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6 BEFORE THE HEARING EXAMINER
7 FOR THE CITY OF SEATTLE

8 In the Matter of the Appeals of) Hearing Examiner File:
9 WALLINGFORD COMMUNITY) **W-17-006 through**
COUNCIL, ET AL.) **W-17-014**
10 Of Adequacy of FEIS Issued by the)
11 Director, Office of Planning and)
Community Development)
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15 FRIENDS OF RAVENNA-COWEN'S CLOSING ARGUMENT

16
17 (CITING TRANSCRIPTS)
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INTRODUCTION

In disregard of public input and actual urban village housing density capacity, the MHA FEIS proposes to upzone every single family parcel in ten urban villages and expansion areas that are within a 10-minute walkshed from rapid transit. This predetermined decision was set in stone (Nick Welch¹). The conditions on the ground are irrelevant, such as: the capacity of each urban village to absorb additional housing, the predictable demise of historic resources, the destruction of tree canopy, the harm to environmentally critical areas such as Ravenna Park, inadequate infrastructure to meet increased density, such as eight-inch combined sewer pipe, and topography. The MHA FEIS is inadequate and much of the data relied on is inadequate, in part because the City applied the same criteria everywhere. Thoughtful and knowledgeable people who live in the Roosevelt/Ravenna communities provided workable suggestions where to upzone within the current Roosevelt Urban Village which would not have impacted this area's historic and ecological resources (Lorne McConachie, see n. 153, *infra.*) – to no avail because the decision was already made nine months or more before the MHA DEIS was published. (Alex Gagne's Ex. 161)

Jane Jacobs wrote, “Whether in urban downtowns or neighborhoods, local residents and business people know instinctively which improvements will bring positive change - local wisdom and community visions over the grandiose designs of distant planners and so-called experts.” Jacobs' words resonate today and encapsulate the reason for this appeal.

¹ Q: Do you know within the current boundaries of the Roosevelt Urban Village whether there's room for the expanded capacity? A: [Welch] We concluded there is zoning capacity in the existing urban village boundary. 8/31, Day 17, Tr. 29: 4- 14, 30:16 - 25. Mr. Welch was asked to read lines 3-16, p. 3 of his deposition A [Welch]: "Well, it's not just me working on this proposal but our staff team concluded that we had a principle of expanding urban villages identified as having frequent transit based on the ten-minute walk shed concept." *Id.*, 31:1-8.

1 The City's justification is that this City-wide EIS is "programmatic" and the cost would be
2 prohibitive if each neighborhood required a separate EIS on a parcel-by-parcel basis. (Weinman)
3 But, as the City's own studies showed, the City already had parcel-by-parcel data for every parcel in
4 the "project area." *E.g.*, Ex. 310. The City already had data that showed that additional capacity
5 existed within the current urban villages without the need to expand. (Peter Steinbrueck's Ex. 50 at
6 136 - "Existing residential housing units/acre" in the RUV was 8.62 and the "Potential Residential
7 Density," 2105 – 2035, is 26.6 housing units/acre; Welch, see n. 1, p. 1) The City has the address of
8 all Landmark buildings and surveys of Seattle historic resources, and which could have been easily
9 mapped (Spencer Howard; see n. 88 *infra*), but did not do so. The City could have shown tree
10 canopy on a neighborhood basis, but did not do so. (Ex. 215, p. 21) And the City's proposed remedy
11 for all the impacts is "project-by-project" SEPA review, but that remedy is inadequate: (1) Once the
12 proposed zoning is adopted and a permit applied for, the property owner has a vested right to use
13 that property to its highest zoning;² (2) SEPA review is exempt, not available, unless a certain
14 threshold is met;³ (3) even if SEPA review were available, there will be no assessment of the
15 cumulative impacts of upzoning - the review is limited to the specific project;⁴ (4) state law
16 precludes local government from re-examining land use decisions;⁵ and (5) deferring environmental
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21 ² *Town of Woodway v. Snoh. Co.*, 180 Wn. 2d 165, 1, 322 P.3d 1219 (2014) (Developers have a right to use their
land under development regulations in effect when the permit is filed even if the regulations were later found to be
noncompliant with SEPA); RCW 19.27.095 (building permit applications); RCW 58.17.033 (subdivision applications).

22 ³ SMC 25.05.800; SDCI Director's Rule 7-2018 (1/18/2018) - pursuant to code section SMC 25.05.800, "SEPA
code regulations provide 'categorical exemptions' from compliance with procedural requirements related to environmental
23 review. In other words, projects of a certain type or scale are exempt from SEPA review." SEPA review is exempt if
there are fewer than four units on a Residential Small Lot or LR 1 lot. *Id.*, at 2, Table A The upzoning of single family
24 homes in the Ravenna-Cowen Roosevelt Urban Village and proposed expansion area to RSL and LR 1 fall within the
exemption since many of these lots are 4000 square feet and less (*e.g.*, Ex. 157), and rarely, if ever, would there be four
25 units on one lot.

26 ⁴ SMC 25.05.443B

⁵ RCW 36.70B.030

1 review to a later date is contrary to SEPA requirements.⁶ Appellant Friends of Ravenna-Cowen
2 incorporates by reference the entirety of the issues and legal discussion in Appellant SCALE's and
3 other appellants' Closing Arguments. The particulars, as related to the evidence in the case, are
4 addressed below.

5
6 The major concerns raised in Friends of Ravenna-Cowen's 's appeal involve this
7 community's jewels - available not only to the immediate residents, but to the entire city and
8 future generations: destruction of Ravenna Park, annihilation of tree canopy, and the decimation
9 of the fabric of an irreplaceable historic district. This is not hyperbole. These inevitable results,
10 if the proposed upzoning were to occur, are fully supported by the evidence. This closing brief
11 begins with the history and conditions on the ground in the Roosevelt Urban Village and
12 proposed expansion area as established by the evidence.

13
14 **The Development Of The Roosevelt Urban Village, And What It Is Today**

15 In 1891, The City of Seattle annexed the Roosevelt neighborhood.⁷ In 1909, the Alaska-
16 Yukon- Pacific Exposition brought recognition to the city and residents flocked to the then privately-
17 owned Ravenna and Cowen Parks. The popularity of the parks and the availability of public transit,
18 a trolley line running along 15th Avenue NE, encouraged rapid development of the area, which is
19 why so many of the remaining houses in the Roosevelt and Ravenna neighborhoods date from about
20 1908 to the mid-1920s. (Lawrence Kreisman;⁸ Ex. 92, part 1, p. 14, National Historic District
21 Application). During this period, the central Roosevelt neighborhood, north of NE 63rd St.
22 developed into a commercial center. The area between Roosevelt Way NE and 12th Avenue NE
23

24
25 ⁶ *King Co. v. Boundary Review Bd.*, 122 Wn. 2d 648, 644, 860 P.2d 1024 (1993); SMC 25.05.030 B.4;
25.05.055 A, B. 2 and 3.

26 ⁷ 6/28, Day 4, McConachie, Tr. 62,:2-3.

⁸ Kreisman Tr. 35:5-23, 36:1-25, 37:1-16; see also, 21:11-25, 22:1-25, 23: 1-7, 28:4-25, 29: 1-12.

1 along NE 65th Street became the commercial core.⁹ This section of what is now the Roosevelt
2 Urban Village (RUV) has remained a commercial neighborhood hub for the contiguous
3 communities. Ex. 210, pp. 3-19. The RUV has three major north/south arterials, 15th Ave. NE,
4 Roosevelt Way NE and 12th Ave. NE; its western boundary is the freeway. The RUV has two major
5 east/west arterials, NE 65th St. and NE 75th St.¹⁰
6

7 The southern border is the Olmstead-designed Ravenna Boulevard NE and Cowen Park.
8 Along this border and north to about NE 63rd St., are well-maintained, single-family homes from the
9 early 1900s, which are part of the Ravenna-Cowen North Historic District, now listed on the
10 Washington State Historic Register.¹¹ (Exs. 91[map of historic district], 208, 209)
11

12 In the 1990s the Roosevelt neighborhood began a planning process involving residents,
13 businesses, employees, institutions and property owners, including those in the contiguous Ravenna
14 neighborhood (Lorne McConachie¹²). "Since early 1995, neighborhoods throughout Seattle have
15 been engaged in planning for their future development. These neighborhood planning efforts
16 represent an innovative, *grass-roots approach to growth management* that encourages neighborhood
17 residents, business owners, and other community members to plan for their own future." (Emphasis
18 added) (Ex. 66, "Tomorrow's Roosevelt Neighborhood Plan," p.5) In 1994, in adopting the 1995
19 Comprehensive Plan, the City Council created urban villages:
20

21 A basic tenet of the Comp Plan is a concept that concentrates future growth in areas
22 designated as either 'urban villages' or 'urban centers'... Urban villages are the commercial
23 and residential cores of *historically distinct neighborhoods* [emphasis added]. Like urban
24 centers, but on a somewhat smaller scale, urban villages are intended to be relatively dense,

25 ⁹ McConachie, Tr., 62:10-20.

¹⁰ McConachie, Tr., 64:6-20.

¹¹ *Id.*, Tr., 64:21-25, 65:1

¹² *Id.*, Tr., 69:8-23.

1 walkable communities, served by local shops and services and well connected by transit
2 systems." [Id.]

3 The 1995 Comp. Plan designated the RUV planning area boundaries along I-5, NE 75th
4 Street, 15th Avenue NE, Cowen Place NE, and Ravenna Boulevard (*id.* and map at p. 6) - the same
5 boundaries adopted in the 2035 Comprehensive Plan, Ex. 3, p. 383.

6 The Roosevelt Neighborhood Plan recognizes that its commercial hub is distinct from its
7 neighbors:

8 The Roosevelt neighborhood lies between two of the city's busiest north-end commercial
9 nodes - just north of the University District and about two miles south of Northgate. To the
10 east is the Ravenna-Bryant neighborhood and to the west, separated by Interstate 5, is the
11 Green Lake neighborhood. To the north is the Maple Leaf Neighborhood." [Ex.66, pp. 6-7]

12 Lorne McConachie, FAIA (Ex. 65) is a Ravenna resident who participated in the
13 neighborhood planning process.¹³ He testified that Sound Transit, which was building the light rail
14 system, had planned links at Northgate and the University District. However, the RUV residents and
15 Ravenna participants strongly advocated a link at the RUV.¹⁴ Sound Transit agreed, and now in
16 Phase 2, the light rail station is scheduled to open in 2021. With the advent of light rail, the 1999
17 Roosevelt Neighborhood Plan also advocated for increased density, upzoning in specific areas, and
18 *downzoning in the area of single-family homes (id. at 18 and zoning map at 19).*¹⁵

19 In anticipation of light transit, a development surge engulfed the RUV, with numerous large
20 apartment buildings (some of which displaced existing small neighborhood businesses), some
21 condominiums, and a few new small businesses. (John Stewart's Ex. 210, pp. 3-19) Most of these

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23 ¹³ McConachie, Tr., 59:10-17.

24 ¹⁴ *Id.*, Tr. 65:4-25, 66:1:12.

25 ¹⁵ This southern area, bordering Ravenna Boulevard NE and between 12th and 15th Aves. NE, designated as SF
26 5000 on the Neighborhood Plan map RUV map, is the Cowen area of the RUV, which section is now included (as of
June 29, 2018) in the Washington State Register of Historic Places of the Ravenna-Cowen North Historic District. Exs.
208, 209 (Many of the lots are less than 4000 square feet, John Stewart. Tr. 40:11-17.)

1 apartment buildings contain micro units, efficiencies or one-bedroom apartments, with limited or no
2 parking facilities. (Barbara Warren, Ex. 85, p. 2, lines 13-17) In December 2017, a developer
3 purchased Roosevelt Square and five other parcels within the RUV for \$68.3 million. Stewart Ex.
4 211, p.1, "*The Roosie*" (May 2018).

5
6 Given the development and the lack of family-sized and affordable housing, the Roosevelt
7 neighborhood, together with Ravenna participants, initiated the effort to obtain affordable housing
8 adjacent to the light rail station. Barbara Warren (Ex. 85) is a Ravenna resident; her work
9 experience involved affordable housing and community development, work with low-income
10 tenants, running an affordable housing fund and serving on various housing committees (*id.* at1).
11 Warren and others were concerned about the need for affordable housing and in 2016, led by the
12 Roosevelt Neighborhood Association Land Use Committee, a group formed to obtain affordable
13 housing, which included the Ravenna-Bryant Community Association president and its Land Use
14 Committee chairperson. Through this process, there will now be 245 affordable-housing units with
15 42% family-sized two and three-bedroom apartments, complete with a daycare facility, community
16 space, retail shops, and a public plaza contiguous to the light rail station, set to open coincident with
17 the opening of the light rail station. *Id.* at 6. This project was not initiated by the City of Seattle or
18 Sound Transit (although both subsequently participated to provide funding and land). The Roosevelt
19 and Ravenna neighbors, through their efforts initiated and brought this to fruition.¹⁶

21
22 **Ravenna, Its Development, And What It Is Today**

23 In 1906, Ravenna became an incorporated city and in 1907 was annexed to the City of

24
25 ¹⁶ In addition, in 2017, pursuant to the City's "incentive zoning" program, which has a performance or payment
26 option, and which provides a multifamily tax exemption for the developer, a total of 70 affordable performance units
were built or permitted in the RUV. Ex. 277, p. 2 (Table A) and p. 3 (Table B).

