists simply of policies, not something as specific as regulatory enactments or,
6 even more specific, a particular building project. Thus, SEPA rules acknowledge that non-project
7 EISs may be less detailed than project EISs. “The lead agency shall have more flexibility in preparing
8 EIS’s on nonproject proposals, because there is normally less detailed information available on their
9 environmental impacts and on any subsequent project proposals.” SMC 25.05.442.A. For instance,
10 an EIS on rezoning a neighborhood will focus on neighborhood level impacts and will not be
11 evaluating “curb cuts,” “drainage swales,” and site specific plans, as might occur at the project level.
12 RCW 36.70B.030 (5).
13
14

15 Mr. Weinman and Ms. Wilson agreed with this construct: As proposals become more specific,
16 more detail is required. Thus, as Mr. Weinman agreed, the high-level policies in countywide planning
17 policies may be addressed in less detail. The policies in a city’s comprehensive plan, being somewhat
18 more specific, can be addressed in somewhat more detail. Further along this continuum, an area-wide
19 zoning proposal (with its specific regulatory tools) can be addressed in more detail than policy
20 documents. Finally, a specific project can be addressed in even greater detail (down to the curb cuts
21 and the size of truck loading bays). Ms. Wilson agreed that there is no “bright line” separating project
22 from nonproject EISs and that “the level of detail for each varies depending on how specific the
23 proposal is.” Wilson V10 @ 235:18. *See also* V10 @ 233 (agrees there is a spectrum of specificity for
24 programmatic EISs).
25
26

1 Critically, this continuum is not related to the geographic size of the proposal, but rather is
2 linked to the specificity of the proposal. High-level policies (whether they apply to a small or large
3 area) simply cannot be assessed in the same detail as a proposal to build a specific project (regardless
4 of whether the specific proposal covers a small lot or many acres).

5
6 One of the most perplexing aspects of the City's defense is its claim that as the impacts of the
7 proposal encompass a larger area and thus become more consequential, the level of analysis is allowed
8 to decrease. Several witnesses, including Mr. Weinman and Ms. Graham, made this or similar
9 assertions. This defense is in direct conflict with the SEPA requirement to increase the level of detail
10 as impacts increase.

11 The City's argument is based on a confounding of the two different factors discussed above:
12 magnitude of the impacts (which grow larger as the impacted area grows larger) and the specificity of
13 the proposal. But analytically they are distinct.

14
15 An EIS for a non-project document (whether it is for one neighborhood or many) will not be
16 as specific as an EIS for a specific project; the latter can address details like the shading cast by a
17 particular building design, the location and size of loading docks, the location of drainage swales and
18 other project details. But comparing the level of detail for EISs of two non-project documents – one
19 document applicable to a single neighborhood and the other document applicable to several
20 neighborhoods – the fact that the multi-neighborhood EIS is covering more than one neighborhood is
21 no reason to decrease the level of analysis. At minimum, assuming the documents are of the same
22 nature (*e.g.*, both adopting subarea policies or both adopting new zoning for the neighborhoods), the
23 two EISs should have comparable levels of detail.

24
25 Here, the proposal is non-project but, along the continuum of non-projects, this proposal is as
26 specific as any proposal can be. The MHA proposal is not a general, high-level policy document. It

1 embodies specific development regulations, right down to determining the precise development
2 potential on hundreds of individually identified lots in the city – each defined by maximum numbers
3 of units on the parcel, setbacks, height limits and FAR. The heightened level of specificity in the
4 proposal allows for a more detailed analysis than if the proposal were merely a high level, policy
5 proposal along the lines of “concentrate more development in Urban Villages.”
6

7 The courts have made clear that the greater uncertainty of forecasting at the nonproject
8 stage is not license to dispense with forecasting altogether. *Pacific Rivers Council v. U.S. Forest*
9 *Serv.*, 689 F.3d 1012, 1026–27 (9th Cir. 2012) (emphasis in original), *vacated as moot*, 570 U.S.
10 901, 133 S. Ct. 2843, 186 L. Ed. 2d 881 (2013). Thus, in *Klickitat Cty. Citizens Against Imported*
11 *Waste v. Klickitat Cty, supra*, the Yakama Indian Tribe challenged the adequacy of a programmatic
12 EIS for Klickitat County’s solid waste management plan. The Supreme Court emphasized that the
13 greater flexibility allowed for a programmatic EIS was not an excuse to avoid an adequate
14 discussion of serious impacts:
15

16 Even at this more generalized level, however, “[s]ignificant impacts
17 on both the natural environment and the built environment *must* be
18 analyzed, if relevant,” in an environmental impact statement. (Italics
19 ours.) WAC 197–11–440(6)(e). One element of the built
environment is “*historic and cultural preservation.*” (Italics ours.)
WAC 197–11–444(2)(b)(vi).

20 *Id.* at 641–42.

21 The Court also rejected the County’s argument that more detailed analysis could be
22 provided when specific projects, like the landfill, went through the permitting process:

23 The EIS attempts to dodge the issue by stating these impacts can be
24 meaningfully evaluated only in site-specific proposals. We disagree.
25 One of the primary purposes of the 1990 Plan Update is to make an
26 initial evaluation of whether the County wants to build a large
regional landfill at all, or whether one of the proposed alternatives
would be a better course of action. Postponing discussion of

1 historical and cultural impacts to a later site-specific proposal would
2 prevent the Board from considering these impacts in its evaluation.
3 Although a discussion of historical and cultural impacts need not be
4 at the level of detail needed in a site-specific proposal, we do not
think a 1–page discussion is sufficient to adequately inform the
Board's decision.

5 *Id.* at 643.⁵ See also *Better Brinnon Coalition v. Jefferson Cy.*, WWGMHB No. 03-2-0007 (Final
6 Decision and Order), 2003 WL 22896402, at 19 (“the flexibility afforded the County [for
7 programmatic EISs] is not unlimited;”); *id.* at 4 (“Simply providing, as Jefferson County has, that
8 any impacts will be addressed on a permit basis fails to assess the cumulative impacts and to fully
9 inform the decision makers of the potential consequences of the designations challenged here”).

11 The importance of these limits on programmatic EISs is profound. The parcel-by-parcel
12 upzones proposed here are as sweeping as they are specific, setting the stage for City-wide impacts
13 that will forever alter our urban environment in numerous significant areas. The duty to analyze
14 those impacts cannot be avoided simply by slapping the “programmatic” label on the document.

15 C. The EIS Omits Discussion or Provides Meager Discussion of Critical Issues – None
16 of which will be Addressed in a Later EIS

17 The EIS fails to adequately address many critical issues. Some are not addressed at all.
18 Because the City Council will be using this EIS to make decisions about upzones in 27 neighborhoods,
19 this information must be presented in this EIS. Its absence renders the EIS fatally flawed.

20 The 50-page limit does not permit a full recounting of all the testimony on the following issues.
21 We summarize the highlights below, relying on the Examiner’s recall of many other items and details.

23 1. *Historic resources.*

26 _____
⁵ In the end, Klickitat County was saved by a more detailed analysis of cultural resource impacts
included in an EIS appendix. *Id.* at 644.

1 Numerous witnesses spoke to the importance of retaining historic structures in Seattle's
2 neighborhoods, both individual high value historic structures and neighborhoods with intact
3 collections of vintage homes. These buildings make Seattle's neighborhoods special places to live,
4 work and relax. Destroying them would be a huge loss. See Testimony of Woo, McConachie,
5 Kasperzyk, Howard (Vol 1:271), Kreisman, Scarlett, Latoszek, and Veith. Upzones which
6 encourage their destruction should not be approved unless the probable impact of the upzones on those
7 resources is clearly explained in an EIS.

9 The EIS analysis appears to have been doomed from the start. Even before hiring a consultant
10 to write this section of the EIS, the City's initial take was that the proposal "would not result in
11 significant impacts." Ex. 237 (COS 34807). As a result, it provided "a small budget to do a high-level
12 analysis." *Id.* at 34806. A \$30,000 budget was provided to analyze historic resources, open space,
13 recreation, public services, and utilities *combined*. *Id.* No wonder the resulting product was so bare.

15 The primary author of the historic resources section, Ms. Wilson, was laboring under the
16 mistaken impression that gaps in the EIS analysis could be cured with more specific review at the
17 project stage. V10 @ 235:24. As shown above, Ms. Wilson's reliance on later review to save the day
18 was sorely misplaced.

19 a. Missing information about existing historic resources and impacts.

21 An EIS must include a description of the "affected environment." SMC 25.05.440; WAC
22 197-11-440(6). The description is to be "succinct," *id.*, but it must not exclude important
23 environmental resources that will be threatened by the proposal. "[B]ecause the 'Affected
24 Environment' chapter of the EIS sets the 'baseline' for the environmental analysis that is the heart
25 of the EIS, it is important that the baseline be accurate and complete." *Ctr. for Biological Diversity*
26 *v. Bureau of Land Mgmt.*, 422 F. Supp. 2d 1115, 1163 (N.D. Cal. 2006). See also, *Weinman V 19*

1 @53:8 (Q: Do you agree that because the Affected Environment of an EIS sets the baseline of the
2 environmental analysis, that it's important that the baseline be accurate and complete." Answer:
3 "Yes.").

4 One critical piece of information missing from the EIS are maps (easy to create) showing
5 the location of historic resources in the areas proposed for upzones. See Testimony of Howard,
6 Kasperzyk, Howard, Veith, and Woo. The city does not deny that it did not include this
7 information. Instead, the City argues that because the information was not available for all
8 neighborhoods, it would have been misleading to provide it for some.

9
10 The City's argument makes sense if the only reason to include the information was for the
11 purpose of comparing one neighborhood to another. But the information serves another purpose:
12 to assess the impact of the upzone in specific neighborhoods as to historic resources in each
13 neighborhood viewed in isolation. Where to draw lines for UV expansions and upzones should
14 take into account readily available information about historic resources in the expansion and
15 upzone areas. Simply because such information is not available in every neighborhood does not
16 mean it should not be used where it is available.⁶

17
18 Without this critical baseline information, the City Council is left blind. The City Council
19 has no basis for assessing its options for reshaping the specific blocks to be upzoned in a way that
20 would allow it to avoid, for instance, areas of high concentrations of historic resources or specific
21 historic resources of particular value.
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25 ⁶ During cross examination, Ms. Wilson agreed that while Exhibit 234 demonstrated the problems with
26 using the inventory data for comparing impacts of two different neighborhoods (one of which (Westwood) had been
inventoried, the other (South Park) not), it made no sense to not use the inventory data to assess the impacts to South Park,
where the data was available and could be used to consider drawing lines to avoid areas with high historic resource value.
Wilson 10/4 1:04:20 and 1:09:02.

