SEATTLE HEARING EXAMINER

In the Matter of the Appeal by QUEEN ANNE COMMUNITY COUNCIL of the Final Environmental Impact Statement for the proposed legislation on accessory dwelling units	Hearing Examiner File No. W-18-009 APPELLANT'S REPLY ARGUMENT

I. INTRODUCTION

The Queen Anne Community Council (QACC) replies to the City's Closing Brief and reaffirms arguments presented in its Closing Argument that the EIS is inadequate.

II. ARGUMENT

A. The EIS fails to adequately consider impacts to on-street parking.

1. The EIS does not use a conservative analysis.

The City's Closing at 20, line 9 erroneously asserts that EIS "incorporates a number of assumptions intended to create a more conservative analysis" and claims that all ADU demand assumed to park on the street, even though ADU owners may provide off-street parking and that Alternatives 1 & 3 require it. However, that all demand would be on the street reflects more a fact than a conservative assumption; in fact, very few ADU residents would have an off-street option, and very few owners would provide off-street parking. Alternatives 1 & 3 do not make the analysis more conservative; they simply make it different since there are greater differences among the options like the maximum occupancy limits.

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The City at 20:12-15 claims that two ADU's per lot were assumed for all eligible lots. This is flatly wrong as the EIS text (p. 4-182) clearly states that Alternative 2 and the Preferred Alternative assumed 5% of eligible lots would have 2 ADUs, while Alternative 3 would have 2% of eligible lots with 2 ADU's.

The City at 20:16-17laims that the study areas capture effects of commercial activity "which likely overstates potential parking impacts due to spillover from nearby multifamily and commercial uses" However, utilization was checked in the early hours of a Friday morning (between 1:30 and 5:30 a.m.) when virtually no commercial demand would occur. Mr. Tilghman testified that peak demands in the NW study area occur in the early evening around 7:00 p.m. when restaurant and residential demands overlap, as documented in 7009 Greenwood's parking analysis, as well as late morning on Sundays when residential and church demands overlap. See Exhibit 11. The analysis cannot claim to be conservative by using study areas proximate to commercial uses if demand from those uses isn't included in the analysis. The influence of commercial demand must be measured when those uses are open.

2. TIP 117 was not complied with.

The City's argument at 21 that EIS complied with Tip 117 is not supported by the testimony. Tip 117 (Exhibit 22) provides that:

> The measurements of the length of the block face can be obtained from the SDCI geographic information system (GIS) maps; width of driveways, placement of hydrants and street signs, etc. are measurements made by the person(s) preparing the study. Once this information is obtained, the unobstructed lengths of street between street features available for legal

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on-street parking can be determined based on the chart below and should be noted on each block front plan…"[emphasis added].

Amalia Leighton-Cody testified that aerial images were used to measure curb length. Mr. Tilghman testified that aerial photos and maps can be used but that there is always a question about their accuracy. Many features such as fire hydrants, stop signs, or other regulatory signs restricting parking may not be visible, and tree canopies may obscure driveways. Mr. Tilghman testified that these problems affect the accuracy of using such "observational" techniques, which has no specific definition in the trade of traffic and parking analysis.

Mary Catherine Snyder testified that SDOT used a different approach to determine the number of spaces for a given length of curb than specified in Tip 117's chart, stating that SDOT used an average of 18' per space rather than Tip 117's guidance. In the chart titled "Number of Legal On-Street Parking Spaces" (Tip 117, p. 6), the legal number of parking spaces for a range of distance of curb space is defined. Comparing the minimum distance for a given number of spaces yields an average dimension of 18.1 feet per space, while the maximum distance for a given number of spaces averages 21.8' per space. Overall, Tip 117's minimum and maximum dimensions result in an average of 19.95' per space. SDOT's choice to use 18' uniformly ignores the variability that occurs in on-street parking efficiency that is built into Tip 117's approach, and has the effect of increasing the inventory by nearly 11% (1-1/(18/19.95)), which in turn has the effect of diminishing the impact of adding new parking demand, hardly a conservative approach.

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The City provided no block plans or worksheets to show the curb measurements or the determination of spaces. See Exhibits 20 & 21. Consequently, the EIS's findings cannot be independently recreated or verified. Nor did the EIS sample two weekday evenings of demand, as Tip 117 advises.

The City's position at 21:16-17 that a broad estimation of parking inventory is appropriate for a non-project action relies in part on the testimony that "there are no specific project details available." But there is nothing about Alternative 2 or the Preferred Alternative that suggests any changes to on-street parking supply would ever occur as ADU's get built. The lack of specific project detail has no bearing on the future supply of on-street parking. The current parking inventory is effectively the future parking inventory and should be accurately reported.

The City's Closing at 21:19 to 22:1 claims that Mr. Tilghman testified that only one day of utilization data collection occurred. But in fact, Mr. Tilghman testified that only one *weekday* (a Friday morning) of data was collected, plus a Saturday. Again, as Mr. Tilghman testified, Tip 117 advises two weekdays (a Tuesday, Wednesday or Thursday).

The City also claims that it used the higher of the two days. But, as noted above, the single early morning sample is not when parking demand peaks in the NW study area, as shown by Tilghman's 7009 Greenwood parking study.

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The City at 22:3-8 notes that the EIS discloses that there would be more localized impacts where parking utilization exceeds 85%. The City's footnote 103 cites to the EIS at 4-185, which reads:

> Although none of the four study locations exceed the 85 percent threshold, there are likely some specific blocks within the study area where on-street parking utilization currently exceeds parking supply and would be more sensitive to changes in local population.

The EIS's language ("…likely some specific blocks…) gives the reader the erroneous impression that fairly few blocks would meet or exceed capacity. But as Mr. Tilghman testified, as many as 43 of the 113 blocks of the NW study area *already* equal or exceed 85%, and therefore are not appropriate candidates for receiving ADUs without mitigation. The EIS never indicates how many blocks would likely reach capacity. The cited EIS text goes on to say:

> The degree of the deficiency and impacts experienced in any given neighborhood depends on many factors including the choices an individual makes about parking on- or off- the street when there are existing off-street parking spaces provided (i.e., in a driveway or a garage that are required or provided by choice).

As Mr. Tilghman testified, that language serves to minimize the impact by suggesting that high utilization stems from residents' choices, as if it were their fault for parking. Tilghman noted that many older driveways and garages are functionally too skinny to be used by modern vehicles. The EIS obscures the fact that the proposed action would increase demand for on-street parking.

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The City at 22:9-16 claims QACC does not know the difference between non-project and project action EISes and argues that lack of information about specific project locations and specific parking demands mean that parking impacts cannot be studied in the same way in a non-project EIS. However, it must be noted that parking inventory is not likely to change due to the proposed legislation, so it should be accurately reported, even based on estimations. For example, the EIS could easily have checked its estimates of parking supply against actual field measurements as IDAX did in response to this appeal to refine its calculation of the inventory. What can also be known and disclosed is how many blocks in the study areas have capacity to absorb an ADU's parking demand without exceeding 85% utilization. The EIS could easily have taken that approach, as Tilghman did, but it did not.

The City at 24:3-11 discusses differences in wheeled measurements. But It is important to put the testimony of Leighton-Cody and Snyder about flaws and discrepancies with wheeling in context: the differences between IDAX's and Tilghman's measurements pale in comparison to the wheeled result and the EIS's inventory. The City's erroneously asserts that "IDAX wheeled the same blocks that Mr. Tilghman had wheeled, and its results showed that wheeling did not consistently result in a lower count of parking inventory than the observational method. In some instances, the wheel resulted in a higher count, sometimes significantly more so than the observational method." However, out of 24 block faces, IDAX's wheeled measurements

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resulted in a higher count in only 2 instances. Each of those instances amounted to 1 extra space. See Exhibit 40.

