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lawyers working for the environment

Reply to: Seattle Office

January 12, 2017

VIA E-MAIL TO prc@seattle.gov

Seattle Department of Construction and Inspections (SDCI)
Attn: PRC
P.O. Box 34019
Seattle, WA 98124-4019

Re: Addendum to FEIS for Downtown Height and Density Changes for the Fifth and Virginia Proposal, Project No. 3019699

Dear Mr. Papers:

I am writing on behalf of the Escala Owners Association to comment on the December 15, 2016 Addendum to the FEIS for Downtown Height and Density Changes for the Fifth and Virginia Proposal, Project No. 3019699. As you know, Escala is directly adjacent to and west of the project site. It is home to 408 residents who enjoy living downtown in the Belltown neighborhood.

The Fifth and Virginia Proposal will have devastating impacts to the quality of life of residents in Escala. Over the past year, they have engaged fully in the process and have repeatedly and consistently urged both you and the Design Review Board to mitigate the severe adverse impacts of the proposal. They have meticulously outlined the specific, concrete impacts that the proposal will have and they have constructively proposed focused, credible solutions to mitigate those impacts. They are not anti-development and they are not anti-density. They are certainly not "nimbys." They support higher densities and tower development and have never opposed the building outright. That's why they chose to live downtown. They have simply been asking SDCI to attach conditions to the project to mitigate the severe impacts that it will have on them. That's the entire purpose of the State Environmental Policy Act and Design Review.

But the Escala resident's hopes that SDCI had any respect for the concerns that they have repeatedly raised over and over again over the past year were crushed when they saw the Addendum for the project. Reliance on the old 2005 EIS for this project constitutes a blatant violation of SEPA and the Addendum is the most inadequate environmental review that I have ever seen for a project with significant impacts in twenty years of practicing land use law. With this Addendum, it became clear that the City of Seattle has no interest in preserving and enhancing the livability, safety, and health of this community. This flies in the face of the so-called

EXHIBIT D

"commitment" to the public that the Director of SDCI, Nathan Torgelson, promised on the SDCI website.

I cannot underscore enough how disappointed the Escala residents have been with this process and the City's lack of fortitude to protect the public interest against developer's profit interests. SDCI needs to go back to the drawing board, prepare an EIS for this proposal, and adequately review and mitigate the significant impacts that this proposal will have.

A. SDCI has violated the process that is required for environmental review of the 5th and Virginia Proposal.

SDCI has violated the process that is required for environmental review of this project under the State Environmental Policy Act (SEPA), ch. 43.21C RCW and accompanying rules in ch. 197-11 WAC. SEPA does not allow the City to prepare an addendum to an old programmatic EIS for a different proposal in lieu of an EIS for a site specific project in this manner.

On December 15, 2016, SDCI issued a "Determination of Significance" for the 5th and Virginia project. This means that SDCI is required to engage in scoping and then prepare a Draft EIS on the environmental impacts, any adverse environmental effects that cannot be avoided should the proposal be implemented, mitigation, and alternatives to the proposed action. SDCI must then accept comments on that draft followed by a Final EIS which revises the draft and responds to the comments. But, SDCI did not do this. Instead, SDCI issued an "Addendum" on the project, with no scoping, no draft, no alternatives analysis, and no expectation of preparing a Final EIS. This approach might be convenient for the developer and for SDCI, but it has no possible justification or basis in law and it is certainly not in the public interest.

1. SEPA requirements

A Determination of Significance (DS) is "the written decision by the responsible official of the lead agency that a proposal is likely to have a significant adverse environmental impact, and therefore an EIS is required (WAC 197-11-310 and 197-11-360)." WAC 197-11-736. When a Determination of Significance (DS) is issued for a proposal, the responsible official "shall prepare and issue a determination of significance (DS) substantially in the form provided in WAC 197-11-980." The form in WAC 197-11-980, which is titled: "Determination of Significance and Request for Comments on Scope of EIS," initiates the public comment period for scoping. The responsible official commences scoping by circulating copies of the DS to the applicant, agencies with jurisdiction and expertise, if any, affected tribes, and to the public. WAC 197-11-360; WAC 197-11-510. The scoping process is set forth in WAC 197-11-408.

After that, the lead agency must prepare a draft and a final environmental impact statement for that proposal. RCW 43.21C.031. "An EIS shall provide impartial discussion of significant environmental impacts and shall inform decision makers and the public of reasonable alternatives, including mitigation measures, that would avoid or minimize adverse impacts or enhance environmental quality." WAC 197-11-400. Among other things, an EIS must generally include a description of the proposal and alternatives; a description of the affected environment, and a

disclosure and analysis of the significant impacts and mitigation measures. Specifically, an EIS must contain everything that is identified in WAC 197-11-440, a copy of which is attached to this letter.

> The EIS process enables government agencies and interested citizens to review and comment on proposed government actions, including government approval of private projects and their environmental effects. This process is intended to assist the agencies and applicants to improve their plans and decisions, and to encourage the resolution of potential concerns or problems *prior to issuing a final statement.* An environmental impact statement is more than a disclosure document. It shall be used by agency officials in conjunction with other relevant materials and considerations to plan actions and make decisions.