1 The EIS does include a map of some previously identified historic resources and lists the
2 neighborhoods where these resources are present. EIS at 3-296 (list); 3-300 and 3-301 (maps). But
3 the list and map are terribly incomplete. These maps show the location only of only those buildings
4 that have been determined eligible for listing on the National Register of Historic Places by the
5 Washington State Department of Archaeology and Historic Preservation. Testimony of Woo. These
6 determinations of eligibility barely scratched the surface of the *known* historic properties in the 27
7 neighborhoods. Testimony of Woo, Howard, Kasperzyk and Veith; Exs. 26, 28, 38, 46, 48, 117,
8 118, 119, 120. Existing inventories are sitting in the City’s own database and in the Department of
9 Neighborhood’s office, but the authors of the EIS failed to use that information. The checkmarks
10 in the first column of EIS Exhibit 3.5-4 (EIS at 3-302) indicates that the City has its own designation
11 of historic properties in all but one of the listed neighborhoods. Yet none of that information,
12 readily available in the City’s database, is disclosed or utilized in the EIS. Without disclosure of
13 this baseline information, it is impossible for EIS readers to make informed decisions about the
14 likely impact of the proposed upzone and it is impossible for the Examiner to conclude that OPCD
15 took the requisite “hard look” at the project’s impacts. *Ctr. for Biological Diversity v. Bureau of*
16 *Land Mgmt., supra* (“[i]f numerous species are omitted from the environmental baseline, neither
17 the Court nor the public can be assured that the BLM took a ‘hard look’ at the environmental
18 impacts on those species”).
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22 Mr. Weinman counseled the author of this section of the EIS that the “locations of surveyed
23 historic buildings . . . are known and could be compared to the parcels being rezoned.” Ex.238
24 (COS 34827). Exactly! But this advice was ignored.

25 As an example of the extremely limited information provided in the EIS, consider that the
26 EIS informs the reader that there is only one historic building determined eligible for listing on the

1 National Register of Historic Places in North Rainier. EIS at 3-301 (Ex. 3.5-3). That would likely
2 lead the reader to believe that increased density in that neighborhood would have little or no impact
3 on historic resources. Now consider the information *in the city's own database* that is not included
4 in the EIS. When that database is queried for historic properties in North Rainier, a list of dozens
5 of historic properties is generated and can be readily mapped. Woo V1 @ 163:1; Ex. 14; Howard
6 V1 @ 248-249; 252:21-255; 258-265; Exs. 25-28.

8 Testimony provided other examples around the city. Koehler V8 @ 50-58 (esp. 51:20); Exs.
9 164, 166-168 (Morgan Junction: century old neighborhood; large FAR increase; no description of
10 impacts in EIS); Howard V1 @ 263-264 (North Rainier: large area of "edge" impacts not addressed
11 in EIS); Veith V6 @ 130-1; 135; 140-145 (Wallingford); Kreisman V5 @ 32; 51-65 (Ravenna-
12 Cowen, Cowen section of Roosevelt RUV and expansion area; "the best qualities of a bungalow
13 early twentieth century neighborhood"); Kasperzyk V2 @ 133:2-4; 136:13-145:20 (Ballard: UV
14 expansion areas rich with historic structures, but not discussed in EIS). Across the entire city, the
15 EIS maps show exceedingly few historic resources within the neighborhoods slated for map
16 upzones, while the city's database contains troves of information on the historic resources at risk
17 in those neighborhoods. The EIS is inadequate because it fails to provide this basic and important
18 baseline information.⁷ (The city knows how to do it right. The U District and Uptown EISs include
19 the detail lacking here. *See* Ex. 261 (Uptown DEIS at 3.188); Ex.70 (Uptown FEIS at 4.28; Howard
20 V1 @ 240:21-245:19; V17 @ 220-221 (contrasting U District EIS (which he authored) with MHA
21 EIS).⁸

25 ⁷ Mr. Weinman testified that he was not aware all of this data was readily available in the City's database
when he signed off on the draft EIS. Weinman 19/2 58:41.

26 ⁸ The Uptown EIS included a series of maps showing the proposed blocks to be upzoned and to what
degree under each alternative. (Uptown Draft EIS at 3.182 through 3.187 and Final EIS at 3.182 through 3.184). The

1 The EIS focus on only properties on an agency register also ignores the large groupings of
2 well-preserved, early 20th Century homes in quintessential Seattle neighborhoods like Ravenna-
3 Bryant, North Rainier, Ballard, and Morgan Junction. The EIS fails to alert the reader to these
4 assemblages of fine homes that are not on any register, but whose presence is well-known to the
5 City. As Larry Kreisman, Spencer Howard (V1 @ 269-272) and others explained, the integrity of
6 these neighborhoods depends on maintaining the critical mass that cements these individual
7 structures into a harmonious whole. Picking off one lot at a time and replacing a hundred-year-old
8 home with a modern duplex will inevitably (and quickly) destroy that fabric of these
9 neighborhoods. No single project will cause that impact. It is the cumulative effect of numerous
10 such projects – an effect which should have been addressed in this EIS, not pushed off to a non-
11 existent and/or impotent analysis when an individual duplex is proposed.
12

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14 The absence of this information cannot be excused on grounds that it would be cost
15 prohibitive. First, the city provided no evidence of the cost and no evidence that the Council would
16 not have funded the necessary work. To the contrary, Sarah Sodt testified that every time staff
17 needed more money for more research, they received the funding they requested. Second, Spencer
18 Howard testified that the time and expense of accessing the data and mapping it was slight (given
19 the resources devoted to the EIS overall). Third, the City was able to afford the work when it
20 prepared the U District and Uptown EISs. If the city did not have the budget to adequately analyze
21 the issue city-wide all at once, it should have stayed the course and continued with the
22 neighborhood-by-neighborhood approach it used for the U District and on Queen Anne.
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designated historic resources were called out on those maps. *Id.* This allowed the public and the City Council to immediately grasp the difference in the impacts to historic resources depending on which alternative upzone (or no action) was being considered. Nothing like that was provided in the MHA EIS.

1 The failure of the EIS to disclose the existing historic resources precludes readers from
2 assessing the differences among the alternatives presented in the EIS. Without a description of the
3 historic resources in these neighborhoods, the reader cannot assess the extent to which impacts to
4 historic resources in a given neighborhood vary among the alternatives. Do the different locations
5 of UV expansion areas and upzones change the likely impacts to historic resources and, if so, to
6 what extent? Without better information about the location of the historic resources, that critical
7 comparison is all but impossible to make.
8

9 The failure of the EIS to provide this comparative assessment is a critical flaw. A primary
10 purpose, perhaps “the” primary purpose, of any EIS is to allow for an informed choice between
11 alternatives. The alternatives section is the heart of the EIS, 40 C.F.R. § 1502.14 (1984), and serves
12 to insure that the decisionmaking body has actually considered other appropriate methods of
13 attaining the desired goal. If the EIS does not provide meaningful information about the extent to
14 which impacts vary among alternatives, the EIS is a failure.
15

16 The EIS acknowledges that one difference among the alternatives is that areas of more
17 intense development will vary neighborhood-to-neighborhood among the alternatives. EIS at 3-
18 304. But that generic statement does not provide readers the information they need to evaluate the
19 impacts of the specific alternatives presented in the EIS. Two paragraphs at EIS 3-310 set forth
20 the entirety of the EIS’s comparative description of the impacts that will occur under the Preferred
21 Alternative in contrast to the other alternatives. They, too, provide the reader virtually no useful
22 information. Given the EIS’s acknowledgement that more development equals more risk to historic
23 resources, there ought to be a description of the differing risk to historic resources in the various
24 neighborhoods as development intensity shifts among the alternatives. But there is none.
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b. Arbitrary cutoff for significant impacts

The EIS arbitrarily defined significant impacts as situations where the MHA upzones resulted in potential growth rates of 50% or more. EIS at 3.304. That threshold was created with no basis whatsoever. *Wilson V10 @ 229:17-31:14; 239:11-19*. Mr. Weinman reviewed a pre-publication draft of the section and warned that the threshold was “useful, but incomplete.” Ex. 238 (COS 34827). “[T]his metric implies that the other impacts discussed in this section are categorically not significant, which is dubious.” *Id.* But the author of this section of the EIS ignored this advice and did not even confer with Mr. Weinman about it. *Wilson V10 @ 231:11*.

c. The EIS incorrectly suggests that future SEPA analysis will mitigate impacts

The EIS explains that some of the development catalyzed by the upzones will fall below SEPA thresholds and, therefore, historic resources in those situations have no protection. “[P]rojects with fewer than 20 residential units, or that have less than 12,000 square feet of commercial space, are exempt from SEPA review.” EIS at 3-305. But the EIS never addresses the extent to which development catalyzed by the MHA upzones will fall below those thresholds. Numerous witnesses addressed the “death by a thousand cuts” scenario that century-old residential areas face if this proposal is adopted. The failure to explain the extent to which the SEPA exemption thresholds will contribute to the demise of these neighborhoods renders the EIS inadequate.

The EIS also infers that projects above SEPA thresholds will protect historic resources through the SEPA review process. *Id.* That is not true. The EIS ignores the limitations of the city’s SEPA-based protections for historic resources. Eugenia Woo testified to the limitations of the City’s SEPA policies. *V1 @ 192-193. See also V10 @ 238:8–19*. Instead of acknowledging those limitations and the resulting impacts generated by even those projects not exempt from SEPA, the

1 EIS instead trumpets the possibility that SEPA mitigation “may” be used to avoid the loss of
2 historic resources. EIS at 3-306.

3 The authors of the EIS either were unaware or simply could not bring themselves to admit
4 that even when SEPA applies, historic resources and entire historic neighborhoods will be
5 significantly impacted, *i.e.*, historic buildings will be lost and the historic fabric of whole
6 neighborhoods will be damaged or destroyed. Again, environmental review must occur early in the
7 process, and at a level of detail that is commensurate with the level of planning in the proposal.
8 Here, entire neighborhoods and historic landscapes are proposed for collective upzones. Given the
9 inherent weaknesses of the City’s SEPA mitigation for historic resources, the EIS should have
10 acknowledged that even for implementing projects subject to SEPA, significant adverse impacts
11 will occur, including the loss of historic structures and a decrease in the historic fabric of entire
12 neighborhoods. But it did not.
13
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15 d. Failure to assess cumulative impacts

16 Because piecemeal development in a neighborhood like Ravenna or North Rainier can
17 destroy the historic fabric a little at a time, it is critical that the cumulative effect of a multitude of
18 small projects be assessed at this moment when the whole neighborhood is rezoned. The demise
19 of the historic fabric is threatened by the combination of development that would occur even
20 without MHA and the additional development catalyzed by MHA. The EIS historic resources
21 author acknowledged that historic resources in the city are being lost already as the development
22 boom occurs, but that she did not evaluate the cumulative effect of the losses caused by the baseline
23 development combined with the additional development which would be unleashed by MHA.
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1 Wilson V10 @ 239:20–241:21. The EIS failure to consider those cumulative impacts renders it
2 inadequate.

