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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 REPLY TO
RESPONDENTS' JOINT RESPONSE
BRIEF

I. INTRODUCTION

The Final Environmental Impact Statement for the Swedish Medical Center Cherry Hill
MIMP (FEIS) is not adequate in all respects as respondents attempted to prove in their Joint
Response Brief. While the FEIS correctly concluded that the height, bulk, and scale of the

1 | proposal will cause significant adverse impacts to the surrounding neighborhoods and significant
2 | adverse traffic and transportation impacts in the area, it still omitted critical information.

3 | Overall, the FEIS omitted critical information regarding impacts and potential mitigation
4 | related to the size of the proposal. Central questions presented by the rezone and MIMP
5 | decisions revolve around how big this project should be. The size and scale of this proposal will
6 | not be revisited in the MUP process for each individual building permit. Approval of Alternative
7 | 12 would lock in approval of the total building area of approximately 2.75 million gross square
8 | feet with full build out.

10 | It is important, therefore, to understand and know the probable significant adverse impacts
11 | on traffic and transportation, on land use, and height, bulk, and scale now. The Hearing
12 | Examiner and the City Council may decide, based on that information, that mitigation in the form
13 | of reducing the size of the proposal or increasing the setbacks should be applied. Or they may
14 | decide that Alternative 12 should be denied as proposed. This appeal is not about “more detail,”
15 | this is about being fully informed of the impacts of full build out of this proposal (and the
16 | potential mitigation) before approving it.

18 | II. ARGUMENT

19 | A. The FEIS Failed to Adequately Disclose and Analyze the Height, Bulk, and Scale 20 | Impacts of the Proposal

21 | Respondents describe Washington CAN’s position regarding the height, bulk and scale
22 | impacts of the proposal incorrectly. *See* Response Brief at 5-6. Washington CAN did not
23 | “concede” that the FEIS’ treatment of height, bulk, and scale issues is adequate. *Id.* Quite the
24 | opposite – it is Washington CAN’s position that the FEIS does not adequately disclose or analyze
25 | the adverse impacts of the proposal related to height, bulk, and scale. *See* WCAN’s Post-Hearing
26 |

1 SEPA Brief at 8.¹ In support of this argument, Washington CAN incorporated, in full, the
2 testimony of Dr. Sharon Sutton. *Id.*

3 As respondents are aware, Dr. Sutton testified that the FEIS failed to adequately disclose
4 and analyze the height, bulk, and scale impacts to the neighborhood surrounding the proposal.
5 Sutton Testimony, Day 3, Part 4. She pointed out that the FEIS contained no analysis of the
6 setbacks and/or landscaping along the streets of the neighborhood surrounding the site so as to
7 provide some context for and comparison to the proposed setbacks of the building on the site.
8 Sutton Testimony, Day 3, Part 4. Because the FEIS failed to look at the existing landscaping and
9 setbacks of the neighborhood, it failed to conduct an adequate analysis of the impacts of the
10 proposed setbacks to what currently exists. *Id.*

12 In addition, Dr. Sutton testified that the FEIS conclusions about the impacts associated
13 with the proposed setbacks were inadequate. *Id.* Dr. Sutton testified that she strongly disagreed
14 with the FEIS assessment that adequate transitions would be provided by the setbacks. *Id.* She
15 pointed out that the proposed ground level setbacks will greatly alter the fit of the existing
16 campus with the surrounding neighborhood. She testified that generally, the current Swedish
17 building setbacks vary between 11 and 30 feet and that is roughly consistent with the existing
18 residential neighborhood setbacks off-site. *Id.* The proposed setbacks for the project will cause
19 significant adverse impacts and the FEIS analysis indicating otherwise, and even worse, claiming
20 that those setbacks are “mitigation,” is not only inadequate, it fails the rule of reason and misleads
21 the decision makers.

24
25 ¹ In the post hearing brief, Washington CAN referred to “land use” impacts broadly. As can be seen from
26 the text following that reference, the term “land use” was meant to include aesthetic impacts related to height, bulk
and scale. *Id.* That is reflective of and consistent with the Department of Ecology’s description of “land use,” as an
element of the environment in the SEPA rules. *See* WAC 197-11-444(2)(b). “Aesthetic” impacts are a category of
“land use” impacts under the rules.