The first instance was in the NE study area, NE 98th St. between Roosevelt Way NE and 12th Ave NE, south side. Assuming mostly parallel parking, the EIS reported 26 spaces while IDAX measured 27. As Mr. Tilghman testified, NE 98th street has no curb or gutter and has areas where cars may park perpendicular to the street. That is why Mr. Tilghman determined 30 spaces, using a mix of parallel and perpendicular. The second instance was in the NW study area, Division Ave. NW between NW 70th St and NW 67th St., west side. The EIS reported 18 spaces, and IDAX's wheeled measurement found 19 spaces.

The claim that the higher count was "sometimes significantly more" than the EIS fails to understand the assumptions used for NE 98th Street between Roosevelt Way NE and 12th Ave NE as to whether parallel or perpendicular parking predominates. IDAX determined that a perpendicular parking count would be much greater than the parallel count. But not all of this street can be parked perpendicularly, as Mr. Tilghman illustrated in his parking inventory worksheets (see Ex. 15, NE 98th – North Side, Roosevelt Way to 12th Ave NE, and NE 98th St. – South Side, 12th Ave NE to Roosevelt Way where head-in parking and parallel parking is specifically noted based on available depth from the street).

What is clear from IDAX's wheeled measurements is that the count of spaces is significantly less than reported in the EIS, meaning that the impact of additional parking

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demand upon on-street parking would be greater than disclosed within the EIS. In fact, the IDAX counts are very similar to Mr. Tilghman's counts, as Tilghman testified. For example:

- The sections of NE 82nd Street measured by both IDAX and Tilghman resulted in an IDAX total of 56 spaces compared to 75 in the EIS. Mr. Tilghman measured 57 spaces in these blocks. IDAX's wheeled measurement is just 75% of the EIS value.
- IDAX's measurement of NE 98th Street, assuming parallel parking, found 70 spaces, not the 74 in the EIS.
- In additional spot checks in the NE study area, on streets Mr. Tilghman did not sample, IDAX's wheeled measurements yielded 54 spaces where the EIS reported 67 spaces. The wheeled measurement found only 81% of the EIS supply.
- In the NW study area, IDAX's count on 6th Ave NW (total of 6 block faces) was 72 spaces, identical to Tilghman's count, and vastly less than the EIS's reported 99 spaces. The wheeled measurements came to 73% of the EIS value.
- IDAX's additional spot checks in the NW study area totaled 59 spaces versus the EIS's 75 spaces, or just 79% of the reported inventory.

While small differences in individual block counts occurred between IDAX's and Tilghman's measurements, reflecting differences in judgment, they are small compared to the differences to the EIS's inventory. IDAX's counts show that in 22 out of 24 examples, or over 90% of examples, parking supply is significantly less than the EIS discloses. The total of all the block faces checked in Exhibit 40 is 311 spaces for IDAX and 390 spaces for the EIS, proving Mr. Tilghman's point that the EIS systematically overstated parking supply by approximately 25%.

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The EIS also misleads its readers by failing to describe clearly its methods to determine parking supply. It gives the impression that methods detailed in Tip 117 were used when in reality it used estimates based on less detailed observations, estimates that were not verified by field measurements. As Mr. Tilghman and IDAX subsequently demonstrated, a small sample of field measurements would have highlighted the flaws in the estimates and could have produced a more accurate calculation of supply.

3. Mr. Tilghman's data sample demonstrates that the EIS's inventory of parking supply was inflated.

The City at 24:12-18 argues that Mr. Tilghman's data sample was too small to show that EIS's inventory was inflated. But as shown in Exhibit 40, IDAX's measurements on 22 block faces found that the EIS inventory is 25% higher than wheeled measurements. IDAX's NW spot check covered streets Mr. Tilghman did not measure yet found similar results, with the EIS showing 27% more supply than measured by wheel. Tilghman measured 13 block faces for this appeal but had also previously measured 35 other block faces (on streets consistent with those in the NW study area) in his parking study for 7009 Greenwood. See Appendix to Exhibit 11. It was his previous work in Greenwood that alerted him to the inventory problem, as he testified. In total, Mr. Tilghman has measured 48 block faces within the EIS study areas. Of those, 41 were in the NW study area, representing 36% of the area's 113 block faces, a substantial sample. Between Mr. Tilghman and IDAX, a total of 46 separate block faces have been measured in the NW study area, or nearly 41% of the total. Even where Mr. Tilghman's sample was smaller, 8 of 104 block faces in the NE

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study area, his findings were corroborated by IDAX. IDAX measured an additional 5 block faces in the NE study area, so that a combined total of 13 block faces have been measured, a sample size of 12.5%. Whether a sample size of 12.5% of 41%, the trend of EIS's over-estimation of parking supply (and hence under representation of impacts to on-street parking) is consistent.

The City at 24:21 to 25:5 claims that IDAX wheeled counts are 91% of the observational count, much higher than Mr. Tilghman's adjustments. The authors of the City's Closing apparently do not understand the City's own exhibit comparing wheeled measurements to the EIS's observations. Two different types of parking occur in the NE study area: parallel on most streets, and both parallel and perpendicular on some portions of streets such as NE 98th St. Exhibit 40 indicates "lean parallel" or "lean perpendicular" to distinguish the difference for NE 98th St. It also includes a section with the heading "NE parallel and Perpendicular", in which it repeats information for NE 98th St. showing how the count changes when considering perpendicular versus parallel parking. The EIS apparently assumed parallel parking on NE 98th and similar streets lacking curbs and gutters. But the proper tally of all spaces measured in Exhibit 40 excludes the section "NE Parallel and Perpendicular" since those spaces have been included in the first section of the table. That tally is: Observed Tip 117 = 390 spaces; Wheel Measured Tip 117 = 311 spaces (lean parallel). The wheeled measure is 311/390 = 79.7%, not the 91% stated in the brief. That erroneous figure is obtained by including the "NE Parallel and Perpendicular" section which triple counts NE 98th St by

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including “lean parallel” counts twice and adding the “lean perpendicular” count. In short, and as discussed above, IDAX’s wheeled measurements confirm the range of Mr. Tilghman’s adjustment factors, and the EIS’s under reporting of potential impacts to on-street parking.

As Mr. Tilghman testified, there are differences in judgment as to where perpendicular parking occurs on NE 98th St. Mr. Tilghman’s worksheets noted where sufficient depth exists for perpendicular (head-in) parking, and it varies by location along the street. It is not a question of measuring the street for parallel or perpendicular parking exclusively, but of determining where each is most likely to occur. That difference in approach is reflected in the table for NE 98th Street between Roosevelt Way NE and 12th Ave NE, South side, where Mr. Tilghman determined 30 spaces for a mix of parallel and perpendicular parking and IDAX’s wheeled measure (lean perpendicular) yielded 40 spaces. Looking at Mr. Tilghman’s worksheet at Exhibit 6 that shows measurements for segments A through I and dividing each one by 10’ per perpendicular space (and rounding down to the nearest whole number) would yield 42 spaces, or just two more than IDAX’s count of 40. So, the wheeled measurements are not radically different, but the judgment about the type of parking in a given segment does differ depending on the amount of information collected about it.

