BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of: **THE BALLARD COALITION** of the adequacy of the Final Environmental Impact Statement, prepared by the Seattle Department of Transportation for the Burke Gilman Trail Missing Link Project	Hearing Examiner File W-17-004 DECLARATION OF LEAH B. SILVERTHORN IN SUPPORT OF THE BALLARD COALITION'S MOTION TO CONTINUE PREHEARING ORDER DATES UNTIL DISCOVERY IS COMPLETE

I, Leah B. Silverthorn, declare and state as follows:

1. I am an attorney for the Ballard Coalition (the "Coalition").

2. I am over the age of 18, am licensed to practice law in the state of Washington, am competent to testify in a court of law, and this declaration is based on my personal knowledge.

3. Attached as Exhibit A is a true and correct copy of the Hearing Examiner's July 7, 2017 Prehearing Order in this matter.

4. The Coalition served its First Set of Interrogatories and Requests for Production to the Seattle Department of Transportation ("SDOT") on June 30, 2017 (the "Discovery Requests"). SDOT's responses to the Discovery Requests were due on July 30, 2017.

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tel 206.829.9590 fax 206.829.9245

5. SDOT did not produce documents on or before July 30, nor did it serve written objections or responses to the Discovery Requests.

6. SDOT produced the following documents, on the following dates:

a. July 31, 2017 (209 separate documents);

b. August 4, 2017 (2,318 separate documents);

c. August 10, 2017 (608 separate documents and 493 GB of video data);

d. August 11, 2017 (699 separate documents);

e. August 16 (189 separate documents);

f. August 17 (9,919 documents);

g. August 23 (6,705 documents);

h. August 31 (1,168 documents); and

i. September 12 (71 documents).

7. Attached as Exhibit B is a true and correct copy of a July 25, 2017 email from an attorney for SDOT.

8. Attached as Exhibit C is a true and correct copy of a July 31, 2017 email from an attorney for SDOT.

9. Attached as Exhibit D is a true and correct copy of an August 9, 2017 email from an attorney from SDOT.

10. Attached as Exhibit E is a true and correct copy of a September 12, 2017 email from an attorney from SDOT.

11. SDOT's documents were not produced in a Concordance load file, were not organized or sorted by subject, category, or request for production/interrogatory number, and were not paginated.

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12. The defects in SDOT's production required significant additional processing and loading time, and there is no way for the Coalition to easily evaluate how many pages of the 21,886 documents that SDOT has produced to date.

13. It will take the Coalition's attorneys and support staff approximately 314 hours, or 40 full time days, just to review the documents produced by SDOT.

14. SDOT served its responses and objections to the Discovery Requests late, on August 10, 2017.

15. The parties are currently scheduling at least 13 half-day depositions, and counsel for SDOT has indicated it will likely take the depositions of additional fact witnesses after review of the Coalition's preliminary witness and exhibit lists.

16. SDOT continues to produce documents in response to the Coalition's public records requests, which now number over six thousand documents, with additional productions expected as late as October 13, 2017.

17. SDOT indicates that it expects to produce additional installments of public records in early October. It is likely that SDOT will continue its rolling production of responsive records well after the current hearing date.

18. The Coalition does not have the resources to review all of SDOT's production on or before the current deadline for final witness and exhibit lists or to prepare for depositions and hearing. Without allowing time for review of all relevant documents prior to hearing, the Coalition will be significantly prejudiced in the presentation of its case in chief, and will make appeal on procedural grounds highly likely.

19. Counsel for the Coalition conferred with counsel for SDOT and the Cascade Bicycle Club on its Motion to Continue prior to filing its motion.

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20. Attached at Exhibit F is a true and correct copy of the Findings and Decision of the Hearing Examiner in *In re Queen Anne Comm'y Council*, Seattle Hearing Examiner No. w-16-004 (Dec. 13, 2016).

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED at Seattle, Washington, this 18th day of September, 2017

/s/ Leah B. Silverthorn
Leah B. Silverthorn, WSBA No. 51730

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EXHIBIT A

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of

THE BALLARD COALITION

of adequacy of the FEIS issued by the Director, Seattle Department of Transportation

Hearing Examiner File:
W-17-004

PREHEARING ORDER

On July 6, 2017, a prehearing conference was held regarding this matter. Represented at the conference were the Appellant, The Ballard Coalition ("Appellant"), by Joshua C. Brower and Patrick J. Schneider, attorneys-at-law. The City of Seattle ("City"), was represented by Erin E. Ferguson, attorney-at-law. The Cascade Bicycle Club ("Cascade") which had filed a motion to intervene (which has since been granted), was represented by Matthew Cohen, attorney-at-law.

During the prehearing conference the parties discussed a hearing schedule, and briefing schedule for pre-hearing motions. The following matters were discussed and resolved:

1. The parties are engaging in prehearing discovery on their own initiative, and will notify the Hearing Examiner only if necessary.

2. The parties anticipate filing pre-hearing motions. Any party filing a pre-hearing motion shall file with the Office of Hearing Examiner, and serve a copy on the other parties, its motion, no later than 5:00 PM on August 4, 2017.

3. Responses to any pre-hearing motion shall be filed and served, no later than fourteen days after the filing of the motion. (see HER 2.04 for additional information on computation of time)

4. Replies to any Response shall be filed and served, no later than ten days after the filing of the Response. (see HER 2.04 for additional information on computation of time)

5. The City and Cascade agreed to make a good faith effort to coordinate any prehearing motion activity between them to enhance efficiency in presentation and briefing for such motions.

Additional hearing schedule dates:

6. The parties shall file and serve their respective preliminary witness lists[1] and exhibit lists, no later than 5:00 PM on September 8, 2017.

7. The parties shall file and serve their respective final witness lists and exhibit lists, no later than 5:00 PM on October 6, 2017. Each party shall serve the other parties a copy of each of the exhibits listed on its exhibit list, no later than 5:00 PM on October 6, 2017. (Exhibits are not to be filed with the Office of the Hearing Examiner electronically or in hard copy. Parties are not required to provide copies of an exhibit to another party if the other party is known to possess a copy of the exhibit. Parties must be prepared to provide a copy of any exhibit to be introduced at the hearing in hard-copy form to the Hearing Examiner.)

The hearing in this matter is scheduled to be held on October 16, 2017, beginning at 9 AM in the Office of Hearing Examiner, Hearing Room 4000, 700 Fifth Avenue, (Seattle Municipal Tower, 40th Floor) Seattle, Washington. In addition to this initial hearing date, October 17, 18, 20 and 23, 2017, all at 9:00 AM, have been reserved on the hearing calendar for continuation of the hearing.

