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. W-23-001** **APPELLANT'S CLOSING ARGUMENT**

I. INTRODUCTION

In 2019, the Hearing Examiner remanded the Determination of Nonsignificance ("2018 DNS") issued by Respondent Seattle City Council ("City") for a prior set of proposed Comprehensive Plan amendments ("2018 Proposal") to establish a transportation impact fee ("TIF"), noting the "directive under SEPA that a threshold determination must be supported by actual analysis and disclosure of the environmental impacts of a proposal, and that mere conclusory statements about impacts in a DNS do not convey analysis on the part of the City." *Seattle Mobility Coalition*, HE No. W-18-013, Amended Findings and Decision (Oct. 24, 2019) ("Exhibit 14") at 10.[1] Now, the City has issued a new proposal ("Proposal" or "2023 Proposal")

[1] Citations refer to PDF page numbers in the electronic copy of an exhibit unless otherwise noted.

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and a new Determination of Nonsignificance ("DNS" or "2023 DNS") that repeats the same problems as the 2018 DNS. The 2023 DNS fails to comply with SEPA and with the Examiner's order, as the supporting documents do not demonstrate substantive consideration of any environmental impacts – particularly housing impacts – but simply include conclusory statements that no actual consideration of impacts is required. SEPA demands more. The City's inclusion of non-substantive responses to the questions in Part B of the environmental checklist ("Checklist" or "Exhibit 3") does not establish prima facie compliance with SEPA.

Because the City has failed to establish prima facie compliance with SEPA, the Examiner should remand the DNS on this basis and need not reach the question of whether an Environmental Impact Statement ("EIS") is required. Should the Examiner choose to rule on the second question, the evidence at hearing established that the Proposal will have probable, significant adverse impacts on housing and that an EIS must be prepared to examine those impacts. The analysis prepared by Morgan Shook provides a detailed, quantitative assessment – unchallenged by any comparable analysis on the City's part – of the probable impacts of a transportation impact fee on housing production and affordability. Notably, Mr. Shook's analysis considers both the effects *of* the City's recently enacted Mandatory Housing Affordability ("MHA") legislation (which adds substantial costs to development) and the likely effects of a TIF *on* housing affordability under the MHA regime (because reduced housing production will lower the amount contributed to MHA's housing fund), finding a probable 15-17% reduction in housing production. In light of the City's housing goals and the number of units affected, a reduction in housing production at even a fraction of this amount would qualify as significant. The testimony of Meredith Holzemer and Ben Maritz corroborated and expanded

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upon Mr. Shook's analysis, explaining the detailed analysis that must be conducted to allow for housing production and the substantial impacts on project viability of even a seemingly small reduction in return on cost, due to the manner in which projects are financed and investment decisions occur. Ms. Holzemer and Mr. Maritz also explained that the adoption of the Proposal alone – even if not imminently followed by implementing legislation – would have probable and substantial impacts on project viability because investors would take the City's policies into account and seek to build housing in other jurisdictions. Because this evidence establishes that the Proposal will have probable, significant adverse impacts, the DNS must be reversed and an EIS prepared.

II. ARGUMENT

A. The City fails to demonstrate prima facie compliance with the requirements of SEPA.

1. Legal standard.

"SEPA requires 'actual consideration of environmental factors before a DNS can be issued.'" Ex. 14 at 6 (quoting *Norway Hill Preservation and Protection Ass'n v. King County*, 87 Wn.2d 267, 275, 552 P.2d 674 (1976)). "The record must 'demonstrate that environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA.'" *Id.* (quoting *Norway Hill*, 87 Wn.2d at 276). "[T]he question on review is whether the agency actually considered environmental factors." *Id.* (citing *Hayden v. City of Port Townsend*, 93 Wn.2d 870, 881, 613 P.2d 1164 (1980); *Save a Neighborhood Environment v. City of Seattle*, 101 Wn.2d 280, 286, 676 P.2d 1006 (1984)). These requirements are echoed by the City's regulations. SMC 25.05.335 (City was required to

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"make its threshold determination based upon information reasonably sufficient to evaluate the environmental impact of [the] proposal.").

