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BEFORE THE HEARING EXAMINER  
FOR THE CITY OF SEATTLE

In the Matter of the Appeal of:  
**SEATTLE MOBILITY COALITION**  
From a Decision by the Seattle City Council  
Central Staff

**Hearing Examiner No. \_\_\_\_\_:**  
  
**DPD Reference:**  
Determination of Nonsignificance for 2023  
Amendments to the Seattle Comprehensive  
Plan Related to Transportation Impact Fees and  
the Adoption of Existing Environmental  
Documents

**NOTICE OF APPEAL**

**Introduction**

In 2018, the City of Seattle (“City”) proposed amendments to its comprehensive plan (“2018 Proposal”) that would have imposed, for the first time, a transportation impact fee in the City. The City issued a State Environmental Policy Act (“SEPA”) Determination of Nonsignificance (“2018 DNS”) for the 2018 Proposal. The Seattle Mobility Coalition (“Coalition”) appealed the 2018 DNS to the Hearing Examiner. The City moved to dismiss the appeal for lack of standing, but the Examiner denied the motion because the Coalition had alleged concrete injury due to adverse environmental impacts that would result from the transportation projects (“Eligible Projects”) that would be funded by the fee. After a hearing, the Examiner reversed the 2018 DNS, holding that the City had failed to demonstrate prima facie

1 compliance with the requirements of SEPA because its environmental checklist (“2018  
2 Checklist”) included no response to relevant questions.

3           The City has now put forward a new version of the impact fee proposal: the 2023  
4 Amendments to the Seattle Comprehensive Plan Related to Transportation Impact Fees and the  
5 Adoption of Existing Environmental Documents (“Proposal”). On February 13, 2023, the City  
6 issued a DNS (“DNS”) and accompanying environmental checklist (“Checklist”) for the  
7 Proposal. Like the 2018 Proposal, the Proposal would amend the Comprehensive Plan to, among  
8 other things, prescribe the use of the “existing system value methodology” in setting impact fee  
9 rates. Unlike the 2018 DNS, however, the new DNS includes a Seattle Impact Fee Study (“Rate  
10 Study”), prepared in January 2023 by Fehr & Peers, that provides details of the methodology to  
11 be used in calculating fees and prospective rates, including maximum rates.  
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13  
14           Despite the additional detail regarding the highly specific parameters of the fee policy  
15 embodied in the Proposal, the 2023 Checklist and DNS still fail to meet the requirements of  
16 SEPA: most notably, they fail to demonstrate consideration of the relevant questions being asked  
17 in the Checklist. The new Checklist includes language in places where it was absent from the  
18 2023 Checklist, but none of this language does what SEPA requires: considers the actual impacts  
19 of the proposal under review. Instead, the language is non-responsive filler, using more words to  
20 say the same thing the City used silence to say the last time around: that the City does not have to  
21 consider any actual impacts of the Proposal because of its non-project nature and because  
22 different versions of future implementing legislation are possible. As the Examiner has already  
23 ruled, however, the City does need to grapple with the implications of the Project that can be  
24 known at this time, including whether it will impact housing. Because the DNS fails to do this, it  
25 must be reversed.  
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1 **Decision being appealed.**

2 The Coalition appeals the DNS on the Proposal. The DNS was issued on February 13,  
3 2023 and is attached as Exhibit A. The accompanying SEPA Checklist (“Checklist”) is attached  
4 as Exhibit B. The comment letter submitted by the Coalition on February 27, 2023 is attached as  
5 Exhibit C. The Examiner’s decision in the prior appeal (“2019 Examiner Decision”) is attached  
6 as Exhibit D.  
7