The parties are reminded that Hearing Examiner Rule (HER) 2.05(a) requires that any electronically filed document more than 10 pages in length, including exhibits, must also be delivered to the Hearing Examiner in hard copy; and HER 2.05(c) prohibits the filing of more than 15 pages with the Office of Hearing Examiner by electronic facsimile.

Entered this 7th day of July, 2017

Ryan Vancil, Deputy Hearing Examiner
Office of Hearing Examiner
P.O. Box 94729
Seattle, Washington 98124-4729
Phone: (206) 684-0521
Fax: (206) 684-0536

[1] Witness lists must include the names of witnesses and a brief summary of their expected testimony. If a witness will be testifying as an expert, a statement of qualifications must be included. Except for purposes of impeachment or rebuttal, only those witnesses and exhibits listed by the parties may be offered at the hearing.

EXHIBIT B

Leah Silverthorn

From: Ferguson, Erin <Erin.Ferguson@seattle.gov>
Sent: Tuesday, July 25, 2017 4:00 PM
To: Josh Brower; Danielle Granatt; Megan Manion; Leah Silverthorn
Cc: 'Pat Schnieder' (SchnP@foster.com); Menzel, Laurie
Subject: discovery response

Hi All,

The City is working to compile our response to your discovery request and I have a few questions. First, I assume all electronic v. hard copies of all the responsive documents is acceptable – correct? And what document management software do you use? If you let me know, we can try to save our production in a format that will work with your software, such as summation, concordance, etc.

Please let me know.

Thanks,
Erin

Erin E. Ferguson
Assistant City Attorney
Land Use Section
Seattle City Attorney's Office
Civil Division
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
Phone: 206-684-8615
FAX: 206-684-8284
Erin.Ferguson@seattle.gov

*** *Please be aware that I am out of the office on Fridays.*

EXHIBIT C

Leah Silverthorn

From: Ferguson, Erin <Erin.Ferguson@seattle.gov>
Sent: Monday, July 31, 2017 10:27 AM
To: Josh Brower; Danielle Granatt; Pat Schneider; Megan Manion; Leah Silverthorn
Cc: Tadas Kisielius; Cohen, Matthew; Reise, Alicia L; Menzel, Laurie; Dale N. Johnson
Subject: Discovery Response

As I indicated in an email last week, the City is working hard to compile its response to your extensive discovery request. I am also aware that City departments are working to respond to somewhat related public disclosure requests. Although our response to your discovery request is not yet complete, I am sending over a CD with our first installment of documents in response to your RFPs today. The City does not waive any objections to the interrogatories or RFPs with this production. I anticipate being able to provide responses to the interrogatories within the week and we will continue to produce responsive documents in installments as quickly we are able.

One question, for now: we have over 500GB of video of driveways along the Missing Link corridor. Do you want that? If so, we can either make it available for viewing on a computer at our office or if you provide an adequate external hard drive, we can copy it over for you. Let us know.

Thanks,
Erin

Erin E. Ferguson
Assistant City Attorney
Land Use Section
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FAX: 206-684-8284
Erin.Ferguson@seattle.gov

*** *Please be aware that I am out of the office on Fridays.*

EXHIBIT D

Leah Silverthorn

From: Ferguson, Erin <Erin.Ferguson@seattle.gov>
Sent: Wednesday, August 09, 2017 2:28 PM
To: Josh Brower
Cc: Leah Silverthorn; 'Pat Schnieder' (SchnP@foster.com); Menzel, Laurie; Megan Manion; Danielle Granatt; tak (tak@vnf.com); Dale N. Johnson
Subject: RE: discovery response

Josh,

The City and its consultants have been working diligently to respond to your discovery request, which was served just before a holiday weekend, prior to the prehearing conference and discussions about allowing discovery at all, and before outside counsel was retained to assist the City. The City has a number of well-founded objections to your discovery request. However, rather than make those objections and stop our efforts to respond, we took a reasonable approach to cooperate, without waiving our objections. On July 31st, we notified you that the City intended to respond in installments because of the extensive and burdensome nature of the requests and provided that the responses would be expressly subject to the City's objections.

Even before we received your email, we were planning to provide responses to the interrogatories this week, as well as additional production of documents, so those are forthcoming. On that note, you should have received TWO productions so far. One on July 31st, and a second on August 4th. The first installment consisted of 290 *documents*, not pages. The second installment was 2,318 documents. Can you please confirm you received both? Also, we have put the driveway video data, as well as GIS and data used for the economics considerations report on the external hard drive you provided and it will be delivered by tomorrow via ABC. In addition, we produced the CAD files and AutoTURN analysis in the FEIS separately on July 24th, as a courtesy well before any discovery due date. The production so far is a significant portion of the City's response.

Also, I think it is important to note that this is a proceeding before the Hearing Examiner and not Superior Court, with a truncated schedule and typically more limited discovery. The broad nature of your requests exceed what is necessary and is not targeted at obtaining the information most relevant to the key disputed issues, which is creating a huge burden on the City.

Moreover, you bear the burden of proof in this appeal. While the information the City provides may be relevant to your rebuttal, you should not need to wait for discovery responses to decide what evidence you will present to make an affirmative case on the issues you raise in your appeal. The City's minor delay in responding fully to your discovery request is not a basis for delaying any other deadlines.

With the exception of email, we expect to be able to produce the remaining responsive documents by late this week or early next. The City has identified over 15,000 potentially responsive emails and associated attachments that need to be reviewed. I am happy to talk with you to see if there are subjects you would like to focus on within that 15,000 to help expedite production; otherwise we will continue to review them and produce them as quickly as we can.

And a final note: Please include Tadas on future communications.

Best,
Erin

Erin E. Ferguson
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FAX: 206-684-8284
Erin.Ferguson@seattle.gov

*** *Please be aware that I am out of the office on Fridays.*

From: Josh Brower [mailto:josh@verislawgroup.com]
Sent: Tuesday, August 08, 2017 4:28 PM
To: Ferguson, Erin <Erin.Ferguson@seattle.gov>
Cc: Leah Silverthorn <leah@verislawgroup.com>; 'Pat Schnieder' (SchnP@foster.com) <SchnP@foster.com>; Menzel, Laurie <Laurie.Menzel@seattle.gov>; Megan Manion <megan@verislawgroup.com>; Danielle Granatt <danielle@verislawgroup.com>
Subject: Re: discovery response

Erin, I am writing regarding the City's Responses to the Coalition's First Set of Interrogatories and Requests for Production. The City's Responses are now very overdue—they were due on July 30. To date, we have received only one partial production, consisting of approximately 290-pages of unorganized materials.

