

EXHIBIT C

November 8, 2018

VIA HAND DELIVERY AND ELECTRONIC MAIL

Seattle City Council Central Staff
Attn: Ketil Freeman
P.O. Box 34025
Seattle, Washington 98124-4025
ketil.freeman@seattle.gov

Re: Determination of Nonsignificance (“DNS”) for 2018 Amendments to the Seattle Comprehensive Plan Related to Transportation Impact Fees and the Adoption of Existing Environmental Documents

Dear Mr. Freeman:

We are writing on behalf the Seattle Mobility Coalition (“Coalition”) to provide comments on the Determination of Nonsignificance (“DNS”), attached as Exhibit A, for the 2018 Amendments to the Seattle Comprehensive Plan Related to Transportation Impact Fees and the Adoption of Existing Environmental Documents (“Proposal”).

A. Interests of Coalition

The Coalition is an unincorporated association with members who own and develop property and live in Seattle. Members of the Coalition are adversely affected by the Proposal because they own property or live near street improvement projects which will proceed as a direct result of the Proposal and will impact them. They also own property on which development projects are proposed that must be physically modified or are rendered infeasible as a direct result of the Proposal. In addition, they are prospective residents of these projects and neighbors who will be impacted by loss of housing and amenities that would have been provided by these projects but for the Proposal.

B. The Proposal Description is Inadequate

Under the State Environmental Policy Act (“SEPA”), “[p]roposals should be described in ways that encourage considering and comparing alternatives. Agencies are encouraged to describe public or nonproject proposals in terms of objectives rather than preferred solutions.” WAC 197-11-060(3)(iii); *see also* Department of Ecology SEPA Handbook (“SEPA Handbook”), Section 4.1. Contrary to this requirement, here the Proposal is described as specific Comprehensive Plan amendments. The Proposal is not described in terms of its objectives, in violation of WAC 197-11-060.

C. Conflict of Interest and Lack of Authority to Serve as SEPA Responsible Official

To ensure that SEPA review fully and impartially accounts for potential project impacts, WAC 197-11-926(2) requires that “[w]henver possible, agency people carrying out SEPA procedures should be different from agency people making the proposal.” This Proposal, however, appears to have been developed by the same agency staff who conducted the inadequate environmental review.

The materials published by the City in conjunction with the DNS reflect that this Proposal has been developed and organized by you, in your capacity as Supervisory Analyst for the City Council Central Staff. You are listed as the author/presenter on the “Transportation Impact Fees – Comprehensive Plan Amendments” PowerPoint presentation on the City Council’s “Impact Fees” website, as the applicant contact on the Checklist, and as the author of the draft ordinance itself. You are also listed on the City Council’s organizational chart as the supervisor of Analyst Lish Whitson, who signed the Checklist. Respectfully, we are concerned that the lack of separation between the development of the Proposal and the cursory environmental analysis leading to the DNS violates WAC 197-11-926(2) and poses a conflict of interest.

Additionally, the Coalition has seen no indication that you have been delegated lawful authority to serve as the SEPA responsible official on this matter. Unless you have been delegated such authority, the DNS is invalid on its face.

D. The DNS is Based on Inadequate Information

A threshold determination must be “based upon information reasonably sufficient to evaluate the environmental impact of a proposal.” WAC 197-11-335. Here, the DNS is based on inadequate or inaccurate information contained in the Checklist.

Section B of the Checklist is left entirely blank. Yet, as discussed below, the Proposal will lead to the construction of specifically identified transportation improvements, which will have impacts on the environment. In addition, the Proposal will discourage development in Seattle and will reduce the physical amenities provided in future development projects by directing funding to transportation improvements instead, resulting in adverse impacts to the built environment. “Implicit in the statute is the requirement that the decision makers consider more than what might be the narrow, limited environmental impact of the immediate, pending action.” *Cheney v. Mountlake Terrace*, 87 Wn.2d 338, 344, 552 P.2d 184, 188 (1976). “The agency cannot close its eyes to the ultimate probable environmental consequences of its current action.” *Id.* The Checklist must evaluate these impacts.