1 Seattle. Its western border, then and now, is 15th Ave. NE. It developed as a "suburban" community
2 with the advent of the trolley line along 15th Ave. NE, adjacent to two privately-owned parks –
3 Ravenna Park and Cowen Park. It offered modest lot prices, appealing to working families and
4 some professionals. Owners built their homes from plans sold by such companies as Sears Roebuck
5 and the Craftsman Company. These were not for the rich, contain built-ins, small gardens, and
6 porches so that neighbors could interact. (Lawrence Kreisman¹⁷) Many properties were owned for
7 decades by generations of the same family. *Id.*; Anne McGowan's home includes her granddaughter
8 and great-grandchild;¹⁸ Ex. 154 (the Donnelly family).

10 The Ravenna neighborhood is not an urban village¹⁹ and has retained its historic heritage and
11 fabric with intact homes in excellent condition, well-cared for gardens and mature tree
12 and shrub cover. (Lawrence Kreisman²⁰) The only arterials are 15th Ave. NE on the east, 25th Ave.
13 on the west, and NE 65th St on the north where there are a few small apartment commercial
14 buildings. But other than these, none exist within the single-family area. Even some of its alleys are
15 undeveloped, such as the alley between 16th Ave. NE and 17th Ave. NE, never paved, tall grass
16 growing with a narrow track, and steep sides to the west kept in place only by the vegetation. (John
17 Stewart²¹) And other alleys are so narrow garbage trucks cannot drive down them, such as the alleys
18 between 15th Ave. NE and 16th Ave NE and 16th and 17th. (Anne McGowan and Alexander
19 Gagnon;²² Ex. 155e; both alleys are within the area the expansion area OPCD proposes to upzone.)
20
21

22 ¹⁷ 6/29, Day 5, Tr. 27:18-25, 28: 1-15.

23 ¹⁸ McGowan Tr. 216: 16-17.

24 ¹⁹ The President of the Ravenna-Bryant Community Association suggested that certain commercial areas of the
25 RBCA might be appropriate for an urban village, but not in the proposed RUV expansion area. (Ex.160, Inga Manskopf,
26 p. 2).

²⁰ 6/29, Day 4, Tr: 33:6-14.

²¹ Stewart Tr. 43:6 to 46:18.

²² McGowan Tr. 215:16-21; Gagnon Tr. 269:13-25

1 Because this area has among the most intact and cohesive Craftsman-bungalows, and other 1906 –
2 1930 era homes in the City of Seattle (Lawrence Kreisman; Ex. 207, p. 12 *et seq.*),²³ it is now on the
3 Washington State Heritage Register.²⁴

4 **Ravenna Park And Ravenna Creek**

5 Ravenna Park is located east of 15th Ave. NE and south of and contiguous to, NE 62nd St.
6 The park was once privately owned and a streetcar ran along the southern edge offering tours.
7 Ex. 92 at 13, 67, 71. The park is three-quarters of a mile long, about 600-feet wide, with steep sides
8 ranging from 100 to 125-feet. (Prof. Kern Ewing²⁵) In the middle of the ravine is a stream known as
9 Ravenna Creek and adjacent wetlands. *Id.*; Ex.110, City ECA map. Prof. Ewing testified that
10 Ravenna Creek was originally part of a larger watershed starting at Green Lake. When Green Lake
11 was lowered, the flow diminished.²⁶ An 1863 surveyor's map shows the stream running from Green
12 Lake to join with Union Bay and an 1893 picture shows the creek. Ex. 92 at 35, 68. In 1960, the
13 City dumped freeway construction spoils into the ravine in Cowen Park, and diminished the stream
14 even more. *Id.* at. 89. More recently, the Seattle Parks Department, together with neighborhood
15 volunteers and students from Prof. Ewing's wetlands restoration class, worked to restore the park to
16 its natural state.²⁷ As is explained in this brief, all that work will be for naught if the upzones
17 proposed in the MHA FEIS go into effect.
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20 **SUMMARY OF THE ARGUMENT**

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22 ²³ Witnesses testified that the proposed RUV expansion area is a "cohesive" neighborhood. Lorne McConachie
23 (6/28, Day 4, Tr. 73:18-25, 74:5 [describing the area as "intact" rather than "cohesive"]), Lawrence Kreisman (6/29, Day 5,
Tr. 36: 2-25, 37: 1-6), Geoffrey Wentlandt (8/23, Day 14, Tr.: 228: 1-12), and Nick Welch (8/31, Day 17, Tr.: 6 - 24).

24 ²⁴ Although too late to be included in the hearing record, the Hearing Examiner is asked to take judicial notice
that as of Sept. 13, 2018, this is now a recognized National Historic District,
<https://www.nps.gov/subjects/nationalregister/weekly-list-20180914.htm> (listed under Washington).

25 ²⁵ 6/29, Day 5, Tr. 203:16- 23.

26 ²⁶ Ewing, Tr. 204:13 -16, 205:3 -16.

27 ²⁷ Ewing, Tr. 201: 4 – 18, 206:10 -25, 207:1- 208:19.

1 *The Level of Detail Presented In This MHA FEIS Is Inadequate and Unreasonable.*

2 SMC 25.05.402B states, "The level of detail [in an EIS prepared by an agency] shall be
3 commensurate with the importance of the impact, with less important material summarized,
4 consolidated or referenced." WAC197-11-442 (2) states: "The lead agency shall discuss impacts
5 and alternatives in the level of detail appropriate to the scope of the nonproject proposal and to the
6 level of planning for the proposal." (SMC.25.05.442B uses the identical language.) The appropriate
7 level of detail permeates this appeal. The level of the proposal is parcel-by parcel zoning, which has
8 enormous impacts, and these impacts affect every element of the environment (such as ECAs, tree
9 canopy and, historic resources discussed *infra*.)

10 In *Klickitat Cty. Citizens Against Imported Waste v. Klickitat Cty.*, 122 Wn.2d 619, 641-42,
11 94 P.3d 961 (1993) *as amended on denial of reconsideration* (Jan. 28, 1994), *amended*, 866 P.2d
12 1256 (1994), the Court explained: "The lead agency shall discuss impacts and alternatives in the
13 level of detail appropriate to the scope of the nonproject proposal and to the level of planning for the
14 proposal. WAC 197-11-442(2). See *Cathcart-Maltby-Clearview Comm'ty Council v. Snohomish*
15 *Cy.*, 96 Wash.2d 201, 211, 634 P.2d 853 (1981)... Even at the more generalized level, however,
16 '[s]ignificant impacts on both the natural environment and the built environment *must* be analyzed, if
17 relevant,' in an environmental impact statement. (Italics ours.) WAC197-11-440(6)(a). " See also
18 Settle, *Washington State Environmental Policy*, §14.01[3] at 14-7:

19 Here this nonproject EIS addresses not an abstraction, but a very specific and far reaching proposal. Zoning
20 maps for every corner of the City are proposed to be amended parcel-by-parcel. Zoning code text is to be
21 changed word-by-word and number by number (e.g. building heights; density) . This is anything but an abstract
22 proposal; more detail is required in the EIS for a nonproject proposal that might include, for instance, only the
23 development of broadly stated land use policies."

24 The City's mantra throughout this appeal is that the project is a programmatic EIS involving
25 the whole city, and a lesser level of detail suffices. But the City ignores the level of detail required
26

1 to analyze the impacts in upzoning parcel-by-parcel 27 urban villages, expansion areas, and other
2 areas. These zoning changes are proposed without regard to actual conditions on the ground even
3 though in many instances the City has more than adequate information and can easily provide the
4 level of detail that would enable a decision-maker to make a knowledgeable decision. There are
5 several categories of deficiencies in this FEIS: (1) deficiencies that arise because the City has
6 adequate detailed information which would adequately inform the decision-maker, at low cost, but
7 chose not to do so (*e.g.* historic resources), (2) biting off more than it can chew because the impact
8 analysis requires the City to "ground truth" the actual site or area (*e.g.*, Ravenna Park and
9 height/bulk/scale issues unique to each neighborhood), and (3) inadequacy because the City fails to
10 evaluate the cumulative impact of the proposed upzones. These deficiencies are further compounded
11 due to:
12

- 13 (a) a predetermined, top-down, upzone-everywhere "planning," in disregard of the actual
14 environment on the ground;
- 15 (b) disregard of the residents' suggestions who know best their community and its resources;
- 16 (c) disregard for the goals and policies adopted in the 2035 Comprehensive Plan to the extent
17 these conflict with MHA FEIS proposals;
- 18 (d) denial or minimization of real adverse impacts that will occur;
- 19 (e) lack of data and faulty data so that conclusions made are factually baseless;
- 20 (f) insufficient data and/or insufficient presentation of data to enable decision makers to
21 make knowledgeable decisions;
- 22 (g) obfuscation, rather than data and clear presentation applicable to each neighborhood's
23 unique circumstances, resulting in the public's and decision-makers' inability to evaluate the
24 consequences and real impacts of these zoning proposals.

25 This brief next examines the MHA FEIS inadequacy of the FEIS with respect to Ravenna
26 Park.

I. The Undisputed Evidence Establishes that the MHA FEIS Is Inadequate with Respect to the Impacts on Ravenna Park, An Environmentally Critical Area.

A. Definitions of Terms Used

1 Section 3.6 of the MHA FEIS (Ex. 2) is titled Biological Resources and addresses
2 Environmentally Critical Areas (ECAs) and the City's urban forest and tree canopy. This section
3 states at 3.321, "Direct and indirect impacts to ECAs would be evaluated on a project by project
4 basis as a condition of permitting." The first page, 3.315, specifically references regulations that
5 apply to ECAs, Chapter SMC 25.09. SMC 25.09.015 states, "This Chapter 25.09 applies to any
6 development, as defined in 25.09.520, or platting carried out by any person on publicly or privately
7 owned parcels containing an environmentally critical area or buffer (emphasis added)." The
8 cumulative impact of upzoning an entire area is non-reviewable if this FEIS goes forward.

10 SMC 25.09.012 and .520 define terms used in the hearing related to ECAs. Steep slope
11 erosion hazard areas are areas with a slope described in subsection 25.09.012A.3.b.5 and,
12 25.09.012A.4 (an incline of 40 percent or more within a vertical elevation change of at least 10 feet).
13 "Wetlands are those areas that are inundated or saturated by surface water or ground water at a
14 frequency and duration sufficient to support, and that under normal circumstances do support, a
15 prevalence of vegetation typically adapted for life in saturated soil conditions." 25.09.012C. SMC
16 25.09.160 sets out development standards for wetland buffers. "The term 'buffer' means a defined
17 area adjacent to and/or a part of an environmentally critical area and intended to protect the
18 environmentally critical area." "'Development' means all components and activities related to
19 construction or disturbance *of a site* [emphasis added], including but not limited to land disturbing
20 activities." 25.09.520. " SMC 25.160 The code also defines impervious surfaces, SMC 22.801.100:
21 "Impervious surface" means any surface exposed to rainwater from which most water runs off. Impervious surfaces
22 include, but are not limited to, roof tops, walkways, patios, driveways, formal planters, parking lots or storage areas,
23 concrete or asphalt paving, areas with underdrains designed to remove stormwater from subgrade (e.g. playfields, athletic
24 fields, rail yards), gravel surfaces subjected to vehicular traffic, compact gravel, packed earthen materials, and oiled
25 macadam or other surfaces which similarly impede the natural infiltration of stormwater.

1 B. Based On The Undisputed Testimony re ECAs/Ravenna Park, There Will Be Significant
2 Adverse Impacts to Ravenna Park.

3 Friends of Ravenna-Cowen called Professor Kern Ewing as a witness by to address the
4 inadequacy of the MHA FEIS with respect to Ravenna Park. In 1990 Prof. Ewing became a faculty
5 member at the University of Washington's Department of Botany. As of June 15, 2018, when he
6 retired, Prof. Ewing was the Rachel Woods Professor of Environmental and Forest Sciences the
7 University of Washington, College of the Environment.²⁸ Additionally, he has a degree in civil
8 engineering and has been a registered engineer for over 50 years.²⁹ Ex. 109, *curriculum vita*.
9

10 Ravenna Parks contains three ECAs - steep slopes, a riparian stream and wetlands. Ex. 110.
11 Prof. Ewing explained that although the Ravenna Creek flow is now less, the creek still remains part
12 of a watershed that joins with two other streams, Yesler Creek and water from the Kincaid ravine.
13 These meet at Union Bay. This watershed is the second largest remaining lakeside system on Lake
14 Washington, and this drainage is important for salmon habitat. Ravenna Creek's water purity is an
15 essential element to the health of Lake Washington.³⁰ Prof. Ewing has overseen eight restoration
16 projects in Ravenna Park, five of them since 2010, to reestablish mature forest habitat with native
17 plant species. (*See, e.g.,* Ex. 111.) He testified the purpose of restoration is to provide improved
18 water quality, improve hydrology, prevent sediment coming off the steep sides, and improve habitat
19 for birds and other wildlife Restoration is critical to maintaining the purity of Ravenna Creek.³¹
20

21 Prof. Ewing explained Ravenna Creek lies at the low point of a hill that rises steeply to NE
22 62nd St. and then gradually slopes north continuously for several miles. Geologically, these hills
23

24 ²⁸ 6/29, Day 5, Tr. 198: 20 – 25, 199: 1 – 19.

25 ²⁹ Tr. 198:20 -24.

26 ³⁰ Tr. 209:3- 25, 210:1 – 23.

³¹ Tr. 207-209: 1- 2, 29:11-23.