Unless we are missing something, we have not yet received the City's written Responses to the Interrogatories or the documents requested pursuant to the Requests for Production of documents, which must be organized to respond to the RFP and cannot just be "batch dumped" on a disk.

Since the City did not ask nor obtain an extension, it has waived any objections to the outstanding discovery.

Please confirm that the City will immediately and fully respond to the discovery. Lacking that, please let me know when you are available to conduct a "meet and confer."

Unless we receive the City's responses this week we will file a motion to compel and for sanctions, including asking to reschedule the hearing until the City complies with the discovery requests.

Regards, Josh

Joshua C. Allen Brower
Veris Law Group PLLC
1809 Seventh Avenue, Suite 1400
Seattle, WA 98101
206.829.8233 direct
206.829.9590 office

josh@verislawgroup.com
www.verislawgroup.com

From: Erin' 'Ferguson <erin.ferguson@seattle.gov>
Date: Tuesday, July 25, 2017 at 3:59 PM
To: Josh Brower <josh@verislawgroup.com>, Danielle Granatt <danielle@verislawgroup.com>, Megan Manion <megan@verislawgroup.com>, Leah Silverthorn <leah@verislawgroup.com>
Cc: Patrick Schneider <SchnP@foster.com>, "Menzel, Laurie" <Laurie.Menzel@seattle.gov>
Subject: discovery response

Hi All,

The City is working to compile our response to your discovery request and I have a few questions. First, I assume all electronic v. hard copies of all the responsive documents is acceptable – correct? And what document management software do you use? If you let me know, we can try to save our production in a format that will work with your software, such as summation, concordance, etc.

Please let me know.

Thanks,
Erin

Erin E. Ferguson
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EXHIBIT E

Leah Silverthorn

From: Ferguson, Erin <Erin.Ferguson@seattle.gov>
Sent: Tuesday, September 12, 2017 10:05 AM
To: Danielle Granatt; Josh Brower
Cc: tak (tak@vnf.com); Pat Schneider; Leah Silverthorn
Subject: RE: FEIS - Land Use Chapter Author

Hi Danielle,

Thank you for working with us. We would like to depose the four expert witnesses identified on your preliminary witness and exhibit list. We also anticipate that we will want to depose some of your fact witnesses, but have not made a final determination about which. We will be better able to anticipate the estimated length of each expert deposition after you respond to our interrogatories. Without that information, our best estimate is that each expert deposition would last approximately 2-4 hours. We would like to schedule those between Monday September 25 to Thursday September 28th. If you let us know your expert's availability, we will do our best to coordinate our client's depositions that week accordingly.

We are also happy to work with your requests, and the City will make available those witnesses we have identified on our preliminary list. However, we have some concerns about both the volume of depositions you are proposing and some of the individuals you have identified. The volume of depositions proposed exceeds what is reasonable in this Hearing Examiner proceeding. In particular, you have identified multiple people that contributed to a specific analysis. For example, you propose to depose Claire, Mark, and Jennifer, yet all three contributed to the same analysis. Without an explanation as to why you seek to depose these specific people instead of the testifying experts that the City has identified, we cannot agree to your request. Also, your list includes witnesses that do not have information that is relevant to your case and the substantive issues you have raised. Neither Brian Surratt nor Scott Kubly were not involved in drafting the EIS or performing any of the analysis and so deposing them is irrelevant. Similarly, it does not make sense to schedule a deposition of Ben Perkowski. Ben was not involved in drafting the EIS. Because SDOT has not initiated the shoreline permitting process for any of the alternatives, Ben has not started permitting work. While we do not believe there is any justification for taking his deposition, at the very least, we cannot agree to that in advance of the resolution of the City's motion for partial dismissal, since the only issue Ben may be able to speak to may be dismissed.

We are certainly willing to make Mark Mazzola, Morgan Shook, and Mark Johnson, who have been identified as City witnesses, available for depositions during the time period you set out. How much time do you anticipate setting aside for each deposition? Once you let us know, we will check with them on availability and let you know as soon as possible. Unless there is some reason additional depositions are necessary and warranted, we object to the additional depositions you have proposed.

Please let us know how you would like to proceed.

Best,
Erin

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Erin.Ferguson@seattle.gov

*** *Please be aware that I am out of the office on Fridays.*

From: Danielle Granatt [mailto:danielle@verislawgroup.com]
Sent: Friday, September 08, 2017 11:24 AM
To: Ferguson, Erin <Erin.Ferguson@seattle.gov>; Josh Brower <josh@verislawgroup.com>
Cc: tak (tak@vnf.com) <tak@vnf.com>; Pat Schneider <pat.schneider@foster.com>; Leah Silverthorn <leah@verislawgroup.com>
Subject: RE: FEIS - Land Use Chapter Author

Erin:

Thank you for getting back to me and clarifying this issue. Despite her departure from Parametrix, we still plan to depose Jennifer—please let us know if you can accept service for her or whether we need to send her a SDT.

Regarding depositions, yes, we plan to take a number of them and plan to do so in the following order:

1. Ben Perkowski
2. Scott Kubly
3. Mark Mazzola
4. Morgan Shook
5. Claire Hoffman
6. Mark Johnson
7. Brian Surratt
8. Jennifer Hagenow

We may identify other deponents as we work through the large volume of documents we received from the City and CBC.

We would like to take these depositions between Monday, September 18th to Thursday, September 21st and between Tuesday, September 26th to Friday, September 29th.

Thank you for working with us to schedule the depositions during these time periods.

Please let us know whether you are planning to schedule depositions in this matter, and if so, who you are considering and when. We will work with you to get the depositions scheduled.

All the best,

Danielle

Danielle N. Granatt
Veris Law Group PLLC

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Fax: 206.829.9245
danielle@verislawgroup.com
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From: Ferguson, Erin [mailto:Erin.Ferguson@seattle.gov]
Sent: Tuesday, September 05, 2017 4:07 PM
To: Danielle Granatt; Josh Brower; Pat Schneider
Cc: tak (tak@vnf.com)
Subject: RE: FEIS - Land Use Chapter Author

Hi Danielle,

Mark Johnson, who is identified as the reviewer of the land use chapter, would be the correct person at ESA on that topic. Jennifer is no longer with ESA and my understanding is that Claire and Mark worked hand-in-hand on that chapter, with Mark being the lead.

Also, are you considering other depositions? If you let us know who you are considering or on what subject matters, as well as when you would prefer to schedule any depositions, we would be willing to work with you to identify the appropriate person and set up an appropriate schedule.

