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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:)	
)	Hearing Examiner File
WALLINGFORD COMMUNITY COUNCIL,)	
ET AL.)	W-17-006 through W-17-014
)	
of the adequacy of the FEIS issued by the Director,)	CITY'S RESPONSE TO
Office of Planning and Community Development)	APPELLANTS' MOTIONS FOR
)	SUMMARY JUDGMENT
)	
)	

I. INTRODUCTION

The Hearing Examiner should deny the Appellants' Motions for three main reasons.¹ First, the City of Seattle ("City") met its State Environmental Policy Act ("SEPA") obligations pertaining to review and disclosure of the proposals' relationship to the Comprehensive Plan. The Environmental Impact Statement ("EIS") issued for the citywide Mandatory Housing Affordability ("MHA") proposal ("Proposal") adequately summarized the City's existing plans and zoning regulations, and how the Proposal is consistent and inconsistent with them, in compliance with WAC 197-11-440(6)(d)(i). Further, the City adequately considered the relationship of the Proposal to the existing Seattle 2035 Comprehensive Plan in compliance with WAC 197-11-444(2)(b)(i). Second, the Appellants' Motions continue to rely on flawed legal

¹ The Appellants are Friends of Ravenna-Cowen ("Ravenna") and Junction Neighborhood Organization ("JUNO").

1 theories. The Appellants erroneously assert that the EIS was required to include precise proposed
2 amendatory language in order to adequately summarize how the Proposal is consistent or
3 inconsistent with existing plans and zoning regulations. Further, the Appellants continue to
4 erroneously assert that past Comprehensive Plan decisions preclude the amendments identified in
5 this separate Proposal. Third, the Appellants’ Motions mischaracterize and misstate the facts.

6 RELATIONSHIP TO OTHER PENDING MOTIONS

7 In April, the City filed its Motion for Partial Dismissal. The nine appellants have already
8 filed individual responses to the City’s Motion and the City has already filed its Reply brief.

9 Separate from that briefing cycle, Ravenna filed a Motion for Partial Summary Judgment
10 (“Ravenna’s Motion”) and JUNO filed a Motion for Summary Judgment as to MHA EIS’ Failure
11 to Describe Inconsistencies with Comprehensive Plan and Proposed Amendments Thereto
12 (“JUNO’s Motion”). Ravenna’s Motion and JUNO’s Motion together will be referred to as
13 “Appellants’ Motions.” This Response responds only to the Appellants’ Motions and the City
14 files the Declaration of Geoffrey Wentlandt solely to support the City’s Response to Appellants’
15 Motions. Mr. Wentlandt’s Declaration is intended only to correct statements from the
16 Appellants’ Motions and to support the City’s response to the Appellants’ contention that the
17 City’s EIS inadequately summarized how the Proposal was consistent with and, inconsistent
18 with, the existing plans and regulations. The City’s Motion for Partial Dismissal addressed a
19 different contention—FORC’s contention that past Comprehensive Plan decisions preclude the
20 amendments identified in this separate Proposal. No declaration was provided or was needed to
21 support the City’s Motion for Partial Dismissal regarding that contention, which presented a
22 purely legal question.

1 **II. STATEMENT OF FACTS**

2 The City incorporates by reference the statement of facts provided on pages 3 – 11 in the
3 City’s Motion for Partial Dismissal.

4 Additional facts related to the Seattle 2035 Comprehensive Plan Adoption.

5 In 2012, the City of Seattle began its effort to update the Seattle Comprehensive Plan to
6 plan for the twenty-year period of growth from 2015 to 2035, referred to hereafter as Seattle
7 2035. Public outreach for Seattle 2035 began in 2013.²

8 In May of 2016, after years of public outreach, the Mayor issued the Mayor’s
9 Recommended Seattle 2035 Comprehensive Plan – Managing Growth to Become an Equitable
10 City (“Mayor’s Recommended Plan”) which was transmitted to the City Council on May 3,
11 2016, and then referred to the Planning, Land Use and Zoning (“PLUZ”) Committee on May 16,
12 2016.

13 The Mayor’s Recommended Plan did not propose to amend any urban village boundaries,
14 but did propose a change to the Future Land Use Map (“FLUM”) to depict certain urban village
15 potential expansion areas with dashed lines.