The City at 25:6-17 asserts that use of the observational method was not unreasonable and that cost considerations support that approach. However, IDAX’s wheeled measurements confirm Tilghman’s point that the EIS inventory is

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systematically inflated in the NE and NW study areas. IDAX measured the same streets Tilghman measured plus additional streets and found that the wheeled measurements were consistently less than the EIS's observational findings. (In only 2 out of 24 checks was the wheeled measurement greater and then by only 1 space). Worse, the EIS did not disclose the true method used to estimate parking supply but instead said that it followed Tip 117's guidance, leading readers and decision makers to think that a detailed inventory had been prepared, when in fact it had not. The EIS did not disclose that it used an estimation method that had not been verified for its accuracy.

The consideration of cost could easily have been addressed by doing what IDAX eventually was asked to do: use wheeled measurements on a sample of block faces to verify the accuracy of the observational method. It could also have relied on recent parking studies prepared for specific projects in the study areas that had already provided wheeled measurements of numerous block faces. See Exhibits 9, 10 & 11.

Contrary to the City's claim, QACC has demonstrated, as has IDAX, that the observational method is flawed by overstating parking inventory in the NE and NW study areas. Yet the City defends its budget constrained and untested estimation methods by saying that that they're sufficient for the specific, comparative purposes of this non-project study. But what comparison is to be made? The City's position is that the impact of the proposed legislation should be assessed based upon an inaccurate,

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inflated inventory. Consistent with SEPA's full disclosure requirements, even a non-project EIS cannot be lawfully based upon inaccurate inventory data.

4. Significant unmitigated impacts to on-street parking would remain.

The City's Closing at 26:1 claims that "…the EIS discloses all probable impacts and discusses potential mitigation of those impacts." This apparently is based upon the statement in the EIS at 4-185 that no adverse parking impacts would occur. But this is based upon flawed methods resulting in an inflated inventory. Lacking identified impacts, no serious discussion of mitigation occurs beyond broad reference to code provisions and implementation of Residential Parking Zones (RPZ). The EIS gives the erroneous impression that few blocks would experience utilization above 85% with the enactment of the proposed legislative changes, when instead the EIS could have identified the number of blocks already at or exceeding 85%, blocks that would not be candidates for ADU development, as Mr. Tilghman testified. It could also have identified the number of blocks where the addition of a single ADU could push utilization to or above 85%, but did it not. Instead, the EIS claims that for each of the alternatives (see pp. 4-185, 4-186, 4-187 and 4-188) "there are likely some blocks within the study area where on-street parking utilization currently exceeds parking supply and would be more sensitive to changes in local population." But it never quantifies the number of blocks already exceeding capacity, and it doesn't indicate the nature of the impact beyond suggesting a high-occupancy block would be "more sensitive to changes in local population." That's a very vague indication of impact with no consideration given

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to potential impacts, such as, longer walking distances from parking, or greater frustration for residents who may not able to park on their block. Indeed, the EIS doesn't address impacts that *residents* would experience. Consequently, the discussion of mitigation is so vague as to be meaningless for a resident.

5. **Failure to consider a proposed increase in maximum occupancy.**

As testified to by Mr. Tilghman the EIS did not considere parking impacts resulting from a 50% increase to the allowed maximum occupancy under the preferred alternative. Apparently in defense, the City at 27:12-14 to 28:1-4 chides Mr. Tilghman for not using maximum occupancy assumptions in his work for 7009 Greenwood Ave NW. But the EIS must evaluate the impact of a proposed legislative change. And that change includes a 50% increase in maximum occupancy over current policy. Surely, it must intend for such occupancy to occur. That's why the EIS should evaluate the change, and why Mr. Tilghman's apartment analysis and other similar analyses don't address maximum occupancy scenarios, in part because the proposed development did not propose a change in average occupancy. But the preferred alternative does propose a change in maximum occupancy. Asserting that maximum occupancy is a rare occurrence is not an evaluation of its impact. Furthermore, it is perfectly appropriate to use an average occupancy for a well-established use, such as a multi-family apartment, where occupancy regulations have been in place for a long time. The focus should be on the adequacy of the EIS's analysis. The EIS didn't indicate degree of impact from maximum occupancy, nor did it quantify parking demand from 12

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unrelated adults living on one lot. Readers and decision makers have no idea how a maximum occupancy scenario would affect on-street parking. The EIS could have done a sensitivity analysis as Tilghman did to put some perspective on that outcome.

6. The analysis of impacts to on-street parking should have considered the effect of perceived barriers to access parking supply.

As Mr. Tilghman testified, in the NW quadrant the EIS did not consider the effect of Greenwood Avenue upon perceived access to on-street parking. City at 29:7-12 seeks to defend this omission by claiming that Mr. Tilghman didn't use perceived barriers in his own study for 7009 Greenwood. For 7009 Greenwood, the study area necessarily included parking on both sides of Greenwood Ave NW, due to the site's location on Greenwood (west side) and the location of pipeline developments, immediately across the street on the east side of Greenwood. See Exhibit 11. Mr. Tilghman's study noted that future parking demand at 7:00 p.m. would exceed both the legal and effective supply within 800' of the project's site due to the combination of pipeline projects and 7009 Greenwood. This would result in pushing demand further into the neighborhood. It stated clearly that spillover from 7009 Greenwood would be expected to favor parking west of Greenwood precisely because the walk would be easier. And Tilghman testified that the project's added demand was assumed to favor the west side of Greenwood for that reason. In discussing the spillover demand created by the combination of pipeline development and the project, Tilghman's report also noted that Dayton Avenue, east of

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Greenwood, would be expected to absorb some of the area's spillover demand, but still stated that project demand would favor parking *west* of Greenwood.

The City at 29:13-15 and 30:1-2 asserts that use of perceived barriers is inconsequential, and only serves to show that some portions of the study area have different rates of utilization than the whole area. But as Tilghman testified, averaging parking utilization across the entire study area masks what happens within key sub-areas. Exhibit 14 & 15 showed existing utilization in sub-areas defined by perceived pedestrian barriers. The EIS relies on the study area's average to reach its conclusion that no adverse parking impacts would occur. The point emphasized by Mr Tilghman that the availability of parking across a major arterial is of little use to someone living in a high utilization area bounded by that street. The EIS stated its assumption that residents prefer to park on the street on which they live, so the availability of parking well away from their own street is of little practical use to them, especially if using that parking involves crossing the perceived barrier street. As Exhibit 15 shows for the NW study area, existing utilization east of Greenwood is 88% (above the 85% threshold), and existing utilization west of 3rd Ave NW is 89% (also above the 85% threshold) while the utilization of the area between them is 75%, yet the availability of parking in that middle area is of little use to people who would have to cross busy streets to use available parking. What the EIS fails to show is that large segments of the NW study area really aren't candidates for ADU development based on existing parking exceeding 85% utilization. This sub-area assessment goes well beyond the EIS's

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acknowledgment of "potential localized impacts on some specific blocks where parking utilization could exceed supply."

7. Pipeline projects should have been considered.

The City at 31:5-10 claims pipeline projects to be irrelevant. The City's Brief previously stated that the study areas were selected in part to include zones near urban villages to capture the effect of commercial and multifamily development on neighborhood parking patterns. Yet, when presented the chance to include known pipeline multi-family and mixed-use projects in its selected study areas, the City disavows their relevance for a non-project review. That position conflicts with the City's own SEPA regulations at SMC 25.05.670, which require the consideration of cumulative impacts. The three developments cited by Mr. Tilghman are existing conditions whose effects upon on-street parking should have been considered by the EIS's assessment of current parking utilization. These developments have been long known by the City. As with other omissions, the EIS's failure to consider the impacts of those projects results in an understatement of the potential on-street parking impacts of the proposed legislative changes.