Best,
Erin

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From: Danielle Granatt [mailto:danielle@verislawgroup.com]
Sent: Tuesday, September 05, 2017 12:24 PM
To: Ferguson, Erin <Erin.Ferguson@seattle.gov>
Subject: FEIS - Land Use Chapter Author

Hi Erin -

I hope you had a great holiday weekend. Jennifer Hagenow and Claire Hoffman are both listed as authors of the land use chapter of the FEIS. Can you please let us know whether Jennifer or Claire was the principal author of the chapter? We are thinking about a deposition schedule and would like to make sure we note the correct person at ESA.

Many thanks,

Danielle

Danielle N. Granatt
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EXHIBIT F

FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

QUEEN ANNE COMMUNITY COUNCIL

from a SEPA determination of non-significance issued by the Director, Office of Planning and Community Development

Hearing Examiner File:
W-16-004

Introduction

Pursuant to Chapter 25.05 SMC, the City's codification of the State Environmental Policy Act ("SEPA")[1], the Director of the Office of Planning and Community Development issued a determination of non-significance for a proposed ordinance that would amend the Land Use Code,[2] to revise and add provisions related to accessory dwelling units. The Queen Anne Community Council appealed the determination of non-significance.

The appeal hearing was held before the Hearing Examiner ("Examiner") on August 31, September 1, and September 30. Parties represented at the hearing were the Queen Anne Community Council ("Appellant"), by Jeffrey M. Eustis, attorney-at-law; and the Director of the Office of Planning and Community Development ("OPCD"), by Geoff Wentlandt, OPCD Strategic Advisor. The hearing was then continued to November 1, 2016 to allow OPCD to complete its response to the Appellant's public records request. At the conclusion of the November 1 hearing on the issues related to the requested records, the hearing record was held open for the parties' post-hearing briefs.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code ("SMC" or "Code") unless otherwise indicated. After considering the evidence in the record, the Examiner enters the following findings of fact, conclusions and decision on the appeal.

Findings of Fact

Background

1. The Code defines an "accessory dwelling unit" as one or more rooms that: 1) "are located within an owner-occupied dwelling unit, or within an accessory structure on the same lot as an owner-occupied dwelling unit;" 2) meet certain Code standards; 3) "are designed, arranged, and intended to be occupied by not more than one household as living

[1] Chapter 43.21C RCW.
[2] Title 23 Seattle Municipal Code.

accommodations independent from any other household;" and 4) "are so occupied or vacant." [3]

2. Since 1993, state law has required local governments to allow "accessory apartments" subject to certain local limitations.[4] The City of Seattle has allowed accessory dwelling units, or "ADUs"[5] since 1994. In 2006, the City instituted a pilot program allowing DADUs on single-family lots in one area of the City, and in 2010, regulations were changed to allow either an ADU or a DADU on single-family lots throughout the City subject to Land Use Code regulations.

3. Although tens of thousands of single-family lots are eligible for a DADU, OPCD determined that as of December, 2015, only 221 had been constructed.

4. In 2014, the City Council asked the Department of Planning and Development[6] for a detailed report on the existing status and regulation of ADUs and DADUs in the City, and information and analysis on program and policy changes that could increase their production.[7]

5. OPCD produced the requested report in October of 2015.[8] It determined that there are 124,000+ lots available for use as single-family housing. After subtracting those ineligible for a DADU due to lot size (under 4,000 square feet), environmental constraints, shoreline areas, and lot coverage limitations, OPCD concluded that approximately 75,000 lots remained eligible for a DADU. Reducing the lot size requirement from 4,000 square feet to 3,200 square feet yielded approximately 7,000 additional lots, for a total of 82,000 eligible lots, which are located throughout the city.[9]

6. OPCD determined that DADUs constructed between 2012 and 2014 were an average size of 632 square feet, located on an average lot size of 6,770 square feet, and at an average self-reported construction cost of $55,000.[10] The DADU owners interviewed by OPCD reported charging rents between $650 and $1,800 per month.

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[3] SMC 23.84A.002 "A" and SMC 23.84A.032 "R".
[4] RCW 43.53A.215; RCW 36.70.677.
[5] As used herein, an "ADU" is an accessory dwelling unit that is attached to or located within the principal residence on a residential lot, and a "detached accessory dwelling unit" or "DADU," (sometimes called a "backyard cottage") is an accessory dwelling unit located on the same residential lot as the principal residence but not attached to it.
[6] The Department of Planning and Development was divided in 2016 into OPCD and the Department of Construction and Inspections.
[7] City Exhibit ("C") 9. *Note*: The Appellant's exhibits have no letter preceding the number.
[8] Exhibit C7.
[9] *See* Exhibit C7 at 7.
[10] Exhibit C7. at 4.

7. OPCD's October 2015 report states that "DADUs are projected to serve households earning 80 to 120 percent of AMI".[11] This is also stated earlier in the report.[12] At hearing, an OPCD witness explained that this statement was based on information from other cities that allow DADUs. However, the theme of ADUs and DADUs as affordable housing, whether for those earning between 60 percent to 80 percent of the AMI or those earning more, runs through many City documents in the record[13] and some of the testimony at hearing.

8. OPCD also reviewed the approach to ADUs and DADUs taken by Vancouver, BC and several jurisdictions within the United States.[14] They most closely examined the regulations adopted by Portland, Oregon and Vancouver, BC.

9. None of the US jurisdictions reviewed allow both an ADU and a DADU on the same single-family lot, but Vancouver, BC does so for corner lots and lots with alley access. Similarly, all jurisdictions except Vancouver, BC require owner occupancy of one of the units.[15] Only Portland and Denver have no requirement for off-street parking associated with ADUs and DADUs.[16]

10. OPCD conducted several months of targeted outreach to current and prospective DADU owners, designers and builders, and held two community meetings.[17]

11. In early 2016, a councilmember and OPCD co-hosted two meetings to receive feedback on potential Land Use Code changes to facilitate the production of ADUs and DADUs. A planner from Portland attended one of the meetings to review Portland's experience with ADUs and DADUs. OPCD also distributed comment forms on the proposed Code changes.

12. The Portland planner reported no negative impacts associated with ADUs and DADUs, and in particular, few on-street parking impacts, as these units were associated with 0.93 vehicles per unit compared to 1.31 vehicles per unit for other Portland rentals.[18] According to OPCD, planners in other cities that allow ADU and DADUs also reported no adverse impacts from them.

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[11] *Id.* at 21. "AMI" is the Area Median Income.
[12] *Id.* at 4.
[13] *See, e.g.,* Exhibits C1, C3, C7, C9 and numerous City emails included in Exhibit 18. *Note;* As reflected in the minutes of the hearing, some of the content in Exhibit 18 was excluded from the record.
[14] Exhibit C7 at 13.
[15] Vancouver requires owner occupancy if one of the units is a short-term/vacation rental.
[16] Exhibit C7 at 13
[17] *See* Exhibits C8 and 17.
[18] *See* Exhibit C10 at 22 and 25.