- 3 e. The EIS fails to provide an adequate discussion of mitigation
4 measures.

5 An EIS is required to include a discussion of mitigation measures. The discussion need not
6 be as detailed as the discussion of impacts, SMC 25.05.440; WAC 197-11-440(6)(b)(iv), but “the
7 intended environmental benefits” must be described, *id.* A “perfunctory description” is
8 “inconsistent with the ‘hard look’” required by law. *Neighbors of Cuddy Mountain v. U.S. Forest*
9 *Serv., supra*, 137 F.3d at 1380. “Mitigation must ‘be discussed in sufficient detail to ensure that
10 environmental consequences have been fairly evaluated.’” *Id.* (*internal citation omitted*).
11 Repeatedly, the courts have made clear that a “mere listing” of possible mitigation measures is
12 “insufficient to qualify as the reasoned discussion” required by the statute. *Id.* (*quoting and citing*
13 *cases*).

14
15 Despite this, the authors of this EIS have merely listed mitigation measures. No discussion
16 of their effectiveness, expense, practicality, potential for being adopted, or any other feature is
17 provided. *See* EIS at 3-311. Wilson V10 @ 241:22–242:5 (statement of intended benefits only
18 “implied” in the EIS). The EIS should be remanded for inclusion of a discussion of mitigation
19 measures for historic resources to ensure that the City Council is able to make a reasonably
20 informed decision.

- 21
22 f. The EIS fails to include a reasonable range of alternatives designed
23 to reduce impacts on historic resources.

24 An EIS must include a reasonable range of alternatives. The alternatives should be shaped
25 to respond to the significant issues presented by the proposal. Here, there are various ways to
26 increase development capacity that would result in significantly different impacts to historic

1 resources. The city took one step in this direction by precluding any zoning map changes in historic
2 neighborhoods that already have been formally designated. EIS at 3-305. This limitation applies
3 to all three action alternatives. *Id.*

4 But OPCD might also have considered an alternative that avoided additional growth in
5 historic neighborhoods that have not yet been officially designated, yet have the qualities likely to
6 merit that designation. Such an alternative could have still achieved OPCD's purposes of
7 increasing development capacity to a degree sufficient to address its affordable housing goals.

8
9 OPCD knows how to shift density. The three action alternatives shift density among the
10 neighborhoods, but none of those alternatives was developed with a goal of better protecting the
11 city's quickly diminishing historic resources. Instead, the three alternatives shift density based on
12 two factors: displacement risk and access to opportunity. EIS at 2-16. As described in the EIS, the
13 difference between Alternative 2 and 3 is that for Alternative 3, more growth would be directed to
14 "high opportunity" areas and less to areas with high risk of displacement. EIS at 2-31. In limiting
15 alternatives to those that address areas of opportunity and displacement risk, OPCD failed to
16 include an alternative that would allow the City Council to evaluate opportunities to modify the
17 proposal in a way to avoid or minimize damage to historic neighborhoods, structures, or landscapes
18 (designated or otherwise).
19

20
21 The final EIS includes a fourth alternative, dubbed the Preferred Alternative. It is said to
22 be like Alternative 3, but with modifications to address additional factors, like housing near transit
23 nodes, moderating development capacity increases in environmentally constrained areas, and
24 increasing development capacity on known potential affordable housing sites. EIS at 2-17. But
25 this alternative does nothing to protect undesignated historic neighborhoods either. As a result, the
26 City Council has no way to assess the merits of an alternative that shields historic neighborhoods

1 from the upzones (unless the historic neighborhoods have already been designated). *See also*
2 Howard V10 @ 248-50; 256:12-24; 259:17-260:15 (importance of identifying clusters of historic
3 resources).

4 If all neighborhoods qualifying for historic designation had already been designated, this
5 would not be an issue. But everyone involved in historic resource protection in this city knows that
6 there are neighborhoods that likely qualify for historic designation, but have not yet sought or
7 obtained that status. The City's Comprehensive Plan recognizes this, calling for the designation of
8 additional historic districts to protect and perpetuate their historic identity:
9

10 Policy LU 14.2: Support the designation of areas as historic and
11 special review districts, and the designation of structures, sites, and
12 objects as City of Seattle landmarks in order to protect, enhance, and
perpetuate their historical or architectural identities.

13 Ex. 3 (2035 Comprehensive Plan at 66).

14 Commenters on the DEIS noted that there were additional areas of the city that maintained
15 their historic fabric and where increased density as contemplated by the project would create
16 unmitigable harm. For instance, petitioner JuNO's letter complained about the lack of detail at The
17 Junction in West Seattle (intersection of Alaska Avenue and California Avenue:
18

19 The DEIS fails to recognize the Hamm and Campbell buildings, which
20 are historic landmarks in the upzone area, in this very intersection. It
21 acknowledges that a private group carried out a historic survey but fails
22 to take advantage of it. It should use it as an integral part of the
analysis.³ Six additional buildings are identified that have landmark
potential, and community input and local business owners comment
extensively on the culture of the Junction as it is worth preserving.

23 Ex. 287 (EIS, Comments & Responses (JuNO letter)). And North Rainier residents alerted the city
24 that the designation process had already begun. Testimony of Abolins and Howard; EIS, Chapter
25 4, Comments & Responses, Marked Comments G-M, at 77 (Comment of P. Mark Hannum (Aug.
26

1 7, 2017) (“I think no action should be implemented in the North Rainier Urban Village area. **The**
2 **neighborhood is in the process of acquiring a Landmarks designation** for the unique homes in this
3 area and an expansion of the area boundaries and change in zoning would impede these efforts”)
4 (emphasis supplied)); and at 204 (Comment of Eve Keller (Aug. 7, 2017)); Ex. 288, Comment of
5 Lani and Larry Johnson, “architectural historians consider Ravenna/Cowen one of Seattle's best
6 twentieth century examples of bungalow neighborhoods and redevelopment would irreversibly and
7 irretrievably alter its architectural integrity and historic fabric”).

9 Mr. Levitus addressed this issue, too, and provided examples of other jurisdictions that
10 implemented similar programs grounded on “bottom up” neighborhood planning, instead of a plan
11 developed at city hall that runs roughshod over years of neighborhood planning efforts. The City’s
12 own witness agreed that “reshaping the lines to avoid clusters of historic resources” “would not
13 have been unreasonable.” Weinman V19 @ 62:18–63:23.

15 In sum, the City has recognized the importance of protecting intact historic neighborhoods
16 and other clusters of historic resources from the increased demolitions inherent in its proposal. But
17 OPCD failed to provide decisionmakers with an alternative that adequately addressed the reality
18 that not all historic neighborhoods are already formally designated. The EIS should be remanded
19 for development and analysis of an alternative that precludes upzones in neighborhoods that are
20 probable candidates for historic district designation or otherwise include clusters of high value
21 historic properties.

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1 2. *Aesthetics*

- 2 a. The EIS does not adequately describe the existing environment that
3 will be affected by the proposal with respect to aesthetic impacts.

4 As mentioned above, an EIS must include a description of the “affected environment.” SMC
5 25.05.440; WAC 197-11-440(6). The ‘Affected Environment’ chapter of the EIS must be accurate
6 and complete because it sets the ‘baseline’ for the impact analysis. *Ctr. for Biological Diversity v.*
7 *Bureau of Land Mgmt., supra*, 422 F. Supp. 2d at 1163.

8 Different neighborhoods are characterized by different aesthetic character, different
9 viewsheds, different topography, different height/bulk/scale, and different architecture. Testimony of
10 Tobin-Presser, Derr, Hill, Bradburd, Latoszek, Abolins, and Stewart. The evidence demonstrated that
11 the existing aesthetics in Wallingford are very different from West Seattle, which are very different
12 from 23rd and Union-Jackson, which are different from Beacon Hill, which are different from North
13 Rainier and so on for all of the neighborhoods throughout the City. *Id.*

14 Appellants also presented two baseline examples of what should have been done by OPCD to
15 meet SEPA requirements: The Uptown Urban Center Rezone EIS and the U District Urban Design
16 Alternatives EIS. Ex. 306 and 307. These two neighborhoods (Lower Queen Anne and U. District)
17 underwent a separate planning process to implement increases in development capacity and MHA
18 requirements - each receiving their own independent EIS. The U District EIS contains a description
19 of the existing street network, green streets, neighborhood character, architectural aesthetic, different
20 height/bulk/scale in different areas, location of light rail station, viewsheds, scenic routes, shadows on
21 specific public parks, historic landmarks, and light and glare. Ex. 306 at 3.3-1 – 3.3-12 at 3.1-1, 2 Ex.
22 307 at 3.4. The Uptown Urban Center Rezone EIS contains a description of the neighborhood
23 character, lot sizes, visual character, certain buildings and areas of visual interest, height/bulk/scale,
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1 viewsheds, scenic routes, shadows on specific public parks, light and glare, and historic landmarks.
2 Ex. 307 at 3.93 – 3.108. Because the Uptown neighborhood has considerable number of view
3 corridors, the description of viewsheds was three pages long (with maps of viewpoint locations). *Id.*
4 at 3.97-3.100.

