

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeal by
FRIENDS OF MADISON PARK, et al.,
Appellants,
From the Office of Planning and Community
Development’s Final Environmental Impact
Statement on the One Seattle Plan.

Nos. W-25-001, W-25-002, W-25-003,
W-25-004, W-25-005, W-25-006
(Consolidated by Order of the
Hearing Examiner)

**THE DEPARTMENT’S COMBINED
MOTION TO DISMISS SIX APPEALS
IN WHOLE OR IN PART, MOTION TO
REJECT GODFREY ISSUE
CLARIFICATION, AND MOTION FOR
CONSOLIDATION AND
CLARIFICATION OF ISSUES**

I. INTRODUCTION AND RELIEF REQUESTED

Six appeals were filed challenging the Final Environmental Impact Statement (“FEIS”) of the One Seattle Proposal, which encompasses the City’s proposed Comprehensive Plan (known as the One Seattle Plan) and the implementing development regulations and zoning maps (referred to as “Phase 1 and “Phase 2” legislation). The appeals raise many appeal issues, some of which arise under the State Environmental Policy Act, Ch. 43.21C RCW (“SEPA”) and several others that fall outside of the Examiner’s jurisdiction. The Office of Planning and Community Development (“Department”) moves to dismiss all appeals in full. In the alternative, the Department moves to dismiss five appeals for lack of standing and dismiss Friends of Ravenna-Cowen for failure to file a proper appeal. If any appeal

1 issues remain, the Department moves to dismiss all issues outside the Examiner’s jurisdiction. Lastly,
2 the Department requests the Examiner reject Appellant Godfrey’s Issue Clarification and to consolidate
3 and clarify the limited scope of any remaining claims.

4 First, the Department moves to dismiss all six appeals in full because state law exempts the One
5 Seattle Proposal from SEPA appeal. RCW 36.70A.070(2), RCW 36.70A.600(3), RCW 36.70A.680(3)
6 and RCW 43.21C.095, provisions of state law enacted specifically to remove barriers to housing posed
7 by SEPA appeals, bar all six appeals.

8 Second, and in the alternative, all Appellants must be dismissed except Godfrey. None of the
9 Appellants, except Godfrey, commented on the Draft Environmental Impact Statement (“DEIS”).
10 Under SEPA rules and caselaw, failure to comment on a DEIS is deemed a lack of objection and
11 constitutes lack of standing to bring a SEPA appeal. Further, Appellant Youtz’s attempt to add
12 “additional appellant” Friends of Ravenna-Cowen (“FORC”) fails because FORC did not file an appeal
13 consistent with HE Rules 5.01(d)(2), (3). The FORC appeal must be excluded, and FORC must be
14 dismissed as an additional party.

15 Third, if any appeals remain, the Department moves to dismiss all issues that are outside of the
16 Examiner’s jurisdiction or otherwise lack merit on their face, including claims alleging GMA
17 noncompliance; electric vehicle mandate noncompliance; NOAA guideline noncompliance;
18 enforcement of private restrictive covenants, interference with contractual rights, or alleged takings;
19 constitutional due process violations; attempts to challenge the scope and content of policy decisions;
20 and alleged impacts that are outside the scope of what SEPA analysis requires, such as parking impacts
21 and economic analysis. The Examiner only has jurisdiction granted by ordinance or other City Council
22 action. Here, the Examiner has jurisdiction only over the adequacy of the FEIS.

23 Fourth, the Department moves to reject Appellant Godfrey’s Issue Clarification, which attempts

1 to add several new and significant issues to Godfrey’s notice of appeal. The “clarification” must be
2 denied because these new and largely expanded issues violate of HER 5.07 and SMC 25.05.680.A.2.b.
3 It would be improper and unfair to allow Appellant to add new issues after the appeal deadline.

4 Finally, if any issues remain, the Department moves to consolidate and clarify the limited scope
5 of some of Appellants’ issues to streamline the hearing process.

6 II. FACTS

7 A. The One Seattle Proposal and the Final Environmental Impact Statement.

8 1. The One Seattle Proposal and FEIS were developed after extensive public 9 engagement and environmental review.

10 To comply with the GMA, the City of Seattle (“City”) must periodically update its long-range,
11 citywide planning document, known as a comprehensive plan, as well as the development regulations that
12 implement the plan. *See* RCW 36.70A.040; RCW 36.70A.130.

13 The City’s current comprehensive plan update is years in the making, with extensive public
14 engagement and environmental review. OPCD Core Documents (“Core Docs.”) at SEA000164–69
15 (summarizing the process that began in at least early 2022); *see also id.* at SEA001312 (linking to website
16 containing dozens of project documents, including public comments). Over the years, the Department has
17 solicited public feedback online, at in-person events, through media coverage, and through community
18 partnerships. *Id.* at SEA000164–69, SEA003481–98. The Department received thousands of comments
19 from the public and interested groups. *Id.* at SEA003481–98. In March 2024, after two years of significant
20 outreach, the Department published a draft comprehensive plan (“Draft One Seattle Plan”) and a DEIS for
21 the Plan. *Id.* at SEA001116.

22 The Department issued the DEIS on March 7, 2024, and the public comment period ran from
23 March 7 to May 6. *Id.* at SEA003492. Notice of the DEIS issuance, the comment period, and the public
hearings on the DEIS was published through the Seattle Services Portal, in the Land Use Information

1 Bulletin (“LUIB”), and in the Daily Journal of Commerce (“DJC”). *Id.* at SEA004636-50. The DEIS was
2 also uploaded to the State SEPA Register and distributed to relevant agencies, service providers,
3 community groups, and commenters. *Id.* at SEA004651–54, SEA000011–12. Comments were accepted
4 at the public hearings, through email, and through mail. *Id.* at SEA003492-93. Notably, only one
5 Appellant in this matter submitted a public comment on the DEIS.¹ Appellant Jennifer Godfrey
6 submitted a public comment on the DEIS on May 5, 2024. *Id.* at SEA001109–16. In the list of
7 Commenters, see “Godfrey 1” and “Godfrey 2”, given Response Numbers 221 and 222. *Id.* at
8 SEA001113. The Department responded to her comments in the FEIS. *Id.* at SEA001195–96.

9 Then, in fall 2024, the Department published draft development regulations and zoning maps that
10 would implement the growth strategy of the One Seattle Plan. *Id.* at SEA000167.² The Department again
11 sought and received feedback. *Id.* at SEA000167, SEA003495–98. Finally, the Department and Mayor’s
12 Office published an updated One Seattle Plan on January 6, 2025, and a FEIS on January 30. *Id.* at
13 SEA000009.

14 **2. The FEIS thoroughly analyzes the environmental impacts of the One Seattle**
15 **Proposal.**

16 The FEIS—which, including its appendices, is nearly 3,000 pages—analyzes the environmental
17 impacts of the One Seattle Proposal through six alternatives including a “No Action Alternative” and
18 a “Preferred Alternative.” The FEIS identifies the One Seattle Plan as the “Preferred Alternative.” *Id.*
19 at SEA000007. All six alternatives vary in how and where the City will direct housing and job growth
20 over the next twenty years. *See id.* at SEA000006–7, SEA000041–58 (summarizing all six
21 alternatives). Generally, the five action alternatives would increase housing capacity beyond the no

22 ¹ While Larry Johnson also submitted a public comment on behalf of FORC on the DEIS on May 4, 2024, FORC did not
properly file an administrative appeal with the Hearing Examiner. *See* Section III.C.2 herein.

23 ² *See also* Zoning Map, <https://one-seattle-plan-zoning-implementation-seattlecitygis.hub.arcgis.com/pages/zoning-map> (last
accessed 3/13/2025).

1 action alternative. *See id.* Alternative 1 (the No Action Alternative) expects growth of 80,000 new
2 homes between 2024 through 2044. Alternatives 2 (“Focused”), 3 (“Broad”), and 4 (“Corridor”) plan
3 for 100,000 new homes by 2044, and Alternatives 5 (“Combined”) and the Preferred Alternative (the
4 One Seattle Plan) each plan for 120,000 new homes. *See id.* at SEA000006–7.

5 The FEIS analyzes how each alternative would impact the following “elements of the
6 environment”: earth and water quality; air quality and greenhouse gas emissions; plants and animals;
7 energy and natural resources; noise; land use patterns; cultural/historic resources; population,
8 employment, and housing; transportation; public services; and utilities. *See id.* at SEA000169,
9 SEA000215. Chapter 3, which is 892 pages, contains the bulk of that analysis, including disclosure and
10 analysis of the affected environment and potential impacts and mitigation measures for each alternative.
11 *Id.* at SEA000214-1107. Relevant to this appeal, the FEIS concludes that “none of the action
12 alternatives would be expected to have significant, unavoidable adverse impacts on aquatic species and
13 habitats.” *Id.* at SEA000344. Chapter 4 contains the Department’s responses to the comments on the
14 DEIS. *Id.* at SEA0001108–1250.