8 **Property address of decision being appealed.**

9 Not applicable

10 **Elements of decision being appealed.**

11 EIS not required; Adequacy of conditions; Other (procedural compliance with SEPA).  
12

13 **Appellant’s interest.**

14 The Coalition is an unincorporated association with members who own and develop  
15 property and live in Seattle. Members of the Coalition are adversely affected by the Proposal  
16 because they own property or live near street improvement projects which will proceed as a  
17 direct result of the Proposal and will impact them. These impacts include noise, dust, and  
18 congestion from construction, as well as long term noise, traffic, and aesthetic impacts. These  
19 interests are squarely within the zone of interests protected by SEPA. *See, e.g.*, Items 1, 2, 7, 10,  
20 and 14 on the environmental checklist set forth at WAC 197-11-960.  
21

22 Coalition members also own property on which development projects are proposed that  
23 must be physically modified or are rendered infeasible as a direct result of the Proposal. In  
24 addition, they are prospective residents of these projects and neighbors who will be impacted by  
25 loss of housing and amenities that would have been provided by these projects but for the  
26 Proposal. Coalition members are in the process of developing projects that would increase the  
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1 supply of housing in Seattle, thereby increasing housing affordability, or directly provide  
2 affordable housing, and would redevelop existing vacant or underdeveloped properties with new  
3 buildings that are aesthetically pleasing and consistent with the City’s land use goals and  
4 policies. These projects would be prevented or altered due to the additional fees effected by the  
5 Proposal. The Proposal will cause specific and perceptible harm to Coalition members’ ability to  
6 contribute to Seattle’s housing supply and develop property consistent with the City’s goals and  
7 policies.  
8

9 **Objections to Decision.**

10 **A. The DNS Fails to Demonstrate Prima Facie Compliance With SEPA**

11 A threshold determination must be “based upon information reasonably sufficient to  
12 evaluate the environmental impact of a proposal.” WAC 197-11-335. SEPA requires “actual  
13 consideration of environmental factors before a DNS can be issued.” *Norway Hill Preservation*  
14 *and Protection Ass’n v. King County*, 87 Wn.2d 267, 275, 552 P.2d 674 (1976). The record must  
15 “demonstrate that environmental factors were considered in a manner sufficient to amount to  
16 prima facie compliance with the procedural requirements of SEPA.” *Id.* at 276. As the  
17 Examiner ruled in the appeal of the prior matter, “[t]here is no exemption of non-project actions  
18 from SEPA review, or from adequate environmental review directed at identifying potential  
19 significant environmental impacts.” Exhibit D at 9 (emphasis added). In contrast to the  
20 flexibility afforded preparation of an EIS, “there is no comparative softening of the analysis  
21 required at the time of the threshold determination for nonproject proposals.” *Id.* SEPA requires  
22 consideration of direct, indirect and cumulative impacts. WAC 197-11-060(4)(d), (e).  
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26 In the latest version of the Checklist, Section B is not left blank as before. Nonetheless,  
27 just like the 2018 Checklist, it contains no consideration of the impacts of the proposal under  
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1 review. Instead, the Checklist consists only of general statements about the City (e.g. p. 16,  
2 “Seattle’s urban area is developed with a wide range of structures, ranging from single-family  
3 residences to high-rise office towers to large industrial structures.”) along with statements  
4 disclaiming the necessity of engaging in substantive analysis due to the nature of the proposal  
5 (e.g. p. 19, “Potential adverse housing impacts, if any, of future specific transportation  
6 improvement projects would be addressed through regulations and/or separate project-specific  
7 environmental review.”). This fails to satisfy the requirements of SEPA and the 2019 Examiner  
8 Decision because it simply uses additional words to reach the same conclusion rejected in the  
9 previous appeal: the Proposal has no impacts that need to be analyzed at this time. But as before,  
10 “mere conclusory statements about impacts in a DNS do not convey analysis on the part of the  
11 City.” Exhibit D at 10.

14 The Coalition objects to the lack of consideration regarding construction impacts from  
15 construction of the transportation improvement projects identified in the Proposal. These  
16 projects will result in temporary construction-related impacts to the following elements of the  
17 environment, among others: earth (due to earth movement for construction), air (due to  
18 emissions from construction and other vehicles), water (due to increased impervious surface), the  
19 built environment (including noise, light and glare, and aesthetics), and transportation, among  
20 others, and long-term traffic, noise and aesthetic impacts. The City failed to analyze these  
21 impacts and to identify potential mitigation.