5
6 In stark contrast, the MHA EIS on appeal here does not include a description of the existing
7 street networks, green streets, neighborhood character for each neighborhood, architectural aesthetic,
8 height/bulk/scale, locations of light rail station, location and description of specific viewsheds,
9 buildings and areas of visual interest, scenic routes, shadows on specific public parks, historic
10 landmarks, or light and glare for the neighborhoods. Nor does it include this information for the areas
11 that are affected by the text amendments, which are outside of the urban villages. The text amendments
12 will affect all multi-family, RSL and neighborhood commercial zones throughout the City. Ex. 2 at
13 H.98 – H.113. These amendments are not limited in geographic scope to the Urban Villages where
14 the map amendments apply. There is no description in the EIS of the aesthetics of the areas affected
15 by these text amendments.⁹

16
17 The EIS discussion of the affected aesthetic environment includes a general description of
18 “applicable regulations.” *Id.* at 3.159-3.162. That is (obviously) not a description of the existing
19 aesthetics in the study area. This section also discusses the Design Review requirements and process
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22 ⁹ The zoning text amendments increase development capacity to the same or greater extent as the map
23 amendments. The development capacity increases provided by these text amendments can be measured in various ways.
24 Height limits for “tandem” and “cottage” uses in the RSL zone jumps from eighteen feet to 30 feet. *Id.* at F.1. In the LR3
25 zone, height limits move from 40 feet to 50 feet. *Id.* at F.2. In the Highrise zone, they jump from 300 feet to 440 feet. *Id.*
26 at F.4. Every parcel that is currently zoned NC1-30 will be changed to NC1-40 (M). *Id.* at F.3. Every parcel that is currently
zoned NC1-40 will be NC1-55(M) and so on. *Id.* In the various commercial zones, the height limits increase anywhere
between ten and 40 feet. *Id.* at F.5. Density increases by 20% for regular and tandem RSL projects. *Id.* at F.1. Density for
townhouses in the LR1 zone increases by 18.5% for townhouses and 23% for rowhouses. *Id.* at F.3. FAR increases in the
LR zones by various amounts, spanning a range from 7% (townhouses in LR2) to 64% (townhouses and rowhouses in
LR3); in the Midrise zone by up to 40%; in the Highrise zone by up to 15%; and in the commercial zones by 25% to 65%.
Id. at F.2, F.4 and F.5.

1 and Design Guidelines broadly. *Id.* at 3.164-3.167. That may be relevant to the concept of mitigation,
2 but it is not a description of the existing aesthetic environment that will be affected by the proposal.

3 The section also includes five images that are meant to show existing single-family housing,
4 infill single family housing, lowrise multifamily infill housing, and mixed use commercial corridors
5 for the entire area affected by the proposal. *Id.* at 3.163. Residents from different neighborhoods
6 throughout the City who testified at the hearing unanimously explained that those pictures do not
7 accurately or adequately describe the existing area in each of their neighborhoods. Tobin-Presser V11
8 @ 77:4 – 80:11; Tobin-Presser V11 @ 87:12-88:17; Bradburd V12 @ 16:15 – 17:2; Bradburd V12
9 @ 21:1-24:25; Hill V12 @ 77:2-80:16; Hill V12 @ 141:16-142:16; Hill V12 @ 163:6-166:5. The
10 reader can barely even see the houses in the image of established single family housing. *Id.* at 3.163.
11 No context is provided to know or understand the actual location and extent of different types of single-
12 family housing (including setbacks, size of homes, height of homes, and other elements) in each
13 neighborhood. For example, Ms. Tobin Presser presented extensive quantitative evidence that proved
14 that West Seattle, on the whole, has very little of the “infill single family housing” shown in the second
15 image. Tobin-Presser V11 @ 79:6-85:10. West Seattle has four separate single-family areas in the
16 neighborhood that each have their own character – one with larger craftsman style homes that are
17 primarily 90-100 plus years old, another with homes that were built between the 1940’s and the 1960’s,
18 and another with much smaller scale of single-family bungalows. *Id.* Without critical baseline
19 information, the EIS cannot provide a meaningful assessment of the aesthetic impacts of the proposal.
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1 b. The EIS fails to adequately disclose and analyze the aesthetic impacts

2 The EIS does not provide adequate analysis of the aesthetic impacts in the context of each
3 urban village neighborhood and/or in areas outside of the urban villages that are affected by the
4 proposed upzone text amendments.

5 i. *Context*

6 With any discussion of the aesthetic impacts of a proposal, context is crucial. Gifford V18 @
7 123:5-125:21. A 55-foot building may have minimal aesthetic impacts in one location, but significant
8 aesthetic impacts in another location. *Id.* The existing topography, views, neighborhood character,
9 street network, location of green streets, architecture, height/bulk/scale, light rail stations, scenic
10 routes, potential for shadows, historic landmarks, and light and glare all inform the analysis of aesthetic
11 impacts.

12 The EIS analysis of aesthetic impacts is seriously flawed because it does not consider context.
13 The EIS provides conclusory statements about the height, bulk, scale impacts based on an assumption
14 that increasing FAR by a certain amount, or increasing height by a certain amount, regardless of the
15 context (location), will or will not be significant. Ex. 2 at 3.173-3.177. The EIS characterizes the
16 impacts in a linear fashion - the more development capacity, the more significant the impact. For
17 example, to describe the impacts for (M) zoning changes in existing Lowrise 1 zones, the EIS states
18 “an increase of 0.1-0.2 in the maximum FAR limit could result in some additional floor area compared
19 to existing regulations. ...[this] would have only minor aesthetic impacts.” *Id.* at 3.174. The generic
20 description of the changes proposed and assumptions about impacts simply based on size and intensity
21 ignores the context of those changes.

22 The graphics on pages 3.178–3.179 of the EIS also ignore context. Those graphics are generic
23 images that, as every resident who testified agreed, do not accurately depict the neighborhoods in the
24

1 study area. They do not represent any actual real street in Seattle. There is no hint of the presence of
2 steep slopes or any variation of topography that would significantly affect the height, bulk, and scale
3 impacts. Those graphics do not show any real views from any of the neighborhoods. They do not
4 show the neighborhood character for each of the neighborhoods in the study area. They do not show
5 an actual existing street network, location of green streets, the actual architectural aesthetic of each
6 neighborhood, the actual existing height/bulk/scale of each neighborhood, or scenic routes.
7

8 The images on page 3.185 are meant to show potential for shadows on open space, but it is a
9 generic park that has no basis in reality. And all it shows is the impact of Lowrise 2 (M1) infill. The
10 proposal includes zoning changes above and beyond just Lowrise 2 (M1) adjacent to open space and
11 parks. The EIS does not identify those parks and does not show the impacts of shadows from the
12 actual zoning being proposed adjacent to the actual parks that will be impacted.
13

14 *ii. Height, bulk, scale and character*

15 The EIS does not contain an adequate analysis of height, bulk, scale and character impacts of
16 the proposal largely because it does not consider context, as explained above. But it is also important
17 to note that the graphics on 3.178 – 3.179 of the EIS, which are meant to show height, bulk, scale and
18 character impacts of the proposal, are incomplete and not credible. The mid-level perspective (instead
19 of head-on street level perspective) downplays the height impacts. Despite that most controversies
20 over impact that are caused by increased height, bulk, and scale come from neighbors who lose their
21 light, privacy, and views, these images show the impacts as experienced by a person floating in mid-
22 air somewhere far away and down the street. *Id.* New development is hidden in the very back of many
23 of the graphics and barely visible. *Id.* It is almost impossible to truly tell what the impacts would be
24 to adjacent land-owners with respect to height, bulk, and scale.
25
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1 These graphics also tell us only a fraction of the story. There will be many more combinations
2 of height, bulk, and scale adjacent to each other unleashed by the proposal than are shown by these
3 limited graphics. The proposal will introduce NC1 55, 65, and 75 into areas that are immediately
4 adjacent to single family zones, Lowrise 3 immediately adjacent to RSL zones, and so on. The impacts
5 of most of the more egregious combinations of zones adjacent to each other are not represented.
6

7 Also, the graphics inappropriately assume that the affected environment is fully built out to
8 what is allowed by the code. That is not the reality in these neighborhoods. Testimony of Tobin
9 Presser, Derr, Hill T, Bradburd, Latoszek, Abolins, and Stewart.

10 *iii. View impacts.*

11 The EIS does not adequately disclose and analyze view impacts. The entire content of the
12 section in the EIS titled “View Obstruction and Shading Effects” is two paragraphs long, EIS 3.191,
13 for a study area encompassing 27 urban villages and every property outside of those urban villages
14 that is currently zoned multifamily or commercial.
15

16 This section states that there will be building height and bulk increases and increases in
17 development intensity; this may interfere with view corridors; but Design Review will consider these
18 impacts. *Id.* That is it. That is the entire analysis of the view impacts of the MHA proposal.
19

20 This is grossly inadequate. The EIS does not identify any of the viewsheds that will be
21 impacted by the proposal, provides no text describing or graphics to illustrate the impacts, and provides
22 no meaningful information for the public and decision makers to understand the view impacts.

23 In stark contrast, the Uptown EIS devoted 14 pages to showing the view impacts of that MHA
24 zoning legislation for just one neighborhood - lower Queen Anne. Ex. 307 at 3.128-3.141.

25 *iv. Shadow impacts*

1 The EIS does not adequately disclose or analyze shadow impacts of the proposal. In “View
2 Obstruction and Shading Effects,” the second paragraph states “[i]ncreased building height and bulk
3 in the study area can also increase shading effects on public spaces and private property.” Ex. 2 at
4 3.191. The EIS then explains that large height limit increases have the potential to generate significant
5 shading effects on the street level pedestrian environment. *Id.* It also explains that taller buildings can
6 shade shorter buildings in transition areas. *Id.* Again, this is a grossly inadequate analysis of shadow
7 impacts that provides no meaningful information about the actual impacts of the proposal. At the very
8 least, the EIS was required to identify specific public parks, schools, and street ends that will be
9 affected by shadows considering that SMC 25.05.675.Q.2 indicates that these are protected areas via
10 SEPA. There is nothing at all provided on this in the EIS.

11
12
13 v. *Scenic views*

14 The EIS does not adequately disclose and analyze scenic view impacts. The EIS mention of
15 scenic routes is lumped in with views in the “View Obstruction and Shading Effects” section. Ex. 2
16 at 3.191. Again, this is the entirety of the EIS analysis of scenic view impacts for a study area
17 encompassing 27 urban villages and every property outside of those urban villages that is currently
18 zoned multifamily or commercial.

19 c. The EIS inaccurately describes the Proposal

20 To provide a complete and accurate picture of the impacts of a proposal, the proposal must be
21 fully defined and accurately described. Gifford V18 @ 186:21-187:8. Here, there are gaps,
22 inconsistencies, and major omissions in the EIS description of the proposal that make it impossible to
23 provide a complete and correct disclosure and analysis of impacts.

