

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of

SMART GROWTH SEATTLE

from a determination of non-significance
by the Director, Department of Planning and
Development

HEARING EXAMINER FILE NO.:
W-14-001

SMART GROWTH SEATTLE'S CLOSING
ARGUMENT

I. INTRODUCTION

The City's Determination of Nonsignificance ("DNS") was issued in error. The DNS was not based on information sufficient to evaluate the actual impacts of the amendments. There are impacts caused by the legislation that the City failed to evaluate. Even the impacts that the City did evaluate actually have more than a moderate impact on the environment. Under the State Environmental Policy Act ("SEPA"), the faulty analysis and unmitigated impacts mandate that the DNS be reversed, and the matter remanded to the Department of Planning and Development ("DPD") to conduct additional analysis, including potential preparation of an Environmental Impact Statement ("EIS").

II. CLOSING ARGUMENT

- A. SEPA requires thorough review based on information that is reasonably sufficient to evaluate the impacts of the proposed LR Code Amendments.

Here, DPD conducted the SEPA threshold determination process for a package of legislative amendments called the Lowrise Multifamily Zoning Code Adjustments (the "Legislation" or "LR Code Amendments"). DPD's threshold determination process resulted in a

DNS, rather than a DS requiring preparation of a full Environmental Impact Statement. Under RCW 43.21C.031, an EIS is required for actions having a probable significant adverse environmental impact. That means that an EIS is required whenever more than a moderate effect on the quality of the environment is a reasonable probability. *Boehm v. City of Vancouver*, 111 Wn. App. 711, 717- 718, 47 P.3d 137 (2002). In contrast, issuance of DNS is allowed only when there are no adverse significant environmental impacts.

To be sustained, DPD's DNS is required to be based upon information sufficient to evaluate the impact of the proposed Legislation. *Boehm*, at 718; SMC 25.05.335. That means that the record supporting DPD's DNS must "demonstrate that environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA." *Sisley v. San Juan County*, 89 Wn.2d 78, 85, 569 P.2 712 (1977) (citations omitted). Mere assertions, "unanswered questions," and a "paucity" of supporting information will not satisfy DPD's obligation. *Sisley*, at 85-86. DPD possesses the authority to conduct, and, in fact, is required to conduct further studies and to obtain sufficient information to conduct its environmental review, so long as the cost of obtaining the information is not exorbitant. SMC 25.05.335, 25.05.080.

The State Department of Ecology publishes a SEPA Handbook¹ to provide guidance and tips regarding how to conduct SEPA review. Section 4.1 of the Handbook, includes guidance for nonprojects like the Legislation at issue here, including:

If the nonproject action is a comprehensive plan or similar proposal that will govern future project development, the probable impacts need to be considered of the future development that would be allowed. For example, environmental analysis of a zone designation should analyze the likely impacts of the development allowed within that zone. The more specific the analysis at this point, the less environmental review needed when a project permit application is submitted.

The City's Environmental Policies and Procedures also describe how DPD was required to evaluate impacts. Among the matters that DPD was required to take into account, were (a) the

¹ The SEPA Handbook can be found here: <http://www.ecy.wa.gov/programs/sea/sepa/handbk/hbintro.html>.
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fact that the same proposal may have a significant adverse impact in one location but not in another location; (b) that the absolute quantitative effects of a proposal are also important, and may result in a significant adverse impact regardless of the nature of the existing environment; (c) that several marginal impacts when considered together may result in a significant adverse impact; and (d) that the action might establish a precedent for future actions with significant effects. SMC 25.05.330. Indeed, the directives of SEPA to provide “full disclosure” and “consideration of environmental values” require “actual” consideration of environmental factors “before” a DNS can be issued. *Sisley*, 89 Wn.2d at 86-87 (citations omitted).

