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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE WASHINGTON

In the matter of the application of

SWEDISH MEDICAL CENTER
CHERRY HILL

for approval of a Major Institution Master
Plan for property located at 500 17th
Avenue

In the matter of the appeals of:

WASHINGTON COMMUNITY ACTION
NETWORK; 19TH AVE BLOCK WATCH;
CHERRY HILL COMMUNITY COUNCIL;
SQUIRE PARK COMMUNITY COUNCIL;
PATRICK ANGUS, et al.; and
CONCERNED NEIGHBORS OF SWEDISH
CHERRY HILL

From a SEPA Decision by the Director,
Department of Planning and Development

CF 311936

FILE NOS.

MUP-15-010 (W)

MUP 15-011 (W)

MUP 15-012(W)

MUP 15-013(W)

MUP 15-014(W)

MUP 15-015(W)

DPD # 3012953

WASHINGTON CAN'S POST-
HEARING SEPA BRIEF

I. INTRODUCTION

Overall, the Final Environmental Impact Statement (FEIS) for the Swedish Medical Center Cherry Hill Major Institution Master Plan concluded, correctly, that the height, bulk, and scale of the MIMP proposal will cause significant adverse impacts to the surrounding neighborhoods. The FEIS also correctly concluded that the proposal will have significant adverse

1 traffic and transportation impacts in the area. All in all, it is clear from the FEIS that the scale of
2 the proposed MIMP is disproportionate to the character and density of the surrounding residential
3 neighborhoods.

4 But despite those conclusions, the FEIS still omitted critical information. The FEIS failed
5 to fully disclose and explore the full extent of the traffic and land use impacts and failed to inform
6 decision makers about potential mitigation measures that could be applied to avoid or minimize
7 the adverse impacts of the proposal. As is explained below, while the FEIS did make it clear that
8 the proposal will have significant adverse impacts, the FEIS omitted information that was
9 required to fully inform the Hearing Examiner and the City Council in its review of the proposed
10 MIMP.
11

12 II. STATEMENT OF FACTS

13 Swedish Medical Center and Sabey Corporation have proposed a new Major Institution
14 Master Plan (MIMP) for the Swedish Medical Center Cherry Hill Campus that would more than
15 double the size of the existing facilities in the Squire Park neighborhood of Seattle. The City of
16 Seattle Department of Planning and Development (DPD) issued an FEIS for the Swedish Cherry
17 Hill Medical Center MIMP on December 11, 2014.
18

19 In the Final MIMP, Swedish proposed one building alternative, referred to as Alternative
20 12. FEIS at 2-11. For the purpose of analyzing potential impacts, the FEIS compared Alternative
21 12 with previously proposed Alternatives 8 and 11 and Alternative 1 – No Build. *Id.* Alternative
22 12 proposed the addition of approximately 1.55 million gross square feet within the current
23 institution boundaries and a change in the zoning to MIO-37, -50, -65, -105, and -160. *Id.*
24

25 Six separate organizations filed appeals of the FEIS: Washington Community Action
26 Network (“Washington CAN”), 19th Avenue Block Watch, Cherry Hill Community Council,

1 Squire Park Community Council, minority members of the Citizens Advisory Committee, and
2 Concerned Neighbors of Swedish Cherry Hill. All of the appellants challenged the adequacy of
3 the FEIS on the grounds that it failed to disclose and analyze the significant adverse
4 environmental impacts of the proposal. Washington CAN's appeal focused primarily on the
5 failure of the FEIS to review the land use, aesthetic (height, bulk, and scale), human
6 development, and transportation impacts of the proposal.¹

8 The Hearing Examiner held a consolidated hearing on the FEIS appeals and the proposed
9 Final MIMP on July 13-17, 2015. Washington CAN is submitting this post-hearing brief to
10 summarize its arguments related to the issues raised in its appeal of the FEIS.

11 III. ARGUMENT AND AUTHORITY

12 A. Legal Standards for Review of an Environmental Impact Statement (EIS)

13 1. Standard of review

14 The adequacy of an Environmental Impact Statement is regarded as a question of law and
15 is subject to *de novo* review. *Kiewit Construction Group, Inc. v. Clark County*, 83 Wn. App. 133,
16 920 P.2d 1207 (1996).