1 originated with glaciers; and as the glaciers receded, the underlying glacial layering includes gravel
2 and sand layers. Groundwater collects from rainwater, percolates through the glacial layers, and
3 seeps into the sides of Ravenna Park. The source of Ravenna Creek now is this seep and rainwater.³²

4 The area along NE 62nd street and throughout the RUV expansion area east to 17th Ave. NE
5 is single family residential. This area is verdant - mature large trees, shrubs and ground cover. Prof.
6 Ewing explained that these trees, shrubs and ground cover are essential in order to preserve Ravenna
7 Creek's water quality and steep banks.³³ In addition to its riparian corridor to Lake Washington,
8 Ravenna Park is also habitat for 87 bird species, including migratory species, as well as other
9 wildlife. (Woodrow Wheeler Ex. 190, chart identifying bird species; photos of other wildlife.)

10 Prof. Ewing also explained that there are restrictions known as buffers to protect wetland,
11 riparian areas and steep slopes (*see* Ex. 112 [scientific article discussing buffers]). The area
12 contiguous, to the park, NE 62nd St., and the neighborhood to the north, serve as the buffer for
13 Ravenna Park's steep sides, riparian stream, and wetlands (ECAs):³⁴

14 Ewing: Well, a buffer is a collection of different layers of vegetation , canopy, subcanopy shrubs, ground layer species. It
15 provides a number of environmental functions in that separates one area - in this case wetland or riparian over a park,
16 from more intensive uses. And it diminishes the impact of light heat sound odors and particulate matter that might get
17 from one side of the buffer to the other and impinge upon the natural area. Buffers also act - can act as habitat.

18 Bendich: So would you - I think the hearing examiner has heard a description of - today of the area - that's along NE 62nd
19 Street and due north [of] northeast 62nd street. Could you describe it for us?

20 A: Well Ravenna Park has trees that come right up to the edge of the street 62nd. And the canopy of those trees is in
21 contact with the canopy of trees that currently exist in neighborhoods north of 62nd Street. It's quite dense quite a dense
22 canopy in some places.

23 Q: But in addition to trees, what about the other elements you were talking about?

24 A: Big shrubs – big shrubs, tree-like species, rhododendrons, a lot of leaf area. The leaf areas is a very important element
25 of the buffer because it's one element in decreasing the passage of sound or light, but it is also an element that's important
26 in retaining rainwater when it rains and retaining pollutants from air pollution.

³² Tr. 205:22- 25, 206:1- 4.

³³ Tr. 212:24 – 213:16.

³⁴ Tr. 212:15 – 215:12.

1 **Q:** Okay so in terms of retaining - helping prevent pollution, are you talking about into the ground soil or are in the air or
2 what are you talking about?

3 **A:** Well if the pollution is in solution and it falls as rainfall, it will probably be captured - and some part of it will be
4 captured by the leaves or the leaf area in the canopy.

5 **Q:** And once that water makes it to the ground and there in this neighborhood, what happens to it?

6 **A:** Well, there are generally a couple of things that happen to rainwater - the first part of it is called "interception," and
7 that's when rain is caught in the canopy of trees and on the on the trunks of trees. When it starts - if you're on the ground
8 and it starts raining, you might not feel the rain drops for 15 or 20 minutes because they've been caught by the canopy.
9 Then that saturates and it begins to flow down to the ground, at which point it is either absorbed in the soil or begins to
10 form puddles. And some of it moves into the soil and proceeds towards groundwater. After that if it's still raining, those
11 compartments are saturated and it begins as surface water.

12 **Q:** Okay. So in this particular instance with Ravenna Park, is that important, in your view, to maintain the kind of buffer
13 area that you have right now?

14 **A:** It's been shown in restoration projects that it's more difficult to achieve a good solution or a good outcome for your
15 restoration if the surroundings are less like the system you're trying to recreate. And so if the surroundings are more like
16 vegetation, it's going to be easier to create a habitat for vegetation. If there are more intensive uses, such as urbanized or
17 industrialized, then it's more difficult to get that, to restore it to the end point that you want to restore to.

18 **Q:** So in terms of the groundwater that's seeping through, where is that going with respect to Ravenna Creek?

19 **A:** Well, groundwater that seeps into the park goes in - goes down the sides of the slope into the stream and then the
20 stream goes to the south part - the south boundary of Ravenna Park, at which point it enters a drop box. And then it goes
21 in a pipe to underneath the 45th Street viaduct, which takes a left turn and then it goes into what's called "University
22 Slough." And University Slough is an open channel body of water which runs down between the sports fields at the
23 University of Washington and Union Bay Natural Area. At that point if it enters into Lake Washington.

24 A factor material to the proposed upzone is the infrastructure adjacent to the park along
25 NE 62nd St, the combined sewer line. Prof. Ewing, a civil engineer, reviewed SPU's sewer maps
26 in preparation for the hearing, Ex.113.³⁵

27 **Q:** And when you saw this sewer map what struck you about it?

28 **A:** Well, the size of the pipe. It's running through 62nd. It's is an 8-inch pipe [in height]. And 8 inches - I think an 8-inch
29 pipe is rather standard for this part of Seattle for sanitary sewers. But it's also a combined sewer, so it's a sormwater and
30 wastewater facility. And it seemed to me that eight inches might not be an adequate size for a combined sewer... So I
31 looked up the pipe size. The last engineering place I worked, we didn't design storm water conveyances any smaller than
32 10 inches. So if this is a combined wastewater and stormwater, it might be near capacity.

33 **Q:** And when was this built ...?

34 ³⁵ Tr. 217:23 - 219:25.

1 A: 1912...

2 Q: So this area - I wanted to clarify what this area meant. Between 15th and 17th avenues northeast, would you be
3 concerned about these sewers if the density is increased in that area?

4 A: If it's near capacity, increased density that would mean you would increase the flow.

5 Q: And what's the likely outcome? Would you expect there to be any overflow or anything? Let's say you have storm
6 water coming in here, too. What would you expect to happen?

7 A: That the capacity of the system would be reached. I don't know the particular location what would happen to that
8 water.

9 Q: Okay, if this storm water - let's just make this a hypothetical. If this storm water overflowed along the steep banks,
10 what would happen to them?

11 A: You would likely get erosion.

12 Prof. Ewing explained that in preparation for his testimony, he reviewed the MHA FEIS
13 Ex. 2, §3.6, the proposed upzone map (*id.*, App. H, p. H-71), the section titled "MHA
14 Housing Affordability Urban Design and Neighborhood Study." He observed that that with the
15 upzoning to RSL, which is the predominant upzone in the proposed RUV expansion area, "There
16 would be a very large increase in impermeable area – there's a decrease in plantable area between
17 the RSL and single family home." He said, "If you're trying to preserve the buffer...this won't
18 do."³⁶ In reviewing §3.6, he stated that he had a general concern in maintaining the
19 integrity of the existing vegetation as a buffer to Ravenna Park, that the EIS was not
20 neighborhood-specific with respect to ECAs.³⁷ He explained that there would be impacts if
21 upzoning occurred:³⁸

22 I think there'd be two impacts. One would be loss of the vegetative buffer which would have a negative impact on
23 maturation of existing forest in Ravenna Park and on restoration projects there. The second would be an increase in
24 impermeable area and building mass which would result in greater heat retention by concrete, pavement and buildings;
25 heating and cooling installations in the buildings. And so there would be more heat released in the general vicinity of
26 Ravenna Park.

³⁶ Tr. 223:6 – 25, 224: 1- 3.

³⁷ Tr. 224: 21 – 25.

³⁸ Tr. 225:9 – 25, 226: 1 – 12.

1 Q: Why does that matter?

2 A: Well, it matters because the system that's - that people are trying to restore or create within the park is a system is a
3 system which is based on a unique microsite kind of humidity, temperature, high temp, low temps, and medium
4 temperatures. And so if you modify that, you're not having the kind of vegetation, the kind of animals, the kind of food
5 chain in that system that you would have if it were more - a more natural climate.

6 Q: And do you have any concerns about the water quality that would seep into Ravenna Creek as a result of upzoning?

7 A: I think upzoning would create more potential for pollution in terms of air pollution, which would then be transferred
8 to the soil and potentially into water pollution and direct runoff onto the streets. If that got into the park, that would be a
9 problem.

10 Prof. Ewing pointed out that the buffer area includes exceptional trees and upzoning,
11 due to the increased permissible land cover for buildings and driveways, would violate the
12 buffer - "[Y]ou're going to have less functioning -- an ecosystem which is less able to provide
13 the environmental functions of water quality improvement, improved hydrology and
14 improved habitat." (Tr. 227:8-12.)

15 Prof. Ewing criticized the lack of data in the FEIS. §3.6 pp. 3.318 - 3.319 (end of
16 last paragraph), which states:

17 Tree cover for a given zone was assumed to remain constant over time if the zoning designation stayed the same. For
18 example, a zone change from LR to LR would not represent a change. The one exception was the percent cover for RSL.
19 There is currently only one area zoned RSL in the Study area. *This did not provide a large enough sample size to
20 accurately estimate the percentage coverage for all current and future RSL zones.* [Emphasis added]

21 In an understatement, Prof. Ewing pointed out the data and analysis are inadequate, "I guess if
22 you're making a decision about tree removal, that would be difficult to do without data."³⁹ He
23 said that even with the proposed mitigation - that a tree be planted in RSL zones, if
24 one were removed - is inadequate:⁴⁰

25 It's hard to grow a tree where it doesn't want to grow. And so I don't know why the residential small lot designation
26 didn't have a tree planting requirement initially. But looking at those lots, there's not a whole lot of space to put trees into.
And if you put trees into them, they can't be the kind of trees that would develop a very large canopy, because in that
particular - in those kinds of zones, there's a 30-foot high allowance. And so some fairly tall walls adjacent to the tree

³⁹ Tr. 229:7-15.

⁴⁰ Tr. 233:6- 23.

1 planting areas. And in Seattle we have a fairly low sun angle. And so there would be lack of available sunlight. And a lot
2 of the root systems in the trees would probably be under impermeable areas which would be difficult for them... The root
system would probably suffer from lack of oxygen and potentially would not reach the size they would reach somewhere
else.

3 Prof. Ewing also explained that it would not be possible to see the effects that would actually
4 occur in Ravenna Park using only LiDAR or Google maps. "It would be very difficult to see below
5 the canopy layer. So on-site investigation would probably be more appropriate if you're looking at
6 the facts and impacts and inventory of shrubs and sub-canopy trees or larger trees."⁴¹

8 Lastly, he disagreed with the FEIS's conclusion that there would be "no significant
9 unavoidable adverse impacts to ECAs or to tree canopy)(*id.* at 3.342, last paragraph, 3.6.4). In his
10 opinion this was not accurate, and the proposed upzones would have significant adverse impacts
11 even with the proposed mitigation. "Certainly the park is on a trajectory to become a much more
12 mature forest ecosystem. Changes like urbanization to it probably put the trees under more stress
13 and it would – either they wouldn't reach that end point or they would do so very much more
14 slowly."⁴²

16 On cross examination, Mr. Mitchell pointed to language in the FEIS addressing potential
17 impacts to streams during construction, with which Prof. Ewing agreed. (*Id.* at 3.23, first and second
18 full paragraphs). He also pointed to language in the next paragraph that "future development in
19 properties without ECA's could indirectly lead to adverse effects upon critical areas such as natural
20 ravine drainages that lie in downstream locations." And then he read the remainder of the paragraph
21 which gives specific examples – "landscaping involving earth movement, improper tree cutting that
22 violates City rules, paving without appropriate storm water control or the cumulative effects of
23 multiple parties' actions that could potentially alter drainage patterns and/or affect soil and slope

25 ⁴¹ Tr. 233: 24 – 25, 234: 1- 8.

26 ⁴² Tr. 234:14 – 21; see also 234:22-25, 235: 1- 7.

1 stability." Prof Ewing agreed with that paragraph, but none of this language addresses the
2 cumulative impact of the upzoning itself. This language is limited to impacts during site construction
3 and ordinance violations.⁴³

4 On redirect, Prof. Ewing elaborated on the relationship between upzoning and water runoff
5 and the effects on the riparian basin below. "Well, if you have less buffering capacity at the top of
6 Ravenna Park, that means you're probably going to have more precipitation having an impact of the
7 landscape in Ravenna Park and potentially more surface runoff coming into the park, which could
8 result in movement of sediment down towards the stream bed." And the water quality can
9 deteriorate and the sediment "alters the course of the stream..."⁴⁴ He also pointed out that p. 3.336,
10 to which the City's counsel referred, addresses impacts only within the urban villages, not
11 contiguous to urban villages.⁴⁵ Prof. Ewing was asked whether in his opinion the last statement in
12 §3.6. statement at p. 3.342 – there is "no significant adverse impacts to ECAs or tree canopy" – was
13 true. His unequivocal answer: "No ...Because there will be adverse impacts to tree canopy cover
14 and to environmentally critical areas... in the wetlands at the bottom of [Ravenna Park], the
15 slopes."⁴⁶

16 In rebuttal, the City called Ilon Logan, a wetland ecologist with a focus on wetland science,
17 wildlife ecology and a consultant with ESA. Ex.89. Ms. Logan authored the MHA FEIS biological
18 resources impact analysis. Within a few minutes of Ms. Logan's testimony, the City's attorney, Mr.
19 Mitchell, asked, "Were you here for the testimony of Professor Kern Ewing who spoke about
20 buffering of Ravenna Park?" Ms. Logan said, "I was." Mr. Mitchell also asked, "The study area
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⁴³ Tr. 237:25 – 240:11.

⁴⁴ Tr. 243: 2-22.

⁴⁵ 243: 23-25, 244:1-3.