1 Dr. Sutton also pointed out that while topography is a central issue to consider with
2 respect to height, bulk and scale impacts, it had not been adequately addressed in the EIS. *Id.*
3 The Final EIS states that the “topography of the site and the surrounding area slopes slightly
4 down to the west and east.” FEIS 3.4-51. In reality, there is a 100 foot drop off over a six block
5 area, which is the same height as a 10-story building. That is not a slight slope. Sutton
6 Testimony, Day 3, Part 4.

8 Dr. Sutton pointed out many other inadequacies in the FEIS that Washington CAN
9 incorporated into its brief: the description of a need for walking pedestrians to get out of the way
10 of runners because there would not be enough room by the sidewalks; the confusion over whether
11 the CAC incorrectly believes that there must be a minimum 18 foot sidewalk which is not
12 clarified or discussed at all in the FEIS; and overall confusion about the width of the sidewalks.
13 *Id.* The FEIS fails to recognize the significant impacts of the proposal removing open space and
14 landscaping which is an amenity, from the public domain by proposing to significantly diminish
15 the setbacks overall at ground level. *Id.* The FEIS is grossly inadequate in assessing whether the
16 setbacks allow for Swedish Cherry Hill to provide for landscaping, open space, and pedestrian
17 amenities along the sidewalk areas. *Id.*

19 Contrary to the suggestion by respondents in their response, Washington CAN did not
20 concede that the FEIS’ treatment of height, bulk, and scale issues as well as land use impacts was
21 adequate.
22

23 B. The FEIS Failed to Describe and Discuss Reasonable Mitigation Measures for the
24 Height, Bulk, and Scale Impacts of the Proposal

25 Respondents argue that the height, bulk, and scale mitigation that Washington CAN refers
26 to as missing from the FEIS is not mitigation, rather it is a “suggestion for another alternative

1 with lower height, bulk, and scale impacts.” Response Brief at 6. More specifically,
2 respondents suggest that the FEIS cannot mention potential mitigation of Alternative 12 in the
3 form of limiting the height of the development, modifying the bulk of the development,
4 repositioning the development, or modifying or requiring setbacks as potential mitigation for
5 height, bulk, and scale because that “mitigation” is already “baked in” to that proposal. This is a
6 nonsensical, straw man argument that should be rejected.
7

8 The EIS is legally required to describe and discuss reasonable mitigation measures that
9 would significantly mitigate any impacts of a proposed alternative. WAC 197-22-400(2); WAC
10 197-11-440(6). The proposed alternative is Alternative 12. Any changes that were made along
11 the process before the developer landed on Alternative 12 in the final MIMP are irrelevant to the
12 question of what mitigation is appropriate to mitigate significant impacts that are caused by
13 Alternative 12.
14

15 The FEIS concluded that, Alternative 12, as proposed, will have significant adverse
16 environmental impacts to the surrounding area because of its height, bulk, and scale. FEIS 3.4-
17 50. As a result, the FEIS should have identified possible mitigation for these impacts. Despite
18 that SMC 25.05.675 lists possible mitigation, the FEIS did not identify any mitigation.
19

20 Respondents argument implies that they are entitled to “Alternative 12” as is and the
21 Hearing Examiner and the City Council have no authority under SEPA’s substantive policies
22 (SMC 25.05.675.G) or under the Major Institution standards in SMC 23.69 to limit the height of
23 proposed Alternative 12, modify the bulk of proposed Alternative 12, modify the required
24 setbacks of Alternative 12, or apply any other similar mitigation that might change Alternative
25 12. This is, of course, not how the process works. The Hearing Examiner has full authority to
26 recommend and the City Council has full authority to adopt mitigation that will limit the height,

1 bulk, and scale of Alternative 12. The point of this appeal is - the FEIS should have disclosed
2 these options for mitigation.

