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HEARING EXAMINER

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of)	
CITIZENS FOR LIVABILITY IN BALLARD,)	Hearing Examiner File:
)	W-16-003
From a decision by the Director, Office of)	
Planning and Community Development, regarding)	RESPONDENT OPCD'S POST-HEARING
the adequacy of a Final Environmental Impact)	BRIEF
Statement.)	

I. INTRODUCTION

At the conclusion of the August 16-17, 2016 hearing on the merits for the above-captioned appeal, the Hearing Examiner authorized the parties to submit post-hearing briefs by the close of business on August 26, 2016. Respondent City of Seattle Office of Planning and Community Development (OPCD) hereby respectfully submits the following in accordance with the Examiner's directive.

It is important to note at the outset of this brief that the growth assumed in the proposed Seattle 2035 Comprehensive Plan (70,000 new dwelling units and 15,000 new jobs) has already been accepted and planned for in the City's currently adopted Comprehensive Plan. Seattle 2035 is a proposal to change the distribution of this accepted growth— not to add growth beyond what has already been provided for in the City's current plan. Because of this, both Seattle 2035 and the EIS challenged in this appeal accept this growth as a given, and the City's SEPA analysis evaluates distribution of this growth through the five growth alternatives identified in the EIS.

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II. BURDEN OF PROOF

2.1 The Adequacy of the EIS for Seattle 2035 is to be Judged Under the “Rule of Reason” and Citizens Bears the Burden of Proving that the EIS Does Not Contain a Reasonably Thorough Discussion of the Environmental Impacts of the Proposal.

The determination by the City’s SEPA responsible official¹ that the Seattle 2035 EIS is adequate is entitled to substantial weight and Appellant Citizens for Livability in Ballard (“Citizens”) bears the burden of showing that the EIS is inadequate as a matter of law. RCW 43.21C.075(3)(d); WAC 197-11-680(3)(a)(viii); Seattle Municipal Code (SMC) 25.05.680(B)(2). The substantial weight requirement in SEPA directs the Hearing Examiner to apply the “clearly erroneous” standard of review to the responsible official’s adequacy decision. *Wenatchee Sportmen Ass’n. v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000); *Preserve Our Islands v. Shoreline Hearings Board*, 133 Wn. App. 503, 538-39, 137 P.3d 31 (2006); *Anderson v. Pierce County*, 86 Wn. App. 290, 393, 936 P.2d 432 (1997). Under the “clearly erroneous” standard, the Hearing Examiner may reverse the adequacy decision of the SEPA responsible official only where, after considering the entire record, the Hearing Examiner is left with the definite and firm conviction that the decision was incorrect, even if there is evidence to support it. *Lauer v. Pierce County, supra*, 173 Wn.2d at 253; *Klineburger v. King County Dept. of Development and Environmental Services Bldg.*, 189 Wn. App. 153, 164, 356 P.3d 223 (2015); *Families of Manito v. City of Spokane*, 172 Wn. App. 727, 736, 291 P.3d 930 (2013), *reconsideration denied, review denied*, 177 Wn.2d 1025, 309 P.3d 504 (2013). Thus, Citizens bears the burden in this appeal of proving that the SEPA responsible official’s determination that the EIS was adequate and ready to issue was a clear mistake.

The term “adequacy” as applied to an EIS refers to the legal sufficiency of the analysis and data included within the impact statement. *Klickitat County Citizens Against Imported*

¹ The SEPA Responsible Official who issued the EIS was Nathan Torgelson, Director of Seattle’s Department of Construction and Inspections. *FEIS*, City’s Exhibit 20 at ii.

1 *Waste v. Klickitat County*, 122 Wn.2d 619, 633, 860 P.2d 390 (1993); R. Settle, *The Washington*
2 *State Environmental Policy Act: A Legal and Policy Analysis*, §14.01(1)(a) (2015). The
3 sufficiency of the analysis and data is to be judged by what courts refer to as “the rule of reason.”
4 *Citizens Alliance to Protect Our Wetlands v. City of Auburn*, 126 Wn.2d 356, 361, 894 P.2d 1300
5 (1998); *Klickitat County Citizens Against Imported Waste v. Klickitat County*, *supra*, 122 Wn.2d
6 at 633; *Cheney v. City of Mountlake Terrace*, 87 Wn.2d 338, 344-45, 552 P.2d 184 (1976);
7 *SEAPC v. Cammack II Orchards*, 49 Wn. App. 609, 614-15, 744 P.2d 1101 (1987). Under this
8 rule, an EIS is adequate if it contains “a reasonably thorough discussion of the significant aspects
9 of the probable environmental consequences” of the proposed action. *Residents Opposed to*
10 *Kittitas Turbines v. State Energy Facility Site Evaluation Council*, 165 Wn.2d 275, 311, 197 P.3d
11 1153 (2008) (quoting *Klickitat County Citizens Against Imported Waste v. Klickitat County*,
12 *supra*, 122 Wn.2d at 633). An EIS is not required to analyze every possible impact:

13 [A]n EIS is not a compendium of every conceivable effect or
14 alternative to a proposed project, but is simply an aid to the
15 decision making process. That is, the EIS need only include
16 information sufficiently beneficial to the decision making process
17 to justify the cost of its inclusion. Impacts or alternatives which
18 have insufficient causal relationship, likelihood, or reliability to
19 influence decision makers are ‘remote’ or ‘speculative’ and may be
20 excluded from the EIS.

18 *Klickitat County Citizens Against Imported Waste v. Klickitat County*, *supra*, 122 Wn.2d at 641.
19 (alteration in original)(quoting R. Settle, §14(a)(1) at 14-19). An EIS is adequate if it provides
20 sufficient information from which the decision-maker can make a reasoned choice among the
21 alternatives. *Solid Waste Alternative Proponents (SWAP) v. Okanogan County*, 66 Wn. App.
22 439, 444, 832 P.2d 503, *review denied*, 120 P.2d 1012 (1992).

23 Citizens has failed to meet its burden of proof under the EIS adequacy standard. As
24 detailed below, the Seattle 2035 EIS contains a reasonably through discussion of the probable
25 environmental consequences of all five growth alternatives and thus meets the legal requirements
26

1 for an adequate EIS. Citizens has offered no evidence to the contrary, and its appeal must be
2 denied.

3 **II. ARGUMENT AND LEGAL AUTHORITY**

4 **2.1 Transportation**

5 **2.1.1. The EIS Contains a Reasonably Thorough Discussion of the Traffic**
6 **Congestion Impacts of the Five Growth Alternatives.**

7 The DEIS and FEIS (collectively, “the EIS”) for Seattle 2035 contain a combined 53
8 pages of transportation-related environmental analysis and 37 pages of transportation-related
9 tables detailing the impacts of the five growth alternatives. *DEIS*, City’s Exhibit 19, at 3.7-1
10 through 3.7-52 and Appendix A at A4-1 through A4-30; *FEIS*, City’s Exhibit 20 at 3.2-17 and
11 Appendix B2 at B.2.1 through B.2-7. With respect to traffic congestion and levels of service, the
12 DEIS and FEIS use the “screenline” methodology adopted by Seattle to identify and evaluate the
13 impacts of each alternative. Under the screenline methodology,

14 [a] screenline is an imaginary line across which the number of
15 passing vehicles is counted. Each of those screenlines has an LOS
16 standard in the form of a volume-to-capacity (v/c) ratio: the
17 number of vehicles crossing the screenline compared to the
designated capacity of the roadways crossing the screenline. The
City’s comprehensive plan evaluates 28 screenlines during the PM
peak hour.