2. The City's failure to consider housing impacts violates SEPA and the Examiner's order.

It is undisputed that the City did not conduct any environmental analysis of the housing impacts that could result from adoption of the Proposal or any analysis of the housing impacts of a transportation impact fee. As the Checklist indicates, and as City witnesses Ketil Freeman, Lish Whitson, and Calvin Chow testified, the DNS instead represents the City's conclusion that the Proposal will not have any housing impacts because it is a Comprehensive Plan amendment that is not sufficient in itself to establish a fee. Nothing in the Checklist or any of the documents adopted by the Checklist contains analysis of housing or of the impacts of a fee. The City's determination that there would be no such impacts was not based on actual consideration of or information about the Proposal.

This violates SEPA. The City repeatedly insists that the Amendments cannot have any impacts because they do not implement a program, do not set rates, and do not authorize improvement projects. Richard Weinman, a planning and environmental analysis consultant with 43 years' experience, who has worked on over 200 projects, explained why this approach is inconsistent with SEPA. Mr. Weinman has worked on more than 200 proposals, including specific work for the City regarding nonproject proposals such as the Comprehensive Plan, Mandatory Housing Affordability legislation ("MHA"), and Accessory Dwelling Unit ("ADU") legislation. Weinman 1.1 00:10-:13.[2] As Mr. Weinman testified, all impacts from nonproject

[2] Cites to testimony refer to the witness, the recording segment as posted on the Hearing Examiner website (for example, "2.5" means "Recording Day 2, Part 5"), and the time.

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proposals are in a sense "indirect": a nonproject proposal by definition does not authorize individual development or construction and therefore requires subsequent action for a physical impact to occur. But this does not mean that no environmental analysis takes place at the nonproject proposal stage, as the City's own environmental documents establish.

Most notably, the very Comprehensive Plan that is the subject of this Proposal is a policy document that must be implemented through subsequent regulations. The Plan does not fully enact any of the policies it sets out, does not set zoning regulations, and does not authorize any construction projects. Nonetheless, the environmental analysis prepared by the City for the Plan describes the potential housing impacts of enacting Plan policies. Exhibit 29, Chapter 3.6. Some of the statements regarding those impacts are general and conditional, but they provide useful information on the impacts that the policies laid out in the Plan are likely to have. Mr. Weinman and Morgan Shook both described similar environmental analysis that was conducted for MHA and ADU legislation, although neither of those proposals established a specific legislative program either. *See* Exhibit 10.

As Mr. Weinman explained, this is consistent with SEPA regulations requiring consideration of both "direct and indirect impacts" and "short-term and long-term effects." WAC 197-11-060(4)(c), (d). These regulations do not limit analysis to policies specifically enacted or projects specifically approved in the action at issue; instead, they provide that impacts include more general considerations such as "effects resulting from growth caused by a proposal, as well as the likelihood that the present proposal will serve as a precedent for future actions" – for example, a zoning ordinance that will "encourage or tend to cause particular types of projects." WAC 197-11-060(4)(d). The regulations controvert the City's assertion that it was

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not required to evaluate the impacts of the Proposal, and the FEIS completely disproves its assertions that it could not do so without knowing every detail of the proposed fee program. *See also* WAC 197-11-752 (defining "impacts" broadly as "the effects or consequences of actions"); *King Cty. v. Wash. State Boundary Review Bd.*, 122 Wn.2d 648, 663, 860 P.2d 1024, 1032 (1993) ("[A]n EIS is required if, based on the totality of the circumstances, future development is probable following the action and if that development will have a significant adverse effect upon the environment."); *Lands Council v. Wash. State Parks & Recreation Comm'n*, 176 Wn. App. 787, 804, 309 P.3d 734, 743 (2013) (quoting WAC 197-11-055(2)(a)(i)) ("The fact that proposals may require future agency approvals or environmental review shall not preclude current consideration, as long as proposed future activities are specific enough to allow *some* evaluation of their probable environmental impacts.'") (emphasis added).