16 The Office of Planning and Community Development (“OPCD”) Director’s Report on
17 the Mayor’s Recommended Plan described the proposed change in this way:

18 Another change to the FLUM is the addition of dashed lines outside the
19 boundaries of those urban villages that have very good transit service – either a
20 light rail station or a Rapid Ride bus stop that intersects with another frequent bus
21 route. The dashed lines are drawn to incorporate an area that is within
approximately a 10-minute walk of the transit service. At this time, these dashed
lines represent a general area for further study as part of the City’s work on the
Housing Affordability and Livability Agenda. Future, more detailed review of

22 _____
23 ² Ravenna’s Motion states that public outreach for the Seattle 2035 Comprehensive Plan did not begin until 2015. This is not a material issue but is worth correcting the record because public outreach for Seattle 2035 began in 2013. See Decl. of Wentlandt, p. 1.

1 each of these locations could result in revisions to the current urban village
2 boundaries.

3 The City Council Central Staff (“Central Staff”) described the proposed change in a
4 memo dated June 2, 2016 to the PLUZ Committee:

5 “The dashed lines on the Future Land Use Map are intended to be preliminary
6 indications of future expansion that would be better defined through a process
7 with the local community. There are currently two processes underway to start to
8 define where those boundaries would be located. The Executive has convened a
9 set of focus groups that will discuss potential urban village expansions. Those
10 focus groups started meeting in April, and will continue meeting through the
11 winter. In addition, the Council, under Councilmember Johnson’s leadership, will
12 host a series of charrettes with communities in and around urban villages that
13 might see expanded boundaries. . . the Council may want to remove the dashed
14 lines from the Future Land Use Map until the charrettes and the focus groups have
15 been completed and there is more community consensus on where urban villages
16 should be expanded.”

17 On August 16, 2016, at a regular meeting, the PLUZ Committee decided to hold off on
18 including future expansion areas shown as dashed lines on the FLUM as part of the Seattle 2035
19 process.³

20 Central Staff prepared a memo dated September 9, 2016, identifying amendments the
21 PLUZ Committee decided to make from the Mayor’s Recommended Plan. On pages 22 and 23
22 of 92, the memo provides that:

23 “Councilmembers may want to hold off on making these changes until more
24 detail regarding future urban village boundaries and zoning is available through
25 ongoing work to implement the mandatory affordable housing program. During
26 discussion on August 16, 2016, PLUZ was inclined to amend the FLUM in the
27 Mayor’s Recommended plan only to add cemeteries as a unique land use.”

28 On September 20, 2016, the PLUZ Committee voted to send the Mayor’s Recommended
29 FLUM, without the dashed lines on the FLUM, to the full City Council for adoption. In October
30

31 ³ The video of the August 16, 2016 PLUZ Committee meeting can be viewed at this link
32 <http://www.seattlechannel.org/mayor-and-council/city-council/2016/2017-planning-land-use-and-zoning->

1 of 2016 the City Council adopted Ordinance 125173, without any full City Council deliberation
2 as to the FLUM, adopting the PLUZ Committee’s amended version as shown on Council’s
3 Amendment No. 190.

4 Additional Facts related to Proposed Amendments to Neighborhood Planning Policies

5 In October 2016, the City published the first draft of Citywide MHA zoning maps and
6 gathered community input on those maps between October 2016 and June 2017.

7 In June 2017, the City issued the DEIS for the Citywide MHA Proposal. DEIS Appendix
8 F identified that several neighborhood plan policies might conflict with the Proposal concerning
9 proposed changes to single-family zones within urban villages. The DEIS further indicated that
10 amendments to several neighborhood planning policies will be docketed and the policies
11 modified to remove potential inconsistencies. DEIS F.11.

12 In August of 2017, the City Council adopted Resolution 31762. In Section 2 of
13 Resolution 31762, the City Council requested that “the Executive provide recommendations for
14 potential amendments to Comprehensive Plan policies and maps to facilitate the implementation
15 of the Mandatory Housing Affordability Program (MHA) citywide . . .” In Section 5 of
16 Resolution 31762, the City Council requested that OPCD “review the amendments described and
17 listed” in Section 2 and “conduct public and environmental review as appropriate; and present its
18 analyses and the Mayor’s recommendations to the Planning Commission and to the City Council
19 on the schedule set by Resolution 31117 for review and consideration in 2018.” Resolution
20 31762 includes an attached memorandum dated July 10, 2017 (“July 10 Memo”), from the
21 Director of the Office of Planning and Community Development to the City Council’s PLUZ
22 Committee that describes the proposed amendments to specific neighborhood plan policies.