18 *DEIS*, City’s Exhibit 19 at 3.7-17. According to the City’s expert, Christopher Breiland, the
19 screenline methodology measures the impacts of growth on all of the arterial roadways crossing
20 a screenline by forecasting the increase in the volume-to-capacity ratio on each of those
21 roadways that will occur as the result of each of the alternatives and then averaging those
22 increases to reach an overall v/c ratio at each of the 28 screenlines. *See, also, DEIS*, City’s
23 Exhibit 19, Appendix A, Table A.4-17; *FEIS*, City’s Exhibit 20, Appendix B, Table B.2-1.

24 The results of the screenline analysis for Seattle 2035 are summarized in Table 3.7-6 in
25 the DEIS and Table B.2-1 in the FEIS. These tables show the projected 2035 PM peak hour
26 volume-to-capacity ratio for all 28 of the City’s screenlines under each of the five growth

1 alternatives. *DEIS*, City's Exhibit 19, at 3.7-33; *FEIS*, City's Exhibit 20, Appendix B at B.2-1.
2 Table A.4-17 in Appendix A of the *DEIS* and Table B.2-1 in Appendix B of the *FEIS*
3 substantiate these projected results with supporting traffic volume and capacity data for each
4 arterial roadway crossing the screenlines. When the projected 2035 v/c ratios in the *DEIS* and
5 *FEIS* are compared with the 2015 ratios shown in Table 3.7-4 on page 3.7-24 of the *DEIS*, the
6 *EIS* clearly discloses the amount by which traffic volumes and traffic congestion will increase at
7 all of the screenlines under each of the alternatives. The *EIS* also clearly discloses that the 2035
8 traffic volumes at some of the screenlines will exceed the theoretical capacity of the roadways
9 and that the volume-to-capacity ratio on some roadways will be better under some of the
10 alternatives than others. For example, at Screenline 5.11 (the Ship Canal - Ballard Bridge
11 Screenline), northbound capacity is expected to be exceeded in the 2035 PM peak hour by 19%
12 under Alternative 1 (the No Action Alternative), 15% under Alternative 2, 16% under
13 Alternative 3, 17% under Alternative 4, and 18% under Alternative 5. This disclosure is the
14 hallmark requirement for *EIS* adequacy: the *EIS* must present environmental analysis in
15 sufficient detail to enable the decision-maker, in this case the Seattle City Council, to make a
16 reasoned choice among the alternatives. *SWAP, supra*, 66 Wn. App, at 444.

17 Based on the screenline analysis, the *EIS* concludes that there will be no significant
18 adverse impact on traffic as the result of adopting Seattle 2035 for two reasons: (1) the traffic
19 congestion under all of the proposed growth alternatives does not exceed the adopted level of
20 service at any screenline, and (2) adoption of any of the (Alternatives 2 through 5) in large part
21 results in less traffic congestion than the No Action Alternative, Alternative 1. *DEIS*, City's
22 Exhibit 19, at 3.7-33 through 3.7-34; *FEIS*, Exhibit 21, at 1-25.

23 Citizens presented no testimony, expert or otherwise, and no other evidence to refute the
24 data and the conclusions in the *EIS* concerning the traffic congestion impacts of the five growth
25 alternatives. While Citizens raised questions and indicated that its members thought the analysis
26 was inadequate, Citizens offered no testimony or other evidence that contradicted any of the

1 discussion or analysis in the EIS or that showed the discussion and analysis was less than
2 thorough. Citizens failed to meet its burden of showing that the responsible official's decision
3 that the EIS was adequate was clearly erroneous.

4 **2.1.2 The Screenline Methodology is a Valid Measure of Transportation**
5 **System Performance under the GMA and was Properly Used in the**
6 **EIS to Measure the Traffic Operations Impacts of the Five Growth**
7 **Alternatives.**

8 While Citizens' argument about the validity of Seattle's screenline methodology under
9 the GMA is beyond the jurisdiction of the Hearing Examiner in this proceeding, it should be
10 noted that the screenline methodology was expressly upheld by the Central Puget Sound Growth
11 Management Hearings Board in *West Seattle Defense Fund (WSDF I) v. City of Seattle*,
12 CPSGMHB Case No. 94-3-0016, Final Decision and Order (Apr. 4, 1995). In that case, WSDF
13 argued (as Citizens does here) that the screenline methodology did not adequately measure the
14 performance of local arterials and transit routes and was therefore invalid under RCW
15 36.70A.070(6)(b)(ii). WSDF also argued (as Citizens does here) that the screenline
16 methodology did not result in an acceptable level of service under the GMA because the
17 methodology allows volume-to-capacity ratios to exceed 1.0, which WSDF characterized as
18 "gridlock" and "not a standard at all." The Board rejected both of these arguments:

19 The Board finds Seattle's arguments more persuasive and
20 holds that Seattle has adopted a level of service methodology and
21 level of service standards for all arterials and transit routes.
22 Furthermore, this LOS methodology does serve as a gauge to allow
23 the City to objectively measure the performance, or lack thereof, of
24 its transportation system. The Board sympathizes with WSDF's
25 concerns that traffic congestion in Seattle may worsen if today's
26 driving habits continue, coupled with the arrival of tomorrow's
projected growth. However, that is a policy matter to be resolved
by the elected officials and the electorate of Seattle and the Puget
Sound Region.

...

Seattle has established LOS methodology and standards
that measure the level of service for the arterials and transit routes
in its transportation system. These gauge the performance of
Seattle's transportation system and therefore comply with RCW
36.70A.070(6)(b)(ii).

1
2 *Id.* at 48-49. Under RCW 36.70A.290(1), the Central Puget Sound Growth Management
3 Hearings Board has exclusive original jurisdiction over the validity of Seattle’s screenline
4 methodology under the GMA and the Board has conclusively upheld that methodology.
5 Citizens’ argument to the contrary is without merit.

6 Citizens’ next argument is that even if the screenline methodology complies with the
7 GMA, it is not appropriate to use the methodology to analyze traffic impacts in an EIS. This is
8 incorrect. According to the testimony of the City’s expert witnesses, Kevin O’Neill and
9 Christopher Breiland, the screenline methodology measures the average traffic congestion and
10 level of service on all of the arterial roadways crossing a given screenline and the methodology
11 therefore shows the effect on traffic congestion and level of service on each of those roadways as
12 traffic volumes are increased by growth. Citizens offered no testimony, expert or otherwise, to
13 show that the screenline methodology is not an accurate indicator of traffic congestion impacts.
14 Citizens failed to meet its burden of proving that the responsible official’s decision that the EIS
15 was adequate was clearly erroneous based on the use of the screenline methodology.