24
25 With this proposal, the reality is that the FAR increase in existing Lowrise 1 zones for (M)
26 zoning changes will go from 0.9 to 1.3 for townhouse developments and from 1.0 to 1.3 for rowhouses

1 and apartments that are built to standard requirements in the code. *Cf.* SMC 23.45.510 (Table A) with
2 Exhibit F-2.¹⁰ That means that there will be a FAR increase for standard buildings in existing Lowrise
3 1 zones of 0.2 to 0.4. This is not an insignificant increase. A change of 0.4 in FAR is a 45% increase
4 in FAR from what is allowed now. That means that building bulk can increase by nearly half.

5
6 The analysis of aesthetic impacts in the text of the EIS states (incorrectly) that the FAR
7 increase in existing LR 1 zones for (M) zoning changes will be 0.1 - 0.2. EIS at 3.174. That incorrect
8 statement is followed by a conclusion (with no analysis) that this change will only have a minor
9 impact. *Id.* To make matters even more confusing, EIS Exhibit 3.3-9, which summarizes the specific
10 changes being proposed in each zone, states that the FAR increase in existing LR 1 zones for (M)
11 zoning changes will be 0.1 - 0.3, which conflicts with the text in the impacts analysis. *Id.* at 3.172.
12 Between the two of them, neither is accurate. Comparing the numbers shown for LR 2 and LR 3 zones,
13 reveals similar discrepancies. *Cf.* SMC 23.45.510 (Table A), Exhibit F-2, and Ex. 2 at 3.172. These
14 inaccuracies lead to an inaccurate conclusion about impacts.

15
16 Exhibit 3.3-9 (EIS 3.172) does not provide data about the preferred alternative amendments
17 at all. Ex. 2 at 3.172. The impacts analysis that follows (3.173 -3.189) addresses only Alternatives 2
18 and 3 based on the numbers presented in Exhibit 3.3-9. *Id.* at 3.173. (the analysis begins on page 3.173
19 with “Under Alternatives 2 and 3...”). On page 3.202, the EIS states that the height, bulk, scale and
20 character impacts of the Preferred Alternative would resemble those that are presented from pages
21 3.173-3.189 with some exceptions. The description of the “exceptions” does not mention or fix the
22 errors associated with FAR of LR 1, 2, or 3 in the earlier discussion.
23
24
25
26

¹⁰ The existing FAR limits increase slightly if/when a developer meets certain “green building standards.” SMC 23.45.510 (Table A).

1 The EIS does not provide any information to inform the public about how FAR will be defined.
2 In the current code, in multifamily zones for example, all gross floor area, unless exempted, counts
3 toward the maximum floor area allowed under the FAR limits. SMC 23.45.510. Will the
4 “exemptions” stay the same or be amended with the proposal? This is important to know because if
5 certain areas are no longer exempt, that could result in a significant increase in the bulk of a building
6 under the same FAR limits.
7

8 Also omitted is the minimum lot size for the RSL zone. As of now, the single-family zoning
9 minimum lot sizes range from 5000, to 7200, to 9500. So, in a single-family zone, a developer cannot
10 build on a lot that is smaller than those limits. Does this change for RSL zoning with the proposal?
11 This is a critical piece of information that is necessary to fully assess the impacts of the change from
12 single family zoning to RSL. For example, if there is no minimum lot size with the new RSL zoning,
13 then developers can build on much smaller lots than currently allowed with greater attendant impacts.
14

15 Another question left unanswered is: To what extent does the proposal include elimination of
16 reference to and reliance on neighborhood plans in the zoning code? As it stands, currently, the code
17 refers to and relies on neighborhood plans in many different provisions. See eg’s SMC 23.34.008;
18 SMC 23.34.010; SMC 23.34.011; SMC 23.34.021. Will those remain as is or will references to the
19 neighborhood plans be deleted from the code? This information is crucial to understanding the land
20 use impacts of the proposal.
21

22 d. The EIS does not include a reasonable range of alternatives designed
23 to reduce aesthetic impacts

24 The question of whether the EIS adequately discusses alternatives to the proposed project is a
25 critical issue because it provides a basis for a reasoned decision among alternatives having differing
26 environmental impacts. *Weyerhaeuser v. Pierce Cty.*, 124 Wash. 2d at 38. “Reasonable alternatives

1 shall include actions that could feasibly attain or approximate a proposal's objectives, but at a lower
2 environmental cost or decreased level of environmental degradation.” SMC 25.05.440; WAC 197-
3 11-440(5)(b).

4 The EIS did not include an analysis of reasonable alternatives that were focused on decreasing
5 aesthetic impacts. The alternatives were driven by economic and social justice factors - They were
6 defined entirely by distinctions between access to opportunity and displacement risk. Ex. 2 at 2.16;
7 Wendtland V14 @ 14:78-87:9. The EIS did not develop any alternatives that were grounded in the
8 concept of having less adverse aesthetic impacts.
9

10 3. *Land Use*

11 a. The EIS does not adequately describe the affected environment in the
12 study area for land use

13 Different neighborhoods are characterized by different ranges, extent, and character of land
14 uses. The development patterns, the mixes of uses, and the scale of development are all different in
15 different neighborhoods. Testimony of Tobin-Presser, Derr, Hill, Bradburd, Latoszek, Abolins, and
16 Stewart. There was a considerable amount of evidence and testimony presented at the hearing about
17 the different development patterns, the mixes of uses, and the scale of development of each
18 neighborhood and, but for the page limit on our closing brief, we would describe it here. Suffice to
19 say, like with the aesthetic impacts, the evidence and testimony demonstrated that the existing
20 development patterns, mix of uses, and scale of development in Wallingford is very different from
21 West Seattle, which is very different from the Central District, which is different from Beacon Hill,
22 which is different from North Rainier and so on for all of the neighborhoods throughout the City. *Id.*
23

24 The Uptown Urban Center Rezone EIS and the U District Urban Design Alternatives EIS
25 provide examples of the baseline that should have been done to meet the SEPA obligations. See Ex.
26

1 306 at 3.3-1–3.3-12 and Ex. 307. These EISs both contain an actual area overview that describes the
2 range of development and the overall pattern of existing development and land use in the study area
3 being affected. Ex. 306 at 3.1-1, 2 Ex. 307 at 3.4. Those EISs include a break-down of the extent of
4 commercial use, mixed uses, single family use, multi-family and other uses in the study area. Ex. 306
5 at 3.1-1 – 3.1-7; Ex. 307 at 3.4, 3.5, 3.11-3.12. They described the location and existence of any major
6 institution overlays and other major land uses of importance. Ex. 306 at 3.1-3, 3.1-5; Ex. 307 at 3.4,
7 3.12. The entire study area is broken down into subareas and the actual existing land uses for each
8 subarea is described. Ex. 306 at 3.1-3, 3.1-5; Ex. 307 at 3.11-12.

9
10 The testimony of residents at the hearing demonstrated, in no uncertain terms, that the MHA
11 EIS did not adequately describe the affected environment with respect to land use impacts. The MHA
12 EIS contains an extremely broad description of the existing citywide zoning, future citywide zoning
13 designations, and urban centers/urban villages. EIS at 3.99-3.108. There is no description of the range
14 of development and the overall pattern of existing development and land use in the neighborhoods
15 being affected. There is no disclosure of the location and existence of major institutions, parks, major
16 streets, or other major land uses of importance. There is no recognition or analysis of the presence of
17 subareas in the neighborhoods. It’s just not there.

18
19 The EIS indicates that the current land use conditions in Seattle are described in the
20 2035 Comprehensive Plan EIS. *Id.* at 3.99. The 2035 Comprehensive Plan EIS does not adequately
21 describe the affected environment with respect to land use impacts for the proposal. The “affected
22 area” that is described in the Comp Plan EIS is the entire City of Seattle – approximately 83 square
23 miles. Ex. 4 at 3.4-1. The description of existing land use for the entire City of Seattle is summed up
24 in 13 pages. *Id.* at 3.4-1 – 3.4-13. It is at a very high level that is covering a much larger area for a
25 policy document (not regulations) and that is even more general and lacking in specifics than the MHA
26

1 EIS. That document simply does not provide any meaningful information about the affected
2 environment in the 27 neighborhoods and areas outside of the urban villages that will be affected by
3 the proposal. Without this critical baseline information, the EIS cannot conduct a meaningful
4 assessment of land use impacts of the MHA proposal. SMC 25.05.440; WAC 197-11-440(6); *Ctr. for*
5 *Biological Diversity v. Bureau of Land Mgmt., supra.*

6
7 b. The EIS does not adequately disclose and analyze the probable
8 significant land use impacts.

9 The EIS discussion of generic land use impacts is speculative, vague, and meaningless. It does
10 not provide adequate disclosure and analysis of the actual land use impacts for each neighborhood
11 throughout the entire study area that will occur as a result of this proposal.

12 Like with aesthetic impacts, context is crucial to understand land use impacts. A commercial
13 development next to a major institution will have a different impact than if it is built in an area that is
14 currently primarily all single family uses. Context informs the analysis of whether aspects of a
15 proposal will or will not have significant adverse land use impacts.

16 The EIS discusses land use impacts in a generic sense without adequate consideration of the
17 actual range of development, overall pattern of existing development or land uses in the neighborhoods
18 being affected. EIS at 3.109- 3.154. Unlike with the aesthetic chapter, there is a meager attempt in the
19 land use chapter of the EIS to provide information that is specific to each neighborhood on land use
20 impacts. *See Id.* at 3.121- 3.154. But those are isolated, arbitrary, incomplete and incorrect narratives
21 that do not rise to the level of taking a “hard look” at the actual land use impacts overall in each
22 neighborhood. Furthermore, those do not address the land use impacts caused by the text amendments
23 outside of the urban villages. *See id.* at 3.121.
24
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26

1 c. The EIS fails to disclose and assess impacts associated with the
2 proposal’s consistency or inconsistency with SMC 23.34.008.

3 The Seattle Land Use Code states:

4 In general, height limits greater than forty (40) feet should be limited
5 to urban villages. Height limits greater than forty (40) feet may be
6 considered outside of urban villages where higher height limits would
7 be consistent with an adopted neighborhood plan, a major institutions
adopted master plan, or where the designation would be consistent with
the existing built character of the area.

8 SMC 23.34.008.

9 The MHA proposal includes increasing heights for commercial zones outside of urban villages
10 to limits greater than 40 feet throughout the City. Ex. 245; Ex. 291; EIS at F3 and H-87 thru H-113.
11 Many of these commercial zones are adjacent to single family zones. Ex. 291; Ex. 245.