⁴⁶ Tr. 244:6-21

1 doesn't extend into Ravenna Park, is that correct?" Ms. Logan said, "Not to my knowledge."⁴⁷ From
2 that point on, Mr. Mitchell never asked if Ms. Logan disagreed with any of Prof. Ewing's testimony.
3 Ms. Logan proceeded to address ECAs *within* urban villages and urban village expansion areas, and
4 proceeded page-by-page through §3.6. Ms. Logan also noted several provisions from Chapter SMC
5 25.11 "Tree protection," and several SDCI Director Rules about trees. (Exs, 224, 225 and 226)
6

7 On direct, Ms. Logan was not asked about and did not address cumulative impacts caused by
8 upzoning an entire buffer area or the increased runoff from impervious surfaces on ECAs contiguous
9 to proposed upzone areas. Nor did not she address the impacts on ECAs from ground water overflow
10 due to inadequate sewer line capacity.

11 Because Prof. Ewing's testimony was not rebutted, cross examination was limited.
12 Ms. Logan's résumé indicated she had some familiarity with sewage lines and she was asked
13 about the eight-inch combined sewer overflow line in the expansion area, but she said she
14 was unfamiliar with that. Ms. Logan was asked whether the MHA FEIS discussed
15 cumulative impacts of upzoning on ECAs outside the urban village. She identified p. 3.3.23, the
16 last sentence, which states:⁴⁸
17

18 Even after construction, for future possible activities on residential or commercial properties could adversely affect ECAs
19 directly or indirectly. Examples include landscaping involving earth movement in or near critical areas, improper tree
20 cutting or other vegetation management that violates city rules, heaving areas without including appropriate storm water
21 control features, or the cumulative effects of multiple parties' actions that could potentially alter drainage patterns and/or
22 affect slope -- excuse me, soil and slope stability.

23 Since this paragraph does not discuss at all the impact of increased impermeable surfaces, such
24 as increase in heat, or the inadequate sewer line capacity, Ms. Logan was then asked whether there
25 was anything in the EIS that addresses the cumulative impacts on ECAs of increased
26

⁴⁷ 7/27, Day 10, Tr. 29:21-25, 30:1-20.

⁴⁸ Logan Tr. 60:18 – 25, 61:1-10.

1 impermeable surface area from future development and the loss of groundcover. She said, "No it
2 [the EIS] does not."⁴⁹

3 In summary, Prof. Ewing's testimony was un rebutted. There will be significant
4 adverse impacts to Ravenna Park due to upzoning. These impacts are cumulative and
5 irreversible. Upzoning to RSL (splitting a SF lot with a building on each small lot) will result in
6 significantly greater impermeable surfaces. This in turn has multiple adverse impacts:
7

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

11 2. Reduced tree canopy, reduced shrubs and groundcover, all of which are essential buffers
12 for Ravenna Park and all of which help reduce pollution.

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

16 Because these cumulative impacts are not addressed in the MHA FEIS, decision-makers
17 have no basis to make knowledgeable decisions regarding these impacts, and the EIS is inadequate.

18 **II. The Evidence Establishes that the MHA FEIS Fails to Adequately Analyze Tree**
19 **Canopy Loss in the Proposed Upzones in the Expansion Area Because The**
20 **Calculation of the Loss of Tree Canopy Is Fatally Flawed, and the Presentation in**
21 **the FEIS, Using Four Zones, Rather Than Urban Village-By-Urban Village, Masks**
22 **the Real Neighborhood Impacts.**

23 A. Testimony of Appellant's Witness, Woodrow Wheeler, re The Importance of Tree
24 Canopy, Shrubs and Groundcover in the Roosevelt Urban Village Proposed
25 Expansion Area and the Impact to Wildlife Corridors If These Are Reduced.

26 In addition to Prof. Ewing's testimony about the impact to Ravenna Park due to decreased
tree cover, shrubbery and groundcover, Friends of Ravenna-Cowen called Woodrow Wheeler to
testify about these and wildlife in the proposed RUV expansion area. Mr. Wheeler has worked for

⁴⁹ Logan Tr. 61: 11-16.

1 the Seattle Parks Foundation, the Audubon Society, the Nature Conservancy, and presently conducts
2 nature and natural history tours, teaches classes, and provides land conservation consulting services.
3 He is a Master Birder and Certified Interpretative Guide.⁵⁰ Ex.188. Mr. Wheeler lives in the
4 Ravenna neighborhood.⁵¹ Mr. Wheeler began with the importance of tree and shrub canopy –
5 capturing, filtering and removing pollution, reducing stormwater runoff by interception, providing
6 wildlife habitat and wildlife corridors, improved public health and well-being, and even crime
7 reduction.⁵² He cited Ex. 189 (*Seattle's Urban Forestry Plan*), pp. 1-3, which states that Seattle's
8 trees and shrubs provide the equivalent of \$5.9 million in energy reduction costs annually, \$10.9
9 million saved by carbon sequestration, and pollution removal valued at \$5.6 million annually.

11 Mr. Wheeler then presented a PowerPoint slide show (Ex. 190), largely photographs of the
12 proposed RUV expansion area in which Mr. Wheeler presents tree and shrub survey data, describes
13 the flora and fauna, and explains their importance.⁵³ Within a relatively small area (NE 62nd St. to
14 NE 70th St. between 15th Ave. NE to 17th Ave.), there are 425 trees. Ex. 190, p. titled "Number of
15 Trees and Shrubs." Of these, about 225 are 20-39 years old, about 90 are over 40 years old (with
16 four western red cedars over 80-years old), and about 110 are under 20 years old. Ex. 190, see chart
17 titled "Relative Ages of Tree Species." Additionally, there are over 110 shrubs 10-feet tall or more.
18 Ex. 190, p. titled "Number of Trees and Shrubs." (Mr. Wheeler limited his documentation to 10-feet
19
20
21

22 ⁵⁰ 7/25, Day 8, Tr. 116:15-25, 117 – 120:1:24.

23 ⁵¹ Tr. 121:22-25, 122:1

24 ⁵² In the FEIS the City did not refer to the 2035 Comprehensive Plan, LU 17.20 (Ex. 3, p.70): "Regulate
25 development in environmentally critical areas that contain vegetative cover and physical space for habitat, and seek to •
26 protect contiguous wildlife-habitat areas; • maintain wildlife corridors that connect functions; • conserve soil and ground
conditions that support native vegetation; • prevent siltation and high water temperatures in downstream habitats; •
dampen fluctuations in surface-water flows, which are typically problematic in urbanized areas... (Emphasis added)

⁵³ Tr. 142:10- 24, 144:4 – 148:4.

1 and greater.)⁵⁴ Mr. Wheeler stressed the particular importance of evergreen trees and evergreen
2 shrubs, such as rhododendrons, because these provide year-round carbon and pollution sequestration
3 and ameliorate stormwater run-off. They also serve as year-round habitat for birds and food for
4 wildlife. He also pointed out tree conservation priorities from *Seattle's Urban Forestry Plan* (Ex.
5 189) – (a) preserve existing trees since it takes decades for trees to grow to their ultimate size and
6 benefits cannot be matched by small replacement trees; (b) focus on evergreen trees; and (c) focus
7 on larger trees because these provide more environmental, cultural, and economic functions than
8 smaller ones. Ex. 190, titled "Tree Conservation Priorities from Urban Forestry Plan."

10 Several of Mr. Wheeler's photos show buffer area along NE 62nd St., described by Prof.
11 Ewing – NE 62nd between 15th and 17th NE, "looking west on NE 62nd from 17th NE," "1520 NE
12 62nd looking north." These photos show dense shrub cover, ground cover, large evergreen trees, as
13 well as established deciduous trees. While some are street trees, there are a significant number of
14 trees on these SF lots. The photos continue north (which Prof. Ewing testified also said serves as
15 buffer for Ravenna Park to moderate heat, pollution and runoff from rain), a few with overviews
16 from above that show green cover throughout the proposed expansion area. Some rhododendrons
17 exceed 25-30 feet (*id.*, e.g. 6559 17th NE; 6559 16th NE; 6822 15th NE).

19 Mr. Wheeler explained that the flora in the neighborhoods (trees, shrubs and low-growing
20 plants) protects wildlife, provides habitat, and maintains wildlife corridors for wildlife in Ravenna
21 Park. Migratory birds, such as western tanagers, return year-after-year to the same trees.⁵⁵ Some
22 species, such as the red-breasted sapsucker, depend on older trees. Pileated woodpeckers require 250
23

25 ⁵⁴ Tr. 140::21-25, 141:1-2

26 ⁵⁵ Tr. 157:20 – 159:22.

1 acres of mature forest.⁵⁶ The species he described inhabit Ravenna Park, but also are found north of
2 the park in the proposed upzone area. He described the creation of "habitat islands" or a "postage-
3 stamp effect." When canopy and groundcover are reduced, this creates islands where previously
4 there were corridors. The "habit islands" inevitably begin to lose their bird species," citing *The*
5 *Cornell Lab of Ornithology Handbook of Bird Biology*. Mr. Wheeler described this neighborhood
6 corridor as "connectivity."⁵⁷ "Those big trees [in the proposed RUV expansion area] are a stepping
7 stone from Ravenna Park, and they help maintain the habitat of that park to eliminate that postage
8 stamp effect I was talking about earlier where you have connectivity from neighborhood trees to
9 park trees."⁵⁸ Mr. Wheeler actually tested this thesis. He conducted bird counts radiating out from
10 Ravenna Park, and as the number of trees, shrubs and ground cover decreased, so did the number of
11 species.⁵⁹

12
13
14 His presentation also shows the loss of tree canopy in the RUV. One photo shows the
15 exceedingly small size of a newly-planted street tree, surrounded by concrete, in front of the new
16 Mio apartments, and the next page looks south into the Cowen neighborhood where a large stand of
17 mature trees still remains, not yet subject to proposed upzoning.

18 Mr. Wheeler had several critiques of §3.6, but his major disagreement was with the
19 conclusion that there would be no significant unavoidable adverse impacts. "Even accepting those
20 numbers [the FEIS tree loss calculation], that's too much. I think that's a setback and would be
21 devastating not only for the neighborhood, but a setback for the urban forest stewardship."⁶⁰

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24 ⁵⁶ Tr. 160:14-23.

25 ⁵⁷ Tr. 126:4-21.

26 ⁵⁸ Tr. 148:20-25, 149: 1-3.

⁵⁹ Tr. 126:22-25, 127:1-7.

⁶⁰ Tr. 169:15-19.

1 On cross-examination, Mr. Mitchell asked whether the presentation indicated the number of
2 street trees [of the 425 counted]. Mr. Wheeler said he did not break out the number of street trees.⁶¹

3 B. The Testimony By the City's Witness, Mike Leech, Together With the City's Exhibits,
4 and Mr. Wheeler's Tree/Shrub Count Data, Confirm The City's Tree Canopy Calculation Is
5 Inadequate, Includes Irrelevant Data That Should Not Be Included in the Calculation,
6 Minimize s the True Amount of Tree Loss On Parcels , and Obfuscates the Impacts by
7 Aggregating Data, Thus Providing No Information to Decision-Makers As to Actual Tree
8 Loss and Neighborhood Impacts.

9 The City called Michael Leech to testify about LiDAR and Tree Canopy Analysis
10 Summaries in §3.6 of the FEIS.⁶² Mr. Leech stated the analysis was based on a LiDAR-based
11 canopy cover assessment for the city of Seattle.⁶³ The City contracted the analysis to the University
12 of Vermont Spatial Analysis Lab, Jarlath O'Neill-Dunne, Director.⁶⁴ See Exs. 214 and 215. The
13 proposal includes "deliverables" for 2106 canopy metrics which include 13 sub-categories, including
14 "SDOT rights-of-way" (Ex. 215, p. 21, 3-b) and "neighborhoods" (*id.*, 3-f). The proposal states, the
15 "minimum height for detectable trees will be set at 8 feet..." (*Id.*, p. 4.)

16 Mr. Leech testified the lab used a 2016 "leaf off" LiDAR provided by the City, which "tends
17 to underestimate tree canopy," and other native data from the U.S.D.A from 2015 would be
18 combined with it.⁶⁵ The resulting canopy cover from the lab was then overlaid on the area for four

19
20 ⁶¹ Tr. 171:11-19. This same issue, including street trees in the parcel data, is relevant to the deficiency of the
21 City's analysis of "Tree Cover," discussed *infra*. Multiple witnesses explained how and why §3.6 is inadequate re tree loss: No
22 established baseline from which to measure tree loss; challenge as to the to the insufficiency of the calculation used to determine tree
23 loss (Carl Guess); the inaccuracy of LiDAR when used to calculate tree loss per lot (Jeffrey Richardson and others), reference in the
24 FEIS to the Seattle Tree Ordinance without explaining that the ordinance permits removal of exceptional trees for new construction,
25 SMC11.060, .070 and .080, removal of street trees for utility work or if these might be damaged by a new development (Nolan
26 Rundquist), and the tree ordinance does not require replacement of "hazardous" trees. The testimony also noted SDCI's failure to
enforce the ordinances. (Steve Zemke, Michael Oxman) This testimony is not repeated here, but Friends of Ravenna-Cowen
incorporates by reference their evidence and closing arguments.

⁶² Ex. 2, section 3.6, p. 3.329, Exs. 3.6-5 and 3.6-6 (Alternative 2); p. 3.325, Exs. 3.6-11 and 3.6-12, (Alt. 3);
and p.3.339, Exs. 3.6-15 and 3.6-16 (Preferred Alt.)

⁶³ 7/26, Day 9, Tr. 96:10 – 99: 14.

⁶⁴ Tr. 100: 4 – 12.