In addition, Section D of the Checklist contains only cursory responses, asserting that the Proposal itself is “not sufficient to implement” an impact fee program so “in and of itself, has no impacts.” This statement reflects the City’s improper piecemealing of the Proposal. The Checklist goes on to acknowledge that impact-fee eligible transportation improvements could result in environmental impacts, but dismisses these without meaningful analysis. This is insufficient to satisfy the City’s obligation under SEPA. *See, e.g., Spokane Cty. v. E. Wash. Growth Mgmt. Hearings Bd.*, 176 Wn. App. 555, 579, 309 P.3d 673, 684 (2013) (“[F]or a nonproject action, such as a comprehensive plan

amendment or rezone, the agency must address the probable impacts of any future project action the proposal would allow.”).

E. The Proposal Will Result in Significant Adverse Impacts

The City may issue a DNS only when the proposal under consideration will not have significant adverse environmental impacts. WAC 197-11-340(1); SMC 25.05.340.A. In contrast, if a proposal will have a significant adverse impact on the environment, the City must issue a Determination of Significance (“DS”) and prepare an Environmental Impact Statement (“EIS”). WAC 197-11-360(1); SMC 25.05.360.A. Here, the Proposal will have significant adverse environmental impacts that were not analyzed in the DNS. These include the following:

- Construction impacts. The Proposal will lead to the construction of the transportation improvement projects identified in the Proposal. These projects will result in temporary construction-related impacts to the following elements of the environment: earth (due to earth movement for construction), air (due to emissions from construction and other vehicles), water (due to increased impervious surface), the built environment (including noise, light and glare, and aesthetics), and transportation, among others. The City failed to analyze these impacts and to identify potential mitigation.

The Checklist opines, without support, that “any construction-related impacts associated with potential future development of identified projects would be mitigated by existing environmental protection regulations and, for those projects that are not categorically exempt from SEPA, additional environmental review.” Checklist, p. 15. Yet, a “county, city, or town may not rely on its existing plans, laws, and regulations when evaluating the adverse environmental impacts of a nonproject action.” *Heritage Baptist Church v. Central Puget Sound Growth Management Hearings Board*, 2 Wn. App. 737, 752, 413 P.3d 590 (2018). In addition, in making this statement with regard to future project actions, the City failed to comply with WAC 197-11-158.

- Impacts to the built environment. Development projects will be modified or rendered infeasible due to the burdensome fees resulting from the Proposal, causing loss of infill redevelopment, including housing, and amenities that would have been provided by these projects but for the Proposal. For those projects that proceed forward, impact fees will be passed along to future purchasers and tenants, increasing the cost of housing. This will result in long-term impacts to the built environment, including relationship to existing land use plans, housing, aesthetics and recreation, among other elements of the environment.

During the threshold determination process, an agency must ask, “Is the project consistent with the . . . local development regulations, and the comprehensive plan?” Department of Ecology SEPA Handbook, Section 2.6. “Review of a nonproject proposal should include a consideration of other existing regulations and plans, and any other development.” *Id.* at Section 4.1. Here, by burdening development, including housing, the Proposal conflicts with the following Comprehensive Plan goals and policies, among others: GS G1 (keep Seattle as

a city of unique, vibrant, and livable urban neighborhoods); GS 1.2 (encourage investments and activities in urban centers and urban villages that will enable those areas to flourish); GS 1.5 (encourage infill development); GS 1.22 (support healthy neighborhoods throughout the city so that all residents have access to a range of housing choices, parks, open space); LU G8 (allow a variety of housing types and densities that are suitable for a broad array of households and income levels); LU 8.3 (provide housing for Seattleites at all income levels in development that is compatible with desired neighborhood character and that contributes to high-quality, livable urban neighborhoods); LU G9 (create and maintain successful commercial/mixed use areas); LU 9.2 (encourage the development of compact, concentrated commercial/mixed-use areas); TG 1 (ensure that transportation decisions, strategies and investments support the City's overall growth strategy and are coordinated with this Plan's land use goals); HG2 (help meet current and projected regional housing needs of all economic and demographic groups); HG5 (make it possible for households of all income levels to live affordably in Seattle); and ED G1 (encourage vibrant commercial districts).