WAC 197-11-400 (emphasis added). SEPA's purpose is to provide decision makers with all relevant information about the potential environmental consequences of their actions and to provide a basis for a reasoned judgment that balances the benefits of a proposed action against its potential adverse effects. *City of Des Moines v. Puget Sound Regional Council*, 108 Wn. App. 836, 849 (1999). Toward this end, SEPA places great importance on allowing neighbors and others impacted by a proposal to have an opportunity to comment and be heard. The goal is to provide citizens with full access to documents and adequate time to comment on proposals that may affect them *before* the Final Environmental Impact Statement is prepared. This ensures that the people who are most impacted by government decisions will have input on those decisions before they are made. Public input is a major component of SEPA. Review, comment, and responsiveness to comments on a draft EIS are the focal point of the act's commenting process because the DEIS is developed as a result of scoping and serves as the basis for the final statement. WAC 197-11-500.

Thus, after preparing the DEIS, the lead agency is required to invite and consider comments on the DEIS as set forth in WAC 197-11-500 through 570. The lead agency must inform the public and other agencies that an environmental document is being prepared or is available and that public hearing(s), if any, will be held. WAC 197-11-510. At a minimum, the draft EIS must be sent to the following:

> (a) The department of ecology (2 copies).
>
> (b) Each federal agency with jurisdiction over the proposal.
>
> (c) Each agency with jurisdiction over or environmental expertise on the proposal.
>
> (d) Each city/county in which adverse environmental impacts identified in the EIS may occur, if the proposal were implemented.

> (e) Each local agency or political subdivision whose public services would be changed as a result of implementation of the proposal.
>
> (f) The applicable local, area-wide, or regional agency, if any, that has been designated under federal law to conduct intergovernmental review and coordinate federal activities with state or local planning.
>
> (g) Any person requesting a copy of the EIS from the lead agency (fee may be charged for DEIS, see WAC 197-11-504).
>
> (h) Any affected tribe.

WAC 197-11-455. The lead agency is encouraged to send a notice of availability or a copy of the DEIS to any person, organization or governmental agency that has expressed an interest in the proposal, is known by the lead agency to have an interest in the type of proposal being considered, or receives governmental documents (for example, local and regional libraries). *Id.* Having a draft EIS allows the lead agency to consult with members of the public, affected tribes, and agencies with jurisdiction and with expertise prior to issuing the final EIS. WAC 197-11-405. *See also* RCW 43.21C.030.

A public hearing on the environmental impact of a proposal must be held when fifty or more persons residing within the jurisdiction of the lead agency, or who would be adversely affected by the environmental impact of the proposal, make written request to the lead agency within thirty days of issuance of the draft EIS. WAC 197-11-535

After public and agency comments have been received and reviewed, the lead agency must prepare a final EIS (FEIS) to revise the DEIS as appropriate and respond to comments per WAC 197-11-560. *Id.* The FEIS must respond to opposing views on significant adverse environmental impacts and reasonable alternatives which the lead agency determines were not adequately discussed in the DEIS. The lead agency must then issue the FEIS as specified by WAC 197-11-460.

2. SDCI has not followed the proper process for environmental review of the 5th and Virginia Proposal.

Within the context of the requirements above, we turn to look at the environmental review process that SDCI has followed for the 5th and Virginia project. While it is clear that an EIS is required for this proposal (in light of the DS), SDCI did not issue a notice under WAC 197-11-980, nor did SDCI prepare a Draft EIS for the 5th and Virginia Proposal. Instead, SDCI has taken the position that the Final EIS for Downtown Height and Density Changes is the EIS for the 5th and Virginia Proposal. SDCI issued an "Addendum" to that 2005 FEIS which contained some "additional, more site-specific environmental analysis and mitigation" relative to a few selected environmental parameters. *Addendum* at 6.

When a DS is issued for a *proposal*, the lead agency must prepare a draft and a final environmental impact statement for that *proposal*. RCW 43.21C.031.

> "Proposal" means a proposed action. A proposal includes both actions and regulatory decisions of agencies as well as any actions proposed by applicants. A proposal exists at that stage in the development of an action when an agency is presented with an application, or has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal, and the environmental effects can be meaningfully evaluated. (See WAC 197-11-055 and 197-11-060(3).) A proposal may therefore be a particular or preferred course of action or several alternatives. For this reason, these rules use the phrase "alternatives including the proposed action." The term "proposal" may therefore include "other reasonable courses of action," if there is no preferred alternative and if it is appropriate to do so in the particular context.

WAC 197-11-784.

The Downtown Height and Density Changes are not the 5th and Virginia Proposal. The Downtown Height and Density Changes were area wide programmatic rezone proposals for portions of the Denny Triangle, Commercial Core, and Belltown neighborhoods within Downtown Seattle. The Draft EIS for Downtown Height and Density Changes was issued in November, 2003 and the Final EIS for Downtown Height and Density Changes was issued in January, 2005. These were non-project, rezoning proposals (i.e. legislation) that were considered by the City Council over a decade ago. The project proponent for the proposed legislation was the City of Seattle. The Downtown Height and Density Changes FEIS was a programmatic EIS that examined five alternatives that covered a range of possible actions for the City Council to consider. They consisted of different combinations of increases in allowable maximum heights and densities throughout the Downtown area. This was a programmatic EIS for general zoning.