15 Significantly, the FEIS found that, compared to no action, the action alternatives would increase
16 housing capacity, increase housing affordability, and decrease overall displacement. *See id.* at
17 SEA000107–18. The FEIS summarizes its findings as follows³:

23 ³ The FEIS is built off the DEIS, with changes shown with strikethroughs and underlines, plus the City’s responses to public
comments on the DEIS (Chapter 4).

Exhibit 1.6-22. Population, Housing & Employment Summary of Thresholds of Significance

Metric	Threshold	Alt. 1	Alt. 2	Alt. 3	Alt. 4	Alt. 5	Pref.
☒ Equity & Climate	Increase the supply of market-rate housing. ¹	—	△	△	△	▲	▲
☒ Equity & Climate	Increase the affordability of market-rate housing. ²	—	△	△	△	▲	▲
☒ Equity & Climate	Increase the diversity of market-rate housing. ³	—	△	▲	△	▲	▲
☒ Equity & Climate	Increase the supply of income-restricted housing. ⁴	△	▲	△	▲	▲	▲
☒ Equity & Climate	Reduce residential economic displacement. ⁵	▽	△	△	△	▲	▲
☒ Equity & Climate	Reduce residential physical displacement. ⁶	—	▽	▽	▽	▽	▽

Note: Impacts are considered either unavoidable adverse (▼▼), adverse but able to be mitigated (▼), impact but less than adverse (▽), limited or none (—), moderately positive (△), or positive (▲). The Preferred Alternative was added to this exhibit, and associated analysis in the notes, since the Draft EIS—no changes were made to the impact summary for Alternatives 1–5.

Id. at SEA000117. The FEIS notes that “Alternative 5 and the Preferred Alternative provide[] the greatest amount of new supply, and therefore would be expected to have the greatest impact on reducing market housing cost pressures.” *Id.* Also, “Alternative 5 and the Preferred Alternative are expected to have the greatest impact on reducing economic displacement pressure because they anticipate[] the largest increase in housing supply.” *Id.* at SEA000118.

3. The One Seattle Plan calls for increased housing capacity, increased housing affordability, and measures to mitigate displacement.

The One Seattle Plan—identified as the Preferred Alternative in the FEIS—is composed of the Mayor’s proposed comprehensive plan and growth strategy that will be considered by the Council. The One Seattle Proposal would increase housing capacity across most of the City, which is predicted to result in 120,000 new homes built over the next twenty years (40,000 more homes than if no action is taken). *Id.* at SEA000038.

The One Seattle Plan discusses “Four Key Moves” that it undertakes, two of which are relevant

1 here: “Housing and Affordability” and “Equity and Opportunity.” *Id.* at SEA002875–79. Regarding
2 the former, the Plan states in part: “The One Seattle Plan is designed to improve the supply, variety,
3 and affordability of housing across the city. Our approach addresses past exclusionary policies and
4 practices and the need to expand housing and neighborhood access.” *Id.* at SEA002875. Regarding
5 “Equity and Opportunity,” the Plan states in part: “The Plan embraces a vision of growth without
6 displacement of households, businesses, and cultural communities that are currently at risk of being
7 forced to leave Seattle. The One Seattle Plan highlights anti-displacement strategies across many
8 elements and builds on many anti-displacement programs the City has in place.” *Id.* at SEA002876.

9 Similarly, the One Seattle Plan’s “Housing element” describes “three key strategies”:

10 **INCREASE HOUSING PRODUCTION**

11 First, the Housing element complements this Plan’s Growth Strategy by promoting
12 more housing production overall, of diverse types and throughout all neighborhoods.
13 This is necessary to meet the needs of a diversifying population, keep pace with demand
14 as the region continues to grow, and address past underproduction. This Plan also
15 identifies the need for a streamlined and predictable permitting process for housing.

16 **INVEST IN AFFORDABLE HOUSING**

17 Second, this Plan supports resources, investment, and a variety of tools to address
18 housing needs unmet by the market. Despite historic levels of investment in affordable
19 housing for low-income households, we continue to fall far short of the need. The
20 Housing element identifies the critical need for significant public investment to produce
21 and preserve rental units and to create homeownership opportunities for people with
22 incomes too low to afford housing in Seattle. This Plan also supports land use rules that
23 boost our ability to add income-restricted homes in all neighborhoods.

24 **IMPLEMENT MEASURES TO PREVENT DISPLACEMENT**

25 Third, this Plan supports a broad array of anti-displacement strategies to keep vulnerable
26 households in place and cultural communities intact. Affordable housing itself is a
27 primary anti-displacement measure. Measures to protect low-income tenants from rent
28 increases and eviction and preserve housing affordable to them are critical. Additional
29 tools focus on stabilizing communities, increasing community ownership, and
30 redressing past discrimination and exclusion, particularly for Black and Indigenous
31 communities.

32 *Id.* at SEA002958. The One Seattle Plan includes dozens of new goals and polices that address each
33

1 strategy.⁴ For example, regarding housing supply, Housing policy 2.1 states: “Expand capacity for
2 housing development broadly to encourage market production that meets short- and long-term housing
3 needs, reduces upward pressure on costs caused by scarcity, accommodates current and projected future
4 growth, and accounts for past underproduction of housing.” *Id.* at SEA002962; *see also, e.g., id.* at
5 SEA002887 (Growth Strategy policies 1.1, 1.2), SEA002907 (Land Use policy 1.1), SEA002970
6 (Housing policy 6.5).

7 As an example of a policy meant to increase affordability, Housing policy 2.3 provides:
8 “Promote the production of housing with lower market price points, including by removing regulatory
9 barriers, to meet Seattle’s projected 20-year affordable housing needs.” *Id.* at SEA002962; *see also,*
10 *e.g., id.* at SEA002963 (Housing policy 3.3), SEA002964 (Housing policies 3.6, 3.7), SEA002966
11 (Housing policies 4.5, 4.6), SEA002990 (Utilities policy 2.10). As an example of displacement
12 mitigation, Housing policy 5.9 states: “Provide financial, regulatory, and technical support for
13 community-based developers working to help [Black, Indigenous, and People of Color] homeowners
14 and prospective homebuyers avoid displacement, achieve or retain homeownership, or return to their
15 cultural communities.” *Id.* at SEA002968; *see also, e.g., id.* at SEA002907 (Land Use policy 1.7),
16 SEA002938 (Transportation policy 1.8), SEA002964 (Housing policy 3.17), SEA002967 (Housing
17 policy 5.1).

18 The One Seattle Plan also explains that the three strategies are interrelated, such that increasing
19 housing production will result in greater affordability and decreased displacement: “Increasing our
20 ability to build more housing in more places will help to ease market pressures that are driving up costs
21 and contributing to displacement of [Black, Indigenous, and People of Color] and low-income
22

23 ⁴ Additionally, the One Seattle Plan proposes to keep dozens of goals and polices that exist in the current comprehensive plan and that address each of the three strategies.

1 households and provide more affordable housing options for the working families of today and
2 tomorrow.” *Id.* at SEA002875; *see also id.* at SEA000673 (“Increasing housing supply reduces the
3 upward pressure on housing costs that otherwise results when a growing population competes for a
4 finite number of homes. Given Seattle’s historic underproduction of housing relative to demand and
5 population growth, a substantial expansion of housing supply is necessary to address economic
6 displacement pressures.”).

7 **4. The proposed development regulations and zoning maps will implement the**
8 **growth strategy of the One Seattle Plan, as well as state laws that require**
9 **increased housing capacity.**

10 On October 16, 2024, the Department published draft development regulations and zoning maps
11 that would implement the growth strategy of the One Seattle Plan. The first component of this
12 legislation (referred to as Phase 1) is included as Appendix J to the FEIS. Phase 1 would primarily
13 update the development regulations for the City’s “Neighborhood Residential” zoning (formerly
14 referred to as single-family zoning), which is currently Seattle’s largest and lowest density residential
15 zone, mainly containing detached single-family homes. *See id.* at SEA001559.

16 In addition to implementing the One Seattle Plan growth strategy, the Phase 1 legislation would
17 implement multiple state laws that are “intended to increase the production of housing and address our
18 housing affordability crisis.” *Id.* at SEA001632. Of note is House Bill (“HB”) 1110 (RCW 37.70A.635
19 et seq.), which increases housing density in traditionally low-density residential areas by requiring local
20 jurisdictions to allow “middle housing” in areas traditionally dedicated to detached single-family
21 homes. *See Laws of 2023, ch. 332, title.* In accordance with HB 1110, Phase 1 would generally allow
22 at least four to six dwelling units of various types—like duplexes, triplexes, and fourplexes—on most
23 residential lots throughout the City. *See Core Docs.* at SEA001560. Relevant to this appeal and in line

1 with state law, environmentally critical areas and buffers, submerged lands, and areas within shoreline
2 setbacks would be exempt from increased housing density. *Id.* at SEA001635; RCW 36.70A.635(8)(a).