3 Respondents argue “additional mitigation, beyond that already ‘baked in,’ would further
4 cut into the institution build development capacity and would, therefore, not be reasonable, in
5 contravention of SEPA’s requirement that ‘[m]itigation measures shall be reasonable and capable
6 of being accomplished.” SMC 25.05.660.A.3. They argue that Swedish established its need for
7 expansion through expert testimony by an expert on need.² Response Brief at 17-18. An FEIS
8 disclosure of potential mitigation is not legally limited by a developer’s financial interests. But,
9 if the mitigation cannot be accomplished, then perhaps outright denial of the proposal under the
10 Major Institutions standards in SMC 23.69 is the only appropriate approach considering the
11 impacts to the neighborhood.
12

13
14 Furthermore, Swedish’s claim of “need” is an unsubstantiated, ever changing claim that
15 was proven to be significantly lacking in credibility by the testimony of Jack Hanson, also an
16 experienced and respected expert on this issue. The changes made so far prove that the claim of
17 “need” of a specific number of million square feet is arbitrary. At first, Swedish claimed that it
18 “needed” a total of 3.1 million gross square feet. Then, Swedish proposed Alternative 12 in its
19 Final MIMP, which resulted in a total of 2.7 MSF on the site. Then, at the eleventh hour at the
20 hearing, Swedish announced changes to the setbacks and, therefore, the additional elimination of
21 even more square footage. See Ex. 14. Swedish has reached into the original 3.1 MSF figure
22
23
24

25 ² It is ironic that after strenuously and repeatedly objecting to allowing any MIMP testimony by
26 experts during the SEPA hearing, respondents’ SEPA brief now casually and explicitly relies on expert testimony
that was submitted exclusively for purposes of supporting the MIMP proposal.

1 arbitrarily without any explanation or information to show why their claim of “need” allowed
2 them to reduce the square footage at random.

3 Respondents take the position that the proposal itself (Alternative 12) is the “applicant’s
4 objective.” To the extent that the objective in the FEIS is the Alternative 12 – the specific
5 proposed action – that “objective” seriously violates SEPA rules and regulations. This is
6 especially inappropriate for a “non-project EIS,” as respondents characterize this EIS. *See* SMC
7 25.05.442.
8

9 Respondents argue that “no reported decision” has ever held an FEIS inadequate for
10 failure to discuss mitigation. The fact that no “reported” decision (which would be a State Court
11 of Appeals or Supreme Court decision) has held an FEIS inadequate for failure to discuss
12 mitigation is irrelevant. As a matter of law, SEPA requires that the FEIS discuss mitigation. *See*
13 WAC 197-11-400(2). The fact that a failure to do so has not been litigated before the Court of
14 Appeals or the Supreme Court does not in any way excuse an agency from doing what the SEPA
15 rules explicitly require.
16

17 The case law cited by respondents is not applicable here. In *Solid Waste Alternative*
18 *Proponents v. Okanogan County*, 66 Wn. App. 439, 442, 832 P.2d 504 (1992), the appellant,
19 SWAP, challenged an EIS for a landfill on grounds that the EIS contained only general
20 descriptions of mitigation measures that could be used to reduce the adverse environmental
21 impacts of the proposal, but it failed to assess the cost and effectiveness of those mitigation
22 measures. *Id.* at 508. The court rejected that argument, pointing out that all potential mitigation
23 measures had been discussed for all of the significant impacts of the landfill, and therefore, the
24 EIS was adequate. The court concluded that the level of detail the SWAP sought was not required
25 by the rules. *Id.*
26

1 In this case, Washington CAN is not arguing that the discussion about potential mitigation
2 should have been more detailed. The problem here was that there was no discussion at all. The
3 FEIS completely failed to even mention all of the possible mitigation that could be applied to
4 limit the size and scale of the proposal. A failure to discuss mitigation that is explicitly listed in
5 the City of Seattle substantive SEPA policies fails the rule of reason and results in an inadequate
6 EIS. On the other hand, if this mitigation is not capable of being accomplished, perhaps the
7 Hearing Examiner and City Council will ultimately determine that the MIMP proposal should be
8 denied.