8. **The EIS fails to identify adequate mitigations for parking impacts.**

The EIS's mitigation discussion consists of a single paragraph at section 4.4.3. It is very vague about the types of mitigation and how such actions would alleviate impacts. First, the statement that "the City will continue to monitor for any changes to parking supply in specific areas that are currently or projected to exceed available supply"

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makes little sense when considering how *demand* compares to supply. Second, the EIS goes on to state that "[i]f issues are identified, the City will rely upon use of regulations in its municipal code, including Vehicles and Traffic (Title 11) and Land Use Code (Title 23), and continued implementation of RPZ's in areas that meet eligibility requirements. Further, the City will continue to implement plans to improve the transit, pedestrian and bicycle network." But the EIS does not identify how and at what point such "issues" would be identified. Rather than anticipating impacts, the City's approach in this case evidently is to experience the impact and then decide whether to apply some existing policy to remedy it, after the fact. It is unclear how a revision to the traffic or land use code would mitigate impacts following development of ADU's unless those code changes would be applied retroactively to an already built project (unlikely, given vesting rules). The EIS's identification of mitigations fails to meet the requirement of SMC 25.05.440.E.3.c that an EIS "[c]learly indicate those mitigation measures … that could be implemented or might be required, [etc.]" As Mr. Tilghman testified, a clear and concrete mitigation for ADU development in areas above 85% utilization would be to retain off-street parking requirements. Yet, the City's appears to prefer to allow such parking impacts to go unmitigated.

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B. The EIS fails to adequately consider impacts upon housing.

1. The adequacy of the EIS's analysis of impacts upon housing, populations, and displacement lies within the scope of the Examiner's review.

The City at 9 erroneously argues that the Examiner lacks jurisdiction to review the adequacy of the EIS's review of impacts upon housing and displacement. Impacts upon populations are among the elements of the environment to be considered SMC 25.05.444.B.2.a. Impacts upon housing are among topics to be considered in the preparation of an EIS, SMC 25.05.440.E.5, as are economic factors, including, *but not limited* employment, public investment, and taxation. SMC 25.05.440.E.6. Impacts upon housing and displacement of vulnerable populations fall squarely within the required scope of an EIS, and are not examples akin to "economic competition, profits and personal income and wages, and … fiscal and welfare policies" beyond the bounds of EIS review as claimed by the City. Because the ruling on the DNS at Conclusions 10 (Exhibit 32) specifically directed the City to consider impacts of the proposed ADU legislation upon housing and displacement, those topics cannot be regarded as simply optional within SMC 25.05.440.G.

2. **The Growth & Equity Analysis does not satisfy the EIS's need to analyze impacts upon housing and vulnerable populations.**

The City at 10 claims that Bill Reid testified that the Growth & Equity Analysis was not data-driven. The City's reference to Mr. Reid's testimony is incomplete. What Mr. Reid said was that the Displacement Index is not "data-driven <u>based on actual</u>

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displacement data."[1] (underscored text representing Reid testimony excised from the quote). The omission of Mr. Reid's specificity about the nature of the Displacement Index results in a mischaracterization of Mr. Reid's testimony, namely that the Displacement Index is intended to gauge displacement potential based on a variety of social well-being (equity) indicators, but does not attempt to predict displacement based on any historical data of realized displacement and gentrification.

The City at 10-11 oversells the scope of the Growth & Equity Analysis by arguing that it provides "an appropriate basis for the FEIS's displacement analysis … and provides a forward-looking analysis of future displacement risk." The Growth & Equity Analysis source of the Displacement Index itself warns against misunderstanding what it is, what it intends to accomplish, and what it is not:

> "The indices and maps in the Growth & Equity Analysis should be **used with caution**. This is a **first attempt to understand equity effects** of broad City policies, and results of the analysis depend on the selection and weighting of indicators."[2]
>
> "These indices are high-level assessments that **can inform (but should not predetermine)** decisions about growth, investment, and policy. **Greater historical and qualitative context is needed to avoid simplistic conclusions**."[3]
>
> "Engagement with those most affected by the equity issues evaluated here **should complement this analysis** and inform policy makers' decisions."[4]

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[1] Hr'g Tr. 120:6–122:3, March 25, 2019 (Testimony of W. Reid).
[2] Seattle 2035 Growth and Equity, Analyzing Impacts on Displacement and Opportunity Related to Seattle's Growth Strategy, May 2016, Seattle Office of Planning & Community Development, Page 15.
[3] Ibid
[4] Ibid

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> "The indices present **'snapshots in time' based on the best currently available data** and on research indicating relationships between that data and both displacement risk and access to opportunity… Furthermore, these indicators **will change over time**."[5]
>
> "The displacement risk index is an assessment of susceptibility, **not a predictor of future outcomes**. Whether displacement occurs depends on several factors, such as the timing and intensity of growth and the public investments that precede or accompany it."[6] [Emphasis added in bold.]

Given all of these caveats provided within the Growth & Equity Analysis report itself, Mr. Reid's testimony accurately contends that its use in the ADU EIS is problematic for any predictive power connecting displacement impacts to ADU construction as modeled in the EIS as the Index is not based on historical data and should be informed by historical data pertinent to new housing production and loss or gain in vulnerable household populations in Seattle. Contrary to the City's assertion, it does purport to provide a forward-looking analysis of future displacement risk.

The City's claim at 10 that the Growth & Equity Analysis provide analysis of future displacement risk applicable to ADU development is further undercut by the scope of the analysis itself, because it focuses on growth in urban centers and villages, not within the single family neighborhoods impacts by the ADU proposal. As the Growth & Equity Analysis itself states in its introductory section: "The analysis seeks to answer the following questions:

- Is the intensity of expected growth in particular urban centers and villages likely to have an impact on displacement of marginalized populations?

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[5] Ibid
[6] Ibid

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- Is the intensity of expected growth in particular urban centers and villages likely to have an impact on marginalized populations' access to key determinants of physical, social, and economic well-being?

- What strategies and levels of investment are necessary to mitigate the impacts of expected growth and to maximize opportunities for equitable incomes?"[7]

In other words, the Displacement Index is constructed to explain displacement risk in Urban Villages and Centers and would likely be inadequate as any sort of measure of displacement risk within the ADU EIS study area which excludes Urban Centers and Villages. Limited historical data about populations of different racial composition discussed within the Growth & Equity Analysis are limited to Urban Villages and Centers, as exemplified by Figure 2 "Urban centers and villages in Seattle with a decrease in population by race, 1990 to 2010."[8] In discussing historical population by race, no attempt is made in the document to connect or explain any relationship between historical population by race data and incidence of new housing construction likely contributing to if not causing displacement.

3. Existing data of household displacement should have been used.

The City at 11 contends that Appendix M to the MHA EIS mostly analyzed data from multi-family and mixed use zones and therefore argues that it has limited applicability to the ADU proposal which would apply only to single family

[7] Seattle 2035 Growth and Equity, Analyzing Impacts on Displacement and Opportunity Related to Seattle's Growth Strategy, May 2016, Seattle Office of Planning & Community Development, Page 5.

[8] Seattle 2035 Growth and Equity, Analyzing Impacts on Displacement and Opportunity Related to Seattle's Growth Strategy, May 2016, Seattle Office of Planning & Community Development, Page 9.

