BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeals of MBAKS, LEGACY GROUP, BLUEPRINT CAPITAL from a Determination of Non-Significance issued by the Director, Seattle Department of Construction and Inspections.	NO. W-22-003 Department Reference: 000268-22PN INTERVENOR TREEPAC'S RESPONSE TO APPELLANTS' CLOSING BRIEF

ARGUMENT

A. Appellants did not meet their burden of presenting actual evidence of probable significant adverse impacts from the proposal.

When an appellant complains that a local jurisdiction failed to adequately identify or mitigate certain probable significant adverse impacts after conducting its requisite SEPA review, but then presents no evidence to show that such impacts exist, their challenge to a DNS must be denied.[1] In this case, Appellants' Closing Brief drives the point home that they have presented no evidence to demonstrate that the Proposed Action will cause probable significant adverse housing or land use impacts.

[1] *Boehm v. City of Vancouver*, 111 Wn. App 711, 719-20, 47 P.3d 137 (2002).

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SEPA requires an EIS only for "legislation and other major actions having a "*probable* significant, adverse environmental impact."[2] "Probable" means that SEPA's provisions require the consideration of impacts that are "likely, not merely speculative."[3]

The term "probable" is defined as:

> …likely or reasonably likely to occur, as in a 'reasonable probability of more than a moderate effect on the quality of the environment. (See WAC 197-11-794). Probable is used to distinguish likely impacts from those that merely have a possibility of occurring, but are remote or speculative.[4]

SEPA also requires that the impact be "significant," which means a reasonable likelihood of more than a moderate adverse impact on environmental quality.[5] "Significance" also involves a weighing of the severity of the impact along with the likelihood of its occurrence.[6] It is also worth noting that SEPA does not require that all adverse impacts of a development proposal be eliminated, because, if it did, no change in land use would ever be possible.[7]

Appellants evidence was entirely speculative and anecdotal. None of their witnesses conducted an actual impact analysis of any kind. The entire premise of their case –*i.e.*, that some unknown number of lots in the City may not be developed in the future if the amendments are adopted – was based on conjecture, faulty logic, and a disregard for the fact that the Proposed Action will actually make it easier for developers to build at full capacity on sites that have protected trees on them. Also, and perhaps more importantly, even if we accepted that premise as true, Appellants failed

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2 RCW 43.21C.031.
3 SMC 25.05.060(D)(1); *Boehm*, 111 Wn. App at 720.
4 SMC 25.05.782.
5 SMC 25.05.794.
6 SMC 25.05.794(B).
7 *Marantha Min., Inc. v. Pierce Cty,* 59 Wn App 795, 804, 801 P.2d 985 (1990).

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to actually connect the dots to demonstrate that the lack of development of this unknown number of lots will cause probable significant impacts to future housing stock in the City of Seattle.

Appellants' assertion that developers will pass on opportunities to develop or redevelop properties was based on anecdotal, shooting from the hip, statements of lay witnesses Lucas Deherrera, Michael Pollard, and Todd Britsch. Mr. Deherrera spent the majority of his testimony looking backwards at a process that won't even apply under the Proposed Action. He complained about the delays, uncertainty, and costs associated with the streamlined design review process, which is currently required for review of development projects on sites that have exceptional trees on them. Under the current code, for tree protection on sites undergoing development in low-rise zones, if the Director determines that an exceptional tree is located on the lot of a proposed development and the tree is not proposed to be preserved, the development "shall go through streamlined design review."[8] If there is an exceptional tree on the site, a development project that otherwise would be exempt from design review must adhere to all of the design review guidelines that are set forth in Intervenor Exhibit 12. This means that the substantive review goes far beyond just the tree review itself – the project must also be consistent with architectural context and site requirements, public life requirements (walkability, street level interaction), open space requirements, and much, much more.[9] Once streamlined design review is triggered, (1) a pre-application conference is required, (2) applicants are required to engage in extensive community outreach, (3) the applicant must prepare a full design review packet, (4) public comments must be received from the public, and (5) SDCI must prepare a full report that identifies all of the guidelines and documents the design changes to achieve consistency with all of the design guidelines, and more.[10]

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[8] SMC 25.11.070.
[9] Intervenor Ex. 12.
[10] SMC 23.41.018

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According to Mr. Deherrera, this design review process is unpredictable and can take six to nine months of extra time for review. Also, according to Mr. Deherrera, it can cost a developer $50,000 to $100,000 to go through streamlined design review. Mr. Deherrera testified that if a tree on a project site was not going to be easy to save, they would no longer pursue development on that site because the streamlined design review process was too costly, time consuming, and expensive. Based on Mr. Deherrera's testimony, they reject the 450 to 500 sites during feasibility analysis because those projects have to go through the time consuming and uncertain streamlined design review process. When Mr. Deherrera compared the single-family zone process for tree review (Type 1 permit review) with the low-rise zone tree review, he testified that the single-family zone process was far less complex and time consuming than the low-rise process, because the single-family zone process did not require streamlined design review.