In addition to relying on characteristics that apply to any Comprehensive Plan amendment proposal, the City has incorrectly downplayed the decisions that are embodied in this Proposal. Although City witnesses characterized the Proposal as simply adding a list of transportation projects to the Plan's Transportation Appendix, the Proposal includes important policy determinations about the nature and scope of a future fee program – most notably, the addition of language that commits the City to "use transportation impact fees" to fund improvements needed to serve growth, and to using the existing system value methodology to determine the amount of those fees. Exhibit 4 at 4-7. Thus, because the City "is actively preparing to make a decision on one or more alternative means of accomplishing [its] goal" of adopting an impact fee program, *see* WAC 197-11-784; SMC 25.05.784, "[a]ppropriate consideration of environmental information *shall* be completed *before* an agency commits to a

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particular course of action." WAC 197-11-055(2)(c); SMC 25.05.055.B.3 (emphasis added). SEPA does not require impacts to be precisely quantified, but does require that some environmental analysis be conducted. *See, e.g.*, SMC 25.05.055.A (review required at "earliest possible point" when "impacts can be reasonably identified"); SMC 25.05.055.B.1.a (consideration required when "*some* evaluation of [] probable environmental impacts" is possible) (emphasis added); WAC 197-11-330(3)(d) (directing agencies to recognize that for "some proposals, it may be impossible to forecast the environmental impacts with precision, often because some variables cannot be predicted or values cannot be quantified"); WAC 197-11-782 (determination of "probable" impacts is "not meant as a strict statistical probability test"). Here, there was no analysis – a situation that has been recognized as inconsistent with SEPA's requirements for more than 40 years. R. Settle, *Washington State Environmental Policy Act: A Legal and Policy Analysis* ("Settle"), § 13.01 ("From SEPA's earliest days, [the threshold] determination required *actual analysis and disclosure*," because "without preliminary environmental analysis of a proposal, application of the threshold standard, no matter how stringent, would be uneducated guesswork and hardly amenable to meaningful administrative and judicial review.") (emphasis added); *see Lassila v. Wenatchee*, 89 Wn.2d 804, 817, 576 P.2d 54 (1978) ("*At minimum* SEPA requires a threshold determination for such recommendations *and* an actual consideration of potential environmental significance.") (emphasis in original).

The City's failure to conduct actual analysis also violates the Examiner's order in the prior decision. The City's position appears to be that as long as it has filled out Section B of the Checklist, it has met its obligations. But the inclusion of language in response to the questions in Section B of the checklist is not the same as analysis or as a substantive determination that no

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environmental impacts will occur as a result of the Proposal, as the Examiner's order specifically noted. Ex. 14 at 10 ("[M]ere conclusory statements about impacts in a DNS do not convey analysis on the part of the City."). As described above, this has not occurred – despite the fact that the Examiner's order also specifically identified question 9.c ("Proposed measures to reduce or control housing impacts, if any") as a relevant issue. *Id.*

The lack of environmental analysis is particularly significant because the City has indicated that it likely will not conduct any further analysis of an impact fee program before adopting implementing legislation. The Examiner's 2019 order provided: "New SEPA review must accompany any adoption of TIF program plans and/or development regulations implementing the [Proposal]." Exhibit 14 at 9. Mr. Freeman testified, however, that this will "probably not" take place because the City will consider implementing legislation to be categorically exempt unless it is packaged with other types of development regulations. Freeman 2.4 00:28. On this basis, Mr. Freeman declined to include suggested language in the Checklist stating that "[i]mpacts of any potential future transportation impact fee on the feasibility of any particular type of housing development would be assessed in developing a specific impact fee proposal as discussed in the Rate Study," noting that such assessment will "probably not" occur later because "[r]ate setting is likely categorically exempt from SEPA." *Compare* Ex. 17 at 21 *with* Ex. 3 at 19; *see* Ex. 31.

This evidence belies the City's assertions that there is no reason to provide information now – instead, it reinforces the imperative that analysis be conducted before, rather than after, the Council takes action on the Proposal. SEPA compels policymakers to ensure the analysis of all probable impacts related to an action. "A major purpose of the environmental review process

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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."); *see Klickitat Cty. Citizens Against Imported Waste v. Klickitat Cty.*, 122 Wn.2d 619, 643, 860 P.2d 390, 402 (1993) (noting that future site-specific issues did not preclude consideration of earlier nonproject plan when "[o]ne of the primary purposes of the 1990 Plan Update is to make an initial evaluation of whether the County wants to [take the action] at all").

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3. Actual analysis can – and must – occur now.