The 5th and Virginia Proposal is a land use application to construct a 47-story building with retail, hotel rooms, and apartments at 1933 5th Avenue. It is a specific project on a specific piece of property that is being proposed by a private developer. It is being reviewed fourteen years after the 2003 Draft EIS was issued and twelve years after the 2005 Final EIS was issued. It raises separate and distinct environmental issues. One is a project action - the other is a non-project programmatic action. The 5th and Virginia proposal will affect new and different members of the public and raises new and different issues that implicate new state agencies. The 5th and Virginia proposal is a site specific project that is unrelated to that old rezone legislation other than the mere fact that the development regulations that were adopted in that legislation presumably apply to this site.

The 2003 Draft EIS and the 2005 Final EIS do not analyze the affected environment and environmental impacts specific to the 5th and Virginia project (which are discussed below in

Section B).[1] They do not analyze alternatives to the 5th and Virginia project. They do not consider mitigation for the direct, adverse impacts caused by the 5th and Virginia project. They do not consider the specific impacts of the 5th and Virginia proposal – such as height, bulk and scale impacts (including light, air and privacy impacts); the traffic and transportation impacts (including impacts to the public facility alley); shadow impacts to Escala residents; environmental health impacts; land use impacts; construction impacts; and the other impacts that are mentioned below in Section B. They were not proceeded by scoping of issues relevant to the 5th and Virginia project. They do not contain the other information required in WAC 197-11-440 with respect to the 5th and Virginia Project. The residents of Escala did not receive a copy of the 2003 Draft EIS when it was issued.

As mentioned above, having a draft EIS allows the lead agency to consult with members of the public, affected tribes, and agencies with jurisdiction and with expertise prior to issuing the final EIS. WAC 197-11-405. *See also* RCW 43.21C.030. Government agencies and interested citizens must be given an opportunity to review and comment on the analysis of the affected environment, the disclosure and analysis of environmental impacts, the analysis of alternatives, the analysis of mitigation, and all other information that is required to be in the Draft EIS. They must be given an opportunity to comment on these issues *specific to the 5th and Virginia proposal* prior to the issuance of a final environmental impact statement on the proposal.

The Addendum is not a draft detailed statement as required by SEPA – it is a final document. The Addendum doesn't include all of the information and analysis required in WAC 197-11-440 and/or to the extent that it purports to include an analysis of the affected environment, significant impacts, and mitigation measures, it is woefully inadequate. The City did not follow the proper draft EIS process – The City failed to use the form for a DS in WAC 197-11-980 and did not engage in the requisite scoping process. There was no 30 day DEIS comment period and notice, no opportunity for input on the disclosure and analysis of environmental impacts, alternatives analysis, mitigation, etc. before issuing a final detailed statement on the impacts of this proposal. The residents of Escala were not given the opportunity of requiring a public hearing on the DEIS pursuant to WAC 197-11-535.

SDCI has eliminated the step of consultation with and input from the public and agencies with jurisdiction or special expertise with respect to the environmental impacts involved, alternative impacts considered, and mitigation proposed *prior to* preparation of its analysis on the 5th and Virginia project. All of the public comments that you receive, including my comments on the adequacy of the Addendum below will be submitted after you have prepared the final document – the "Addendum."

The rules don't even require a comment period for an addendum. *Id.* Applied here, the rules would require that the Addendum be circulated to the recipients of the original Downtown Height & Density Changes FEIS. That means that the Addendum for the 5th and Virginia proposal is required to be sent to the list of interested persons for zoning amendments that were adopted a decade ago,

[1] WAC 197-11-442 allows for more flexibility in preparing EISs on non-project proposals, because there is normally less detailed information available about the environmental impacts. This is reflected in the 2003 and 2005 EIS documents.

which is ridiculous. *Id.* According to the regulations, the City was not even legally required to circulate the Addendum to residents of Escala. We recognize that the City gave notice of the Addendum to Escala residents as a courtesy, but that is not the point. The point is – it is obvious that the process for an addendum looks nothing like the process for an EIS.

The City is violating the requirement that it must revise a DEIS as appropriate and respond to comments on impacts, alternatives, and mitigation specific to the 5th and Virginia Project per WAC 197-11-560 in a final EIS. *Id.* There must be a FEIS for this project that responds to opposing views on significant adverse environmental impacts and reasonable alternatives for this project which the lead agency determines were not adequately discussed in a DEIS for this project. An addendum can be used to add analysis or information to an existing environmental document, but the City cannot ignore the requirements and public process that is required for a proposal that has probable significant impacts. *See* WAC 197-11-600; WAC 197-11-625.

I see that the Department of Archeology & Historic Preservation wrote a letter to you after the Addendum was issued to point out that there are potential impacts to archeological resources on the site. *See* Letter from Gretchen Kaehler to Garry Papers (December 29, 2016). Ms. Kaehler requested that a professional archeologist prepare an overview for the project. That would possibly include borings, historical research of the maps and documents, and more. Appropriate mitigation and oversight – be it monitoring, trenching, or something else - depends entirely on the conclusions from that overview – which hasn't been done yet. This is a prime example of what is wrong with this process. If this had been done correctly, this issue would have come up during scoping. The "overview" would have been summarized and presented in the Draft EIS. The Department of Archeology & Historic Preservation and other interested parties, including Tribes, would have had an opportunity to comment on the disclosure, analysis and suggested mitigation. SDCI would have then prepared a Final EIS in response to those comments. Instead, the issue has been raised by the Agency after the final environmental document is completed. And that final environmental document – the Addendum - didn't even mention archeological resources at all. This process is improper under SEPA.

