

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

In the Matter of the Appeals of

**WALLINGFORD COMMUNITY
COUNCIL, ET AL.**

Hearing Examiner Files:

W-17-006 through
W-17-014

of adequacy of the FEIS issued by the Director,
Seattle Office of Planning and Community Development

Introduction

On November 9, 2017, the Director of the Seattle Office of Planning and Community Development (“Department”) issued a State Environmental Policy Act (“SEPA”) Final Environmental Impact Statement (“FEIS”) for Mandatory Housing Affordability (“MHA”) legislation. The FEIS was appealed by a coalition of Seattle neighborhood groups (“Appellants”).

The appeal hearing was held on June 25-29, July 23-27, August 20-24, 30 and 31, and September 4 and 7 2018, before the Hearing Examiner. Represented at the hearing were the Appellants: Wallingford Community Council, by Lee Raaen, attorney-at-law; Morgan Community Association, by Deborah Barker; Friends of Ravenna-Cowen, by Judith Bendich; Seattle Coalition for Affordability, Livability and Equity, by David A. Bricklin and Claudia M. Newman, attorneys-at-law; Seniors United for Neighborhoods, by David Ward; Beacon Hill Council of Seattle, by Mira Latoszek; Friends of the North Rainier Neighborhood Plan, by Talis Abolins; West Seattle Junction Neighborhood Organization, by Philip Tavel, and Christine M. Tobin-Presser, attorney-at-law; and Fremont Neighborhood Council, by Toby Thaler, attorney-at-law. The City of Seattle (“City”), was represented by Jeffrey Weber, Daniel B. Mitchell, Tadas Kisielius, Dale Johnson, and Clara Park, attorneys-at-law. The Hearing Examiner visited portions of the areas included within the study area of the FEIS at various times between June 30th and November 20th. The parties submitted written closing arguments on September 24, 2018, and response closing arguments on October 10, 2018 and the record closed on that date.

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

Findings of Fact¹

Proposal and FEIS

1. The City of Seattle seeks to address the need for affordable housing, and proposes to do so by implementing MHA legislation. MHA will require new development proposals to include affordable housing with rent-restrictions and/or income-restrictions as part of the proposed development, or to contribute to a City fund for affordable housing. This proposal would apply MHA requirements to 27 urban villages and other areas with commercial and multifamily zoning throughout the city. The FEIS² indicates:

The proposed action includes several related components:

- Adopt requirements in the Land Use Code (SMC Chapter 23) for developers either to build affordable housing on-site or to make an in-lieu payment to support the development of rent- and income-restricted housing when constructing new development meeting certain thresholds.
- Modify development standards in the Land Use Code to provide additional development capacity, such as increases in maximum height and floor area ratio (FAR) limits.
- Make area-wide zoning map changes.
- Expand the boundaries of certain urban villages on the Comprehensive Plan's Future Land Use Map (FLUM) near high-frequency transit, as studied in the Seattle 2035 Comprehensive Plan.
- Modify certain rezone criteria in the Land Use Code.

Exhibit ("Ex.") 2 at 1.2.

2. The City's objectives for this proposal are to:

- Address the pressing need for housing that is affordable and available to a broad range of households.
- Increase overall production of housing to help meet current and projected high demand.
- Leverage development to create at least 6,200 net new rent- and income-restricted housing units serving households at 60 percent of the area median income (AMI) in the study area over a 20-year period.
- Distribute the benefits and burdens of growth equitably.

Ex. 2 at 2.4.

¹ The Findings of Fact are not intended as a full recitation of all facts introduced at the hearing by either testimony or written evidence, but are intended to identify and summarize the evidence that informs the conclusions of the Hearing Examiner.

² Exhibit 2 in the record.

3. The study area for the FEIS included significant portions of the City including but not limited to “existing multifamily and commercial zones in Seattle, areas currently zoned Single Family Residential in existing urban villages, and areas zoned Single Family Residential in potential urban village expansion areas identified in the Seattle 2035 Comprehensive Planning process.” Ex. 2 at 1.3. The study area includes portions encompassing many of the City’s urban villages. The FEIS study area also included areas outside the urban villages such as multifamily and commercial zones. The study area is shown in Exhibit 2-1 to the FEIS at 2.2. In addition, the FEIS Appendix H includes maps showing the proposed zoning changes to urban villages, proposed expansion areas of urban villages, and areas outside of urban villages and urban centers. Urban village expansion areas are addressed throughout the FEIS, but are specifically described and depicted in Exhibit 2 at 2.41-2.63.

4. The City’s Comprehensive Plan Provides:

The foundation of Seattle’s Comprehensive Plan is the urban village strategy. It is the City’s unique approach to meeting the state GMA requirement . . . This strategy encourages most future job and housing growth to occur in specific areas in the city that are best able to absorb and capitalize on that growth. These are also the best places for efficiently providing essential public services and making amenities available to residents. These areas include designated urban centers, such as Downtown and the five others (First Hill/Capitol Hill, South Lake Union, Uptown, University District, and Northgate) recognized in the regional plan. Both urban centers and urban villages are places that already have active business districts and concentrations of housing.

Ex. 3 (Seattle 2035 Comprehensive Plan) at 10. A map of City urban centers and villages is located at Ex. 3 at 12.

5. The City updated its Comprehensive Plan in October 2016. An EIS for that update that evaluated associated environmental impacts was released on May 5, 2016 (“2016 Comprehensive Plan EIS”). The 2016 Comprehensive Plan EIS “identified a significant unavoidable adverse housing impact, stating that Seattle would continue to face a housing affordability challenge under all of the growth alternatives studied.” Ex. 2 at 1.4. The FEIS at issue herein is in part supported by the analysis in the 2016 Comprehensive Plan EIS, and that document is incorporated as a baseline for the FEIS analysis.
6. The MHA proposal in the FEIS is derived from a public process, two resolutions and an ordinance. Exhibits 265 (Seattle Housing Affordability and Livability Agenda), and 266 (Housing Seattle: A Roadmap to an Affordable and Liveable City) detail the public process and City administration efforts prior to the Council’s enactments. The Council adopted Resolution 31622 indicating its “intent to consider strategies to increase the availability of affordable housing in the City of Seattle,” subsequent to the public and administration process. Ex. 267. That resolution was followed by Council Resolution 31612 stating the “intent to make changes to zoning and land use regulations to

implement a mandatory inclusionary affordable housing program for residential development.” Ex. 268. Lastly, the Council adopted Ordinance 125108 “to establish the framework for mandatory housing affordability for residential development.” Ex. 269. By these enactments the City established the primary elements of the proposal analyzed in the FEIS.

7. The FEIS includes a Growth and Equity Analysis at Appendix A. The Growth and Equity Analysis addresses impacts on displacement and opportunity related to the City’s growth strategy. Its objectives were to “inform elected officials and the public about:
 - Potential future displacement impacts of the recommended Growth Strategy on marginalized populations; and
 - Strategies for mitigating identified impacts and increasing access to opportunity for marginalized populations.”

Ex. 2 Appendix A at 4.

“The Growth and Equity Analysis examined demographic, economic and physical factors to evaluate the risk of displacement and access to opportunity for marginalized populations across Seattle neighborhoods.” Ex. 2 at 2.5. The analysis in the Growth and Equity Analysis underpins the analysis in the FEIS alternatives.

8. The FEIS considers four alternatives. Alternative 1 was the no action alternative. Alternative 2, Alternative 3, and the Preferred Alternative all assume implementation of MHA to facilitate achievement of the objective to create at least 6,200 affordable homes built in the study area by 2035. Alternative 2, Alternative 3, and the Preferred Alternative differ in the intensity and location of development capacity increases and the patterns and amounts of housing growth across the city that could result. The action alternatives were assumed to result in approximately 95,000 new households over the next 20 years compared to approximately 76,000 new households under the no action alternative.
9. Alternative 2 applies “specific zoning map changes based on a set of basic planning concepts, policies in the Comprehensive Plan, and MHA Implementation Principles developed during community engagement.” Ex. 2 at 1.7. “Under Alternative 2, incrementally greater density of housing and employment would occur in the same overall pattern and proportions identified in the Seattle 2035 Comprehensive Plan.” *Id.*
10. Alternative 3 follows the same planning concepts but allocates development capacity “based on each urban village’s relative level of displacement risk and access to opportunity, as identified in the Growth and Equity Analysis.” *Id.* The overall pattern and distribution of growth in Alternative 3 also follows the Urban Village and Centers growth strategy. Under Alternative 3 incrementally greater density of housing and employment would occur within the same overall pattern of the Seattle 2035 Comprehensive Plan.

Alternative 3 would focus relatively more housing and job growth in areas with high access to opportunity, and relatively less in areas with high risk of displacement.” *Id.*

11. The Preferred Alternative combines features of Alternatives 2 and 3, while being more closely aligned with the elements of Alternative 3.

Specific MHA development capacity increases would be based on the guiding concepts, MHA Implementation Principles, and guidance from the Comprehensive Plan. The Preferred Alternative would also consider each urban village’s relative level of displacement risk and access to opportunity. In addition, the Preferred Alternative would apply a distribution of zoning capacity increases that emphasizes:

- Increasing housing and jobs near transit nodes
- Moderating development capacity increases in areas with environmental constraints
- Increasing development capacity on known sites of future affordable housing development

Id.

12. The FEIS discusses alternatives considered but not included in any detailed analysis. These alternatives include proposals to increase MHA performance and payment requirements (which was determined not feasible in the context of the proposal’s objectives), varying geographic distribution of MHA affordable housing payment units, and incentive zoning. Ex. 2 at 2.84-2.88.

13. Appellants’ identified several alternative proposals at the hearing:

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

Testimony of David Levitus.