But therein lies the rub. The streamlined design review process will no longer be required for tree review under the Proposed Action. All of those concerns - all of the extra time, extra cost, and unpredictability – will be gone under the new ordinance. With the Proposed Action, the tree review process will be a Type 1 permit review, and will, therefore, be more efficient and straightforward than the current tree review process. With the Proposed Action, development that is otherwise exempt from design review, but has a protected tree on the site, will no longer have to go through design review and will no longer have to be consistent with all of the design guidelines. And, with the Proposed Action, the lowrise zone tree review will be similar to that which occurs currently for the single-family zone tree review. Therefore, based on Mr. Deherrera's testimony, the amendments will make it easier for developers to develop lots that have protected trees on them.

And that's not the only change that will make it easier for developers to develop sites with regulated trees under the Proposed Action. The Proposed Action also introduces a new simple

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"payment in lieu" approach that will allow developers to remove protected trees on the site to allow them to develop at full capacity with the most marketable design desired while paying a mitigation fee into a fund instead of having to plant new trees on the site. That fact was noticeably absent from Appellants' witnesses' testimony. Perhaps recognizing that this undermines their entire case, Appellants do attempt to argue in their Closing Brief that the payment in lieu option will itself cause increased adverse impacts, but that argument should be rejected outright because (1) it makes no sense because it's an option that allows for complete removal of trees from the site that didn't exist before and (2) they provided no citation to any evidence in the record to support a claim that this change will increase impacts.

Appellants' argument that the Proposed Action will lead to fewer housing developments is based entirely on backward looking anecdotal stories about the costly, time-consuming, and unpredictable tree review process of the past. They are stuck in the misguided mindset that the tree review process will not change with the Proposed Action despite the elimination of the design review requirement and despite the introduction of the payment-in-lieu option.

Also, while Appellants argue that developers avoid moving forward with development on properties that have regulated trees on them, Mr. Pollard's testimony demonstrated exactly the opposite. Not only did Mr. Pollard admit that he's pursued multiple development projects in the past on sites with regulated trees, but the list of projects in Appellants Exhibit 21 drove the point home. Appellants Exhibit 21 provides a list of the current active projects that are in progress – projects that Shelter Homes decided to move forward with.[11] According to that document, there are exceptional trees on 6 of the 10 project sites that Mr. Pollard's company decided to move forward with.[12] This

[11] Appellant Ex. 21.
[12] *Id*.

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means that the *majority* of projects that made it through their feasibility review had exceptional trees on the site. The fact that Mr. Pollard's company is currently pursuing the development of 238 housing units on 10 different project sites right now and 6 of those 10 project sites have exceptional trees on them (totaling 13 exceptional trees) exposes the fallacy of their argument that developers do not and will not build housing on sites that contain regulated trees.[13]

Mr. Deherrera also admitted that Blueprint does develop properties with regulated trees on them and, in fact, saves "a ton of" trees. Mr. Deherrera went even farther to say that Blueprint "saves more trees than anybody." Therefore, there are development projects moving forward on lots that have protected trees on them.

It is also notable that Mr. Deherrera and Mr. Pollard represent the limited perspective of only two development companies out of an unknown number of other developers in the City of Seattle. When asked on cross about whether some other developers may move forward with projects that have regulated trees on them following the adoption of the Proposed Action, Mr. Deherrera testified, "I can only speak for Blueprint. It's a strictly single-family question for us now." He testified "I don't talk to other developers that much." He couldn't quantify whether Blueprint does more than all of the other lowrise developers combined – he "didn't have the numbers."

Appellants' Closing Brief stated that Blueprint is the "largest developer of housing in Seattle in single-family and multi-family low-rise zones."[14] That is not an accurate reflection of Mr. Deherrera's testimony. Mr. Deherrera stated that Blueprint was the largest "low-rise" developer, not the largest developer. According to Mr. Deherrera, Blueprint engages in a very limited category of

[13] *Id*.
[14] Appellant Closing Brief at 8.