3. <u>The City cannot use the 2005 FEIS for environmental review because it does not adequately address environmental considerations set forth in SEPA</u>

SDCI cannot use the 2005 FEIS for environmental review because it does not adequately address environmental considerations set forth in SEPA. SEPA states:

> Lead agencies are authorized to use in whole or in part existing environmental documents for new project or nonproject actions, if the documents adequately address environmental considerations set forth in RCW 43.21C.030. The prior proposal or action and the new proposal or action need not be identical, but must have similar elements that provide a basis for comparing their environmental consequences such as timing, types of impacts, alternatives, or geography. The lead agency shall independently review the content of the existing documents and determine that the information and

> analysis to be used is relevant and adequate. If necessary, the lead agency may require additional documentation to ensure that all environmental impacts have been adequately addressed.

RCW 43.21C.034.

RCW 43.21C.030 requires, among other things, that SDCI prepare a detailed statement (EIS) on the environmental impact of the 5th and Virginia Proposal, any adverse environmental effects which cannot be avoided should the 5th and Virginia proposal be implemented; and alternatives to the 5th and Virginia proposal. The 2003 DEIS and the 2005 FEIS do not adequately address environmental considerations set forth in RCW 43.21C.030 for the 5th and Virginia Proposal. They do not consider alternatives to the 5th and Virginia Proposal. They do not consider the specific impacts of the 5th and Virginia proposal – such as height, bulk and scale impacts (including light, air and privacy impacts); the traffic and transportation impacts (including impacts to the public facility alley); shadow impacts to Escala residents; environmental health impacts; land use impacts; construction impacts; and the other impacts that are mentioned below in Section B. The Downtown Height and Density Changes are not similar in timing, not similar in alternatives, not similar in geography, not similar in impacts on specific properties, and not similar in environmental consequences. Clearly, the old downtown height and density EIS does not meet the requirements in SEPA for the 5th and Virginia Proposal.

The Seattle Municipal Code states that the City can use an existing document provided that the information is that document is "accurate and reasonably up-to-date." SMC 25.05.600. The information in the 2005 FEIS is twelve years old. Just to give you some perspective of how long ago that was – it was two years before the first Apple iPhone was released and two years before Amazon moved its corporate headquarters to South Lake Union.

The 2005 FEIS identifies what sites the authors of the EIS assumed would be developed under the proposed rezone as a basis for its analysis and conclusions about impacts and mitigation. Figures 16 and 18 on pages 4-17 and 4-19 show that the EIS analysis anticipated that only one tower would be built on the block between 4th and 5th and between Stewart and Virginia. This is also presented (numerically) in Appendix D – the Preferred Alternative Project List for Potential Development. The assumptions in that EIS are outdated and completely inaccurate. We know now that not only is there a project for development at 5th and Virgina, there is also a current proposal for a massive tower at 5th and Stewart. The environmental documents associated with SEPA review for the current upzone that is being proposed in Downtown anticipate additional towers on this block and in the area. The information in the 2003 DEIS and 2005 FEIS is not accurate and is not reasonably up-to-date.

4. <u>At the very least, a Supplemental EIS must be prepared for the 5th and Virginia Proposal</u>

Even if it was appropriate to adopt the 2003 Draft EIS and the 2005 Final EIS, then at the very least, the 5th and Virginia project requires a supplemental EIS (SEIS), not an Addendum. A supplemental EIS (SEIS) must be prepared as an addition to either a draft or final statement if:

> (a) There are substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts; or
>
> (b) There is significant new information indicating, or on, a proposal's probable significant adverse environmental impacts.

WAC 197-11-405. Preparation of a SEIS must be prepared in the same way as a draft and final EIS except that scoping is optional. WAC 197-11-620.

WAC 197-11-600, which describes when existing documents may be used to meet all or part of an agency's responsibilities under SEPA, incorporates the very same requirement. It states that for EISs, preparation of a supplemental EIS is required if there are:

> (i) Substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts (or lack of significant adverse impacts, if a DS is being withdrawn); or
>
> (ii) New information indicating a proposal's probable significant adverse environmental impacts. (This includes discovery of misrepresentation or lack of material disclosure.) A new threshold determination or SEIS is not required if probable significant adverse environmental impacts are covered by the range of alternatives and impacts analyzed in the existing environmental documents.

WAC 197-11-600.

There can be no dispute that there are substantial changes to the "proposal" considering that the 5th and Virginia Proposal is a completely different proposal from the area wide rezone in 2005. It's a different project, different people impacted, different proponent, different issues, different impacts, different mitigation, and different alternatives. In addition, there is significant new information since the 2003 and 2005 EIS was prepared indicating, or on, the probable significant adverse environmental impacts of the 5th and Virginia Proposal.

The 2003 DEIS and the supporting documentation for that old EIS is twelve to fourteen years old. There has been an enormous amount of growth and changes in the character of downtown since then - exponentially more residents, traffic, residential vs commercial construction downtown, and services like overnight delivery services were in their infancy, and the amazon fresh type of deliveries didn't even exist. The bike lanes, streetcars, trolleys, and light rail that exist today did not exist when that EIS was prepared.

The 2005 review of the rezone and development regulations for downtown never contemplated this level of development would occur, on a single block without any FAR restrictions, tower spacing, or setback requirements to protect against overcrowding of residential towers. We know

now that more residential units will be built this decade than the previous 50 years combined.[2] In addition, there is significant new information on the anticipated development of additional towers in the area that was not contemplated on the same bock in the 2005 FEIS as explained above. Even the Addendum admits that changes have occurred in land use in Appendix B.