17 2. The purpose of an EIS

18 The State Environmental Policy Act (SEPA), ch. 43.21C RCW, requirements constitute a
19 directive to shape the future environment by deliberation, not default. *ASARCO, Inc. v. Air*
20 *Quality Coalition*, 92 Wn.2d 685, 707, 601 P.2d 501, 515 (1979). An EIS analyzes
21 environmental impacts and must be used by agency decision makers, along with other relevant
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25 ¹ Washington CAN also challenged the adequacy of the disclosure and analysis related to the
26 project's consistency with the human development element of the Comprehensive Plan (FEIS at 3.3-52 – 3.3-57), but those issues were dismissed by the Hearing Examiner prior to the hearing. Order on Respondents' Joint Motion to Dismiss (May 21, 2015).

1 considerations or documents, in making final decisions on a proposal. WAC 197-11-448(1). The
2 main purpose of the EIS process is full disclosure and consideration of environmental
3 consequences and values *prior to* government action so that the decision makers are fully
4 informed about the impacts of their decisions. *City of Des Moines v. Puget Sound Regional*
5 *Council*, 108 Wn. App. 836, 849, 988 P.2d 27 (1999). SEPA's purpose is to provide decision
6 makers with all relevant information about the potential environmental consequences of their
7 actions and to provide a basis for a reasoned judgment that balances the benefits of a proposed
8 project against its potential adverse effects. *Id.*

10 Environmental review consists of the range of proposed activities, alternatives, and
11 impacts to be analyzed in an environmental document, in accordance with SEPA's goals and
12 policies. WAC 197-11-060(1). Proposals should be described in ways that encourage considering
13 and comparing alternatives. The range of alternative courses of action discussed in EISs shall
14 encompass those to be considered by the decision maker. WAC 197-11-402.

16 The rules require that an EIS inform decision makers and the public of mitigation
17 measures that would avoid or minimize adverse impacts or enhance environmental quality. WAC
18 197-22-400(2). The EIS shall describe and discuss reasonable mitigation measures that would
19 significantly mitigate any impacts of the proposal. WAC 197-11-440(6). The EIS must indicate
20 what the intended environmental benefits of mitigation measures are for significant impacts and
21 may discuss their technical feasibility and economic practicability, if there is concern about
22 whether a mitigation measures is capable of being accomplished. WAC 197-11-440(6)(c)(iv).
24 An EIS is more than a disclosure document – it shall be used by agency officials in conjunction
25 with other relevant materials and considerations to plan actions and make decisions. WAC 197-
26 11-400(4).

1 EISs shall serve as the means of assessing the environmental impact of proposed agency
2 action, rather than justifying decisions already made. WAC 197-11-402(10). The rules state that
3 the EIS shall be prepared early enough so that it can serve practically as an important contribution
4 to the decision making process and will not be used to rationalize or justify decisions already
5 made. WAC 197-11-406.

6
7 3. Legal test for EIS adequacy

8 The legal adequacy of an EIS is tested under the rule of reason. *City of Des Moines v.*
9 *Puget Sound Reg'l Coun.*, 108 Wn. App. at 849. Under this rule, an EIS is reviewed for its
10 sufficiency in properly disclosing and discussing probable environmental impacts, reasonable
11 alternatives, and reasonable mitigation so as to inform the agency in making a reasoned decision.
12 In applying the test, one is required to determine whether an EIS supplied an adequate amount of
13 information to properly inform the agency of the probable environmental impacts of the different
14 alternatives. *Citizens Alliance to Protect Our Wetlands (CAPOW) v. City of Auburn*, 126 Wn.2d
15 356, 362, 894 P.2d 1300 (1995).

16
17 The rule of reason test has been described as follows:

- 18
- 19 • To be adequate, an EIS must present decision makers with a reasonably
20 thorough discussion of the significant aspects of the probable environmental
21 consequences of the agency decision. *Kiewit Construction Group v. Clark*
22 *County*, 33 Wn. App. at 140.
 - 23 • The rule of reason is a broad, flexible cost-effectiveness standard, and is
24 determined on a case-by-case basis, considering all of the policy and factual
25 consideration reasonably related to SEPA's policy directives. *Concerned*
26 *Taxpayers v. Department of Transportation*, 90 Wn. App. 225, 229, 951 P.2d
812 (1998).
 - ... [t]he role of a reviewing court is to determine whether the environmental
effects of the proposed action and reasonable alternatives are sufficiently
disclosed, discussed, and ... substantiated by supportive opinion and data ...
to be judged by application of the rule of reason. Richard L. Settle, *The*

1 *Washington State Environmental Policy Act: A Legal and Policy Analysis*,
2 14.01[1][a], 14-16-14-16.1 (2006).