3 Phase 1 would also implement HB 1337 (RCW 36.70A.680 et seq.), which requires local
4 jurisdictions to allow two accessory dwelling units on lots zoned for single-family homes. *See* RCW
5 36.70A.681(1)(c); Core Docs. at SEA001636, SEA001651 (allowing accessory dwelling units in all
6 zones). Relevant here, the provisions of HB 1337 do not apply to lots with environmentally critical
7 areas or buffers. RCW 36.70A.681(4). Any lots within the shoreline would continue to be subject to
8 the local shoreline master program. RCW 36.70A.680(4).

9 The Phase 2 legislation would adopt changes to the City’s zoning maps—implementing the One
10 Seattle Plan’s growth strategy for the new proposed neighborhood centers, expanding existing regional
11 and urban centers, and changing zoning along frequent transit arterials. Core Docs. at SEA0003452–
12 73. Relevant to this appeal, these changes would include upzoning areas in both the proposed Madison
13 Park neighborhood center and along a frequent transit route running through the Mt. Baker
14 neighborhood parallel to the current Mt. Baker Urban Center. *Id.* at SEA0003475–77. Phase 2 proposed
15 no changes to the environmentally critical areas ordinance, chapter 25.09 SMC, or the Shoreline Master
16 Program, chapter 23.60A SMC, both of which would continue to apply to any upzoned areas. *See id.*
17 at SEA003451 et seq.

18 **B. The appeals.**

19 Friends of Madison Park (“FOMP”) filed its appeal (W-25-001) on February 11, 2025. It alleges
20 nine objections mostly regarding impacts from the proposed residential upzoning in the Madison Park
21 neighborhood. Trevor Cox and Jake Weyerhaeuser filed their appeal (W-25-002) on February 12. It
22 alleges eleven issues regarding impacts, most of which arise from the proposed residential upzoning in
23 the Madison Park neighborhood. The remaining four appeals were filed on February 13. Hawthorne

1 Hills Community Club (W-25-003) alleges one issue regarding parking impacts from proposed
2 residential upzoning in the Hawthorne Hills neighborhood. Chris Youtz and additional appellants (W-
3 25-004) allege six issues mostly related to proposed residential upzoning in the Mt. Baker
4 neighborhood. John Cary and additional appellants (W-25-005) allege multiple issues also related to
5 proposed residential upzoning in the Mt. Baker neighborhood. Jennifer Godfrey’s notice of appeal (W-
6 25-006) focuses on impacts on the Southern Resident Killer Whales, retention of large trees, and water
7 quality in Elliot Bay. On February 18, 2025, the Examiner consolidated all six appeals.

8 **III. ARGUMENT**

9 **A. All appeals must be dismissed under Rule 3.17(j).**

10 The Examiner should dismiss all six appeals under Hearing Examiner Rule (“HER”) 3.17(j). Per
11 that Rule, a party may move to dismiss an appeal, in whole or in part, on three grounds relevant here:

- 12 (3) The Examiner lacks jurisdiction, in whole or in part, over the appeal;
- 13 (4) The appeal is frivolous or without merit on its face; or
- 14 (5) Other grounds established by law exist.

15 The Examiner must dismiss all the appeals on a variety of bases. First, the Examiner must
16 dismiss all six appeals under broad statutory exemptions in the GMA and SEPA that prohibit
17 administrative SEPA appeals of nonproject actions that will increase housing capacity, housing
18 affordability or mitigate displacement. RCW 36.70A.070(2). The One Seattle Proposal will increase
19 housing capacity by 40,000 new housing units from 2024–2044 and will provide 13,000 income-
20 restricted units that help with affordable housing supply and will mitigate displacement. Further, the
21 One Seattle Proposal will mitigate displacement with policies to help homeowners stay in place.

22 The Examiner should also dismiss all six appeals under another GMA statute,
23 RCW 36.70A.600, which bars SEPA appeals of nonproject proposals that encourage housing through
a variety of mechanisms, including allowing stacked flats and sixplexes, where they are not currently

1 allowed. The One Seattle Proposal encourages housing and allows new housing types in zones they are
2 not currently permitted. And the Examiner should dismiss all six appeals under a third GMA statute,
3 RCW 36.70A.680, which bars SEPA appeals of city actions taken to comply with that statute and
4 RCW 36.70A.681. The One Seattle Proposal takes action to comply with those statutes.

5 If the Examiner does not dismiss all six appeals under the statutory prohibitions on SEPA
6 appeals, the Examiner must dismiss all Appellants except Godfrey for failure to submit a comment on
7 the DEIS. The Examiner has recognized that appellants that fail to comment on an environmental
8 document lack standing to appeal. Because only Godfrey submitted a DEIS comment, all other
9 Appellants must be dismissed for lack of standing. Moreover, the Examiner must dismiss FORC
10 because it did not file a proper appeal consistent with the Hearing Examiner Rules.

11 If the appeals are not dismissed in whole, numerous claims must be dismissed due to lack of
12 Examiner jurisdiction, including over alleged noncompliance with GMA and other state statutes and
13 constitutional provisions. Additionally, several claims lack merit on their face and should be dismissed
14 including claims regarding parking and economic interests that are not elements of the environment
15 under SEPA.

16 Significantly, Godfrey's attempt to expand and add claims to her notice of appeal based on her
17 Issue Clarification must be rejected. The Rules and Seattle Municipal Code prevent adding new legal
18 claims or issues after the appeal deadline has passed.

19 Finally, if any issues remain, the Department asks for consolidation and clarifications limiting
20 the scope of some issues to ensure a streamlined and fair hearing.

21 **B. SEPA and the GMA completely bar all six of the appeals because the One Seattle Proposal**
22 **will increase housing.**

23 Multiple separate statutes within SEPA and the GMA clearly and broadly prohibit administrative

1 SEPA appeals of city actions that will increase housing. The first provides that nonproject actions⁵ that
2 increase housing capacity, increase housing affordability, and/or mitigate displacement are not subject to
3 administrative or judicial appeal under SEPA:

4 The adoption of ordinances, development regulations and amendments to such regulations,
5 and other nonproject actions taken by a city . . . that increase housing capacity, increase
6 housing affordability, and mitigate displacement as required under this subsection (2) and
7 that apply outside of critical areas are not subject to administrative or judicial appeal under
8 chapter 43.21C RCW [SEPA] unless the adoption of such ordinances, development
9 regulations and amendments to such regulations, or other nonproject actions has a probable
10 significant adverse impact on fish habitat.

11 RCW 36.70A.070(2).⁶ (emphasis added). SEPA contains a nearly identical exemption from appeals on
12 the same grounds. RCW 43.21C.495(1). A second exemption prohibiting appeals is found at
13 RCW 36.70A.600 and similarly prohibits SEPA appeals. It encourages cities like Seattle to take certain
14 actions to increase residential building capacity including the following:

15 (c) Authorize at least one duplex, triplex, quadplex, sixplex, stacked flat, townhouse, or
16 courtyard apartment on each parcel in one or more zoning districts that permit single-
17 family residences unless a city documents a specific infrastructure of physical constraint
18 that would make this requirement unfeasible for a particular parcel;

19 (d) Authorize a duplex, triplex, quadplex, sixplex, stacked flat, townhouse, or courtyard
20 apartment on one or more parcels for which they are not currently authorized;

21 RCW 36.70A.600(1). The statute further provides that adoption of “nonproject actions taken by a city
22 to implement the actions specified,” including in subsections (c) and (d) above, “are not subject to
23 administrative or judicial appeal under chapter 43.21C RCW [SEPA].” RCW 36.70A.600(3); *see also*

⁵ Under SEPA, the adoption or amendment of a comprehensive plan or zoning ordinance is a “nonproject action.” WAC 197-11-704(b)(ii).

⁶ RCW 36.70A.070(2) does not require a nonproject action to address all three elements (capacity, affordability, and displacement) to be eligible for the appeal exception; it is sufficient to satisfy only one element because the “and” disjunctive (i.e., “or”), just like the “and” between “development regulations” and “amendments to such regulations” in the first part of the provision must be read disjunctively. “In certain circumstances, the conjunctive ‘and’ and the disjunctive ‘or’ may be substituted for each other if it is clear from the plain language of the statute that it is appropriate to do so.” *Bullseye Distrib. LLC v. State Gambling Comm’n*, 127 Wn. App. 231, 239 (2005); *see also, e.g., State v. Keller*, 98 Wn.2d 725, 729 (1983) (interchange of “or” and “and” in statutory interpretation may be necessary to avoid absurd results). Regardless, the nonproject action at issue here—the One Seattle Proposal—satisfies all three elements.