23 [committee?videoid=x67436](#). The discussion at the August 16, 2016 PLUZ meeting of the Mayor’s proposed

1 The July 10 Memo describes the proposed amendments to specific neighborhood
2 planning policies in more detail. The July 10 Memo provides that “[C]ertain policies that call for
3 maintaining aspects of single-family areas . . . are proposed for amendment if they would clearly
4 and directly conflict with the draft MHA implementation proposal.” Also, the July 10 Memo
5 provides:

6 Amendments would remove explicit references to preservation of zoning, in favor
7 of statements to preserve physical scale or character where appropriate. For goal
8 or policy statements that could be construed to directly conflict with MHA
9 implementation short of direct references to zoning, policy language would be
added to recognize the potential for addition of a variety of housing types, while
preserving aspects of single family areas that are desired for preservation by the
neighborhood plan policy.

10 The July 10 Memo identified the nine neighborhood plans and specific policies within
11 those plans to be amended (included in that list was Roosevelt Policy R-LUG1 and West Seattle
12 Junction Policy WSJ-P13) and provided next steps—that the final content of policy language and
13 exact text and map amendments will be determined at a future time based on public engagement
14 and environmental review and that specific text would be developed at a future time and made
15 available by and discussion with community members before City Council adoption.

16 The City, through OPCD and Department of Neighborhoods (“DON”), provided
17 additional community engagement beginning in October of 2017 pertaining to the text
18 amendments to the nine neighborhood planning policies identified in the July 10 Memo. The
19 City held community meetings on October 17, 2017 and October 26, 2017, to discuss proposed
20 options for updating the neighborhood plan policies. The City deliberately included
21 neighborhood groups in this process. The City also provided a “meeting-in-a-box” to help
22 community members and groups discuss the issues at their own gatherings and provide feedback.

23 _____
amendments to the FLUM begins at 1 hour 4 minutes and 47 seconds into the video.

1 The City also created an online engagement website that launched October 10, 2017, to solicit
2 input on options and allow discussion. Comments on the proposed amendments to neighborhood
3 planning policies were accepted until December 8, 2017.

4 In November 2017, the City issued the FEIS for the MHA Proposal. FEIS, Appendix F
5 was amended to recognize the effect of the City Council’s adoption of Resolution 31762 that
6 docketed the amendments to the neighborhood planning policies and clarified that they would be
7 modified to remove potential inconsistencies.

8 OPCD expects that an Executive recommendation that proposes specific amendments to
9 the Neighborhood Plan policies in the Comprehensive Plan will be transmitted to the City
10 Council for its review sometime in May or June of 2018.

11 III. ARGUMENT

12 A. Standard of Review

13 The Hearing Examiner, when reviewing a motion for summary judgment, is to consider
14 all facts and reasonable inferences from facts in the light most favorable to the City, the non-
15 moving party. *Columbia Riverkeeper v. Port of Vancouver*, 188 Wn.2d 80, 90, 392 P.3d 1025
16 (2017). The hearing examiner should deny a motion for summary judgment if the hearing
17 examiner determines that there is a genuine dispute as to any material fact. *Suquamish Indian*
18 *Tribe v. Kitsap County*, 92 Wn. App. 816, 827, 965 P.2d 636 (1998). Summary judgment may be
19 granted only if there is no genuine issue of material fact and reasonable minds could reach but
20 one conclusion from the admissible facts in evidence. *Id.*

21 When reviewing an EIS, the Examiner must give substantial weight to OPCD’s
22 determination that the EIS is adequate. The burden of establishing the contrary rests with the
23 Appellants. EIS adequacy is reviewed under the “rule of reason,” a “broad, flexible cost-

1 effectiveness standard” that requires that the EIS include a reasonably thorough discussion of the
2 significant aspects of the probable environmental consequences of an agency decision.

3 **B. The City adequately summarized the Proposal’s consistency and**
4 **inconsistency to existing plans and zoning regulations and adequately**
5 **considered the relationship of the Proposal to existing plans.**

6 The Appellants’ Motions seem to ask whether the City complied with WAC 197-11-
7 440(6)(d)(i) and WAC 197-11-444(2)(b)(i).

8 By its terms, WAC 197-11-440(6)(d)(i) requires “when appropriate” a “summary” of
9 existing plans and zoning regulations applicable to the proposal, and how the Proposal is
10 consistent and inconsistent with them. In other words, this rule requires that an EIS include how
11 the proposed action is “consistent and inconsistent” with existing plans. *Cascade Bicycle Club v.*
12 *Puget Sound Regional Council*, 175 Wn. App. 494, 509-510, 306 P.3d 1031 (2013).

13 The other provision, WAC 197-11-444(2)(b)(i), requires that an EIS consider the
14 “relationship” of the proposal to existing land use plans.