In assessing the significance of an impact, DPD “shall not limit its consideration of a proposal’s impacts only to those aspects within its jurisdiction, including local or state boundaries.” SMC 25.05.060.D.2; *see also*, *SAVE v. City of Bothell*, 89 Wn.2d 862, 869, 576 P.2d 401 (1978) (holding that the City of Bothell was required to evaluate the impacts of a proposal on adjoining jurisdictions, particularly as to traffic and the pressure to alter land uses). Similarly, DPD was required to analyze both “direct and indirect impacts,” such as the 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. SMC 25.05.060.D.4. DPD also was required to consider that even a proposal designed to improve the environment in one aspect, may also have significant adverse environmental impacts as to another aspect. SMC 25.05.330.E.

The City of Seattle has an express and detailed “cumulative effects policy” explaining that a proposal “which by itself does not create undue impacts on the environment may create undue impacts when combined with the cumulative effects of prior or simultaneous developments; further, it may directly induce other developments, due to a causal relationship, which will adversely affect the environment.” SMC 25.05.670. DPD’s analysis of cumulative effects was required to “include a reasonable assessment of” matters such as the present and planned capacity of public facilities including streets, and public services such as transit. *Id.*

An agency’s decision to issue a DNS is accorded substantial weight. RCW 43.21C.090. However, substantive decisions made in the SEPA threshold determination are reviewed under

the “clearly erroneous” standard. *Norway Hill Pres. & Prot. Ass’n v. King County Council*, 87 Wn.2d 267, 275, 552 P.2d 674 (1976). A decision is clearly erroneous when the Hearing Examiner is left with the definite and firm conviction that a mistake has been committed. *Norway Hill*, at 274 (citation omitted). Where the DNS is shown to be clearly erroneous, that deference is overcome.

Here, as detailed below, DPD’s decision to issue a DNS was clearly erroneous.

- B. DPD failed to assess impacts associated with the loss of development capacity, including failing to even determine the amount of development capacity to be lost.

The City concedes that, in 2010, it conducted a “thorough” SEPA review of the major rewrite to the multi-family code, and that it conducted a different level of SEPA review of the now proposed LR Code Amendments. Testimony of Geoffrey Wentlandt. The “thorough” SEPA review conducted for the 2010 amendments included a detailed assessment of the development capacity proposed for the LR1, LR2, and LR3 zones under those amendments, including a comparison to prior capacity analyzed in a 1989 Environmental Impact Statement, addressing the 1989 Multifamily Code amendments. Ex. 23 (2010 Environmental Checklist, pp. 12 – 13). The development capacity numbers were summarized as follows:

	2010 Capacity	1989 Capacity
LR 1 Zone	5,839 dwelling units	4,730 dwelling units
LR 2 Zone	12,005 dwelling units	10,256 dwelling units
LR 3 Zone	21,059 dwelling units	20,341 dwelling units

No such analysis is contained in the 2014 SEPA materials for the LR Code Update. However, pursuant to the statements of Bill Mills, the information contained in the City’s August 2014 Development Capacity Report (Ex. 18) helped inform the City’s SEPA 2014 analysis. But, the August 2014 Development Capacity Report is not referenced or incorporated into the City’s SEPA documents for the LR Code Amendments, and the City’s DNS was issued before the report was published. In addition, the projected development capacity numbers shown in

Appendix 3 to the 2014 Development Capacity Report (Ex. 18, p. 16) do not include the reduction in development capacity that is associated with the proposed LR Code Amendments.² Testimony of Geoffrey Wentlandt.

DPD's DNS identifies an anticipated 20% maximum reduction in floor area for new apartments to be built in the LR 2 and LR 3 zones, and a reduction in intensity of use on LR 1 zoned sites due to the reduction of allowable townhomes/rowhouses from 4 to 3 units per commonly platted 5,000 square foot parcel. Ex. 29, p. 4. But DPD refused to calculate or tally the likely reduction in number of housing units across the LR1, LR2, and LR3 zones, and did not include a specific reduction in allowed housing units in its environmental review, and even refused to calculate that number after-the-fact during the hearing on this matter. Testimony of Geoffrey Wentlandt. DPD also refused to admit that the 20% reduction in floor area for new apartments would result in a decrease in dwelling unit output, suggesting that it was even possible for the number of dwelling units to increase, assuming that units were built at a lower square footage/unit. Testimony of Geoffrey Wentlandt. Not surprisingly, then, the DPD SEPA materials are devoid of any quantitative or even qualitative discussion or analysis disclosing the potential impacts on development capacity in the Lowrise zones.