10 C. The FEIS Incorrectly Concluded That There Would Be No Significant Adverse
11 Land Use Impacts Caused by the Proposal

12 Respondents argue that the FEIS correctly concluded that there will be no significant land
13 use impacts caused by the proposal because the MIMP does not change the actual use of the
14 property as a major institution. It is incorrect to say that, under the SEPA regulations, the term
15 “land use” focuses solely on whether the actual use as a major institution will change. The state
16 SEPA rules list the “elements of the environment” that must be considered in an EIS. WAC 197-
17 11-444. Included on that list is “land use.” WAC 197-11-444(2)(b). “Land use” is not limited to
18 “uses.” “Land use” includes the following:

- 20 (1) Relationship to existing land use plans and to estimated
21 population;
- 22 (2) Housing;
- 23 (3) Light and glare;
- 24 (4) Aesthetics;
- 25 (5) Recreation;
- 26 (6) Historic and cultural preservation;

1
2 (7) Agricultural crops.

3 WAC 197-11-444(2)(b). Under SEPA, therefore, consideration of impacts to “land use” includes
4 consideration of impacts related to, among other things, the relationship of the proposal to
5 existing “land use plans.” This is also incorporated into the City’s SEPA policies on “land use.”
6 See SMC 25.05.675.J. That is the issue that Washington CAN is focused on: the impacts caused
7 by the project’s inconsistency with the City of Seattle’s Comprehensive Plan.

8
9 The City’s Comprehensive Plan, *Toward a Sustainable Seattle* (hereinafter referred to as
10 “Comp Plan”), is a 20 year vision and road map for Seattle’s land use future. Comp Plan at v. It
11 guides the City’s decisions on where to build new jobs and houses, how to improve the
12 transportation system, and where to make capital investments, such as utilities, sidewalks, and
13 libraries. *Id.* at v-ix. The Comp Plan is the framework for most of Seattle’s big picture decisions
14 on how to grow while preserving and improving its neighborhoods. *Id.*

15 The Comp Plan directs growth to existing urban centers and villages, contributes to the
16 vibrancy of neighborhood centers, and reinforces the benefits of City investments in transit,
17 parks, utilities, community centers, and other infrastructures. *Id.* at vii. A fundamental goal of
18 the Comp Plan is to steer the majority of estimated growth in housing units and jobs toward urban
19 centers and urban villages for many reasons, including to “preserve the character of Seattle’s
20 predominantly single-family neighborhoods.” *Id.* The Land Use Element of the Comp Plan
21 carries the plan’s urban village strategy forward to guide the development of Seattle’s Land Use
22 Code. Comp Plan at 2.3.

23
24 A conclusion that the MIMP proposal will cause no significant land use impacts despite
25 that it is inconsistent with the 20 year vision for land use in the City of Seattle is nonsensical.
26

1 When an FEIS concludes, repeatedly – over and over again – that a proposal is inconsistent with
2 goals and policies set forth in Seattle’s Comprehensive Plan, the only reasonable conclusion is
3 that the proposal will cause significant adverse land use impacts. The enormity of this proposal –
4 its impact to transportation, its height, bulk, and scale (adding jobs and bulk and more) in a
5 predominantly single-family neighborhood that is not meant to accept this level of growth – flies
6 directly in the face of the City of Seattle land use policies.
7

8 Respondents zero in on the urban village element of the Comp Plan and claim that
9 inconsistencies with these goals and policies are “irrelevant” to major institution planning, either
10 as part of the MIMP or as a matter of substantive SEPA policy. *See* Response Brief at 14. They
11 quote from a City Council decision indicating as such for the Children’s Hospital proposal. *Id.*
12 There are two problems with this argument.
13

14 First, the City Council erred when it claimed that the urban village strategy in the Comp
15 Plan is irrelevant to the substantive MIMP decision. Inconsistency with the urban village strategy
16 is directly relevant to major institution planning. On a big picture scale, Chapter 23.69 SMC
17 limits growth within a Major Institution Overlay district. Over and over again, the regulations
18 therein assert and support a policy of minimizing adverse impacts to the surrounding area
19 associated with development and expansion and protecting the livability and vitality of adjacent
20 neighborhoods. Thus, in considering whether to approve or deny a request for expansion of a
21 major institution, the Hearing Examiner and the City Council must consider the extent to which
22 the growth and change will or will not significantly harm the livability and vitality of the
23 surrounding neighborhood. A major institution does not have unfettered ability to grow as large
24 as it wants to be – it must be limited so that it does not adversely affect the neighborhood.
25
26