15 The EIS issued for this Proposal includes a summary of how the proposed action is
16 consistent and inconsistent with existing plans, in compliance with WAC 197-11-440(6)(d)(i).
17 Also, the City met its SEPA obligation pursuant to WAC 197-11-444(2)(b)(i) to consider the
18 “relationship” of the Proposal to existing land use plans by incorporating into the EIS the
19 summary required in WAC 197-11-440(6)(d)(i). For this reason, the Hearing Examiner must
20 deny JUNO’s and Ravenna’s Motions for Summary Judgment.⁴ Below is a comprehensive list of
21 provisions in the EIS addressing the Proposal’s consistency and inconsistency with existing plans
22 and regulations.

23 ⁴ Specifically, the City is referring to JUNO’s Motion for Summary Judgment as to MHA EIS’ Failure to Describe
Inconsistencies with Comprehensive Plan and Proposed Amendments Thereto as it asserts on p. 26 of its Motion.

1 **1. Summary of Proposal’s Consistency with Existing Plans**

2 As part of its summary, the FEIS provides important planning context and describes the
3 relationship of this Proposal with Seattle 2035. The FEIS on page 1.4 provides important
4 planning context in relation to Seattle 2035:

5 The Seattle 2035 Comprehensive Plan and EIS provide key context for the MHA
6 proposed action, and this EIS builds on the prior analysis. The MHA EIS uses the
7 same 2035 planning horizon as the Seattle 2035 Comprehensive Plan and EIS.
8 The No Action alternative in this MHA EIS closely parallels the preferred
9 alternative of the Seattle 2035 Comprehensive Plan Final EIS. The environmental
10 analysis of the Action Alternatives for MHA implementation in this EIS study the
11 potential for housing and job growth that is greater than the estimates adopted in
12 the Seattle 2035 plan. These larger growth amounts are similar to the increment of
13 additional growth that was studied in a ‘sensitivity analysis’ in the Seattle 2035
14 Final EIS, which also studied additional growth in anticipation of potential future
15 strong demand for housing.

16 Chapter 3 of the EIS includes a section titled “Relevant Policies and Codes.” This section
17 identifies land use policies from Seattle 2035 that implement the urban village strategy, including
18 policies governing changes in zoning for residential areas and infill development. The following
19 Seattle 2035 land use policies are summarized:

- 20 • Policy LU 1.3: Provide for a wide range in the scale and density permitted for
21 multifamily residential, commercial, and mixed-use projects to generally achieve
22 overall density and scale characteristics
- 23 • Policy LU 1.4: Provide a gradual transition in building height and scale inside urban
 centers and urban villages where they border lower-scale residential areas.
- Policy LU 2.7: Review future legislative rezones to determine if they pose a risk of
 increasing the displacement of residents, especially marginalized populations, and the
 businesses and institutions that serve them.
- Policy LU 7.3: Consider allowing redevelopment or infill development of single-
 family areas inside urban centers and villages, where new development would
 maintain the low height and bulk that characterizes the single-family area, while
 allowing a wider range of housing types such as detached accessory units, cottage
 developments or small duplexes or triplexes.

- Policy LU 8.4: Establish evaluation criteria for rezoning land to multifamily designations that support the urban village strategy, create desirable multifamily residential neighborhoods, maintain compatible scale, respect views, enhance the streetscape and pedestrian environment, and achieve an efficient use of the land without major impact on the natural environment.
- Policy LU 8.13 Use highrise multifamily zoning designations only in urban centers, where the mix of activities offers convenient access to regional transit and to a full range of residential services and amenities, as well as to jobs.

FEIS 3.107 – 108.

In addition, the FEIS identifies several goals and policies from the Seattle 2035 that assist the evaluation of the Proposal to implement MHA.

- Land Use Goal 1 from the Seattle Plan is to “Achieve a development pattern consistent with the urban village strategy, concentrating most new housing and employment in urban centers and villages, while also allowing some infill development compatible with the established context in areas outside centers and villages.” (LU G1)
- Urban Center, Hub Urban Villages, and Residential Urban Village were established as Future Land Use designations on the Future Land Use Map (FLUM)(Exhibit 3.2-1). Prior to this, the FLUM indicated other use-specific designations (e.g., Single Family, Multifamily) in urban centers and urban villages.
- Seattle 2035 renewed the concept the policy commitment for urban centers and urban villages to flourish as compact mixed-use neighborhoods designed to accommodate most of Seattle’s new jobs and housing. (GS 1.2)
- Land use policies for Urban Center and Urban Village designations were updated to promote a variety of housing types and affordable rent levels. (GS 1.13, LU G2)
- Seattle 2035 considered expansions of certain urban villages with very good transit service. The Plan includes new land use policies that support aligning urban village boundaries generally within a 10-minute walk of light rail and other very good transit. (GS 1.12)

FEIS 3.100.