Proposal

13. OPCD has prepared a draft ordinance that would amend existing Land Use Code provisions on ADUs and DADUs.[19] The major provisions of the ordinance are as follows:

A. Rather than being limited to an ADU or a DADU, an eligible lot would be allowed to have both an ADU and a DADU;

B. DADUs were formerly limited to 800 square feet of gross floor area, but the size would be increased to match the existing 1,000 square foot limit for ADUs. Further, garage and storage areas, which are now included in the gross floor area calculation for both, would be excluded;

C. Although OPCD considered the idea of increasing the total number of unrelated people who could live on a lot with an ADU and/or DADU,[20] the current limit of eight people would be retained;[21]

D. The existing requirement that an owner "with at least a 50 percent interest in the property" must occupy one of the units on the property for at least six months of every calendar year as the owner's permanent residence[22] would be revised to require that an owner with any ownership interest in the property must occupy one of the units on the property for six months only during the first twelve months following final building permit inspection.

E. The minimum lot size for DADUs would be reduced from 4,000 square feet to 3,200 square feet;

F. The total allowed lot coverage limit would remain at 35 percent for lots of 5,000 square feet or more, and 1,000 square feet plus 15 percent of lot area for lots of less than 5,000 square feet. (Thus, the effective lot coverage allowed for a 4,000 square foot lot is 40 percent, and for a 3,200 square foot lot is just over 46 percent.)

G. The existing 40 percent maximum combined rear yard coverage limit for all structures would apply only if a DADU was greater than 15 feet in height. A DADU 15 feet or less in height could cover an additional 20 percent of the rear yard so long as all other structures combined did not cover more than 40 percent of the rear yard, for a total allowed rear yard coverage of 60 percent. Further, for rear yards abutting an alley, the rear yard coverage could be expanded by calculating it from the centerline of the alley.

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[19] Exhibit C3.
[20] Exhibit 18.
[21] The current average number of residents occupying a household is approximately two.
[22] SMC 23.41.041.C.

H. The maximum height of DADUs is based on the width of the lot. The lot width categories would be reduced from five to three, and allowed base structure heights would be increased by two feet.

I. The present requirement for one off-street parking space to be provided for an accessory dwelling unit outside defined urban centers or urban villages would be removed.

J. Some restrictions on the location of ADU/DADU entrances would be removed, some roof features that add interior space would be allowed, and standards for projections from DADUs would be clarified.[23]

Environmental Review

14. OPCD prepared a SEPA Environmental Checklist ("Checklist") for the proposed legislation on May 16, 2016.[24] The Checklist was completed by one of the planners who had done most of the background work for the ordinance, and the Checklist cites three documents he had prepared.[25]

15. OPCD determined that because the proposed ordinance is a non-project proposal, there was no requirement to provide substantive information about it in response to the questions in Part B of the Checklist. The planner did respond to the questions in Part D, answering that the proposal would not have any direct impacts on most elements of the environment.

16. OPCD based much of its analysis in Part D of the Checklist on its production estimate for new DADUs which, in turn, is based on the existing ADU/DADU production rate and OPCD's opinion that the proposed ordinance is an "incremental modification of existing regulations":

> For the purposes of analysis and discussion, OPCD considered a scenario in which as many as five percent of the approximately 75,000 single-family lots eligible for a detached accessory dwelling unit[26] added an attached and/or detached accessory dwelling unit. If produced over a 20-year period, this quantity of new accessory dwelling units would translate to less than a sixfold increase over currently observed annual production rates. A production rate of this magnitude is greater than what can be reasonably expected as a result of this proposal – but even if realized would have only a minor effect on single-family zones as a whole. This theoretical ...

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[23] Exhibit C3.
[24] Exhibit C1
[25] Exhibits C6, C7 and C8. *See* Exhibit 1 at 1-2.
[26] OPCD did not address any additional impacts that might result from the additional 7,000 DADU-eligible lots between 3,200 and 4,000 square feet in size.

> production rate increase ... would result in less than 4,000 new accessory dwelling units in single-family zones citywide.[27]

17. Proceeding from this premise, OPCD reviewed the likely impacts to land use, which were said to be indirect. The Checklist determined that the proposal was consistent with several Comprehensive Plan policies and, in light of OPCD's production estimate, concluded that the proposal was not likely to result in a higher population density than anticipated by existing zoning.[28] Height, bulk and scale impacts were described as "compatible with existing goals and policies for single-family zones," and proposed height increases for DADUs were described as minor "when compared to redevelopment of principal dwelling units in single-family zones."[29]

18. The Checklist briefly addressed the potential for ADUs and DADUs to be used for short-term/vacation rentals, which are not regulated, and determined that such a use would have no greater impacts than long-term rental use.[30]

19. Based on OPCD's production estimate, the historic distribution of ADUs and DADUs throughout the City, and the existence of transit in some areas, the Checklist states that any increased localized impacts from the proposal on transportation, including parking, or on public services and utilities, are expected to be negligible.[31]

20. The SEPA determination for the proposal was prepared by another OPCD employee, who supervised the author of the Checklist, had consulted with him about it, and was fully involved in the development of the proposal.[32]

21. Following completion of the Checklist, OPCD issued a determination of non-significance ("DNS") for the proposed ordinance.[33] Concerning the natural environment, the DNS concludes that the proposal would not significantly alter the eligible locations for ADUs and DADUs, and that single-family-zoned areas are typically characterized by a high level of existing development and urbanization.[34] Neither direct nor indirect impacts on vegetation are discussed.

22. Concerning height, bulk and scale impacts, the DNS acknowledges some impacts from increased height and bulk, but concludes that taken together, the Code changes amount to "very minor and incremental increases" that would not increase overall allowed lot coverage.[35]

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[27] Exhibit C1 at 15.
[28] *Id.* at 14.
[29] *Id.* at 16.
[30] *Id.*
[31] *Id.* at 16-17.
[32] *See, e.g.,* admitted emails within Exhibit 18.
[33] Exhibit C2.
[34] Id. at 2-3.
[35] *Id.* at 3.