B. The 5th and Virginia Proposal Addendum is Inadequate

The Addendum for the 5th and Virginia Proposal contains the most inadequate environmental review for a project with significant impacts that I have ever seen in my career. SDCI did not even purport to include all of the information and analysis required by WAC 197-11-440. The 2005 EIS certainly does not contain the information and analysis for this proposal that is required by SEPA. While it should have, at the very least, filled in the gaps, the 5th and Virginia Proposal Addendum certainly does not rise to the occasion. The analysis of the affected environment, significant impacts, and mitigation measures that the authors of the Addendum put together is just plain dismal.

1. SDCI failed to consider alternatives to the 5th and Virginia Proposal

A basic requirement in SEPA is the alternatives analysis. *See eg.* RCW 43.21C.030; WAC 197-11-400; WAC 197-11-402; WAC 197-11-440(5). For every major action significantly affecting the environment, agencies must consider alternatives, including no action, other reasonable courses of action, or mitigation measures not in the proposed action. *Id. See also* WAC 197-11-792(2)(b). Governmental agencies cannot take any action that will limit the choice of reasonable alternatives before SEPA review has occurred. WAC 197-11-070(1)(b). Under SEPA, no action concerning a proposal shall be taken by a governmental agency before the responsible official issues a Final EIS that will limit the choice of reasonable alternatives. *Id.*

The 2005 EIS did not consider reasonable alternatives to the 5th and Virginia Proposal. That is not surprising considering that the 5th and Virginia proposal didn't even exist until twelve years after it was prepared. The alternatives analyzed in the programmatic rezone EIS consisted of different combinations of increases in allowable maximum heights and densities of buildings in several Downtown zone. Any attempt to argue that this analysis can be construed as a reasonable alternatives analysis for the 5th and Virginia Proposal would be preposterous.

SDCI did not conduct any analysis of reasonable alternatives to the 5th and Virginia Proposal in its environmental review of the proposal. This is an obvious violation of a pretty clear and unequivocal legal requirement.

2. The analysis of height, bulk and scale impacts and mitigation in the Addendum is inadequate

The disclosure and analysis of height, bulk and scale impacts and mitigation of the 5th and Virgina Proposal in the Addendum is inadequate.

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2 http://www.seattletimes.com/business/real-estate/seattles-record-apartment-boom-is-ready-to-explode/

This section of the Addendum does not describe the existing environment related to height, bulk, and scale that will be affected by the proposal as is required by WAC 197-11-440.

In addition, this section does not contain an adequate disclosure and analysis of significant impacts and mitigation measures associated with the height, bulk and scale of the building. The proposed five hundred foot tower is an oversized, bulky, and inelegant skyscraper that looks more commercial than residential and that is squeezing into practically every possible square foot of the site, including its development air space. There is no restriction on FAR due to a highly unusual (no other city we know of has such a blanket FAR exemption) land use code aberration. Strangely, if it were a commercial office tower on this site it would be restricted to FAR 14 or less than half the size under the DOC2 zoning requirements. The tower is considerably larger, bulkier, and taller than any other building in the Belltown neighborhood and, as a visual comparison, it is 10 stories taller than Rainier Tower. It is destructive to the character, scale, heights, and residential qualities of the Belltown urban village.

The building looms over the existing 30-story Escala condominiums. A mere 18 feet (including a 2 foot easement) of alley separates Escala from this enormous building creating a dark and oppressive crevasse between them. Over 100 of the proposed hotel rooms and residences would be almost spitting distance away from, and looking right into, many of the living rooms, kitchens, and bedrooms of the Escala residents. The lack of alley setbacks allows construction of multiple buildings right up to the alley edge degrading privacy, robbing residents of air and light necessary for the health and safety of Escala residents.

The Addendum completely fails to adequately address impacts on privacy to Escala residents. This is a significant and adverse impact that the Escala residents have raised with you over and over and over again. I find it shocking that it was not mentioned in the Addendum. The environmental review should have included an analysis of these impacts caused by the height, bulk, and scale of the building on the Escala residents. That should include an analysis of the design for residential-to-residential that determines the proper design (canting) and the minimum acceptable tower separation necessary to protect privacy and livability of the Escala residents.

The Addendum does not adequately address lighting and shadow impacts on the Escala residents either. Again, it is shocking that the Addendum doesn't even mention this significant impact. Early in the process, Escala attended meetings with the understanding and expectation that the City would require the Applicant to conduct an appropriate and accurate study on this issue. The applicant's original daylighting study (Page 33 of the EDG2 Meeting Booklet) was seriously flawed. It only showed diluted daylight autonomy averages for the entire floors, and no daylight data was provided to show before-and-after conditions.

As it became evident that the Board was not going to require any more study of the issue, prior to the second recommendation meeting, Escala hired national daylighting expert, Joel Loveland, co-founder of the Integrated Design Lab, to independently study the issue. Professor Loveland's own modeling and analysis revealed that there will be devastating impacts to natural daylight to alley side residents. For example, at the fifth floor (where there are only alley views) residents will see

their daylight reduced by more than 75 %. This means during daylight hours these alley side units will only rarely be able to turn off their electric lights. And worse, some units (identified as "B" in the report) will commonly experience adequate daylight conditions for only 12 % of daytime hours. For winter months, there would be only negligible daylight reaching these residents. The residents will be living in a cavern in the dark.