16 **2.1.3 An Intersection-Level Analysis was Not Required for the EIS to be**
17 **Adequate.**

18 Citizens also failed to show that the EIS for Seattle 2035 was required to contain an
19 intersection-level congestion analysis in order to be adequate. Citizens presented no testimony,
20 expert or otherwise, and no other evidence showing that an intersection-level congestion analysis
21 would have provided any beneficial information on the traffic congestion impacts of the Seattle
22 2035 growth alternatives. Moreover, the testimony that the City presented from Kevin O’Neill
23 and Christopher Breiland showed that performing an intersection-level congestion analysis in the
24 EIS for Seattle 2035 would have been contrary to both SEPA requirements and SEPA practice.
25 Under SEPA, “the EIS need only include information sufficiently beneficial to the decision
26 making process to justify the cost of its inclusion.” *Klickitat County Citizens Against Imported*

1 *Waste v. Klickitat County, supra*, 122 Wn.2d at 641. (quoting R. Settle, *supra*, §14(a)(1) at 14-
2 19). As Mr. O’Neill and Mr. Breiland testified, intersection-level congestion analysis is not
3 typically performed in EISs related to citywide plans in jurisdictions as large as Seattle both
4 because of its cost and because of its lack of efficacy in identifying impacts from citywide
5 traffic. As Mr. Breiland further explained, an intersection-level congestion analysis for the
6 Seattle 2035 EIS would not have yielded any better information concerning the traffic congestion
7 impacts of the five growth alternatives than the screenline analysis did because of the speculative
8 nature of intersection-level congestion analysis when dealing with the trip destinations and
9 turning movements attributable to citywide traffic growth. Mr. Breiland also explained that an
10 intersection-level congestion analysis would have been cost-prohibitive, given the thousands of
11 arterial intersections that would have had to be studied. Thus, while an intersection-level
12 analysis is helpful and practical in an EIS on a smaller-scale plan like the University District
13 Community Urban Center Plan, where the number of intersections is limited and the trip
14 destinations and turning movements are readily predictable, the City’s experts testified that such
15 an analysis would not have been helpful or cost-effective for Seattle 2035. Citizens offered no
16 testimony, expert or otherwise, that contradicted the testimony of the City’s experts. Citizens
17 failed to meet its burden of showing that the Seattle 2035 EIS was inadequate because an
18 intersection-level analysis was not performed.

19 **2.1.4 Seattle’s Proposed Adoption of a Mode Share Level of Service Meets**
20 **the Requirements of the GMA and is a Valid Alternative to the**
21 **Current Screenline LOS.**

22 Citizens’ argument that the proposed mode share level of service is not authorized by the
23 GMA and is therefore not a valid alternative to be studied in the EIS is incorrect because mode
24 share is specifically authorized and encouraged under regulations adopted by the Washington
25 State Department of Commerce. The Department of Commerce is charged by the legislature
26 with providing “criteria to assist counties and cities in adopting comprehensive plans and
development regulations that meet the goals and requirements of [the GMA].” RCW

1 36.70A.190(4)(b). With respect to transportation levels of service, the Department has adopted
2 WAC 365-196-430(2)(e), which provides, in subsections (v), (vi), and (vii), that “[a]dopted level
3 of service standards should reflect... mode-split... goals,” that performance of transportation
4 facilities may be measured “in terms of multimodal capacity available in a corridor,” and that
5 “the use of [level of service] methodologies analyzing the transportation system from a
6 comprehensive, multimodal perspective” is “encouraged.” Seattle’s proposed use of mode share
7 methodology to measure the performance of its transportation system is thus expressly
8 authorized by state law and Citizens’ argument to the contrary is without merit.

9 Citizens’ argument that the EIS should have analyzed the environmental impacts of
10 adopting the proposed mode share level of service is also incorrect. As Mr. O’Neill and Mr.
11 Breiland testified, mode share is simply a method of measuring the traffic congestion impacts of
12 a proposed development and has no environmental impacts in and of itself. In fact, as Mr.
13 Breiland and Mr. O’Neill said, the whole point of mode share is to reduce environmental impacts
14 by moving more people and goods in the same physical roadway space, thereby lessening the
15 impacts of growth. And according to the testimony of John Shaw, the use of the mode share
16 methodology will have limited practical effect at the project review level, since all projects
17 requiring SEPA review that currently provide an intersection-level congestion analysis will still
18 be required to provide such an analysis for the City’s review. Citizens offered no testimony,
19 expert or otherwise, showing that the adoption of a mode share level of service will have
20 probable significant adverse environmental impacts requiring discussion in the EIS. Citizens
21 failed to meet its burden of proving the EIS inadequate on this basis.

22 **2.2 Parking**

23 **2.2.1 The EIS Contains a Reasonably Thorough Discussion of the Parking** 24 **Impacts of the Five Growth Alternatives.**

25 The EIS for Seattle 2035 recognizes that all of the growth alternatives will have probable,
26 significant adverse impacts on parking. *DEIS*, City’s Exhibit 19, at 1-23, 3.7-46 and 47; 3.7-51;

1 *FEIS*, City's Exhibit 21, at 3.2-17. This is so, not because the City's parking regulations are
2 changing (they aren't), but because on-street parking demand currently exceeds on-street parking
3 supply in some areas of the City and the projected growth from the five growth alternatives will
4 likely make this deficit worse. *Id.* The EIS indicates, however, that these impacts can and will
5 be mitigated if the mitigation strategies are implemented:

6 Potentially significant adverse impacts are identified in this Draft
7 EIS. However, the parking impacts are anticipated to be brought
8 to a less-than significant level by implementing a range of possible
9 mitigation strategies such as those discussed in Section 3.7.3.
10 While there may be short-term impacts as individual developments
11 are completed (causing parking demand to exceed supply), it is
12 expected that over the long-term, the situation would reach a new
13 equilibrium as drivers shift to other modes or to using off-street
14 parking facilities. With implementation of a range of possible
15 mitigation strategies addressing parking impacts, no significant
16 unavoidable adverse impacts are expected.

17 *FEIS*, City's Exhibit 21, at 3.2-17. Citizens offered no testimony, expert or otherwise, and no
18 other evidence which contradicted any of the analysis contained in the EIS regarding parking
19 impacts. Having failed to do so, Citizens has failed to meet its burden of proof to show that the
20 EIS is inadequate.