12 The fact that this proposal will increase height limits to above 40 feet outside of urban villages
13 when the City of Seattle code prohibits that from occurring unless certain criteria apply is a significant
14 land use impact. The EIS is in error because it does not disclose the limits in SMC 23.34.008, it does
15 not assess whether the proposed rezone is consistent with this provision, and it does not assess whether
16 the height increases above 40 feet are consistent with a neighborhood plan, a master plan, or the
17 existing built character of the area. The EIS does not mention this provision at all. An assessment of
18 this provision is also explicitly required by SMC 25.05.440.E.4 and WAC 197-11-440.
19

20 d. Transition impacts and “edge” impacts.

21 The EIS did not adequately assess “edge” or transition impacts of the MHA proposal. While
22 this argument has been placed here in our discussion of “land use impacts,” the EIS also failed to
23 adequately assess the aesthetic impacts to land that sits along the edges of the “study area.”
24

25 The “study area” for the EIS includes existing multifamily and commercial zones in Seattle,
26 areas in existing urban villages, and areas in proposed urban village expansion areas. Ex. 2 at 1.2-1.3.

1 Thus, the proposal will increase density, height, bulk and scale in 27 urban villages throughout the
2 City, in certain expansions of urban villages, and for all existing multifamily and commercial zones
3 outside of the urban villages.

4 The increased height, density, bulk and scale in the study area will not happen in a vacuum.
5 These increases in height, bulk, and scale will have significant land use and aesthetic impacts outside
6 of the study area, especially along the “edges” of the boundaries. Some unknown quantity of single-
7 family zones are immediately adjacent to areas that are being upzoned to new heights of up to 75 feet.
8 Ex. 245; Ex. 291.

9 The Seattle Land Use Code states:

10 The following zoning principles shall be considered:

- 11 1. The impact of more intensive zones on less intensive zones or
12 industrial and commercial zones on other zones shall be minimized by
13 the use of transitions or buffers, if possible. A gradual transition
14 between zoning categories, including height limits, is preferred.

15 SMC 23.34.008.E. The “basic planning principles and rezone criteria” described in the EIS echo this
16 section at page 2.22, where the EIS states: “Provide transitions between higher- and lower-scale zones
17 as additional development capacity is accommodated.”

18 But while the code and the EIS both emphasize consideration of this zoning principle, the EIS
19 does not consider it. There is no assessment of the extent that the proposal is placing high-intensive
20 zones in areas that are immediately adjacent to low intensive zones with no transition or buffer. In
21 fact, the EIS does not even bother to inform the reader what the zoning is immediately outside of the
22 boundaries of the study area. See Ex. 2, App. H. It is as if those areas do not exist. This is despite
23 that they are *immediately adjacent* to the upzoned parcels. The EIS does not tell us how much single-
24 family zoning will be adjacent to or near these upzones. How many single-family zones are adjacent
25
26

1 to NC1-75? How many are adjacent to NC1-55 or 65? We do not know for sure, but Mr. Moehring’s
2 testimony and Exhibit 245 demonstrate that there are an alarming number of places where the proposal
3 will increase the zoning to above 40 feet in areas that are immediately adjacent to single-family areas.

4 The EIS does not have any meaningful analysis of edge impacts. The EIS doesn’t describing
5 the existing aesthetics of these areas, nor is there any discussion of impacts to views, parks, or
6 architectural character at the the edges of the upzoned areas. There is no information in the EIS to
7 give a reader any idea about the existing environment or impacts of the upzone to areas that are
8 adjacent to the study area – be it urban village boundaries or areas outside of urban villages that are
9 zoned multi-family or commercial.
10

11 The discussion on page 3.117 of the EIS about “edges” is inadequate and conclusory. That
12 very brief discussion, which is meant to cover this issue for 27 different urban villages and countless
13 acres of multifamily and commercial land outside of the urban villages, contains no meaningful
14 information or analysis upon which readers can rely to truly know the impacts. It does not constitute
15 a “hard look” at edge impacts of the proposal.
16

17 e. The EIS does not include a reasonable range of alternatives designed
18 to reduce land use impacts.

19 The MHA EIS did not include an analysis of reasonable alternatives that were focused on
20 decreasing land use impacts. The alternatives were driven by economic and social justices factors -
21 They were defined entirely by distinctions between access to opportunity and displacement risk. EIS
22 at 2.16; Wendtland V14 @ 14:78-87:9. The EIS did not develop any alternatives that were grounded
23 in the concept of having less significant and less adverse land use impacts. SMC 25.05.440; WAC
24 197-11-440(5)(b).
25
26

1 4. *Housing and Displacement*

2 There are two distinct aspects of the EIS’s failing regarding housing and displacement
3 issues. One, the EIS failed to address reasonable alternatives that could have accomplished the
4 City’s objectives with fewer adverse impacts. Two, the EIS understated the displacement impacts
5 associated with the alternatives analyzed in the EIS.
6

7 a. Failure to include reasonable alternatives

8 An EIS must contain a reasonable range of alternatives. The alternatives cannot be all so
9 much like one another that real choices are not presented. *See, e.g., California v. Block*, 690 F.2d
10 753, 767 (9th Cir. 1982) (by excluding materially different alternative, EIS “ends its process at the
11 beginning”).
12

13 Here, the EIS considers three action alternatives which vary very little from one another.
14 All rely on upzones and UV expansions to create a pot of money to help fund construction of
15 affordable housing for the poorest households in the city. The variations among the alternatives
16 are minor, shifting rezone areas slightly among the various UVs.

17 David Levitus described several alternatives that would have provided more meaningful
18 differences. Crucially, these omitted alternatives would have allowed the city to consider proposals
19 with fewer adverse impacts. The core purpose of the alternatives analysis is to ascertain whether
20 alternatives are available that would approximate the proposal’s objectives with fewer adverse
21 impacts. SMC 25.05.440.D.2; WAC 197-11-440(5)(b). Mr. Levitus’s testimony (echoed, in part,
22 by Mr. Sherrard) showed that such alternatives were available (but were not considered in the EIS).
23 Mr. Levitus described the following alternatives which could approximate the proposal’s objectives
24 with fewer adverse impacts:
25
26

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

Mr. Levitus provided uncontradicted testimony¹¹ that each of these alternatives is feasible in that they have been employed successfully in other similar communities around the country. Mr. Sherrard testified about the third option above, too, noting that it had been employed successfully in Bellevue during his tenure there. V4 @40-53 and 88-92.

¹¹ Mr. Mefford acknowledged on cross that while he had determined that a fee of 11% was viable in Seattle, he had not ruled out the feasibility of a higher fee. Mefford V10 @ 154:15-19. He said he left that to the city to analyze, if it chose to. V10 @ 138:14-17. But when Mr. Wendlandt testified, he offered no testimony that he had used Mr. Mefford's model to analyze a higher fee either.

Moreover, while Mr. Mefford did not directly analyze higher fees, he did show such large profitability margins for many of his development prototypes that he conceded that they would remain economically viable options even with a higher fee. (This was borne out by referring to the sensitivity analysis Mefford created to test higher costs generally. By assuming that all the cost increase was the result of only a fee increase, he could use that analysis to test a fee roughly 50% greater than the 11% fee he tested, V10 @ 132:5-12; 134:12-18, that is, a fee of about 16% - 17%. He then acknowledged that many of the development prototypes he tested would remain feasible at that higher fee. V10 @ 136; @ 137 (even where yellow square is as low as the middle of the yellow range, half of the development prototypes are still feasible.)

Mefford also agreed that MHA fees are such a small portion of total development costs, that a relatively large increase in MHA fees would have a relatively small impact on developer profits and the feasibility of individual projects. V10 @ 149-154 (MHA fees could double and impact overall costs by just 1% to 1.5% for developers in low demand markets and just 2.5% to 4% in high demand markets. *Id.* He agreed developers would be "less sensitive" to such small cost increases. *Id.* Because the fees are such a small component of overall costs, prototype developments that are feasible without the fee remain feasible with the fee. In very few scenarios is the tiny fee the difference between a feasible and infeasible prototype. *Id.*

Mefford also asserted that a fee greater than 11% created a risk of developers moving to other cities, but he admitted he had not done anything to assess the magnitude of that risk. V10 @ 129:2-10; 147:2-148:1

Mefford also admitted that a higher fee would be feasible for many developers who were developing in "high demand" (hot market) portions of the City, but were only paying a medium or low fee (because the program arbitrarily divides the City into broad areas of low, medium and high development pressure, without regard to hot markets like Fremont that are within the "moderate" fee zone on the City's map, V10 @ 145:3-146:8). Apparently, he never alerted the City that the proposed fee structure would mean a higher fee could be charged to developers in "hot" neighborhoods that were located in the City's "low" or "medium" fee areas. V10 @ 146:9-147:1.

Mr. Weinman testified that a fee greater than 11% was not feasible, but he based that on Mr. Mefford's analysis, not his own.

Thus, Mr. Levitus's testimony that a higher fee is feasible (based on its use in similar urban areas) remains un rebutted and, indeed, validated by Mr. Mefford's own analysis.

1 To qualify as a reasonable alternative, an alternative must “approximate the objectives of
2 the proposal.” Here, the city’s objectives are stated to be (1) address housing affordability and
3 availability; (2) increase housing production; (3) generate funds to build 6200 units of income-
4 restricted (subsidized) housing; and (4) distribute the benefits and impacts of growth equitably.
5 EIS at 1.3. Mr. Levitus testified that each of his alternatives would meet those objectives equal to
6 or better than the alternatives analyzed in the EIS. V7 @ 64:11–81, 106. Yet, in doing so, they
7 would cause less impacts. In brief, less impacts would result because in the “no upzones”
8 alternative, all of the adverse impacts associated with the upzones would be avoided (*e.g.*,
9 displacement; impacts to historic resources and vintage neighborhoods; loss of tree canopy; etc.).
10 For the alternative with higher in lieu fees, there would be fewer low-income units built off-site in
11 areas of the city with low property values, thus reducing the proposal’s proclivity to increase, not
12 decrease, housing segregation in the city. For the alternative with higher affordability
13 requirements, more affordable units would be built. The only adverse impact might be a slightly
14 less robust range of housing types (given Mr. Mefford’s projection that fewer housing types would
15 be profitable with a higher fee). Tellingly, Mr. Weinman agreed upzones were not necessary to
16 stimulate housing production. Weinman V19 @ 69:24–70:18. In sum, the EIS failed to address
17 reasonable alternatives that could achieve the city’s objectives at lower environmental cost –
18 precisely the types of alternatives that should have been examined in detail in the EIS to accomplish
19 SEPA’s core purpose of providing decision-makers with the information they need to accomplish
20 their objectives at lower environmental cost.
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b. Failure to adequately analyze displacement impacts

i. *Failure to adequately analyze economic displacement*

The witnesses agreed that a major displacement concern is that pricey, new development spurred by MHA’s upzones will cause an increase in housing costs that will force lower income households out of their established neighborhoods. *See, e.g., Reid V2 @ 70:16–21* (“As prices rise as economic conditions change such that households can no longer afford to live there. They have to leave. That’s economic displacement being priced out basically.”) *Id.* at V2 @ 87:3 -20 (new housing “greatly skewed” towards demolition of lower priced housing stock and replacement with higher end homes; overall supply increases, but supply of affordable housing decreases); *Levitus V7 @ 107, 110, 129; EIS at 3.48* (“new development can contribute to economic displacement at the neighborhood scale” due to amenities and higher priced homes driving up rents and house prices). Worse, in terms of the City’s equity objective, the largest economic displacement impacts have been suffered by the black population. *Reid V2 @ 71* (citing *EIS App. A*); *Levitus V7 at 139; Mefford V10 @ 124* (“number one cause of homelessness . . . is increase in rents” (not physical displacement)).