14. Appellants also raised concerns with the FEIS alternatives analysis in the context of the historic resources. See SCALE Closing Argument at 20. Appellants argued that the City should have considered an alternative that avoids additional growth in neighborhoods that have the potential for designation as historic. *Id.*

15. The alternatives in the FEIS allow for the analysis of varying degrees of environmental impact between alternatives for impacts including but not limited to those associated with land use, aesthetics, historic resources, critical areas, open space and recreation and physical displacement.
16. The FEIS was conducted predominantly on a City-wide basis, and each of the urban villages was not addressed in separate break-out sections covering only the proposal's impacts within a single urban village. However, the FEIS did conduct impact analyses that included some neighborhood or urban village level analysis. Chapter 3.2 of the FEIS provides an analysis of land use impacts associated with each of the FEIS alternatives, and includes a discussion of anticipated impacts to each of the urban villages based on their relative risk for displacement and access to opportunity. Ex. 2 at 3.119-3.154. The FEIS also addresses urban villages in the context of open space availability in terms of general availability, and then for each alternative it provides an analysis concerning urban villages underserved by open space. Ex. 2 at 3.350-3.356. In other portions of the FEIS, impacts within urban villages are discussed more generally, and specific urban villages are identified by example. For example, aesthetics impacts are addressed in Chapter 3.3, and Bitter Lake, Lake City, and Greenwood-Phinney Ridge are cited as examples of urban villages that differ from the majority of urban villages which are "predominantly residential in terms of land use and character." Ex. 2 at 3.162. In some cases, urban villages with unique conditions were included in the analysis when they might have a higher potential for impacts. See e.g. Ex. 2 at 3.360-3.362, and 3.403-3.404. The critical areas in every urban village were identified by mapping in Chapter 3.6 on biological resources. Ex. 2 at 3.326-3.327, and 3.332-3.333.
17. The FEIS mapping (in particular the online version of the map), and to a lesser degree associated text, provides detailed information at a parcel level sufficient to allow a property owner to determine proposed MHA zoning designation changes for their property.

Historic Resources

18. The FEIS addresses historic resources in the study area in Chapter 3.5. Ex. 2 at 3.295. "Historic and cultural resources exist belowground and aboveground and can be archaeological sites, buildings, structures, or objects. Historic and cultural resources can be designated/listed, recommended eligible for listing, or determined eligible for listing on federal or local historic registers." Ex. 2 at 3.295. The FEIS describes a broad overview of the history of Seattle and how it developed. It includes identification of designated national historic districts and landmarks within the study area. In preparation of the FEIS, the City considered a range of available historic resource information including neighborhood specific context statements and inventories, and information from city, state and federal historic resource databases. The FEIS assesses the potential impact on historic resources for each of the alternatives to the proposal, and discussed mitigation proposals. The FEIS analyzes the location of the MHA proposal's zoning changes relative to designated City historic districts and seven National Register historic districts. Ex. 2 at 3.305.

19. The FEIS historic resources analysis includes the following:

Potential impacts to historic resources could occur from demolition, redevelopment that impacts the character of a historic property, or development adjacent to a designated landmark if the development alters the setting of the landmark and the setting is a contributing element of the landmark's eligibility. Redevelopment could result in significant adverse impact for properties that have the potential to be landmarks if the regulatory process governing the development does not require consideration of that property's potential eligibility as a Seattle Landmark, such as projects exempt from review under SEPA.

Ex. 2 at 3.305.

20. The FEIS historic resources analysis indicates:

Potential decreases to the historic fabric of a neighborhood are likely to occur if historic buildings are redeveloped or demolished and new buildings are constructed that are not architecturally sympathetic to the existing historic characteristics of a neighborhood. As a neighborhood's historic fabric decreases, it is less likely to meet local and federal eligibility criteria for consideration as a historic district.

Ex. 2 at 3.306.

21. Exhibit 3.5-2 to the FEIS depicts National Register of Historic Places ("NRHP") determined eligible properties within and outside the study area in relation to urban villages. Ex. 2 at 3.300-3.301.

22. Exhibit 3.5-4 to the FEIS lists the City's urban villages, and indicates which urban villages include properties listed in the City Historic Resources Survey Database, whether the urban village has had a systemic inventory conducted, and whether they have a prepared Historic Context Statement. Ex. 2 at 3.302. Exhibit 3.5-4 to the FEIS shows that not all neighborhoods have been systematically inventoried, and even fewer have prepared historic context statements. Ex. 2 at 3.299.

23. In preparing the FEIS the City reviewed a variety of historic resource information sources including but not limited to the following:

National Register of Historic Places - The National Register of Historic Places is used by federal, state, and local governments, private groups, and citizens to identify the nation's significant historic resources. The register is maintained by the National Park Service, United States Department of the Interior, in Washington, D.C.. Seattle properties are listed in the National Register.

State Office of Archaeology and Historic Preservation (OAHP) State Register - The Washington Heritage Register identifies and documents significant historic resources throughout Washington at the state level. The Washington Information System for Architectural and Archaeological Records Data (“WISAARD”) is an online GIS map tool for locating designated historical sites which are listed on the state and national register.

City Designated Landmarks - The Seattle Landmarks Preservation Board determines if properties are eligible to be designated and listed as historic landmarks if the property fits age and other review categories. Designated landmarks are protected to some degree by the City’s Landmark Preservation Ordinance. The City keeps a record of properties that have been designated through its process.

City Historic Resources Database - The City has initiated a systematic and comprehensive effort to survey and inventory historic resources in the City. Surveys and inventories of eight neighborhoods have been completed as well as neighborhood commercial districts and residential properties built prior to 1906. The Seattle Historical Sites database includes a listing of surveyed historical properties. The City indicated at the hearing that survey data in the Seattle Historical Sites database included information that is inaccurate and/or outdated, and that many of the properties require further evaluation before their eligibility as a historic landmark could be certified or determined. For this reason, the City felt that reliance on the Seattle Historical Sites database was of limited value for purposes of an accurate impact analysis.

24. The FEIS historic resource analysis was presented in a manner to avoid showing unequal cataloging of historic resources City wide. It was explained that inventories and other information available concerning historic resources in many instances was inconsistent between areas of the City. For example, some urban villages benefit from having had a Historic Context Statement, while others have not. The FEIS preparers were concerned that FEIS reviewers would overly rely on this unequal distribution of information, and mistakenly believe that the distribution of information would equate to distribution of actual historic resources. Tr. Vol. 13, 199:6-201, Aug. 22, 2018 (Johnson); Tr. Vol. 10, 197:3-205:5, July 27, 2018 (Wilson). For this reason, the City elected to focus on the NRHP properties to “illustrate ‘which urban villages have a higher likelihood to contain the oldest historic resources.’” City of Seattle Closing Brief at 41 (citations omitted). Exhibit 3.5-2 to the FEIS shows only NRHP properties, and does not include properties from the City’s own historic resources inventory, including City registered historic landmark properties. There is no evidence in the record that the City’s information concerning designated City landmarks is inaccurate; instead each landmark has been designated through an adopted City process that ensures the property’s eligibility as a landmark, and is only then allowed landmark designation, and the City then keeps track of these designated properties. This is a distinct category of historic properties. While the database may have inaccuracies as to the properties that have not yet been determined eligible, there is no indication that the City designated landmark records are similarly inaccurate. There is no indication in the record that the database for designated City landmarks is inaccurate or would be any more or less confusing to readers if utilized in conjunction with the NRHP data.

25. The Appellants called a series of witnesses to describe the specific details of the historic resources in the City's neighborhoods. The Appellants provided extensive expert level testimony describing early Twentieth Century homes clustered in neighborhoods including but not limited to Ravenna-Cowen, North Rainier, Ballard, South Park, and Morgan Junction. *See e.g.* Friends of Ravenna Cowen's Closing Argument at 34. This testimony described both individual structures and neighborhoods with distinct historic value. It is beyond the scope of the Hearing Examiner's findings to describe the full breadth of testimony concerning the historic resources described. Appellants witnesses clearly established that Seattle has extensive and unique historical resources.

Aesthetics

26. The potential negative impacts to aesthetics associated with the proposal are described in Chapter 3.3 of the FEIS.³ The chapter generally describes the City's existing urban centers and design review processes. The analysis reviews potential impacts from development including impacts to height, scale, character, and shading. The analysis includes graphics that depict general development scenarios that might occur under the proposal. These graphics are informed in part by Urban Design and Neighborhood Character Study (FEIS Appendix F), and analyze and generally characterize potential aesthetic impacts from the proposal as development occurs in various neighborhoods. Ex. 2 at 3.163-3.164, 3.178-3.189, and 3.207. The FEIS identifies which drawings are relevant to each urban village in the City. Ex. 2 at 3.179, 3.181, 3.183, 3.185, 3.187, 3.189, and 3.207. View obstruction, height impacts, and shading effects are discussed under the impact analysis for each FEIS alternative. Ex. 2 at 3.191-3.211. This section includes maps showing the location of (M), (M1), and (M2) proposed zoning changes for Alternative 2 and the Preferred Alternative, Ex. 2 at 3.194, and MHA height limit changes for the same alternatives. Ex. 2 at 3.194 – 3.195 and 3.204 – 3.205. In addition, the analysis in the chapter includes proposed mitigation measures, and identification of significant unavoidable adverse impacts.

27. Height differential impacts, instances where new structures could be built under the proposal that have large-scale differences in height compared to existing development, are also addressed in the land use chapter of the FEIS. *See e.g.* Ex. 2 at 3.111 and 3.116.

28. The FEIS acknowledged that:

Given the large scale of the study area, impacts to aesthetics and urban design are primarily discussed in a qualitative and generalized manner. Because MHA is a broadly defined, citywide program, this EIS does not provide a detailed or site-specific analysis of aesthetic impacts at any specific location; the exact form of a given development cannot be accurately predicted and any such analysis would be speculative. Rather, the EIS assesses aesthetic impacts of the proposed action based on

³ Some elements of aesthetics are also addressed in the land use Chapter 3.2 analysis concerning scale.

anticipated changes to building form, as described in the MHA Urban Design and Neighborhood Character Study (Appendix F).

Ex. 2 at 3.169.

29. The graphics in the FEIS do not depict all representative conditions that might be found in each of the City's urban villages. Instead "[p]otential changes are described using graphic examples that are intended to reflect a variety of prototypical rezoning/redevelopment situations that occur in the context of a generalized city neighborhood/block." Ex. 2 at 3.169-3.170. Appellants indicated that "[r]esidents from different neighborhoods throughout the City who testified at the hearing unanimously explained that those pictures do not accurately or adequately describe the existing area in each of their neighborhoods," SCALE's Closing Argument at 25, and that "[w]ithout critical baseline information, the EIS cannot provide a meaningful assessment of the aesthetic impacts of the proposal." *Id.* at 26. Appellants also introduced the Uptown Urban Center Rezone EIS and the U District Urban Design Alternatives EIS as examples of the level of aesthetic analysis Appellants argue was required for the MHA FEIS. Exs. 306 and 307.
30. Appellants introduced testimony and document evidence for a number of urban villages and neighborhoods that described the specific and unique aesthetic conditions in those areas including but not limited to: Wallingford, West Seattle, Fremont, Beacon Hill, North Rainier, Queen Anne, Mount Baker, West Seattle Junction, and Ravenna.