1 RCW 43.21.495(1) (barring SEPA appeals on the same grounds in the SEPA chapter). Finally, any
2 action taken by a city to comply with HB 1337—which essentially requires cities to allow two
3 accessory dwelling units on lots zoned for single-family homes—“is not subject to legal challenge
4 under this chapter or chapter 43.21C RCW.” RCW 36.70A.680(3); *see also* RCW 43.21C.495(3)
5 (barring SEPA appeals on the same grounds). Notably, unlike RCW 36.70A.070(2), the SEPA appeal
6 exemptions of RCW 36.70A.600(3) and RCW 36.70A.680(3) are applicable even if the nonproject
7 action will apply to critical areas or will have probable significant adverse impacts on fish habitat.

8 The broad prohibition on administrative and judicial SEPA appeals in RCW 36.70A.070(2) and
9 RCW 36.70A.600—which were adopted together—is expressly intended to “promot[e] housing
10 construction in cities.” Laws of 2022, ch. 246, title (also known as “SSB 5818”). As the Hearing Examiner
11 stated last year, SSB 5818 is “one of multiple recent SEPA and GMA amendments adopted to facilitate
12 housing development within cities, including by limiting appeal opportunities for residential and mixed-
13 use projects.” *In re Belltown Livability Coalition*, Seattle Hearing Examiner, File No. W-24-001, Order
14 on Motion to Dismiss, at 2 (September 30, 2024) (dismissing SEPA challenge to Seattle ordinance per
15 RCW 36.70A.070(2)).

16 The legislature recognizes that SEPA appeals can obstruct or delay housing development. Thus,
17 through SSB 5818 and similar legislation, the legislature has “clear[ly] . . . decided to shield [from appeal]
18 ordinances that increase residential building capacity.” *City of Olympia v. W. Washington Growth Mgmt.*
19 *Hearings Bd.*, 27 Wn. App. 2d 77, 85 (2023) (ordering dismissal of SEPA appeal under
20 RCW 36.70A.600); *see also* RCW 36.70A.636(3)(e) (barring SEPA appeals of certain city actions that
21 increase housing capacity); RCW 43.21.229(3), (4) (exempting certain housing projects from SEPA
22 review entirely). Indeed, such legislation is part of a broader legislative push in recent years to address
23 Washington’s housing “crisis” by authorizing or mandating local governments to increase housing

1 capacity and options. *See* Laws of 2024, ch. 180, § 1; Laws of 2023, ch. 332, § 1; Laws of 2023, ch. 334,
2 § 1; Laws of 2020, ch. 217, § 1.

3 Here, under the plain language of multiple statutes, the FEIS is not subject to SEPA appeal.
4 RCW 36.70A.070(2) and RCW 43.21C.495(1) bar Appellants’ appeals because the underlying
5 nonproject action—the One Seattle Proposal—will increase housing capacity, increase housing
6 affordability, and mitigate displacement. *See, e.g.*, Core Docs. at SEA000117. For example, the One
7 Seattle Proposal is expected to add 40,000 more housing units to Seattle than if no action is taken. *Id.*
8 at SEA000038. As explained above, increasing the City’s housing supply will have positive knock-on
9 effects on housing affordability and displacement. *See id.* at SEA000673, SEA002875. Further, the
10 Plan includes dozens of new policies that target affordability and displacement. *See, e.g., id.* at
11 SEA002907 (Land Use policy 1.7), SEA002938 (Transportation policy 1.8), SEA002962 (Housing
12 policy 2.3), SEA002963 (Housing policy 3.3), SEA002964 (Housing policies 3.6, 3.7, 3.17),
13 SEA002966 (Housing policies 4.5, 4.6), SEA002967 (Housing policy 5.1), SEA002968 (Housing
14 policy 5.9) SEA002990 (Utilities policy 2.10). Moreover, the Proposal does not apply to critical areas,
15 *see e.g. id.* at SEA001635,⁷ and will not cause significant adverse environmental impacts to fish habitat,
16 *id.* at SEA000344.

17 RCW 36.70A.600(3) and RCW 43.21C.495(1) also bar the appeals because the One Seattle
18 Proposal will authorize certain housing types—e.g., duplexes, triplexes, quadplexes—on parcels for
19 which they are not currently authorized. *See* SEA001560. And RCW 36.70A.680(3) and
20 RCW 43.21C.495(3) bar the appeals because the Proposal implements the accessory dwelling unit
21
22

23 _____
⁷ *See also* RCW 36.70A.635(8)(a); RCW 36.70A.681(4).

1 requirements of HB 1337. *See* at SEA001636, SEA001651.⁸

2 Tellingly, almost all the issues raised by Appellants relate to the proposed increases in housing
3 capacity. These are the exact type of appeals that the legislature wants to prohibit. Accordingly, just as
4 the Examiner did in *Belltown Livability Coalition*, the Examiner in this matter must dismiss all appeals.
5 To rule otherwise would contradict not only the plain language of the statutes, but also the Legislature’s
6 clear intent to shield any city actions that increase housing from appeal.

7 **C. In the alternative, all but one Appellant should be dismissed in whole and “additional
8 appellant” FORC should be excluded from the Youtz appeal.**

9 **1. Appellants in five appeals lack standing because they failed to comment on the
10 DEIS; these appeals must be dismissed.**

11 No Appellant, except Jennifer Godfrey (W-25-006), commented on the DEIS within the required
12 public comment period and thus all Appellants, except Godfrey, do not have standing to challenge the
13 FEIS.⁹ Failing to comment on a DEIS is “construed as lack of objection to the environmental analysis”
14 when the Department complies with the public notice requirements listed in SMC 25.05.510. SMC
15 25.05.545.B; *see also* WAC 197-11-545(2). Here, all Appellants except Godfrey failed to comment on
16 the DEIS, and the Department complied with the public notice requirements. Thus, all appeals except
17 Godfrey’s must be dismissed.

18 It cannot be disputed that the only Appellant who commented on the DEIS during the comment
19 period was Jennifer Godfrey. *Id.* at SEA001109–16.

20 It is also cannot be disputed that the Department complied with the public notice requirements.
21 Notice of the DEIS met the requirements of both SMC 25.05.510.C and chapter 23.76 SMC.¹⁰ Notice was

22 ⁸ Because the One Seattle Proposal will not impact critical areas or fish habitat, RCW 36.70A.070(2)’s SEPA appeal
23 exemption applies. But even if critical areas or fish impacts are implicated, the appeals would still be barred by RCW
36.70A.600(3) and RCW 36.70A.680(3), which apply regardless of critical areas or fish impacts.

⁹ Larry Johnson submitted a public comment on behalf of FORC on the DEIS on May 4, 2024, however FORC did not
properly appeal to the Hearing Examiner. *See* III.C.2 herein.

¹⁰ Amendments to the official land use map and Title 23 are Type V Council Land Use Decisions. SMC 23.76.036.C.1-2.

1 published through the Seattle Services Portal, in the LUIB, and in the DJC. Core Docs. at SEA004636–
2 50. The DEIS was also submitted to the State SEPA Register and distributed to relevant agencies, service
3 providers, community groups, and commenters. *Id.* at SEA004651–54, SEA000011–12. The Department
4 accepted comments at the public hearings, via email, and by U.S. mail during the comment period. *Id.* at
5 SEA003492–93. Therefore, all Appellants except Godfrey must be dismissed for lack of standing.

6 Caselaw is clear. Both Washington courts and numerous state boards have dismissed SEPA
7 appeals when appellants failed to submit public comment. In a case directly on point, the Washington
8 Supreme Court dismissed an appeal over the adequacy of a FEIS for failing to comment on the DEIS.
9 *Kitsap County. v. State Dep't of Nat. Res.*, 99 Wn.2d 386, 391–92 (1983) (“[T]he County did not bother
10 to comment . . . on the EIS draft. The County is, therefore, now barred from alleging any defect in the
11 adequacy of the EIS.”). The Court held that failing to comment frustrates the purposes of SEPA by not
12 participating in the process in a meaningful way until there is an unfavorable decision. *Id.* at 391.

13 Various state boards have consistently dismissed SEPA appeals when the appellant fails to
14 comment during the SEPA comment period. *See e.g. Canyon Park Business Center Owners' Association*
15 *v. Washington State Department of Transportation, et. al.*, SHB Case No. 21-006, Order on Summary
16 Judgment (Feb. 13, 2023) (“[A] party must comment to the lead agency during the SEPA review period,
17 or it will lack standing to pursue SEPA claims before the Board.”); *Asbjornsen v. City of Puyallup*,
18 CPSGMHB Case No. 21-3-0004, Order on Motion for Partial Summary Judgment (April 13, 2021)
19 (Petitioners did not comment during the SEPA process and thus did not have participation standing to
20 appeal); *Snohomish County Farm Bureau, et al. v. State of Washington Department of Transportation, et*
21 *al.*, PCHB Case Nos. 10-124, 10-135, 10-138, Order Granting Partial Summary Judgment on
22 Jurisdictional Issues (Sept. 21, 2011) (petitioners did not have standing because they failed to comment
23 during the designated SEPA comment period).