1 The goals and policies of the City's Comp Plan are directly relevant to the question of
2 impacts on the neighborhood. When you have a fundamental goal of steering the majority of
3 estimated growth and housing units and jobs toward urban centers and urban villages for the
4 purpose of "preserving the character of Seattle's predominantly single-family neighborhoods,"
5 you cannot and should not ignore that goal when considering how large this major institution in a
6 single-family neighborhood should be. That this proposal is repeatedly inconsistent with the goal
7 of preserving the character of the predominantly single-family neighborhoods is directly relevant
8 to the MIMP decision. You can bet that if this site was within an urban village, Swedish and
9 Sabey would be repeatedly emphasizing that growth was appropriate because it is within an urban
10 village. But, because it is not within the urban village, they argue, incorrectly, that the proposal's
11 inconsistency with Seattle's 20 year vision for limited growth outside of those areas is irrelevant.
12

13
14 Second, while it is true that the SEPA substantive policies on land use for the City of
15 Seattle focus on the goals and policies set forth in Section B of the land use element of the Seattle
16 Comprehensive Plan, this does not affect Washington CAN's argument. The proposal's
17 inconsistencies with the Comprehensive Plan are not limited to the urban village element of the
18 plan. The proposal is inconsistent with policies in the Land Use Element of the Comp Plan as
19 well. See FEIS at 3.3-37; 3.3-38; and 3.3-40. Specifically, regarding Section B.1, the FEIS
20 concludes that the proposal is inconsistent with the following goals:
21

22 LUG8: Preserve and protect low density, single-family
23 neighborhoods that provide opportunities for home ownership, that
24 are attractive to households with children and other residents, that
25 provide residents with privacy and open spaces immediately
26 accessible to residents, and where the amount of impervious surface
can be limited.

LUG9: Preserve the character of single-family residential areas
and discourage the demolition of single-family residences and

1 displacement of residents, in a way that encourages rehabilitation
2 and provides housing opportunities throughout the city. The
3 character of single-family areas includes use, development, and
density characteristics.

4 The FEIS concluded that the Final MIMP is inconsistent with these goals in that it does
5 not provide any permanent housing and would contrast with the character of adjacent single-
6 family areas. FEIS at 3.3-38. The FEIS concluded that the proposal was inconsistent with other
7 goals and policies within the Land Use Element of the Comp Plan because of the increased
8 density impacts on a single-family residential area. Specifically, the FEIS said the Final MIMP's
9 proposed greater heights and more densely developed MIO is generally inconsistent with the
10 policies that apply to areas zoned for single-family and low rise residential development. FEIS at
11 3.3-37. *See also* FEIS at 3.3-40. The FEIS concluded that the proposed height limits would be
12 substantially higher than the 30 foot height of structures that define the neighborhood's existing
13 character. FEIS 3.3-37. Those are significant adverse impacts to land use. The FEIS erred by
14 concluding otherwise.
15

16 Respondents argue "nothing in SEPA requires a proposal to be consistent with every
17 aspect of every adopted land use plan, and such a standard would likely be impossible to meet in
18 any event." *See* Response Brief at 15. In this SEPA context, respondents miss the point. SEPA
19 requires disclosure of the impacts. SEPA does not require consistency or inconsistency with
20 regulations, comprehensive plans, or anything. Washington CAN is simply pointing out that the
21 FEIS erred in failing to state that there will be significant adverse land use impacts because the
22 proposal is repeatedly inconsistent with the City of Seattle's 20 year vision for growth in the City.
23
24
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26

1 D. Dr. Sharon Sutton Provided Credible, Reliable Testimony That Should Be
2 Afforded the Full Weight of an Expert

3 Respondents attempt to undermine and belittle Dr. Sutton's testimony on the grounds that
4 she was "advocating from an ideological bent." Response Brief at 7-8. They also argue that her
5 testimony should be disregarded entirely because she is not an expert in "hospital design." *Id.*

6 With this argument, respondents completely overlook the purpose of an FEIS and the
7 legal requirements of SEPA. An FEIS must analyze the probable significant adverse impacts of
8 the proposal to the surrounding area, not where hospital beds should be placed, where surgical
9 rooms should be located, or how much square footage is needed to meet the different demands of
10 a medical center.