⁶⁵ Tr. 101: 10 – 102:6

1 broad zones⁶⁶ - High Displacement Risk & High Access to Opportunity,⁶⁷ High Displacement Risk
2 & Low Access to Opportunity,⁶⁸ Low Displacement Risk & High Access to Opportunity,⁶⁹ and Low
3 Displacement Risk & Low Access to Opportunity, but not overlaid on each urban village and
4 expansion area. Then, that tree canopy cover was used to calculate the "average" percent tree cover
5 for each zoning designations (LR, MR/HR, NC/C, RSL, and SF).⁷⁰ This was then overlaid "with
6 GIS data layers representing the various alternatives, the "zone changes," *i.e.*, from SF to RSL, SF to
7 LR, RSL to LR, *etc.* And the change in tree cover was then calculated. Mr. Leech testified, as is
8 stated in the FEIS and on the charts, "green space" was not included in the total canopy in each zone,
9 meaning, "parks, cemeteries, public and private schools." ⁷¹ The FEIS states, p. 3.318, the "green
10 spaces were evaluated separately, as tree canopy in these areas are unlikely to change, regardless of
11 zoning changes."
12

13
14 On cross examination, Mr. Leech explained that ESA did not directly contract with the lab,
15 the City did, and the City set the parameters. The City provided "the data product" to ESA.⁷²
16 Mr. Thaler asked whether the lab performed an accuracy check. He said, no, because this was not
17 requested by the City because it adds to the cost. Mr. Thaler then asked whether street trees were
18 included in the total toward the tree canopy cover. Mr. Leech said, "[W]e included the right-of-way
19
20
21

22 ⁶⁶ Tr. 96:6-25

23 ⁶⁷ Columbia City, Lake City, Northgate, First-Hill Capitol Hill, N. Beacon Hill, North Rainier, and 23rd &
24 Union- Jackson. [From MHA FEIS, Ex. 2, p. 2.26]

25 ⁶⁸ Rainier Beach, Othello, Westwood-Highland Park, South Park, Bitter Lake. *Id.*

26 ⁶⁹ Green Lake, Roosevelt, Wallingford, Upper Queen Anne, Fremont, Ballard, Madison-Miller, Greenwood-
Phinney Ridge, Eastlake, West Seattle Junction, Admiral, Crown Hill and Ravenna (in the University Community Urban
Center). *Id.*

⁷⁰ Tr. 110: 16-21.

⁷¹ Tr. 112:8-12.

⁷² Tr. 131: 17- 25, 132:1 – 7.

1 trees within the designations as part of our analysis."⁷³ Mr. Leech agreed the right-of-way tree
2 inclusion is not explicitly set out in the FEIS.⁷⁴ Mr. Thaler asked, "Wouldn't this skew the data? Mr.
3 Leech didn't answer the question. He just repeated, "We included the right-of-way trees in the
4 calculation...within each zoning designation."⁷⁵ When Mr. Thaler asked who decided to include
5 street trees, Mr. Leech said "Geoff [Wentlandt] or Sharese [Graham]."⁷⁶
6

7 Mr. Leech also said no analysis was done for the areas outside urban villages, but which are
8 part of the "project area." "To my knowledge we didn't do an evaluation of those areas. (Tr. 157:4-
9 8.) " Mr. Thaler also asked, "Didn't you have the data to do show the tree canopy urban village-by-
10 urban village?" Mr. Leech said, "Yes, those calculations could be made."⁷⁷
11

12 On cross-examination by Appellant's counsel, Mr. Leech testified that the height set for tree
13 identification was 12-feet (even though the lab states it is 8 feet, Ex. 215, p.4). He agreed that any
14 shrub over the threshold would be included as a tree. He was asked, regardless of the height, doesn't
15 the Tree Analysis Summary in the MHA FEIS actually include shrubs. He said it did.⁷⁸ He said that
16 it would be preferable to have some ground assessment to make sure that only trees were included,
17 even sampling, but the decision not to do so was an economic decision. (Tr., 163:9 21.)
18
19
20

21 ⁷³ Tr. 152:18-21, 153:24-154:24. Street trees in public right-of-ways, which will not decrease or be impacted
22 due to upzoning, are counted in the tree canopy cover, whereas "green space," parks, cemeteries, public and private
23 schools are not.

24 ⁷⁴ Tr. 155:9-11.

25 ⁷⁵ Tr. 153: 24-25, 154: 1-6. (See §3.6, p. 3.317, first line, states, "**The public right-of-way (interspersed in all
26 zones) holds 23 percent of the city's tree canopy.**" (Emphasis added))

⁷⁶ Tr. 155:12-15.

⁷⁷ Tr. 158:13-18

⁷⁸ Tr. 162:16-25, 163:1-8. (In the RUV expansion area, Mr. Wheeler's shrub count includes about 92 shrubs
between 10-20 feet, about 22 between 21-30 feet, and 8 greater than 31 feet. Ex. 190, p. titled "Shrub Height.")

1 He was asked to look at p. 3.318, which explains "green space" was treated separately and
2 not included in tree canopy.⁷⁹

3 Bendich: Well, if you deleted out all the green space here, shouldn't you have equally taken out the green
4 space that's attributable to the right-of-way trees?

5 Leech: It's – it's something that could have been done. But we - our team made a decision to include those
6 areas as part of the zoning designation.

7 Q.: But since those don't change, you're looking at data that don't change with data that does change, how can
8 you evaluate it without taking out that data?

9 A: It was our team's decision to include those areas within the zoning the zoning designation.

10 Mr. Leech never answered the question. At this point Mr. Leech got a pained look on his face, drew his
11 shoulders forward, and hunched over. His body language was clear even as he avoided
12 answering the question.⁸⁰

13 Mr. Leech was also asked about Ex. 134, written by a City employee reviewer, M.
14 Glowacki, which states, pp. 1-2:

15 The 2016 tree canopy cover reveals that there is disparity in the amount of tree canopy cover in people of
16 color neighborhoods and lower income neighborhoods. Because the biological resources information and
17 specifically the tree canopy loss data was not analyzed [in the MHA FEIS] based on neighborhoods it cannot be
18 determined what impacts on racial equity are created by additional tree canopy cover loss or additional impacts
19 on other biological resources. Need to bring the analysis of tree canopy and environmentally critical areas and
20 shorelines to the neighborhood level...

21 First an analysis needs to be conducted that includes the following: Overlaying the canopy cover data, the
22 environmentally critical areas data, the equity and the environment initiative data, shorelines data and MHA
23 data to determine what impacts are occurring in each neighborhood. Then need to develop a mitigation plan that
24 allows for protection and enhancement of the biological resources in the areas that do not have these resources.

25 Mr. Leech was asked, "Based on the data that's in the EIS presently, is there anything that indicates
26 which neighborhoods or projects in this area – in the project area – do not have these resources?

Let's just take tree canopy." Mr. Leech said, "For our assessment, no."⁸¹ Mr. Bricklin followed up

⁷⁹ Tr. 166:14-24.

⁸⁰ The finder of fact assesses credibility.

⁸¹ Tr. 176:5- 9.

1 and asked whether it would have been easy to do the tree canopy overlay by urban village
2 designation instead of "zones." Mr. Leech said:⁸²

3 I have – I'm – it would be very easy to run the calculation, but again, there's the whole steps – once you finish
4 the calculation, going through the review, and then all the way to the development of the report. So it - I say
5 it's easy, but it - there's a process to do it. But, but yes, in general its - it can be done.

6 The MHA FEIS includes three tables titled "Tree Canopy Analysis," one table for each
7 alternative (2, 3, and preferred; see n.15, *supra.*) These tables look very scientific since they use
8 terms like "Change Coefficient" with percentages to the second decimal point. But these
9 coefficients are meaningless because the underlying "supporting" data is wrong.

10 Starting with "Existing" (far left column), the first entry is "Green Space," acres that will not
11 change due to upzoning. DOT right-of-way street trees will not change due to upzoning. Yet,
12 unlike other static "green space," street trees are included in the acreage for every existing "zone"
13 that will be upzoned. The FEIS states at p. 3.317, first sentence, "The public right-of-way
14 (interspersed in all zones) holds 23 percent of the city's tree canopy." Therefore, the baseline - to
15 determine the impact of upzoning on *parcels* – is substantially inflated because street trees are
16 included. Second, the LiDAR canopy technique includes not only trees, but large shrubs. Thus,
17 "Acres of Tree Cover" (fourth column from left) is a misnomer and inaccurate because "Tree Cover"
18 on parcels (where there will be impacts) is not solely tree cover at all but also includes tall shrubs as
19 well as street trees.
20

21 By way of example, in the RUV expansion area alone, there are 122 shrubs ten-feet and
22 taller (and probably many more between 8 to 10 feet, but Mr. Wheeler did not count those⁸³). Ex.
23 190, p. titled "Trees and Shrubs." And he counted 425 trees, which includes street trees. (Assuming
24

25 ⁸² Tr. 181:6-14.

26 ⁸³ Wheeler Tr. 140::21-25, 141:1-2

23% are street trees - 98, there would be 327 trees on parcels.) Thus, using this example for the RUV expansion area, the City's calculation would include as "Tree Cover" a combined total of 220 street trees and shrubs (98 trees + 122 shrubs) that should not be included, as compared to 327 trees that should be included. This is a 67% error rate (220÷327) in calculating trees on parcels. Thus, in this example the baseline data include 67% more "trees" than actually exist on parcels.

The City thus starts with a grossly inflated and inaccurate number for "Tree Cover" per zone type (2nd column from left). Deductions for tree loss due to upzoning are subtracted from this inflated number. The result, of course, is that tree loss is purported to be *de minimis*, whereas, as the RUV expansion area shows, the reality is that tree loss would be significant.

Compounding this "error,"⁸⁴ are additional invalid analyses. As Prof. Ewing noted, which the FEIS does disclose, there are no valid data for upzones from SF to RSL due to insufficient sample size. The FEIS also aggregates urban villages into four categories. One category includes seven urban villages, another five, another 13, and one with only two (See ftns.67-69, *supra*.) We have no idea about the actual acreage of each urban village, the actual tree canopy in each, or the actual upzoning proposals in each and how these interface. Aggregated data is a form of averaging, to obfuscate the effects on the ground and make it impossible to understand the real impacts.⁸⁵

⁸⁴ These calculations appear to be deliberate. The City knows full well that street trees are not on parcels. It also knows that shrubs were included in the "tree" calculation but *failed to disclose that fact in the FEIS*. The distinction between shrubs and trees is critically important because the FEIS discussion on mitigation describes ordinances, an Executive Order, and proposed legislation to protect *trees on private property*, pp. 3.340-3.342. These do not protect shrubs.

⁸⁵ Some say, "There's lies, damn lies, and averages." Averages can be misleading. To illustrate this point is a joke about a man with one foot in a bucket of boiling water and the other foot in a bucket of freezing water. The man subjected to the excruciating extremes of temperature exclaimed that "on average" he felt comfortable.

Here, some urban villages in a group may have copious trees and shrubs while others just a few. The "average" will not show the reality. Had the City done an overlay urban village by urban village, which it could have easily done, the result would be obvious – buckets of green and buckets of not green.

1 As. Prof. Ewing and Ms. Glowacki stated, the analysis of ECAs and tree canopy must be
2 brought to the neighborhood level in order to determine the actual impacts. Mr. Leech conceded this
3 was not difficult to do. Indeed, the lab proposal states, Ex 215, p. 21, metrics would be provided by
4 neighborhood. Although the City has neighborhood-by-neighborhood data, and could have done
5 overlays for each urban village and expansion areas, it did not do so. This makes it impossible for
6 decision-makers to determine the extent of tree cover for each UV, which ones have less, which
7 more, where the tree cover is located, and the impact of proposed upzones on tree cover.

8
9 In summary, for all the above reasons and for the reasons provided by other appellants, the
10 MHA FEIS analysis of the impacts on tree loss is not only inadequate, but the entire analysis was
11 unreasonable and appears to be duplicitous.

12
13 **III. The Analysis of Historic Resources Is Unreasonable and Inadequate and Does Not**
14 **Enable A Decision-Maker To Make Knowledgeable Decisions Because The City Did**
15 **Not Present An Adequate Level of Detail Of Historic Resources That It Had Readily**
16 **Available and Could Have Presented at Little Cost.**

17
18 A. Overview.

19 Historic and cultural preservation is an element of the environment under WAC 197-11-
20 444(2)(vii). Pursuant to chapter 43.12 RCW and WAC 197-11-960, the agency must make a
21 checklist to help identify impacts from the proposal. WAC 197-11-960B(13)(a) states, "Are there
22 any buildings or structures that are over 45 years old listed in or eligible for listing in national, state,
23 or local preservation reregisters: if so, specifically describe." For nonproject actions a supplemental
24 sheet is required (to be read in conjunction with the list of elements in the environment). WAC 197-
25 11-960D(4) states: "How would the proposal be likely to use of affect environmentally sensitive
26

1 areas or areas designated (or eligible or under study) for governmental protection: such as ...historic
2 or cultural sites...?"⁸⁶

3 An issue in this appeal is what does "eligible for listing" mean? Ms. Paula Johnson, an ESA
4 consultant, who also prepared the City's programmatic Uptown DEIS and FEIS section on historic
5 resources, used age alone as the sole criterion for the Uptown EIS, together with a map of the
6 Uptown boundary because these parcels were "potentially" eligible for future listing as a historic
7 resource. (Ex. 261, p. 3.187, Exhibit 3.5-7) The Uptown map has orange and blue areas within the
8 boundary explained by the key, "Register and Landmarked-Listed and Potentially Register or
9 Landmark-Eligible Properties." Orange sections - "Meets minimum-age threshold for NRHP
10 eligibility (50 years, pre-1967). Blue sections meet the City's 25-years eligibility. The map also
11 identifies Seattle Landmark buildings with a circle.
12

13
14 On Ms. Johnson's re-direct, after Appellant's counsel asked why, for the MHA EIS, the
15 historic resources couldn't be similarly shown on a map on the basis of age, Mr. Kisielius asked Ms.
16 Johnson:

17 [I]f I were to tell you that there were between 3,400 - 3,600 acres that are rezones pursuant to MHA – What
18 would you have done to your level of effort needed to do it that way?