- 3 • ... [t]he rule of reason is the guiding principle not only as to the alternatives
4 and impacts to be included in an EIS but also to the extent of environmental
5 analysis. Settle, *supra*, 14.01(1) at 14-19.

6 In sum, an EIS must contain enough detail about the environmental impacts, alternatives,
7 and potential mitigation to inform a reasoned decision by agency decision makers.

8 B. The Swedish Cherry Hill MIMP FEIS Contains Inadequate Disclosure and
9 Analysis of the Impacts and Potential Mitigation

10 1. The FEIS does not adequately disclose or analyze the adverse impacts of
11 the proposed skybridge

12 The Swedish Cherry Hill MIMP FEIS does not disclose or analyze the probable
13 significant adverse impacts that will be caused by the double level skybridge that is proposed to
14 be built by Swedish across 16th Ave. This is not a situation where incorrect assumptions were
15 made or the discussion was not thorough enough. Here, the discussion simply does not exist.

16 Swedish is proposing to construct a double level skybridge as a replacement for the
17 existing single level skybridge across 16th Avenue. FEIS at 2-24 (The FEIS incorrectly refers to
18 18th Avenue, when in fact the skybridge is proposed across 16th Avenue). Testimony during the
19 hearing revealed that double level skybridges are against City policy and that there will be
20 significant adverse aesthetic impacts caused by the proposed skybridge. But, the FEIS contains
21 no discussion or analysis about the probable significant adverse impacts of the skybridge across
22 16th Avenue. The FEIS simply mentions the skybridge – it doesn't disclose or analyze the
23 impacts associated with shadow, light, aesthetics, bulk, and scale related to that structure.

24 The FEIS states that Swedish is not seeking approval for the proposed skybridge or tunnel
25 at this time and that "if deemed needed at the time of new development," Swedish would submit
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1 applications in the future. FEIS at 3.3-69. Implied in that statement (and in the cross-examination
2 during the hearing) is an argument that there is no need for concern about the failure to disclose
3 and analyze impacts now because the significant impacts associated with shadow, light,
4 aesthetics, and bulk and scale related to the skybridge will be analyzed during a future permitting
5 process.

6
7 But that would constitute improper phased review, which is forbidden by SEPA rules.
8 Under SEPA:

9 Phased review is not appropriate when:

10 (i) The sequence is from a narrow project document to a broad
11 policy document;

12 (ii) It would merely divide a larger system into exempted
13 fragments or avoid discussion of cumulative impacts; or

14 (iii) It would segment and avoid present consideration of
15 proposals and their impacts that are required to be evaluated in a
16 single environmental document under WAC 197-11-060(3)(b) or
17 197-11-305(1); however level of detail and type of environmental
review may vary with the nature and timing of proposals and their
component parts.

18 WAC 197-11-060. Proposals or parts of proposals that are related to each other closely enough
19 to be, in effect, a single course of action must be evaluated in the same environmental document.

20 WAC 197-11-060(3)(b). The rule states:

21 Proposals or parts of proposals are closely related, and they shall be
22 discussed in the same environmental document, if they:

23 (1) Cannot or will not proceed unless the other proposals (or
24 parts of proposals) are implemented simultaneously with them; or

25 (2) Are interdependent parts of a larger proposal and depend on
26 the larger proposal as their justification for their implementation.

WAC 197-11-060(3)(b).

