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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeals of

**WALLINGFORD COMMUNITY
COUNCIL, ET AL.**

of adequacy of the FEIS issued by the
director, Office of Planning and Community
Development.

Hearing Examiner File:
W-17-006 through W-17-014

**BEACON HILL COUNCIL OF
SEATTLE’S (W-17-012) RESPONSE
TO MOTION TO DISMISS**

I. INTRODUCTION

The Beacon Hill Council of Seattle here responds to the Director of the Office of Planning and Community Development’s Motion for Partial Dismissal of BHCS’s appeal.

A. Scope of response.

The director seeks the dismissal, in whole or in part, of nine appeals brought by nine parties in a single motion. Not all sections of the motion to dismiss are directed to all appeals. The Argument sections designated by the director as applying to BHCS are: E and F. This response will address only those sections which OPCD claims supports its request to dismiss BHCS’s appeal.

OPCD applies its arguments and authorities to multiple appellants in the same motion. Appellants are expected to file separate responses. To avoid duplication of common issues, BHCS here incorporates by reference authorities cited by other appellants addressing

1 common issues and basic rules of law such as summary judgment requirements, standards
2 for the Hearing Examiner’s review, and SEPA requirements.

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4 **B. Summary of response.**

5 The director’s motion for partial dismissal acknowledges that the EIS only
6 considered variations on implementing the housing program designated as MHA–R. The
7 director did not consider alternatives to the MHA program for reaching the stated objectives.
8 The claims of environmental review of MHA leading to this point are vague and
9 inconsistent. Instead of an orderly process for SEPA review, the director attempts to cobble
10 together earlier actions to justify not considering alternative programs as required by SEPA.
11 As a result, there is a break in what should have been orderly environmental review.

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14 **II. Relief Requested**

15 BHCS requests that the director’s motion for partial dismissal of BHCS’s appeal be
16 denied and that the FEIS which is the subject of this matter be remanded for the SEPA
17 review required by law.

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19 **III. Statement of Facts & Evidence**

20 OPCD commits three-quarters of its extensive “statement of facts” describing the
21 HALA process. The history described does not reflect the limited and contentious nature of
22 the process. It is also irrelevant to the legal issues before the Hearing Examiner.
23

1 The essential facts which relate to this matter are not disputed. Those facts concern
2 the process leading to the FEIS and what was and was not included in it. The one fact that
3 led to this appeal is this: The former Mayor and a small group of developers agreed to what
4 is now known as MHA in a “Grand Bargain” signed behind closed doors. There were no
5 alternatives identified prior to pointing to MHA as the one solution to affordable housing.
6 No alternatives to this specially selected proposal have been identified by the OPCD in the
7 FEIS, and no environmental review of those alternatives has occurred. This is contrary to
8 the mandate of SEPA as a procedural statute that requires an open process of consideration
9 of the impacts of reasonable alternatives in order to make an informed decision. Instead
10 OPCD adopted a single program and now refuses to consider any alternatives to the
11 proposal or to adequately analyze the impacts of the proposal. This makes it impossible for
12 the director to propose appropriate mitigation for adverse impacts.
13

14 **IV. Issues, Authorities & Discussion**

15 The environmental impact statement which is the subject of BHCS’s appeal and
16 OPCD’s motion was created for the implementation of MHA. OPCD’s motion to dismiss
17 BHCS’s appeal concern the SEPA requirement to adequately analyze existing conditions;
18 consider the direct, secondary and cumulative impacts of a proposal; and potential
19 mitigation of those impacts as part of the environmental review process.
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1 **A. OPCD did not do an adequate analysis of the existing conditions on**
2 **Beacon Hill with respect to air and noise pollution.**

3 The MHA FEIS stated that the air and noise pollution in Beacon Hill were
4 considered. Yet, no information was provided as to what was considered, the criteria used,
5 the study and the results of the study. The BHCS is asking OPCD to provide us with the
6 information that was considered, the criteria used, the study and the results of the study. The
7 City’s failure to properly recognize the existing conditions of the North Beacon Hill urban
8 village in respect to existing noise and air pollution from air and vehicular traffic results in
9 the City’s flawed and false assumptions that the village has a healthy range of conditions
10 supportive of human density and thus is appropriate for increased population that would
11 result from the zoning changes should the MHA proposal be implemented.
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13 **B. OPCD did not do an adequate analysis of direct, secondary and**
14 **cumulative impacts of the MHA proposal on Beacon Hill with respect to air and noise**
15 **pollution.**
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17 An EIS should provide an extensive evaluation of a project’s direct, secondary and
18 cumulative impacts, confirmation that such impacts have been avoided, minimized or
19 otherwise mitigated, and a comprehensive alternatives analysis. Any irreversible and
20 irretrievable environmental changes that would be involved in the proposed project should it
21 be implemented must be identified. It should include a discussion of the social, economic
22 and environmental impacts of each alternative, the reason for eliminating alternatives from
23 the detailed study, and the preferred alternative. Identification of the environmental impacts
24

1 of the project should not be limited to direct environmental impacts but must also include
2 secondary and cumulative impacts.

3 OPCD does not argue that air pollution and noise have a negative impact on human
4 health. Indeed, there air pollution and noise pollution are taken into consideration in the
5 case of freeway traffic. Buffers from freeways are discussed in the MHA FEIS and the
6 proposed zoning maps are designed to include buffer areas so as not to increase population
7 in close proximity of freeways.

8 Instead, OPCD argues that the implementation of MHA would not in and of itself not
9 cause an increase in air pollution and noise in the North Beacon Hill Urban Village and
10 therefore these impacts do not need to be considered, analyzed or mitigated. This is
11 inadequate because OPCD is only considering the direct impact of the MHA zoning change
12 proposal. Increasing human density in an area that is negatively impacted by existing
13 conditions such as air and noise creates a secondary and cumulative impact on the health of
14 the population living under those conditions.
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17 **C. OPCD did not include a discussion of appropriate mitigation measures**
18 **for the unique air and noise pollution issues of Beacon Hill in the MHA FEIS.**

19 Appropriate mitigation measures are not discussed due to the lack of analysis of the
20 impacts of increasing human density in the existing conditions of the North Beacon Hill
21 urban village with respect to existing noise and air pollution. OPCD argues that the
22 adequacy of mitigation measures is unnecessary because of the lack of specificity of the
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1 effects. However, the lack of specificity is due to OPCD's own failure to do an adequate
2 analysis.

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4 **V. Conclusion: Implementation of MHA on Beacon Hill without adequate**
5 **mitigation with respect to air and noise pollution would have an adverse effect on an**
6 **already vulnerable population.**

7 Beacon Hill has a highly diverse population of: 80% people of color, 44%
8 immigrant and refugees and 20% low income. This population is already dealing with air
9 and noise pollution more than any other community given the multiple emission sources
10 from I-90, I-5, Rainier and MLK and frequent airplane overflight over Beacon Hill. Noise
11 from airplanes already exceed City noise levels. Increasing the population under such
12 conditions would put more vulnerable people at risk of health issues from environmental
13 conditions. The MHA FEIS ignores these risks and is therefore inadequate in its analysis
14 and should be overturned on this basis.
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17 Respectfully submitted this 1st day of May, 2018.
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22 Mira Latoszek

23 Attorney for Beacon Hill Council of Seattle
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BHCS's RESPONSE TO CITY OF SEATTLE'S
MOTION FOR PARTIAL DISMISSAL

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