EXHIBIT C

February 27, 2023

VIA ELECTRONIC MAIL

Seattle City Council Central Staff
Attn: Ketil Freeman
P.O. Box 34025
Seattle, Washington 98124-4025
ketil.freeman@seattle.gov

Re: Determination of Nonsignificance ("DNS") for 2023 Amendments to the Seattle Comprehensive Plan Related to Transportation Impact Fees and the Adoption of Existing Environmental Documents

Dear Mr. Freeman:

We are writing on behalf of the Seattle Mobility Coalition ("Coalition") to provide comments on the Determination of Nonsignificance ("DNS"), attached as Exhibit A, for the 2023 Amendments to the Seattle Comprehensive Plan Related to Transportation Impact Fees and the Adoption of Existing Environmental Documents ("Proposal").

As noted in the DNS, the Coalition appealed the 2018 threshold determination issued for the prior version of the Proposal ("2018 DNS"). As a result of that appeal, the Seattle Hearing Examiner reversed the 2018 DNS, finding that the City had failed to consider required aspects of SEPA analysis. *See* Examiner Decision, attached as Exhibit B. Unfortunately, the environmental checklist prepared for the current Proposal ("Checklist"), attached as Exhibit C, fails to remedy the errors identified by the Examiner. In addition, the Checklist fails to recognize probable, significant adverse impacts of the Proposal and exhibits other procedural deficiencies.

A. Interests of Coalition

The Coalition is an unincorporated association with members who own and develop residential and commercial property and live in Seattle. Members of the Coalition are adversely affected by the Proposal because they own property or live near street improvement projects which will proceed as a direct result of the Proposal and will impact them. They also own property on which development projects are proposed that must be physically modified or are rendered infeasible as a direct result of the Proposal. In addition, they are prospective residents of these projects and neighbors who will be impacted by loss of housing and amenities that would have been provided by these projects but for the Proposal.

B. The Checklist Ignores the Proposal's Significant Impacts to Housing

A transportation impact fee would raise the cost of development in Seattle across the board, amounting to a tax on new housing, which will reduce housing production, increase housing costs and undermine the goals of the Mandatory Housing Affordability ("MHA") program. Adding further costs to the already expensive and challenging process of building new housing of all types – whether affordable or market rate – will result in the construction of fewer new units than would occur without the added fee. The effects are likely to be significant because housing affordability challenges in Seattle are driven by shortages and the resulting bidding-up of available units. As a result, both designated affordable units and market-rate units contribute to alleviating housing shortages, and the adequate provision of new units of both types of housing is vital. Because a transportation impact fee would drive up the cost of housing for Seattle residents, it would do more harm than good.

Particularly in Urban Centers and Urban Villages, where the City's future growth is intended to be focused, adding a transportation impact fee would increase development costs for housing of all densities, resulting in some of the densest possible projects becoming infeasible. In addition, the effects of the fee are likely to be magnified because of increasing development costs and other fees, including MHA fees. In the midst of a housing crisis, the Council should not make it even more expensive to develop both affordable and market-rate housing. Yet that is exactly what the Proposal would do. Impact fees are often framed as "requiring developers to do their part," but developers are not the only ones who will be harmed by this proposal. Instead, the additional costs imposed by an impact fee will, in large part, be passed along to renters and homebuyers, placing housing further out of reach. The costs that are not passed on will make it more expensive to build housing, needlessly constraining the availability of new units despite the growing population. Either way, the negative effects of the Proposal will fall most heavily on people who need housing. These impacts are not reflected in the DNS.

The Proposal would also have an effect on affordable housing specifically. Development projects that would otherwise pay MHA fees would be rendered infeasible by the additional cost burden imposed by the Proposal. As a result, fees that would otherwise be used to construct affordable housing will be lost. Accordingly, beyond the adverse effect of reduction in housing production, there will be a specific significant, adverse effect on affordable housing.

The Proposal's impacts on housing will go beyond direct impacts on the feasibility of housing projects in the City. The population of the Seattle metropolitan area continues to grow, and new residents will continue to require places to live. If these residences are not built in the City, they will be built in nearby cities and suburbs. The resulting sprawl will have its own adverse environmental impacts, including destruction of natural areas and habitat, increased vehicle miles traveled, and accompanying pollution. Moreover, increasing housing development in the suburbs will result in bidding up land prices in those locations, further exacerbating affordability issues. These interjurisdictional impacts, too, must be considered under SEPA.

