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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeal of:

SEATTLE MOBILITY COALITION

From a Decision of the Director of the
Department of Planning and Development.

Hearing Examiner file:

DPD Reference:
Determination of Nonsignificance for 2018
Amendments to the Seattle Comprehensive
Plan Related to Transportation Impact Fees and
the Adoption of Existing Environmental
Documents

NOTICE OF APPEAL

The City of Seattle (“City”) has proposed amendments to its Comprehensive Plan to establish, for the first time, a traffic impact fee in the City (“Proposal”). The City describes the Proposal as “a necessary, but not sufficient, step to establish an impact fee program.” The Proposal includes amendments to the Comprehensive Plan that would require the adoption of impact fees and a list of proposed projects that, according to the City, “would be eligible for future investments with revenue from a transportation impact fee program.” The City notes that for full implementation of the fee program, it “will need to adopt a fee schedule and regulatory program through separate legislation,” which “could occur in the first quarter of 2019.”

In other words, the City has announced its intent to amend its Comprehensive Plan to require the adoption of a traffic impact fee, to promulgate development regulations imposing a

1 fee, and to spend the revenue gained from the fee on a particular list of projects. If the Proposal
2 is adopted, therefore, the consequence will be the imposition of fees that will have a profound
3 effect on future development in (and thus the built environment of) Seattle, as well as significant
4 environmental impacts caused by the designated projects themselves. Yet the Determination of
5 Nonsignificance (“DNS”) issued on by the City October 25, 2018 steadfastly ignores these
6 certain outcomes, seeking to frame the proposed amendment as a “procedural step” that will
7 have no environmental impact – despite the fact that any subsequent development regulations
8 will need to conform to the Comprehensive Plan as amended. The City’s approach turns a blind
9 eye to reality and ignores the requirements of the State Environmental Policy Act (“SEPA”).
10 The City may not take the major and consequential step of amending its Comprehensive Plan
11 without a full analysis of the environmental effects of the Proposal.
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14 The Seattle Mobility Coalition (“Coalition”) appeals the DNS issued on the Proposal
15 because the City’s approach seeks improperly to avoid review of the environmental
16 consequences of its action. The DNS must be remanded with instructions to comply with SEPA.
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18 **Identification of matter being appealed.**

19 The Coalition appeals the DNS on the Proposal. The DNS was issued on October 25,
20 2018, and is attached as Exhibit A. The accompanying SEPA Checklist (“Checklist”) is attached
21 as Exhibit B. The comment letter submitted by the Coalition on November 8, 2018 is attached as
22 Exhibit C.
23

24 **Appellant’s interest.**

25 The Coalition is an unincorporated association with members who own and develop
26 property and live in Seattle. Members of the Coalition are adversely affected by the Proposal
27 because they own property or live near street improvement projects which will proceed as a
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1 direct result of the Proposal and will impact them. These impacts include noise, dust, and
2 congestion from construction, as well as long term noise, traffic, and aesthetic impacts. These
3 interests are squarely within the zone of interests protected by SEPA. *See, e.g.*, Items 1, 2, 7, 10,
4 and 14 on the environmental checklist set forth at WAC 197-11-960.

5
6 Coalition members also own property on which development projects are proposed that
7 must be physically modified or are rendered infeasible as a direct result of the Proposal. In
8 addition, they are prospective residents of these projects and neighbors who will be impacted by
9 loss of housing and amenities that would have been provided by these projects but for the
10 Proposal. Coalition members are in the process of developing projects that would increase the
11 supply of housing in Seattle, thereby increasing housing affordability, and would redevelop
12 existing vacant or underdeveloped properties with new buildings that are aesthetically pleasing
13 and consistent with the City's land use goals and policies. These projects would be prevented or
14 altered due to the additional fees effected by the Proposal. The Proposal will cause specific and
15 perceptible harm to Coalition members' ability to contribute to Seattle's housing supply and
16 develop property consistent with the City's goals and policies. These interests are squarely
17 within the zone of interests protected by SEPA. *See, e.g.*, Item 9 on the environmental checklist
18 set forth at WAC 197-11-960.