21 **2.2.2 The City's Parking Policies and Parking Regulations are Unchanged
22 by Seattle 2035 and No Analysis of Regulatory Changes was Required
23 for the EIS to be Adequate.**

24 Citizens argues that the parking policies in the Comprehensive Plan are being radically
25 changed by Seattle 2035 and that the EIS should have considered the impact of those changes.
26 But as Gordon Clowers testified on behalf of the City, most of the changes made in the parking
policies are semantic and the policies remain consistent overall with those set forth in the current
Comprehensive Plan. Mr. Clowers also testified that the City already has no minimum parking
requirement for development in frequent-transit served areas and that none of the parking
requirements and standards in Chapter 23.54 SMC are changed by the Seattle 2035 proposal.
Citizens offered no testimony, expert or otherwise, and no other evidence to refute the testimony

1 of Mr. Clowers and no evidence that the proposed parking policies in Seattle 2035 would have
2 any significant impact that was not analyzed in the parking sections of the EIS. Citizens failed to
3 meet their burden of proving that the EIS fails to contain a reasonable discussion of the parking
4 impacts of Seattle 2035 and that the responsible official's determination that the EIS is adequate
5 was clearly erroneous.

6 **2.3 Parks**

7 **2.3.1 Seattle's Park and Open Space Goals are Not Repealed by Seattle** 8 **2035.**

9 Much of Citizens' argument regarding the parks and open space discussion in the EIS for
10 Seattle 2035 proceeds from a false premise: the idea that the park and open space goals found in
11 the Urban Village Appendix of the 2005 Seattle Comprehensive Plan are repealed by the
12 proposed Seattle 2035 Comprehensive Plan. As the testimony and exhibits showed, this is not
13 the case. Currently, the parks and open space goals for Seattle's Urban Villages are found in two
14 places: (1) on page UV-A3 in the Urban Village Appendix of the 2005 Seattle Comprehensive
15 Plan, City's Exhibit 1, and (2) on pages 18-19 of Seattle's Parks and Recreation 2011
16 Development Plan, City's Exhibit 35. In order to address this redundancy, the proposed Seattle
17 2035 Comprehensive Plan deletes the park and open space goals from the Comprehensive Plan
18 and simply incorporates the Park Development Plan by reference in Parks and Open Space
19 Policy P1.2. That policy requires the City to:

20 Provide a variety of parks and open space to serve the city's
21 growing population consistent with the priorities and level-of-
22 service standards identified in the City's Park Development Plan.

23 (Emphasis added). Both Tom Hauger and David Graves, testifying on behalf of the City, said
24 that the primary purpose of this change was simply to have the parks and open goals and level of
25 service set forth in one place and one place only, thus avoiding the need to amend both
26 documents when the Park Development Plan was changed. According to Mr. Hauger and Mr.
Graves, since the 2011 Park Development Plan is not amended by the proposed Seattle 2035

1 Comprehensive Plan, the park and open space goals set forth in the Park Development Plan
2 continue to control and no change in the goals will occur as a result of the Comprehensive Plan
3 adoption. Citizens' assertion to the contrary is mistaken.

4 It should be noted, as discussed at the hearing, that the Park Development Plan is
5 currently scheduled to be updated in 2017 and that the goals and levels of service may be
6 changed as part of that process. The EIS recognizes this:

7 [T]he proposed Comprehensive Plan (Policy P1.2) implies that
8 priorities and level-of-service standards will be updated with
9 respect to parks and open space in the *Park Development Plan*.
10 Seattle Parks and Recreation (SPR) will begin work on this
11 functional plan in 2016. This sort of refinement of goals, policies,
12 and objectives is a necessary step to best direct the City's
13 parks/open space planning efforts, and it reflects an intent to
14 maintain effective policy guidance by the Comprehensive Plan in
15 the functional planning category. It is acknowledged, however,
16 that exact content of new parks/open space planning goals, both in
17 quantitative and qualitative terms, are not defined at this time.
18 When proposed, they may be subject to future SEPA review.

14 *FEIS*, City's Exhibit 20, at 3.2-19. Thus, if and when the park and open space goals and level-
15 of-service are changed from those that are currently set forth in the Park Development Plan,
16 additional SEPA review and an additional public amendment process will occur and Citizens
17 will have the opportunity to participate in both of those processes at that time. Seattle 2035
18 makes no such changes, however, and Citizens has therefore failed to prove that the EIS should
19 have contained an analysis of those changes in order to be adequate.

20
21 **2.3.2 The EIS Contains a Reasonably Thorough Discussion of the Impacts
22 of the Five Growth Alternatives on Parks and Open Space.**

23 The EIS for Seattle 2035 acknowledges that while the City currently has adequate
24 parkland to serve its projected population and job growth when viewed on a citywide basis, the
25 distribution of that parkland is unlikely to meet the proximity goals set forth in the Park
26 Development Plan over the next twenty years of growth. *DEIS*, City's Exhibit 19, at 3.8-27;

1 *FEIS*, City’s Exhibit 20 at 3.2-18. The EIS concludes, however, that this distributional “gap” can
2 be addressed by the entire system’s capacity and the range of available services within the City’s
3 parks, as augmented by Seattle Parks and Recreation’s future improvements, without causing
4 significant environmental impacts. *Id.*

5 The EIS also acknowledges that there are currently significant open space “gaps” in
6 several areas of the City when measured against the open space goals and level of service
7 standards and that these gaps “could” continue and increase over the twenty-year life of Seattle
8 2035. *Id.* This could occur primarily because the acquisition of sizable open space is very
9 difficult at the present time given the cost of land, the need to pay fair market value, and the lack
10 of available space for purchase. *DEIS* at 3.8-28; *FEIS* at 3.2-18 and 3.2-19. The EIS concludes,
11 however, that these gaps could be reduced over time as SPR strives to obtain additional park and
12 open space land and to improve that land as appropriate. *FEIS* at 3.2-19.

13 Gordon Clowers testified that based on his experience with over 100 EISs, the parks and
14 open space analysis contained in the EIS presents a reasonably thorough discussion of the park
15 and open space impacts of Seattle 2035 and presents sufficient information to allow the Seattle
16 City Council to make a reasoned decision. Citizens offered no testimony, expert or otherwise,
17 that any of the data, discussions, or conclusions in the EIS were inaccurate or flawed or that Mr.
18 Clowers’ conclusions were mistaken. Citizens failed to meet its burden of proving that the EIS
19 is inadequate as it relates to parks.

20 **2.4 Alternatives**

21 Citizens’ various challenges to the alternatives analysis contained in the EIS are also
22 without merit. Citizens offers no evidence or legal authority to support its arguments, which are
23 clearly outweighed by the testimony and legal citation provided by the City.

24 **2.4.1 SEPA Standard for Alternatives Analysis.**

25 An Environmental Impact Statement must contain a discussion of “alternatives, including
26 the proposed action.” WAC 197-11-430(2)(d). The purpose of this aspect of the EIS is to

1 present a comparison of the environmental impacts of alternatives to the proposal. WAC 197-11-
2 440(5)(C)(vi). The agency's analysis must describe the objective, proponent and principal
3 features of reasonable alternatives, including the proposed action, as well as any identified
4 mitigation measures. WAC 197-11-440(5)(c). The analysis must also include a "no action"
5 alternative that is comparatively evaluated in relation to the other alternatives. WAC 197-11-
6 440(5)(b)(ii). Reasonable alternatives are actions "that could feasibly attain or approximate a
7 proposal's objectives, but at a lower environmental cost or decreased level of environmental
8 degradation." WAC 197-11-440(5)(b). However, the SEPA Rules clarify that not every
9 conceivable alternative to a proposal must be identified and evaluated; "[t]he word 'reasonable'
10 is intended to limit the number and range of alternatives, as well as the amount of detailed
11 analysis for each alternative." WAC 197-11-440(5)(b)(i). "Reasonable alternatives may be those
12 over which an agency with jurisdiction has authority to control impacts either directly, or
13 indirectly through requirement of mitigation measures." WAC 197-11-440(5)(B)(iii).