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neighborhoods. While it may be technically true that most housing production considered in Appendix M was in Central Seattle census tracts that include South Lake Union, Capital Hill, and Downtown, nonetheless Appendix M is comprehensive in its data for all City of Seattle census tracts, many of which are overwhelmingly zoned as single-family housing, therefore including the ADU EIS study area. Nowhere in Appendix M or Section 3.1 of the MHA EIS is there a qualification that "total housing produced" in each census tract in Appendix M is of any predominance or even share of multifamily-zoned areas. Granted, for analysis of potential impacts of the ADU proposal, it would have been more useful for Appendix M to focus on census tracts zoned single family. To assess potential impacts of the ADU proposal, that's what the EIS should have done. At the moment, Appendix M is the best data available of the negative impact of intensification of zoning upon vulnerable populations.

The City at 12 postulates a hypothetical (displacement measured by change in income rather than change in household) to criticize Mr. Reid's identification of the likelihood of increased displacement in more vulnerable neighborhoods. The City's assertion and the conclusion that follows from it are a gross mischaracterization of both displacement data in MHA EIS Appendix M as well as Mr. Reid's testimony.

To begin with, the hypothetical is not representative because it would be an isolated exception and an outlier as proven by the loss of Persons of Color population in Seattle documented in Figure 2 of the Growth & Equity Analysis itself.[9]

[9] Ibid.

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Mr. Reid's reliance upon Appendix M is well-founded. All data points in Appendix M represent the following information for each census tract in the City of Seattle:

- The number of new housing units constructed in that Seattle census tract over the study period; and
- The number of households of a particular demographic group that were gained or lost over the study period.

In terms of actual displacement – the loss of economically vulnerable households as new housing is built – Appendix M data is the closest data known and reported by the City of Seattle to measure displacement itself and specifically by census tract. In Appendix M, many data points (census tracts) show the following reality:

- Addition of new market rate housing or addition of any new housing (market rate or income-restricted); and
- *Net loss* in households of a specific demographic definition (race or income level primarily).

The only reasonable conclusion from each census tract data point that shows new housing construction but loss of economically vulnerable households during that time is that displacement is occurring in that census tract, and in some census tracts where vulnerable household loss is sizeable, displacement is significant. New housing is neither retaining economically vulnerable households nor increasing the number of economically vulnerable households in those census tracts.

While Appendix M does not purport to be a "definitive" analysis of population and housing displacement and its causes, the City in the MHA EIS does utilize the data to conduct a citywide correlation analysis to characterize the impact of new housing

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production upon vulnerable households. In other words, although City legal counsel argue Appendix M data points do not describe displacement, the MHA EIS utilizes these data points to describe whether or not displacement is occurring with a correlation analysis. Each data point (census tract) is fed into a correlation calculation to establish a relationship between new housing construction and whether or not vulnerable households are at risk. Even though the correlation analysis is citywide, it does document by census tract that within poorer neighborhoods and those of greater ethnic minority, new market rate housing has resulted in the loss of households. The ruling on the DNS at Conclusions 8-10 directed the City to specifically consider impacts of ADU expansion upon housing and vulnerable populations identified by Mr. Reid in the prior proceeding. The City has data that demonstrate in census tracts involving both multi-family and single-family housing the expansion of new market rate housing results in the loss of lower income and minority populations. With that data in hand, the City was obliged to take the next step and analyze its proposed legislation for the same impacts.

4. **The parcel typology fails to consider impacts upon more vulnerable households.**

The City at 13-14 mischaracterizes Mr. Reid's criticism of the parcel typology. Mr. Reid faulted the parcel typology not for its failure to consider every parcel in the City, but for its failure to include within its sample the economically most vulnerable single family households. Mr. Reid's testimony indicated that parcel types throughout the City of Seattle vary greatly and that the selection of a limited number of parcel types and qualities for modeling purposes was inadequate and incorrect. Economically vulnerable

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households comprise the minority of households in Seattle, and are an exception to the most common types of households. Existing housing that entry level purchasers can currently afford – and which may be threatened by DADU or ADU construction – is the exception or minority of the Seattle housing stock. This housing stock is more prevalent in lower income neighborhoods. Rather than focusing on 12 generic single family lots, the methodology employed in the ADU EIS also should have explored the question of what parcel types are the minority and likely less common but are more prone and vulnerable to modification or outright demolition and replacement by new construction with an ADU, a DADU, or both. Modeling the most common types of parcels throughout the City by design ignores what parcel types are less typical and, therefore, may be more vulnerable to loss with the new policy. By modeling the parcel typology types, the analysis yields results that are valid only for parcels that most closely represent these common parcels and not those parcels where occupants are most vulnerable to displacement.

5. The Residual Land Value methodology fails to cover the majority of single-family ownership.

The City at 15-16 attempts to dismiss Mr. Reid's criticisms of the City's reliance on the Residual Land Value (RLV) methology and claims that that methodology uses the same inputs as the Return on Cost analysis, apparently based on the testimony of Mr. Shook, who is not an economist. Again, the City is mistaken. As testified by Mr. Reid, Return on Cost analysis is utilized for financial return analysis on many different types of assets besides real estate as it compares a stream of costs to a stream of

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income to determine if the income is worth the costs. Residual Land Value analysis is highly unique to the financial analysis in real estate development. It asks and attempts to answer the following question: How much can a developer afford to pay for a property given all of the costs of development and eventual income generated by that development and then need to make a profit? Each methodology is very different, with RLV being a far more complicated analysis and not similar to the more basic Return on Cost approach to return analysis.

As Mr. Reid discussed at length, the question a developer can afford to pay for a parcel of property – the Residual Land Value – is unique to a situation where a party considers buying a house or a parcel at market price and then considers converting the property to a new use. The RLV, therefore, is only pertinent to situations where a developer looking to buy a property with (or without) existing improvements at current market price might construct an ADU, a DADU, or some combination of the two.

Also extensively described by Mr. Reid, in instances where a property owner considers modifications to a property in which they already hold title, the property owner need not consider the implications of how much the property costs before they develop or redevelop it. They already own it. There is no need to consider Residual Land Value. Households that already own a house – particularly those who own a house and rent it out – face higher potential return from ADU and DADU construction, including demolition of the existing structure and replacement of it, because they do not have the high, upfront cost of purchasing the property at current market price. They already own

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it, purchased it at a lower price in the past, and have paid down some amount of the debt that was taken on to purchase the house in the past. For this reason, as Mr. Reid described, existing property owners' decision-making should have been modeled differently because their cost equation is lower. This indicates higher likelihood to convert the property by adding ADUs or demolishing the home and being replaced by up to three units including two ADUs. Nor is there any showing in the EIS, that the forecasting model included within its adjustment factors application of Return on Cost by existing parcel owners.

6. The sale of units as condominia was not considered.

As QACC pointed out in its Closing Argument at 22-23, the development and sale of a principal dwelling and two ADUs (or a AADU and DADU) carry a higher potential return than the sale of such a development as a single lot. Even though that potential was not considered within any of the four possible ways of valuing the property at in Appendix A at A-13 and none of the 44 possible outcomes in the Appendix A at 1-11-12, the City at 18 nonetheless maintains that its methodologies considered that option. In fact, it did not. Mr. Shook could point to no scenarios of development and sale that considered that option. As he clarified after repeated questioning, the fourth option for valuing the property, considered sale of the entire parcel, not sale of individual condominium units.