It was not difficult, exorbitantly expensive, or impossible to obtain this information and, therefore, the City's SEPA analysis should have included it. But using the City's numbers alone, the impacts of the LR Code Amendments can only be summarized as follows:

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² The 2014 Development Capacity numbers are substantially below the 2010 Capacity numbers. The City's justification for this difference was merely that different assumptions were used. Testimony of Wentlandt. It is unknown whether the City will analyze the precipitous drop in capacity as part of its SEPA review on the 2035 Comprehensive Plan update.

	Capacity with LR Code Amendments	2014 Capacity	2010 Capacity	1989 Capacity
LR 1 Zone	Uncalculated; potential loss of one unit for every standard 5,000 sf site	4,791 du*	5,839 du	4,730 du
LR 2 Zone	Uncalculated, maximum loss of 20% of floor area	8,547 du	12,005 du	10,256 du
LR 3 Zone	Uncalculated, maximum loss of 20% of floor area	14,397 du	21,059 du	20,341 du

* Dwelling unit = “du”

That the City could have calculated the decrease in development capacity is shown by a review of the evidence. PSRC and the City’s own Development Capacity report project housing and population growth of 70,000 new households and 120,000 new residents in the City of Seattle out of almost 300,000 regionally. Ex. 14, Ex. 15, p. 2. Development in the LR 1 zones is typically townhomes or rowhouses. Testimony of VanWyck; Testimony of Neiman. Development in the LR2 and LR3 zones is typically apartments, but townhomes are allowed. Testimony of Neiman.

The City’s DNS admits that the typical LR 1 townhome development will be reduced from 4 to 3 units should the LR Code Amendments be adopted. Ex. 7, the Weyand diagrams and tables, demonstrate why the LR 1 zone reduction in unit count will occur. The testimony of Mr. Neiman confirmed that under current Code, a developer of a typical 5,000 square foot lot in the LR 1 zone can subdivide the parcel into two 2,500 square foot lots, then use the Code’s density limit of one unit/1,600 square feet and the density rounding factor that allows any fraction above 0.5 to equal another full unit to result in a development output of 4 units, rather than 3 on that 5,000 square foot lot. This is also described in the DPD Director’s Report, Ex. 18, pp. 32 - 34. Mr. Neiman testified, and the Director’s Report (Ex. 18, p.65) explains, that the LR Code Amendment would alter the rounding factor to 0.85. Using background source data from a title

company, Mr. VanWyck succeeded in preparing three Excel spreadsheets demonstrating that across the LR 1 zone, this change in rounding factor would result in the following loss of new townhome units:

- Including all LR 1 zoned parcels, greater than 2,400 square feet, but excluding parcels developed or held as a condominium, public park, or school, the change in rounding factor from 0.5 to 0.85 results in a loss of 1,643 potential new units. Ex. 2, first page (headings), and last page, far right column.
- Including all LR 1 zoned parcels, greater than 2,400 square feet, but excluding parcels developed or held as a condominium, public park, or school, and excluding parcels containing buildings built after the year 2000, the change in rounding factor from 0.5 to 0.85 results in a loss of 1,482 new units. Ex. 3, first page (headings), and last page, far right column.
- Including all LR 1 zoned parcels, greater than 2,400 square feet, but excluding parcels developed or held as a condominium, public park, or school, and excluding parcels containing buildings built after the year 1990, the change in rounding factor from 0.5 to 0.85 results in a loss of 1,369 new units. Ex. 4, first page (headings), and last page, far right column.