Land Use

31. The FEIS included an analysis of land use impacts at Chapter 3.2. Ex. 2 at 99. This analysis considered three types of land use impacts: intensification of use (land use impacts associated with change and intensification of uses allowed under zoning), density increase (land use impacts associated with increased density of development), and scale change (land use impact associated with scale change of buildings). Ex. 2 at 3.110-3.111. The FEIS included review of all proposed text and map MHA rezones.
32. Current land uses in the City are described in the 2035 Comprehensive Plan EIS (Ex. 5), and incorporated by the FEIS. Ex. 2 at 3.99.
33. The FEIS considered land use and aesthetic impacts of the proposed up-zone to areas adjacent to areas that will be up-zoned, or "edge effects," both generally and in the example of specific urban villages. *See e.g.* Ex. 2 at 3.135-3.136, and 3.148. The FEIS described:

Where potential land use impacts are identified, the potential impact is not necessarily limited to the land within the rezone area. There is potential for conflicts and changes in character at the zone edge transition as well. Land use impacts in use, scale, or density changes could occur in transitions to single family locations outside the zone change.

...

In locations where land rezoned from greater intensity abuts or transitions to lower-intensity areas and uses, some spillover or proximity impacts may occur, including noise, increased pedestrian and vehicle traffic, competition for on-street parking, and changes to building form. Compatibility issues and minor conflicts such as these are common in any growing city, however. Depending on the alternative, the level of impact will vary from location to location.

Ex. 2 at 3.117.

34. The MHA up-zone proposal includes rezone suffixes MHA (M), (M1), and (M2), which are utilized in part to “approximate the magnitude of an MHA zone change.” Ex. 2 at 3.112. The FEIS notes that “[w]here more than one type of land use impact is present due to a proposed change, the land use impact would be more severe than if only one of the . . . impacts are present.” *Id.* The (M) suffixes generally approximate the severity of the potential land use impacts as they increase from (M) to (M2).
35. The FEIS analyzes land use impact thresholds noting that “land use impacts due to changes in zoning can be a variety of different types . . . depending on existing conditions at a specific location, the land use impact due to any particular zoning change may have greater or lesser impact.” Ex. 2 at 3.115. The FEIS impact analysis categorizes the degree of impacts to land use and patterns and compatibility for purposes of impact analysis as: minor, moderate or significant impacts, which roughly correspond to the (M) suffix category, but also includes location specific information. *Id.* at 3.115-3.116. Generally, rezones associated with the (M) suffix are associated with minor impacts as a result of the rezone, (M1) with moderate, and (M2) significant, although the FEIS acknowledges that location-specific factors can alter across the City. The FEIS includes hard copy maps, and an online map, that allow viewers and decision-makers to identify and compare anticipated land use impacts at both the area-wide and site-specific level.
36. As indicated above, the land use impact analysis includes a neighborhood level analysis for urban villages that compares the FEIS alternatives and severity of impacts. *See e.g.* Ex. 2 at 3.109.
37. The FEIS identifies relevant codes and policies, including Comprehensive Plan policies and land use code provisions, and reviews the consistency of codes and policies for each action alternative. Ex. 2 at 3.107-3.108, 3.130, 3.140, and 3.155. Discussions of the Comprehensive Plan in relation to the proposal are also incorporated in various points throughout the FEIS. *See e.g.* SCALES’s Closing Argument at 48-50; and Ex. 2 at 3.168. The FEIS review summarizes consistency with the Comprehensive Plan, rather than adopting an analysis of any potential specific policy change resulting from the proposal.
38. Appellants identified a list of Comprehensive Plan policies arguing that they should have been considered in the FEIS. Ex. 166.

39. FEIS Appendix F indicates:

Several policies in individual urban villages contained in the Neighborhood Plan policies section of the Comprehensive Plan may conflict with elements of the proposed action concerning changes to single family zones within urban villages. Amendments to these policies are docketed and the policies would be modified to remove potential inconsistencies. The potential impacts of these policy amendments is considered in the EIS.

Ex. 2 at Appendix F at F11.

Housing and Socioeconomics

40. The FEIS analyzes impacts concerning housing and socioeconomic impacts in Chapter 3.1. Ex. 2 at 3.3. This chapter of the FEIS considered existing conditions for population and City household characteristics, including the historical context of racial segregation, racial and ethnic composition of neighborhoods, income and wealth distribution, housing affordability, subsidized housing and displacement in the City. Ex. 2 at 3.3 – 3.24.
41. The FEIS analyzed potential socioeconomic impacts associated with physical displacement and economic displacement. “Various circumstances can cause physical displacement, including demolition of existing buildings to enable the construction of new buildings on the same site. Another cause is rehabilitation of existing buildings” where rehabilitation of older structures is undertaken to “attract higher-income tenants.” Ex. 2 at 3.40. The physical displacement analysis concerns estimating the extent of demolition that would result from the proposal. The FEIS used two methods including the “parcel allocation” approach, which included a parcel level analysis to examine potential redevelopment of individual parcels in the context of the proposal’s development capacity increase. The FEIS analysis also included a “historic trends” approach in this analysis, which estimated demolition “based on a continuation of the ratio of net new housing units permitted to units demolished for the period 2010-2016 (e.g. up to the time of the FEIS analysis), and resulted in a higher estimate of demolitions.” City of Seattle’s Closing Brief at 34.
42. Based on the estimates of demolition, the FEIS estimates the level of physically displaced low-income households that would result from demolitions likely to occur under the proposal.
43. “Economic displacement occurs when a household is compelled to relocate due to the economic pressure from increased housing costs.” Ex. 2 at 3.43. The FEIS included an extensive analysis of potential economic displacement.
44. The City’s expert Kevin Ramsey testified at the hearing. Mr. Ramsey was an author and reviewer of the Housing and Socioeconomics section in the FEIS and Appendices I and M. Mr. Ramsey testified providing fact and expert testimony regarding the Housing and Socioeconomics analysis in the EIS. He did not agree that Appellants’ suggestion that

physical displacement should be analyzed in terms of rent level of buildings. He indicated that such an analysis would not be accurate, and the FEIS does incorporate the concept that older buildings tend to have lower rents.

45. The FEIS primarily focused its affordability analysis on rental housing as opposed to ownership housing. The City's representative Chris Mefford was involved in preparing a 2016 Economic Analysis of MHA, and testified concerning the economic feasibility of MHA requirements, as well as other housing market and economic matters. He indicated that the FEIS focus on rental housing was supported in part by the fact that the number one cause of homelessness in the City is increasing rents.

Open Space Resources

46. The FEIS analysis concerning open space and recreation resources is addressed in Chapter 3.7. Ex. 2 at 3.343. This section of the FEIS details the affected environment by providing a citywide description of the City's parks and open spaces. The chapter details the City policy framework for open space, and analyzed impacts to open space and recreation resources under each of the alternatives, mitigation measures, and significant unavoidable adverse impacts.
47. The FEIS open space analysis applies the 2035 Comprehensive Plan's policies, and the City 2017 Parks and Open Space Plan's Level of Service ("LOS") standard (which calls for 8 acres of park space per 1,000 residents), and walkability guidelines and gaps analysis. The LOS for parks service is determined on a citywide basis, and is not set for neighborhoods.
48. The FEIS concludes that under all of the alternatives, including the no action alternative, the City will not meet the citywide LOS goals by 2035, and indicates this is a potential significant adverse impact. Ex. 2 at 3.357. The FEIS examined baseline conditions for parks and open space distribution by urban villages in the context of the City LOS, and identified underserved urban villages.
49. The FEIS indicates that under all of the alternatives, including the no action alternative, the City will not meet the citywide LOS goals by 2035, and that this is a potential significant adverse impact. Ex. 2 at 3.357. The FEIS examined baseline conditions for parks and open space distribution by urban villages in the context of the City LOS, and identified underserved urban villages.
50. The FEIS states:

Future growth under all EIS alternatives would result in significant adverse impacts to the availability and accessibility of parks and open space. The impacts would be experienced in the form of increased crowding in parks, longer wait times to use facilities for some activities, or

a need to travel longer distances to access available park facilities. However, under all of the alternatives, the City as a whole would not meet the citywide LOS and the overall impact is considered to be significant. It is expected that the significant impact could be reduced to a less-than-significant level if some combination of the mitigation measures described above are utilized.

Ex. 2 at 3.357.

51. Friends of North Rainier challenged the FEIS concerning the adequacy of the open space analysis. Talius Abolins testified as to the unique open space features and challenges faced by the North Rainier community. In addition to other issues raised in his testimony he indicated: the FEIS failed to highlight the presence of the historic Olmsted open space system, the significant gap in open space for the North Rainier neighborhood, and plans for a conceptual park called the North Rainier Town Center that is proposed as a step toward filling the open space gap. The FEIS acknowledges the open space gap, but does not go into detail concerning North Rainier.

Public Services and Utilities

52. The FEIS analysis concerning public services and utilities is addressed in Chapter 3.7. Ex. 2 at 3.359. This section of the FEIS describes the affected environment including police services, fire and medical services, and utilities. Ex. 2 at 3.359-3.372. The FEIS then goes on to provide an analysis of impacts to public services and utilities for all of the FEIS alternatives, and proposed mitigation. *Id.* at 3.372-3.385. The FEIS disclosed capacity issues for the Seattle Police Department (Ex. 2 at 3.360), and potential demands for increased service by the Seattle Fire Department (Ex. 2 at 3.361). The FEIS states:

Some development is required to improve stormwater and drainage systems. However, small scale development in areas of informal drainage could have an impact on localized stormwater drainage. All projects must comply with the minimum requirements in the Seattle Stormwater Code (SMC 28.805), even where drainage control review is not required.

Ex. 2 at 3.372.