1 When asked how important the skybridge is to the functioning of the hospital, the
2 architect for the proposal, John Jex, testified: "It is absolutely critical. It is a critical core
3 necessity of meeting the medical center's need for inpatient hospital care." John Jex Testimony,
4 SEPA Appeal Day 4. He explained that the skybridge connection is a core criteria of the
5 operational plan for the future. *Id.*

6
7 Therefore, according to the testimony of Swedish's architect, the proposal and the
8 skybridge are interdependent. His testimony leaves no doubt that the skybridge is an
9 interdependent part of the larger proposal and depends on the larger proposal as its justification
10 for its implementation. Delaying environmental review of the impacts of the skybridge not only
11 avoids discussion of cumulative impacts, but it improperly segments and avoids present
12 consideration of impacts that are required to be evaluated in a single environmental document
13 under WAC 197-11-060(3)(b). Postponing environmental review of the skybridge to a later date
14 is inappropriate. This review should have been included in the FEIS.

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16 2. The FEIS does not adequately disclose or analyze the adverse land use
17 impacts and potential mitigation of those impacts

18 The Swedish Cherry Hill MIMP FEIS does not adequately disclose or analyze the adverse
19 land use impacts of the proposal. Rather than repeat all the points made by Dr. Sharon Sutton
20 during her testimony, I incorporate the entirety of her testimony herein to support this point.

21 On top of all of the issues that Dr. Sutton discussed, it is important to note that the FEIS
22 incorrectly concluded that the probable significant adverse impacts related to height, bulk, and
23 scale are "unavoidable." See FEIS at 3.4-50. As mentioned above, the SEPA rules require that an
24 EIS inform decision makers and the public of mitigation measures that would avoid or minimize
25 adverse impacts or enhance environmental quality. WAC 197-22-400(2). The EIS shall describe
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1 and discuss reasonable mitigation measures that would significantly mitigate any impacts of the
2 proposal. WAC 197-11-440(6). The EIS must indicate what the intended environmental benefits
3 of mitigation measures are for significant impacts and may discuss their technical feasibility and
4 economic practicability, if there is concern about whether a mitigation measures is capable of
5 being accomplished. WAC 197-11-440(6)(c)(iv).
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7 In this case, the FEIS failed to describe and discuss reasonable mitigation measures for
8 the height, bulk and scale impacts. Under SMC 25.05.675.G.2, the decision maker may condition
9 or deny a project to mitigate adverse impacts of substantially incompatible height, bulk, and
10 scale. This provision identifies a number of different potential mitigations that could be applied
11 to avoid significant impacts. Mitigating measures may include but are not limited to:

- 12 I. Limiting the height of the development;
- 13 II. Modifying the bulk of the development;
- 14 III. Modifying the development's façade including but not
15 limited to color and finish materials . . . ;
- 16 V. Repositioning the development on the site; and
- 17 VI. Modifying or requiring setbacks, screening, landscaping, or
18 other techniques to offset the appearance of incompatible height,
19 bulk, and scale.

20 SMC 25.05.675.G.2. The FEIS incorrectly concluded that the height, bulk, and scale would
21 cause unavoidable impact, and it failed to identify the mitigation above as potential mitigation for
22 the significant adverse impacts of the proposal.

23 The FEIS also incorrectly concluded that there would be no significant adverse land use
24 impacts caused by the proposal. See FEIS at 1-19; FEIS at 3.3-74. In the summary of potential
25 mitigation measures in Table 1-3, the EIS states "no significant impacts to land use have been
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1 identified, and no mitigation measures specific to land use are required.” FEIS at 1-19. That
2 conclusion contradicts the analysis of the proposal’s consistency (or lack of consistency) with the
3 Comprehensive Plan as set forth in the land use section of the FEIS.

4 The FEIS repeatedly concluded that the Swedish Cherry Hill proposal’s height, bulk, and
5 scale is inconsistent with the goals and policies in the Comprehensive Plan. See FEIS at 3.3-32 to
6 -33; 37-38; 40; and 42.² The FEIS concluded that the Final MIMP’s proposed greater heights and
7 more densely developed MIO is inconsistent with policies in Seattle’s Comprehensive Plan that
8 apply to areas zoned for single family and low rise residential development. FEIS at 3.3-37.

9 The City’s SEPA policy on land use states that “it is the City’s policy to ensure that
10 proposed uses and development projects are reasonably compatible with surrounding uses and are
11 consistent with any applicable, adopted City land use regulations, the goals and policies set forth
12 in Section B of the Land Use Element of the Seattle Comprehensive Plan regarding land use
13 categories.” SMC 25.05.675.J.2. The decision maker may condition or deny any project to
14 mitigate adverse land use impacts resulting from the project or to achieve consistency with the
15 goals and policies set forth in the Seattle Comprehensive Plan. SMC 25.05.675.J.2.