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C. Land Use and Aesthetics

1. Failure to consider impacts upon actual neighborhoods.

The City at 33:6-17 claims, without evidence, that they have utilized "typical and standardized methodology to assess impacts," and because their witness Mr. Kuehne has prepared such computer models before, it somehow represents a "common approach for aesthetic analysis." The City provided no evidence that such an aesthetic analysis has ever been completed to demonstrate a comprehensive aesthetic analysis for a non-project action that includes half the land area of a city the size of Seattle. It has not been done. Mr. Kuehne testified that he made up the two-block model from discussions with Mr. Welch and represented that while he attempted to depict a range of property sizes and building forms, he in no way ever used real Seattle Neighborhoods, real Seattle homes, or evaluated impacts with residents, although he claimed that he and others considered using actual neighborhoods but it would be too expensive to do so. In fact, his familiarity with Seattle neighborhoods was principally based upon virtual, not actual, observations.

Additionally, the City at 33:14-17 claims that Mr. Kuehne "used a three-dimensional modeling software that accurately reflects all real-life dimensions and accurately reflects differences in development regulations" while providing no evidence that their computer modelling could possiblly reflect all real-life dimensions. Within a planning area the size of half of Seattle's land area, no computer modelling could

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capture “all real-life dimensions” and that is why Mr. Kuehne and Mr. Welch should have considered using real neighborhoods which would have been typical for Seattle.

The City at 33:20 to 34:3 erroneously contends that the hypothetical block “allows for depiction of a wider range of characteristics than might exist in an actual block, and in that sense, provides better representation than using an actual block.” The City’s reliance upon a hypothetical computer model of a one two-block area of Seattle significantly underestimates the typical variation found in US cities of equal size to Seattle. Among thousands of actual two-block neighborhood scenarios throughout over 34 single family neighborhoods in Seattle, it is against the “rule of reason” to assume that completing a proper EIS, as directed in the former DNS hearing, could rely upon such a limited two-block sample composed by a Portland-based technician with no history or experience in Seattle neighborhoods. Reliance upon the non-project action rationalization to eliminate consideration of actual neighborhoods renders this EIS woefully inadequate.

At 35:4-7 the City notes that the EIS “finds that there could be minor impacts to height, bulk and scale generally and also acknowledges potential localized impacts to the extent that ADUs are concentrated in a particular area.” While the EIS acknowledges “localized impacts,” the EIS fails to study, identify, or discuss any mitigation whatsoever concerning what those impacts may be. The EIS aesthetics analysis uses only one generic hypothetical computer model, without reference to one actual neighborhood that may suffer such impacts. The shortcoming of the EIS’s model

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is even more apparent in its failure to depict impacts upon the City's neighborhoods most vulnerable to displacement and conversion (i.e., the lesser expensive neighborhoods identified by Mr. Reid). In no way does Mr. Kuehn's model begin to represent those communities. Based upon his testimony, it is doubtful he was even aware of their existence.

The City claims at 35:8 that "the addition of an FAR limit would serve to lessen those aesthetic impacts because it would reduce the size of the largest house that someone could build on that property." The imposition of a FAR would not significantly limit the scope of a teardown and new construction. The .5 FAR only relates to the principal dwelling unit and above grade floor area. It does not include basements which are defined as spaces that extend below grade 48" or more. So, daylight basements and other living spaces increase the actual FAR, but would not be limited. In addition, this FAR restriction does not apply to ADU development. Even under this policy, the construction of two ADU's at 1,000 sf each could increase the FAR to .9 (2500 sf + 1000 sf + 1000 sf = 4500 sf , which amounts to a FAR of .9 on a 5000 sf lot), a potential scale of development which the EIS fails to adequately discuss or identify any mitigation. As Mr. Kaplan testified, the significant impacts and changes to the land use form from increased height, bulk, and scale would be exacerbated by the condominiumization of principal and accessory dwelling units.

The City at 35:18 to 38:2 asserts that "Mr. Kaplan mischaracterized or misunderstood elements of the proposal in a manner that exaggerates the purported

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aesthetic impacts [and that] the aesthetics exhibits he presented are not accurate depictions of the proposal… ." Mr Kaplan neither misunderstood nor mischaracterized any elements of the proposal. As Mr. Kaplan testified, he was among a few members of the Seattle Planning Commission in 2005-2006 who researched and authored the original codes allowing for the development of ADU's, eventually becoming a city-wide ordinance in 2009 to present day. Mr. Kaplan led the efforts to appeal the DNS that the City advanced in 2016 claiming that removing regulations and effectively eliminating single-family zoning would have few if any environmental impacts. Mr. Kaplan has been intimately involved since 2015 in working with City planners and councilmembers in encouraging a complete, transparent, and neighborhood inclusive study of all the environmental impacts. Contrary to the community-based, bottoms-up planning that was more typical in the past, the City has taken a tops-down approach with its ADU legislation with minimal involvement of neighborhood organizations and virtually no effort to include the 350,000 single-family neighborhood residents, apart from rather minimal notice, commenting and hearing opportunities.

2. Response to criticisms of Mr. Kaplan's testimony.

The City at 36 – 39 assails Mr. Kaplan's testimony on a number of accusations, which are responded to here.

- **Dimensioned drawings**

The City criticizes Mr. Kaplan for lack of use of dimensioned drawings in his exhibits**.** True, Mr. Kaplan did not testify or present evidence that depicted dimensioned

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drawings. The evidence that Mr. Kaplan presented and testified to was used to illustrate the significant differences between composing a hypothetical, computer two-block model and actual photographs of real Seattle neighborhoods. The City mischaracterized Mr. Kaplan's testimony in that his evidentiary areal photos were used as visual aids in proving the differences between the City's hypothetical computer drawings and numerous actual neighborhood areal photos presented to illustrate the inadequacy of the City's model in representing all, or even selected, Seattle neighborhood blocks. The evidence clearly illustrated the deficiency in the City's model to accurately depict lot coverage from houses and trees, inadequate parking representations, and existing conditions related to height, bulk and aesthetic considerations that would be affected by the proposed legislative changes. Mr. Kaplan made no representation that the drawings in the EIS needed to be dimensioned as such dimensioning was not necessary in evaluating his exhibits and their obvious comparisons to the City's computer model.

- **Changes to subdivision laws**

Mr. Kaplan's testimony regarding lot size specifically focused upon the City's lack of study of any potential impacts from not differentiating between lots of 3,200 sf and upward. Like the City's hypothetical computer model that falsely claimed that it could represent all Seattle two-block areas, Mr. Kaplan's critique of the small lot issue revealed that within the EIS, there was no evaluation of any policy impacts that could result in greater impacts to smaller lots. Simply stated, the City's policy discussed in the

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EIS treated all Seattle lot sizes over 3,200 sf the same. Mr. Kaplan's faulted the EIS for not studying differences in impacts upon differently sized lots. He pointed out that allowing 12 unrelated people to occupy three units on a 3,200 sf lot with no more than a single off-street parking space would have a much greater environmental impact than three units on larger lots within the City's typology. Not only did the EIS fail to study or identify any potential conflicts and impacts, it in turn did not identify any mitigations to address the greater impacts presented by ADU development on smaller lots, including increased on-street parking impacts and greater tree loss. Notably, the EIS points to no studies (other than its own) of the impacts of allowing ADU development on single family lots of less than 4,000 sf.

- **Increased lot coverage**

The City in one breath claims the preferred alternative would not allow increased lot coverage, but in the next admits that it would allow an increase in rear yard lot coverage. As one of the authors of the original legislation, and a member of the Seattle Planning Commission from 2004 thru 2012 and a practicing Seattle architect for well over 4 decades, Mr. Kaplan is well aware of all the land use and building codes in Seattle. Mr. Kaplan did not contend that the proposed legislation would change the maximum lot coverage limitations in single family zoning. Instead Mr. Kaplan's critique of the EIS inadequacy included the fact that the policy allows for a 50% increase in the rear yard lot coverage and the environmental impacts from such a significant change were not discussed or even evaluated in the EIS. He pointed out that for many decades

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the lot coverage limits in single-family neighborhoods have not changed, but to not consider even one environmental impact (*e.g*., reduction in tree canopy) from allowing a 50% increase in rear yard coverage was a significant failure of the EIS.