1 The Examiner has also dismissed a SEPA appeal for lack of standing when an appellant failed
2 to comment. In *In re Friends of Cheasty*, Seattle Hearing Examiner, File No. W-23-002, Order on Motion
3 to Dismiss, at 2 (July 24, 2023), the Examiner dismissed an appeal of a DNS for failure to comment noting
4 that a key component of SEPA, early public input, is frustrated when appellants fail to comment and wait
5 until the analysis is complete before objecting.

6 If not dismissed on other grounds, the Examiner should dismiss appeals W-25-001 through
7 W-25-005 because none of those Appellants commented on the DEIS during the public comment period
8 and do not have standing to appeal the adequacy of the FEIS.

9 **2. Friends of Ravenna-Cowen failed to properly appeal and must be excluded.**

10 Friends of Ravenna-Cowen (“FORC”) is listed as an additional appellant in the Youtz appeal
11 (W-25-004). The Youtz notice of appeal states that FORC “[j]oins in objections 1 and 2 as also
12 applicable to the Ravenna-Cowen North National Historic District.” Youtz appeal, Exhibit A. Pursuant
13 to HER 5.01(a), FORC should be excluded as an additional party for failure to file an appeal.

14 The reference to FORC in the Youtz appeal fails to meet the requirements of HER 5.01(d)(2),
15 (3). HER 5.01(d) requires notices of appeal to include in part:

16 (2) A brief statement as to how the appellant is affected by or interested in the matter
17 appealed;

18 (3) A brief statement of the appellant’s issues on appeal, noting appellant’s specific
19 objections to the decision or action being appealed . . .

(emphasis added.)

20 FORC did not meet HER 5.01(d)(2) because there is no statement of its interests. Unlike the
21 Appellants who “live in the Mt. Baker neighborhood of Seattle,” Youtz appeal at 2, FORC presumably
22 consists of residents of the Ravenna neighborhood and people who live near Cowen Park. The
23 Mt. Baker and Ravenna-Cowen neighborhoods are not adjacent to each other and are in separate

1 designated study areas in the FEIS. Core Docs. at SEA000040. Thus, their interests are not stated in
2 the appeal.

3 FORC also does not meet HER 5.01(d)(3) because there is no specific statement of its appeal
4 issues. The Youtz appeal focuses on the Mt. Baker neighborhood. Issue two of the Youtz appeal is
5 limited to the Mt. Baker neighborhood, as is clear in its heading; “The FEIS fails to consider the
6 environmental effects of demolishing old, historical homes in the Mt. Baker area.” Youtz appeal,
7 Exhibit B at 1. The statement underneath the title also makes clear that it is limited to the Mt. Baker
8 neighborhood, specifically referencing the assumed growth slated for Mt. Baker, how that would lead
9 to demolishing old homes, and how that would remove “historical and desirable homes *from the*
10 *neighborhood. . .*” *Id.* at 3 (emphasis added).

11 FORC did not properly appeal and cannot attempt to join the Youtz appeal—which is focused
12 on Mt. Baker, not the Ravenna neighborhood—where they failed to set forth its interests and claims as
13 required by the Examiner’s rules. The Examiner should dismiss FORC for failing to file an appeal that
14 complies with HER 5.01(d)(2), (3).

15 **D. If any appeals remain, claims that are outside of the Examiner’s jurisdiction or otherwise**
16 **lack merit on their face must be dismissed.**

17 At the March 6, 2025, prehearing conference, the Hearing Examiner explained the narrow
18 scope of his review in this matter:

19 We are here for purposes of administrating a litigation as to the adequacy of the appealed
20 EIS. We’re not here to litigate the legislative concepts or plans for which the EIS has
21 been prepared. The One Seattle Comprehensive Plan Proposed Update is a legislative
22 action over which I don’t have any jurisdiction. . . . We’re here to look at the legal
23 adequacy of the EIS only. Thus, the wisdom of upzoning or the increase of affordable
housing opportunities or any other legislative concept that may be of concern is not at
issue before me in this hearing.

Prehearing conference recording at ~3:58–4:42. If the Examiner does not dismiss the appeals for the
reasons argued above, the Examiner must nonetheless dismiss most of Appellants’ claims because the

1 Examiner lacks jurisdiction and because they do not fit within the Examiner’s narrow scope of review.

2 **1. The Examiner lacks jurisdiction over alleged Growth Management Act**
3 **noncompliance.**

4 As a quasi-judicial official, the Hearing Examiner “has only the authority granted it by statute
5 and ordinance.” *HJS Development, Inc. v. Pierce County*, 148 Wn.2d 451, 471 (2003); SMC 3.02.120.
6 The Hearing Examiner’s Rules provide further: “Examiner jurisdiction is limited to matters identified
7 in the Seattle Municipal Code or assigned to the Hearing Examiner by ordinance or other City Council
8 action.” HER 3.01(b). The Examiner’s jurisdiction over a challenge to the adequacy of a FEIS is set
9 forth in detail in SMC 25.05.680.A.2.a.1.

10 The Seattle Municipal Code provides no jurisdiction for the Examiner to hear and decide claims
11 alleged noncompliance with the GMA. No code provision, ordinance, or other City Council action
12 authorizes the Examiner to hear appeals regarding GMA noncompliance. Rather, state law delegates
13 the authority to hear such appeals to the Growth Management Hearings Board. RCW 36.70A.280(1)(a).
14 GMA compliance is separate and distinct from an administrative appeal of the adequacy of a FEIS
15 under SEPA, which is the basis for the present administrative appeal before the Examiner. The
16 Examiner has ruled that “Compliance within GMA and the [Comprehensive] Plan is not within the
17 Hearing Examiner’s jurisdiction.” *In re Maple Leaf Community Council Executive Board*, Seattle
18 Hearing Examiner, File No. MUP-08-014(DR,W), Order, at 3 (July 28, 2008). Therefore, the Examiner
19 must dismiss all claims alleging GMA noncompliance including the following: Cox appeal at 6 (issue
20 III.B.1) (“Failure to Comply with the Growth Management Act (GMA),”); Youtz appeal, Exhibit B at
21 4 (objection 3) (“The FEIS incorrectly conclude that the One Seattle Plan complies with the Growth
22 Management Act, including its requirements of maintaining historic districts and existing
23 neighborhoods”); Cary appeal at 3 (objection 2.B) (“The FEIS’s failure to consider the impact of the
Plan’s noncompliance with the Growth Management Act (“GMA”)”).

1 **2. The Examiner lacks jurisdiction over alleged noncompliance with a statewide**
2 **electrical vehicle mandate.**

3 Like the GMA claims, claims of noncompliance with a statewide electrical vehicle mandate
4 must be dismissed because the Examiner lacks jurisdiction. Appellant Cox alleges that the FEIS fails
5 to address the conflict between the proposed rezoning and Washington State’s mandate to transition to
6 electric vehicles. *See* Cox appeal at 6 (issue III.A.2) (“Conflict with Washington State Electric Vehicle
7 Mandate”). No Code provision, ordinance, or other Council action authorizes the Examiner to hear
8 appeals over alleged conflicts with the state electrical vehicle mandate. Rather, compliance with an
9 electrical vehicle target is based in a state goal set out in Section 415 of Wash. Engrossed Second
10 Substitute Bill 5974 and tied to RCW 70A.30.010 and chapter 173-423 WAC, which establishes the
11 Clean Vehicles Program. Nowhere in SMC 25.05.680 does it provide the Examiner with jurisdiction
12 to hear administrative appeals related to electric vehicle compliance. Consequently, the Examiner must
13 dismiss Cox’s claim alleging a conflict with Washington’s electric vehicle provisions.

14 **3. The Examiner lacks jurisdiction over the City’s tree protection regulations to be**
15 **more aligned with NOAA Guidelines.**

16 Appellant Godfrey claims that the One Seattle Plan and the FEIS fails “to adequately protect
17 the [Southern Resident Killer Whales] by requiring the City of Seattle to follow the federal NOAA
18 Southern Resident Killer Whale Recovery Guidelines of 2008.” Godfrey appeal. She further objects to
19 the FEIS because the One Seattle Plan does not “protect and retain . . . bio-remediators and bioretainers,
20 larger trees, from development and there is no alternative listed that will adequately replace the polluted
21 stormwater filtration currently performed by large trees.” *Id.* In particular, she desires that the One
22 Seattle Plan “require the retention of trees greater than 20 [inches] with intelligent building design.”
23 *Id.*

 These objections take issue with the City’s policy decision to not propose more restrictive tree

1 regulations as part of the One Seattle Proposal. Godfrey would prefer more stringent regulations to
2 protect trees. This policy desire does not serve as a viable claim in a challenge to the adequacy of a
3 FEIS. Further, no Code provision, ordinance, or other Council action grants to the Examiner
4 jurisdiction to review or implement the NOAA SRKW Recovery Guidelines, independently or as part
5 of an adequacy challenge to a FEIS. In the context of an adequacy challenge to a FEIS, appellants must
6 demonstrate how the Department failed to adequately disclose and analyze likely significant impacts
7 of the proposed action on the relevant elements of the environment, not whether the proposed action
8 should be changed to require the retention of trees greater than 20 inches as recommended in the NOAA
9 guidelines. These claims must be dismissed.

