

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of

TreePac Environmental Impact Review
(TEIR) and Greenwood Exceptional
Trees (GET) of the November 15, 2021,
Determination of Non-Significance by Brennon
Staley, Office of Planning and Community
Development.

Hearing Examiner File:

W-21-007

OPCD's RESPONSE TO APPELLANT'S
POST-HEARING BRIEF

**I. OPCD PROPERLY DETERMINED THE POTENTIAL IMPACTS OF THE
PROPOSAL WOULD BE MINOR.**

OPCD properly determined that the potential impacts of the Proposal would be minor.

1. Potential impacts were properly analyzed in relation to the baseline.

The potential impacts were properly analyzed in relation to the established baseline. The baseline environmental conditions are the current uses and developmental regulations that currently apply to developments in the multifamily zone, particularly the LR1 zone, under the existing code. The baseline includes existing development conditions within the affected areas and development expected to occur within the future time horizon under the current code

1 conditions.¹

2 **2. Brennon Staley's preparation of the environmental checklist and**
3 **analysis together with Geoff Wentlandt's thoughtful review and**
4 **determination met the prima facie requirements of SEPA.**

5 Brennon Staley, the lead project manager for this Proposal, described the factors that
6 were taken into consideration as he prepared the environmental checklist. *Staley Testimony*,
7 Volume I, p. 66-69.²

8 In response to Section D(2) of the environmental checklist, Mr. Staley described how the
9 Proposal would likely affect plants, animals, fish, or marine life. *Staley Testimony*, Volume I, p.
10 71-73. Mr. Staley testified:

11 In terms of plants. . . we're not modifying, we're not allowing development in any
12 new areas, we're not allowing any new types of development, we're not changing
13 the floor area, the height, we're not changing the stormwater regulations, we're
14 not changing the green factor regulations, we're not changing the open space
15 regulations, parking regulations. All those mean that . . . for sites that . . . would
16 be developed under either scenario [i.e., current code or proposed], you know, the
17 footprint of the buildings is going to be, in broad sense, generally very similar.
18 But there are - - could be kind of minor impacts in terms of how changes to bike
19 parking and - - you know, and parking - - and automobile parking might affect it.

20 . . .

21 Removing the short-term bike parking requirement will free up more space for
22 planting, and that could potentially - - that could be planted with trees and
23 vegetation . . . allowing more flexibility where you locate bike parking so that it
doesn't as frequently need to be in front and rear setbacks also would allow for
potential more space that could potentially be planted. Allowing parking to be
partially underneath the building could also potentially reduce the amount of . . .
impervious space needed for parking. And . . . making it easier to put on alleys
similarly could because it would remove the need for driveways. On the other
side, if - - in some cases, if it changes the density of a . . . unit, that might slightly
increase impervious surface, which would reduce plants.

¹ The impacts from development allowed under current code conditions were studied in prior threshold determinations and EISs.

² Attached to this brief is an updated Volume I of the Official Transcript that OPCD received on March 21, 2022. OPCD will electronically file this updated Volume I and provide an electronic copy to Appellants. To save paper, OPCD will not plan to provide a hardcopy of the official transcript to the Hearing Examiner unless necessary.

1 *Staley Testimony*, Volume I, p. 71-72; See also Ex. 3, Section D(2).

2 Mr. Staley also concluded that:

3 Overall, because of all the regulations that are in place, because we're not allowing
4 development in new areas, because we're not allowing new types of development,
5 because . . . development can already - - is already allowed through (inaudible)
mechanisms the densities that we're considering here, that these things. . . are going
to be minor changes overall.

6 *Staley Testimony*, Volume I, p. 72.; See also Ex. 3, p. 16.

7 Mr. Staley also recognized that existing code chapters are in place and are relevant in
8 determining that there would be minor impacts to plants and vegetation, such as the Shoreline
9 Master Program, Environmental Critical Area regulations, stormwater code, as well as the tree
10 protection code. *Staley Testimony*, Volume I, p. 74; See also SMC 25.05.665.D. He also
11 confirmed his awareness that the City recently introduced a new proposal to amend the tree
12 protection code intended to provide even more tree protections than are currently provided. *Id.* at
13 78.

14 In addition, Mr. Staley referred to the existing environmentally critical area regulations
15 and shoreline regulations as existing regulations that reduce the Proposal's impacts to threatened
16 or endangered species and habitat, as well as existing Director's Rule 13-2018 that provides
17 specific protections to Great Blue Heron habitat, none of which are proposed to be amended by
18 the Proposal. *Staley Testimony*, Volume I, p. 80-81.

19 Regarding the review of impacts to historic resources, Mr. Staley testified that the
20 analysis looked at historic districts and landmarked properties, characterizing the extent of
21 historic properties in the LR1 zone to understand what the potential would be. Mr. Staley also
22 recognized that no modifications were proposed to existing landmark regulations, which already
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1 limit and modify demolition or construction of those areas. *Staley Testimony*, Volume I, p. 80-
2 81; Ex. 3, p. 17; See also SMC 25.05.675.H.2.