23. The DNS concludes that significant impacts on land use are not expected because ADUs and DADUs "are currently allowed as accessory uses to principal single-family dwelling units in single-family zones, and that would not change under the proposal." [36] Anticipated increases in the production rate for ADUs and DADUs, and in the average overall "household" size for lots that include these uses are determined to be minor. And the limited production rate is expected to translate into "minimal or negligible impacts to public services and utilities."[37]

24. The DNS also relies on a limited production rate and a continuation of the existing distribution pattern for ADUs and DADUs in concluding that the proposal's transportation impacts would be small and incremental. It acknowledges that there could be "minor localized impacts to the availability of on-street parking" but notes that the availability of on-street parking varies by neighborhood and concludes that those with greater parking constraints "tend to be neighborhoods with a greater variety of transportation options closer to job centers." It does not analyze impacts by neighborhood.

25. The DNS concludes that overall, the proposal is not expected to result in any significant adverse impacts on the environment, and that the existing regulatory framework will address impacts on a project-specific basis.

Appeal

26. The Appellant timely appealed the DNS. Some of the Appellant's claims were dismissed by order following briefing on OPCD's motion to dismiss. The remaining claims assert that the DNS is clearly erroneous due to the manner in which OPCD conducted the environmental review; because OPCD failed to consider whether the proposal attains its stated objectives; and because OPCD failed to sufficiently analyze the impacts of the proposed legislation on housing and displacement of populations, height, bulk and scale, parking, and public services and facilities. The Appellant asks that the DNS be reversed and an environmental impact statement ("EIS") be required.

27. William Reid, an experienced urban economist from Oregon whose work focuses on real estate and economic development, has worked as a consultant for projects in both Oregon and the Seattle area as well as for public agencies, including the City of Seattle. He is familiar with Portland's experience with backyard cottages. Mr. Reid testified on behalf of the Appellant. Having reviewed the record for the DNS, he concluded that OPCD did a thorough analysis of the likely incremental increases in ADUs and DADUs that would be built under the proposed legislation by single-family property owners for their own uses, such as a rental or for housing a family member. But he observed that there was no acknowledgement by OPCD of the likelihood that the legislation would promote the

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[36] *Id.*
[37] *Id.* at 4.

conversion of single-family equity asset property into income property, and no analysis of the environmental impacts of that fundamental shift.

28. Mr. Reid explained that in Portland, when just one 800 square foot ADU or DADU was constructed on a single-family lot, the value of the lot rose by 10%, and from that, he extrapolated that the addition of two 1000 square foot rental units on a single-family lot would raise the value as much as 20%. The value would increase further where the owner occupancy requirement was substantially reduced, as in the proposed legislation, allowing for rental of all three units on the property. Mr. Reid described this as the "tipping point," because under this scenario, outside investment interests would have significant interest in the properties for investment purposes, and "the fundamental form of the land use would change." He did not see the short-term rental restriction imposed by the proposed ordinance as an impediment to this change. Neither he, nor OPCD, found anything in the ordinance that would prevent a one percent owner in an LLC that, in turn, owned a single-family lot that included a principal residence and an ADU and/or DADU, from fulfilling the revised owner/occupant requirement.

29. In reviewing the record of the legislation, Mr. Reid saw no analysis of what parts of the city, or what populations would be most affected by these changes or what the effects would be, and he was certain that this information could not be extrapolated from the city's experience with ADUs and DADUs to date. He explained that the households most vulnerable to this type of redevelopment are properties that have lower values and thus, are often already providing affordable housing, because they allow for a greater return on investment. The replacement housing would be rented out at higher market value rents or as overnight/short-term vacation rentals. Sam Lai, a licensed and certified residential appraiser called to testify by OPCD, agreed that he had seen no formal study of adding "two income streams" to an existing single-family home, and that the ability to put multiple income units on a single-family lot would make it more attractive to investors and increase property values.

30. Mr. Reid and Sou Souvanny, a land use and economic development consultant originally from Seattle, agreed that the proposed legislation would cause displacement of some populations within the city, particularly minority populations. She testified that this would accelerate gentrification, driving up home values and reducing the number of entry-level single-family residences available to immigrant populations, thereby diminishing the City's diversity. Ms. Souvanny expected that this would occur most in Southeast and Southwest Seattle.

Applicable Law

31. SMC 25.05.752 defines "Impacts" as "the effects or consequences of actions. Environmental impacts are effects upon the elements of the environment listed in Section 25.05.444."

32. "A proposal's effects include direct and indirect impacts caused by a proposal. Impacts include those effects resulting from growth caused by a proposal as well as the likelihood that the present proposal will serve as a precedent for future actions. For example, *adoption of a zoning ordinance will encourage or tend to cause particular types of projects ....*" SMC 25.05.060 D.4. "Impacts shall include those that are likely to arise or exist over the lifetime of a proposal". Emphasis added.

33. "Probable" is defined in SMC 25.05.782 as "likely or reasonably likely to occur...."

34. SMC 25.05.794 defines "significant" as "a reasonable likelihood of more than a moderate adverse impact on environmental quality."

35. SMC 25.05.330 directs that, in making the threshold determination, the responsible official shall determine "if the proposal is likely to have a probable significant adverse environmental impact". If the responsible official reasonably believes that a proposal may have such an impact, an environmental impact statement is normally required. *Id.* If the responsible official determines that there will be no probable significant adverse environmental impact, a determination of non-significance is to be issued. SMC 25.05.340.

Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to SMC 25.05.680. The Director's DNS is to be accorded substantial weight, and the party appealing it bears the burden of proving that it is "clearly erroneous". SMC 25.05.680 B.3. A decision is clearly erroneous if the Examiner is "left with a definite and firm conviction that a mistake has been committed." *Moss Bellingham*, 109 Wn. App 6, 13, 31 P.3d 703 (2001)(citations omitted). The record must demonstrate that "environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA," and that the decision to issue the DNS was based on "information sufficient to evaluate the proposal's environmental impact." *Anderson v. Pierce County*, 86 Wn. App. 290, 302, 936 P.2d 432 (1997). "The burden is on the body subject to SEPA" to make this showing. *City of Bellevue v. King County Boundary Review Bd.*, 90 Wn.2d 856, 867, 586 P.2d 470 (1978).

2. The reviewing body may not substitute its judgment for the decisionmaker, but instead, examines the record and all the evidence in light of the public policy underlying SEPA. *Association of Rural Residents v. Kitsap Cy.*, 141 Wn. 2d 185, 196-195, 4 P.3d 115 (2000)(citations omitted).

3. The courts have held that the policy underlying SEPA is "to promote the policy of fully informed decision making by government bodies" to ensure that environmental values are given appropriate consideration. *Moss v. Bellingham supra* at 14, *quoting Norway Hill Preservation and Protection Assoc. v. King Cy. Council*, 87 Wn.2d 267, 272, 552 P.2d 674 (1976). Further, "one of SEPA's purposes is to provide consideration of environmental factors at the earliest possible stage to allow decisions to be based on complete disclosure

of environmental consequences." *King Cty. v. Washington State Boundary Review Bd.*, 122 Wn.2d 648, 663–64, 860 P.2d 1024 (1993) *citing Stempel v. Department of Water Resources,* 82 Wn.2d 109, 118, 508 P.2d 166 (1973).