10 **4. The Examiner lacks jurisdiction over claims regarding enforcement of private**
11 **restrictive covenants, interference with contractual rights or alleged takings.**

12 Two Appellants claim the FEIS is inadequate because it “fails to address enforceable restrictive
13 covenants that do not allow development of the buildings authorized by the proposed One Seattle Plan.”
14 Youtz appeal, Exhibit B at 6–7 (objection 5); *see also* Cary appeal at 2 (interest 1.F) (“City’s disregard
15 of deed covenants This amounts of interference with contractual rights, a taking of property
16 without compensation and an inducement to developers to violate such covenants”). Contrary to
17 Youtz and Cary’s claim, the FEIS acknowledges that the “City is not responsible for enforcement or
18 mapping preexisting private covenants, easements, or deed restrictions; however, the City is aware that
19 some preexisting private covenants, easements, CC&Rs, and other deed restrictions may prevent
20 developing to the maximum density allowed by proposed zoning controls even if not included in the
21 various maps, Comprehensive Plan, or development regulations.” Core Docs. at SEA001170. There is
22 nothing in the Seattle Municipal Code that grants the Examiner the authority over disputes related to
23 enforcement of private restrictive covenants, interference with contractual rights, or alleged takings.
Accordingly, such claims must be dismissed.

1 **5. The Examiner lacks jurisdiction over constitutional due process claims.**

2 The Examiner also lacks jurisdiction over constitutional due process claims and so any issues
3 alleging a violation of Appellants’ due process rights must be dismissed. Appellants FOMP and Cox both
4 allege that the Department violated their due process rights by failing to provide adequate notice. FOMP
5 appeal at 3 (issue 2); Cox appeal at 5 (issue III.A.1). The Seattle Municipal Code does not grant the
6 Examiner authority over constitutional due process claims and such claims should be dismissed.

7 **6. The Examiner lacks jurisdiction over policy decisions and the scope of a policy
8 proposal.**

9 Appellants would prefer different policies in the One Seattle Proposal than are currently
10 proposed. *See, e.g.*, Cox appeal at 9 (issue III.C.2) (“Changing the [42nd] street zoning to LR3 would
11 cause significant harm to the existing residence.”); Youtz appeal, Exhibit B at 8 (“a housing plan that
12 does not look at closely at individual neighborhoods to determine what can and should be accomplished
13 in those neighborhoods instead of simply declaring a cookie-cutter sitewide plan is unworkable and
14 meaningless”); Cary appeal, at 2 (“The Plan’s uniform, one-size-fits-all unzoning that fails to take into
15 account the unique character of individual neighborhoods and will result in the loss of variety of
16 housing types and design.”); Godfrey appeal, (“Require the retention of trees greater than 20” and
17 “Follow the federal NOAA Southern Resident killer Whale Recovery Guidelines and SRKW Recovery
18 Plan”).

19 As the Examiner explained in the prehearing conference, the Examiner has no jurisdiction over
20 policy choices in the One Seattle Proposal—the Examiner’s jurisdiction is limited to FEIS adequacy.
21 The Examiner does “not rule on the wisdom of the proposed development but rather on whether the
22 FEIS [gives] the City . . . sufficient information to make a reasoned decision.” *Citizens Alliance to*
23 *Protect Our Wetlands v. City of Auburn*, 126 Wn.2d 356, 362 (1995). This Examiner has reached this
conclusion numerous times. For example, “it is not the Examiner’s role to determine that such impacts

1 should not be allowed, but only to determine if the City’s environmental review of those impacts is
2 adequate under the standards of SEPA” *In re Escala Owners Association*, Seattle Hearing
3 Examiner, File No. MUP-17-035 (DR, W), Amended Findings and Decision, at 15 (June 12, 2018).
4 Policy preferences are outside the scope of the Examiner’s jurisdiction on a challenge to the adequacy
5 of a FEIS. Displeasure with proposed changes to City policy should be raised with the Seattle City
6 Council. For this reason, Appellants’ claims and requests for relief seeking different policy preferences
7 must be dismissed.

8 **7. The FEIS does not impose conditions or rezone property; thus Appellants’**
9 **attempt to challenge the adequacy of conditions or rezones lack merit and must**
10 **be dismissed.**

11 Similarly, Appellants improperly attempt to challenge the “adequacy of conditions” of the FEIS
12 or “rezone.” FOMP appeal at 1 (“Decision being Appealed”); Cary appeal, at 1 (“Decision being
13 Appealed”); Cox appeal at 2 (“Decision being appealed”). Unlike a permit decision which may include
14 permit conditions, a FEIS does not impose any conditions. The FEIS is also not a rezone. The FEIS
15 disclosed and analyzed environmental impacts of the One Seattle Proposal. Appellants cannot
16 challenge “adequacy of conditions” in the present appeal; these claims must be dismissed.

17 **8. Claims of alleged parking impacts must be dismissed because parking is no longer**
18 **an element of the environment and need not be analyzed in the FEIS.**

19 Several Appellants allege the FEIS fails to adequately analyze impacts to vehicular parking.
20 *See* Cox appeal at 9 (issue III.C.2) (“Increased density will lead to further strain on available parking
21 and congestion on the limited road network. The EIS fails to adequately analyze these impacts or
22 propose viable mitigation measures.”); Hawthorne Hills appeal (relating entirely to parking impacts);
23 Cary appeal at 1 (interest 1.D). Such claims are without merit on their face because parking is no longer
an element of the environment.

SEPA requires consideration of a proposal’s likely environmental impacts.

1 WAC 197-11-060(4)(a). “‘Environment’ means, and is limited to, those elements listed in WAC 197-
2 11-444” WAC 197-11-740. Similarly, “[e]nvironmental impacts are effects upon the elements of
3 the environment listed in WAC 197-11-444.” WAC 197-11-752. Further, environmental analysis “may
4 be required only for those subjects listed as elements of the environment (or portions thereof).”
5 RCW 43.21C.110(1)(f). In 2020, the state legislature directed Department of Ecology to remove
6 parking as an element of the environment within WAC 197-11-444. Laws of 2020, ch. 173, § 5.
7 Ecology did so, and WAC 197-11-444 no longer lists parking as an element of the environment. *See*
8 Washington State Register 23-01-119.¹¹ Seattle Municipal Code also no longer identifies parking as an
9 element of the environment. *See* SMC 25.05.444. Accordingly, the FEIS was not required to analyze
10 parking impacts, and any claims related to parking impacts must be dismissed.

11 **9. Claims of alleged impacts to small businesses and property values must be**
12 **dismissed because business and property values are not elements of the**
13 **environment and need not be analyzed in the FEIS.**

14 FOMP alleges that the FEIS fails to adequately analyze impacts to small businesses, and Cary
15 Appellants allege that there will be adverse effects on property values. FOMP appeal at 4 (issue 4);
16 Cary appeal at 1 (interest 1.C). These claims must be dismissed because, just like parking, business and
17 property values are not elements of the environment. WAC 197-11-444. “It is well established that
18 purely economic interests are not within the zone of interests protected by SEPA.” *Kucera v. State,*
19 *Dep’t of Transp.*, 140 Wn.2d 200, 212 (2000). Further, while social and economic considerations may
20 be weighed by the decisionmaker, a FEIS “is not required to evaluate and document all of the possible
21 effects and considerations of a decision” but rather must only “analyze *environmental* impacts.”
22 WAC 197-11-448(1) (emphasis in original). “Examples of information that are not required to be
23 discussed in an EIS are: . . . economic competition, profits and personal income and wages, and social

¹¹ For ease, the rule is set out here: lawfilesexternal.wa.gov/law/wsr/2023/01/23-01-119.htm

1 policy analysis” WAC 197-11-448(3). Accordingly, the FEIS was not required to analyze impacts
2 to small businesses or property values, and any claims related to such impacts must be dismissed.

3 **E. The Department requests the Examiner to limit multiple appeals by same person or**
4 **group as required by the HE Rules.**

5 Two sets of Appellants are part of two separate appeals yet have the same or overlapping appeal
6 issues. Cox is both an additional appellant in the FOMP appeal and an individual appellant. Cary is
7 identified as an additional appellant in the Youtz appeal, and Youtz is identified as an additional appellant
8 in the Cary appeal.