53. Appellants challenged the adequacy of nearly every aspect of the public services and utilities chapter with testimony primarily delivered from a single fact witness, but did not provide any expert level analysis challenging the adequacy of this section of the FEIS.

Biological Resources

54. The FEIS analyzes biological resources including Environmental Critical Areas (“ECA”s), and the City’s urban forest and tree cover, in Chapter 3.6. Ex. 2 at 3.315.

55. The FEIS indicates “[a] healthy urban forest provides benefits including air and water pollution mitigation, habitat for wildlife, reduction of the urban heat island effect, and storm water runoff reduction.” Ex. 2 at 3.320.
56. The FEIS found that “[g]rowth will occur in all urban villages in varying amounts due to the proposed changes in zoning and boundary expansion. Given the potential for future growth, ECAs in these areas could experience adverse impacts generated during future construction and by increased density of urban uses and activities after construction.” Ex. 2 at 3.323. The FEIS described expected impacts during construction such as impacts from disturbed soils and petroleum products being introduced into ECAs. Ex. 2 at 3.323. The FEIS also described expected impacts after construction such as improper tree cutting and intrusion into critical areas.
57. “To characterize and assess potential changes in ECAs and tree canopy cover as a result of proposed changes in zoning classifications and urban village boundary expansion areas within the City, the project team conducted an analysis using geographic information systems (GIS).” Ex. 2 at 3.317. The tree canopy analysis was conducted to inform the FEIS analysis. That study was supported by LiDar surveying technology, that was performed under both leaf off and leaf on conditions (Ex. 215), and additional datasets. The LiDar work was demonstrated to be based on accepted industry standards, and contradicted Appellants’ expert testimony that only leaf off conditions had been relied upon as baseline data.

The canopy area [identified by LiDar] was then intersected with project areas to calculate acres of tree cover. Comparing the acres of tree cover within a zone to the total amount of area within that zone resulted in percent tree cover. The GIS comparison was done at the city scale and then subdivided and summarized by zoning areas. The percent tree cover was then used to determine the amount of change (change coefficient) for high and low tree change scenarios.

Ex. 2 at 3.319.

58. The FEIS specifically analyzed tree canopy impacts for each of the alternatives in FEIS exhibits 3.6-5 and 3.6-15. Ex. 2 at 3.329 – 3.339.
59. City witness Mike Leech indicated that the tree canopy analysis was included in response to scoping comments, and that in his experience it is not common to include a tree canopy analysis for a programmatic EIS.
60. The Appellants introduced testimony concerning the tree canopy in various Seattle neighborhoods, including but not limited to Ravenna-Cowen and Fremont. This

testimony described the unique existing conditions of tree canopy in the neighborhoods. In addition, the testimony also generally addressed the value of an urban tree canopy, and the relationship between development and tree loss. For example, the testimony included descriptions of the value of tree canopy relative to heat impacts, pollution control, cultural values, connectivity for habitat for birds and animals (e.g. testimony included a description of the unique nature of bird species in Ravenna-Cowen park and north of the park area), and water quality impacts. Appellants also testified as to the efficacy of the City's existing tree ordinance and provided generalized and anecdotal examples of how the current Code does not work.

61. The Appellants argued that the bulk of the City's tree canopy will be removed if single-family housing is up-zoned. However, the Appellants did not introduce an analysis of the impacts of the proposal on the City's tree canopy.
62. Appellants challenged the adequacy of the FEIS's tree study arguing that it was based on incomplete information and an inadequate methodology.

Transportation

63. The FEIS transportation analysis is found in Chapter 3.4. Ex. 2 at 3.214. The transportation analysis includes a description of the existing transportation network (including pedestrian, bicycle, transit, and vehicular transportation), relevant plans and policies, and impact analysis for each of the alternatives. The impact analysis is supported by an analysis methodology that included vehicle volume-to-capacity screenlines, mode share, transit daily boardings, travel demand forecasting, and other metrics. The FEIS identified potential significant negative adverse impacts to parking and screenline volumes that can be mitigated.
64. Appellants raised various concerns regarding the traffic impact analysis including that the FEIS did not present neighborhood specific parking occupancy data, provided an inadequate analysis of level of service for certain areas, and did not do a neighborhood specific study of streets and intersections. *See e.g.* Junction Neighborhood Organization's Closing Brief at 16; and testimony at hearing. Appellants did not provide any expert level analysis, or testimony supported by accepted traffic analysis industry standards in challenging the FEIS.
65. The City's transportation expert Ariel Davis responded to Appellants' concerns indicating that (1) the FEIS analysis is not an intersection-level analysis, because that type of analysis is more appropriate to development level proposals (Tr. vol. 16, 130:19-131:21 (8-30-18)), (2) PM peak hour is typical for traffic analysis industry standards, because traffic is generally worse during the PM peak hour (Tr. vol. 16, 131:22-133:3 (8-30-18)), and (3) that assessment of issues related to right-of-way widths at the non-project level (Tr. vol. 16, 133:24-134:18 (8-30-18)).

66. One non-expert Appellant witness briefly raised concerns at the hearing that the FEIS had not adequately addressed South Park's proximity to highways, industrial areas, and other air quality and health issues in the area. The FEIS does include a health risk assessment regarding proximity to transportation services including South Park. Ex. 2 at 3.396 and 3.403-3.404.
67. The Appellants raised issues concerning the FEIS analysis for impacts to small businesses, but did not introduce any expert or substantive fact testimony concerning this issue. The FEIS addresses impacts to small businesses associated with increases in commercial rents caused by redevelopment. Ex. 2 at 3.77-3.80. The FEIS also identified adverse impacts wherein businesses dependent on a particular population, for example a particular cultural population, may be faced with the displacement of that population.
68. The FEIS process included public notice, and was coupled with an extensive public outreach campaign. Appellants raised concerns at the hearing concerning aspects of the public process such as location of certain public meetings, and the sufficiency of email communications concerning public meetings.

Appeals

69. The Appellants filed timely appeals of the FEIS. By a Preliminary Order on Prehearing Motions dated June 8, 2018, and oral ruling at a prehearing conference held June 11, 2018 certain issues raised in the Notices of Appeal of the FEIS were dismissed.
70. The appeals of the FEIS raised the following issues:
 - a. Whether the FEIS's alternative analysis was adequate;
 - b. Whether proper notice had been issued concerning the FEIS;
 - c. Whether the FEIS adequately considered potential adverse impacts concerning housing and economics;
 - d. Whether the FEIS adequately considered potential adverse impacts concerning land use;
 - e. Whether the FEIS adequately considered potential adverse impacts to aesthetics;
 - f. Whether the FEIS adequately considered potential adverse impacts to historic resources;
 - g. Whether the FEIS adequately considered potential adverse traffic impacts;
 - h. Whether the FEIS adequately considered potential adverse impacts to biological resources;
 - i. Whether the FEIS adequately considered potential adverse impacts to open space and recreation resources;
 - j. Whether the FEIS adequately considered potential adverse impacts to public services and utilities;
 - k. Whether the FEIS adequately considered potential adverse impacts to air quality;
 - l. Whether the FEIS adequately summarized existing plans and regulations in relation to the proposal; and
 - m. Whether the FEIS adequately considered cumulative impacts.

Applicable Law

71. “To be adequate, the EIS must present decisionmakers with a ‘reasonably thorough discussion of the significant aspects of the probable environmental consequences’ of the agency’s decision. Adequacy is judged by the ‘rule of reason,’ a ‘broad, flexible cost-effectiveness standard,’ and is determined on a case by case basis, considering ‘all of the policy and factual considerations reasonably related to SEPA’s terse directives.’” *Concerned Taxpayers Opposed to Modified Mid-South Sequim Bypass v. State, Dept. of Transp.*, 90 Wn.App. 225, 229, 951 P.2d 812 (1998) (citations omitted).
72. “In determining whether a particular discussion of environmental factors in an EIS is adequate under the rule of reason, the reviewing court must determine whether the environmental effects of the proposed action are sufficiently disclosed, discussed, and substantiated by supportive opinion and data.” *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 644, 860 P.2d 390 (1993).
73. In an appeal of an FEIS “the decision of the governmental agency shall be accorded substantial weight.” RCW 43.21C.090.
74. “The requirement that only reasonable alternatives be discussed in an EIS is intended to limit the number of alternatives considered, as well as the detailed analysis required for each alternative. WAC 197-11-440(5)(b)(i). The discussion of alternatives in an EIS need not be exhaustive if the impact statement presents sufficient information for a reasoned choice of alternatives.” *Solid Waste Alternative Proponents v. Okanogan County*, 66 Wn.App. 439, 446, 832 P.2d 503 (1992).
75. WAC 197–11–440(6)(a) provides that an EIS must “discuss reasonable mitigation measures that would significantly mitigate” the significant impacts. The EIS shall “[c]learly indicate those mitigation measures ... that could be implemented or might be required, as well as those, if any, that agencies or applicants are committed to implement.” The EIS must “[i]ndicate what the intended environmental benefits of mitigation measures are for significant impacts;” however, it “need not analyze mitigation measures in detail unless they involve substantial changes to the proposal causing significant adverse impacts, or new information regarding significant impacts, and those measures will not be subsequently analyzed under SEPA.”
76. WAC 197-11-442 addresses the contents of Environmental Impact Statements for non-project proposals, and states:
 - (1) The lead agency shall have more flexibility in preparing EISs on nonproject proposals, because there is normally less detailed information available on their environmental impacts and on any subsequent project proposals. The EIS may be combined with other planning documents.

(2) The lead agency shall discuss impacts and alternatives in the level of detail appropriate to the scope of the nonproject proposal and to the level of planning for the proposal. Alternatives should be emphasized. In particular, agencies are encouraged to describe the proposal in terms of alternative means of accomplishing a stated objective (see WAC 197-11-060(3)). Alternatives including the proposed action should be analyzed at a roughly comparable level of detail, sufficient to evaluate their comparative merits (this does not require devoting the same number of pages in an EIS to each alternative).

(3) If the nonproject proposal concerns a specific geographic area, site specific analyses are not required, but may be included for areas of specific concern. The EIS should identify subsequent actions that would be undertaken by other agencies as a result of the nonproject proposal, such as transportation and utility systems.