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development, which is "mostly small projects." They develop 90% single-family and only 10% low-rise projects. Their lowrise projects do not exceed 6 units.

Todd Britsch's testimony was pure conjecture and speculation. His vague conclusion that the Proposed Action would cause a drop in development was based on "conversations with developers." He did not conduct a housing impacts analysis of the Proposed Action and he did not demonstrate a connection between the Proposed Action and significant impacts to housing in the City that would supposedly be caused by the Proposed Action itself. In fact, it became obvious on cross examination that Mr. Britsch was not even familiar with what the Proposed Action required or allowed with respect to tree protections and removals and/or how it differed from the current code requirements. It is impossible to accept any of his testimony as credible when he's not even familiar with the Proposed Action that was the subject of SEPA review.

The shoot from the hip guesswork of Mr. Pollard and Mr. Deherrera that 12" DBH trees are on 75% – 80% of buildable lots is not consistent with the quantitative data or studies in the hearing record. Mr. Deherrera explicitly said that he didn't conduct any analysis and that this was a "guess." In fact, the evidence based in scientific analysis in the record reveals that these witnesses' subjective impressions were way off the mark. The City's estimation of properties, using LiDAR data from the 2016 Tree Canopy Assessment as detailed in Appellants' Exhibit 28, calculated that 15.90 percent of all City lots and 18 percent of single-family lots had trees over 12 inches DBH. This number, 18%, is obviously not even close to 75% or 80%. In addition, the Seattle Forest Ecosystem Values Report (Aug. 2012) summarizes the results of the Forest Ecosystems Values Project, which used the USDA Forest Services iTree Ecotool to conduct a comprehensive analysis of the current extent and condition

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of Seattle's urban forest.[15] Tree and shrub size and species information was used to quantify associated ecosystem functions and their public benefits and economic values.[16] ". . . Within the single-family residential unit, 18 percent of the urban forest trees are 12 inches in diameter and 55 percent are less than 6 inches diameter."[17] The 18 percent was based on a ground measurement analysis.[18]

Appellants characterize the increase of the number of developable lots with regulated trees as an increase of "300%" to paint a false picture that the impacts are significant (if it's a 300% increase, it must be big!). But a 300% increase of a small number is still a small number. For purposes of assessing housing impacts, SDCI appropriately considered the percentage of affected lots in the context of all of the lots in the entire City of Seattle. This so-called "300%" increase is also less impactful when you consider that the majority of those affected lots are within single-family zoning and not in the multi-family zones within Urban Centers and Urban Villages, where the majority of development of future housing is mandated to occur.[19]

Finally, but perhaps most importantly, even if less housing will be created than otherwise would without the Proposed Action, that does not demonstrate that there will be a significant adverse impact on future housing in the City of Seattle. Nowhere did Appellants quantify, or even attempt to quantify, how much "less housing" there will be or how that lower amount would play out in the larger context of housing and development throughout the entire City. When asked what the impacts will be on future housing of the regulation of significant trees under the new proposal, Mr. Deherrera simply said "Blueprint will do less projects." Even if it was true that Blueprint will pursue fewer housing

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15 Intervenor Ex. 6
16 *Id*.
17 *Id.* at 10.
18 *Id*.
19 City of Seattle Comprehensive Plan, Citywide Planning at 10; City Ex. 22 at 12; Testimony of Gordon Clowers; Appellant Ex. 27.

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projects, that does not, in and of itself, lead to a conclusion that the Proposed Action will have probable significant adverse impacts on housing and land use in the City of Seattle.

Appellants introduce brand new arguments about a failure to consider adverse impacts on neighborhood character, affordable housing, infrastructure, and utilities in their Closing Brief despite clear direction from the Hearing Examiner during the hearing that Appellants are strictly limited to raising issues that are identified in their notice of appeal. Obviously, it is inappropriate to raise new issues that were not identified in the notice of appeal and that were not addressed via evidence during the hearing. These arguments should be disregarded and stricken entirely not only because they are baseless and weren't properly raised, but also because the City and TreePAC did not have any opportunity to present evidence to rebut those claims.