14 The requirements for EISs associated with nonproject actions like the proposed Seattle
15 2035 amendments are more flexible. In this context, SEPA affords agencies broad latitude and
16 specifically acknowledges that the content of nonproject EISs may be limited to alternatives that
17 have been "formally proposed" or are "reasonably related" to the underlying action:

18 *(1) The lead agency shall have more flexibility in preparing*
19 *EISs on nonproject proposals, because there is normally less*
20 *detailed information available on their environmental impacts and*
on any subsequent project proposals. . . .

21 *(2) The lead agency shall discuss impacts and alternatives in*
22 *the level of detail appropriate to the scope of the nonproject*
23 *proposal and to the level of planning for the proposal. Alternatives*
24 *should be emphasized. In particular, agencies are encouraged to*
25 *describe the proposal in terms of alternative means of*
26 *accomplishing a stated objective (see WAC 197-11-060(3)).*
Alternatives including the proposed action should be analyzed at a
roughly comparable level of detail, sufficient to evaluate their
comparative merits (this does not require devoting the same
number of pages in an EIS to each alternative).

. . . .

1
2 (4) *The EIS's discussion of alternatives for a comprehensive*
3 *plan, community plan, or other areawide zoning or for shoreline or*
4 *land use plans shall be limited to a general discussion of the*
5 *impacts of alternate proposals for policies contained in such plans,*
6 *for land use or shoreline designations, and for implementation*
7 *measures. The lead agency is not required under SEPA to examine*
8 *all conceivable policies, designations, or implementation measures*
9 *but should cover a range of such topics. The EIS content may be*
10 *limited to a discussion of alternatives which have been formally*
11 *proposed or which are, while not formally proposed, reasonably*
12 *related to the proposed action.*²

13 WAC 197-11-442 (emphasis added).

14 The range of alternatives identified in an EIS must be sufficient to permit a reasoned
15 choice among them by the relevant agency decision maker—here, the Seattle City Council. *See*
16 *SWAP*, 66 Wn. App. at 444. The adequacy of the range of alternatives, as well as the adequacy
17 of the level of detail provided concerning the impacts of each alternative, is measured by the
18 same “rule of reason” applicable to the EIS as a whole. *Id.*; *Toandos Peninsula Ass’n v. Jefferson*
19 *County*, 32 Wn. App. 473, 483, 648 P.2d 448 (1982). Under this standard, the range of
20 alternatives set forth in the Seattle 2035 FEIS and the depth of the analysis provided for each is
21 adequate if the EIS provides sufficient information from which the City Council can make a
22 reasoned selection. *Id.*

23 As explained below, Citizens cannot meet its burden of demonstrating that the Seattle
24 2035 EIS violates these standard in any way. Its various challenges to the alternatives contained
25 in the EIS should be rejected accordingly.

26 **2.4.2 The alternatives identified in the Seattle 2035 EIS are adequate.**

The alternatives analysis contained in the challenged EIS is appropriate under the
relevant circumstances and satisfies the applicable requirements of WAC 197-11-442. The
overriding policy objective of the proposed Seattle 2035 amendments is to determine the best
distribution of growth for the 70,000 new housing units and 115,000 new jobs that will be added

² The corollary provisions of the City’s SEPA ordinance mirror the state law requirements for EIS content.
See SMC 25.05.440 -.442.

1 to City by the year 2035. *FEIS* at 1-1, 1-2. Each of the five alternatives identified in the EIS
2 necessarily assumes this level of growth, but they describe differing means of distributing the
3 City's anticipated population and job increases within the larger framework of Seattle's current
4 Urban Village strategy. *FEIS* at 1-4 - 2-9.

5 Each alternative emphasizes different patterns of projected future growth amount and
6 intensity among the City's urban centers, urban-villages and transit-related areas. *FEIS* at 1-4.
7 Summarized, the five alternatives involve the following approaches to accommodating the City's
8 growth estimates:

- 9 ▪ **Alternative 1** (No Action) (continue the City's current growth policies associated
10 with the pre-existing Urban Village Strategy).
- 11 ▪ **Alternative 2** (prioritize greater growth concentrations into the City's six existing
12 urban centers).
- 13 ▪ **Alternative 3** (prioritize greater growth concentrations around existing and
14 planned light rail stations).
- 15 ▪ **Alternative 4** (prioritize greater growth concentrations around light rail stations
16 and in specific areas along priority bus transit routes).
- 17 ▪ **Alternative 5** (guide growth toward urban villages near light rail transit stations
18 and very good bus service, along with growth distributions supporting the City's
19 equity objectives).

20 *FEIS* at 1-4 - 1-7.

21 Employing these alternative approaches, the Seattle 2035 *FEIS* provides a comparative
22 evaluation of the anticipated impacts and mitigation strategies of the five alternatives with
23 respect to earth and water quality; air quality and greenhouse gas emissions; noise; land use
24 considerations; population, employment and housing concerns; transportation; public services;
25 utilities; and the relationship of each proposal to relevant plans, policies and regulations. *FEIS* at
26 1-11 - 1-29, 2-1 - 2-45. As the City's expert witnesses uniformly confirmed, the range, content,
format and depth of the City's alternatives analysis facially satisfy the requirements set forth at
WAC 197-11-440 and WAC 197-11-442 in every relevant manner. Testimony of Gordon
Clowers, Richard Weinman and Deborah Munkberg.

1 **2.4.3 A Policy-Specific Analysis Is Not Required for a Nonproject EIS.**

2 The EIS references and addresses the most significant policy-related land use changes
3 that have been proposed as part of the Seattle 2035 amendments. *FEIS* at 1-2; Section 2, Section
4 3. Citizens’ primary challenge to the alternatives analysis contained in the EIS, however,
5 contends that the City erred by failing to provide a separate, individualized evaluation of each
6 proposed change to all of the various Comprehensive Plan goals and policies slated for revision
7 or replacement as part of the Seattle 2035 proposal. Appeal Statement at 2, 4-10. This argument
8 fails as a matter of law under the unambiguous text of WAC 197-11-442(4):

9 The EIS’s discussion of alternatives for a comprehensive plan. . .
10 shall be limited to a *general discussion* of alternate proposals
11 contained in such plans[.] The lead agency is *not* required under
 SEPA to examine *all conceivable policies*, . . . but should cover a
 range of such topics.

12 (Emphasis added.)