24 In addition, the Coalition objects specifically to the lack of consideration demonstrated in  
25 response to questions concerning the Proposal’s potential to limit housing production and  
26 exacerbate sprawl, including questions 6(c) (proposed measures to reduce or control energy  
27 impacts); 8(k) (proposed measures to avoid or reduce displacement impacts); 8(l) (proposed

1 measures to ensure compatibility with existing and projected land uses and plans); 9(b)  
2 (elimination of housing units); 9(c) (proposed measures to reduce or control housing impacts);  
3 14(f) (vehicular trips generated due to proposal); and 14(h) (measures to reduce or control  
4 transportation impacts). Questions 9(c) and 14(h) were noted specifically in the Examiner  
5 Decision as requiring consideration in the case of this non-project proposal. *See* Exhibit D at 10.  
6

7 **B. The Proposal will have Significant Adverse Environmental Impacts**

8 The City may issue a DNS only when the proposal under consideration will not have  
9 significant adverse environmental impacts. WAC 197-11-340(1); SMC 25.05.340.A. In  
10 contrast, if a proposal will have a significant adverse impact on the environment, the City must  
11 issue a Determination of Significance (“DS”) and prepare an Environmental Impact Statement  
12 (“EIS”). WAC 197-11-360(1); SMC 25.05.360.A. Here, the Proposal will have significant  
13 adverse environmental impacts that were not analyzed in the DNS.  
14

15 First, the Proposal will entail significant construction impacts because it will lead to the  
16 construction of the transportation improvement projects identified in the Proposal. These  
17 projects will result in significant construction-related impacts to the following elements of the  
18 environment, among others: earth (due to earth movement for construction), air (due to  
19 emissions from construction and other vehicles), water (due to increased impervious surface), the  
20 built environment (including noise, light and glare, and aesthetics), and transportation, among  
21 others, and long-term traffic, noise and aesthetic impacts. The City failed to analyze these  
22 impacts and to identify potential mitigation.  
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24 Additionally, the Proposal will significantly impact the built environment in the City. A  
25 transportation impact fee would raise the cost of development in Seattle across the board,  
26 amounting to a tax on new housing, which will reduce housing production, increase housing  
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1 costs and undermine the goals of the Mandatory Housing Affordability (“MHA”) program.  
2 Adding further costs to the already expensive and challenging process of building new housing  
3 of all types – whether affordable or market rate – will result in the construction of fewer new  
4 units than would occur without the added fee. The effects are likely to be significant because  
5 housing affordability challenges in Seattle are driven by shortages and the resulting bidding-up  
6 of available units. As a result, both designated affordable units and market-rate units contribute  
7 to alleviating housing shortages. The Proposal will further significantly impact affordable  
8 housing (even if designated affordable housing projects are exempted from the fee) because  
9 development projects that would otherwise pay MHA fees would be rendered infeasible by the  
10 additional cost burden imposed by the Proposal. As a result, fees that would otherwise be used  
11 to construct affordable housing will be lost. This is not merely an economic impact as the loss of  
12 these fees will translate to a loss of affordable housing units, an impact on the built environment.  
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15 The Proposal’s impacts on housing will go beyond direct impacts on the feasibility of  
16 housing projects in the City. The population of the Seattle metropolitan area continues to grow,  
17 and new residents will continue to require places to live. If these residences are not built in the  
18 City, they will be built in nearby cities and suburbs. The resulting sprawl will have its own  
19 adverse environmental impacts, including increased vehicle miles traveled, and accompanying  
20 pollution. Moreover, increasing housing development in the suburbs will result in bidding up  
21 land prices in those locations, further exacerbating affordability issues.  
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23 The Proposal will therefore have significant adverse impacts to housing and  
24 accompanying significant impacts regarding displacement; compliance with land use plans and  
25 policies; energy use; and transportation. If the City believes it does not have information  
26 sufficient to analyze significant adverse impacts at this juncture, it must conduct a worst-case  
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1 analysis and “generally indicate in the appropriate environmental documents its worst case  
2 analysis and the likelihood of occurrence.” WAC 197-11-080(3)(b).