19 Paula Johnson: That would have been a significant number crunch to try to make sense of that data to make
20 the 27 different urban villages have comparable sets of data.⁸⁷

21 Ms. Johnson's statement is, in fact, incorrect. There would be no "significant number
22 crunch" to make comparable sets of data because the City already has year-built data for every

23
24 ⁸⁶ SMC 25.05.315A states: Agencies shall use the environmental checklist substantially in the form found in
25 section 25.09.960 [which states the same the same thing] to assist in making threshold determinations for proposals,
26 except for public proposals ["public projects", SMC 25.05.060C(1)(a)] in which the lead agency has decided to prepare
its own EIS, proposals on which the lead agency and applicant agree and EIS will be prepare; or projects which are
proposed as planed action (see subsection B of this section.)"

⁸⁷ 8/22, Day 13, Tr. 237: 13-22.

1 parcel – "comparable data" to the Uptown EIS. The City had already compiled a database for every
2 urban village, and for every parcel within the urban village and expansion area, including the year
3 built for every parcel (Ex. 310 from the database the City provided in discovery). Ex. 310 is sorted
4 by urban village and age built, with a cut-off date of 1939 – since most Craftsman era homes were
5 built before 1939 - and lists 4,876 parcels by address and PIN. The PIN (parcel identification
6 number) allows the user to easily place each parcel on a map. (*Id.*) Thus, every urban village has
7 "comparable sets of data" based on the year built – just as Ms. Johnson used year built as the sole
8 criterion to show historic resources on a map for the Uptown EIS. On rebuttal, Mr. Spencer Howard
9 testified that he used the data from the same database to transfer the information to a map, and it was
10 easy to do.⁸⁸

12 Had the City used the same criteria as the Uptown EIS, it would have been a simple process
13 at little cost. More importantly, it would have clearly shown decision-makers where these potential
14 historic resources are located within every urban village in the project area. Instead, readers found
15 the data displayed in the MHA DEIS and FEIS baffling. Ex. 2, §3.5, is titled "Historic Resources."
16 The EIS has two maps (north and south Seattle, pp. 3.300-.301, Exs. 3.5-2 and 3.5-3) with 111 dots
17 (§3.5, p. 298, Ex. 3.5-1) on a map that show only sites taken from the NRHP (National Register of
18 Historic Places) from the Washington state database maintained by the Department of Archaeology
19 and Historic Preservation. The EIS contains no explanation why only these sites were mapped;
20
21
22
23

24 ⁸⁸ Howard, 8/31, Tr. 213:17 to 214:3. The City tried mightily to distinguish the programmatic Uptown EIS
25 from the programmatic MHA EIS arguing the Uptown area is much smaller, the Uptown EIS had been in progress for a
26 while, there was a community plan to consider, *et al.* But all of those distinctions are irrelevant. The City could have
easily done the identical analysis as for Uptown because the City data were readily available and simply needed to be
overlaid to urban village maps.

1 Seattle inventories of historic resources at the DON web site are not normally included in the state
2 database. (Spencer Howard⁸⁹).

3 Therefore, all appellant witnesses who testified about historic resources, discussed the EIS's
4 lack of mapping for individual urban villages.⁹⁰ Spencer Howard prepared maps not only of the
5 NRHP sites, but N. Rainier's historic resources, and other City inventories using entries from the
6 Seattle Department of Neighborhood's web site; see n. 88, p. 213, *supra*.) This web site lists historic
7 resources inventoried from the year 2000 and later, by address or by neighborhood each parcel
8 (including a photo of the building) that had been surveyed. (*See, e.g.*, Mr. Vieth's exhibits for
9 Wallingford, Ex.s 117, 120 [Ex. 120 also shows pictures of Landmark buildings near and in the
10 Wallingford UV.]) Tom Veith similarly mapped Wallingford's historic resources within the UV
11 using the same City database. Ex.s 118, 119. Davidya Kasperzyk submitted a map of Ballard
12 historic resources by year built. Ex. 33. For the Roosevelt UV and expansion area, which had never
13 been surveyed by the City, Lawrence Kreisman⁹¹ provided maps of the Ravenna-Cowen Historic
14 District (Ex. 90), which identify every parcel by year-built, together with examples of "continuation
15 sheets" from the application, which contain a picture of each dwelling and full survey information.⁹²
16 Ex. 92, pp. 30, 62, 78 and 86.

17
18
19
20 ⁸⁹ Howard. 8/31, Tr. 222:5-9.

21 ⁹⁰ Eugenia Woo, Historic Seattle; Spencer Howard, N. Rainier; Davidya Kasperzyk, Ballard; Jennifer Ott, the
22 Olmstead Boulevard legacy; Lawrence Kreisman, the Cowen section of the Roosevelt UV (see n. 32 below) and the
23 proposed expansion into Ravenna; Tom Veith, Wallingford; Jennifer Scarlett, South Park; and Mira Latoszek, Beacon
24 Hill.

25 ⁹¹ 6/29, Day 5, Tr. 34: 15-20, 35: 5-25, 36: 1-5.

26 ⁹² N. Rainier had notified the City of its application for a national historic district designation before the FEIS
was published. Spencer Howard, 6/26, Day 2, Tr. 26:17 to 27:13. (This is never mentioned in the EIS.) But the
Ravenna-Cowen North historic District application did not exist at the time of the DEIS or FEIS. The City had never
conducted a survey of the Ravenna-Cowen area although Mimi Sheridan recommended in 2002 that a survey be
undertaken. Ex. 45, COS005736. The 2035 Seattle Comp. Plan singles out the RUV, R-HG 1: "Protect and maintain the
architectural heritage of Roosevelt's Craftsman, bungalow, and Tudor-style housing while embracing growth of well-

1 All these witnesses pointed out that there were readily identifiable historic resources that
2 could be mapped but weren't.⁹³ And uniformly, each said the reason to do an overlay of historic
3 resources on urban village proposed upzone maps was to inform decision-makers of the impacts if
4 upzoning were to occur so that they could make a knowledgeable decision.

5
6 B. Testimony By Lawrence Kreisman re Historic Resources, the Ravenna-Cowen
7 Neighborhood and EIS Deficiencies and Examination of the City's Witnesses.

8 Friends of Ravenna-Cowen called Mr. Kreisman to testify about his knowledge of Seattle's
9 history, its historic resources, the Ravenna-Cowen neighborhood, and his review of §3.5. Mr.
10 Kreisman's extensive resume is summarized in the footnote below.⁹⁴ In addition, he is a prolific
11 writer about Seattle's architectural history, has written ten books, including *Made to Last* (Ex. 87, the
12 introduction) and *The Arts and Crafts Movement in the Pacific Northwest*, (Ex. 88, chapter titled
13 "Bungalows for Everyone."). He has also written numerous scholarly and general-interest articles.

14
15
16 designed buildings of an appropriate scale." But the EIS does not cite R-HG 1, Ex. 3, p. 381. Comment letters pointed
17 out Ravenna/Cowen's historic resources, but these were ignored. Ex. 288, Larry and Lani Johnson, which states that
18 "several architectural historians consider Ravenna/Cowen one of Seattle's best twentieth century examples of bungalow
19 neighborhoods and redevelopment would irreversibly and irretrievably alter its architectural integrity and historic fabric;"
20 Ex. 292, Judith and Arnold Bendich (The City never included this letter with other DEIS comment letters.); Ex. 290
(compendium of DEIS comment letters): Judith Bendich; Karen Hardisty; Dana Standish; John Stewart.

21 ⁹³ These included the Seattle DON database, Seattle's 1979 inventory of 34 Seattle neighborhoods (Exs. 46,47,
22 and 48), and the 1976 Nyberg and Steinbrueck inventories, which contain the history of each neighborhood and identify
23 historic resources in 16 neighborhoods, on the Historic Seattle web site, [https://historicseattle.org/neighborhood-](https://historicseattle.org/neighborhood-inventories/)
24 [inventories/](https://historicseattle.org/neighborhood-inventories/). This study is mentioned in the EIS (p. 3.299), but this web site is not. At the hearing Mr. Kreisman, who
25 still owns an original set of these large maps, held one up to display it. 6/29, Day 5, Tr. 54:25, 25:5-21, 56:2-25, 57:18.

26 ⁹⁴ Mr. Kreisman has a masters of architecture degree with a certificate in urban design from the UW. He
worked for the City of Seattle while in graduate school and inventoried historic resources as part of the City's 1979
neighborhood surveys. He taught classes at the UW on preservation and urban design and taught in Antioch's summer
program instructing teachers. For nine years Mr. Kreisman worked for the Seattle Architecture Foundation, and served as
a consultant for three years thereafter, where he implemented walking tours of Seattle neighborhoods, including Ravenna-
Cowen. In 1997 Mr. Kreisman became the Program Director for Historic Seattle and retired in 2017. Mr. Kreisman
served on the Seattle Landmarks Preservation Board for eight years. He has received many honors, including being made
an honorary member of the American Institute of Architects and an "outstanding career achievement in historic
preservation" award from the Washington State Historic Preservation Foundation. 6/29, Day 5, Tr:16:14-25 (Ex. 86),
17:7-25, 18:1-24.

1 From 1988 to 2012 he wrote monthly articles for the *Seattle Times*' "Pacific Northwest Magazine."
2 (Example at Ex. 89, "Restore vs Raze" which cites G. Strickland, "A country without a past has the
3 emptiness of a barren continent and a city without old buildings is like a man without a memory.")
4 This article points out, as did Ms. Woo in her testimony,⁹⁵ as a matter of sustainability, it costs less
5 to restore and rehabilitate old buildings than demolish them and build new ones.
6

7 At Historic Seattle, Mr. Kreisman helped start the annual Town Hall Bungalow Fair and Arts
8 and Crafts Lecture series to explain to the public why the arts and crafts movement and bungalows
9 are key to the development of Seattle.⁹⁶ And through the Seattle Architecture Foundation, he
10 initiated walking tours as an educational device, which included the Ravenna-Cowen area.

11 Appellant's counsel asked, "What is particularly special about the Ravenna-Cowen neighborhood?"

12 Mr. Kreisman said:⁹⁷
13

14 For me it speaks to the best qualities of a bungalow early twentieth century neighborhood in that
15 there's an, it's insular in a way... [I]nto the neighborhood you have a sense of welcoming and it's
16 partly that the age and the character of these buildings with shared materials of clapboard siding,
17 clinker brick of cobblestone and the scale of these and the pitched roofs and the covered porch
18 that welcome people. It also provided communication. It was a way of responding to your
19 community and knowing your neighbors by the front porch by the front stoop. It's something that
20 we don't see very much in modern day construction, where you now have a two car garage and a
21 long driveway, people drive in with their car and never see the light of day because they never
22 come out... These buildings were designed to be relating to the outdoors and indoors through this
23 transition part of the front porch. And so you would be able to meet your neighbors, know your
24 neighbors, be part of a community.

25 So what I get from Ravenna-Cowen is a much stronger sense of that. And it's partly that the
26 mature street trees on the landscaping make the connection to the park. Also, the fact that it's
not a completely true grid, that because of the ravine of the park, you have angled streets,
they come in angles, and consequently, when you're walking down some of them, each of
these bungalows is askew. They're not, you know, straight on. So you see the fronts on the
porches of these as staggered down the street and covered. And so there's something a little
bit different about Ravenna-Cowan...

⁹⁵ 6/25, Day 1, Woo, Tr. 137:17 to 138:13.

⁹⁶ Kreisman, Tr. 31:9-23

⁹⁷ 6/29, Day 5, Tr. 32:2-25, 33:1-17

1 Mr. Kreisman was then asked about the FEIS §3.5 and his concerns. His first set of
2 concerns was the inadequacy of the data reviewed by the consultant. He started by explaining that
3 the 1979 survey of 34 neighborhoods still exists today in notebooks at the City's DON office and
4 provides detailed information. The survey group was led by an eminent historian, Earl Layman, and
5 the survey identifies all the buildings they believed were Landmarks and of community significance.
6 He said from the discussion in the EIS, it was apparent the consultants had never looked at this
7 information.⁹⁸ Mr. Kreisman explained that although the EIS identifies context statements post-
8 2000, omitted are the histories from the 1975-77 *Urban Inventory* by architects Victor Steinbrueck
9 and Folke Nyberg, faculty members at the UW.⁹⁹ Among these are historical synopses for Admiral,
10 Eastlake, and Green Lake, but the EIS does not identify these.¹⁰⁰ Importantly, the EIS does not even
11 identify and does not map City Landmark buildings.¹⁰¹

12 Another critique was the lack of specificity. " [I]f I was the public or the decision-making
13 person...I would need more information to go on. What are... these boundaries that's going to
14 impact particular areas?" He said a map "would have been great." "[I]t would have told me
15 immediately that there's a core of valuable resources here that's not necessarily documented...and
16 really needs to be protected even though it's not a Landmark District..."¹⁰² He also pointed out, as
17 did others, that project review was inadequate because based on his experience SEPA review did not
18 normally occur with development on a single family lot, and he'd seen that happen in his own
19 neighborhood.

20 ⁹⁸ Tr. 52:24-25, 53:-25, 54:1-15, 55: 7-24, 56:2-3, 24-25, 57:1-18.

21 ⁹⁹ Tr. 58:1-20.

22 ¹⁰⁰ *Id.*

23 ¹⁰¹ Tr. 54:9-12.