In addition, courts have repeatedly held that physical impacts that result from economic effects are environmental impacts that must be considered under SEPA. *West 514, Inc. v. County of Spokane*, 53 Wn. App. 838, 847-848, 779 P.2d 1065 (1989); *Indian Trail Property Association v. City of Spokane*, 76 Wn. App. 430, 444, 886 P.2d 209 (1994). Here, the fees required as a result of the Proposal will reduce development in Seattle, causing some properties to remain vacant or underutilized, with buildings in a state of disrepair and serving as magnets for graffiti and other undesirable activities. Some housing projects will be rendered infeasible, reducing housing supply and decreasing affordability. Amenities (including expensive design features and materials, recreational spaces and improvements that enhance the pedestrian environment) will not be provided. Residents of Seattle will be impacted by reduced housing supply and neighborhoods by reduced redevelopment.

F. Piecemealing

SEPA requires the City to review all related actions that are likely to have an effect on the environment, at the earliest stage possible. Where a proposal will require a series of related actions that are reasonably understood at the outset, the checklist must consider the environmental impacts of all of the actions together, not just the first or second one in isolation. Specifically, WAC 197-11-060 provides that proposals "related to each other closely enough to be, in effect, a single course of action" must be considered together under SEPA if they "are interdependent parts of a larger proposal and depend on the larger proposal as their justification or for their implementation." *See also King Cty. v. Wash. State Boundary Review Bd.*, 122 Wn.2d 648, 662-64, 860 P.2d 1024, 1032-33 (1993) (improper to defer environmental review if the proposal will generate momentum and result in probable significant adverse environmental impacts). Similarly, WAC 365-196-805(1) provides that when "amendments to comprehensive plans are adopted, consistent implementing regulations or amendments to existing regulations should be enacted and put into effect concurrently." This underscores the importance of evaluating the Comprehensive Plan amendment component of the proposal with the anticipated development regulation as a "single course of action" for SEPA review.

Since the current proposed Comprehensive Plan amendments are expressly intended to be followed by development regulations imposing transportation impact fees and, subsequently, by development of the transportation improvements *expressly identified in the Proposal*, there is no possible conclusion other than that these proposed amendments are interdependent parts of a larger proposal. The City has broken this single course of action into smaller pieces in order to avoid timely review of the impacts of its actions. SEPA requires the City to conduct adequate environmental review not only of the Comprehensive Plan Amendments themselves, but of the City's entire course of action (the actual proposal), which includes adoption of the impact fee and construction of the specifically identified transportation improvements.

As you may recall, in 2015 the City issued a similar DNS in conjunction with its proposed Affordable Housing Mitigation Program. A coalition of developers of housing and office buildings appealed the DNS to the Office of the Hearing Examiner, based in large part on piecemealing issues very much like those that exist in this proposal. *See In the Matter of the Appeal of Coalition for Sustainable Jobs and Housing from a Decision of the Director of the Department of Planning and Development*, Hearing Examiner File No. W-15-006. In recognition of this inadequacy, the City withdrew the DNS – as it must in this case as well.

G. Public Process

The purpose of SEPA is to inform the public and decision makers. The Proposal has numerous significant adverse impacts and unintended consequences that are not addressed in the Checklist. The Checklist fails to take into account information provided by affected stakeholders, including property owners, developers, and affected Seattle residents. The Coalition requests that the City extend the public comment period on the DNS to allow more time for stakeholders to comment.

H. Conclusion

The Environmental Checklist lacks crucial information. The Proposal will result in significant adverse environmental impacts. The City must withdraw the DNS and either (1) issue a DS and prepare further environmental analysis, which may include an EIS, addressing these impacts; or (2) make modifications to the Proposal or adopt mitigation measures to eliminate these significant adverse environmental impacts.

Thank you for your consideration of these comments.

Ketil Freeman
November 8, 2018
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Sincerely,

A handwritten signature in black ink, appearing to read "G. Richard Hill". The signature is written in a cursive, somewhat stylized font.