4. The Appellant claims that the DNS was clearly erroneous because OPCD was the proponent of the proposed ordinance, and the same OPCD staff who developed the legislation, and were advocating for it, also prepared the Checklist and make the SEPA threshold determination. The Appellant points to some of the numerous emails included in Exhibit 18 that demonstrate that the authors of both the Checklist and the DNS were advocates for the legislation, expressing satisfaction that it could "unleash tremendous growth in single family areas,"[38] and suggesting that survey responses from owners of DADUs might be used to "tell a positive story" about DADUs.[39] The Appellant suggests that among the hundreds of staff members employed in OPCD and DCI, there must have been a planner other than the proposal's champions who could have conducted SEPA review on it. OPCD responds that a councilmember was actually the ordinance's proponent, with OPCD providing technical assistance, which is a common practice.

5. SMC 25.05.926. provides that when "an agency initiates a proposal, it is the lead agency for that proposal" and that "[w]henever possible, agency people carrying out SEPA procedures should be different from agency people making the proposal." This Code section expresses a strong procedural preference, but not an absolute requirement for separation of the project proponent from the SEPA threshold determination process. It is clear from the record in this case that although OPCD may have started out merely providing technical assistance on the ordinance, it soon became an enthusiastic proponent of it. It would have been better practice for the SEPA review process to have been conducted by others inside or outside of OPCD who were not associated with work on the ordinance. Nonetheless, the fact that this did not occur is not alone a basis for overturning the DNS.

6. The Appellant argues that the DNS is clearly erroneous because responses to Part B of the Checklist "would have meaningfully contributed to analysis of the proposal."[40] The Appellant lists the questions in Part B on which it presented evidence at hearing to show that responses would have contributed "meaningfully to the analysis of the proposal," and seeks a remand to OPCD for preparation of a new threshold determination that includes answers to those questions. OPCD maintains that because the proposal is a non-project action, it was properly analyzed under Part D of the Checklist, and that within the responses to the questions in Part D, it did, in fact, analyze the issues raised by the Appellant. The

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[38] Exhibit 18, "Proposals Without Analysis," Email 18.

[39] *Id.*, "Bias In Public Process," Email 19; Testimony of Geoff Wentlandt.

[40] Closing Argument by Queen Anne Community Council at 4. SMC 25.05.960 requires that "City departments shall use an environmental checklist substantially in the form set forth in WAC 197-11-960, which reads, in part: "For nonproject proposals complete this checklist and the supplemental sheet for nonproject actions (Part D). The lead agency may exclude any question for the environmental elements (Part B) which they determine do not contribute meaningfully to the analysis of the proposal."

Examiner does not consider this issue further. The substance of the information provided in the Checklist is key, not its location within the Checklist, and that substance is addressed below.

7. The Appellant observes that the proposed ordinance has been actively promoted as a means to create affordable housing but that OPCD failed to analyze whether the ordinance could fulfill that objective. There is significant testimony in the record that the ordinance would not create affordable housing in most instances,[41] but OPCD responds that the objective of the legislation is simply to encourage the production of ADUs and DADUs through revisions to Code requirements that restrict their production. Although it may be unsettling for the Appellant to see legislation promoted for a purpose that it is unlikely, and apparently not intended, to fulfill, that is a political issue, not a SEPA issue. As noted, the SEPA issue in this case is whether the record demonstrates that environmental factors were fully considered and the DNS was based on "information sufficient to evaluate the proposal's environmental impact."[42]

8. The Appellant asserts that the DNS is clearly erroneous because OPCD failed to consider the proposal's impacts on existing housing, including the displacement of some populations. The Appellant notes that the Checklist requires consideration of the proposal's impacts on housing, including the housing type impacted and the potential for elimination of housing. It also requires an assessment of displacement impacts. Apparently relying on its opinion that no more than 4,000 new ADUs and DADUs would be produced under the ordinance over a 20-year period, and its assumption that they would continue to be dispersed throughout the city, OPCD did not further analyze housing and displacement impacts in either Part B or Part D of the Checklist or in the DNS.

9. The testimony of Mr. Reid, Ms. Souvanny, and Mr. Lai showed that the proposal is likely to cause significant adverse impacts to housing, including existing lower income housing, and is likely to displace vulnerable populations. Maintaining that it did consider housing and displacement impacts, OPCD repeats the statistics and projections from the Checklist and DNS that are based on its experience with ADUs and DADUs under existing regulations. But the evidence shows that the proposed legislative changes would create a regulatory environment that is likely to generate entirely different impacts that OPCD has not considered, what Mr. Reid referred to as a "fundamental change to the land use form."

10. OPCD characterizes the impacts discussed by Mr. Reed and Ms. Souvanny as purely economic in nature and thus, not required to be analyzed in a DNS. But they are not. SEPA requires analysis of both the direct and indirect impacts that would occur over the lifetime of the proposal. As with other zoning legislation, the direct impact of the proposed ordinance would be to alter the economic environment for development, in this case, development within single-family zones. However, the evidence here shows that the

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[41] Testimony of William Reid, Sou Souvanny, Sam Lai, Matt Hutchins, Gregory Hill, Nicholas Welch; and Geoff Wentlandt.

[42] *Anderson v. Pierce County supra.*

indirect impacts of the legislation would adversely affect housing and cause displacement of populations. These are significant adverse environmental impacts that must be studied in an EIS in the context of the development/economic environment that would be created by the proposal.

11. OPCD also argues that the housing and displacement impacts cited by the Appellant's witnesses are remote and speculative, but there is more objective evidence in the record to support them than can be found in either the Checklist or the DNS, both of which lack citations to any independent sources.

12. The Appellant contends that OPCD failed to consider the proposal's impacts on height, bulk and scale and that the DNS and Checklist do not accurately represent the magnitude of development allowed by the proposed legislation. OPCD reviewed the additional height, bulk and scale that the legislation would permit in comparison to the additional mass that could be, but generally has not been, constructed on single-family lots under existing regulations. But the Appellant contends that "[e]ven though the proposed legislation may not increase the maximum allowable lot coverage within single family zones, it would allow for increased height, bulk and scale by allowing an additional 1200 sq ft[43] ... of rental space, increased rear yard lot coverage, and increased height for DADUs. None of the City's documents accurately show the impact of the increased height, bulk and scale."[44] Thus, the crux of this issue is transparency.

