

City of Seattle
Office of Hearing Examiner

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In Re: Determination of Non-Significance (DNS) for Proposed Land Use Code Text Amendments Concerning Lowrise ("L") Zones by Seattle Department of Planning and Development, Dated April 22, 2010 by John G. Shaw, Senior Transportation Planner

No. _____

OFFICE OF
HEARING EXAMINER

1. Appellants:

Seattle Community Council Federation
Seattle Displacement Coalition
John Barber, Leschi
Rick Barrett, Haller Lake
Bill Bradburd, Jackson Place
Jeannie Hale, Laurelhurst
Greg Hill, Wallingford
Kathryn Keller, Madison Valley
Chris Leman, Eastlake
Jeanette Means, Eastlake
Anna Nissen, Queen Anne
Michael Oxman, West Seattle
Dennis Saxman, Capitol Hill
Toby Thaler, Fremont
Irene Wall, Phinney Ridge

The Seattle Community Council Federation is a Washington non-profit corporation incorporated in 1948. Since that time, as a coalition of community councils and other neighborhood based organizations, the SCCF has advocated for the conservation and improvement of the quality of life for all residents of the City of Seattle. Members of the SCCF are residents of lowrise ("L") zones in the City of Seattle.

The Seattle Displacement Coalition is a 26 year-old region-wide low income housing organization, made up of low income residents, the homeless, and representatives of social service, church, civil rights, women's, and community-based organizations. The SDC was created to provide a forum for affected people and their supporters to call for preservation and expansion of low income housing and other measures that ensure a fairer distribution of economic and political resources in the Seattle/King County area. Members of the SDC are residents of L zones in the City of Seattle.

Individual appellants are residents of Seattle who live in or near L zones and who will be significantly affected by the proposed land use code text amendments. These effects include changes in the likely density, design, and infrastructure that will occur in the L zones if the proposed land use code text amendments are adopted and implemented. These changes together constitute a likely significant adverse impact on the lives of the individual appellants and the members of the organizational appellants.

2. Authorized Representative:

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3. Affected Property

There are over 4,000 acres of L zones in the City of Seattle that would be affected by the proposed land use code text amendments. These properties are located throughout the city.

4. Statement of Issues on Appeal

This appeal concerns the City of Seattle Department of Planning and Development's ("DPD") determination that proposed land use code text amendments affecting over 4,000 acres of land will not have a significant adverse impact on the environment. Under the State Environmental Policy Act ("SEPA"), the City's determination of non-significance ("DNS") means that no further environmental review will be conducted prior to potential adoption by the City Council and implementation by DPD.

Appellants' two basic issue categories are: 1) the SEPA checklist dated April 5, 2010 fails to provide support for many of its conclusions; and 2) the decision and checklist contain numerous errors of fact and analysis that minimize or ignore significant impacts, and improperly presume that mitigation will occur. Appellants reserve the right to further develop the specific issues based on the record of supporting documents produced by DPD.

Appellants' initial statement of issues include but are not limited to the following objections:

a. Improper definition of the proposal

- i. The City's SEPA regulations clearly state alternatives should be considered, especially for non-project actions. SMC 25.05.060(C)(1)(c). Alternatives are noticeably absent in the document, particularly for the issues listed in c. below.
- ii. The proposal is for a "GMA (Growth Management Act) action." WAC 197-11-220(4). The City has failed to comply with its policies mandating integrated consideration of SEPA and GMA actions. SMC 25.05.030(B)(5).

b. Incomplete, inadequate, and inaccurate information to inform the analysis and conclusions

- i. DPD failed to gather information sufficient to evaluate the probable impact of the non-project action or the future development that would be allowed by the proposed zoning changes.
- ii. Supporting documents are not listed.
- iii. By focusing only on the differences between existing legislation and the proposed changes,

- analysis of the full effects of the proposed changes in the L zones are avoided.
- iv. The DNS is framed as a non-project action, and as a result the majority of the checklist provides no evaluation of specific impacts. Yet the checklist states that over 12,000 additional units of housing will result from the proposed zoning changes and specifics of housing units are used to assess traffic and parking impacts.
 - v. The decision ignores obvious impacts that are clearly stated in the checklist, such as “The proposal would result in an appreciably greater amount of impervious covering compared to what existing zoning provisions allow.”
 - vi. The decision ignores impacts to whole environmental areas of concern, such as storm water runoff into Lakes Washington and Union and Puget Sound.
 - vii. The decision states “The proposed changes do not significantly increase the size or density of potential development projects or the likely number of projects that would be built in the affected zones.” Yet elsewhere it states that a net increase of 12,000 units of housing is possible with these changes.
 - viii. The determination did not assess increased need for adequate infrastructure and maintenance and repair of existing infrastructure in neighborhoods that will receive increased density.
 - ix. DPD failed to gather information sufficient to evaluate the probable impact of the non-project action on our city's remaining stock of low income housing due to the future development that would be allowed by the proposed zoning changes. What limited information they provide in this regard is wholly misleading and inaccurate.