- **Street widths**

Mr. Kapan testified used his exhibits of real neighborhood areal photographs to show the contrast between the results of the City's hypothetical computer model and actual photos of real Seattle neighborhoods and streets. As the City claims that Mr. Kaplan admitted he did not know the dimensions shown in the model, no one could have known except Mr. Kuehne who was responsible for composing the computer model. Mr. Kaplan's testimony illustrated the differences in real streets and parking counts in real areal photos compared to the City's hypothetical model that failed to consider actual parking counts. Mr. Kaplan simply pointed out that the streets in the City model looked woefully barren of cars which would give a decision maker the false impression that the street, no matter the width, could accommodate many more cars, which Mr. Kaplan simply pointed out did not provide a true representation of a typical Seattle neighborhood street.

- **Lot sizes**

The City again mischaracterizes Mr. Kaplan's testimony. He clearly testified and illustrated that the EIS is deficient in properly depicting a common two-block area of the city, especially as the City represents in the EIS that their model is representative city-wide. Mr. Kaplan simply used his exhibits and areal photos to demonstrate the

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significant differences in the City's model and real Seattle neighborhoods. He demonstrated that the City's depiction of property size and house size significantly understates the impacts created by removing the policy regulation the EIS claims to study. Mr. Kaplan suggested that the City model looked more like an "Arizona suburb" than a Seattle neighborhood and used his exhibit to prove his point. Additionally, he pointed out that by misrepresenting the scale and density of a typical neighborhood, a decision maker would not understand the true potential impacts of the policy and therefore criticized the EIS for significantly failing to use a true, and accurate representation of a Seattle neighborhood while making claims of no impacts.

- **Illustrations from the Portland study.**

Mr. Kaplan presented illustrations from the Portland study to show the scale of development allowed under the proposed legislation discussed in the EIS. In addition, Mr. Kaplan explained that this exhibit revealing the factual inaccuracy of the EIS's representations regarding the effect of a .5 FAR limitation. The EIS has claimed that the purpose of the .5 FAR limit is to limit the height, scale and bulk of new construction. However, Mr. Kaplan used the document to illustrate that the .5 FAR limit would only apply to the principal structure and would exempt all floor area 4 feet below grade, the floor area of ADUs, and garages and other accessory structures. The City's representation of the .5 FAR limit is misleading, because the various exceptions would allow a FAR of up to .9 on a 5000 sf lot, as pointed out above.

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- **Illustrations from MHA EIS.**

The City mischaracterizes the intent of the illustrations Mr. Kaplan presented in the MHA illustration. The drawings in the exhibit, prepared by the City and annotated by QACC for the purpose of comparing height, bulk and scale, were offered to support Mr. Kaplan's testimony that allowing 12 unrelated people to live on one property, housed in three units, with no additional on-site parking is comparable to converting single-family properties to multi-family zoning. The two illustrations are simple architectural renderings of a box – first prepared to illustrate an allowable form within a multi-family zone. While the City's challenge to Mr. Kaplan using this exhibit appeared to be based upon the literal composition of the original drawing and the annotated comparable QACC drawing, Mr. Kaplan was clear that the two drawings had only one purpose in that they depicted that a similar height, bulk, and scale could be achieved thru the policies presented in the EIS, and these physical results from these policies were not revealed, studied, or mitigated in any way within the EIS. Mr. Kaplan was clear about what he was attempting to show.

- **Exhibit 28**

Upon first presenting this exhibit, Mr. Kaplan found a discrepancy and miscalculation within the spreadsheet and suggested that there was an error. Upon further analysis, he was able to correct the spreadsheet and offer the correct numbers. But those corrected numbers did not change the relevance of the points presented in the exhibit regarding the inadequacy of the City's hypothetical two-block model compared to actual

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Seattle neighborhood models which revealed many significant differences and impacts for which the City chose not to evaluate, admit, or discuss in the EIS.

- **Maximum occupancy of up to 12 unrelated adults**

The City incorrectly argues that Mr. Kaplan's exhibit and testimony were inaccurate in exploring and exposing the true impacts from studying actual neighborhoods. The Hearing Examiner in QACC's DNS appeal hearing directed the City within an EIS to address, study and explore the impacts from a full build-out pursuant to the proposed policy changes. As Mr. Kaplan clearly demonstrated with his exhibits, the EIS did not comply with this directive.

- **FAR limits**

The City erroneously contends that Mr. Kaplan's testimony was based on an incorrect understanding of lot coverage calculations. Once again, the City mischaracterizes Mr. Kaplan's testimony and exhibits. As a member of a team who helped author the Multi-Family code and define LR1 and FAR limits while serving on the Seattle Planning Commission, Mr. Kaplan is quite familiar with the land use code. The City's criticism opinion is misleading because it ignores the thrust of Mr. Kaplan's testimony which clearly pointed out that while the EIS represents that the preferred alternative would impose a.5 FAR limit on a principal dwelling unit, that alternative would actually encourage buildings of three units and a FAR approaching 1.0, which the EIS fails completely to disclose or provide any mitigation for. Mr. Kaplan's testimony

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simply pointed out the that imposition of a FAR limit of .5 FAR was misleading in that it failed to disclose the actual building intensity could result.

- **Mr. Kaplan's criticisms of the EIS are well-founded.**

Contrary to the City's urging at 39:16 to 40:3 that Mr. Kaplan's testimony be given no weight, the thrust of his testimony remains sound: 1) the EIS fails to analyze the "height, bulk and scale impacts … in the context of the actual development environment created by the legislation," namely, within actual City neighborhoods, rather than a hypothetical mock-up more characteristic of an Arizona suburb; 2) reliance on a .5 FAR limit is misleading and misrepresents and understates the actual building mass that could result from construction under the preferred alternative; 3) no analysis was given to the proposal to increase lot occupancy by 50% from 8 to 12; and 4) the EIS did not analyze impacts to the land use form that could result from the City's policy of allowing individual units on a single family lot to be sold off as condominium units.

3. **The EIS should have analyzed impacts on specific neighborhoods.**

The City at 42-43 contends that nothing in SEPA compels a neighborhood specific analysis. The City hides behind the "non-project" veil to claim that rezoning half of the city relieves it of the need to consider impacts of its actions upon actual neighborhoods within the city. Instead, the EIS relies upon one computer model, composed in an office in Portland, Oregon instead of actually studying and analyzing real Seattle neighborhoods. In so doing, the City's one-size-fits-all, two-block model ignores hundreds of inconsistent existing neighborhood variables and 350,000 citizens

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as they disregarded real-time exposure to actual neighborhoods, people, and current vulnerabilities. While Mr. Welch and Mr. Kuehne testified that their computer modelling was more representative and a proven methodology, they offered no proof or comparable examples that such a methodology was either standard or provided reliable data in any US city as a non-project city-wide action. Reliance upon such a model challenges any professional standard, opinion and common "rule of reason." The City attempts to defend its hypothetical, two-block modelling as being cost effective. But when the Hearing Examiner in the DNS appeal directed the City to complete a full EIS and to consider the actual development environment, she did not direct that it be done as cheaply as possible. The Examiner was clear that the City's proposed policy changes would result in changes to the land use form that required analysis through an EIS. The City has ignored this directive.