24 ¹⁰² Tr. 59:23 to 60:7.

1 Mr. Kreisman was asked, why is it destructive to take out even one building? With respect
2 to a potential historic district, neighborhoods like Ravenna-Cowen, he said, "Buildings lost are like a
3 book with book with its page torn out...it will affect and change neighborhood character."¹⁰³ He
4 also pointed out that proposed upzoning is inconsistent with the Comprehensive Plan, and the EIS
5 did not refer to the Plan.¹⁰⁴
6

7 On cross-examination Mr. Dale Johnson asked about national historic districts and implied
8 these are protected. Mr. Kreisman responded, "What I do know about National Register property or
9 in a district, does not necessarily protect you from any of the things that are going to happen with
10 rezoning unless it's a City Landmark District. It's not going to have oversight and protection."¹⁰⁵ He
11 explained that the only time a National Historic District has some protection is if federal funds were
12 used as part of the project.¹⁰⁶
13

14 C. Similar to the City's Presentation of Tree Loss, the Effect of the City's Presentation and
15 Witness Testimony re Historic Resources in §3.5, Is to Obfuscate And Omit Readily-
16 Available Data So That It Is Impossible to Learn the Impacts of Upzoning in Each Urban
17 Village and Expansion Areas, Thus Preventing Decision-Makers From Making Informed
18 and Knowledgeable Decisions Where and Whether to Upzone.

19 The City called Katherine Wilson, an ESA employee, to testify about §3.5, which she
20 authored. Ms. Wilson said the City only mapped NRHP data onto a map because it "describe[s]
21 the affected environment in an equal way across the study area." She also said although Landmark
22 listings and the City's inventoried surveys of historic properties in Seattle were also considered, "we
23 came up with a reasonable approach to treat everything equally."¹⁰⁷ (Ms. Paula Johnson stated that
24

25 ¹⁰³ Tr: 64:5-9.

26 ¹⁰⁴ 6/29, Day 5, Tr.: 65:7-22.

¹⁰⁵ 6/29, Day 5, Tr 74: 21-25, 75: 2-3.

¹⁰⁶ *Id.*, 75:9-14.

¹⁰⁷ Wilson, 7/27, Day 10, Tr. 181:19-20

1 this "reasonable approach"¹⁰⁸ is totally unexplained in the EIS.¹⁰⁹) Ms. Wilson cited the WAC, that
2 "historic resources" are properties "listed or eligible for listing on a national or state register,"¹¹⁰ but
3 she said "eligible" means a decision-maker already made a determination,¹¹¹ which is not the same
4 meaning her supervisor, Paula Johnson, used in the Uptown EIS.¹¹²

5
6 On cross-examination, Mr. Bricklin introduced Ex. 237, a Sept. 19, 2016 email from Mark
7 Johnson, Planning Director at ESA:

8 We have a small budget to do a high level analyss for historic resources, open space and recreation, and public
9 services and utilities" ... "about \$30,000 for the whole of our work.".. "The City's initial take on these topics
10 were that they would not result in significant impacts." ... "They [the City] feel the need to justify this
11 assumption."

12 Mr. Bricklin then asked about Ex. 238, a May 5, 2017 draft of §3.5, p. COS0034827, [RW3],
13 a comment by Richard Weinman, "The locations of surveyed buildings, on the other hand are known,

14 ¹⁰⁸ The adequacy of an EIS is not governed by what a consultant thinks is reasonable. The adequacy is tested
15 under the "rule of reason." *Citizens' Alliance v. Auburn*, 126 Wn.2d 356, 362, 894 P.2d 1300 (1995). "The EIS must
16 present decisionmakers with a 'reasonably thorough discussion of the significant aspects of the probable environmental
17 consequences' of the agency's decision. 'Reasonableness' of the EIS is an ultimate question of law. 'The rule of reason is
18 in large part a broad, flexible cost-effectiveness standard,' in which the adequacy of an EIS is best determined 'on a case-
19 by-case basis guided by all of the policy and factual considerations reasonably related to SEPA's terse directives. R.
20 Settle, [The Washington State Environmental Policy Act: A Legal and Policy Analysis] § 14(a)(i) [(4th ed. 1993)]."
21 (Internal case citations omitted.)

22 ¹⁰⁹ 8/22, Day 13, Tr. 211:17-22

23 ¹¹⁰ 8/22, Day 13, Tr. 72:4-6.

24 ¹¹¹ Tr. 83:24 to 84:4.

25 ¹¹² Ms. Wilson seemed to be unaware that Ms. Johnson interpreted the WAC differently in the Uptown EIS,
26 where eligible properties are those that meet the age-based threshold as "potentially eligible" (see pp. 31-32, *supra*). So,
Ms. Wilson criticized Mr. Kasperzyk's Ballard inventory for using the same criterion as Ms. Johnson. Wilson, 7/27, Tr.
210:8-21.) Ms. Wilson also did not read WAC 197-11-960D(4) (see n. 125 *infra*), which requires the EIS to address
historic resources "under study," thus dismissive of N. Rainier's notice to the City of its application to the state for
designation on the state and federal historic registers. Ms. Wilson's definition would also rule out the entire category of
inventories by highly-educated, trained surveyors who identify properties as a "significant historic resource" or
"Landmark- eligible" because no "decision-maker" has yet made the decision. Ms. Johnson stated such designations are
included on properties in the City's inventory data. (Johnson, Tr. 218:16-21) Ms. Wilson refers to City Landmarked
properties, but these are not listed in the EIS. (E.g., Wilson 7/27, Tr. 177:4-6, stating there are 450 Landmarks in Seattle.)
on the Ms. Wilson also acknowledged the EIS failed to include a Beacon Hill context statement, and did not include on
the NRHP map properties determined eligible in the Mt. Baker Historic District that are in the state database. She said,
"[I]t's very unfortunate, I do not like to have errors, but I'm a very precise person, so I regret that that happened, but it
does not change our findings." (Wilson, 7/27, Tr. 192:11-15.) It may not change her findings, but given the already scant
information in the EIS, these accumulated omissions contribute even more to decision-makers' lack of ability to make
knowledgeable decisions about where and whether to upzone.

1 and could be compared to parcels being rezoned. Rezoning would seem to be a stronger indicator of
2 likelihood of demo or redevelopment and a better measure of significant impact." Ms. Wilson stated
3 she did not follow up with Mr. Weinman and, "We did not look at the parcel level."¹¹³ Mr.
4 Bricklinn asked, "Was one of your thoughts here that would be okay because at the time of
5 individual projects additional analysis could be done at that time." Wilson said, "Yes."¹¹⁴ Ms.
6 Wilson was also asked whether anywhere in the EIS was the cumulative effect on the fabric of the
7 neighborhoods analyzed. Mr. Bricklin asked, "... you didn't analyze-well, "looked at growth rates".
8 You didn't analyze the impacts of that combined development on the historic fabric – on the fabric of
9 these historic communities, did you?" Ms. Wilson answered "No."¹¹⁵ Mr. Bricklin also asked:
10 "Don't you think it would be important for decision-makers deciding whether to change the zoning
11 on a parcel to know whether it's been identified as a potential historic resource in the city's
12 database?" Ms Wilson said, "Potentially."¹¹⁶

15 Ms. Wilson's testimony resumed Aug. 22, 2018. Appellant's counsel resumed cross-
16 examination. During cross, Ms. Wilson agreed with the following points:

17 The EIS does not explicitly state why there is only the NRHP map.¹¹⁷

18 A decision-maker would not know what the rationale was for using only the NRHP map.¹¹⁸

19 No one in the group (Mark Johnson, Sharese Graham, Paula Johnson) ever discussed that, because
20 the EIS impacts specific parcels within the city, the EIS should have greater specificity as to where
21 these historic properties are located.¹¹⁹

22 Before beginning her work, Ms. Wilson did not look at the Washington State Environmental Policy
23 Act, the administrative code provisions or the code provisions that pertain to programmatic EIS's

23 ¹¹³ 7/27, Day 10, Tr. 231:20-25.

24 ¹¹⁴ 7/27, Tr. 235:25-24, 236:1-2.

25 ¹¹⁵ 7/27, Tr. 241:15-21.

26 ¹¹⁶ 7/27, Tr. 247:12-16.

¹¹⁷ 8/22, Day 13, Tr. 76:19-22.(Ms. Paula Johnson said the same thing. Tr.211:17-22.)

¹¹⁸ Tr. 76:23-25, 77:1

¹¹⁹ Tr. 77:2-8.

1 and historic resources [Ms. Wilson stated, "Not directly, but I am aware of those."], and she did
2 not re-read them.¹²⁰

3 She did not re-read SMC provisions that pertain to EIS's generally.¹²¹

4 She did not read SMC 25.05.402B that states "the level of detail should be commensurate with the
5 importance of the impact with less important material consolidated or referenced."¹²²

6 She looked at the zoning maps only after preparing the DEIS.¹²³

7 She did not know that WAC 197-11-960D(4) requires the agency to state how the proposal would
8 affect historic resources that are eligible or "under study," she did not ask any questions to find out
9 whether there were any historic resources under study.¹²⁴

10 She did not consider anything that was "under study" [the question mentioned N. Rainier's
11 application to the state.]¹²⁵

12 Federally funded national historic districts receive protection under the National Historic
13 Preservation Act, §106, but national historic districts without federal funds are not protected.¹²⁶

14 There is no disclosure in the EIS of the neighborhoods or particular blocks with historic character
15 most at risk from upzones.¹²⁷

16 There is an on-line interactive map of Seattle Landmark buildings, but no map in the FEIS of Seattle
17 Landmarks. ("The decision was not to map the Landmarks.")¹²⁸

18 There is no policy that allows the city to deny or condition a project in order to reduce or avoid
19 impacts to historic character of the neighborhood and historic resources that are not Landmarks.¹²⁹

20 There is no statement in the EIS that increases in height allowance have the potential to
21 impact views of additional eligible or potentially eligible historic properties or Landmark
22 properties.¹³⁰

23 There is nothing in §3.5 that talks about neighborhood plans in the 2035 Comprehensive
24 Plan.¹³¹

25 Decision-makers would not know from the EIS where older properties would be located by
26 block (contrasting §3.5 with the Uptown DEIS, Ex. 261).¹³²

Ms. Wilson agreed the Uptown DEIS provided decision-makers with more information
and there was no way for the city council to get the same information from the MHA
FEIS.¹³³

¹²⁰ Tr. 79:14-20.

¹²¹ Tr. 79:9:21-25, 80:1-2.

¹²² Tr. 80:16-2

¹²³ Tr.:80:23-25, 81:1-15.

¹²⁴ Tr. 86:13-24

¹²⁵ Tr. 86: 25 ["Mel" in transcript should be "Mount."], 87:1-14.

¹²⁶ Tr. 91:20-25, 92:1-12, 152:3-22.

¹²⁷ Tr. 94:14-17.

¹²⁸ Tr.:95: 11-25, 96:1.

¹²⁹ Tr. 98:19-23.

¹³⁰ Tr. 94:7-11.

¹³¹ Tr. 79:3-13, 103:11:25, 104:1; 133:22-25, 134:1.

¹³² Tr. 105:2 to 106:19.

¹³³ *Id.*

1 After a break, Ms. Wilson's testimony resumed, and the Hearing Examiner asked Ms. Wilson
2 questions predominantly about City Landmarks.¹³⁴

3 The City next called Paula Johnson. She stated she provided "senior review" for Katherine
4 Wilson.¹³⁵ Direct testimony was not long. She was asked to distinguish and explain the Uptown
5 EIS. She was asked whether the Uptown analysis set a significance threshold such as used in the
6 MHA EIS.¹³⁶ She testified it did not.¹³⁷ She also testified that the biggest difference was the size of
7 the study, one urban village versus twenty-seven, and in Uptown "we weren't troubled by any old
8 information."¹³⁸ Ms. Johnson also stated that the Uptown EIS did not include 70-some [or 77, tape
9 not clear] buildings which had been inventoried.¹³⁹ She also elaborated somewhat on the Seattle
10 Landmarks Ordinance process.
11

12 On cross examination, Ms. Johnson was asked whether the Landmark Preservation
13 Board could control (decrease) the height of a 75-foot new building, adjacent to a Landmark, that
14 obstructs a view or blocks. She said that Board could not control that.¹⁴⁰ Ms. Johnson said she never
15 looked at other sections of the EIS; she never looked at the zoning maps.¹⁴¹ When asked, "So you
16 have no idea what the impact would be on an urban village by urban village basis, to upzoning on
17 historic resources within the urban village, is that correct?," she stated, "I understand that there will
18 be upzoning within urban villages. That is adequate for understanding potential impacts to historic
19
20
21

22 ¹³⁴ Tr. 134:18 to 151:1.

23 ¹³⁵ 8/22. Day 13, Tr. 179:9-13.

24 ¹³⁶ Mr. Weinman criticized the use of this threshold on his review of the May 5, 2017 draft §3.5, p.
25 COS0034827, Comment [RW 3].

26 ¹³⁷ Tr. 191:8-10.

¹³⁸ Tr. 194:17 to 195:3.

¹³⁹ Tr. 196:7-9.

¹⁴⁰ Tr., 205:10 to 206:2.

¹⁴¹ Tr. 208:8-20.

1 resources."¹⁴² Ms. Johnson agreed that the MHA EIS could have detailed the ages of buildings
2 within urban villages, as the City did in the Uptown EIS, and that information was readily available.