(4) The EIS's discussion of alternatives for a comprehensive plan, community plan, or other areawide zoning or for shoreline or land use plans shall be limited to a general discussion of the impacts of alternate proposals for policies contained in such plans, for land use or shoreline designations, and for implementation measures. The lead agency is not required under SEPA to examine all conceivable policies, designations, or implementation measures but should cover a range of such topics. The EIS content may be limited to a discussion of alternatives which have been formally proposed or which are, while not formally proposed, reasonably related to the proposed action.

77. SMC Chapter 25.05 details the City's environmental policies and procedures, and SMC Chapter 25.05 Subchapter IV identifies requirements for an Environmental Impact Statement.

78. "The lead agency shall prepare its threshold determination and environmental impact statement (EIS), if required, at the earliest possible point in the planning and decisionmaking process, when the principal features of a proposal and its environmental impacts can be reasonably identified." SMC 25.05.055.A.

79. "Agencies shall make certain that the proposal that is the subject of environmental review is properly defined . . . A proposal by a lead agency or applicant may be put forward as an objective, as several alternative means of accomplishing a goal, or as a particular or preferred course of action." SMC 25.05.060.

80. SMC 25.05.070 describes limitations on actions during the SEPA process including:

A. Until the responsible official issues a final determination of nonsignificance or final environmental impact statement, no action concerning the proposal shall be taken by a governmental agency that would:

1. Have an adverse environmental impact; or

2. Limit the choice of reasonable alternatives.

...

D. This section does not preclude developing plans or designs, issuing requests for proposals (RFPs), securing options, or performing other work necessary to develop an application for a proposal, as long as such activities are consistent with subsection 25.05.070.A.

SMC 25.05.070.A and D.

81. Pursuant to SMC 25.05.400.C, “Environmental impact statements shall be concise, clear, and to the point, and shall be supported by the necessary environmental analysis. The purpose of an EIS is best served by short documents containing summaries of, or reference to, technical data and by avoiding excessively detailed and overly technical information.”

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

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

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

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

SMC 25.05.402 A, B and D.

83. SMC 25.05.440.D.2 requires that an EIS describe the preferred alternative and alternative courses of action indicating that:

Reasonable alternatives shall include actions that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation.

a. The word "reasonable" is intended to limit the number and range of alternatives, as well as the amount of detailed analysis for each alternative.

b. The "no-action" alternative shall be evaluated and compared to other alternatives.

c. Reasonable alternatives may be those over which an agency with jurisdiction has authority to control impacts either directly, or indirectly through requirement of mitigation measures.

84. SMC 25.05.440.D.2.f requires an EIS to “Present a comparison of the environmental impacts of the reasonable alternatives, and include the no action alternative. Although graphics may be helpful, a matrix or chart is not required. A range of alternatives or a few representative alternatives, rather than every possible reasonable variation, may be discussed.”
85. SMC 25.05.440.E.6.a calls for economic issues to be included in every EIS, stating that the analysis shall include: “Economic factors, including but not limited to employment, public investment, and taxation where appropriate, provided that this section shall not authorize the City to require disclosure of financial information relating to the private applicant or the private applicant's proposal.”
86. SMC 25.05.442 requires the following with regard to the contents of and EIS for non-project proposals:
- A. The lead agency shall have more flexibility in preparing EIS's on nonproject proposals, because there is normally less detailed information available on their environmental impacts and on any subsequent project proposals. The EIS may be combined with other planning documents.
 - B. The lead agency shall discuss impacts and alternatives in the level of detail appropriate to the scope of the nonproject proposal and to the level of planning for the proposal. Alternatives should be emphasized. In particular, agencies are encouraged to describe the proposal in terms of alternative means of accomplishing a stated objective (see Section 25.05.060 C). Alternatives including the proposed action should be analyzed at a roughly comparable level of detail, sufficient to evaluate their comparative merits (this does not require devoting the same number of pages in an EIS to each alternative).
 - C. If the nonproject proposal concerns a specific geographic area, site specific analyses are not required, but may be included for areas of specific concern. The EIS should identify subsequent actions that would be undertaken by other agencies as a result of the nonproject proposal, such as transportation and utility systems.
 - D. The EIS's discussion of alternatives for a comprehensive plan, community plan, or other areawide zoning or for shoreline or land use plans shall be limited to a general discussion of the impacts of alternate proposals for policies contained in such plans, for land use or shoreline designations, and for implementation measures. The lead agency is not required under SEPA to examine all conceivable policies, designations, or implementation measures but should cover a range of such topics. The EIS content may be limited to a discussion of alternatives which have been formally proposed or which are, while not formally proposed, reasonably related to the proposed plan.
87. SMC 25.05.448.A provides:

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

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

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

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

Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to Chapter 23.76 SMC. Appeals are considered de novo, and the Examiner must give substantial weight to the Director's decisions. SMC 25.05.680.B.3. The Appellant bears the burden of proving that the FEIS is legally insufficient within the standards set by SEPA.
2. In reviewing the adequacy of the FEIS the Examiner does "not rule on the wisdom of the proposed development but rather on whether the FEIS [gives] the City . . . sufficient information to make a reasoned decision." *Concerned Taxpayers Opposed to Modified Mid-South Sequim Bypass*, 90 Wn.App. at 362. Appellants have raised many legitimate and compelling concerns regarding the proposed legislation, and its potential impacts. However, it is not the Hearing Examiner's role to determine that such impacts should not be allowed, but only to determine if the City's environmental review of those impacts is adequate under the standards of SEPA in the context of the legal issues raised by the Appellants. To prevail in an appeal of an EIS requires the Appellants to not only raise issues of concern or objections to the City's failure to consider certain information, but also requires them to meet an extremely high burden of evidentiary proof. The Hearing Examiner's decision cannot be compelled by deep emotional concern, no matter how sincere. The Hearing Examiner is privileged to sit as a witness to the issues around the development of and changes to the City of Seattle, and to hear the story of Seattle's

neighborhoods, but in the end must set aside that listening and receptive nature of the role to apply the law as developed under state statute and local municipal code.

3. Generally, Appellants’ experts did not introduce evidence sufficient to show the probability of any significant adverse impact that might result from the proposal that was not considered by the FEIS. Most of Appellants’ citizen and expert testimony focused on identifying perceived flaws in the level of analysis and study performed by the City. Under SEPA, except where the FEIS itself expressly identifies a significant impact, the Appellants must meet the high burden of demonstrating the reasonable probability of the significant impact which they allege. Even where Appellants introduced large volumes of evidence concerning certain resources such as historic resources or tree canopies, such evidence of the presence of the resource would have to be coupled with sufficient evidence of the probability of damage or harm in the form of a significant adverse negative impact in order to meet that burden. This evidentiary standard is not met by the mere statement from an expert that they believe there will be significant impacts. Instead, the probability of significant adverse negative impacts must be demonstrated by actual analysis and evidence showing a more than moderate impact on the environment. This is true for where the Appellants argue that the FEIS has failed to identify certain significant adverse impacts. Where the FEIS itself finds significant adverse impacts through its own analysis, Appellants can rely on those findings.
4. The MHA proposal as an area-wide re-zone is a non-project action for purposes of SEPA analysis. See WAC 197-11-442; SMC 25.05.442.D. SMC 25.05.442.B provides that “[t]he lead agency shall discuss impacts and alternatives in the level of detail appropriate to the scope of the nonproject proposal and to the level of planning for the proposal.” An agency need follow only a ‘rule of reason’ in preparing an EIS, and ... this rule of reason governs ‘both *which* alternatives the agency must discuss, and the *extent* to which it must discuss them.’” *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195 (D.C. Cir. 1991) (quoting *Alaska v. Andrus*, 580 F.2d 465, 475 (D.C. Cir. 1978)) (citation omitted). Under the rule of reason, “as long as the agency ‘look[s] hard at the factors relevant to the definition of purpose,’ we generally defer to the agency’s reasonable definition of objectives.” *Theodore Roosevelt Conservation P’ship*, 661 F.3d at 72 (quoting *Citizens Against Burlington*, 938 F.2d at 196) (alteration in original). *Union Neighbors United, Inc. v. Jewell*, 831 F.3d 564, 575 (2016).⁴

SMC 25.05.060. indicates “Agencies shall make certain that the proposal that is the subject of environmental review is properly defined . . . A proposal by a lead agency or applicant may be put forward as an objective, as several alternative means of accomplishing a goal, *or as a particular or preferred course of action*,” (emphasis added). SMC 25.05.442.D provides “The EIS content may be limited to a discussion of alternatives which have been formally proposed.” Thus, the definition of the proposal and alternatives to analyze it are viewed as policy decisions.

⁴ “Because NEPA is substantially similar to SEPA, . . . [courts] may look to federal case law for SEPA interpretation.” *International Longshore and Warehouse Union, Local 19 v. City of Seattle*, 176 Wn.App. 512, 525, 309 P.3d 654 (2013).

SMC 25.05.440.D.2 requires that an EIS describe the preferred alternative and alternative courses of action and that “reasonable alternatives shall include actions that could feasibly attain or approximate a proposal's objectives.”

In accordance with SMC 25.05.442.B the FEIS described “the proposal in terms of alternative means of accomplishing” the stated objectives. In the context of the substantial deference due to the City concerning a policy decision, the City’s definition of the proposal, its objectives and the range of proposal alternatives it explored satisfy the rule of reason.

The Appellants identified other alternative means of achieving the identified objectives, but there is no requirement for an agency preparing an EIS to explore every alternative to the proposal, or even the most reasonable alternative presented by opponents to the proposal. Where the City’s determination is owed substantial deference, it is not adequate for the Appellants to simply suggest another alternative means of achieving the objectives. Appellants’ suggested alternatives were not demonstrated to meet the proposal’s objectives as identified by the City. The alternatives examined in the FEIS provide an opportunity for a decision maker to analyze the proposal in the context of differing ranges in intensity and location of development capacity increases, and in the amounts of housing growth that could result across the city. These ranges allow for the analysis of differing impacts to the environment, and to identify actions with lower environmental cost or decreased level of environmental action. The range of alternatives considered by the FEIS satisfies the rule of reason in relation to the City’s stated objectives.