3 Regarding potential impacts to transportation access and parking, Mr. Staley testified that
4 the Proposal's bike storage amendments would make it easier for people to park their bikes
5 within the future projects. Also, any incremental encouragement of more townhomes would
6 encourage more housing in places where people can bike to things, so that would make biking
7 and use of transit easier. *Staley Testimony*, Volume I, p. 86. The Proposal would not change the
8 underlying car parking requirements, but it would make it slightly easier to accommodate car
9 parking on site. If the Proposal encourages additional density, Mr. Staley recognized that might
10 increase the amount of car parking on site, but such increases would be very minor changes to
11 the basic form and are kind of generally consistent with the types of housing development
12 already being built within the City of Seattle under current code. *Id.*, p. 86-87; See also Ex. 3, p.
13 19-20.

14 Regarding utilities, Mr. Staley testified that OPCD works closely with Seattle Public
15 Utilities and Seattle City Light to understand their needs and that, overall, the kind of
16 development is consistent with what they are expecting to see within the City of Seattle. Mr.
17 Staley recognized that there would be minor impacts, but that they would be very incremental.
18 Mr. Staley also confirmed that Seattle Public Utilities received notice of the Proposal and did not
19 provide any comments expressing concern about the Proposal. *Staley Testimony*, Volume I, p.
20 87; See also Ex. 3, p. 19-20.

21 Geoff Wentlandt, in response to being asked whether he agreed with Brennon Staley's
22 testimony describing the Proposal as being small in scale with minor impacts that are not
23 significant, Mr. Wentlandt testified:

1 I do agree with that testimony. A couple of the things that I noted from the
2 testimony are that the proposed legislation does not rezone any property. It does
3 not propose any changes to setback distances. It does not propose any changes to
4 height limits. It does not propose any changes to the open space requirements on
5 new development. It does not propose any changes to the green factor landscaping
6 requirement. So, you know, with those points in mind, I do agree with Mr.
7 Staley's testimony that there are some environmental impacts which come
8 through in the checklists as well as the determination, but those impacts - - I think
9 he used the term "minor," and I would agree that in general those impacts are
10 minor.

11 *Wentlandt Testimony*, Volume I, p. 166.

12 **3. OPCD properly undertook a quantitative and qualitative analysis**
13 **because it was impossible to forecast the environmental impacts with**
14 **precision as some variables could not be predicted or quantified.**

15 Mr. Wentlandt testified that the environmental checklist as well as the DNS recognize
16 that there are environmental benefits that are described along with potential impacts in some of
17 the sections and that it is difficult to predict over a future time horizon the exact configuration of
18 development without speculating. *Wentlandt Testimony*, Volume I, p. 187-88. The state SEPA
19 rules recognize this difficulty, and provide that for some proposals, it may be impossible to
20 forecast the environmental impacts with precision, often because some variables cannot be
21 predicted or values cannot be quantified. WAC 197-11-330(3).

22 OPCD did perform a GIS analysis to specifically quantify the amount of lots within each
23 lowrise zone that might redevelop within the time horizon, utilizing OPCDs development
capacity model, while also considering relevant factors such as whether the lot is an interior or
corner lot, whether the lot includes environmentally critical areas or is within the shoreline
district, or whether there are designated landmarks or is within a historical district.

However, OPCD is not able to predict the specific type of, and design of, future
development and the impacts cannot be quantified with precision. For instance:

- a property owner may decide not to redevelop a lot, even though OPCD identified it as one that might potentially redevelop.
- a developer might choose to build apartments or cottage housing in the LR1 zone, which are allowed under current code without any density limits so long as the development is subject to MHA suffix (which most are). The Proposal only makes minor adjustments to townhouse and rowhouse development and would not make any change to development of apartment or cottage housing different from the status quo.
- a developer may choose not to provide any onsite parking if the code does not require parking be provided based on proximity to frequent transit service, or a developer may utilize a design that includes onsite parking within the structure's footprint, so as not to include any additional impervious surface for parking or may utilize a design that includes parking by an alley so as to avoid the need for a driveway.
- a developer may propose a development that retains existing trees onsite or might propose to mitigate loss of vegetation from construction activities by planting new trees and vegetation onsite or planting street trees.

These are just a few examples that illustrate why it is not feasible and would be speculative to quantify potential future impacts. Pursuant to WAC 197-11-330(3), OPCD properly undertook a quantitative approach when feasible, and a qualitative approach to analyzing potential future impacts that are not quantifiable.

II. APPELLANT FAILED TO MEET ITS HIGH BURDEN OF PROOF.

Appellant bears the burden to prove the City was clearly erroneous in issuing the DNS. Appellant fails to meet this high burden.