2. Summary of Proposal’s inconsistency with Existing Plans

Chapter 2 of the EIS lists several related components that would need to be implemented to provide additional development capacity, including: changing development standards in the

1 Land Use Code, changing zoning designation on the official zoning map, changing certain urban
2 village boundaries on the City's Future Land Use Map, and changing policies in the
3 Neighborhood Plans section of the Comprehensive Plan. FEIS 2.2, FEIS 2.21. The proposed
4 urban village boundary amendments for each alternative were provided that identify the current
5 boundaries and how the boundaries are proposed to change. FEIS 2.41 – 2.63.

6 Appendix F of the FEIS includes a summary of proposed amendments to the Land Use
7 Code rezone criteria for single-family parcels as well as a summary of proposed amendments to
8 neighborhood plan policies. Appendix F on page F.11 provides the following summary regarding
9 amendments to neighborhood plan policies:

10 Several policies in individual urban villages contained in the Neighborhood Plan
11 policies section of the Comprehensive Plan may conflict with elements of the
12 proposed action concerning changes to single family zones within urban villages.
13 Amendments to these policies are docketed and the policies would be modified to
14 remove potential inconsistencies. The potential impacts of these policy
15 amendments is considered in this EIS.

16 Appendix H of the FEIS contains a set of maps depicting the proposed zoning changes
17 for all parcels in the study area that are proposed to have zoning changes to implement MHA.

18 **3. The summary in this EIS meets the standard practice of the City.**

19 The City's standard practice is to incorporate a summary into an EIS, pursuant to WAC
20 197-11-440(6)(d)(i), by including a summary-level identification of the most relevant
21 comprehensive planning policies and regulations and discuss the proposal's general consistency
22 with the Comprehensive Plan and zoning regulations.⁵

23 Here, this EIS follows the standard practice of the City. This EIS includes a summary-
level identification of the most relevant comprehensive planning policies and regulations and

⁵ Decl. of Wentlandt, p. 7.

1 discusses the Proposal’s general consistency with the Comprehensive Plan and zoning
2 regulations. The City met its obligation pursuant to WAC 197-11-440(6)(d)(i).

3 **4. The EIS includes sufficient information to adequately summarize how**
4 **the Proposal is inconsistent with the several neighborhood planning**
5 **policies without inclusion of specific amendatory language.**

6 JUNO’s Motion seems to challenge the adequacy of the FEIS analysis of the
7 Neighborhood Plan section of the Comprehensive Plan.⁶ In raising this argument, JUNO
8 erroneously claims that the FEIS does “not present any analysis or consideration of the
9 Neighborhood Plan section of the Comprehensive Plan...”⁷ This assertion by JUNO either
10 overlooks or simply ignores relevant sections of the FEIS

11 The EIS acknowledges that the proposed rezones of single-family zoned areas in urban
12 villages may be inconsistent with certain neighborhood planning policies:

13 “Several policies in individual urban villages contained in the Neighborhood Plan
14 policies section of the Comprehensive Plan may conflict with elements of the
15 proposed action concerning changes to single family zones within urban villages.
16 Amendments to these policies ~~will be~~ are docketed and the policies would be
17 modified to remove potential inconsistencies. The potential impacts of these
18 policy amendments is considered in this EIS.”

19 FEIS F.11 (underline/strikeout in original).

20 Modifying these neighborhood plan policies is specifically included as part of the
21 proposal. FEIS 2.2. The FEIS provides that the proposed action would “increase development
22 capacity to implement the MHA” by, among other things, “changing policies in the
23 Neighborhood Plans section of the Comprehensive Plan.” FEIS 2.21.

There is sufficient information in the EIS to understand the nature of the proposed
amendments as to how they are consistent or inconsistent with the existing plans—e.g., to allow

⁶ JUNO’s Motion, p. 15, line 10-14.

⁷ JUNO’s Motion, p. 15, line 13-14.

1 rezoning of single-family zoned areas in urban villages to a more intensive zoning
2 classification—as well as the particular zoning changes that are proposed based on the
3 amendments. The EIS contains maps that show, for each action alternative and each urban
4 village, the proposed urban village expansions as well as the proposed new zoning designations
5 for single-family-zoned areas that are proposed to be rezoned (both within existing urban
6 villages and within urban village expansion areas.) FEIS, Appendix H.

7 The FEIS identifies that several neighborhood planning policies may be inconsistent with
8 this proposed action “concerning changes to single family zones within urban areas” and that
9 amendments to these policies “are docketed and the policies would be modified to remove
10 potential inconsistencies . . . ” FEIS F.11. This summary-level identification and analysis make
11 clear that several neighborhood planning policies have been identified as potentially inconsistent
12 with the proposed action to rezone single-family zoned properties within urban villages to
13 multifamily zones such as Small Residential Lot or Lowrise zones, and would be modified so as
14 not to be inconsistent with the proposed action to rezone those properties.