B. The City satisfied its burden of demonstrating prima facie compliance with SEPA's procedural requirements.

Nothing in Appellants' Closing Brief effectively rebuts the fact that the City considered the proposal's potential housing and land use impacts in a manner reasonably sufficient to amount to prima facie compliance with the requirements of SEPA. *See Anderson v. Pierce County*, 86 Wn. App 290, 302, 936 P.2d 432 (1997). The decision to issue a DNS was based on information sufficient to evaluate the Proposed Action's impacts on housing and land use.

It was plainly evident that Mr. Clowers relied on more than just the checklist, the language of the proposed ordinance and the Director's Report in drafting the DNS.[20] For his assessment of housing and land use impacts, he relied on SDCI's assessment of the estimated number of newly regulated trees, the number of new sites affected by the regulated trees, and the increase in permits per year related to tree removal under the amendments. Mr. Clowers also reviewed information that revealed

[20] *See* Appellant Closing Brief; TreePAC's Closing Brief at 4-11.

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that a large amount of the properties that are affected by the Proposal would be a lower density residential usage and, therefore, the overall potential of the Proposal to affect the total amount of future growth potential was limited. He considered the current tree protection regulations in Chapter 25.11 of the Seattle Municipal Code and compared those regulations to the proposed amendments to determine whether the flexibilities that allow for removal of regulated trees under the current code would be changed in any way. He also reviewed Seattle's Comprehensive Plan and determined that the proposal is consistent with the City's goals and policies, specifically supporting the City's Urban Forest Management Plan and the Seattle Comprehensive Plan's environmental-related goals, growth strategy and housing goals, environmental and land use policies.

Mr. Clowers did not simply make "assumptions" about housing availability and future housing impacts as Appellants contend, rather he made reasonable conclusions based on substantial evidence regarding (1) the ability of developers to continue developing properties with trees on them after the Proposed Action is adopted, (2) the inclusion of waivers and payment in lieu allowances in the Proposed Action that will allow developers to develop at full capacity on affected lots, (3) the removal of the streamlined design review requirement for review of regulated trees, (4) the fact that trees on affected lots may be easily preserved on some lots, (5) the fact that the affected lots are a small percentage in the larger context of developable lots within the City of Seattle, (6) the fact that the majority of lots affected by the Proposed Action are in single-family zones and not in multi-family zones (Urban Centers or Urban Villages), which are the areas where future housing will be built, and (7) the fact that the City has already met or exceeded its growth targets in Urban Centers and Urban Villages. The City relied on very large data sets created via automated methods using City operational systems to assess the number of regulated lots and protected trees that will result from the Proposed Action.

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Appellants presented a number of complaints about the methodologies used by SDCI's experts and suggested alternative methodologies, many of which were not even supported by any expert witnesses of their own. The nitpicking fails because (1) the City relied on the best available snapshot of tree canopy and the best available scientific information for its analysis and (2) Appellants did not demonstrate that their suggested approach would result in a different outcome. For example, in light of all of the information considered by SDCI (as summarized above), it was unnecessary for SDCI to consider the "frequency of the occurrences of adjustments under the current tree protection ordinance" or "an estimation of the frequency (and location) in the future given the increased number of lots with protected trees" because the information considered above made that question moot.

While Appellants' arborist may have a different opinion about whether employing a correlation between the height of a tree and the width of a tree for purposes of estimating the number of trees that will be affected by the Proposed Action, SDCI's witnesses provided detailed and reasonable explanations as to why that was the best available tool for that purpose. It is also worth noting that SDCI began with nationwide tree data based on iTree Surveys for purposes of its impact analysis, but then rejected that data and replaced it with the San Francisco data because the nationwide data did not accurately reflect the higher number of large trees that are found in Seattle. In other words, SDCI purposefully utilized data that increased the number of affected lots for its assessment of impacts.

Appellants point that the proposed Directors Rule identifies 33 different tree species that are exceptional, even though their DBH is less than 24 inches, as if this is some new development under the new Proposed Action. [21] But what Appellants fail to mention is this is no different from the current

[21] Appellant Closing Brief at 17.