11
12 Dr. Sutton has a Ph.D. in environmental psychology from the City University of New
13 York where she specialized in the relationship between the urban environment and human
14 development. Sutton Testimony, Day 3, Part 4. Her scholarship relates specifically to creating
15 equitable urban space and analyzing how citizen participation in creating those spaces improves
16 their well-being. *Id.* During her testimony, Dr. Sutton pointed out that the public and the
17 Examiner had heard a lot about very complex health care needs, but her expertise was in the
18 everyday needs that help families and communities live healthy lives and how they actively
19 participate in achieving health and well-being in their communities. Sutton Testimony, Day 3,
20 Part 4 of 4.

21
22 Dr. Sutton did not display an "ideological motivation." Dr. Sutton looked at the project
23 from the perspective of the neighborhood impacts, not from the perspective of designing a
24 hospital or the financial interests of Swedish and Sabey. Respondents are suggesting that any
25 expert who testifies from the perspective of the neighborhood must have an "ideological
26

1 motivation" to do so. In her profession, Dr. Sutton studies the relationship between the urban
2 environment and human development and the impact of architecture on the well-being of families
3 and communities appears biased. That is her expertise. It is not "ideology." And, it just so
4 happens that this is precisely what the FEIS is required to review.

5
6 Frankly, Dr. Sutton is better equipped than John Jex to address these issues and Dr.
7 Sutton's testimony should be given greater weight than that of John Jex on the issue of probable
8 significant adverse impacts of the proposal to the surrounding area. John Jex testified from the
9 perspective of designing a medical institution, not from the perspective of impacts to the
10 neighborhood. Mr. Jex was hired by Swedish and Sabey -- he looked at this project from the
11 perspective of financial "need." Mr. Jex was clearly testifying with a bias for what Swedish and
12 Sabey want to build. It is hardly accurate to say, as respondents do, that he provided a
13 "disinterested analysis." See Respondents' Response Brief at 8.

14
15 Respondents' attempt to undermine Dr. Sutton's testimony should be rejected and, in fact,
16 Dr. Sutton's testimony should be given greater weight than that of John Jex on the issue of
17 impacts of the proposal to the neighborhood.

18 E. The FEIS Does Not Appropriately Analyze Skybridge Impacts

19 Respondents argue that the skybridge impacts were adequately disclosed and analyzed in
20 the FEIS because the skybridge was depicted graphically in two viewpoints that were shown in
21 the FEIS. They point in particular to Viewpoint 11 and Viewpoint 3. FEIS at 3.4-40-42.
22 Viewpoint 11, which shows a small hint of the skybridge from far away, can hardly be
23 characterized as an adequate assessment of the impacts of a two level skybridge. Viewpoint 3 is
24 even more obscured and distant. The comparison between the one-story skybridge and the
25 hypothetical two-story skybridge are not given the close up, focused attention that would pass the
26

1 rule of reason in those simulated photographs. A proper analysis would focus in on 16th Avenue
2 to show the experience of pedestrians, bicyclists, and cars in relationship to the two-story
3 skybridge in that specific area. Neither Viewpoint 3 nor Viewpoint 11 provide a meaningful
4 analysis or disclosure of the impacts of a two-story skybridge.

5
6 Respondents also indicate that the comparison between the existing one-story skybridge
7 and a hypothetical two-story skybridge is “plainly disclosed” by the renderings and Figures 3.4-
8 43, -44, and -45. Response Brief at 9. Those pages do not contain any mention or analysis of the
9 skybridge.