15 The City’s summary was adequate without the need to include specific proposed
16 amendatory language. The FEIS adequately summarizes the inconsistency by considering it,
17 providing assurances that the inconsistent comprehensive plan policy would be modified to fix
18 the inconsistency, and that the potential impacts of such modifications are included in the EIS.
19 Further, to the extent JUNO raises an argument regarding analyzing JUNO’s proposed docketed
20 amendment, SEPA does not impose any obligation on the City to conduct an analysis of JUNO’s
21 proposed docketed amendatory language because it is not part of the Proposal. The City, in
22 issuing its EIS, is only required to summarize how the *City’s* proposed action, not an entirely
23

1 different action proposed by the Appellant, was consistent or inconsistent with existing plans to
2 comply with WAC 197-11-440(6)(d)(i).⁸

3 **5. The City adequately considered the Proposal’s relationship to existing**
4 **land use plans.**

5 The City met its SEPA obligation under WAC 197-11-442(2)(b)(i) to consider the
6 Proposal’s relationship to existing land use plans.⁹ The City, by including in the FEIS a summary
7 as to how the Proposed Action is consistent and inconsistent with existing plans and zoning
8 regulations, met its obligation to consider the Proposal’s “relationship to existing land use plans”
9 pursuant to WAC 197-11-442(2)(b)(i). Much of the EIS is devoted to discussing the
10 environmental consequences of action alternatives compared to the no action alternative. Here,
11 the no action alternative is very similar to the existing Seattle 2035. Therefore, the EIS considers
12 the relationship between Seattle 2035 (Alternative 1, no action) and the Proposed Action
13 (Alternatives 2, 3, and Preferred, action alternatives). Ravenna’s sweeping assertions that the
14 FEIS somehow violated WAC 197-11-442(2)(b)(i) or failed “to address the impacts and
15 inconsistencies between the EIS and 2035 Comprehensive Plan” are simply wrong, unfounded,
16 and unsupported by any evidence.¹⁰

17 **C. The Appellants’ Motions rely on flawed legal theories.**

18 **1. SEPA does not require that specific amendatory language be included**
19 **in an EIS.**

20 To the extent the Appellants argue that SEPA requires that specific amendatory language
21 must be provided in an EIS, the Appellants are wrong. First, such an argument is directly

22 ⁸ JUNO’s Motion, p. 9, lines 1-3.

23 ⁹ Ravenna’s Motion seems to challenge the City’s compliance with WAC 197-11-444(2)(b)(i), a listed element of the built environment.

¹⁰ Ravenna’s Motion asks the Hearing Examiner for summary judgment but is not accompanied by a sworn declaration or affidavit as is required by CR 56.

1 inconsistent with SEPA regulations that defy the specificity they demand. An EIS’s discussion
2 of alternatives for a non-project proposal such as a comprehensive plan or other areawide zoning
3 “shall be limited to a general discussion of the impacts of alternate proposals for policies
4 contained in such plans . . .” WAC 197-11-442(4). This language, together with the requirement
5 discussed above that the EIS incorporate a “summary” of how the proposed action is consistent
6 with and inconsistent with existing plans and zoning regulations, make clear that SEPA does not
7 require that an EIS contain the level of specificity demanded by the Appellants in order to
8 comply with the “summary” requirement in WAC 197-11-440(6)(b)(i).

9 Second, the Appellants bear the burden to prove that the EIS failed to meet its obligation
10 pertaining to providing a summary of how the proposal is consistent/inconsistent with the
11 existing plans and regulations. It is simply not sufficient for the Appellants to argue that the City
12 could have chosen to provide more specific language. Rather, the Appellants must demonstrate it
13 was unreasonable as a matter of law to have failed to include the level of detail demanded by the
14 Appellants. The question of whether something is reasonable is inherently factual and one that is
15 context specific. Here, the level of detail provided by the City was reasonable. The City
16 identified that several neighborhood planning policies may be inconsistent with the Proposal
17 concerning single-family zoned properties within the urban village. The EIS identifies that such
18 amendments were docketed, i.e. made part of the 2017/2018 docket, and that the impacts of such
19 amendments were studied as part of the EIS.

20 The City provided additional community engagement on potential amendments to several
21 neighborhood planning policies between October and December of 2017.¹¹ Through this
22 additional community engagement process, Roosevelt Neighborhood Plan policy R-LUG1 and

23 _____
¹¹ Decl. of Wentlandt, p. 4-5.