1. SEPA does not require consideration of every remote and speculative consequence of an action.

SEPA does not require consideration of every remote and speculative consequence of an action. *Murden Cove Preservation Ass'n v. Kitsap County*, 41 Wn. App. 515, 526, 704 P.2d 1242 (1985). Contrary to Appellant's assertions, OPCD is not required to provide a parcel-by-parcel Google Earth review of tree canopy as shown on Google's satellite imagery for the thousands of lots identified by the City that have the potential to be redeveloped in the LR1 zone.³ Mr. Ellison

³ See Appellant Post-Hearing Brief, p. 10, line 6.

1 did not hold himself out to be a GIS expert. The Appellant did not provide any testimony from a
2 GIS expert explaining how 2016 tree canopy assessment data could be analyzed five years later
3 in a timely and meaningful way to determine and measure potential impacts from the Proposal in
4 relation to the baseline, i.e., impacts that have occurred and are expected to occur under existing
5 code.

6 Further, SEPA does not require the City analyze and establish, for each and every project
7 or non-project action, how each individual action will meet the Urban Forest Management Plan's
8 2007 goal to achieve 30% tree canopy cover citywide, or a 20% tree canopy cover in multi-
9 family residential zones, by 2037.⁴ The 20% coverage goal is a goal for all lands within the
10 multi-family residential zones, which includes all lowrise, midrise, and highrise residential
11 zones. The affected area of the Proposal is far less in scope than the total area included in the
12 multi-family residential zone. Even if the Proposal's affected area lined up neatly with the total
13 area of the multi-family residential zone, SEPA does not specifically require a tree canopy
14 coverage analysis. Instead, it requires a hard look at a proposal's impacts to plants and
15 vegetation, which might include a tree canopy coverage analysis, but does not necessarily require
16 one in order to meet SEPA prima facie requirements.

17 **2. Appellant makes erroneous assertions in its Post-Hearing Brief.**

18 First, the Proposal does not "increase the number of rowhouses and townhouses on a typical
19 parcel. . . ." as stated by Appellant.⁵ Rather, the Proposal amends code provisions that might allow
20 for future incremental increase in the number of rowhouses and townhouses on a parcel.

21 Second, Appellant notes that a lot that develops with rowhouses and townhouses would
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23 ⁴ The 2020 Urban Forest Management Plan is attached here as Appendix II.

⁵ See Appellant's Post-Hearing Brief, p. 11, line 13-14.

1 not be limited to a “future use of lot segregation techniques,” but Appellant ignores the fact that
2 if the lot develops rowhouses or townhomes, or a combination of both at 1 du/1150 square feet as
3 would be allowed under the Proposal, the building footprint of the area would then be fully
4 developed, and any future use of lot segregation would not result in any further development.⁶

5 Third, Appellant is wrong that a future tree canopy cover assessment expected to be
6 produced later this year would “further exacerbate the proposal’s” impacts.⁷ The tree canopy
7 cover assessment anticipated later in 2022 will not be relevant, nor provide insight to assessing
8 the potential impacts of this Proposal in relation to the current code, as any gain or loss to
9 Seattle’s tree canopy identified in the 2022 tree canopy assessment will have occurred under the
10 current city code or historical versions of the code.

11 Fourth, Ex. 7 was prepared by the City to illustrate that existing projects or project
12 applications involving a combination of rowhouses and townhomes through a lot subdivision or
13 lot boundary adjustment, were already achieving a substantially similar density under the current
14 code as the density level proposed in the Proposal.⁸ Ex. 7 was not prepared and presented to
15 represent “good examples of LR1 development” as asserted by Appellant.⁹ Ex. 7 illustrates the
16 existing conditions and is relevant to establishing the baseline as to what densities are currently
17 achieved under the existing code. *Staley Testimony*, Volume I, p. 107.

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22 ⁶ See Appellant’s Post-Hearing Brief, p. 11, line 14.

23 ⁷ See Appellant’s Post-Hearing Brief, p. 13, line 17-18.

⁸ Lot segregations are allowed pursuant to chapter 23.24 SMC and lot boundary adjustments are allowed pursuant to chapter 23.28 SMC.

⁹ See Appellant’s Post-Hearing Brief, p. 10, line 1.

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DATED this 23rd day of March 2022.

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1 **CERTIFICATE OF SERVICE**

2 I certify that on this date, I electronically filed a copy of the foregoing document with the
3 Seattle Hearing Examiner using its e-filing system.

4 I also certify that on this date, a copy of the same document was sent via email to the
5 following parties:

6 TreePac Environmental Review
7 512 N. 82nd Street
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9 Richard Ellison, Chair & Vice President
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10 Dated this 23rd day of March 2022, at Seattle, Washington.

11
12 s/ Eric Nygren
13 ERIC NYGREN, Legal Assistant
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