In addition to claiming that the nature of the Proposal means no environmental analysis is required, the City has also asserted that actual analysis cannot occur now because both the nature of the future fee program and the conditions under which it would be adopted are unknown. This too is unavailing. Mr. Freeman testified that an analysis of housing impacts cannot be conducted because the details of future legislation are uncertain and because future market conditions that would also affect housing are unknown. Neither argument is convincing.

First, the suggestion that the environmental impacts of a legislative proposal cannot be analyzed because legislators might amend or reject the proposal turns SEPA on its head. The entire purpose of the law is to inform legislators' decision *whether* to adopt, amend, or reject the proposal. *See Magnolia Neighborhood Planning Council v. City of Seattle*, 155 Wn. App. 305, 316, 230 P.3d 190, 195 (2010) (rejecting City's argument that approval of a "binding" site plan was not a SEPA "action" because of the "possibility that the City might not follow through with the intent stated in the" plan"). Notably, the City does not claim that it would not be useful for the Council to know about adverse impacts to housing production and affordability, for example, prior to making its decision. Instead, the City takes a position that analysis cannot be performed in the absence of a full proposal to implement a fee. This is incorrect. If the Council adopts the Amendments as written, it will have obligated itself to impose a fee that uses the existing system value methodology to fund the eligible projects. If the Council has no access to environmental analysis of the consequences of these choices until it considers implementing regulations, it will have no way to understand the consequences of the policy decisions embodied in the Amendments until it is too late to reconsider those decisions. This is contrary to the purpose of

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SEPA: "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); *see also Int'l Longshore & Warehouse Union, Local 19 v. City of Seattle*, 176 Wn. App. 512, 522, 309 P.3d 654, 659 (2013) ("[T]he fundamental idea of SEPA[is] to prevent government agencies from approving [] plans before the environmental impacts of doing so are understood.").

More specifically, substantial evidence contradicted the notion that because a specific fee amount has not been chosen, no analysis is possible. Assertions by City witnesses that nothing about a fee amount can be determined at this point were not convincing. The City has developed a rate study, attached to the Proposal, that not only lays out a methodology for calculating impact fees but that includes a schedule assigning a specific discount rate and maximum allowable fee to particular land uses. Exhibit 2 at 20. Mr. Freeman previously prepared draft legislation implementing a fee, which drew upon a detailed revenue that similarly assigned a fee rate to specific land uses to reach a designated revenue target. Exhibit 34. Numerous City materials refer to a likely or expected rate for fees that is consistent with established revenue targets and with rates charged by surrounding jurisdictions. *See* Exhibit 7 at 6-7; Exhibit 32 at 1 ("For the implementing bill, we were assuming a rate comparable to Bellevue's."); Exhibit 33 at 2 (noting that the fee ceiling in the Proposal is "high enough to support the *range of fees the Council is likely to consider*") (emphasis added); Exhibit 34. The City cannot plausibly claim in light of this information that it is incapable of conducting any analysis about the likely impacts of the policies that the Proposal would establish.

City witnesses also suggested that an analysis of future housing impacts is not possible because certain variables that would affect the housing market when fee legislation is adopted

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are currently unknown. *E.g.* Freeman 2.4 00:31. This too is unavailing, because there is always the potential for economic conditions that will affect housing in the future – but that did not prevent the City from conducting an analysis of housing impacts for its enactment of the Comprehensive Plan or the MHA and ADU legislation, and it does not prevent the City from conducting such an analysis now. Indeed, the evidence provided by Appellant witnesses Morgan Shook, Meredith Holzemer, and Ben Maritz, discussed below regarding significant adverse impacts, contravenes the City's assertions because it demonstrates that relevant information about the effects of a fee on housing production and affordability is available. In addition to establishing the probability of significant adverse impacts, this evidence provides a further indication that the City should, at the very least, have considered readily available information about the foreseeable housing impacts of the Proposal before making its threshold determination.

4. The City's failure to analyze environmental impacts requires remand.

The City, as "the governmental body subject to SEPA," cannot meet its burden to "show that it made a threshold determination which demonstrate[s] that environmental factors were considered in a manner sufficient to be a prima facie compliance with the procedural dictates of SEPA." *Bellevue v. King Cty. Boundary Review Bd.*, 90 Wn.2d 856, 867-68, 586 P.2d 470, 477 (1978). This is not consistent with the purpose of SEPA, which "*mandates* governmental bodies to consider the total environmental and ecological factors to the fullest in deciding major matters." *Eastlake Cmty. Council v. Roanoke Assocs.*, 82 Wn.2d 475, 490, 513 P.2d 36, 46 (1973) (emphasis in original); *see also Anderson v. Pierce Cty.*, 86 Wn. App. 290, 301, 936 P.2d 432, 438 (1997) ("[A] DNS means that no EIS will be required; [i]t does not mean, however, that environmental review will not be undertaken."). The City's failure to engage with any impacts

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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).