G. Richard Hill

cc: Client
Jeff Weber, Office of the Seattle City Attorney

EXHIBIT A



SEATTLE CITY COUNCIL

Determination of Non-significance (DNS) for 2018 Amendments to the Seattle Comprehensive Plan Related to Transportation Impact Fees and the Adoption of Existing Environmental Documents

Proposal	Adoption of Transportation Impact Fee-related Amendments to the Seattle Comprehensive Plan, <i>Seattle 2035</i>
Date of Issuance	October 25, 2018
Proponent / Lead Agency	Seattle City Council
SEPA Contact	Ketil Freeman, AICP, (206) 684-8178, ketil.freeman@seattle.gov
Location	Non-project – Areas within the Seattle Corporate Limits

Proposal Description

The 2018 amendments to *Seattle 2035* related to transportation impact fees are non-project in nature, primarily procedural, and will have citywide applicability. The proposed amendments would (1) amend the Capital Facilities and Transportation Elements of the Comprehensive Plan and related appendices to identify deficiencies in the transportation system associated with new development and (2) incorporate a list of transportation infrastructure projects that would add capacity to help remedy system deficiencies.

Projects included in the list would be eligible for future investments with revenue from a transportation impact fee program. The amendments to *Seattle 2035* are a necessary, but not sufficient, step to establish an impact fee program under RCW 82.02.050.

The proposed amendments and related documents are available at:

<http://www.seattle.gov/council/issues>

Threshold Determination

The lead agency has determined that this proposal will *not* have probable, significant adverse impacts on the environment. An environmental impact statement (EIS) is not required by RCW 43.21C.030(2)(c). This finding is made pursuant to RCW 43.21C, SMC 25.05 and WAC 197-11 and based on the attached SEPA environmental checklist and review of existing environmental documents.

As disclosed and described more fully in the environmental checklist, the proposed amendments are of a non-project nature, primarily procedural, and have a citywide effect, rather than a site-specific effect. As such, the amendments would not affect the extent, intensity or rate of impacts to the built and natural environments.

The amendments would accomplish the procedural requirements of RCW 82.02.050(5)(a) for establishing a transportation impact fee program to help mitigate a portion of the impacts attributable to planned residential and employment growth. Projects listed in the Comprehensive Plan would guide investment decisions by the City for mitigation payments made pursuant to a transportation impact fee program. Projects included in the list are drawn from capacity-improvement projects that are partially funded by the Move Seattle levy, projects identified in adopted modal plans, and Move Seattle vision projects identified through the Move Seattle levy planning process. The amendments would not in themselves create a transportation impact fee program. For future development of an impact fee program and a fee schedule, estimates for growth in trips on the transportation network would be based on growth estimates for *Seattle 2035*.

Documents Adopted

The following additional documents support environmental review and provide necessary SEPA disclosures and are hereby adopted for the purposes of this threshold determination of non-significance. The information in these documents is reasonably sufficient to evaluate whether the proposal will have probable, significant adverse impacts.

- City of Seattle Department of Construction and Inspections, [Final Environmental Impact Statement for the Seattle Comprehensive Plan Update](#), May 2016.
- City of Seattle Department of Construction and Inspections, [Draft Environmental Impact Statement for the Seattle Comprehensive Plan Update](#), May 2015.
- Seattle Department of Transportation, [Seattle Transit Master Plan, Determination of Non-significance](#), February 2012.
- Seattle Department of Transportation, [Seattle Bicycle Master Plan, Determination of Non-significance](#), December 2013.
- Seattle Department of Transportation, [Seattle Freight Master Plan, Determination of Non-significance](#), February 2016.
- Seattle Department of Transportation, [Seattle Pedestrian Master Plan, Determination of Non-significance](#), January 2017.

Description of Adopted Documents

The [Draft Environmental Impact Statement for the Seattle Comprehensive Plan Update](#) analyzes the full range of impacts associated with four alternatives, including a no action alternative, for allocating 70,000 new housing units and 115,000 new jobs across the city by 2035. The Draft EIS, which is incorporated by reference in the Final EIS, identifies implementation of a transportation impact fee program as a potential mitigation measure.

The DNSs for the modal plans identify actions, strategies, and projects the City can take to improve the capacity, speed, reliability, and safety of the transit, bicycle, pedestrian, and freight transportation networks. The Final EIS for the Comprehensive Plan update also identifies implementation of the modal plans as a potential mitigation measure.

Comments

Comments regarding this DNS or potential environmental impacts may be submitted through November 8, 2018. Comments may be sent to:

Seattle City Council Central Staff
Attn: Ketil Freeman
P.O Box 34025
Seattle, WA 98124-4025
(206) 684-8178
ketil.freeman@seattle.gov

Responsible Official

Signature: _____ On File _____	October 25, 2018
Ketil Freeman, AICP	Date