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21 **Issues on Appeal.**

22 **A. Conflict of Interest and Lack of Authority to Serve as SEPA Responsible Official**

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24 This Proposal appears to have been developed by the same agency staff who conducted
25 the inadequate environmental review, in violation of WAC 197-11-926(2), which requires that
26 "[w]henver possible, agency people carrying out SEPA procedures should be different from
27 agency people making the proposal."
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1 The materials published by the City in conjunction with the DNS reflect that this
2 Proposal was both developed and organized by Ketil Freeman, in his capacity as Supervisory
3 Analyst for the City Council Central Staff. Mr. Freeman is listed as the author/presenter on the
4 “Transportation Impact Fees – Comprehensive Plan Amendments” PowerPoint presentation on
5 the City Council’s “Impact Fees” website, as the applicant contact on the Checklist, and as the
6 author of the draft ordinance itself. He is also listed on the City Council’s organizational chart as
7 the supervisor of Analyst Lish Whitson, who signed the Checklist. The lack of separation
8 between the development of the Proposal and the cursory environmental analysis leading to the
9 DNS violates WAC 197-11-926(2) and poses a conflict of interest.
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11
12 Additionally, the Coalition has seen no indication that Mr. Freeman has been delegated
13 lawful authority to serve as the SEPA responsible official on this matter. Unless such authority
14 was delegated, the DNS is invalid on its face.

15 **B. The DNS is Based on Inadequate Information**

16 A threshold determination must be “based upon information reasonably sufficient to
17 evaluate the environmental impact of a proposal.” WAC 197-11-335. The DNS and the SEPA
18 checklist insist that the proposed amendments by definition cannot have any environmental
19 impact because they will not independently have the force of law. Comprehensive Plan
20 amendments, however, necessarily set the stage for future development regulations, which must
21 be consistent with the Plan as amended. And not only are development regulations imposing a
22 fee and specific projects designated for implementation necessarily contemplated by the
23 Proposal, they are specifically referred to in the Proposal. The City’s supposedly non-project
24 Proposal comes with a list of projects attached – projects that will have adverse impacts on the
25 environment, as discussed more below. Similarly, the Proposal also specifically references the
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1 forthcoming adoption of development regulations implementing impact fees. It contains no
2 information about the impacts of those fees, despite the fact that they will result in environmental
3 impacts, as discussed below.

4 **C. The Proposal will have Significant Adverse Environmental Impacts**

5 The City may issue a DNS only when the proposal under consideration will not have
6 significant adverse environmental impacts. WAC 197-11-340(1); SMC 25.05.340.A. In
7 contrast, if a proposal will have a significant adverse impact on the environment, the City must
8 issue a Determination of Significance (“DS”) and prepare an Environmental Impact Statement
9 (“EIS”). WAC 197-11-360(1); SMC 25.05.360.A. Here, the Proposal will have significant
10 adverse environmental impacts that were not analyzed in the DNS. “Impacts include . . . the
11 likelihood that the present proposal will serve as a precedent for future actions.” WAC § 197-
12 11-060(4)(d).
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15 First, the Proposal will entail significant construction impacts because it will lead to the
16 construction of the transportation improvement projects identified in the Proposal. These
17 projects will result in temporary construction-related impacts to the following elements of the
18 environment, among others: earth (due to earth movement for construction), air (due to
19 emissions from construction and other vehicles), water (due to increased impervious surface), the
20 built environment (including noise, light and glare, and aesthetics), and transportation, among
21 others, and long-term traffic, noise and aesthetic impacts. The City failed to analyze these
22 impacts and to identify potential mitigation.
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25 Additionally, the Proposal will significantly impact the built environment in the City.
26 Development projects will be modified or rendered infeasible due to the burdensome fees
27 resulting from the Proposal, causing loss of infill redevelopment, including housing, and
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1 amenities that would have been provided by these projects but for the Proposal. For those
2 projects that proceed forward, impact fees will be passed along to future purchasers and tenants,
3 increasing the cost of housing. This will result in long-term impacts to the built environment,
4 including relationship to existing land use plans, housing, aesthetics and recreation.