Mr. VanWyck's three Excel spreadsheets also demonstrate that if townhomes were the assumed and preferred development type for the LR 2 and LR 3 zones and were the only form of development that occurred on LR 2 and LR 3 sites, then, with the same assumptions as above, the loss of new units for the LR 2 zone will range from 1,659 to 2,050 lost units, and the loss of new units across the LR 3 zone will range from 1,918 to 2,290 lost units. Ex. 2, Ex. 4. Thus, assuming only rowhouse and townhome development across all of the LR1, LR2, and LR3 zoned lands, the proposed Legislation would result in a loss of new housing units ranging from 4,946 to 5,983 lost units. Ex. 2, Ex. 3, and Ex. 4; Testimony of VanWyck.

Apartments are the typical type of use developed in the LR 2 and LR 3 zones. Testimony of Neiman. As shown in the Weyand diagrams and tables (Ex. 7), and testified to by Mr.

Neiman, a typical LR 2 and LR 3 apartment project would lose one floor of space due primarily to the effect of the LR Code Amendment elimination of the FAR exemption for portions of a story that extend no more than 4 feet above grade. Ex. 7, LR 2 and LR 3 Apartments diagrams (showing loss of basement), and LR2 and LR3 Zoning Change Impact tables (showing loss of entire 2,735 square foot P1 level for LR 2, and loss of entire 2,990 square foot P1 level for LR 3 project).

Notably, eliminating the existing FAR exemption for a partially below grade floor is not likely to lead to developers creating entirely below grade floors (which if completely below grade would not count as FAR), because a fully below grade floor is expensive to construct, and cannot be used or rented as living space because of the lack of necessary ingress and egress and light. Testimony of Neiman. Under the current code, these partially below grade floors include living units. Testimony of Neiman; Ex. 6. The loss of floor area associated with the LR Code Amendment was projected for the typical project in the LR 2 site as a loss of 25% of the units (a drop from 20 units to 15 units), and in the LR 3 zone, a loss of 25% of the units (a drop from 24 to 18 units). Ex. 7, LR2 and LR3 Zoning Change Impact tables. In addition, on some LR 3 zoned sites, the combination of the loss of FAR exemption for a partially below grade story and the additional proposed LR Code Amendment to count as chargeable FAR the area of exterior corridors, breezeways, and stairways, results in a loss of 40% of floor area that could be used for dwelling units. Testimony of Neiman.

It is true that the loss of development capacity applied to apartment construction in the LR2 and LR3 zones is associated with a loss of floor area, and that unit count would not be directly regulated by the proposed Legislation. But, as explained by Mr. Neiman, developers have markets they develop a product to serve. A developer who knows that apartments with an average unit size of 475 square feet will successfully rent in a particular location is not likely to reduce the average unit size by 25% to accommodate the lost FAR (e.g., to reduce units to an average unit size of 356 square feet), just to retain unit count. Testimony of Neiman.

What the City's SEPA analysis should have been focused on is the loss of development capacity described in the evidence presented by Smart Growth. For example, using the VanWyck spreadsheets, the capacity of the LR 1 zone is reduced by between 1369 to 1643 dwelling units. If that number is subtracted from the 2010 Capacity numbers, the LR 1 zone has capacity for only 4,196 to 4,470 new dwelling units. When subtracted from the 2014 Capacity numbers, following adoption of the new LR Code Amendment package, the LR 1 zone has capacity for only 3,148 to 3,422 new dwelling units. A drop of development capacity from the 2010 Capacity number of 5,839 new units to just 3,148 new dwelling units equals a 46% loss of development capacity in the LR1 zones.

The City's DNS inaccurately portrays the reduction of development capacity associated with the LR Code Amendments as resulting only in reductions of impacts as to height/bulk/scale, intensity of use, and transportation impacts on neighboring lands. Ex. 29. DPD failed to calculate or analyze the impact on supply and housing affordability other than making the bald assertion the impacts would be minor. Yet, as described above, the Legislation will result in a loss of development capacity of up to 40% on some LR 3 zoned lands, a potential 46% loss in new units in the LR 1 zones, and will result in the loss of thousands of new dwelling units across all of the LR zoned lands. Elimination of development capacity at this level constitutes a profound environmental impact, since the people who are coming to Seattle in future years will have fewer choices about where to live.