5. Appellants indicated in their closing arguments that the FEIS was required to identify alternatives to the proposal that would allow for an alternative impact analysis between specific impact types, and thereby resulting in an analysis potentially showing greater mitigation of such impacts (e.g. impacts associated with historic resources, aesthetics, housing and displacement, and land use). However, Appellants did not demonstrate that SEPA requires this type of alternative analysis. WAC 197-11-792 permits alternative analyses that are “no action,” “other reasonable courses of action,” or “mitigation measures (not in the proposed action),” but does not *require* the alternative analysis to include alternatives that are mitigation measures.
6. Appellants also challenged whether the alternatives analyzed would actually achieve the objectives of the proposal with regard to housing. The Appellants did not demonstrate that any of the alternatives identified in the FEIS would not achieve the objectives of the proposal.
7. The Appellants argue that the FEIS did not consider areas that will be rezoned outside urban villages and expansion areas. The FEIS study area adequately encompassed areas outside the urban villages. The FEIS analyzes the expansion areas, identify impacts associated with the proposed expansions in both generalized context and at the urban village level. *See e.g.* Ex. 2 at 2.2-2.3; 2.41-2.63; and 3.119-3.155.

8. Appellants' arguments were presented in the context of a theme that the FEIS analysis of impacts was inadequate, because the FEIS failed to conduct an impact analysis at the neighborhood or urban village level. *See e.g.* SCALE's Closing Argument at 46 (failure to assess displacement risks at the urban village level); Closing Brief – Beacon Hill Council of Seattle at 6 (FEIS fails to adequately address impacts to North Beacon Hill Community); Junction Neighborhood Organization's Closing Brief at 2 (the City did not study the WSJ Urban Village in adequate depth; and Friends of Ravenna-Cowen's Closing Argument at 20 and 37). However, the FEIS does include neighborhood and urban village level of analysis to a varying degree throughout the document, and also includes appropriate parcel level information.

Further, there is nothing under SEPA that compels the urban village level of analysis called for by the Appellants. On the contrary, the Code indicates that where a non-project proposal like MHA "concerns a specific geographic area [such as the City of Seattle], site specific analyses are not required, but may be included for areas of specific concern," and that "[t]he EIS's discussion of alternatives for a . . . areawide zoning . . . shall be limited to a general discussion of the impacts of alternate proposals." SMC 25.05.442.C and D.

Appellants' arguments stem in part from Appellants' concern that the City is seeking to abandon a historical approach of including neighborhoods in rezone and comprehensive planning processes. Beyond being a mere concern, Appellants argue that the City's own comprehensive plan calls for inclusion of neighborhoods in the processes for rezoning and comprehensive planning, and that the City is now abandoning those provisions of the Comprehensive Plan. As presented, this issue fails to raise an issue concerning the adequacy of the FEIS. Instead it is a policy complaint that is not an issue to be addressed through an FEIS appeal, but through political and legal challenges to the comprehensive plan changes when and if they materialize. The Appellants did not identify any new significant adverse impacts to the environment stemming from the potential for the City to make alterations to the Comprehensive Plan, and the FEIS satisfies the rule of reason with regard to its disclosure of proposed changes. The uniqueness of Seattle neighborhoods cannot be denied, and is well established by the testimony from its citizens concerning items such as historic resources and tree canopy cover, but the question in this hearing is not about their inherent value, but to what level – if any – the FEIS was required to review this aspect of City in the context of the proposal.

Appellants' concerns about their neighborhoods stem in part from the absence of information or detail about their neighborhoods in the FEIS. Even where the City's decision to conduct its analysis at the level of detail found in the FEIS is adequate to satisfy SEPA's requirements, it is certainly the case, at least in part, that the choice not to tell a more detailed story of the City's neighborhoods contributed to why the City faced a very protracted appeal and hearing process from representatives in many of its neighborhoods. While the level of analysis for most of the FEIS satisfies the rule of reason and requirements under SEPA, the more "granular" level of analysis called for and debated at the hearing may have averted at least some of the deeply felt community concern expressed in nearly four weeks of hearing and in a hearing process that has taken the better part of a year.

9. In accordance with SMC 25.05.055.A the FEIS was prepared “at the earliest possible point in the planning and decisionmaking process, when the principal features of a proposal and its environmental impacts” could be reasonably identified.
10. The Appellants argue that the FEIS failed to adequately analyze impacts associated with proposed changes to the City’s Comprehensive Plan, and that it failed to adequately identify specific provisions of the Comprehensive Plan that may be changed or are otherwise implicated in the MHA proposal. SMC 25.05.442.D states:

The EIS's discussion of alternatives for . . . areawide zoning . . . shall be limited to a general discussion of the impacts of alternate proposals for policies contained in such plans, for land use or shoreline designations, and for implementation measures. The lead agency is not required under SEPA to examine all conceivable policies, designations, or implementation measures but should cover a range of such topics.

Specific land use policies implicated by the proposal are listed in the FEIS. Appendix F specifically addresses proposed Comprehensive Plan changes. Council Resolution 31762 documented discussion of potential Comprehensive Plan changes considered by the proposal that underlies the FIES. Ex. 244. The FEIS analysis was adequate as to comprehensive plan policy changes that may occur as a result of the proposal; its analysis meets the rule of reason.

11. Appellants argue that the FEIS did not address at all, or at least adequately, cumulative impacts related to certain aspects of the environmental impacts raised in the FEIS. However, it is not enough for Appellants to criticize the FEIS for not addressing such impacts. The Appellants did not introduce evidence establishing the probability of significant adverse cumulative impacts, and therefore failed to meet the burden of proof established for SEPA appellants.
12. Appellants argue that the adequacy of the FEIS’s discussion of mitigation measures is inadequate concerning the FEIS analysis of certain environmental impacts. Some of Appellants’ arguments contravene the Hearing Examiner’s Preliminary Order on Prehearing Motions issued on June 8, 2018, which concluded that:

To the degree parties were raising the issue of challenging the adequacy of mitigation measures identified in the FEIS the City's Motion is **GRANTED**. However, issues raised by the Appellants concerning the FEIS level of analysis, and specifically the adequacy of analysis associated with mitigation proposals is permitted.

Preliminary Order on Prehearing Motions at 3.

In some instances, Appellants’ closing arguments concerning mitigation contravene this Order, and in some cases even repeat arguments raised in the prehearing motions of Appellants that were denied. These arguments have already been addressed by the Order.

Appellants argue that in an EIS “[m]itigation must ‘be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated.’” SCALE’s Closing Argument at 19 (citations omitted). In this respect, Appellants’ argument is largely based in challenging the format of the FEIS. The FEIS lists proposed mitigation measures at the end of each of the chapters addressing environmental impacts. *See e.g.* Ex. 2 at 3.92, 3.155, 3.210, 3.287, 3.311, 3.340, 3.356, 3.383, and 3.414. However, these lists are imbedded in FEIS chapters that analyze the potential impacts of the proposal, which analysis both informs the listed mitigation, and which cross-references the mitigation. Thus, the discussion of proposed mitigation is not limited only to the lists in each chapter, but is prevalent throughout each chapter. For example, in the historic resources chapter, in the section discussing impacts common to all alternatives, mitigation measures are discussed in the context of projects subject to SEPA review and the Seattle City Landmark process, and this same process is *listed* under the mitigation measures heading. Ex. 2 at 3.306 and 3.311. It is not enough for Appellants simply to point to the section headed “mitigation” and assume that this is the complete discussion of mitigation. Appellants have not shown that the FEIS did not adequately discuss mitigation measures. The FEIS discussion of mitigation satisfies the rule of reason.

Historic Resources

13. In many respects the level of detail of impact analysis in the FEIS concerning historic resources is appropriate considering the scope of the non-project proposal and the level of planning. The City is not required to adopt the Appellants’ call for a very detailed parcel-by-parcel historic resource analysis of the entire City and each neighborhood that incorporates information from every available City, State or Federal database. However, the FEIS analysis concerning historic resources is not without fault. The City’s briefing argues that “the disparate level of information about historic resources throughout the City render the data contained in the City database misleading for the purpose of assessing historic resource impacts across the entire City.” City of Seattle’s Closing Brief at 45. However, this is not adequately assessed in the FEIS and the City’s determination to not show or thoroughly discuss this data leaves a reader of the FEIS with the impression that the information is simply not available, or even worse that there are simply not that many historic resource properties in the City.
14. The FEIS preparers were concerned that FEIS reviewers would overly rely on this unequal distribution of historic resources information, and as a result mistakenly believe that the distribution of information would equate to distribution of actual historic resources. However, this approach resulted in the FEIS excluding the depiction of any historic resource properties except NRHP properties.
15. The Appellants’ own SEPA expert, Richard Weinman, who has extensive experience in FEIS preparation, indicated that he had never seen the approach used by the City in this

regard, and indicated that the FEIS could just as well have simply disclosed the gaps in the City's data to readers.⁵

16. Exhibit 3.5-2 to the FEIS technically provides neighborhood data at a comparable level to ensure a comparable alternative analysis by just showing NRHP properties (*See e.g.* WAC 197-11-442; SMC 25.05.442), but what actually results is a comparable *absence* of data between neighborhoods. This is not the intent of SEPA.
17. Maps are an essential tool for conveying information in a document like the FEIS, as they can provide a simple visual aid to convey a large amount of complex data to a reader in a digestible form. Exhibit 3.5-2 to the FEIS is a map intended to assist decision makers and readers to understand the relation of the City's historic resources relative to the proposal's study area. This map only includes reference to NRHP determined eligible properties. The City argues that designated City landmarks were not included on this map because this information would confuse readers to mistakenly conclude that areas without landmarks had fewer historic resources than those that would have shown the presence of designated landmarks, and further that "designated City landmarks are afforded protection under the City's Landmark Preservation Ordinance." City of Seattle's Closing Brief at 45.

The record does not show that information the City has available for designated City landmarks is inaccurate. The testimony indicating that the City database was inaccurate only concerned listed properties that had yet to be determined eligible for listing as landmarks – no testimony indicated that the City record for designated City landmarks is inaccurate.

The record does not support the City's position that showing designated City landmarks would be confusing to readers if utilized in conjunction with the NRHP data. On the contrary, the absence of that information creates a greater risk that readers are simply left unaware of the extent of historic resources in the City.

In addition, the City's argument that designated City landmarks did not need to be depicted because they are protected under the City's Code is not supported by the record. The City's witness indicated that at least some of the NRHP properties are also designated City landmarks. If Code protection were a reason not to describe historic resources, by that reasoning the City could simply have omitted showing NRHP properties as well and done away with showing any distribution of historic resources.