3 **C. Piecemealing**

4 WAC 197-11-060 provides that proposals “related to each other closely enough to be, in  
5 effect, a single course of action” must be considered together under SEPA if they “are  
6 interdependent parts of a larger proposal and depend on the larger proposal as their justification  
7 or for their implementation.” Similarly, WAC 365-196-805(1) provides that when “amendments  
8 to comprehensive plans are adopted, consistent implementing regulations or amendments to  
9 existing regulations should be enacted and put into effect concurrently.” *See also King Cty. v.*  
10 *Wash. State Boundary Review Bd.*, 122 Wn.2d 648, 662-64, 860 P.2d 1024, 1032-33 (1993)  
11 (improper to defer environmental review if the proposal will generate momentum and result in  
12 probable significant adverse environmental impacts). This underscores the importance of  
13 evaluating the Proposal with the anticipated development regulations and transportation  
14 improvement projects as a “single course of action” for SEPA review.  
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18 The Examiner previously ruled that the 2018 Proposal was not an interdependent part of a  
19 larger proposal because the proposed comprehensive plan amendments “seem to lack sufficient  
20 detail to identify the environmental impacts that may be associated with a subsequent  
21 implementing program,” “do not ensure the adoption of a [fee] program, and do not establish  
22 important elements of such a program, such as fee amounts and potential exemptions.” Exhibit  
23 D at 9. The current Proposal, by contrast, includes the 32-page Rate Study detailing how fee  
24 amounts will be calculated and mentions a potential exemption for affordable housing. The  
25 inclusion of this material provides confirms the scope of the decision before the City – a decision  
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1 that must be supported by environmental analysis before key details of an impact fee program  
2 are adopted.

3 **Relief Requested.**

4 The Coalition respectfully asks the Hearing Examiner to reverse the DNS and remand to  
5 the Director with instructions to comply with WAC 197-11-060, WAC 197-11-335, and other  
6 SEPA requirements. Only after these steps are complete, the Director should render a new  
7 threshold determination.  
8

9 **Appellant/Representative.**

10 Appellant is the Seattle Mobility Coalition. Pursuant to Hearing Examiner Rules of  
11 Practice and Procedure 5.02(b), Appellant may be contacted c/o its designated representatives  
12 Courtney Kaylor and David Carpman, McCullough Hill PLLC, 701 5<sup>th</sup> Avenue, Suite 6600,  
13 Seattle, WA 98104, 206 812 3388, [courtney@mhseattle.com](mailto:courtney@mhseattle.com), [dcarpman@mhseattle.com](mailto:dcarpman@mhseattle.com).  
14

15 Dated this 6<sup>th</sup> day of March, 2023.

16 SEATTLE MOBILITY COALITION

17  
18 By: s/Courtney Kaylor  
19 Its: Designated Representative

20 MCCULLOUGH HILL PLLC

21  
22 s/Courtney Kaylor  
23 Courtney Kaylor, WSBA #27519  
24 David P. Carpman, WSBA #54753  
25 Attorneys for Appellant  
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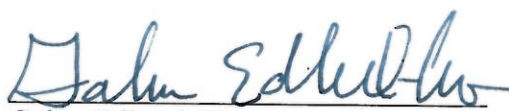
**BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE**

**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Amended Findings and Decision** to each person listed below, or on the attached mailing list, in the matter of **SEATTLE MOBILITY COALITION**, Hearing Examiner Files: **W-18-013**, in the manner indicated.

Party	Method of Service
<b>Appellant Legal Counsel for W-18-013</b> Courtney Kaylor courtney@mhseattle.com  Lauren Verbanik lverbanik@mhseattle.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
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Dated: October 24, 2019



Galen Edlund-Cho  
Executive Assistant