5
6 Physical impacts that result from economic effects are environmental impacts that must
7 be considered under SEPA. Here, the fees required as a result of the Proposal will reduce
8 development in Seattle, causing some properties to remain vacant or underutilized, with
9 buildings in a state of disrepair and serving as magnets for undesirable activities. Some housing
10 projects will be rendered infeasible, reducing housing supply and decreasing affordability.

11 Amenities (including expensive design features and materials, recreational spaces and
12 improvements that enhance the pedestrian environment) will not be provided. Residents of
13 Seattle will be impacted by reduced housing supply and neighborhoods by reduced
14 redevelopment. Moreover, the exclusive use of this additional funding for transportation
15 improvements will necessarily limit the resources the City could put towards other public
16 services, such as police and firefighting. The Proposal's refusal to analyze these impacts fails to
17 satisfy the requirements of SEPA.
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20 **D. Piecemealing**

21 SEPA requires environmental analysis "at the earliest possible point in the planning and
22 decision-making process," even for proposals that "may require future agency approvals or
23 environmental review." WAC 197-11-055(2). Where a proposal will require a series of related
24 actions that are reasonably understood at the outset, the checklist must consider the
25 environmental impacts of all of the actions together, not just the first or second one in isolation.
26 Specifically, WAC 197-11-060 provides that proposals "related to each other closely enough to
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1 be, in effect, a single course of action” must be considered together under SEPA if they “are
2 interdependent parts of a larger proposal and depend on the larger proposal as their justification
3 or for their implementation.” Similarly, WAC 365-196-805(1) provides that when “amendments
4 to comprehensive plans are adopted, consistent implementing regulations or amendments to
5 existing regulations should be enacted and put into effect concurrently.” This underscores the
6 importance of evaluating the Proposal with the anticipated development regulations and
7 transportation improvement projects as a “single course of action” for SEPA review.

8
9 Since the Proposal is expressly intended to be followed by development regulations
10 imposing transportation impact fees and, subsequently, by development of the transportation
11 improvements expressly identified in the Proposal, there is no possible conclusion other than that
12 these proposed amendments and projects are interdependent parts of a larger proposal. The City
13 has broken this single course of action into smaller pieces in order to avoid timely review of the
14 impacts of its actions. SEPA requires the City to conduct adequate environmental review not
15 only of the Comprehensive Plan amendment Proposal itself, but of the City’s entire course of
16 action (the actual Proposal), which includes adoption of the impact fee and construction of the
17 specifically identified transportation improvements.
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20 **Specific Objections to Analysis and Decision**

21 p. 1: The statement that “the amendments would not affect the extent, intensity or rate of
22 impacts to the built and natural environment” attempts to hide the significant consequences of
23 these amendments behind the designations of “non-project” and “procedural,” despite the fact
24 that the amendments would require the adoption of consistent development regulations and
25 would enable the construction of multiple large projects described elsewhere in the Proposal.
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1 p. 2: The DNS asserts that the “amendments would not in themselves create a
2 transportation impact fee program.” This artificially limits the scope of the Proposal, pretending
3 that the amendments will have no impact despite recognizing that they are a “necessary” step
4 towards imposing impact fees and listing projects intended to be built. The DNS ignores the
5 likely impact that the projects will have on their physical environments, as well as the effects that
6 the fees themselves will have on the built environment in the city more broadly.
7

8 p. 3: Ketil Freeman is listed as the SEPA Responsible Official. However, because Mr.
9 Freeman was deeply involved in the development of the Comprehensive Plan amendments and
10 the other aspects of the proposal, this poses a conflict of interest. Additionally, the DNS does not
11 indicate that Mr. Freeman was validly delegated the legal authority to serve as the SEPA
12 Responsible Official.
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14 **Specific Objections to SEPA Checklist**