DPD could easily have computed the potential impacts, but failed to do so, despite the obligation under SEPA to obtain sufficient information to conduct its SEPA review. Without these numbers, the City's SEPA analysis was unable to calculate the impacts on future development, or the impacts on other jurisdictions, let alone the cumulative impacts associated with the separate micro-housing legislation, and the pending 2035 Comprehensive Plan update, based on an-as-yet-unexplained lower development capacity number, than the 2010 capacity number prepared as part of the City's earlier "thorough" SEPA review. The DPD should have

conducted equally thorough SEPA review on the LR Code Amendments. Because they did not, the DPD DNS should be remanded to staff for additional analysis.

C. The City failed to analyze the potential impacts of pressure to more intensely develop single-family zoned lands.

The DPD Director's Report and Recommendation on the LR Code Amendments (Ex. 18, p. 2) concedes that "[r]eceiving growth in lowrise-zoned areas allows single-family zones to remain single-family neighborhoods." As described in Section B, above, DPD's SEPA analysis failed to quantify the loss of development capacity across the Lowrise zones. The evidence at the hearing plainly demonstrates that there will be a loss in the development capacity of the City's lowrise zones, meaning that if the LR Code Amendments are enacted, the City's lowrise zones will be receiving less growth. Despite conceding that receiving growth in lowrise zones protects protects single-family zoned neighborhoods from pressure to develop more intensely, and despite the evidence that shows that capacity for growth will be reduced by adoption of the LR Code Amendments, DPD utterly failed to analyze the potential for increased development pressure on the City's single-family zoned lands.

Smart Growth Seattle agrees that the City of Seattle has the discretionary authority to downzone or otherwise control growth to reduce development capacity. But that discretion does not excuse DPD from conducting SEPA review necessary to inform the City Council of the probable impacts of a downzone. Here, the necessary SEPA review was not conducted, and the DNS should be reversed and remanded to DPD for additional analysis.

D. The City failed to analyze the potential impacts of pressure to more intensely develop lands in adjoining cities, together with the transportation impact and transit impacts, the LR Code Amendments will likely cause throughout the region.

In recent testimony before the Seattle City Council, the City's Department of Planning and Development staff said that 120,000 people will be moving into the City of Seattle in the next two decades, creating a demand for at least 70,000 new units of housing. Testimony of

Valdez; Ex. 14, Ex. 15. As described above, the proposed Legislation undermines the City's ability to meet that demand, by reducing the potential development capacity.

Nearby jurisdictions, including the City of Des Moines are friendlier to lowrise-style multi-family development than the City of Seattle. Testimony of Valdez. While some potential City of Seattle residents who could not afford a new townhome built in a LR 1 zone in the City of Seattle might migrate to a different type of housing, such as a lowrise, midrise or highrise apartment, most would not; instead, according to the only testimony provided by a residential real estate broker, those buyers would look for the same type of townhome housing outside the City limits. Testimony of VanWyck.

Traffic congestion is substantial in the region, and into and out of Seattle. Testimony of Lincoln; Testimony of Shaw; Ex. 10. When faced with freeway congestion, some drivers will divert onto City streets in Seattle and adjoining jurisdictions. Testimony of Lincoln; Testimony of Shaw. In the opinion of Smart Growth Seattle's transportation engineer, these impacts are significant. Testimony of Lincoln.

DPD's only traffic analysis was as to City of Seattle streets, and that analysis was purely qualitative, simply assuming a minor reduction in impacts to the transportation network, because there would be fewer units built in the City and, therefore, fewer people creating traffic impacts. Ex. 29. Even in this limited regard, DPD's analysis is flawed because it assumes that the persons who would have moved into those units just disappear -- that they would simply never arrive or move into the region at all. DPD's assertion at the hearing that all possible transportation impacts would be alleviated by transit, is not well taken. No such analysis was included in the Environmental Checklist or DNS (Ex. 19, Ex. 29), the un-rebutted evidence demonstrates cuts in bus service (Ex. 11), and the funding source for the full remainder of possible Sound Transit light rail construction is unknown (Testimony of Shaw) and, therefore, speculative.