These impacts are far from speculative. As the City testified in the appeal of the 2018 DNS, imposition of a fee set under the existing-system-value methodology prescribed by the Proposal could "have a negative effect on development, make development infeasible" and "might thwart achieving [the City's] comprehensive plan objectives like accommodating 70,000 new households and 115,000 new jobs." Freeman Testimony, attached as Exhibit D. And as the Examiner noted when reversing the 2018 DNS, the question of how potential housing impacts would be mitigated is relevant to consideration of a nonproject action. Nonetheless, the DNS makes no effort to engage with these questions, ignoring the significant impacts this Proposal is likely to have on housing in violation of SEPA and of City policy.

C. The DNS is Based on Inadequate Information and is Improperly Piecemealed

A threshold determination must be "based upon information reasonably sufficient to evaluate the environmental impact of a proposal." WAC 197-11-335. Here, the DNS is based on inadequate or inaccurate information contained in the Checklist, and it fails to analyze the likely impacts that will result from subsequent phases of this proposal.

"A major purpose of the environmental review process is to provide environmental information to governmental decisionmakers for consideration *prior to* making their decision on any action." SMC 25.05.055.B.2 (emphasis added). Courts recognize that initial policy actions, even if "no land use changes would occur as a direct result," can "begin a process of government action which can 'snowball' and acquire virtually unstoppable administrative inertia." *King County v. Wash. State Boundary Review Bd.*, 122 Wn.2d 648, 664, 860 P.2d 1024, 1032-33 (1993). Indeed, this is arguably even more important in the case of nonproject actions like comprehensive plan amendments and other policies, which will affect development and land use not just in one location but across the city. "The snowballing metaphor is powerful because it embodies the fundamental idea of SEPA: to prevent government agencies from approving projects and plans before the environmental impacts of doing so are understood." *Int'l Longshore & Warehouse Union, Local 19 v. City of Seattle*, 176 Wn. App. 512, 522, 309 P.3d 654, 659 (2013). Thus, "SEPA review must precede approval of . . . an action . . . that will have impacts on the environment down the road." *Id.*; *see also, e.g.*, *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 80, 92, 392 P.3d 1025, 1030 (2017) ("SEPA's primary focus is on the decision-making process."); *Lassila v. Wenatchee*, 89 Wn.2d 804, 814, 576 P.2d 54, 59 (1978) (SEPA analysis "must precede governmental action.").

In the checklist prepared for the 2018 DNS ("2018 Checklist"), the "City concluded that because the proposal was of a nonproject nature, it was not required to complete Section B of the environmental checklist." Examiner Decision at 9. The Examiner reversed the 2018 DNS on this basis, noting that "the language of WA 197-11-315 does not indicate that the lead agency can simply ignore Section B." *Id.* at 10. The Examiner noted that several questions in Section B could be applicable to non-project proposals, offering as specific examples questions about measures to reduce or control housing and transportation impacts. *Id.*

In the latest version of the Proposal, Section B is not left blank as before. Nonetheless, it fails to satisfy the requirements of WAC 197-11-335 and the Examiner Decision. As discussed below, the

Proposal is far from a vague, programmatic goal: to the contrary, it establishes a specific, prescriptive methodology for the calculation of fees that will lead to the construction of specifically identified transportation improvements. The proposal is developed at a level where it is possible to evaluate its worst-case impacts. Both aspects of this will have impacts on the environment. In addition to the direct environmental impacts of the improvements, the Proposal will discourage development in Seattle and will reduce the housing and other physical amenities provided in future development projects, resulting in adverse impacts to the built environment. "Implicit in the statute is the requirement that the decision makers consider more than what might be the narrow, limited environmental impact of the immediate, pending action." *Cheney v. Mountlake Terrace*, 87 Wn.2d 338, 344, 552 P.2d 184, 188 (1976). "The agency cannot close its eyes to the ultimate probable environmental consequences of its current action." *Id.*

The Checklist must evaluate these impacts, but it fails to do so. The responses provided in Section B consist of generalized statements that function as filler. They contain no substantive consideration, discussion, or analysis of the Proposal. Instead, they simply repeat, in different words, that the Proposal will have no impacts and all specific review will be conducted later. Section D of the Checklist repeats this error, containing only cursory responses. This is insufficient to satisfy the City's obligation under SEPA. *See, e.g.*, *Spokane Cty. v. E. Wash. Growth Mgmt. Hearings Bd.*, 176 Wn. App. 555, 579, 309 P.3d 673, 684 (2013) ("[F]or a nonproject action, such as a comprehensive plan amendment or rezone, the agency must address the probable impacts of any future project action the proposal would allow."). Here, the City's failure to engage with any impacts of its Proposal violated both these requirements and its own policy that "[a]gencies shall *to the fullest extent possible* . . . [p]repare environmental documents that . . . are supported by evidence that the necessary environmental analyses *have been made*." SMC 25.05.030.B (emphasis added).