1 West Seattle Junction Neighborhood Plan Policy WSJ-P13 were both identified as policies that
2 were potentially inconsistent with the Proposal and the City offered to the public different
3 options of specific amendatory language as to how the planning policies could be modified. The
4 public comment period cutoff was December 8, 2017, which came after the FEIS was issued.
5 Now, OPCD anticipates that an Executive recommendation that proposes specific amendments
6 to the neighborhood planning policies will be transmitted to the City Council for its review
7 sometime in May of June of 2018. Decl. of Wentlandt, p. 7.

8 Third, the approach taken by the City in this EIS to proceed with environmental review
9 prior to the specific amendatory language being formulated is reasonable as it is consistent with
10 the City's own past practices regarding non-project programmatic EIS's. Decl. of Wentlandt, p.
11 7.

12 Finally, a holding that specific amendatory language is necessary to be included in an EIS
13 would thwart the longstanding SEPA requirement that an EIS be prepared at the earliest stage in
14 the planning process. The Appellants' legal argument is fundamentally flawed, because taken to
15 its end, it would require the Hearing Examiner to hold that the EIS should not have been
16 prepared until specific amendatory language to the neighborhood planning policies were
17 formulated and included into the EIS. Such a holding would thwart the long-held cornerstone of
18 SEPA that an EIS, if required, is to be prepared "at the earliest possible point" in the planning
19 process, when the "principal features of a proposal" and its environmental impacts "can be
20 reasonably identified". *Lands Council v. Wash. State Parks Recreation Comm'n*, 176 Wn. App.
21 787, 802, 309 P.3d 734; WAC 197-11-055(2). The EIS process would be upended if the
22 preparation of an EIS must be delayed until it can include the specific amendatory language for
23 every proposed amendment to a comprehensive plan or development regulation.

1 **2. Past Comprehensive Plan decisions do not preclude future**
2 **Comprehensive Plan amendments.**

3 The Appellants continue to rely on the mistaken legal presumption that past
4 Comprehensive Plan decisions bind or preclude Comprehensive Plan amendments here. To the
5 contrary, the law expressly allows the City to amend existing comprehensive plans.¹²

6 Ravenna continues to assert its flawed theory that the City Council’s 2016 legislative
7 action as it pertained to the Roosevelt Urban Village now precludes the City in a separate action
8 from implementing its MHA proposal by expanding the Ravenna Urban Village.¹³

9 Ravenna makes its argument by revisiting a decision made during the 2035
10 Comprehensive Plan update. Ravenna entirely mischaracterizes that process. Regardless,
11 Ravenna accurately states that Roosevelt’s Urban Village boundaries were not extended in 2016
12 eastward of 15th Ave. NE. However, Ravenna asserts that the MHA FEIS action alternatives that
13 proposed to expand the Roosevelt Urban Village are “inconsistent with the 2035 Comprehensive
14 Plan and with its legislative history.” This assertion from Ravenna is irrelevant because the City
15 has the authority to amend the Comprehensive Plan in its annual review process in a way that is
16 different from an earlier adoption. To the extent Ravenna asserts this as a SEPA violation,
17 Ravenna is wrong.

18 **D. The Statement of Facts asserted in the Appellants’ Motions present opinions,**
19 **subjective characterizations, and even legal arguments that are not included**
20 **within the Argument sections.**

21 **1. JUNO’s Motion.**

22 JUNO’s Motion asserts in error that the MHA FEIS “made no attempt to comply with”
23 WAC 197-11-440(6)(d)(i).¹⁴ The City provides sufficient evidence that the City not only

¹² RCW 36.70A.130(2)(a) (allowing updates and amendments to comprehensive plans no more than once a year).

¹³ Ravenna’s Motion, p. 12, line 2-5.

1 attempted to comply, but in fact did comply with its SEPA obligations pursuant to WAC 197-11-
2 440(6)(d)(i).

3 JUNO’S Motion asserts in error that the FEIS “simply states that the proposed action
4 ‘may’ conflict with elements of the Neighborhood Plan section of the Comprehensive Plan.”¹⁵
5 JUNO simply ignores the remainder of the sentence that it quoted from which continues on to
6 state “concerning changes to single-family zones within urban villages.” FEIS F.11.

7 JUNO’s Motion implies that the MHA FEIS included a summary of some, but not all, of
8 the applicable provisions of the existing plans and how the Proposal is or is not consistent with
9 them.¹⁶ Despite JUNO bearing the initial burden of proof, JUNO does not provide a single
10 example within its argument as to what it thinks the City left out of the MHA FEIS’s summary of
11 existing plans that should have been included. *LaPlante v. State*, 85 Wn.2d 154, 158, 531 P.2d
12 299 (1975)(In a summary judgment motion, the moving party bears the initial burden of showing
13 the absence of an issue of material fact). Now, it is too late for JUNO to include new argument in
14 its reply because the Hearing Examiner may not consider such arguments raised for the first time
15 in a reply brief. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549
16 (1992).