13 The testimony of the City’s three SEPA expert witnesses, each of whom unequivocally
14 stated that a policy-specific analysis is not required in this context, further underscores this
15 conclusion. Testimony of Gordon Clowers, Richard Weinman and Deborah Munkberg. Citizens
16 provides no legal authority and no expert testimony supporting its contrary assertion. The
17 Seattle 2035 EIS properly covers a range of policies as required by WAC 197-11-442(4) in the
18 context of the document’s analysis of alternatives, *see, e.g., FEIS* at 1-2, Section 2, Section 3,
19 and is adequate under the applicable standards governing nonproject EISs.

21 **2.4.4 The Alternatives Contained in the EIS Are Not *Post Hoc* Justifications**
22 **for Prior Decisions.**

23 Citizens also alleges that the alternatives identified in the Seattle 2035 EIS “are designed
24 to justify decisions made by the planning staff” in violation of WAC 197-11-402(10). Appeal
25 Statement at 3, 4. This SEPA provision mandates that “EISs shall serve as the means of
26

1 assessing the environmental impact of proposed agency action, rather than justifying decisions
2 already made.”

3 Citizens’ argument unpersuasively conflates staff’s policy recommendation regarding the
4 Seattle 2035 amendments with the City Council’s ultimate decisional role in approving this
5 proposal. The relevant “decision” in this context is not the staff’s advisory recommendation to
6 the Mayor and City Council, but rather the Council’s vote to adopt the proposed amendments.
7 See WAC 197-11-730 (defining “decision maker” as “the agency. . . officials who make the
8 agency decision on a proposal”); RCW 36.70A.130(1) (requiring adoption and amendment of
9 comprehensive plans by “legislative action”).³ Numerous City witnesses, including three SEPA
10 experts, testified that no “decision” regarding the Seattle 2035 amendments had yet been made;
11 that the EIS alternatives were designed to provide SEPA environmental impact analysis for a
12 range of possible decisions to be made at a later date; that the Seattle City Council is the
13 exclusive decisional authority for the underlying proposal; and that Citizens’ proffered
14 construction of WAC 197-11-402(10) was incorrect under SEPA. Testimony of Tom Hauger,
15 Gordon Clowers, Richard Weinman and Deborah Munkberg. Again, Citizens provides no legal
16 authority or expert testimony to support its contrary interpretation, and cannot meet its burden as
17 the party challenging the adequacy of the City’s EIS.

18 **2.4.5 The EIS Includes Alternatives That Could Attain the Seattle 2035**
19 **Proposal’s Objectives with a Lower and/or Different Environmental**
20 **Impact.**

21 Equally without merit is Citizens’ assertion that the Seattle 2035 EIS fails to include an
22 alternative that “reduces the impacts of the proposal”. Appeal Statement at 2. For this
23 proposition Citizens cites WAC 197-11-440(5)(b), which provides that “[r]easonable alternatives
24 shall include actions that could feasibly attain or approximate a proposal's objectives, but at a
25 lower environmental cost or decreased level of environmental degradation.” *Id.*

26 ³ Citizens essentially conceded this point at the appeal hearing.

1 Although Citizens fails to support or otherwise develop this argument with any
2 meaningful authority or evidence, the apparent thrust of its position is that none of the five
3 alternatives evaluated in the EIS would actually reduce the anticipated impacts of the proposed
4 Seattle 2035 amendments. Appeal Statement at 2-10. Citizens' assertion is both factually
5 erroneous and legally unavailing. As explained in the EIS itself, some aspects of the identified
6 alternatives would in fact implicate lesser levels of impact than others. *FEIS* at Figure 1-2;
7 Section 2, Section 3. The EIS consistently indicates that Alternative 2 (i.e., prioritizing future
8 growth concentrations into the City's six existing urban villages) would likely result in the least
9 overall potential for impacts by focusing growth into fewer specific areas. *Id.* Conversely,
10 Alternative 1 (the "no action" alternative) could potentially be viewed as implicating lesser
11 impacts than the other alternatives by providing for more evenly dispersed growth in more areas
12 throughout the City. *Id.* Likewise, Alternatives 3, 4 and 5 could be characterized as generating
13 fewer impacts by channeling future growth toward transit-oriented development patterns. *Id.* In
14 each instance, the extent to which particular alternatives would involve lesser environmental
15 effects depends upon *which* impacts, and *which* areas of the City, are at issue.

16 Irrespective, the fallacy of Citizens' argument is the false premise that the EIS's impact
17 analysis must be expressed in definitive rank order in the first instance. Washington courts have
18 rejected any suggestion that WAC 197-11-440(5)(b) requires this approach, and have instead
19 "approved EIS alternatives that present greater impacts in some areas and fewer impacts in
20 others." *Brinnon Group v. Jefferson County*, 159 Wn. App. 446, 482, 245 P.3d 789 (2011)
21 (citing *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 138 Wn.2d 161, 183,
22 979 P.2d 374 (1999) (internal punctuation omitted)). Courts have likewise recognized the
23 practical difficulty in identifying "reasonable" alternatives with less environmental impact
24 where—as here—the nature of underlying proposal necessarily involves a significant or
25 otherwise intense level of future development. *Id.* at 481. For this reason, SEPA tempers the
26 general EIS requirements set forth at WAC 197-11-440 with the more flexible standards for

1 nonproject proposals contained in WAC 197-11-442. These criteria require only a general
2 discussion of alternatives which have been “formally proposed” or are “reasonably related” to
3 the proposal. WAC 197-11-442(4).

4 The Seattle 2035 EIS clearly satisfies this standard. The alternatives evaluated in the EIS
5 include the plan amendments that have been “formally proposed” by the Mayor, as well as other
6 “reasonably related” potential approaches that would accommodate the City’s future growth
7 levels within the general planning framework of the City’s Urban Village Strategy. *FEIS* at
8 Sections 1-3. The resulting analysis provides the Seattle City Council with sufficient
9 information to make an informed decision. *SWAP*, 66 Wn. App. at 444 Citizens does not—and
10 cannot—demonstrate that this analysis is clearly erroneous under the Rule of Reason.

11 **2.4.6 The EIS Adequately Addresses the Impacts of Proposed Amendments**
12 **to the City’s Comprehensive Plan Goals and Policies.**

13 Citizens identifies several proposed Comprehensive Plan amendments the impacts of
14 which Citizens contends have been inadequately addressed in the EIS. Appeal Statement at 6-
15 10. Other than its own speculative assertions, however, Citizens provides no support for its
16 position, and the uncontested testimony of the City’s witnesses repudiate Citizens’ various
17 claims. The Examiner should reject Citizens’ arguments.

18 **2.4.6.1 Future Land Use Map.**

19 The Seattle 2035 amendments contain a proposed modification of the City’s Future Land
20 Use Map (FLUM) that is addressed in EIS. *Draft 2015-2035 Comprehensive Plan*, City’s
21 Exhibit 2 at 40; *FEIS* at 1-21, 2-4. The EIS describes the intent and effect of the proposed
22 FLUM amendment:

23 In the urban villages, potentially replace [current] generalized land
24 use designations with a single designation for each type of urban
25 village (Residential, Hub and Urban Center). The single
26 designation would be accompanied by policies that describe the
types and intensities of uses allowed in each type of village. This
change is intended to provide greater flexibility in defining the

1 planned future development pattern in each type of urban village
2 and indicate limits to the most intense growth.