13. Neither the Checklist nor the DNS included any illustrations to show the impacts of the proposed changes to allowed height, bulk and scale. The Director's report includes two illustrations, but they depict development on one lot shown in isolation.[45] The Appellant's complaint is that OPCD has not shown the potential total height, bulk and scale impacts of multiple, larger DADUs on a block, or of larger DADUs on lots less than 5,000 square feet in size, as was done by Thomas Marshall, one of architects who testified for the Appellant at hearing.[46] An analysis of the proposed legislation's likely height, bulk and scale impacts in light of what could be constructed under existing regulations is a start. But SEPA's policy of "fully informed decision making by governmental bodies" and "complete disclosure of environmental impacts" "at the earliest possible stage," requires that the City Council be shown the likely height, bulk and scale impacts of the proposal. On remand, the analysis of height, bulk and scale impacts must be done in the context of the actual

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[43] OPCD argues that just 200 additional square feet of rental space would be allowed because existing regulations already allow a 1,000 square foot ADU within or attached to the principal structure or an 800 square foot DADU on the same lot as the principal structure. However, the new legislation would allow both a 1,000 square foot ADU and a 1,000 square foot DADU, which could result in up to 1,200 additional square feet of rental space being constructed on a single-family lot. (For example, with a total of 2,000 square feet of rental space allowed, a property owner with an existing 800 square foot DADU could construct 1,200 additional square feet of rental space on the lot, of which 1,000 square feet would have to be an ADU that was within or attached to the principal structure.)

[44] Rebuttal Argument by Queen Anne Community Council at 8 (footnote omitted).

[45] Exhibit C6 at 8 and 9.

[46] *Compare* Exhibit C4, prepared for the hearing by OPCD's architect, Matt Hutchins, and Exhibit 10, prepared by the Appellant's architect, Thomas Marshall. Both architects have designed ADUs and DADUs

development environment created by the legislation (as opposed to the existing development environment, *see* Conclusions 9 and 10), and must include renderings that accurately represent at least the maximum height, bulk and scale that could be constructed on at least one full block and include lots as small as 3,200 square feet.

14. The Appellant claims that OPCD's assessment of parking impacts is not supported by substantiated opinion and data. As noted, the proposal would remove the existing requirement for one off-street parking space for an accessory dwelling unit located outside an urban center or village. OPCD agrees that its consideration of parking impacts is largely based on its production estimate for ADUs and DADUs and on the existing distribution of ADUs and DADUs within the city.[47] There is no citation to any studies or other objective data as the basis for the conclusion that parking impacts would be minor. The parking analysis was not even reviewed by DCI's transportation planner.[48]

15. OPCD points to a study conducted in Portland, which showed that just over one-third of ADUs had vehicles parked on the street.[49] This study was not cited in the Checklist or the DNS. Of more importance, though, is the fact that Portland allows only one accessory dwelling unit of just 800 square feet on a single-family lot, whereas the proposal would allow two larger units, which increases the likelihood of a larger number of people living on each lot.[50] In addition, there is nothing in the record showing the relative types and availability of transit in Portland and Seattle neighborhoods, which would likely affect car ownership among ADU and DADU residents. Overall, it does not appear that the determination on parking impacts was based on information sufficient to evaluate those impacts. Further, unrefuted testimony from the Appellant's witness, Thomas Marshall, although somewhat exaggerated, showed that the proposal presents a reasonable likelihood of more than a moderate impact on parking. Finally, a new parking impact analysis will be required in any event in light of Conclusions 9 and 10 above.

16. The Appellant contends that OPCD failed to substantiate its conclusion that the proposal would have negligible impacts on public services and facilities. Again, OPCD agrees that its analysis of public service impacts was based on its production and dispersion estimates for ADUs and DADUs drawn from experience under current regulations. And OPCD points out that the household size limit for unrelated persons would remain at eight under the legislation. Nonetheless, most single-family household units do not include eight people. What is not addressed is the fact that, in general, the city's road and utility systems, including stormwater, were laid out to support one single-family dwelling unit on a single-family lot, as noted by the Appellant. There is no information in the record to indicate whether or not they are sized to support the likely increase in density, and attendant increase in impermeable surfaces, that would result from the proposed ordinance. This information is particularly important considering the "fundamental change to the land use form" that

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[47] OPCD's Closing Argument at 8. *See* Finding 16.
[48] Testimony of John Shaw.
[49] OPCD's Closing Argument at 8. *See* Exhibit C10.
[50] OPCD forecasts an average of 1.97 persons per household in 2035, down from an average of approximately two persons today. Exhibit 14.

would be accomplished by the legislation. OPCD's determination on the proposal's likely public service impacts was not based on information sufficient to evaluate those impacts.

17. The record demonstrates that the challenged DNS was not based on information sufficient to evaluate the proposal's impacts. It is therefore clearly erroneous and must be reversed.

Decision

The Determination of Non-significance is **REVERSED** and is **REMANDED** to OPCD for preparation of an EIS consistent with this decision. The Examiner does not maintain jurisdiction over this matter.

Entered this 13th day of December, 2016.

Sue A. Tanner
Hearing Examiner

Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

The decision of the Hearing Examiner in this case is the final decision for the City of Seattle. In accordance with RCW 36.70C.040, a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the decision is issued unless a motion for reconsideration is filed, in which case a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the order on the motion for reconsideration is issued.

The person seeking review must arrange for and initially bear the cost of preparing a verbatim transcript of the hearing. Instructions for preparation of the transcript are available from the Office of Hearing Examiner. Please direct all mail to: PO Box 94729, Seattle, Washington 98124-4729. Office address: 700 Fifth Avenue, Suite 4000. Telephone: (206) 684-0521.

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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Findings and Decision** to each person listed below, or on the attached mailing list, in the matter of **Queen Anne Community Council**, Hearing Examiner Files: **W-16-004,** in the manner indicated.

Party	Method of Service
Queen Anne Community Council c/o Jeff Eustis Eustis & Aramburu, LLP eustis@aramburu-eustis.com	☐ U.S. First Class Mail, postage prepaid ☐ Inter-office Mail ☒ E-mail ☐ Fax ☐ Hand Delivery ☐ Legal Messenger
OCPD Geoffrey Wentlandt Geoffrey.Wentlandt@seattle.gov Nick Welch Nick.Welch@seattle.gov Bob Tobin Bob.Tobin@seattle.gov Mike O'Brien Mike.Obrien@seattle.gov	☐ U.S. First Class Mail, postage prepaid ☐ Inter-office Mail ☒ E-mail ☐ Fax ☐ Hand Delivery ☐ Legal Messenger

Dated: December 13, 2016

Tiffany Ku
Legal Assistant