3 "And so you could have had that data available to put on every single parcel within the up-zone
4 areas in the urban villages, correct? "Sure." And within the expansion areas? "Sure."¹⁴³

5
6 Ms. Johnson was asked about National Register Historic Districts – "Unless they have
7 federal funds attached to those particular historic districts, there's nothing that gives them particular
8 protection against being upzoned, correct?" She said, "Well, I believe the legislation says there will
9 not be upzones in historic districts [referring to "MHA"]." Ms. Johnson's understanding is that
10 future historic districts are protected under the FEIS proposal.¹⁴⁴ She was asked if there were no
11 SEPA review, would there be any protection for a National Historic District – "But if there's no
12 SEPA review, does that process kick in?" [Ms. Johnson] "No."¹⁴⁵ She was asked, using Ravenna-
13 Cowen [then on the Washington state register] as an example, if you had no SEPA review and a
14 house in that area is demolished, wouldn't that impact the fabric of that area?" She answered, "Yes."
15 She also agreed that from the MHA FEIS presentation, there is no way the City Council can identify
16 where potential historic districts might be.¹⁴⁶

17
18 Ms. Newman then asked questions. During the back-and-forth, Ms. Johnson repeated
19 "in fact, we didn't include the inventoried properties in, on any figure in Uptown."¹⁴⁷ When Ms.
20 Newman later asked whether these 77 properties were actually already included on the map,
21

22 ¹⁴² Tr. 208:21 to 209:1.

23 ¹⁴³ Tr. 209:19 to 211:11.

24 ¹⁴⁴ Tr. 211:23 to 212:14. But she is incorrect. §3.5, p. 304 (underlining means added language that was not in
the DEIS): "Potential future impacts to newly-created historic districts would be considered at an individual basis at the
time of designation." This language offers no protection if the proposed upzones are adopted. It's too late. Ms. Johnson
apparently did not read this.

25 ¹⁴⁵ Tr. 213:1-17.

26 ¹⁴⁶ Tr. 213:18 to 214:-11.

¹⁴⁷ Tr. 221:10-15.

1 Ms. Johnson said, "Yes, they would be reflected in the yellow or blue area."¹⁴⁸ Ms. Newman's
2 questions then turned to impacts to Landmark buildings, using hypotheticals. Earlier on, during
3 Appellant Counsel's cross, Ms. Johnson was asked, "What about when they're [City Council]
4 actually making decisions within South Park as to where to zone? Wouldn't that be-how-shouldn't
5 they have that information for their decisions within the boundaries of the South Park urban village?,
6 shouldn't they have that [survey] information for within the boundaries of the South Park urban
7 village? [Ms. Johnson] "Sure."¹⁴⁹
8

9
10 The Hearing Examiner asked Ms. Johnson questions following cross examination, and
11 again following redirect.¹⁵⁰

12 In summary, the City's witnesses confirm:

13 The MHA FEIS does not explain why only NRHP data were mapped. The presentation
14 in the EIS does not permit decision-makers to identify upzoning impacts to Seattle Landmark-
15 buildings. Landmarks are not identified at all. Decision-makers cannot determine impacts from
16 upzoning to potential future historic districts, or other historic resources, except for NRHP parcels,
17 because they are not clearly identified. The witnesses acknowledge that if there is no SEPA review
18 (below the threshold), Landmark buildings are not protected, nor is an existing national historic
19 district, nor are potential historic districts or other historic resources. Ms. Johnson agreed that the
20 same criteria used in the Uptown EIS could have been done, and the evidence in this case, Spencer
21 Howard's testimony and Ex. 310 (with all parcel year-built data), establishes that this same approach
22 was easy to do at low cost. The City ignored its own consultant's recommendation (Richard
23
24

25 ¹⁴⁸ Tr. 230:2-4.

¹⁴⁹ 228:3-7.

26 ¹⁵⁰ 230:11 to 236:9; 242:14 to 244:8.

1 Weinman, Ex. 238, p. COS0034827), to include surveyed historic buildings so that these could be
2 "compared to the parcels being rezoned" (the identical critique raised by appellants' witnesses).¹⁵¹

3 The MHA FEIS is inadequate because it does not comply with SMC 25.05.402B,
4 which states "The level of detail [in the EIS] shall be commensurate with the importance of the
5 impact, with less important materials summarized, consolidated, or referenced." This code provision
6 was not even discussed by "the team." There is no way a decision-maker can evaluate the impacts
7 to historic resources in urban villages and proposed expansion areas. The approach used was not
8 understandable, is inadequate, and is unreasonable.

10 **III. The One-Size-Fits-All Application of a Ten-Minute Walk-Shed As the**
11 **Basis to Upzone Ten Urban Villages and Expansion Areas, Is In Derogation of**
12 **the 2035 Comprehensive Plan Legislative History and Intent, Disregards the**
13 **Actual Language Adopted By the City Council, and Does Not Examine the**
14 **Environmental Impacts Caused By This "Principle."**

15 The 2035 Comprehensive Plan, Ex. 3, p. 25, states: "GS [Growth Strategy] 1.12
16 Include the area that is *generally* within a ten-minute walk of light rail stations or very good bus
17 service in urban village boundaries, except in manufacturing/industrial centers." (Emphasis added.)
18 The Council could have said, "Include the area within a ten-minute walk of light rail stations....," but
19 it did not. This provision has particular legislative relevance because in the Comp. Plan the Mayor
20 submitted to the Council, the City proposed to expand the RUV boundaries east of 15th Ave. NE
21 based entirely on a 10-minute walk from the future light-rail station. The City Council rejected that

22
23 ¹⁵¹ While the MHA FEIS has a laundry list of possible mitigation measures, nowhere in this list, or elsewhere
24 in the EIS, does the City point out or identify as a mitigation factor that due to the time gap, time between implementation
25 and passage of new ordinances that might mitigate potential impacts, no upzoning should occur. Once upzoning is
26 enacted, it's too late. The owner/developer then has a vested right to demolish historic resources. That is why it is so
critically important now to identify already-designated and potential historic resources and correlate these to the zoning
maps.

1 proposal. The Mayor also proposed including a Future Land Use Map, also based on the 10-minute
2 walk, which is almost identical to the proposal in the MHA FEIS. The Council did not adopt that
3 FLUM, Ex. 3, p. 41. Nor did the Council adopt the Planning Commission's proposed amendment to
4 state in LU 7.3 that increased development, such as RSL, LR 1 and LR2, should be expanded to
5 single-family areas *near* urban villages; the Council restricted such development to "*in* urban
6 villages." (Emphasis added.) Ex. 156, the City's Answers to Friends of Ravenna-Cowen's First
7 Request for Admissions, No.s 1-14 and exhibits thereto.

9 Nowhere in the MHA FEIS does the City explain this legislative history. Rather, it
10 states (Ex. 2, p. vii), "Expand the boundaries of certain urban villages on the Comprehensive Plan's
11 Future Land Use Map (FLUM) near high-frequency transit, *as studied in the Seattle 2035*
12 Comprehensive Plan. (Emphasis added.)(See also the map, p. 2.8 which shows in outline "Potential
13 Urban Village Expansion Area Studied in Seattle 2035Comprehensive Plan.") This language
14 implies the Council already approved these expansions. The RUV outline is the same outline based
15 on a 10-minute walk that the Council rejected, but that is not acknowledged in the FEIS.

17 Similarly, the FEIS does not explain that the 10-minute walk was never conceived of as
18 a "principle." To the contrary, the study (upon which the RUV expansion map is based) prepared by
19 Peter Steinbrueck, expressly states, **Main things to consider in assessing boundary expansions:**
20 "Proposed UV boundary expansions should follow street grid (preferably arterials), but not divide a
21 cohesive neighborhood or street." (Emphasis original.) Ex. 50, p. 15, Seattle Urban Village Study,
22 Final Report Aug. 2015, and cover letter from DPD Director Diane Sugimura. Mr. Steinbrueck
23 testified that the lines on the maps were never intended to apply as shown. The study was one-step
24
25
26

1 in a two-step process. The explicit intent was for the City to use the information in the study together
2 with neighborhood-specific information analyzed in phase two. But phase two never happened.¹⁵²

3 Nowhere in the FEIS does the City identify 2035 Comp. Plan provisions that are
4 inconsistent with its proposal, such as: GS1.3, "Establish boundaries for ...urban villages...that
5 reflect existing development patterns... and recognized neighborhood areas (Ex. 3, p. 24); GS 3.9 (p.
6 34), "Preserve characteristics that contribute to a communities' general identity, such as block and lot
7 patterns and areas of historic, architectural, or social significance;" R-HG1, p. 381, "Protect and
8 maintain the architectural heritage of Roosevelt's Craftsman, bungalow, and Tudor-style housing
9 while embracing growth of well-designed buildings of an appropriate scale."

10 The OPCD staff team elevated the 10-minute walk concept to a "principle" (see fn. 1,
11 p. 1, *supra*), and disregarded the 2035 Comp. Plan's legislative history and provisions actually
12 adopted. The OPCD staff team ignored the study's intent and plain words from its own study that the
13 divider for the 10-minute walk should be an arterial, not a small neighborhood street, and should not
14 be applied to cohesive neighborhoods, such as Ravenna-Cowen.
15

16 The impacts from this overarching application of this "principle" are significant. The
17 "principle" adversely affects every element of the environment in Ravenna-Cowen – tree cover,
18 Ravenna Park, and historic resources. Mr. McConachie describes the application to the Ravenna-
19 Cowen neighborhood as an "arbitrary move. It damages the historic fabric of a neighborhood."¹⁵³
20 The 10-minute walk upzones are even applied without regard to height, bulk and scale. Mr. Gagnon
21
22

23
24 ¹⁵² Steinbruek, 6/27, Day 3, Tr. 49:1-7; 58:19 to 59:20,

25 ¹⁵³ 6/28, Day 4, Tr. 75:15-17, see also 75:25, 76:1-22, 77:3-17. See also, Tr. 81:4-25, 82:24. In his testimony
26 Mr. McConachie identified available areas within the RUV for upzoning to meet MHA density, which areas were also
identified in the public meeting process and DEIS comment letters. Tr. 77 :18-25, 78:1-25, 79:1-25, 80:1-25, 81:1-3. See
fn.92, *supra*.

1 pointed out the proposed upzone on NE 65th St. was to 55-feet, and the City's map (Ex. 161, with the
2 same boundaries as Ex. 2, App. H-70), did not stop at 65th, but intruded three or four lots south into a
3 small neighborhood street (16th Ave. NE), right next to a single-family home. City staff told him,
4 "[S]o what you have is mixed use and you can have a bar downstairs." Mr. Gagnon said, "We're a
5 neighborhood where every other house has kids that are four years old."¹⁵⁴
6

7 SEPA, the implementing regulations of WAC 197-11, and SMC Chapter 25.05 require
8 real analysis of real impacts on elements of the environment resulting from the proposal and SMC
9 25.05.020C requires compliance with both the "spirit and letter of the law." That's not possible
10 when, from the outset, the proposal starts and ends with a predetermined outcome applying a
11 predetermined "principle." The required analysis did not occur here, was inadequate, and if adopted,
12 there will be significant adverse consequences.¹⁵⁵
13

14 SUMMARY AND RELIEF REQUESTED

15 For the reasons stated above, and for the reasons addressed by other Appellants, the
16 MHA FEIS does not provide an adequate study of the environmental impacts to the neighborhoods
17 within the study area, including Ravenna-Cowen and the Roosevelt UV proposed expansion area.
18

19 ¹⁵⁴ Gagnon, Tr. 263:1-20, particularly, lines 15-20.

20 ¹⁵⁵ Friends of Ravenna-Cowen's Notice of Appeal also raises the issue that the public notice process required
21 under SEPA and the SMC 25.05 was inadequate. FRC does not waive that issue and joins in Appellant JuNO's analysis.
22 Additionally, Appellant points out there was only one hard copy of the DEIS at the downtown library (Ex. 1, p. ix). As
23 the Hearing Examiner experienced, it is not easy to read the MHA EIS, even in hard copy, but the paper copy is easier to
24 read than trying to read it on line (see, e.g. Ex. 288, comment). SEPA requires the DEIS to be readable, WAC-197-
25 425(1). There are 26 branch libraries throughout the city, <https://www.spl.lib.wa.us/> (click on 'Locations'), and the City
26 could have easily provided copies for those who are not computer adept or who became frustrated trying to read on-line a
462 page document plus 364 pages of separate appendices. (Judicial notice of the library site requested.) Mr. Gagnon
testified he never received notice of "Meeting-in-a-Box, and no one ever came to their door to leave information. Gagnon
Tr. 268:19-21. Mr. Gagnon also testified about not being notified of a meeting held with the Roosevelt Neighborhood
Ass'n., and he attended only because someone leaked the time and place to him. Gagnon, Tr. 255:22 to 261:8. Ms. Brand
testified the MHA DEIS was not translated; therefore, there was no way non-English speakers could meaningfully
participate. Had the City prepared an EIS neighborhood-by-neighborhood, it could have complied with the WAC-197-
425(4)'s 150-page maximum limit for a DEIS.

1 Proposed alternatives 2, 3 and Preferred will cause known direct, indirect, and cumulative impacts to
2 the Ravenna-Cowen neighborhood, which are not analyzed in the FEIS. Appellant Friends of
3 Ravenna-Cowen requests the Hearing Examiner to remand the FEIS to the City with instructions to
4 prepare Supplemental EIS(s) as necessary to adequately address the environmental impacts and
5 mitigation for the four alternatives, including an assessment of the impacts and potential mitigations
6 that are associate with each area in the "project area" (urban villages, proposed expansion areas and
7 other areas outside the urban villages).
8

9 Respectfully re-submitted this 19th day of October, 2018.

10
11 By: 
12 JUDITH E. BENDICH, WSBA #3754
Authorized Representative
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