Indeed, as shown by Smart Growth Seattle's evidence, preparation of even a general analysis of regional transportation impacts is readily accomplished. Using the assumption that 7,000 new dwelling units will be lost from the City's Development Capacity across the lowrise

zones, Smart Growth established the percentage of those trips that would commute into and out of the City from the north, south, east and west, during the multiple hours of commuting time each day. Testimony of Lincoln; Ex. 9. Those thousands of trips include trips which will be added to – not taken away from – the City of Seattle’s road system, as well as the road systems of adjoining jurisdictions. Testimony of Lincoln. If the total loss in development capacity across all the Lowrise-zoned lands is less than 7,000 dwelling units, then the traffic impacts would be lessened; if the loss in development capacity is greater, then the impacts will be increased. During its SEPA analysis of the LR Code Amendments, DPD should have calculated the direct impact on development capacity and the indirect impacts on traffic, transportation and transit. DPD’s failure to do so, mandates reversal and remand for additional analysis.

Finally, the City again included absolutely no analysis - quantitative or qualitative – of either the induced development impacts and pressure or the transportation impact on the roadways of nearby jurisdictions, like Shoreline, Burien, Des Moines, Tukwila. Under *SAVE v. City of Bothell*, 89 Wn.2d 862 (1978), the City of Seattle is not allowed to ignore impacts of its actions on other Cities.

For all of these reasons, the DPD DNS must be reversed and remanded and additional SEPA review conducted.

E. The City erred when determining the LR Code Amendments would have only a minor impact on housing affordability.

The DNS erroneously concludes that the LR Code Amendments would have only a minor impact on housing affordability. Ex. 29. Basic economic principles support that the greater the supply of housing, the lower the cost. Testimony of Valdez; Testimony of Wentlandt. More specifically, as to apartments, when there are higher vacancy rates, there are lower rent changes. Ex. 16 (especially, slide titled: “Apartment rent and vacancy relationship: Seattle”); *see also* Ex. 17.

As described in Section B, above, the LR Code Amendment proposal would reduce townhome development from 4 to 3 units on typical 5,000 square foot site. In addition, each of the three townhomes would become larger structures. Ex. 7 (especially LR 1 Zoning Change

Impact table, noting square footage increase from 1,737 sf under current code, to 2,315 sf under proposed code); Testimony of Neiman. Larger townhomes are priced higher than smaller townhomes. Testimony of Neiman. Thus, the LR Code Amendments will both reduce the future supply of townhomes, thereby increasing their price, and will increase the price of the townhomes that are constructed due to their larger size. As described in Section B, above, the LR Code Amendments will also reduce unit count in the LR 2 and LR 3 zones.

Assuring adequate housing supply includes assuring a choice of housing type and range of prices. As described in the testimony of Roger Valdez, Smart Growth Seattle works with, and on behalf of, developers seeking to provide market rate housing. If adopted, the City's LR Code Amendments will result in a "major" impact on housing affordability. Testimony of Valdez.

The City's assertion of minor impact on affordability is not supported by the evidence. The impact is significant and requires remand for additional analysis.

F. The City erred when failing to analyze the cumulative impacts of the LR Code Amendments and other pending proposals.

DPD's SEPA review materials are devoid of any analysis of the cumulative impact of the LR Code Amendments, together with pending microhousing amendments. Nor is there a proper analysis of whether the LR Code Amendments actually fix the problems they were purportedly designed to fix, meaning that there may be yet more amendments coming.