In addition, the environmental review of the Proposal as reflected in the City's new Checklist is improperly piecemealed. Where a proposal will require a series of related actions that are reasonably understood at the outset, the checklist must consider the environmental impacts of all of the actions together, not just the first or second one in isolation. Specifically, WAC 197-11-060 provides that proposals "related to each other closely enough to be, in effect, a single course of action" must be considered together under SEPA if they "are interdependent parts of a larger proposal and depend on the larger proposal as their justification or for their implementation." *See also King Cty. v. Wash. State Boundary Review Bd.*, 122 Wn.2d 648, 662-64, 860 P.2d 1024, 1032-33 (1993) (improper to defer environmental review if the proposal will generate momentum and result in probable significant adverse environmental impacts). Similarly, WAC 365-196-805(1) provides that when "amendments to comprehensive plans are adopted, consistent implementing regulations or amendments to existing regulations should be enacted and put into effect concurrently." This underscores the importance of evaluating the Comprehensive Plan amendment component of the proposal with the anticipated development regulation as a "single course of action" for SEPA review.

Here, the Proposal is determinative of three things – whether to adopt a program, what rate methodology to use, and what projects to fund. This directly contradicts the assertion that it is too early to engage in environmental review. To the contrary, the inclusion of these determinations in the Amendments indicates definitively that substantive review at this stage is required. As the City

testified in the prior appeal, consideration of the Proposal will amount to a "go/no-go decision" for the Council regarding the adoption of a fee, because the Growth Management Act requires development regulations to be consistent with the Comprehensive Plan. Freeman Testimony.

Since the current proposed Comprehensive Plan amendments are expressly intended to be followed by development regulations imposing transportation impact fees under the methodology *expressly identified in the Proposal*, and, subsequently, by development of the transportation improvements *expressly identified in the Proposal*, there is no possible conclusion other than that these proposed amendments are interdependent parts of a larger proposal. The City has broken this single course of action into smaller pieces in order to avoid timely review of the impacts of its actions. SEPA requires the City to conduct adequate environmental review not only of the Comprehensive Plan Amendments themselves, but of the City's entire course of action (the actual proposal), which includes adoption of the impact fee and construction of the specifically identified transportation improvements.

Alternatively, the City must acknowledge that it is conducting phased review and that environmental analysis of the impacts of a fee must be conducted when development regulations consistent with the Proposal are considered by the Council. However, this would not relieve the City of its obligation to consider those impacts that can be analyzed at this stage, including the worst-case scenario for a fee set at the proposed rates as discussed below.

D. The Proposal Will Result in Significant Adverse Impacts

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

- Construction impacts. The Proposal will lead to the construction of the transportation improvement projects identified in the Proposal. These projects will result in temporary construction-related impacts to the following elements of the environment: earth (due to earth movement for construction), air (due to emissions from construction and other vehicles), water (due to increased impervious surface), the built environment (including noise, light and glare, and aesthetics), and transportation, among others. The City failed to analyze these impacts and to identify potential mitigation.

  The Checklist opines, without support, that "any construction-related impacts associated with potential future development of identified projects would be mitigated by existing environmental protection regulations and, for those projects that are not categorically exempt from SEPA, additional environmental review." Checklist, p. 15. Yet, a "county, city, or town may not rely on its existing plans, laws, and regulations when evaluating the adverse environmental impacts of a nonproject action." *Heritage Baptist Church v. Central Puget*

Sound Growth Management Hearings Board, 2 Wn. App. 737, 752, 413 P.3d 590 (2018). In addition, in making this statement with regard to future project actions, the City failed to comply with WAC 197-11-158.

- Impacts to the built environment. Development projects will be modified or rendered infeasible due to the burdensome fees resulting from the Proposal, causing loss of infill redevelopment, including housing, and amenities that would have been provided by these projects but for the Proposal. For those projects that proceed forward, impact fees will be passed along to future purchasers and tenants, increasing the cost of housing. This will result in long-term impacts to the built environment, including relationship to existing land use plans, housing, aesthetics and recreation, among other elements of the environment.

  Courts have repeatedly held that physical impacts that result from economic effects are environmental impacts that must be considered under SEPA. *West 514, Inc. v. County of Spokane*, 53 Wn. App. 838, 847-848, 779 P.2d 1065 (1989); *Indian Trail Property Association v. City of Spokane*, 76 Wn. App. 430, 444, 886 P.2d 209 (1994). Here, the fees required as a result of the Proposal will reduce development in Seattle, causing some properties to remain vacant or underutilized, with buildings in a state of disrepair and serving as magnets for graffiti and other undesirable activities. Some housing projects will be rendered infeasible, reducing housing supply and decreasing affordability. Amenities (including expensive design features and materials, recreational spaces and improvements that enhance the pedestrian environment) will not be provided. Residents of Seattle will be impacted by reduced housing supply and neighborhoods by reduced redevelopment.