10 Respondents also argue that the shadow impacts analysis of the building envelopes, which
11 were depicted in the figures on page 3.4-57-104 of the FEIS considered the shadow impacts of
12 the skybridge because every one of these 48 figures includes the skybridge. *Id.* Shadow impacts
13 of the building envelopes, which are all taken at a birds eye level, fail to provide any meaningful
14 analysis of the shadow impact of the skybridge for pedestrians or drivers who actually use 16th
15 Avenue. As mentioned above, the shadow impacts analysis should focus in on the experience of
16 pedestrians, cyclists, and cars driving on 16th Avenue – the impacts to that specific area by a two-
17 story skybridge.
18

19 F. Failure to Provide Meaningful Disclosure and Analysis of Skybridge Impacts in
20 the FEIS Constitutes Improper Phased Review

21 Respondents’ argument concerning improper phased review consisted primarily of
22 conclusory statements that are not supported by the evidence. *See* Response Brief at 11. They
23 contend that the division does not avoid discussion of cumulative impacts and they contend that
24 the subsequent review does not divide the review into exempted fragments, but the evidence
25 showed otherwise. *Id.* But the evidence showed that the skybridge is an interdependent part of
26

1 the larger proposal and that it depends on the larger proposal as its justification for its
2 implementation. The testimony of John Jex solidified this: he said it was absolutely critical to
3 the entire project. Therefore, it depends on the larger proposal as its justification for its
4 implementation.

5
6 This case is easily distinguished from *Mentor v. Kitsap County*, 22 Wn. App. 285, 588
7 P.2d 1226 (1978). In that case, the EIS did discuss the potential long-term effects of the
8 bulkhead. *Id.* at 1230. That is exactly what Washington CAN is arguing must be done here. In
9 this case, unlike the *Mentor* case, the discussion of the impacts of the skybridge was virtually
10 non-existent. The failure to provide meaningful disclosure and analysis of skybridge impacts in
11 the FEIS constituted improper phased review.

12
13 G. The FEIS Did Not Adequately Disclose or Analyze Adverse Traffic and
14 Transportation Impacts or Potential Mitigation of Those Impacts

15 In the discussion of traffic impacts, respondents once again mischaracterize Washington
16 CAN's position. See Response Brief at 19. Respondents state that "Washington CAN
17 acknowledges that the FEIS "correctly" identifies the significant adverse traffic impacts of the
18 proposal." *Id.* That is not true. Washington CAN stated that the FEIS correctly *concluded* that
19 the proposal will cause significant adverse traffic impacts to the surrounding areas. See
20 Washington CAN's Post-Hearing SEPA Brief at 11. Washington CAN did not state that the
21 FEIS correctly identified all of the significant adverse traffic impacts of the proposal. In fact,
22 Washington CAN argued the opposite. *Id.* The FEIS failed to fully disclose and analyze all of
23 the traffic impacts, and in some respects, the significance of the impacts was deemphasized. *Id.*

24
25 Respondents incorrectly claim that Washington CAN offered "no argument or authority"
26 for its claim that the FEIS did not adequately disclose or analyze transportation impacts.

1 Response Brief at 19. This argument is baseless. In Washington CAN's post-hearing brief, it
2 devoted an entire section to traffic impacts, with the heading "The FEIS Does Not Adequately
3 Disclose or Analyze the Adverse Traffic and Transportation Impacts or Potential Mitigation of
4 Those Impacts." Washington CAN's Post-Hearing SEPA Brief at 11-12. Under that heading,
5 Washington CAN argued "the FEIS failed to fully disclose and analyze the traffic impacts and in
6 some respects, the significance of the impacts was deemphasized." Washington CAN's Post-
7 Hearing SEPA Brief at 11. This was preceded by a significant amount of authority summarizing
8 the legal standards for review of an environmental impact statement earlier in the brief which
9 stated, among other things, that the main purpose of the EIS process is full disclosure and
10 consideration of the environmental consequences and values prior to government action so that
11 the decision makers are fully informed about the impacts of their decisions. Washington CAN's
12 Post-Hearing SEPA Brief at 3-6.