In addition the FIES acknowledges two potential impact areas that the Code does not protect against. First, the FEIS acknowledged that "[p]otential impacts to historic resources could occur from demolition, redevelopment that impacts the character of a historic property, or development adjacent to a designated landmark if the development alters the setting of the landmark and the setting is a contributing element of the landmark's eligibility." Ex. 2 at 3.305. Second, the FEIS also acknowledges that

⁵ The portion of the transcripts including this testimony was not provided to the Hearing Examiner for citation purposes, but can be found on day 19 of the hearing in response to questioning from the Hearing Examiner.

impacts could result from SEPA exempt projects. These conclusions in the FEIS contradict the City's underlying assumption that the Code will protect designated landmarks from impacts, and the FEIS does not clearly indicate what implications if any these impacts may have for designated landmarks. The record does not reflect that the Code would protect against all situations wherein development of the setting of landmarks might negatively impact designated City landmarks, and the FEIS should be remanded to address this gap in the analysis.

18. Even where the database information is potentially inaccurate this resource and its limits should be described and analyzed in at least a condensed manner so that decision makers and the public are fully informed as to the extent of historic resources, and are not misled into thinking the City has only NRHP historic resources.
19. While the City is owed deference with respect to its approach to the FEIS analysis (SMC 43.21C.075(3)(d)), in this case the City's approach (1) to not include designated landmarks information in Exhibit 3.5-2 to the FEIS, (2) to not provide an adequate analysis disclosing and discussing the City database resources excluded from the FEIS presentation, and (3) the choice to exclude City designated landmarks because they are partly protected by the Code appears arbitrary, and is not in accordance with the analysis required by SEPA. In this respect the FEIS does not present a "reasonably thorough discussion of the significant aspects of the probable environmental consequences" to historic resources that may result from the proposal, and the environmental effects of the proposed action on historic resources are not sufficiently disclosed, or discussed. In all other respects the FEIS historic resource analysis satisfied the rule of reason. Appellants did not identify any new significant negative impacts to the environment concerning historic resources that were not disclosed by the FEIS.
20. Based on this absence of information a decision maker or individual reviewing the FEIS would not be able to assess existing historic resources based on the information in the FEIS.
21. The Appellants argued that the FEIS definition of significant impacts to historic resources was arbitrary, where the FEIS set significant impacts as an occurrence where an MHA up-zone results in potential growth rates of 50% or more. However, Appellants did not show that this determination was inaccurate, or otherwise inappropriate.
22. The Appellants argued that the FEIS was inadequate because it failed to analyze cumulative impacts to historic resources. Even though the City admits that it did not address cumulative impacts to historic resources, Appellants did not meet their burden concerning this issue as they did not introduce sufficient evidence to show the probability of significant adverse cumulative impacts to historic resources such that the FEIS analysis of that type of impact should have been compelled.
23. Appellants argued that the FEIS failed to address impacts that could result from proposals that were SEPA exempt. For example, Appellants argue "that even when SEPA applies, historic resources and entire historic neighborhoods will be significantly impacted, i.e. historic buildings will be lost, and the historic fabric of whole neighborhoods will be

damaged or destroyed.” SCALE’s Closing Argument at 18-19. However, while Appellants provided ample descriptions of the City’s historic resources, the Appellants did not demonstrate that under the proposal significant impacts would result from development to historic resources, and therefore failed to meet their burden concerning this issue.

Aesthetics

24. The EIS was not inadequate on account of its discussion concerning aesthetics, including elements such as height, bulk and scale and shadows. While the graphics of the potential development scenarios under the alternatives did not show the specific existing conditions or build out scenarios for each urban village as argued by Appellants, they were not required to. The drawings in the FEIS were not shown to be inaccurate or deceptive, and were adequate for a general citywide discussion of aesthetic impacts. The analysis of height, bulk and scale was also adequate and sufficiently detailed to apprise decisionmakers of the impacts associated with the alternatives. The shadow study and analysis of impacts was sufficient, and no errors were shown in the FEIS on account of those impacts.
25. Appellants argue that without the context of aesthetic detail found at the neighborhood level, the FEIS aesthetic analysis is meaningless. Appellants are likely correct that a neighborhood level analysis bolstered by neighborhood level aesthetic descriptions and data could produce more information for purposes of an impact analysis. However, the mere suggestion that more detailed work could be done does not show that the City has failed to meet its obligation under SEPA. Even where Appellants provide examples of other non-project level EISs, these EISs for sub-areas within the City do not set a standard that the City must follow with regard to a citywide proposal. The level of detail of impact analysis in the FEIS concerning aesthetics is appropriate considering the scope of the non-project proposal and the level of planning. The proposal is citywide in scope and does not include specific project proposals, no direct aesthetic impacts will result from the proposal, and the level of analysis is appropriate in this context. The level of aesthetics impact analysis called for by Appellants is beyond that called for by the rule of reason standard.
26. The City’s methodology for the FEIS’s aesthetic impacts analysis was consistent with industry-accepted standards and is legally adequate under the rule of reason. Further, the Appellants did not identify any new significant negative impacts to the environment concerning aesthetics that were not disclosed by the FEIS.

Land Use

27. The Appellants allege that the level of detail for land use conditions in the City described in the FEIS and 2035 Comprehensive Plan EIS is insufficient in detail to disclose baseline information about existing conditions in Seattle. The level of detail of impact analysis in the FEIS concerning land use impacts is appropriate considering the scope of the non-project proposal and the level of planning. A full description of each neighborhood area and its unique nature is not necessary to the generalized discussion of City-wide impacts addressed in the FEIS.

28. The City’s methodology for the FEIS’s land use impacts analysis was consistent with standards followed by experts in the field and is legally adequate under the rule of reason. The Appellants did not identify any new significant negative impacts to the environment concerning land use that were not disclosed by the FEIS.
29. The FEIS land use impacts analysis allows a decision maker to understand the potential nature of the proposal’s probable significant adverse land-use impacts at both an area-wide level and site-specific level, which is an adequate approach to informing decision makers to satisfy the rule of reason.
30. The FEIS adequately considered land use and aesthetic impacts of the proposal to areas adjacent to areas that will be up-zoned, or “edge effects.” The FEIS analysis of edge effects analysis meets the rule of reason. In addition, as with other impact concerns expressed by the Appellants, Appellants did not identify any new significant negative impacts to the environment concerning edge impacts that were not disclosed by the FEIS.
31. Appellants argue that the FEIS “fails to disclose and assess impacts associated with the proposal’s consistency or inconsistency with SMC 23.34.008.” SCALE Closing Argument at 35. They argue that the proposal will increase height limits to above 40 feet outside urban villages, that this is a significant impact in the context of SMC 23.34.008, and that failure to include an analysis of this impact violates SEPA. Appellants made no demonstration that height increases proposed under the FEIS would be a significant adverse impact in the context of SMC 23.34.008, and therefore did not meet their burden under this issue of demonstrating that the FEIS failed to adequately analyze a significant impact.
32. The Appellants argued that the FEIS failed to meet the requirements of SMC 25.05.440.E.4 which indicates:

This section shall incorporate, **when appropriate**:

- a. A summary of existing plans (for example: land use and shoreline plans) and zoning regulations applicable to the proposal, and how the proposal is consistent and inconsistent with them

(emphasis added).

The SMC 25.05.440.E.4 requirement for an EIS to include a summary of existing plans and zoning regulations is qualified, and is required only “when appropriate.” Further, SMC 25.05.442.D states “[t]he lead agency is not required under SEPA to examine all conceivable policies, designations, or implementation measures but should cover a range of such topics.”

Appellants did not demonstrate that the FEIS analysis was required to review the specific Comprehensive Plan policies listed in Exhibit 166. Only a handful of items listed would

require amendment to implement the MHA proposal, while others were simply implicated by or not clearly effected by the proposal. Appellants' call for a more detailed analysis is not supported by the loose requirements of SMC 25.05.440.E.4, and directly contradicts SMC 25.05.442.D.

Appellants particularly emphasized concerns about potential implications for Comprehensive Plan policies they argue demonstrate a commitment to urban villages developing with single family areas, and call for participation of urban villages in the planning of zoning for their areas. Appellants did not demonstrate a probable significant adverse impact associated with the MHA proposal in the context of potential Comprehensive Plan modifications that implicate urban villages. For example, Appellants did not provide adequate evidence to support their concern that the proposal would largely eliminate single family housing in urban villages. Instead, this was treated as a baseline assumption by Appellants, and was not supported by independent evidence or analysis. Appellants' arguments concerning this issue appear to derive less from an issue concerning the adequacy of the FEIS environmental impact analysis than with a concern with the underlying proposal and its planning implications. Such concerns cannot be addressed in the forum of an EIS appeal, but are more appropriate to the political forum or litigation related directly to the proposal itself.

Housing and Socioeconomics

33. The City's methodology for the FEIS's housing and socioeconomics impacts analysis is innovative for an area of impact analysis that is still developing, while still following and building upon what other researchers have done in this discipline. Its level of detail concerning the analysis of displacement of low-income populations is legally adequate under the rule of reason.
34. The Appellants did not substantiate any new significant negative impacts to the environment concerning housing and socioeconomics, including any impacts that might be associated with increases in demands for home ownership, that were not disclosed by the FEIS. The mere criticism of the FEIS analysis is not sufficient to meet Appellants' burden in most cases. For example, where Appellants argue the FEIS is inadequate for a failure to examine impacts associated with increased demand for owner-occupied housing, Appellants failed to provide actual data and analysis showing that the MHA proposal would generate such impacts, and that such impacts would be significant such that they should have been addressed in the FEIS analysis. Similarly, testimony from Appellants' expert David Levitus raised concerns with the FEIS analysis, but did not include independent analysis of the proposal to demonstrate the probability of significant adverse impacts he testified would occur under the proposal.
35. Economic displacement is not required to be analyzed in an EIS, as it is not identified as an element of the environment requiring consideration under SEPA. Thus, Appellants' concerns regarding this aspect of the FEIS analysis are not a basis for challenging its adequacy. Even so, the level of analysis included in the FEIS on this subject was adequate

to satisfy the rule of reason, and Appellants' issues essentially simply raise concerns about the level of detail in the analysis without demonstrating its inadequacy.