This somewhat complex economic subject has a well-known name: gentrification. For decades, urban planners have struggled with the difficulty that providing newer housing and shops in an area tends to displace lower income households (and, as Mr. Steinbrueck explained, lower rent businesses, too). The challenge for the EIS was to forecast the extent to which the proposal would result in gentrification. But instead of following through on its acknowledgement that “new development can contribute to economic displacement at the neighborhood scale,” and assessing which neighborhoods were most vulnerable, the EIS reached the remarkable conclusion that MHA would reduce economic displacement, not exacerbate it. *See EIS at 3.86* (“Alternative 2 is expected to reduce economic displacement compared to Alternative 1 No Action”); *EIS at 3.89* (Alternative 3

1 “expected to reduce the economic displacement of low-income households compared to Alternative
2 1”); EIS at 3.91 (Preferred Alternative expected to “reduce pressures that cause economic pressure”
3 of market rate households); *id.* (Preferred Alternative “expected to reduce the economic displacement
4 of low-income households compared to Alternative 1”).

5
6 It is almost as if the EIS suspended gravity. Gentrification regularly occurs as urban areas
7 are redeveloped with new, higher priced housing. Mr. Reid and Mr. Levitus explained that the
8 phenomenon is well documented in the economic literature, *see, e.g.*, Levitus V7 @ 128, 140; Reid
9 V19 @ 150:10 – 16, 152:23 – 153:13, 159:3 - 15; that Mr. Welch had mischaracterized the findings
10 of the Zuk and Chapple article, Reid V19 @ 156:13 – 159:15; and that MHA catalyzing more
11 redevelopment would exacerbate gentrification (economic displacement), *see e.g.*, Reid V2 @
12 87:24 – 88:11 (“acceleration of the affordability problem”).

13
14 Yet, using a complex statistical analysis, the EIS tells the public and the City Council -
15 repeatedly - that new development catalyzed by MHA’s upzones would not have the standard effect
16 of displacing lower income households.

17 The foundation of the City’s argument was a statistical regression analysis (EIS, App. M).
18 But Mr. Reid ably demonstrated that it proved the opposite of the City’s claim. Each graph the
19 City published included many dots in the lower right-hand quadrant. Why was that significant?
20 Each dot represents a census tract in the city. The lower right-hand quadrant represents census
21 tracts that had experienced an increase in housing production and a decrease in low income
22 households. (A decrease in low income households was used as a surrogate for displacement.
23 More on that later.) In other words, census tracts in the lower right-hand quadrant are areas where
24 the City’s data suggests gentrification is occurring (that is, where increases in housing production
25 have been correlated with decreases in the population of poor households). In all, nearly 30% of
26

1 Seattle’s census tracts were in the lower-right quadrant. That is, assuming the validity of the City’s
2 analysis, gentrification would be expected to lead to increased displacement in nearly 30% of
3 Seattle’s neighborhoods. Reid V 19 @ 161:24 – 167:2.¹²

4 That is the message buried in graphs in the City’s own appendix! Yet, the text of the EIS
5 misleads its readers, repeatedly asserting that each of the action alternatives will result in less
6 economic displacement than the No Action alternative. These statements – on a crucial issue of
7 vast public concern that strikes at the heart of the entire MHA program -- are absolutely wrong.
8 The City’s own data projects widespread gentrification effects (economic displacement) across
9 nearly a third of Seattle’s census tracts.^{13, 14}

10 Further, the weight of the evidence established that the City’s statistical analysis was
11 unreliable. Levitus V7 @ 131:15 – 134:1 (“deeply problematic”); V7 @ 59:16 - 25 (“very, very
12 simplistic”); V7 @ 133:15 – 134:1 (“a very blunt instrument”). Mr. Levitus explained that the
13 analysis failed to account for differences in “timing and sequencing” between new housing and
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18 ¹² The City’s data suggests that this effect may be greatest for households struggling with an AMI between
19 50% and 80%. EIS Exhibit M-15 covers households in that income range and shows a significant majority of census tracts
20 in the lower right-hand quadrant. The four smaller scatter plots in Exhibit M-16 disaggregate the data presented in Exhibit
21 M-15 and display it based on the City’s characterization of each census tract’s characterization using the high/low
22 displacement risk and high/low access to opportunity typology. In each of those subsets of this data, the vast majority of
23 census tracts remain in the lower right-hand quadrant.

24 ¹³ At one point, the EIS qualifies its assertion of economic displacement, stating the action alternatives are
25 “likely to . . . reduce economic displacement in the city and region overall. . . .” EIS at 3.75. With the qualifier “in the city
26 and region overall,” this one statement may not be absolutely wrong, just terribly misleading. As Reid and Levitus
explained, the greater housing production in the action alternatives could result in a *regional* improvement in housing prices.
See, e.g., Levitus V7 @ 128:2 – 129:2 (citing literature that distinguished regional trends from neighborhood specific
displacement). But that would not mean gentrification was not pushing lower income households out of Seattle
neighborhoods. It just means those households might be able to find more affordable housing in the suburbs, where there
is less access to transit and jobs. *Id.* That regional displacement is hardly the message conveyed by the EIS, which instead
lulls decisionmakers into thinking that Seattle is like nowhere else and can gentrify large tracts in the city without dislocating
lower income families that have long resided in these neighborhoods.

¹⁴ Another buried acknowledgment that Levitus and Reid are right is found in Appendix A at 15: “In areas
where current rates are below average [*i.e.,* in half of the City], the higher price of new market-rate development can exert
upward pressure on the rents in the immediate vicinity, even as overall housing supply increases.”

1 displacement. Levitus V7 @ 139:4 – 144:4. It also relied on data from an unrepresentative
2 timeframe. *Id.* V7 @ 139; Reid V19 @ 156:22 – 157:10; 165:23 – 166:18.

3 Mr. Reid demonstrated several additional flaws in the city’s statistical analysis, too. Most
4 notably, the city’s analysis relies on increases or decreases of poor households in a given census
5 district as an indirect (surrogate) measure of displacement. But use of that surrogate is highly
6 problematic. As Mr. Reid explained, the number of poor households was based on the number of
7 households falling below a certain AMI value. Each of the scatterplot exhibits in Appendix M
8 (*e.g.*, EIS Ex. M-3) approximates changes in poor households (and, therefore, displacement) by
9 reference to the number of households at certain AMI levels. But because the average median
10 income shifts over time, changes in the number of households below a given AMI level may not
11 represent any households moving in or out of the census tract, but simply a change resulting from
12 a different average median income in that tract. In particular, as relatively well-off households
13 (*e.g.*, tech industry employees) have moved into the region, the AMI has been rising. As the AMI
14 rises, so does the 50% AMI threshold. As that threshold rises, more and more households that
15 formerly were slightly above the cutoff are now below it. In that case, an increase in the number
16 of households in the tract of households below 50% AMI does not represent low income households
17 moving in (a lack of displacement); it simply reflects a rising AMI for the tract as wealthier
18 households move in. Whether lower income households are moving out is obscured by the shift in
19 the AMI (and the 50% AMI threshold).
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23 The authors of the City’s Growth and Equity Analysis gave passing acknowledgment to
24 this problem.¹⁵ But the acknowledgment did not stop the City from relying heavily, indeed
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26 ¹⁵ “In areas where current rents are below average, the higher-price of new market rate development can exert upward pressure on the rents in the immediate vicinity, even as overall housing supply increases.” App. A at 15.

1 exclusively, on the bogus statistical analysis for the claim made repeatedly that the action
2 alternatives would reduce “economic displacement.”

3 For a proposal that is centered on addressing housing issues, it is difficult to conceive of
4 more consequential statements than those related to the issue of whether the program will have the
5 contrary effect of increasing displacement due to gentrification. The inaccurate and grossly
6 misleading statements in the EIS on that subject demonstrate the authors were intent on justifying
7 the MHA proposal, facts be damned. This is the kind of puff piece we might expect from Madison
8 Avenue. It does not belong in an EIS. As the City’s internal critique stated:
9

10 A conclusion that increasing development capacity and encouraging
11 market rate development in high displacement risk areas and an anti-
12 displacement strategy in and of itself is a very dangerous conclusion
13 for Seattle and the field of planning nationally, and goes against the
14 HJUD recommendations on fair housing. **It feels like this analysis
sought to defend a specific strategy instead of recognizing the
benefits and impacts new development has on the neighborhood
level.**

15 Ex. 144 (emphasis supplied).

16 *ii. Failure to address impact on owner-occupied housing*

17
18 The EIS failed to address the impact of the proposal on owner occupied housing. The EIS
19 focused on rental housing, ignoring 60% of the housing market. Reid V2 @ 76:11 – 81:3; Mefford
20 V10 @ 124:17 – 125:4. Mr. Reid explained that MHA’s emphasis on increasing production of
21 rental housing would bring more young renters to the city who, over time, will increase the demand
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23
24 _____
25 Given that half of the area is below average, this statement applies to large sections of the city (and is roughly consistent
26 with Mr. Reid’s analysis of the City’s own data which indicates increased economic displacement in almost a third of the
census tracts due to MHA. Yet this telling acknowledgment (and another at Appendix 31 (“new development may put
upward pressure on rents” in Columbia City, North Rainier and several other UV expansion areas)) are buried in the fine
print of an appendix and do not see the light of day in the body of the EIS which instead states, repeatedly, that the action
alternatives will reduce economic displacement citywide. *See also*, Levitus V7 @ 131:15 – 134:1 (“internal contradiction”
between EIS and appendix).