13
14
15 Washington CAN also presented extensive testimony by Ross Tilghman during the
16 hearing and incorporated that testimony into its argument in its Post-Hearing Brief. *See*
17 Washington CAN's Post-Hearing SEPA Brief at 11. The time and effort that Washington CAN
18 put into presenting Ross Tilghman at the hearing (including preparation for the hearing, attending
19 a deposition prior to the hearing, etc.) combined with the explicit closing argument that his
20 testimony supported the argument that the FEIS inadequately addressed traffic impacts, combined
21 with the legal authority at the beginning of the brief, constitutes a full and adequate presentation
22 of the issue to the Examiner.

23
24 Furthermore, contrary to what respondents say, the testimony of Mr. Tilghman established
25 that the FEIS was inadequate. Mr. Tilghman testified, among other things, that the FEIS analysis
26 of transit capacity was misleading and inadequate. Tilghman Testimony, Day 3, Part 2. The

1 FEIS suggests to the decision maker that there is widely available capacity and so the ability of
2 Swedish Cherry Hill employees to use transit readily exists. *Id.* Mr. Tilghman pointed out that
3 this is not the case. *Id.*

4 Mr. Tilghman pointed out that the analysis of transit capacity focused narrowly on the
5 number of people on the bus solely as it passed the Swedish Cherry Hill campus, basically at 17th
6 and Jefferson. *Id.* A traffic analysis looks not just at the project's driveway, but what happens
7 upstream and downstream. *Id.* The snapshot right by the campus does not really give an
8 indication of system-wide capacity nor does such a narrow view give a sense of what the impact
9 on transit service is. *Id.* Mr. Tilghman explained in great detail that there would be transit
10 capacity of Route 3-4 between the central area and downtown was already at its limit – standing
11 room only – and just the mid-point analysis for Cherry Hill's expansion would get it to absolute
12 density on the route. *Id.* Notably, no evidence was submitted whatsoever by respondents during
13 the hearing to counter Mr. Tilghman's conclusions. This lack of transit capacity was not
14 disclosed in the EIS despite that this is critical information for the decision makers to be aware of
15 with respect to the project at this stage.

16 Mr. Tilghman addressed several other issues, including limitations with the TMP analysis
17 in the EIS and the failure of the EIS to adequately address pedestrian and bicycle safety and the
18 failure of the FEIS to adequately address the proposal's impacts on the 18th Street greenway. *Id.*
19 The FEIS analysis of all of these issues does not satisfy the rule of reason.

20 Respondents argue that the analysis of available transit capacity can occur in the future
21 when specific projects are proposed. Response Brief at 19. That is not a credible argument. The
22 decision on the table now is how big this project should be. That decision will not be revisited in
23 the MUP process for each individual building permit. Approval of Alternative 12 will lock in

1 approval of a total building area of approximately 2.75 million gross square feet, including the
2 development of up to 735 additional parking spaces, for a total of 2,245 parking spaces with full
3 build-out of the development. Once that size is approved, there is no going back. It is important,
4 therefore, to understand and know now that adding approximately 1.55 million gross square feet
5 will have significant adverse impacts on transit capacity as well as on pedestrian and bicycle
6 safety, on the 18th Street greenway – it is important to know that the assumptions about these
7 impacts were incorrect in the FEIS. It is important to know this now because the decision makers
8 may rely on that information and decide that mitigation in the form of decreasing the size of the
9 proposal should be applied and/or Alternative 12 should be denied as proposed. This is not about
10 “more detail,” this is about being fully informed of the impacts of full build-out of this proposal
11 before approving it.
12

13
14 Respondents’ argue (again) that mitigation in the form of rendering the size of the
15 proposal cannot be discussed in the FEIS because it does not meet Swedish and Sabey’s “need”
16 for an additional 1.55 million gross square feet on this site is (as stated before) nonsensical under
17 SEPA law. The same argument was made regarding the height, bulk, and scale mitigation and,
18 the reply to that argument set forth earlier in this brief at pages 5-8 is incorporated here.
19

20 III. CONCLUSION

21 For the reasons stated above, Washington CAN requests that the Hearing Examiner
22 declare that the Final Environmental Impact Statement for the Swedish Medical Center Cherry
23 Hill MIMP proposal was inadequate and that it should be remanded consistent with the
24 arguments above.
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Respectfully submitted,

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