15 pp. 1-2: The City answers the yes-or-no question regarding whether it has plans for
16 “further activity related to or connected to this proposal” with an end run around the obvious
17 answer: yes. Instead of explaining and analyzing the additional activity it has already begun
18 planning, it describes the proposed amendments as a procedural step and implies that they will
19 not necessarily lead to the actual establishment of an impact fee program. This is belied by the
20 legal requirement to adopt consistent development regulations as well as by other components of
21 the Proposal, which refer to the adoption of development regulations and the construction of
22 numerous listed projects.
23

24 pp. 2-3: In response to a request for a “complete description of your proposal,” the City
25 merely repeats the answer it gave regarding the supposedly “procedural” nature of the
26 amendments – ignoring the true nature of the Proposal and its obvious effects.
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1 pp. 3-13: The City points to WAC 197-11-315(1)(e) to justify its failure to discuss the
2 numerous specific environmental impacts that will result from its Proposal – impacts that are
3 specifically contemplated by Section B of the Checklist. Among the topics requiring analysis are
4 the impacts of the construction for the proposed projects on the earth, air, water, plants, and
5 animals in the areas where the projects are to be built (items 1-5); the necessity of “measures to
6 reduce or control housing impacts” that will be caused by reduced development from the fees
7 (item 9(c)); and the transportation-related physical changes, traffic impacts, and effects on transit
8 use that will result from devoting so many resources to road improvements (item 14).
9

10 p. 14: The City’s response states that the “current action . . . makes no incremental
11 change to production, release or discharge of any pollutants,” but Question D.1 on the checklist,
12 to which it is responding, instead asks how the proposal would “be *likely* to increase emissions to
13 air . . . or production of noise” (emphasis added). The capital improvements proposed by the
14 City would involve large construction projects, many of them likely to facilitate an increased
15 volume of cars on the road. These are steps that would make emissions and noise more likely
16 and therefore require description and analysis.
17

18 p. 15: The City’s response states that the “current action . . . makes no incremental
19 change to use of energy and natural resources,” but Question D.3 on the checklist instead asks
20 how the proposal would “be *likely* to deplete energy or natural resources” (emphasis added). The
21 projects proposed by the City would increase the number of car trips in the City, depleting
22 energy more than alternative approaches. Additionally, the tendency of the fees to decrease
23 development will similarly decrease density, requiring greater energy expenditures for
24 transportation to the City center.
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1 p. 16: The City's response states that the "current action . . . would not increase demands
2 on transportation, public services, and utilities" because "[f]uture actions by the City are required
3 for full implementation." By definition, the project list proposed by the city would increase
4 demands on transportation. The Comprehensive Plan amendments proposed here, as a necessary
5 step toward implementing the fees that would fund those projects, make those increased demands
6 more likely.
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8 **Relief Requested.**

9 The Coalition respectfully asks the Hearing Examiner to reverse the DNS and remand to
10 the Director with instructions to comply with WAC 197-11-060, WAC 197-11-335, and other
11 SEPA requirements. Only after these steps are complete, the Director should render a new
12 threshold determination.
13

14 **Appellant/Representative.**

15 Appellant is the Seattle Mobility Coalition. Appellant may be contacted c/o its
16 representatives Courtney Kaylor, McCullough Hill Leary P.S., 701 5th Avenue, Suite 6600,
17 Seattle, WA 98104, 206 812 3388, courtney@mhseattle.com.
18

19 Dated this 15th day of November, 2018.

20 SEATTLE MOBILITY COALITION

21
22 By: Courtney Kaylor
23 Its: Representative

24 MCCULLOUGH HILL LEARY, PS

25 Courtney Kaylor
26 Courtney Kaylor, WSBA #27519
27 Attorney for Appellant
28

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