Professor Loveland recommends the following solutions to daylight deficiencies in the current design:

1. Set back the primary west-facing building façade farther from the alley to allow daylight to penetrate the lower floor levels.
2. Increase use of more diffuse reflectance materials on the west façade so that more daylight can at least reflectively reach deeper into the alley canyon.

And, as an aside, SMC 25.05.665.B incorporates the Design Guidelines and other regulations into the SEPA policies, thereby allowing them to be relied upon for SEPA substantive authority.

This analysis also revealed that the applicant misrepresented the impacts to the Escala during the Design Review process. The Applicant said, incorrectly, that the building wouldn't block any of Escala's light. With Mr. Loveland, we now know that the building will block the light for Escala residents to a very significant degree. Unfortunately, when this was presented to the Design Board, they disregarded it entirely stating that they had already decided on massing and would not consider new evidence at all. This was, to say the least, exceedingly unfair. Escala presented clear and convincing evidence of devastating impacts to the Escala residents that the applicant had failed to reveal at the previous meetings and the Board claimed sympathy but said it was too late. Considering how clear the evidence was on the severity of the impact, we believed that SDCI would address the issue. But, now we that the Addendum doesn't even mention it at all.

The Addendum also fails to adequately disclose and analyze the impacts of the proposal to adjacent uses and zones. "It is the City's policy to regulate height, bulk, and scale of development *in relation to* the neighborhood, surrounding structures, and topography, to create a reasonable transition between the various zones." SMC 25.05.675.G.2.a (emphasis added).Design Guideline B2 requires that the City compose the massing of buildings to create a transition to the height, bulk, and scale of development in nearby less intensive zones, is relevant to and should be applied to modify the design of the 5th and Virginia proposal. Both Escala and 5th and Virginia are in DOC2, but right across Virginia Street to the north and west (across 4th Avenue) are properties that are zoned DMC, with a much lower height limit, 80 foot spacing requirements, smaller residential floor plates, etc. The block that the project site is in the Belltown Urban Village and is a "transition" area from Belltown to Downtown. The Addendum does not adequately disclosure and address the project's relationship to the neighborhood, surrounding structures, and topography.

The Addendum also fails to adequately disclose and analyze the cumulative height, bulk, and scale impacts of the proposal combined with the 5th and Stewart proposal and other proposals for development in the area.

Regarding mitigation, SMC 25.05.675.G makes it clear that DCI has regulatory power, and in fact, the responsibility, to modify the height, bulk and scale of this proposal beyond the limits set forth in the development regulations. The City does not have to allow full build out per the prescriptive requirements of the development regulations. The Seattle Code says that the City's land use regulations cannot anticipate or address all substantial adverse impacts resulting from incongruous height, bulk and scale. SMC 25.05.675.G. Similarly, it says that the mapping of the City's zoning designations cannot always provide a reasonable transition in height, bulk and scale between development in adjacent zones. *Id.* As a result, DCI has express regulatory authority to condition or deny a project to mitigate the adverse impacts of substantially incompatible height, bulk and scale. *Id.* Mitigating measures may include but are not limited to limiting the height of the development, modifying the bulk of the development, repositioning the development on the site; and requiring setbacks above and beyond what the code allows to offset the appearance of incompatible height, bulk and scale. *Id.* The 5th and Virginia project will have significant adverse impacts to Escala and the surrounding area associated with the height, bulk, and scale of the building. Those impacts should be mitigated as the code allows be done.

The Addendum states: "Per SMC 25.05.675.G, the Design Review Process is presumed to be sufficient mitigation for any height, bulk and scale impacts." Addendum at 13. That section of the code states:

> The Citywide design guidelines (and any Council-approved, neighborhood design guidelines) are intended to mitigate the same adverse height, bulk and scale impacts addressed in these policies. A project that is approved pursuant to the design review process is presumed to comply with these height, bulk and scale policies. This presumption may be rebutted only by clear and convincing evidence that height, bulk and scale impacts documented through environmental review have not been adequately mitigated. Any additional mitigation imposed by the decisionmaker pursuant to these height, bulk and scale policies on projects that have undergone design review shall comply with design guidelines applicable to the project.

Id.

First of all, this provision violates SEPA and is unconscionable in its application in this case. When combined with the reality of the Design Review process, this provision created an impossible situation. SDCI advised the Board and the Board chair repeated during its meetings on this that it didn't believe they had the legal authority to limit the height of the development, modify the bulk of the development, or require setbacks above and beyond what the code allows to offset the appearance of incompatible height, bulk and scale impacts. To the extent that they might have thought they had authority despite SDCI staff advising that they don't, the Board members certainly didn't have the fortitude to require these changes. They are primarily architects and real estate professionals who are simply volunteering their time – they are not elected officials or City staff members. Board members don't even consider adding these conditions no matter how

significant the impacts are. As a result, impacted neighbors come out of the starting gate in SEPA review having to overcome a "presumption" that the impacts have been adequately addressed despite that the Board doesn't even have the ability or confidence to apply them in the first place.

This provision also created a kind of circular "pass the buck" loop where the Design Board told us that SDCI will deal with the issue, but then SDCI has now pointed to this provision in the Addendum to say that, legally, the Design Review Board dealt with these issues when, in fact, no one has dealt with the issues. Ultimately, however, the buck stops at SDCI and therefore, we request that you apply mitigation above and beyond what the Board recommends to mitigate the height, bulk and scale impacts of this project to Escala and the neighborhood.