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situation. As it stands, there are more than 33 different tree species that are deemed exceptional, even though their DBH is less than 24 inches, under the current code and Director's Rule 16-2008.[22] There is no noticeable change being proposed here – *i.e.*, no difference in the status quo in that regard and, therefore, no new adverse impacts to development. Also, the addition of new language in the "exceptional tree" definition which stated "exceptional trees, individual trees that comprise tree groves, and all trees identified by Director's rule" does not change the status quo because that is how exceptional trees are currently defined under Director's Rule 16-2008.[23]

Contrary to the Appellants claim otherwise, the fact that the City has met its housing goals over the previous five or six years is a fundamentally critical factor in the overall question of whether this new ordinance will adversely impact the availability of housing in the City and/or whether it will affect the ability of the City to reach the housing goals or policies set forth in the Comprehensive Plan. When the City has already met its goals for housing supply in Urban Centers and Urban Villages, an ordinance that impacts a small percentage of lots that are primarily outside of urban centers and urban villages cannot be said to have a significant adverse impact on housing availability and reaching housing goals.

Also, Appellants incorrectly state that SDCI assumed that the impact of the current tree protection ordinances is zero. To the contrary, the DNS states:

> The nature of the changes would be to increase the number of affected properties and the number of protected trees. This would increase the probability that future development would be more often subject to addressing tree protection requirements in the future design and permitting of development proposals. It could also increase the probability that prospective applicants for new development would evaluate the effect of the tree protection requirements (for example, relative to costs of mitigation) and decide against purchasing properties or submitting development proposals. In this fashion, the proposal

[22] Intervenor Ex. 2 at 5-6.
[23] Intervenor Ex. 2 and 2; Appellant Ex. 4 at 7.

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> might mean that properties with exceptional trees and other regulated trees would be less frequently selected for future development purposes, and thereby the regulated trees would more likely be preserved over the long-term.[24]

The Responsible Official expressly considered the issue and concluded that the proposed action would not have probable significant adverse impacts on future housing.

Appellants' contention that SDCI erred because it did not consider the impact of growth of trees over the lifetime of the proposal should be rejected for several reasons. The scientific based evidence in the record demonstrates that the trend in the City over the last 8 years was a *decrease* in total tree canopy, not an increase. The 2016 Seattle Tree Canopy Assessment states, ". . . in 2015, OSC commissioned an analysis using USDA Forest Service iTree Canopy protocols, which consist of a sample-based approach that estimates canopy by determining the presence/absence of tree canopy at a given location using aerial or satellite imagery. The amount of change was determined through the manual interpretation of 4,000 stratified random points generated for three years: 2007, 2010, and 2015. The 2015 analysis estimated a two percent loss over the span of the eight-year study period with a plus or minus three percent margin of error (Figure 18)."[25] The assessment considered that tree canopy loss could be caused by increased development, but did account for tree growth where it said: "[n]atural growth of mature trees and tree plantings tend to offset canopy loss." Thus, the assessment reveals that while trees will in fact grow in future years, trees also die and/or are removed for development.[26] There are, of course, also species of trees that will never grow larger than 12" DBH. In the end, the balance of growth versus loss over the last 8 years has resulted in a decrease of tree canopy.

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[24] Appellant Ex.1 at 11.
[25] Appellant Ex. 23 at 13.
[26] *Id*.

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In addition, the spreadsheets in Appellants Exhibits 21 and 22 demonstrate that trees in the City are actually getting smaller. They show that, with current development projects being pursued, bigger trees are getting cut down and replaced with multiple smaller trees. It will take decades for those new trees to grow as big as the trees they replaced, during which time more trees will be cut down.

Also, the analysis in Table 5 reported the total number of every single regulated tree in the City of Seattle under the Proposed Action, which is a report on the affected trees for the life of the project, not just the immediate future.

Appellants argue that the City did not appropriately consider the concerns expressed by developers via comments on the proposal.[27] That is not true. The developer's concerns were addressed as the Proposed Action itself was being crafted. In other words, the proponents have voluntarily included what is effectively "mitigation" in its Proposed Action to protect the interests of developers and development. Chandra Emery and Patti Baker's end goal in developing the Proposed Action was to balance the interests of all of the stakeholders, including the developers.[28] The City of Seattle conducted five listening sessions in July and August of 2021.[29] Sessions were held with stakeholders, including developers and homeowners.[30] The listening session for developers and builders was held on August 10, 2021 and Shelter Homes, Legacy Group Capital, Master Builders Association of King and Snohomish Counties, Helsell Fetterman, Gamut 360, KO Architecture, and Blueprint Capital were all participants in that meeting.[31] During that meeting, among other things, the developers complained about the timing, cost, and uncertainty around the streamlined design review process. Undoubtedly in

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27 Appellant Closing Brief at 11.
28 Testimony of Chandra Emery; Testimony of Patti Baker.
29 City Ex. 16 at 3.
30 *Id.*
31 *Id*. at 17.