4. Lack of analysis of a three unit structure.

The City at 41-43 seeks to dismiss the failure of the EIS to analyze height, bulk and scale impacts of development of a principal dwelling and two ADUs within a large, single structure. In discussion of the 'box' form that Mr. Kaplan addressed, the City claims that its analysis included forms depicting two ADU's. Mr. Kaplan's illustration of pointed out that the EIS lacked any modelling of such a 3-unit building, which would be allowable under the City's proposal. Mr. Keuhne admitted that he did not model such a building form as he was directed to only compose a drawing of a house with 1 ADU plus one Backyard Cottage. Upon examination, Mr. Welch and Mr. Kuehne attempted to

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diminish this representation as being more impactful visually, however, Mr. Kaplan clearly refuted that contention on grounds that no passerby would even recognize any backyard, as only the street front building form would obscure any DADU. The City failed to consider, study, and illustrate impacts from a 3-unit building.

The City claims that Mr. Kuehne's **"**extensive experience modeling code changes" somehow absolves the City from making obvious errors in both methodology and modeling. Mr. Kuehne, when challenged to show where singular building forms were analyzed, admitted he could not. He was given specific instructions and had no experience living in, or learning of Seattle neighborhoods, yet the City believes his interpretations deserves "greater weight" than QACC's experts who have decades of professional experience working in Seattle. The City claims that their exhibits do explore the "boxy" forms Mr. Kaplan testified to, however they do not. City witnesses admitted in testimony that they did not consider these forms, favoring a backyard cottage DADU instead as they claimed that the DADU would provide greater visual impact (possibly from the air). Mr. Kaplan clearly explained that this deficiency in the EIS was obvious and not "more conservative" as the City now postulates. By defending their disregard of a 3 unit building and focusing on the DADU form instead, the City ignores the policy-encouraged change in the land use form that Mr. Reid and Mr. Kaplan both testified to. The City also criticizes Mr. Kaplan's testimony that the hypothetical model does not accurately depict trees and cars. In defense of their admittedly inadequate investigation into the environmental impacts upon parking and

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tree canopy they attempt to defend instead that Mr. Kuehne "testified, (that) the purpose of an aesthetics analysis is to focus on showing potential changes to the built form, not to trees or cars." The model fails to address the impacts of increased parking and tree removal. Upon being confronted with that fact, Mr. Keuhne pivoted immediately to suggest that he left some trees out of his model so as not to interfere with showing buildings, which reveals the failure of the model to deplict the full aesthetic impacts of the proposed legislation.

5. The EIS failed to adequately analyze changes to the land use form.

The City at 43-49 disagrees with QACC's contention that the EIS adequately considered changes to the land use form. Mr. Kaplan consistently described the EIS's inadequacies in addressing impacts to the land use form, something the Examiner's DNS decision required be considered.

The City's contention that QACC witnesses failed to challenge the EIS discussion of land use form conflicts with the evidence presented. First, all QACC witnesses challenged the idea that one isolated and non-representative two-block model could be used to define, study, identify and mitigate any city-wide environmental impacts. The City failed to identify one city in the country which has rezoned half of its land area, then performed a study, and found no evidence of impact to the land use form. Instead, Mr. Reid, Mr Tilghman, and Mr. Kaplan each testified that the City's lack of study of any land area other than one made-up, two block, hypothetical model provided evidence that the EIS satisfied the direction given by the former Examiner.

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Instead, without evidence or one example from any other city in the country, the City simply asserts in conclusory fashion "that the proposal will result in minor increases in building and population density that will unfold incrementally over ten years and would likely continue to be distributed throughout the city." This assertion underscores the disconnect between the hypothetical computer model and the analysis of impacts upon actual, representative neighborhoods.

6. The EIS fails to consider the impact on the land use form of condominiumizing ADUs.

The City at 45-49 incorrectly contends that the analyses in the EIS consider the possibility of condominiumization of ADUs. This is a reach, as neither the EIS nor its Appendices ever mention the concept, or its impacts upon the land use form. Until QACC exposed the practice and provided evidence to the City within this proceeding the City paid no attention to the practice, so it's a bit disingenuous for the City to now contend that condominiumization of ADUs had been considered all along. QACC's evidence clearly illustrates the practice of some developers to purchase lesser valued properties, build a DADU, sign a legally binding covenant requiring ownership and occupancy, then create and sell the house and DADU as separate condominiums, and at a far greater price than the original purchase price for the land. Whether or not the practice is lawful, it has been tolerated by SDCI and is therefore a form of development, sale and ownership that should have been considered as part of the various forms of development and sale of ADUs, which was not.

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The City at 46-47 incorrectly asserts that there is no evidence in the record that the condominiumization would increase teardowns or change the land use form. To the contrary, Mr. Kaplan, speaking from 40 years of experience as both an architect and a developer of single family and multi-family housing testified that a teardown and redevelopment of single family property in the form of a three unit condominium would change the design from the outside by encouraging the maximization of the each of the units on the lots in order to maximize the return on investment. And Bill Reid, a housing economist, testified that condominiumization of units would become an added stimulus for teardown and re-development as it would enable a quicker return on investment. These opinions are by professionals in the field, and not idle speculation. QACC's presentation of two examples does not does support the City's claim that the practice would be rare, particularly since its proposed legislation would make the practice more likely given the proposed increase to two ADUs. By its nature, an EIS involves the consideration of future impacts.

7. Adding ADUs does not change minimum lots size.

Contrary to the City's assertion at 47, Mr. Kaplan did not contend that the proposed legislation would change minimum lot size requirements. Instead Mr. Kaplan testified as to the likelihood of developers combining larger properties and using a number of legal means to subdivide larger lots into lots as small as 3,750 sf that would then allow for the development of three residences on each of the created lots. For example, a property owner with one house on a lot larger that 7,500 sf, would be able to

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create two lots and under the EIS preferred alternative construct 3 residences per lot, allowing residency for up to 24 unrelated people, with only two on-site parking spaces, resulting in a greater intensification of land use beyond prior existing conditions.

8. **Whether or not labeled "multi-family" the development of three units per lot is not exactly single-family development.**

The City at 49 claims the Mr. Kaplan asserts that the proposed legislation would allow multi-family development in single family areas. Labels aside, the preferred alternative would allow for one house with two ADUs to be constructed within the same building envelope. Professional architects, developers and most anyone would call this configuration a triplex, and define a triplex as a multi-family residence. When confronted with why he chose not two model such an outcome Mr. Kuehne struggled to find a representation on his model and even suggested that a single structure could have three entries. The City's quibbling over semantics does not provide much of a defense to its EIS.

III. CONCLUSION

The EIS fails to adequately identify, study, and propose even one mitigation for many significant environmental impacts associated with socio-economic, displacement, parking, aesthetic, and land use form changes and impacts. By relying upon non-representative computer modeling of a two-block, hypothetical, miniscule area of the entire city, and relying on a typology of generic lots, the City neglected to consider the extraordinary diversity in populations, neighborhood age and character, adopted Neighborhood Plans, actual streets and tree canopy, unique topography, and many

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other significant elements of the environment that would be affected by its proposed expansion of ADU development.

For reasons given in this reply and the prior closing argument, the EIS should be found inadequate and remanded back to the City Council for issuance of a supplemental EIS that fully considers impacts of the proposed legislative changes.

Dated this 26th day of April, 2019.

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DECLARATION OF SERVICE

I am over eighteen years of age and competent to be a witness herein. On the date below, I served by email copies of the foregoing document upon the parties of record, addressed as follows:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED: April 26, 2019 /s/_____
Jeffrey M. Eustis

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