For example, among the alleged problems that the LR Code Amendments are supposedly intended to cure, is the perception of increased height and building stories. As described in Section B, above, it is the case that the proposed LR Code Amendments will eliminate a FAR exemption for partially below-grade floors which will result in the loss of one story from the typical apartment project in the LR 2 and LR 3 zones. *See, also*, Ex. 6, Ex. 7. However, as described in the testimony of Mr. Neiman and shown on Ex. 6,³ the loss of the basement level due to the LR Code Amendments will likely result in the transfer of mechanical equipment to the roof, meaning that rather than a sloped roof design, the roof would be flat, and accompanying the

³ Exhibit 6 shows a real project currently under construction at 1219 Marion Street, and designed by Mr. Neiman's firm. The "Before" sheet shows a section through the building as designed. The "After" sheet shows how the building would most likely be modified using the LR Code Amendments. Testimony of Neiman.

flat roof would be protective parapets which are allowed to extend above the height limit for the structure, resulting in a structure that has virtually identical height, bulk, and scale impacts to the original building, except with 20 percent fewer units. Since the current LR Code Amendment package was apparently triggered by the “unexpected outcomes” of the 2010 major code update (Ex. 18, p. 3), Smart Growth is concerned that DPD’s analysis does not contemplate the likelihood that these height, bulk, and scale impacts will later be deemed “unexpected outcomes” inducing yet further amendments.

At the same time that the City is evaluating the LR Code Amendments, the City also is reviewing other code provisions affecting microhousing projects, which are often located within the LR3 zones. Testimony of Wentlandt; and *see* Ex. 18, p. 7. Indeed, the City’s Planning Commission believes that the separate code amendments calling for design review of microhousing projects will “help alleviate some design issues that have exacerbated” citizen concerns about development in the Lowrise zones. Ex. 18, p. 7.

DPD asserted that the sites analyzed in the Directors Report (Ex. 18) as examples of problems created by the 2010 multi-family code update were typical and demonstrative of issues with the Lowrise zoning provisions themselves. Testimony of Wentlandt. However, as described by Mr. Valdez, 10 of the 12 example projects were the subject of significant neighborhood controversy, and the sample projects include multiple microhousing projects. Rebuttal Testimony of Valdez. Thus, the City developed its problem statement, and determined its solution to the alleged problem via analysis of sample projects that were both controversial with adjoining neighbors, and that were microhousing, but the DPD’s SEPA analysis fails to acknowledge that fact, or acknowledge that the separate microhousing regulations are likely to separately alleviate the “problems” alleged by adjacent neighbors.

The DNS prepared by DPD was simply not based on information sufficient to evaluate the actual impacts of the amendments. In addition, nothing in the City’s SEPA review for the Lowrise Multifamily Zoning Code Adjustments identifies or evaluates the potential cumulative

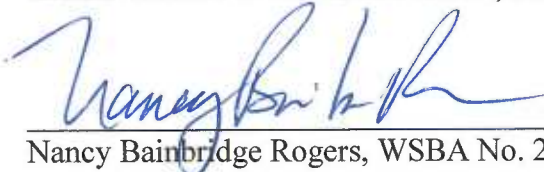
impacts on all of the issues listed above or analyzes the impacts of making uncoordinated multiple code changes.

III. CONCLUSION

The DPD SEPA analysis for the LR Code Amendments failed to identify, actually consider, and fully analyze, let alone propose mitigation for, the adverse significant environmental impacts listed above. The DNS should be reversed and the City directed to prepare an environmental impact statement on these impacts. In the alternative, the DNS should be reversed and remanded to DPD for additional analysis and imposition of mitigation conditions necessary to mitigate the adverse impacts associated with the Lowrise Multifamily Zoning Code Adjustments.

DATED this 7th day of October, 2014.

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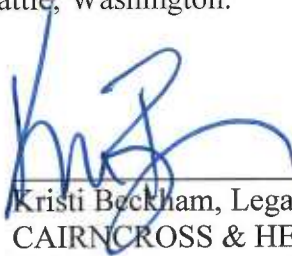
Attorneys for Appellants Smart Growth Seattle and
Roger Valdez

Certificate of Service

I, Kristi Beckham, certify under penalty of perjury of the laws of the State of Washington that on October 7, 2014, I caused a copy of the document to which this is attached to be served on the following individual(s) via email:

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DATED this 7th day of October, 2014, at Seattle, Washington.



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