16 When the FEIS concludes, repeatedly – over and over again – that a proposal is
17 inconsistent with goals and policies set forth in Seattle’s Comprehensive Plan, then the only
18 reasonable conclusion is that the proposal will cause significant adverse land use impacts. The
19 MIMP’s proposal for a densely developed MIO is generally inconsistent with the urban village,
20 urban center, and residential land use goals and policies that the City has established in its

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24 ² An urban village strategy has been developed by the City, with the intention of concentrating
25 growth in the urban villages. Seattle’s Comprehensive Plan, Toward a Sustainable Seattle at 1.3. Areas outside of
26 urban villages are meant to accommodate growth in less dense development patterns consisting primarily of single-
family neighborhoods, limited multi-family and commercial areas. *Id.* at 1.4. The Swedish Cherry Hill MIMP
proposal site is outside of urban centers and villages in the area.

1 Comprehensive Plan. Within that context, it was error for the FEIS to conclude that there were
2 no significant adverse impacts to land use.

3 3. The FEIS does not adequately disclose or analyze the adverse traffic and
4 transportation impacts or potential mitigation of those impacts

5 With respect to the traffic and transportation impacts of the proposal, the FEIS concludes,
6 correctly, that the proposal will cause significant adverse traffic impacts to the surrounding areas.
7 The projected traffic volumes and impacts to intersection operations that are reported in Sections
8 5.5, 5.6, 6.5, and 6.6 are significant. The FEIS also concludes that all three alternatives would
9 contribute to additional travel demand and congestion along arterial corridors, including East
10 Cherry and East Jefferson Streets. FEIS at 3.7-58. The increased traffic will contribute to
11 measurably poor performance of the transportation network, in terms of increased delays along
12 several of the corridors at some specific intersections. *Id.* The increase in traffic and pedestrian
13 and bicycle activity due to the development would result in more conflict points and increased
14 hazards to safety. *Id.*

16 That said, the FEIS failed to fully disclose and analyze the traffic impacts, and in some
17 respects, the significance of the impacts was deemphasized. In support of this statement, rather
18 than repeat it all, I incorporate and refer the Examiner to the testimony of Ross Tilghman that was
19 provided during the SEPA appeal portion of the hearing.

21 During cross-examination, attorneys for Swedish implied that disclosure and analysis of
22 some of the traffic impacts that Mr. Tilghman revealed could be addressed during the MUP
23 process. However, as stated above, impacts related to the project must be considered now
24 because the decision maker needs to be informed about whether mitigation in the form of
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1 decreasing the size and scale of the proposal overall should be applied. This is mitigation that
2 can only be considered and applied at this programmatic phase of the proposal.

3 Like it did in the height, bulk, and scale section, the FEIS incorrectly concluded that the
4 traffic and transportation impacts of the proposal are “unavoidable.” *See* FEIS at 3.7-58. The
5 FEIS failed to mention the potential mitigation that may be applied to this proposal pursuant to
6 the City’s SEPA substantive authority – specifically, a reduction in the size and/or scale of the
7 proposal if other mitigation is inadequate to effectively mitigate the adverse impacts of the
8 project. SMC 25.05.675.R.2.f. This potential mitigation - a reduction in the size and/or scale of
9 the proposal – should have been mentioned as an option to mitigate traffic and transportation
10 impacts. As said above, this is mitigation that cannot be applied later – it can only be considered
11 and applied at this programmatic phase of the proposal.
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13 IV. CONCLUSION

14 For the reasons stated above, Washington CAN requests that the Hearing Examiner
15 declare that the Final Environmental Impact Statement for the Swedish Medical Center Cherry
16 Hill MIMP proposal was inadequate and that it should be remanded consistent with the
17 arguments above.
18

19 Dated this 29th day of July, 2015.

20 Respectfully submitted,

21 BRICKLIN & NEWMAN, LLP

22 By: 

23 Claudia M. Newman, WSBA No. 24928
24 Attorneys for Washington CAN
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