9 HER 5.01(e) governs multiple appeals. It states that “[m]ore than one appeal may be filed, *by*
10 *different parties*, concerning the same appealable decision or other action.” (emphasis added). The FOMP
11 and Cox appeals are not filed by different parties because Cox is a member of FOMP. Similarly, because
12 Youtz and Cary are both additional appellants in each other’s appeals, they are not different parties.
13 HER 5.01(c) allows the Examiner to dismiss appeals that do not comply with the rules. Pursuant to
14 HER 5.01(c) and (e), the Department requests the Examiner require these Appellants to coordinate and
15 identify one responsible party to address overlapping issues. The Department also requests dismissal of
16 the other Appellants’ repetitive issue. Appellants should not be allowed to separately brief, call witnesses,
17 or provide exhibits for the same issues twice, as members of two separate appeals.

18 The specific overlapping issues in the FOMP and Cox appeals are as follows:

- 19 • Cox issue A.1, alleging inadequate notice, mirrors FOMP issue 2;
- 20 • Cox issues B.2 and B.3, alleging insufficient analysis of drainage and stormwater impacts
21 on Lake Washington, overlap with FOMP issues 1 and 3;
- 22 • Cox issue B.4, alleging impacts on transit, mirrors FOMP issue 5;
- 23 • Cox issue B.5, alleging impacts on tree canopy, is the same as FOMP issue 6; and

- 1 • Cox issue B.6, alleging insufficient detail in the FEIS for the Madison Park neighborhood,
2 alleges the same error as FOMP issue 7.

3 Similarly, the Youtz and Cary appeals also overlap. Cary objection 2.A and Youtz objection 1
4 both allege the same error in how the City assumed growth numbers in the FEIS. Youtz appeal, Exhibit B
5 at 2 (objection 1); Cary appeal at 2 (interest 2.A). Cary objection 2.B and Youtz objection 3 both allege
6 the same errors in compliance with GMA. Youtz appeal, Exhibit B at 2 (objection 3); Cary appeal at 3
7 (interest 2.B). Cary objection 1.F and Youtz objection 5 both allege the same error in the private restrictive
8 covenant issue. Youtz appeal, Exhibit B at 6–7 (objection 5); Cary appeal at 2 (interest 1.F).

9 If these issues are not otherwise dismissed, which they should be, the Department moves to require
10 both sets of Appellants to coordinate, to identify the Appellant who will be responsible for addressing
11 those issues, and to provide to the parties which repetitive issues should be dismissed.

12 **F. Godfrey’s Issue Clarification raises new appeal issues not included in her notice of appeal
13 in violation of HER 5.07 and SMC 25.05.680.A.2.b.**

14 The Examiner should reject Appellant Jennifer Godfrey’s Issue Clarification (“Clarification”)
15 as an improper attempt to amend Godfrey’s notice of appeal under HER 5.07 because it untimely adds
16 appeal issues not identified in the notice of appeal.

17 Godfrey’s brief notice of appeal focuses on impacts on the Southern Resident Killer Whales,
18 retention of large trees, and water quality:

- 19 • Alleged failure of the One Seattle Proposal and FEIS to protect killer whales by
20 following the federal NOAA Southern Resident Killer Whale Recovery Guidelines of
21 2008.
- 22 • Alleged failure to adequately protect large trees.
- 23 • Alleged inaccurate assessment of Elliot Bay water quality.
- Alleged incorrect identification of Endangered Species Act listed species.
- Alleged incorrect statement that “it’s not feasible to maintain past species population

1 numbers in the future”

2 The lengthy Clarification, which has three parts, goes far beyond the issues raised in the notice
3 of appeal. Part A, while purporting to be a summary of existing issues, fails to clarify existing issues
4 and instead adds new issues. First, Part A states that the FEIS should have analyzed the impacts of the
5 proposal on unspecified “existing guidance and direction from agencies with expertise regarding the
6 SFKW.” Clarification at 2. That goes far beyond the notice of appeal’s specific reference to the federal
7 NOAA Southern Resident Killer Whale Recovery Guidelines of 2008. Part A also claims that the
8 FEIS’s alleged failure to “identify or mitigate the numerous probable significant adverse impacts to
9 Seattle’s tree canopy” and how those supposed impacts will cause the City to fail to meet the One
10 Seattle Plan’s tree canopy policies and goals. *Id.* The notice of appeal never mentions the City’s tree
11 canopy polices and goals. Part A also alleges stormwater and pollution impacts on Lake Washington
12 and Lake Union, impacts to fish, and violations of the Clean Water Act. *Id.* at 2–3. Those issues are
13 not identified anywhere in the notice of appeal, and some are outside the Examiner’s jurisdiction. And
14 Part A adds a completely new issue regarding alleged unidentified impacts on the built environment.
15 *Id.* at 3. Nowhere in the notice of appeal is the built environment mentioned.

16 Moreover, the Clarification tacitly admits that Parts B and C raise entirely new issues. Part B
17 adds allegations regarding SEPA checklist elements not stated or even related to the issues in the notice
18 of appeal. Part C adds a completely new claim that the City is allegedly conducting improper phased
19 review of the One Seattle Proposal.

20 The Hearing Examiner Rules and Seattle Municipal Code are unambiguous. To amend a notice
21 of appeal, a party must show good cause and should not “raise[] jurisdictional issues (e.g., if a party is
22 seeking to add appeal issues not identified in the notice of appeal after the appeal period has expired) .
23” HER 5.07. Also, the Rules require a notice of appeal to be in writing and contain a statement of

1 appellant's issues, noting appellant's "specific objections" to the decision. HER 5.01(d)(3). This
2 requirement applies equally to both legal counsel and pro se appellants. HER 5.02(a); *Patterson v.*
3 *Superintendent of Public Instruction*, 76 Wn. App. 666, 671 (1994). Requiring specificity in issue
4 identification is common in administrative appeals, and land use appeals in particular, because it advances
5 the strong public policy favoring finality in land use decisions. *Twin Bridge Marine Park, L.L.C. v. State,*
6 *Dept. of Ecology*, 162 Wn.2d 825, 845 (2008). The onus is on the appellant to timely identify each issue
7 the appellant seeks to challenge in its appeal.

8 SMC 25.05.680.A.2.b requires an appeal be filed within fourteen days of the issuance of the FEIS.
9 Once the appeal deadline has passed, new issues cannot be raised. Here, the appeal period ended February
10 13, 2025. The Clarification was filed on March 10. The Examiner should reject the untimely, previously
11 unarticulated issues raised in the Clarification.

12 In a similar case last year wherein a pro se appellant filed a notice of appeal before obtaining
13 counsel, the Examiner did not allow amendment to the notice of appeal after the appeal deadline passed.
14 *In re Seattle Parks and Recreation*, Seattle Hearing Examiner, File No. R-24-001, Order on Motion to
15 Dismiss, at 2–4 (March 28, 2024). The Examiner denied the motion to amend, stating that pro se
16 litigants are bound by the same rules as legal counsel, that the rules require a notice of appeal to include
17 appellant's specific objections to the action being appealed, and that allowing new appeal issues to be
18 presented after the appeal deadline renders HER 5.01(d)(3) meaningless and presents jurisdictional
19 issues. *Id.* at 3. In this matter, the Examiner should rule consistent with this past decision and reject
20 Godfrey's Clarification.

21 **G. Appellants' issues should be consolidated and the scope of the issues clarified.**

22 If not otherwise dismissed, the Department requests consolidation and clarification of the limited
23 scope of the following appeal issues in advance of the parties filing witness and exhibit lists and

1 presenting evidence and witness testimony at hearing. The Examiner has authority to require Appellants
2 to clarify appeal issues. HER 5.06. Appeal issues are limited to the “specific objections” in the notice of
3 appeal. HER 5.01(d)(3). A notice of appeal cannot be amended after the appeal deadline by expanding the
4 scope of the identified issues. HER 5.07; SMC 25.05.680.A.2.b. Appellants’ repetitive issues should be
5 consolidated and other issues clarified to clearly limit the issues to the “specific objections” stated in the
6 notice of appeals. Consolidating and holding Appellants to the specific issues in the notice of appeals will
7 streamline the hearing process and help ensure a fair hearing.

8 **1. FOMP (W-25-001)**

9 The Department moves to clarify that FOMP’s objections, except objection 2, are limited to
10 impacts that apply to the Madison Park neighborhood. Every objection, except 2, limits its discussion to
11 impacts to, or from, development in the Madison Park neighborhood. FOMP appeal at 2–5.

12 The Department also moves for consolidation of objections 1 and 3. FOMP appeal at 2–3. Both
13 objections allege impacts from stormwater and drainage from the Madison Park neighborhood into Lake
14 Washington. *Id.*

15 Objection 2 alleges the Department did not properly provide notice of the FEIS but incorrectly
16 cites to WAC 197-11-560. FOMP appeal at 3. WAC 197-11-560 regulates the Department’s response to
17 comments on a FEIS, not public notice. The Department moves to limit objection 2 to the alleged failure
18 to provide adequate notice and not allow untimely expansion to include responses to comments.