The City's failure to engage in any substantive review of the Proposal's environmental impacts thus requires reversal of the DNS. *See, e.g.*, *id.* (vacating DNS where the record "fails to show sufficient deliberation and consideration and contains little other than the conclusion that an EIS is unnecessary."); *Lassila*, 89 Wn.2d at 817 (vacating comprehensive plan amendment for "serious noncompliance with SEPA's mandate" where "we cannot tell whether the environmental significance of the [amendment] was even considered by the commissioners"); *PT Air Watchers*, 179 Wn.2d at 929 (upholding DNS based on checklist reflecting "a reasoned assessment of the environmental impacts of the proposed project," but noting that if the agency had "entirely ignored the impact . . . we might reach a different result.").

The City's DNS must be reversed for failure to demonstrate prima facie compliance with SEPA.

B. The Proposal will have probable significant adverse impacts on housing.

1. Legal standards.

The City's decision to implement a transportation impact fee program will have probable, significant environmental impacts. An impact is probable if it is "reasonably likely to occur" rather than "remote or speculative." SMC 25.05.782. An impact is "significant" if it would have a "more than moderate adverse impact on environmental quality." SMC 25.05.784.A. An EIS is required "'whenever a more than moderate effect on the quality of the environment is a

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reasonable probability." *Chuckanut Conservancy v. Dep't of Nat. Res.*, 156 Wn. App. 274, 285 n.14, 232 P.3d 1154, 1159 (2010) (quoting *Norway Hill Pres. & Prot. Ass'n v. King County Council*, 87 Wn.2d 267, 278, 552 P.2d 674 (1976)).

The Coalition is not alleging purely economic impacts. Rather, the Coalition alleges – and has demonstrated – that there will be significant adverse impacts to housing production and affordability. Housing is an element of the built environment under SEPA. SMC 25.05.675.I.2.b ("Affordable housing is a critical component of a healthful environment); *see* Exhibit 29, Ch. 3.6.

2. Evidence at the hearing established probable significant adverse impacts.

Evidence provided by Appellant witnesses Morgan Shook, Ms. Holzemer, and Mr. Maritz established that the Proposal will have probable, significant adverse impacts on housing production and affordability.

a. Shook Testimony

Mr. Shook is a Director and Partner with ECONorthwest and an expert in economic analysis who has conducted market analyses of dozens of legislative proposals regarding land use and development. Exhibit 8. After reviewing the Proposal, Mr. Shook prepared a study that reviewed academic literature regarding the housing cost effects of impact fees and analyzed the likely impacts of a transportation impact fee in the City.

Mr. Shook testified that the academic literature establishes that impact fees may have differing effects on housing affordability, but that when the amenity to be funded by the fee is not closely tied to the development that is charged the fee, housing production is more likely to decrease. Shook 1.2 00:40-47; Exhibit 9 at 5. Here, nothing in the Proposal indicates that

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housing developments subject to a future TIF will receive any benefits from the projects funded by that fee, as there is no geographical or temporal link between the listed projects and particular new developments. Although Mr. Shook's study concludes that policymakers should "carefully assess the local housing market dynamics and the potential consequences before implementing or adjusting impact fees considering the results of repeated research into the effects of impact fees on housing production and prices," Exhibit 9 at 5, the City has made no such careful assessment here.

Mr. Shook then conducted a counterfactual analysis that considered the effects a TIF at the rates proposed by the Rate Study would have had on a representative sample of housing projects permitted and constructed since the Examiner's decision on the 2018 Proposal and the enactment of MHA, taking into account both the additional costs imposed by MHA as well as the potential secondary effects of a TIF on the revenues collected through MHA. Ex. 9 at 8-19. For both projects that included affordable units to comply with MHA and projects that pay into a fee that funds affordable development, Mr. Shook concluded that a TIF would reduce the return on cost at a level that is "significant in the context of development feasibility," meaning that "developers would not proceed with the projects as proposed" but instead would either pass along the cost increases to tenants (reducing affordability) or modify the projects to make them smaller or reduce the number of units. Ex. 9 at 11.