17 2. Ravenna’s Motion.

18 Ravenna falsely claims that the Seattle City Council “rejected the City’s proposed
19 Roosevelt Urban Village Expansion.”¹⁷ First, the Mayor’s Recommended Plan did not propose
20 to expand any urban village boundaries. Rather it proposed to identify potential urban village
21 expansion areas with dashed lines on the Future Land Use Map (“FLUM”) to identify the area
22

23 ¹⁴ JUNO’s Motion, p. 26, line 14-15.

¹⁵ JUNO’s Motion, p. 15, line 10-11.

¹⁶ JUNO’s Motion, p. 26, line 12-13.

1 within a 10-minute walkshed of light rail and very good bus transit. This included the Roosevelt
2 Urban Village because of the light rail station under construction that will be operable in 2021.

3 The City Council referred the Mayor’s Recommended Plan to the City Council PLUZ
4 Committee for review. At a regular PLUZ Committee meeting on August 16, 2016, the PLUZ
5 Committee made the decision not to include the dashed lines on the FLUM because the PLUZ
6 Committee decided to wait “until more detail regarding future urban village boundaries and
7 zoning is available through ongoing work to implement the mandatory housing affordability.”
8 Decl. of Wentlandt, Ex. C. This decision was a postponement, not a “rejection” as asserted by
9 Ravenna.

10 Ravenna erroneously asserts that the FEIS does not “address the 2035 Comprehensive
11 Plan.”¹⁸ Section B of this Response proves otherwise.

12 Ravenna erroneously asserts that the FEIS does not address “inconsistencies with the
13 Plan.”¹⁹ Section B of this Response proves otherwise.

14 Ravenna erroneously asserts that the FEIS does not identify impacts of the FEIS
15 proposals to the Plan.²⁰ Section B of this Response proves otherwise.

16 Ravenna erroneously asserts that the FEIS does not propose amendments to the Plan to
17 address inconsistencies.²¹ Section B of this Response proves otherwise. The FEIS clearly
18 proposes that amendments to the Comprehensive Plan’s Future Land Use Map and amendments
19 to certain Neighborhood Plan policies will be required to implement MHA and achieve
20 consistency.

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22 ¹⁷ Ravenna Motion, p. 10, line 7-10.

¹⁸ Ravenna Motion, p. 12, line 6.

¹⁹ Ravenna Motion, p. 12, line 6-7.

²⁰ Ravenna Motion, p. 12, line 7.

²¹ Ravenna Motion, p. 12, line 7-8.

1 Ravenna erroneously asserts that as of November 2017, there were no amendments
2 docketed.²² The City Council adopted Resolution 31762 in August 2017 that added amendments
3 to the Comprehensive Plan and maps to implement MHA to the docket.

4 Ravenna erroneously asserts that the amendment made to FEIS F.11 was somehow to
5 correct a “failure” or a “major omission.” The adoption of Resolution 31762 is what prompted
6 the amendments to FEIS F.11. When the DEIS was issued in June 2017, amendments to the
7 Comprehensive Plan and maps to implement the MHA were not yet docketed on the 2017/2018
8 docket. The DEIS F.11 proposed to amend several neighborhood planning policies and indicated
9 that such amendments will be docketed. At the time the FEIS was issued in November 2017,
10 Resolution 31762 had been adopted. Resolution 31762 was adopted in August 2017 and
11 docketed amendments to the Comprehensive Plan and maps to implement MHA. Thus, FEIS
12 F.11 was amended to reflect that proposed amendments are docketed. Ravenna erroneously
13 states as fact that the amendment to F.11 was somehow a “failure” or a “major omission.”²³

14 **IV. CONCLUSION**

15 The City met its SEPA obligations pertaining to including in the EIS how the Proposal is
16 consistent with and inconsistent with the Seattle 2035 Comprehensive Plan and also met its
17 obligation to consider the relationship between the Proposal and existing land use plans. At the
18 very least, the City has raised genuine issues of material fact that would prevent the Hearing
19 Examiner from granting the Appellants’ Motions. For all the reasons above, the City requests
20 that the Hearing Examiner deny the Appellants’ Motions.

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22 //

23 ²² Ravenna Motion, p. 12, line 8-10.

1 DATED this 10th day of May 2018.

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²³ Ravenna's Motion, p. 9, line 21.