1 for owner-occupied housing, causing an upward pressure on housing costs. He testified this is
2 already occurring, pricing young people and people of color out of the home ownership market and
3 that the EIS completely failed to identify or discuss this issue. Reid V2 @ 81 – 84:7 (“simply not
4 addressed in the EIS”); *id.* at 84:3 (“halo effect” caused by gentrification resulting in upward
5 pressure on home prices and rentals). Mr. Levitus explained that the increasing cost of entry-level
6 owner-occupied housing has been particularly hard on the black community. V7 @ 139. None of
7 this was addressed in the EIS.
8

9 *iii. Failure to assess displacement risks at the urban village level*

10 The risk of displacement is not spread evenly across the city. As Mr. Reid explained, “each
11 Urban Village has distinct home prices and distinct rents. And so, yes, it [displacement risk]
12 varies.” V2 @ 85:18 – 86:1. *See also, id.* at 115:10 (would not have been terribly difficult to do
13 analysis for each urban village). The EIS failed to address these differences, too, for each Urban
14 Village individually. *Id.* at 98:20 – 99:5.
15

16 *iv. Understating physical displacement*

17 Mr. Reid explained that the EIS also understated the risk of physical displacement. The EIS
18 used past trends to forecast the future, without recognizing that past redevelopment primarily
19 involved the “low hanging fruit” of empty lots or parcels that could be subdivided to create new
20 buildable lots. Much of that supply is now exhausted, meaning that future redevelopment will more
21 often displace households than indicated by historic data. Reid V2 @ 102 - 103. The EIS
22 misleadingly understates likely physical displacement because of its inappropriate use of this
23 historic data.
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v. *Exacerbation of segregation trends*

Mr. Reid testified that the income-assisted housing funded by the proposal would exacerbate segregation, rather than ameliorate it, and that this impact was not disclosed by the EIS (indeed, was counter to the City’s objective in developing the program and contrary to the EIS claim that the units would be spread around the city (EIS 3.85, n. 21)). As Mr. Reid explained, the price developers would pay for off-site housing was too low, so that most developers would pay that fee, rather than build units on site. In turn, that money would go to low-income housing developers who could maximize the units constructed by developing them where land costs were low, *i.e.*, in parts of the City where poorer households already are located. Reid V2 at 104:11 – 109:19; Levitus V7 148:3 – 151:6. Likewise, Mr. Levitus used the City’s own data to show that it predicted a “sorting” of neighborhoods as high-income people moved into areas with new housing and lower income households moved out. V7 @ 142:20. The EIS ignores these effects.¹⁶

5. *Relationship to Land use plans and zoning regulations*

- a. The EIS does not include an adequate summary of existing plans and regulations and how the proposal is consistent or inconsistent with them.

An EIS must address a proposal’s “relationship with existing land use plans.” SMC 25.05.444(2)(a); WAC 197-11-444 (2)(b)(i). More specifically, chapter three of the EIS must include “[a] summary of existing plans (for example: Land use and shoreline plans) and zoning regulations applicable to the proposal, and how the proposal is consistent and inconsistent with them.” SMC 25.05.440(E)(4)(a); WAC 197-11-440(6)(d)(i). The EIS does not comply with this requirement.

Overall, there are a number of goals and policies that are relevant to the proposal in the City’s

¹⁶ Mr. Levitus also noted the proposal’s double whammy catalyzing more segregation: simultaneously dislocating low income households from gentrifying neighborhoods while increasing the production of subsidized housing in poor ones. Neither are addressed in the EIS. V7 @ 152:18 – 154:21.

1 2035 Comprehensive Plan. Steinbrueck V1 @ 40:24-41:18, 44:16-47:17, 55:7-63:11; Ex. 7. But the
2 EIS does not summarize, much less even mention, the vast majority of these goals and policies. It
3 does not mention any goals or policies in the 2035 Comprehensive Plan related to Transportation (with
4 one exception); Housing; Capital Facilities; Utilities; Economic Development; Environment; Parks
5 and Open Space; Arts and Culture; Community Well-Being; or Neighborhood Plans. *See, e.g.*, EIS at
6 3-107, 3-108.
7

8 In addition to the Citywide Plan policies, there are (1) neighborhood plan policies contained
9 in the 2035 Comprehensive Plan for each neighborhood and (2) neighborhood plans for each
10 neighborhood that have been adopted separately from the 2035 Comprehensive Plan. *See e.g.*, Exs.
11 250 and 251 (Wallingford Plans), Ex. 58 (Mount Baker and North Rainier Plans), Ex. 66 (Roosevelt
12 Plan), Ex.'s 146-149 (North Beacon Hill Plans), and Ex. 3 at 201-412. The EIS contains not a word
13 from any of the neighborhood policies in the Comprehensive Plan, nor any summary of the proposal's
14 consistency or inconsistency with them. The EIS does not discuss the individual neighborhood plans
15 for any of the affected neighborhoods at all.
16

17 Under the heading, "Relevant Policies and Codes," at 3-107 and 3-108, the EIS lists only six
18 land use policies from the land use element of the 2035 Comprehensive Plan (LU 1.3, LU 1.4, LU 2.7,
19 LU 7.3, LU 8.4, and LU 8.13). Even for those six policies, the EIS does not include a discussion about
20 how or whether the proposal is consistent or inconsistent with those six policies.
21

22 Later in the chapter, the EIS contains additional sections with the heading: "Consistency with
23 Policies and Codes" for each action alternative. EIS 3.130 (Alt 2) 3.140 (Alt 3); 3.155 (Preferred Alt).
24 Those sections do not identify any policies from the Comprehensive Plan or neighborhood plans, but
25 instead contain the conclusory statement that "rezones to implement MHA under Alternative [2, 3 or
26 preferred] would be generally consistent with Comprehensive Plan policies and Land Use Code

1 requirements.” *Id.* There is no analysis provided to show what policies are being included and/or how
2 the authors came to this conclusion.

3 In various other locations scattered throughout the EIS, the EIS mentions a few additional
4 Comprehensive Plan policies in various different narratives on various different topics. See EIS at
5 1.21, 2.4-2.5; 3.100-3.103; 3.117; and 3.168. None of those references discuss
6 consistency/inconsistency in any meaningful way. Basically, they are as follows:
7

- 8 • The discussion at EIS at 2.4-2.5 does not provide a summary of whether the
9 proposal is consistent or inconsistent with existing Comprehensive Plans,
10 neighborhood plans, and/or zoning regulations as is required by SEPA.
11 Instead, it describes GMA’s requirements; discusses the City’s adoption of the
12 Seattle 2035 Comprehensive Plan; and provides a brief overview of the 2035
13 Comprehensive Plan EIS. Furthermore, the SEPA rules require that the
14 disclosure and analysis of Comp Plans be in Chapter 3 of the EIS – and this is
15 not in Chapter 3.
- 16 • The EIS at 1.21 states, “Overall, at the citywide scale, land use impacts may
17 be summarized as follows: Changes to land use patterns would be consistent
18 with the overall Comprehensive Plan strategy.” This fails to summarize any
19 Comprehensive Plan policies and fails to even note (as is done fleetingly
20 elsewhere) that the proposal is inconsistent with some of them. Furthermore,
21 the SEPA rules require that the disclosure and analysis of Comp Plans be in
22 Chapter 3 of the EIS – and this is not in Chapter 3.
- 23 • The EIS at 3.100 – 3.103 summarizes goals and policies from the Land Use
24 and Growth Strategy Elements of Seattle 2035 Comp Plan and describes the
25 land use classification system employed in the Comp Plan (*e.g.*, Urban Center
26 and Hub Urban Village). But there is no analysis of the proposal’s consistency
or inconsistency with those policies. Moreover, the authors crafted the
summary to avoid any hint that the proposal is inconsistent with any
comprehensive plan policies.
- The EIS at 3.168 identifies Comprehensive Plan policy LU 5.15, which
addresses views. But there is no discussion of whether or to what extent the
proposal is consistent or inconsistent with this policy.
- The EIS at 3.287 states that the proposal’s efforts to reduce the use of single
occupancy vehicles is consistent with Comp Plan polices that seek that
objective. This is the only statement in the entire EIS where the document

1 identifies a specific comp plan policy and addresses proposal's consistency
2 with it. This single example does not cure the other omissions

3 The proposal is inconsistent with numerous policies in both the citywide and neighborhood
4 sections of the Comp Plan. Steinbrueck V1 @ 66:22-81:5; Exs. 7 and 8. As Ms. Tobin Presser
5 testified, the Comprehensive Plan clearly envisions growing urban villages in a manner that includes
6 single family areas and the MHA proposal is doing something entirely different. *See, e.g.,* Ex. 3 at
7 206, 303, 332, 349, 355, 379, 398, 405, 408.

8 The EIS also contains no discussion at all about applicable zoning regulations and the
9 proposals' consistency or inconsistency with those regulations. As has been demonstrated in this brief,
10 the proposal is inconsistent with at least two relevant provisions in SMC 23.34.008.

11 This failure to discuss the proposal's relationship to the great majority of the Comp Plan's
12 policies and zoning regulations constitutes a clear violation of WAC 197-11-440(6)(d)(i) and SMC
13 25.05.440(E)(4)(a). Upholding this EIS would be tantamount to waiving this legal requirement.

14
15 b. The EIS fails to adequately describe and assess the proposed
16 comprehensive plan amendment action alternatives and fails to
17 adequately assess alternatives to the proposed amendments.

18 While acknowledging that the proposal is inconsistent with certain undisclosed policies in the
19 Comp Plan and will therefore necessitate amendments to the Comprehensive Plan as part of the
20 "proposal," (Ex. 2 at F-11), these proposed "amendments" are not described anywhere in the EIS.
21 Failing to completely describe the proposal (particularly regarding something as fundamental as the
22 content of necessary comprehensive plan amendments) renders the EIS inadequate as a matter of law.

23 Because zoning codes may not be amended if the amendments create an inconsistency with
24 the comprehensive plan, the proposed comprehensive plan amendments are a necessary and integral
25 part of this proposal. An EIS must include the "principal features" of the proposal. SMC 25.05.440;
26

1 WAC 197-11-440(5)(c)(i). Given the foundational and fundamental nature of the necessary
2 comprehensive plan amendments, they must be included as ‘principal features’ of the proposal and
3 analyzed in this EIS. Because this EIS fails to include a description of the proposed comprehensive
4 plan amendments and fails to analyze their impacts, alternatives and possible mitigation measures, the
5 EIS is inadequate.
6

7 Dated this 19th day of October, 2018.

8 Respectfully submitted,

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