c. Lack of cumulative impacts analysis

- i. The determination did not consider the cumulative effect of planned zoning changes now in process in areas adjacent to lowrise zones, such as South Downtown and the LINK Light Rail Station Areas, and considers only a partial accounting of the city's total developable residential capacity.
- ii. Increased lot coverage and reduced open space and set backs will undoubtedly result in cumulative adverse impacts from limited surface permeability for natural infiltration of storm water, curtailment of tree canopy restoration and conservation, and adequate space for tree roots to allow healthy tree growth, and continued fire hazards that have not been evaluated. The proposal conflicts with State and local goals and policies in these areas.
- iii. Impacts to animal habitat such as native bird populations including cavity nesters, urban runoff as a component of non-point pollution impacting salmon, and other water quality impacted wildlife
- iv. Environmental benefits and durability of ‘Green Factor’ Green roofs, use of the planting strip for trees, green walls and other factors are unproven.
- v. Removing parking requirements has negative adverse impacts on parking availability in some already dense neighborhoods and existing local businesses in some historic neighborhood business districts. Assumptions about transit availability used to justify removing parking requirements are flawed.
- vi. The checklist does not address and the decision does not consider the net increases in CO₂ (a greenhouse gas pollutant) associated with increased demolition, reconstruction, vegetation loss, and population density far in excess of transit provisions, contrary to city goals and policies related to Carbon Neutrality.
- vii. The decision does not consider the net effect of these changes on our dwindling stock of low income housing either within the affected zones, adjacent to those zones, or to the city as a whole.

d. Improper presumption that mitigation will be effective to prevent significant adverse impacts

- i. By use of a “non-project” checklist and DNS for the proposed zoning changes, specific impacts are not evaluated. Very few specific projects for these zones will meet SEPA review thresholds, thereby allowing these zoning changes that will affect six square miles of Seattle to proceed without any further SEPA analysis or development of mitigation.
- ii. The decision substantially relies on an assumption that review of individual projects will allow for mitigation of any significant adverse environmental harm. This ignores past practices of DPD in refusing to require mitigation on small projects, DPD’s persistent allowance of micro-permitting, and the fact that almost none of the individual projects will be subject to environmental review or conditioning to prevent impacts.
- iii. The appropriate time to determine the effectiveness of mitigation for future aggregate significant adverse environmental impacts that will be exempt from further SEPA review is at the present non-project level. DPD’s checklist and DNS errs by presuming the effectiveness of mitigation for a variety of impacts without any supporting documents or analysis. The effect of this error is to eliminate any possibility of sufficient mitigation of the significant adverse environmental harm that will result from the proposed zoning changes.

e. Impacts on housing affordability are improperly evaluated

- i. Assertions that increased density necessarily houses more people are unsupported by evidence and impacts on the region's significant demographic shift have not been assessed.
- ii. Assertions that increased density leads to affordability are not supported by evidence. Impacts to existing affordable housing stock are not assessed in terms of demolition loss and those of modest means being outbid by developers and land speculators.
- iii. Specific SEPA housing mitigation policies are ignored by the DNS and checklist (SMC 25.05.675).

f. Impacts on compatibility with historic properties, mature areas, and planned new character are ignored

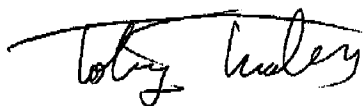
- i. The checklist and decision ignore the potential loss of significant blocks of historical (as opposed to historic) housing.
- ii. The LDT zone on North 36th Street in Fremont was expressly put into this zone to conserve the century old historic housing. The proposed changes are likely to result in the destruction of irreplaceable resources such as these specific blocks and diminish the quality of life for residents throughout the city.
- iii. The checklist and decision inadequately considers the compatibility of new construction with existing neighborhoods outside designated growth areas and with desired new character inside growth areas refined with the use of neighborhood plans and design guidelines.

5. Request for Relief

DPD’s DNS should be vacated with direction to either prepare a more complete and accurate checklist to inform a new decision, revise the proposal to comply with a DNS decision, or issue a declaration of significance and commence scoping for preparation of an environmental impact statement (EIS).

6. Signatures

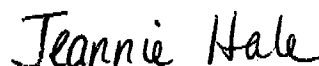
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Dated: May 13, 2010

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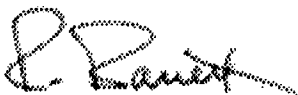
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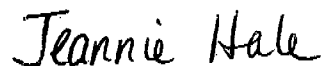
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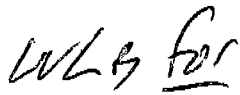
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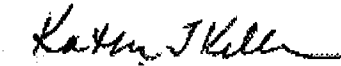
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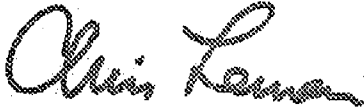
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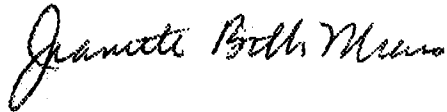
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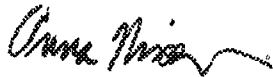
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