  These direct physical impacts will also significantly impact the City's compliance with its land use plans and policies. During the threshold determination process, an agency must ask, "Is the project consistent with the . . . local development regulations, and the comprehensive plan?" Department of Ecology SEPA Handbook, Section 2.6. "Review of a nonproject proposal should include a consideration of other existing regulations and plans, and any other development." *Id.* at Section 4.1. As noted above, because the Proposal will negatively impact the City's production of housing, specifically affordable housing, it will also thwart the success of the City's MHA program, adopted under the GMA as a density bonus pursuant to RCW 36.70A.540.

  In addition, by burdening development, including housing, the Proposal conflicts with the following Comprehensive Plan goals and policies, among others: GS G1 (keep Seattle as a city of unique, vibrant, and livable urban neighborhoods); GS 1.2 (encourage investments and activities in urban centers and urban villages that will enable those areas to flourish); GS 1.5 (encourage infill development); GS 1.22 (support healthy neighborhoods throughout the city so that all residents have access to a range of housing choices, parks, open space); LU G8 (allow a variety of housing types and densities that are suitable for a broad array of households and income levels); LU 8.3 (provide housing for Seattleites at all income levels in development that is compatible with desired neighborhood character and that contributes to high-quality, livable urban neighborhoods); LU G9 (create and maintain successful

commercial/mixed use areas); LU 9.2 (encourage the development of compact, concentrated commercial/mixed-use areas); TG 1 (ensure that transportation decisions, strategies and investments support the City's overall growth strategy and are coordinated with this Plan's land use goals); HG2 (help meet current and projected regional housing needs of all economic and demographic groups); HG5 (make it possible for households of all income levels to live affordably in Seattle); and ED G1 (encourage vibrant commercial districts).

E. The City Cannot Evade its SEPA Responsibilities by Claiming Lack of Information

Here, as noted above, the significant impacts of the Proposal are not speculative but were specifically acknowledged in City testimony during the prior appeal: the Proposal may "make development infeasible" and "might thwart achieving [the City's] comprehensive plan objectives regarding housing." The Council must be fully informed of these possibilities before making a "go/no-go" decision on whether to adopt an impact fee according to this methodology. The 2018 Checklist and DNS fail to provide this necessary information, instead repeatedly asserting that the analysis would come later. But, the City cannot wholly evade its SEPA responsibilities at this stage as it seeks to do. Instead, if the City believes it does not have information sufficient to analyze significant adverse impacts at this juncture, it must conduct a worst-case analysis and "generally indicate in the appropriate environmental documents its worst case analysis and the likelihood of occurrence." WAC 197-11-080(3)(b). This information too is absent from the Checklist.

F. The Proposal Description is Inadequate

Under the State Environmental Policy Act ("SEPA"), "[p]roposals should be described in ways that encourage considering and comparing alternatives. Agencies are encouraged to describe public or nonproject proposals in terms of objectives rather than preferred solutions." WAC 197-11-060(3)(iii); *see also* Department of Ecology SEPA Handbook ("SEPA Handbook"), Section 4.1. Contrary to this requirement, here the Proposal is described as specific Comprehensive Plan amendments. The Proposal is not described in terms of its objectives, in violation of WAC 197-11-060. Instead, it is put forward as a proposal for a specific, prescriptive methodology used to determine the amount of a fee: the Proposal would enshrine the existing system value methodology in the Comprehensive Plan, designating the methodology as the only permissible way of calculating transportation impact fees. The Proposal would require the Council not just to adopt a fee program but to set the rates on the basis of a specific methodology that has only been used previously in large cities outside of Washington. In addition, the Proposal would adopt the specific list of eligible projects to be funded.

G. Public Process

The purpose of SEPA is to inform the public and decision makers. The Proposal has numerous significant adverse impacts and unintended consequences that are not addressed in the Checklist. The Checklist fails to take into account information provided by affected stakeholders, including property owners, developers, and affected Seattle residents. The Coalition requests that the City extend the public comment period on the DNS to allow more time for stakeholders to comment.

H. Conclusion

The Environmental Checklist lacks crucial information. The Proposal will result in significant adverse environmental impacts. The City must withdraw the DNS and either (1) issue a DS and prepare further environmental analysis, which may include an EIS, addressing these impacts; or (2) make modifications to the Proposal or adopt mitigation measures to eliminate these significant adverse environmental impacts.

Thank you for your consideration of these comments.

Sincerely,

s/Courtney Kaylor

cc: Client
Liza Anderson, Office of the Seattle City Attorney