Mr. Shook explained that what might appear to be small percentages (such as a reduction in .5% in return on cost) are in fact significant reductions that cannot simply be absorbed as a reduction in profits, because housing production depends on financing determinations that are

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made on the margins, and investors will simply look elsewhere if a particular housing project is not sufficiently profitable. As a result, the impacts of a fee are significant. In sum:

> The imposition of a traffic impact fee will impact the amount of housing produced. We found the TIF will reduce the amount of housing units in MHA performance housing projects by 17% on average in total and 7% for affordable performance units. In MHA payment housing projects, the TIF will reduce housing units by 15% on average as well as resulting in a significant reduction in MHA fees. . . .
>
> In addition, land use regulations adopted since 2018 that increase the cost of production (i.e., energy efficiency standards, etc.) and other exogenous factors such as changes in construction costs or development financing, have undoubtedly impacted the feasibility of housing production. . . . In particular, denser forms of development (such as towers) are more likely to pause or cancel development plans as these projects require much greater financing and are thus higher risk. However, losing higher density forms of development would result in a much greater reduction in units than smaller development types. Based on these results, it is likely that under harsher development conditions the TIF is likely to have a higher decrease in the total number of units and further exacerbate the housing shortage problem.
>
> Revisiting the City's target of 112,000 net new housing units by 2044 and impact fees is instructive. The city's aforementioned market rate housing report provides an analysis where the City builds the 112,000 units by 2045 and expects 68% of them to be apartments (approximately 76,000 units). If transportation impact fees move forward and reduce the amount of housing production in the 15-17% range, it would translate to a loss of 11,400 to 12,900 housing units over the time period with disparate impacts on households making less than 50% area median income. However, given the 2023 development conditions (including additional land use regulations and higher construction costs), it is likely that this is a conservative estimate and actual impact could be much higher.

Ex. 9 at 20.

City witness Andew Bjorn testified that the impacts of a fee could not be understood without taking into account the potential positive impacts of the transportation projects that would be funded by a fee, but this testimony was unconvincing. As Mr. Shook described, Mr. Bjorn's analysis and memorandum failed to address the issue of dislocation between fees and amenities and how it relates to a developer's ability to pass along the costs of a TIF. Shook 1.4

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00:50. Indeed, as Mr. Shook noted, Mr. Bjorn's testimony demonstrated that even in the best-case scenario, the costs of a TIF will be fully internalized into the value of homes, "which in itself is its own affordability challenge." Shook 1.4 00:51. Mr. Shook also explained that the nature of TIFs has a greater impact on housing supply than an equivalent property tax because property taxes are treated as operating costs, while impact fees are capital costs that must be paid as part of a project's construction loan. Shook 1.4 01:26.

b. Holzemer and Maritz Testimony.

Ms. Holzemer discussed the probable impacts of the Proposal based on her years of experience as a housing developer, including working on multiple projects in the City with Mill Creek Development. She explained that the development process is much lengthier than the permitting process, beginning with site selection, initial underwriting and a feasibility assessment that includes evaluating a variety of economic and physical factors. Holzemer 1.5 00:23-:25. To secure project financing, a project's underwriting model must demonstrate a sufficient return on both equity and debt. Holzemer 1.5 00:29-00:30. Because investors can choose to invest in other housing markets and non-housing investments, the rate of return needed to attract investment fluctuates over time and outside a developer's control. Holzemer 1.5 00:30. As a result, what can appear to be a small change in yield – even on the order of 0.1% - can easily be significant enough to "tip the scales" against an otherwise viable investment. Holzemer 1.5 00:32-00:33. Ms. Holzemer testified that investors are currently requiring returns of 6 to 6.35%, and she echoed Mr. Shook in explaining that if a project is not able to offer the rate that an investor requires, it is not simply a matter of developers or investors having to make due with lower profits. Instead, investors will simply look elsewhere – investing either in housing

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developments in other jurisdictions or in other types of investments altogether. As a result, unless the costs of a TIF are passed along to tenants (raising rents and diminishing affordability), the increased costs would render projects nonviable – specifically including projects that Ms. Holzemer is currently developing. Holzemer 1.5 00:32-00:33.