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response to that complaint, the design review process requirement for tree review was removed entirely in the Proposed Action.[32] The payment in lieu option, which was included in the Proposed Action, was supported by the developers. And although the Urban Forestry Commission (UFC) recommended that more stringent tree protections be incorporated into the Proposal (such as requiring (1) the replacement of all trees that are 6" DBH and larger, (2) the replacement of trees at a larger ratio than one to one, and (3) a tree inventory for building permit issuance), SDCI ultimately rejected those UFC recommendations. The City's Proposal decreased the level of protections recommended by the UFC and, thereby, decreased the adverse impacts on the ability to develop affected lots. The Proposed Action itself incorporates this "mitigation" that will make it easier for developers to develop at full capacity on sites that have regulated trees on them.

Contrary to Appellants' contention otherwise, Mr. Clowers did review all of the relevant policies and goals in Seattle's Comprehensive Plan and determined that the proposal is consistent with the City's goals and policies, specifically supporting the City's Urban Forest Management Plan and the Seattle Comprehensive Plan's environmental-related goals, growth strategy and housing goals, environmental and land use policies. This includes the Comp Plan Goals H 5.13, H 5.16, GS 1.5, and H G2, which Appellant highlighted in their Closing Brief. And contrary to Appellants' claim otherwise, the testimony at the hearing did not establish that the Proposed Action will be contrary to those goals. Appellants did not provide any evidence that demonstrated that cost burdens among Seattle households would increase as a result of the Proposed Action. There was virtually no connection established or mentioned in the evidence between the goal that the City consider implementing affordable housing strategies (which the City has done in spades) and the Proposed

[32] *Id*. at 18.

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Action. Appellants did not present evidence about "infill development" and considering that the majority of protected trees will be in single family zones, this is not a particularly relevant goal to the Proposed Action. The same can be said for Goal H G2 – there was no evidence provided that demonstrated that the Proposed Action is inconsistent with the goal of meeting current and projected regional housing needs by increasing Seattle's housing supply. The simple fact that some developers may avoid developing some unknown number of mostly single-family zoned sites because of the Proposed Action does not lead to a conclusion that the Proposed Action will stop the City from reaching its housing goals.

In sum, nothing in Appellants' Closing Brief effectively rebuts the fact that the City considered the proposal's potential housing and land use impacts in a manner reasonably sufficient to amount to prima facie compliance with the requirements of SEPA.

C. Appellants' argument based in SMC 25.05.926.B was improperly raised and also has no basis in law or fact.

Appellants allege that the City did not comply with SMC 25.05.926.B and was somehow biased when it issued the DNS.[33] As the Examiner clearly stated during the hearing, this issue was not raised in the Notice of Appeal and is, therefore not allowed within the scope of the appeal. For that reason, argument on this issue in the Closing Brief should be stricken and disregarded.

Needless to say, however, that argument also has no basis in law or fact. SEPA rules state: "Nothing in this section 25.05.310 prevents a lead agency, when it is a project proponent or is funding a project, from conducting its review under SEPA."[34] SMC 25.05.926.B provides that "[w]henever possible, agency people carrying out SEPA procedures should be different from agency people making the proposal." In this case, the agency person carrying out the SEPA procedures was different from

[33] Appellants Closing Brief at 24.
[34] SMC 25.05.310.

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the agency person making the proposal. Chanda Emery and Mike Podowski were the "agency people making the proposal." Separately, Gordon Clowers was the agency person "carrying out SEPA procedures" as the SEPA Responsible Official.

This is obviously not an uncommon situation considering that the authors of the SEPA rules found it necessary to include a provision that allowed this exact scenario to occur. Furthermore, Appellants provide no evidence to show that there was any bias in the environmental review process.

CONCLUSION

Under SEPA, selection of the environmental review process and protection is left to the sound discretion of the appropriate governing agency and the governing agency's threshold determination is accorded substantial weight. The anecdotal testimony from developers amounted to nothing more than speculation and conjecture about what might happen and fell far short of demonstrating that there will be any significant adverse impacts to housing production as a result of the Proposed Action.

Intervenor TreePAC requests that the Examiner deny the appeal and uphold SDCI's DNS.

Dated this 19th day of July, 2022.

Respectfully submitted,

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