3 *FEIS* at 2-4. The EIS notes that “[t]his change would be consistent with existing Comprehensive
4 Plan policy (LU1 and LU2)”, and it acknowledges the potential results of this amendment,
5 including the potential for future rezones. *FEIS* at 1-21, 3.2-8 - 3.2-9. However, the EIS
6 concludes that no significant adverse impacts are anticipated. *FEIS* at 1-21. Further, the EIS
7 also included analysis of this change in Section 3.4 Land Use (Height, Bulk, Scale, Compatibility
8 section). *DEIS* at 3.4-14 and 3.4-31.

9 Citizens asserts that the proposed FLUM amendment “provides for the future upzoning of
10 all such designated lands into the highs [sic] density provided for in the zoning code with no
11 guidance from the Comprehensive Plan”, which Citizens contends will result in “the likely
12 elimination of lower ranges of zoning and much higher intensities in the urban villages.” Appeal
13 Statement at 6. Citizens’ assertions in this regard were directly refuted by the testimony of the
14 City’s Comprehensive Plan Manager, its Senior Planner, and the City’s expert land use
15 consultants. Testimony of Hauger, Clowers, Weinman and Munkberg. Citizens failed to present
16 any evidence or meaningful argument supporting its contention that the EIS’s impact
17 determination was clearly erroneous under the applicable SEPA standard, and it has accordingly
18 not met its burden on appeal.

19 **2.4.6.2 Policies LU59 and LU60.**

20 The Seattle 2035 proposal also includes an amendment that would eliminate Policies
21 LU59 and LU60 from the City’s Comprehensive Plan. *FEIS* at 1-21. These policies enumerate
22 various criteria for rezoning single-family designated property. *Id.*; *Policy Crosswalk*, City’s
23 Exhibit 49 at 69. As the EIS explained, these policies are redundant and unnecessary because the
24 relevant rezone criteria are already codified within the City’s zoning regulations. *FEIS* at 1-21;
25 Chapter 23.34 SMC. The EIS accordingly determined that removal of these policies from the
26 Comprehensive Plan would result in no significant adverse impacts. *FEIS* at 1-21 and 4-449.

1 Further, the EIS also included analysis of this change in Section 3.4 Land Use (Height, Bulk,
2 Scale, Compatibility section). *DEIS* at 3.4-24, 3.4-27, and 3.4-35.

3 Citizens' sole challenge to this aspect of the City's SEPA analysis posits that "[t]here
4 would be no need to eliminate these policies if the staff did not also anticipate removing them
5 from the code." Appeal Statement at 7. Thus, according to Citizens, "extensive elimination of
6 single-family zoning in Urban Villages *must be presumed*" as a result of the proposed
7 amendment. *Id.* (emphasis added).

8 Citizens' challenge fails under the applicable SEPA review standard. No amendment to
9 the City's zoning map or development regulations is proposed as part of the Seattle 2035
10 amendments, and multiple witnesses testified that the City has no plans to remove the rezone
11 criteria at issue from the City's code. Testimony of Hauger, Clowers. Citizens' contrary
12 assertion is factually unsupported and relies solely upon Citizens' own subjective and speculative
13 assumptions. Appeal Statement at 7. This is an insufficient basis for challenge as a matter of
14 law, as SEPA requires "attention to impacts that are likely, not merely speculative". WAC 197-
15 11-060(4)(a); *cf. Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122
16 Wn.2d 619, 633, 860 P.2d 390, 398-99 (1993) ("In order for an EIS to be adequate under this
17 rule, the EIS must present decision makers with a 'reasonably thorough discussion of the
18 significant aspects of the *probable* environmental consequences of the agency's decision")
19 (emphasis added). Citizens has failed to identify a colorable challenge to the City's impact
20 analysis on this basis.

21 **2.4.6.3 Policy UVG4.**

22 Citizens' arguments regarding the proposed replacement of Comprehensive Plan Policy
23 UVG4 are likewise meritless. Appeal Statement at 9. Policy UVG4 currently provides as
24 follows:

25 Direct the greatest share of future development to centers and
26 urban villages and reduce the potential for dispersed growth along

1 arterials and in other areas not conducive to walking, transit use,
2 and cohesive community development.

3 *Seattle Comprehensive Plan 2005*, Exhibit 1 at 1.4. As part of the Seattle 2035 amendment
4 proposal, new Policy GSG3 would provide in relevant part:

5 Accommodate approximately 80 percent of the city’s expected
6 household growth in urban centers and urban villages and 80
7 percent of employment in those areas plus
8 manufacturing/industrial centers.

8 *Draft Comprehensive Plan* at 28.

9 Citizens claims that the “FEIS is remiss in not defining the impact of this change,
10 comparing the difference in growth targets between the existing Plan and the proposed Plan[.]”
11 Appeal Statement at 9. But, as witness testimony repeatedly emphasized at the appeal hearing,
12 the change effectuated by the above-referenced policies is largely semantic and is ultimately
13 non-substantive. Testimony of Hauger, Clowers, Weinman and Munkberg. The Policy
14 Crosswalk prepared by the City further clarifies that new Policy GSG3 would carry forward the
15 relevant aspects of current Policy UVG4. *Policy Crosswalk* at 2. To the extent Citizens suggests
16 that the City’s EIS should have included a comparative neighborhood-by-neighborhood analysis
17 with respect to the City’s past and current growth targets, *see* Appeal Statement at 9, the City’s
18 experts consistently rejected the proposition that an evaluation of this type is required under
19 SEPA. Testimony of Clowers, Weinman and Munkberg. Citizens does not—and cannot—offer
20 any legal citation in support of its contrary position, which collapses under the weight of the
21 City’s expert testimony.

22 **2.4.6.4 Policy UVG8.**

23 Policy UVG8 of the Seattle Comprehensive Plan addresses investment in infrastructure:

24 Maximize the benefit of public investment in infrastructure and
25 services, and deliver those services more equitably by focusing
26 new infrastructure and services, as well as maintenance and
 improvements to existing infrastructure and services, in areas
 expecting to see additional growth, and by focusing growth in

1 areas with sufficient infrastructure and services to support that
2 growth.

3 *Comprehensive Plan 2005* at 1.5.

4 Under the Seattle 2035 amendments, this provision would be replaced by new Policy
5 GS2.2:

6 Encourage investments and activities in urban centers and urban
7 villages that will enable those areas to flourish as compact
8 mixed-use neighborhoods designed to accommodate the majority
9 of the city's new jobs and housing, provide services and
10 employment close to housing, and promote efficient use of public
11 services, including transit, with housing options for a variety of
12 households and a range of incomes.

13 *Draft Comprehensive Plan* at 24.