Ms. Holzemer addressed the City's assertions that the transportation projects funded by an impact fee would offset the costs of a fee, noting that the projects on the list included in the Proposal are not required to be completed on any particular timeline or in any particular location in the City, which would mean that it would not be possible to determine that tenants in Ms. Holzemer's developments would pay higher rent as a result. This would prevent Mill Creek from including any benefit or off-set income for underwriting purposes. Holzemer 1.5 00:37-00:38. But while the future benefits of a TIF are diffuse and indeterminate, the impacts of the present Proposal are real and immediate: Ms. Holzemer affirmed that the enactment of the comprehensive plan amendments themselves, not just a later enactment of specific fees, would affect her ability to secure financing for projects, because she has a fiscal responsibility to disclose the Proposed Ordinance and the City Study's rate fees to her potential investors and lenders.. Holzemer 1.5 00:43-00:48; 2.1 00:22. Based on her knowledge of the housing market, Ms. Holzemer testified that it would take years for the impacts of a TIF on land values and rents to stabilize; in the interim, the housing supply pipeline would slow, causing a "significant impact on the amount of housing available and the cost of housing for renters." Holzemer 1.5 01:05. Ms. Holzemer also explained that Mr. Bjorn's suggestion that projects could reduce parking in order to compensate for the viability impacts of a fee was unrealistic; parking is already

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expensive and not something that developers seek to add unless a project truly requires it. Holzemer 2.1 00:31.

Ben Maritz, who develops for-profit affordable housing with Great Expectations, confirmed Ms. Holzemer's and Mr. Shook's descriptions of the development and financing processes, particularly concerning the sensitivity of housing investment decisions in a challenging market. He testified that the Proposal and any future TIF program would significantly impact Great Expectations' ability to provide affordable housing. Maritz 2.1 00:58. For-profit affordable housing is important in reaching the City's housing and affordability goals, because the amount of affordable housing that can be provided on a not-for-profit basis is limited. Mr. Maritz explained that although Great Expectations' financing typically comes from individuals who seek to support housing affordability, rather than institutional investors, the financial considerations are not different – funders of for-profit affordable housing must still make a return. Maritz 2.1 00:58. In fact, Mr. Maritz noted that Seattle's long history of imposing additional financial and regulatory burdens on builders means that his investors require a higher rate of return, as much as 6.5%, to compensate for the risk of unknown costs like potential TIFs. Maritz 2.1 1:06, 1:12. Mr. Maritz conducted his own calculations and concluded that a TIF would either mean a project would not pencil due to cost increases or would require raising rents (or waiting until City-wide rents went up) beyond Great Expectations' metrics for affordability, meaning that either way the project would not move forward. Maritz 2.1 00:53-56.

Mr. Maritz also testified that the inclusion of language in the Proposal directing the Council to "consider" exemptions from TIFs for affordable housing would not make impacts to Great Expectations' ability to produce affordable housing less likely for several reasons. First,

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the language does not purport to make an affordable housing exemption mandatory, so Mr. Maritz could not represent to his investors that such an exemption would necessarily be included. Second, even if such an exemption is included, the Proposal does not establish at what level of affordability the exemption would apply, which would potentially leave out some of Great Expectations' developments. Third, both the legislative language of RCW 82.02.060(4) and the general practice of fee exemptions or subsidies for affordable housing requires a level of process that is incompatible with Great Expectations' business model, including a burdensome and frequent process of ascertaining and certifying household and resident employment and income. Maritz 2.1 01:17. As such, Mr. Maritz testified that he would not expect such an exemption to affect his analysis of the Proposed Ordinance or any TIF adopted in the future. Maritz 2.1 01:16-01:18.

The evidence provided by Mr. Shook, Ms. Holzemer, and Mr. Maritz establishes that the Proposal will have probable, significant adverse impacts to housing affordability, requiring the preparation of an EIS.

III. CONCLUSION

The Coalition respectfully asks the Examiner to reverse the DNS and remand to the Director with instructions to comply with SEPA. Based on the evidence at hearing, the Proposal will result in significant adverse impacts to housing. These impacts must be disclosed in an EIS that also considers mitigation and alternatives.

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