19 The Department moves to clarify that objection 5 is limited to FOMP’s allegation about impacts
20 on transit in Madison Park and cannot be untimely expanded to other transportation issues, such as the
21 traffic analysis of Madison Park. FOMP appeal at 4.

22 FOMP objection 7 alleges that there is not enough detail in the FEIS for the Madison Park
23 neighborhood and specifically notes water pollution, lack of infrastructure, and transit as examples.

1 FOMP appeal at 4. The Department moves to limit this issue to an alleged lack of detail for water
2 pollution, lack of infrastructure, and transit in the Madison Park neighborhood.

3 The Department moves to limit FOMP objection 8 to allegations regarding height, bulk, and
4 scale impacts to the historic business district of Madison Park. FOMP appeal at 5. Objection 8 should
5 not be untimely expanded into an appeal of the cultural resources analysis for the Madison Park
6 neighborhood.

7 **2. Cox (W-25-002)**

8 The Department moves to clarify that Cox appeal issues B.1–.6 are limited to impacts that apply
9 to the Madison Park neighborhood and that Cox appeal issues C.1–.3 are limited to 42nd Ave E between
10 East Blaine Street and East Garfield Street. Cox appeal at 5–9.

11 Cox issue A.1 is identical to FOMP’s objection two. Cox appeal at 5; FOMP appeal at 3. Like
12 FOMP objection 2, the Department moves to limit issue two solely to the alleged inadequate notice and
13 not allow untimely expansion to new claims about responding to comments.

14 The Department moves the Examiner to consolidate Cox’s issues B.2 and B.3. Cox appeal at 6–7.
15 Both allege inadequate disclosure or analysis of potential impacts from the stormwater/drainage system in
16 the Madison Park neighborhood on Lake Washington.

17 The Department moves to limit Cox issue B.4 to transit impacts. Cox appeal at 7. If issue B.4
18 includes allegations regarding traffic impacts beyond transit, the Department moves to consolidate this
19 issue with issue B.1, if not otherwise dismissed. Cox appeal at 6–7.

20 Cox issue B.6 is identical to FOMP objection 7. Cox appeal at 8; FOMP appeal at 4. Like FOMP
21 objection 7, the Department moves to limit Cox issue B.6 to an alleged lack of detail for water pollution,
22 lack of infrastructure, and transit in Madison Park.

23 Also, Cox’s request for relief is not a proper allegation of error or objection to the FEIS and thus

1 is insufficient to add additional appeal issues. The Cox notice of appeal requests a supplemental EIS that
2 addresses, among other things, “the equity impacts of the proposed zoning changes and ensures that lower-
3 income residents are not disproportionately affected.” Cox appeal at 10 (request for relief 4). None of the
4 Cox appeal issues address impacts on lower-income residents. Thus, any evidence, testimony, or briefing
5 offered by Cox on this subject is outside the scope of the appeal and the Department will move to strike
6 it.

7 **3. Hawthorne Hills Community Club (W-25-003)**

8 If not dismissed in whole, the Department moves to clarify that Hawthorne Hills Community
9 Club’s appeal issue is limited to impacts that apply to the Hawthorne Hills neighborhood.

10 **4. Youtz (W-25-004)**

11 The Department moves to clarify that the Youtz appeal issues, except objections 1 and 4, are
12 limited to the Mt. Baker neighborhood. Youtz appeal, Exhibit B at 3–8. Objection 2 only discusses homes
13 in the Mt. Baker neighborhood. Objection 3 only discusses Mount Saint Helens Place South and other
14 historical sites for the Mt. Baker neighborhood. Objection 5 only discusses covenants in the Mt. Baker
15 neighborhood. Objection 6 is limited to a discussion on local conditions of the Mt. Baker neighborhood.
16 The Examiner should limit these objections to the Mt. Baker neighborhood to prevent untimely expansion
17 of the issues at hearing.

18 Also, Youtz appeal issue 2 alleges a lack of analysis of the environmental impacts of the demolition
19 of individual homes from the standpoint of potential contamination of the individual sites and
20 debris/material in the historic homes and does not allege a failure to properly analyze cultural resources
21 generally. Youtz appeal, Exhibit B at 3–4. Based on the notice of appeal, the Department moves to limit
22 this issue to the alleged lack of analysis of the demolition of homes in the Mt. Baker neighborhood and
23 not allow an untimely expansion alleging a more general lack of analysis of cultural resources.

1 Youtz issue 4 alleges that mitigation is inadequate and only references mitigation for impacts to
2 tree canopy. Youtz appeal, Exhibit B at 4–5. The Department moves to limit this issue to mitigation for
3 alleged tree canopy impacts.

4 **5. Cary (W-25-005)**

5 The Department moves to clarify that the Cary appeal issues, except issue 2.A, are limited to
6 impacts that apply to the Mt. Baker neighborhood, as stated in the heading of the notice of appeal. Cary
7 appeal, at 1–3.

8 **6. Godfrey (W-25-006)**

9 If Godfrey’s Clarification of Issues is not rejected by the Examiner, the Department requests the
10 Examiner require clarification of the new issues to prevent the additional expansion of Godfrey’s issues
11 and ensure the Examiner has jurisdiction. The Department requests that Godfrey identify the “existing
12 guidance and direction from agencies with expertise regarding the SRKW” in part A.1. Clarification at 2.
13 It also requests Appellant identify what goals and policies in the One Seattle Plan that Appellant is
14 referencing in part A.2. *Id.* Lastly, the department requests Godfrey identify what “guidance and direction
15 from agencies with expertise regarding stormwater management” that Appellant is referencing in part A.3.
16 *Id.* at 2–3.

17 **IV. CONCLUSION**

18 The Examiner must dismiss all six appeals in full under RCW 36.70A.070(2),
19 RCW 36.70A.600(3), RCW 36.70A.680(3), and RCW 43.21C.495. If the appeals are not fully
20 dismissed under those statutes, they must be dismissed for other reasons. Five Appellants lack standing
21 for failure to comment, and FORC failed to properly appeal. In the alternative, the Examiner should
22 dismiss issues over which he does not have jurisdiction or that lack merit on their face. The Examiner
23

1 should also reject Appellant Godfrey’s clarification. Finally, to the extent appeals or individual issues
2 are not dismissed, they should be consolidated and clarified.

3 DATED this 14th day of March 2025.

4 ANN DAVISON
5 Seattle City Attorney

6 By: s/ Elizabeth Anderson
7 Elizabeth E. Anderson, WSBA #34036
8 Assistant City Attorney
9 liza.anderson@seattle.gov

10 By: s/ Laura Zippel
11 Laura Zippel, WSBA #47978
12 Assistant City Attorney
13 laura.zippel@seattle.gov

14 Seattle City Attorney’s Office
15 701 Fifth Avenue, Suite 2050
16 Seattle, WA 98104
17 (206) 684-8200

18 *Attorneys for Respondent Office of Planning and Community*
19 *Development*

1
2 **CERTIFICATE OF SERVICE**

3 I certify that on March 14, 2025, I caused a true and correct copy of the foregoing document
4 to be served on the following in the manner indicated below:

5

6 Friends of Madison Park c/o Octavia Chambliss 4111 E. Madison #2 Seattle, WA 98112 president@friendsofmadisonpark.com	(X) Via Email () U.S. Mail
7	
8 Trevor Cox 1629A 42 nd Ave. E. Seattle, WA 98112 trevor@trevorcox.com	(X) Via Email () U.S. Mail
9	
10 Jake Weyerhaeuser 1629B 42 nd Ave. E. Seattle, WA 98112 jweyerhaeuser@gmail.com	
11	
12 Hawthorne Hills Community Council 4338 NE 57 th St. Seattle, WA 98105 pj1000@aol.com	(X) Via Email () U.S. Mail
13	
14 Chris Youtz 2745 Mt. Saint Helens Pl. S. Seattle, WA 98144 chris@sylaw.com	(X) Via Email () U.S. Mail
15	
16 John M. Cary 3704 S. Ridgeway Pl. Seattle, WA 98144 john.cary@comcast.net	(X) Via Email () U.S. Mail
17	
18	
19	
20	
21	
22	
23	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Toby Thaler P.O. Box 1188 Seattle, WA 98111 toby@thaler.org	<input checked="" type="checkbox"/> Via Email <input type="checkbox"/> U.S. Mail
Jennifer Godfrey P.O. Box 257 ACP #9964 Seattle, WA 98507-0257 plantkingdom1@gmail.com	<input checked="" type="checkbox"/> Via Email <input type="checkbox"/> U.S. Mail

Dated this 14th of March 14, 2025.

s/ Eric Nygren
Eric Nygren
Legal Assistant