14 Citizens seizes on the fact the new policy contains no explicit reference to "public"
15 investment to insinuate that the Seattle 2035 EIS is deficient for failing to properly evaluate the
16 purported impacts of the proposed amendment, which can only be construed as indicating
17 Seattle's intended abdication of the City's responsibility for making public investments on the
18 basis of this policy wording. Appeal Statement at 10. However, apart from posing a few
19 rhetorical questions, Citizens fails to provide any argument whatsoever—much less any legal
20 authority or evidence—demonstrating that the EIS is inadequate on this basis. Appeal Statement
21 at 10. As the City's witnesses testified, the difference between current Policy UVG8 and
22 proposed Policy GS2.2 is ultimately semantic; nothing in the Seattle 2035 amendments remotely
23 suggests that the City is abandoning its longstanding commitment to public infrastructure.
24 Testimony of Hauger, Clowers. Indeed, one of the fundamental policy objectives of the Seattle
25 2035 proposal is to "[s]upport strategic public investment that addresses areas of need and
26 maximizes public benefit." *FEIS* at 1-2 (emphasis added). Citizens has not met its burden of
demonstrating clear error on this issue.

2.4.6.5 Policy LU-11.

1 Citizens likewise cannot show an inadequacy in the City's SEPA analysis regarding the
2 proposed elimination of Policy LU-11 from the Comprehensive Plan. The current policy
3 discourages displacement of residents as part of the redevelopment process:

4 In order to maintain the character of Seattle's neighborhoods and
5 retain existing affordable housing, discourage the demolition of
6 residences and displacement of residents, while supporting
7 redevelopment that enhances its community and furthers the goals
8 of this Plan.

9 *Comprehensive Plan 2005* at 2.5. Citizens asserts that the removal of Policy LU-11 eliminates
10 consideration of displacement concerns during the rezone process, and that the impacts of this
11 change should have been more thoroughly evaluated in the EIS. Appeal Statement at 10.

12 Again, Citizens' failure to support their argument with any legal authority or evidence is
13 fatal to their challenge. Witness testimony also clarified that Policy LU-11 is not currently a
14 rezone criterion in the first instance, rendering Citizens' assertion legally meritless. Testimony
15 of Hauger, Clowers. Of equal significance, the City's witnesses identified numerous policies
16 contained in the Seattle 2035 proposal that address the same displacement concerns that are
17 currently identified in Policy LU-11. Testimony of Hauger, Clowers. *See, e.g., Draft*
18 *Comprehensive Plan* (Policy GS 1.7, Policy GS 2.8, Policy 3.4, Policy LU 2.7, Policy H 2.5,
19 Policy H 5.3, Policy H 5.6, Policy H 5.9, Policy H 5.10). Citizens has failed to provide any
20 argument demonstrating error in the City's impact analysis under these circumstances.

21 **2.4.6.6 Policy LU95.**

22 Current Policy LU95 encourages the use of "moderate-density multifamily zones in
23 multifamily areas to provide additional housing opportunities[.]" *Comprehensive Plan 2005* at
24 2.18. The Seattle 2035 proposal would replace this policy with new Policy LU 9.11, which
25 refers to using "midrise multifamily zones to provide greater concentrations of housing in urban
26 villages and urban centers." *Draft Comprehensive Plan* at 53. Citizens posits that the
terminology difference (i.e., "moderate-density" as opposed to "midrise") implicated by this

1 change “could be important” because it allegedly “signals a shift from a density cap to a form-
2 based cap” with no relationship to density. Appeal Statement at 10.

3 Citizens fails to actually allege, much less specifically identify, any impact resulting from
4 this proposed amendment. Irrespective, the hearing testimony of the City’s Comprehensive Plan
5 Manager explained that the change simply relates to the manner in which some kinds of
6 multifamily areas would be described and classified under the Seattle 2035 proposal. Testimony
7 of Hauger. In contrast to the City’s current Comprehensive Plan, Seattle 2035 would separate
8 the midrise zone from the highrise zone and clarify that the midrise zone is an appropriate
9 mechanism for achieving higher residential densities in urban centers and urban villages. *Id.*
10 Citizens fails to establish any error with respect to the City’s analysis of Policy LU95.

11 **2.4.6.7 Process for expanding urban villages.**

12 Citizens also alleges that the EIS is deficient because it omits a process for expanding the
13 boundaries of urban villages and urban hubs. Appeal Statement at 10. This argument is
14 erroneous. The EIS properly analyzes the urban village boundary expansions that have actually
15 been recommended as part of the Seattle 2035 amendments. *See FEIS* at Section 2. Because the
16 specific process for considering any additional future expansions has not yet been proposed, the
17 EIS obviously cannot—and thus, did not—include an environmental evaluation to this effect.
18 The City’s experts testified that no such analysis was required under SEPA. Testimony of
19 Clowers, Weinman and Munkberg. Speculative impacts of uncertain future possible actions are
20 beyond the mandate of SEPA review. *See WAC 197-11-060(4)(a)*. Citizens cannot
21 demonstrate that the EIS is clearly erroneous on this basis.

22 **2.5 The Seattle 2035 EIS Is Not an Integrated GMA Document.**

23 Finally, the City does not contest Citizens’ assertion that the Seattle 2035 EIS was not
24 prepared as part of an integrated GMA document, and that the SEPA procedures governing such
25 documents are inapplicable here. Appeal Statement at 2. The Seattle 2035 EIS is not, by its
26 terms, an integrated GMA document, *see FEIS*, and the testimony of the City’s witnesses

1 clarified that the City did not purport to utilize the SEPA procedures codified at WAC 197-11-
2 210 -235. Testimony of Hauger, Clowers. The procedures and standards for integrated GMA
3 documents are irrelevant to this appeal.

4 **III. CONCLUSION**

5 For the reasons set forth above and as further explained by the City at the August 16-17,
6 2016 hearing, Citizens has failed to meet its burden of demonstrating that the Seattle 2035 EIS is
7 clearly erroneous under the applicable "Rule of Reason". The evidence presented at the appeal
8 hearing uniformly supports the City, and each of the City's expert witnesses testified that the
9 analysis contained in the EIS is consistent with accepted practice in the relevant field and is
10 SEPA compliant in every way. The Examiner is respectfully to deny Citizens' challenge and
11 affirm the adequacy of the EIS.

12 DATED this 26th day of August, 2016.

13 OGDEN MURPHY WALLACE, P.L.L.C.

14
15 By 

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1 **DECLARATION OF SERVICE**

2 I, Gloria Zak, an employee of Ogden Murphy Wallace, PLLC, and certify that on the date
3 below, I provided Respondent OPCD's Post-Hearing Brief via email and messenger to the
4 Hearing Examiner, and via email and regular mail to Steven Cohn and Joseph Wert:
5

6 **Office of the Hearing Examiner**

7 Anne Watanabe, Deputy Hearing Examiner
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15 with additional copy to

16 Steven Cohn — smcohn@speakeasy.net

17 I declare under penalty of perjury under the laws of the State of Washington that the
18 foregoing is true and correct.

19 Executed at Seattle, Washington this 26th day of August, 2016.

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Gloria Zak, Legal Assistant