Second, as I explained in my February 19, 2016 letter to you, which I incorporate in full here, there were a myriad of problems with the Design Review process that resulted in a flawed process that prejudiced the public. The Design Review Board decisions were based on only a fraction of all of the information necessary to make a final decision. I recognize that you cannot change the design review process, but, what you can do when you make the final SEPA and Design Review decisions for this particular project is recognize that the Design Board's decision was not fully informed.

Third, this approach makes no sense because the Design Board issues its decisions before SEPA review has even started. SEPA review doesn't inform their decision at all. Because the Design Review Board didn't have the benefit of any SEPA review and because the process is so broken (they don't even review written comments and oral public comments are extremely time limited), its decisions were not fully informed. In fact, this process violates SEPA by creating a snowballing effect and unlawfully limiting the choice of alternatives prior to the conclusion of SEPA review. *See* WAC 197-11-070(1)(b); *King County v. Boundary Review Bd.*, 122 Wn 2d 648, 663 (1993); *Lands Council v. Washington State Parks Recreation Comm'n*, 176 Wn. App. 787, 803-04, 309 P.3d 734 (2013); *Magnolia Neighborhood Planning Council v. City of Seattle,* 155 Wn. App. 305 (2010). I have raised this issue before in my October 24, 2016 letter to you and which I incorporate herein.

It is more than clear, once you consider all of the information, that the height, bulk and scale impacts of this project have not been adequately disclosed, analyzed, or mitigated.

3. <u>The analysis of land use impacts and mitigation in the Addendum is inadequate</u>

The disclosure and analysis of land use impacts and mitigation for the 5th and Virginia Project in the Addendum is inadequate.

This section of the Addendum does not adequately describe the existing environment related to land use that will be affected by the proposal as is required by WAC 197-11-440. There is a section titled "existing conditions" in Appendix B, but that section is inadequate in its description of existing conditions. It incorporates confusing (and presumably mistaken) headings wherein the "project impact" heading falls under the "existing conditions" heading. Part of that section refers to the 2005 EIS, but doesn't really even meaningfully explore or summarize the 2005 EIS

description of existing conditions. Of course, the 2005 FEIS description of existing conditions was for the entire area not the specific project and is twelve years old and, therefore, isn't applicable anyway. As explained above, the existing conditions have changed significantly since then.

In addition, this section does not contain an adequate disclosure and analysis of significant impacts and mitigation measures associated with the land use. The SEPA rules require that the DEIS contain a summary of existing land use plans and applicable zoning regulations with a discussion of how the proposal is inconsistent or consistent with them. WAC 197-11-440.6.d.i. The Addendum does not does not contain an adequate disclosure and analysis under this requirement. The only land use plan discussed is the Belltown Neighborhood Plan and the conclusions of consistency with the plan are incorrect. The review failed to consider whether the project is consistent with the City of Seattle Comprehensive Plan. The analysis of the project's consistency with zoning regulations was also incomplete and contained incorrect conclusions. We have pointed out various inconsistencies of the project with different development regulations throughout this process, yet those provisions and those issues are not mentioned in the Addendum.

The conclusion in the Addendum that the proposed action will be consistent with development throughout the Belltown Area is not true. It is only consistent with the 2 ½ blocks still in Belltown that are zoned DOC 2, contrary to the recommendations in the 2005 EIS. And even in DOC2, the residential development is more than twice the size and density than would be allowed for a commercial building on the same site. Both Escala and 5th and Virginia are in DOC2, but right across Virginia Street to the north and west (across 4th Avenue) are properties that are zoned DMC, with a much lower height limit, 80 foot spacing requirements, smaller residential floor plates, etc. The block that the project site is in the Belltown Urban Village and is a "transition" area from Belltown to Downtown.

The Addendum also fails to adequately disclose and analyze the cumulative land use impacts of the proposal combined with the 5th and Stewart proposal and other proposals for development in the area.

Contrary to the conclusions in the Addendum, the proposal will have significant adverse land use related impacts and mitigation should be considered for those impacts.

4. <u>The analysis of environmental health impacts and mitigation in the Addendum is inadequate</u>

We believe that the scope of analysis for environmental health impacts and mitigation in the Addendum is inadequate based on our initial review, but the short comment period over the holidays left us with inadequate time to prepare our summary on these issues. We intend to provide additional comments on this issue under separate cover.

There will also be significant adverse health impacts associated with the extreme loss of natural daylight throughout the days and year to Escala residents as described above. The lack of natural light is known to cause all sorts of health issues, including reduced alertness, ability to concentrate,

sleep issues, mental anxiety, depression, and even death from cancer or suicide. The Addendum failed to adequately disclose, analyze and address this issue.

5. The analysis of traffic, transportation and public facility impacts and mitigation in the Addendum is inadequate

The disclosure and analysis of traffic, transportation, and public facility impacts and mitigation for the 5th and Virginia Proposal in the Addendum is inadequate.

This section of the Addendum does not describe the existing environment related to transportation, circulation and parking impacts that will be affected by the proposal as is required by WAC 197-11-440.