36. The Appellants argued that the MHA proposal had not been properly reviewed under the City's Race and Social Justice Initiative ("RSJI"). However, whether that is the case or not, while it would be lamentable for any City activity to not be adequately executed in accordance with the City's own RSJI, there is no requirement that an EIS comply with this particular City policy either in the Code or State SEPA requirements. Therefore, the issue of whether the FEIS fulfills the precepts of RSJI is outside the jurisdiction of the Hearing Examiner, whose jurisdiction is wholly dictated by the strictures of the Code.

Open Space Resources

37. The level of detail of impact analysis in the FEIS concerning open space resources is appropriate considering the scope of the non-project proposal and the level of planning. The FEIS adequately discloses the potential for the City to fail in achieving its open space LOS. This analysis adequately included an analysis concerning open space impacts to underserved urban villages for a programmatic level FEIS.
38. The City's methodology for the FEIS's open space resources impacts analysis was consistent with industry-accepted standards and is legally adequate under the rule of reason. The Appellants also did not identify any new significant negative impacts to the environment concerning open space resources that were not disclosed by the FEIS.
39. Appellants' arguments concerning potential increases to property costs for possible future open space acquisitions was speculative, and such a potential cost increase is not an element of the environment required to be analyzed under SEPA.
40. The North Rainier park project described by Appellants, while of great importance to that community, and associated with a need that is clearly identified (e.g. it is the most underserved urban village with regard to open space), is at a conceptual project level and the FEIS analysis is not required to consider it. Including a conceptual, and therefore speculative project, could skew the analysis if the project was not completed. The urgency of the open space gap for this neighborhood does not elevate the finality of this proposal for purposes of EIS analysis.

Biological Resources

41. The level of detail of impact analysis in the FEIS concerning biological resources is appropriate considering the scope of the non-project proposal and the level of planning.
42. The City's methodology for the FEIS's biological resources, including tree canopy, impacts analysis was consistent with industry-accepted standards and is legally adequate under the rule of reason. Further, the Appellants did not identify any new significant

negative impacts to the environment concerning biological resources, including tree canopy, that were not disclosed by the FEIS.

43. The Appellants' argument that the bulk of the City's tree canopy will be removed if single-family housing is up-zoned was not substantiated by adequate or quantifiable evidence to demonstrate that this concern would materialize under the MHA proposal or that it was probable that it would result in a significant impact.
44. Appellants' testimony concerning the current state of the City's tree canopy in certain areas of the City did not include a quantitative analysis of the impact of the MHA proposal on the tree canopy. Appellants concerns as to impacts to the tree canopy were speculative as to significance and likelihood.
45. Concerns expressed by Appellants such as the efficacy of current City tree ordinance protection, while articulate and well-informed complaints about aspects of that process, concern existing conditions, and do not show an inadequacy in analysis of the environmental impacts of the proposal. While such testimony could arguably be directed at the adequacy of proposed mitigation through Code revisions, Appellants' witness Steve Zemke indicated that the status of future ordinances is unknown. Therefore, Appellants' concerns are speculative. Based on the presentations by Appellants, it seems that Appellants conflict with the City may be derived, at least in part, from a difference in opinion as to underlying values. The Appellants seem to express values that call for a strong priority to be placed on preservation of the existing tree canopy, while an underlying value of the City Code was expressed by City witness Nolan Rundquist⁶ who stated at the hearing that trees are transitory in the urban environment. This conflict of values is a conflict over City policy and the existing Code, and is a matter for legislation, not litigation in the context of the adequacy of an EIS. Further, the FEIS tree canopy analysis would reflect any impact or issue concerning loss of tree cover caused by gaps in the current tree regulations, and therefore the FEIS discloses these conditions.
46. The Appellants expressed the concern that the FEIS does not distinguish between significant and not significant impacts to the tree canopy (*See e.g.* Ex. 106 and Ex. 2 at 3.334 and 3.336). The Appellants cite no authority for the proposition that impacts analyzed by the FEIS must be labeled as "significant" or "not significant," and that failure to provide such labeling indicates inadequacy of the FEIS. An agency's determination of significance with regard to environmental impacts is a threshold question under SEPA, to determine if an EIS is required. Once the agency is committed to the environmental review required by an EIS, the question becomes one of adequacy of the analysis of impacts for purposes of disclosure to a decision maker, and whether it passes muster under the rule of reason. Labeling an impact "significant" is no longer required. An FEIS must address significant impacts in its analysis, and may address non-significant impacts. SMC 25.05.402. However, there is no binding requirement to use the term "significant" to distinguish between impacts in an EIS.

⁶ A PNW-ISA Certified Tree Risk Assessor who has worked as a Seattle City Arborist since 1988.

Public Services and Utilities

47. The Appellants' testimony concerning the FEIS public services and utilities analysis was not sufficient to show that the FEIS was inadequate in this respect. The level of detail of impact analysis in the FEIS concerning public services and utilities is appropriate considering the scope of the non-project proposal and the level of planning. The FEIS adequately disclosed impacts to City services and utilities, and its finding that compliance with stormwater and sewer code requirements would address development impacts was not rebutted by Appellants in the form of adequate evidence.
48. The City's methodology for the FEIS's public services and utilities impacts analysis was consistent with industry-accepted standards and is legally adequate under the rule of reason. The Appellants did not identify any new significant negative impacts to the environment concerning public services and utilities that were not disclosed by the FEIS.

Transportation

49. The level of detail of impact analysis in the FEIS concerning traffic is appropriate considering the scope of the non-project proposal and the level of planning.
50. The City's methodology for the FEIS's traffic impacts analysis was consistent with industry-accepted standards and is legally adequate under the rule of reason. Further, the Appellants did not identify any new significant negative impacts to the environment concerning traffic, safety, or parking, that were not disclosed by the FEIS. Appellants' evidence of Google mapping and traffic review was not demonstrated to be based in industry-accepted standards.
51. Appellants' concerns regarding FEIS adequacy related to air quality and health issues, while legitimate subjects of concern for any citizen, are generalized concerns that do not rise to the level of showing that the FEIS is inadequate. Further the FEIS does include a health risk assessment regarding proximity to transportation services including South Park.
52. Appellants' arguments regarding impacts to small businesses are not supported by evidence, and failed to show that the FEIS was inadequate in this regard. The level of detail of impact analysis in the FEIS concerning impacts to small businesses was appropriate considering the scope of the non-project proposal, and satisfies the rule of reason.
53. The FEIS was properly noticed. Appellants' issues with the FEIS public outreach campaign did not raise any legal issues.
54. Appellant Junction Neighborhood Organization challenged the adequacy of the City's response to comments. However, this argument failed to identify the failure of the City to meet any standard set by SEPA concerning response to comments.

55. On review of the entire record, the level of environmental analysis under the FEIS satisfies the rule of reason in all respects except historic resources, and the Department's determination of adequacy should be affirmed, except for the historic resources section which should be remanded for additional review.

Decision

The determination that the FEIS is adequate is **AFFIRMED** for all aspects of the FEIS with the exception of the historic resources analysis which is **REMANDED** for the following:

- (1) include City designated landmarks information in Exhibit 3.5-2 in the FEIS, and make associated text amendments to accommodate this inclusion;
- (2) provide a more detailed and clear analysis identifying the contents of the City database resource (e.g. all properties in the database not just the designated landmarks) and how they have been utilized to inform the FEIS analysis; and
- (3) ensure that the FEIS analysis adequately analyses all probable significant adverse impacts to City designated landmarks where Code protections are not assured, including but not limited to those associated with SEPA exempt projects and redevelopment that impacts the setting or character of a designated historic landmark property.

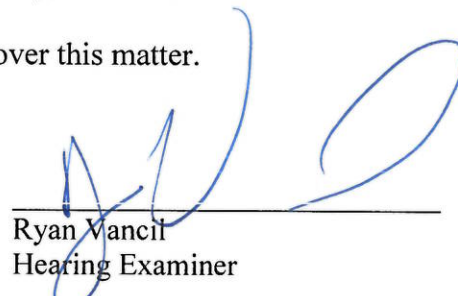
The City should also correct the typo in FEIS Exhibit 3.5-4 that failed to indicate that a Context Statement has been prepared for North Beacon Hill.

The City should also ensure that all NRHP properties are depicted on FEIS Exhibit 3.5-2, if any are missing (as alleged by Appellants at hearing).

Given the opportunity of the FEIS historic resources section remand the City may also wish to address cumulative impacts to historic resources, if any, in its revisions to this FEIS chapter.

The Hearing Examiner does not retain jurisdiction over this matter.

Entered this 6th day of December, 2018.



Ryan Vancil
Hearing Examiner

Concerning Further Review

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

The decision of the Hearing Examiner in this case is the final decision for the City of Seattle. In accordance with RCW 43.21C.075, any appeal of this environmental determination must be consolidated for appeal with the underlying governmental action, and comply with other applicable law.

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**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**


CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Order on Motion for Reconsideration and Revised Findings and Decision** to each person listed below, or on the attached mailing list, in the matter of **Wallingford Community Council, et al.**, Hearing Examiner Files: **W-17-006 – W-17-014** in the manner indicated.

Party	Method of Service
Appellants Wallingford Community Council c/o G. Lee Raen lee@lraaen.com Morgan Community Association (MoCA) c/o Deb Barker djb124@earthlink.net Friends of Ravenna-Cowen c/o Judith Bendich jebendich@comcast.net West Seattle Junction Neighborhood Organization admin@wsjuno.org c/o Rich Koehler rkoehler@cool-studio.net Coalition for Affordability, Livability, and Equity c/o Claudia Newman newman@bnd-law.com David Bricklin bricklin@bnd-law.com Seniors United for Neighborhoods (SUN) c/o David Ward booksgalore22@gmail.com Beacon Hill Council of Seattle c/o Mira Latoszek mira.latoszek@gmail.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger

<p>Friends of North Rainier Neighborhood Plan c/o Talis Abolins talis.abolins@gmail.com</p> <p>Fremont Neighborhood Council fremont@loupploup.net c/o Toby Thaler toby@thaler.org</p>	
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Dated: December 6, 2018



 Alayna Johnson
 Legal Assistant