In addition, this section does not contain an adequate analysis of significant impacts and mitigation measures associated with the impacts of the proposal. The Downtown alley grid was developed over one hundred and forty years ago, in the time of the horse of buggy. They are too narrow to handle modern traffic demands or the 24/7 building service needs and the resident demands of 21st century residential buildings. SDOT tries to funnel all of the traffic off of the streets and into the alleys, but existing alleys can't handle it. Alleys become overloaded with hotel and residential parking, taxis, sanitation, 24 hr. deliveries, repairs, moving, and emergency services; and major streets can become blocked with vehicles waiting for access to or from the alleys. The introduction of trucks, services, and cars for 437 new apartments, 155 new hotel rooms, and two levels of retail into the narrow, already heavily used, alley off of Virginia will cause significant blockage, safety, and other problems. And, when you add the cumulative impacts to the alley that will be caused by the 5th and Stewart proposal of similar height and density, the impacts are even more significant.

For our comments on this issue, I refer to and incorporate Mr. Ross Tilghman's letter on the Addendum dates January 11, 2017, which he submitted directly to SDCI. I also refer back to and incorporate my previous comment letters on the subject – of which there have been many. Residents of Escala have raised these issues repeatedly throughout the process. We met with you in person on this very subject to try to get SDCI to address it. Yet, the Addendum essentially disregards the problem. The impacts that this proposal will have on the alley that we have shown time and time again are severe and the treatment of this issue in the Addendum constitutes not only a clear violation of SEPA, but a lack of responsibility and fortitude on the part of SDCI and the City of Seattle Mayor.

The Addendum also failed to disclose that this proposal triggers the public services and facilities provision in SMC 25.05.675.O because of its impacts on the alley, which is a public facility:

> Public Services and Facilities.
>
> 1. Policy Background. A single development, though otherwise consistent with zoning regulations, may create excessive demands upon existing public services and facilities. "Public services and facilities" in this context includes facilities such as sewers, storm

> drains, solid waste disposal facilities, parks, schools, and streets and services such as transit, solid waste collection, public health services, and police and fire protection, provided by either a public agency or private entity.
>
> 2. Policies.
>
> a. It is the City's policy to minimize or prevent adverse impacts to existing public services and facilities.
>
> b. The decisionmaker may require, as part of the environmental review of a project, a reasonable assessment of the present and planned condition and capacity of public services and facilities to serve the area affected by the proposal.
>
> c. Based upon such analyses, a project which would result in adverse impacts on existing public services and facilities may be conditioned or denied to lessen its demand for services and facilities, or required to improve or add services and/or facilities for the public, whether or not the project meets the criteria of the Overview Policy set forth in SMC Section 25.05.665.

The Addendum failed to mention this provision and failed to analyze the issues associated with the alley in conjunction with the substantive authority granted in this section.

6. The analysis of construction impacts and mitigation in the Addendum is inadequate

The disclosure and analysis of construction impacts and mitigation for the 5th and Virginia Proposal in the Addendum is inadequate.

This section of the Addendum does not contain an adequate analysis of significant impacts and mitigation measures associated with construction impacts of the proposal. The analysis of construction impacts and mitigation associated with noise, traffic, safety, pedestrian circulation, dust and debris impacts to residents, excavation and dump trucks using and blocking the alley, structural impacts from temporary shoring of excavation walls, excessive vibration impacts, cracks in our underground parking is inadequate. Noise impacts will be significant considering the proximity of the construction to residential units in the Escala. The noise code may not be adequate to address those impacts.

SEPA review should address the need for third party monitoring of construction and an accountability plan if and when problems occur. The significant adverse impacts on alley usage during construction must be addressed. The proposed construction ramp for staging, heavy

equipment, and dump trucks moving in and out of the pit from the alley is a completely unworkable plan.

One particular construction impact that should be included in SEPA review concerns safety issues related to the massive cranes that will be used for construction of the tower. A couple of months ago, a massive construction crane in New York City plummeted onto a Lower Manhattan street killing one person and leaving three people injured. The crane landed across an intersection, smashed several car roofs and stretched much of an entire block. According to the newspaper article, this was not an isolated event – apparently this happens rather often. Crane safety is a serious issue that should be reviewed

The Addendum also fails to adequately disclose and analyze the cumulative construction impacts of the proposal combined with the 5th and Stewart proposal on the area.

7. The Addendum failed to consider several other probable significant environmental impacts

In addition to the items addressed in the Addendum, the scope of review should have also included impacts related to archeological resource impacts, air quality impacts, pedestrian impacts, and fire safety impacts between the high-rise residential towers.

There are probable significant impacts associated with archeological resources as discussed above. The Addendum doesn't even mention this issue at all. That is a major error.

Air quality impacts from boilers, diesel generators, vehicle exhaust, and the like in the alley should be analyzed as well. For example, there will be potential adverse impacts from the proposed generator exhaust just south of their loading docks in the alley - the short dispersion distances between the exhaust outlets and neighboring air intakes is a real a concern to the residents who have no options but to breathe fouled and possibly toxic air in their own homes every day.

C. Conclusion

SDCI cannot rely on the old 2005 EIS for this project. Doing so is a blatant violation of SEPA. And to add fuel to the fire, the Addendum is the most inadequate environmental review that I have ever seen for a project with significant impacts in twenty years of practicing land use law. This is not a difficult call – SDCI needs to go back to the drawing board, prepare an EIS for the proposal, and conduct proper SEPA and Design Review that will result in meaningful changes to the proposal that will protect the quality of life and livability for not just the residents of Escala, but for the entire neighborhood.

Thank you for your consideration of our comments.

Very truly yours,

BRICKLIN & NEWMAN, LLP

Claudia M. Newman

CMN:psc

cc: Escala Owners Association