BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of: **WALLINGFORD COMMUNITY COUNCIL, ET AL.,** of the adequacy of the FEIS issued by the Director, Office of Planning and Community Development.	Hearing Examiner File W-17-006 through W-17-014 CITY OF SEATTLE'S RESPONSE TO WEST SEATTLE JUNCTION NEIGHBORHOOD ORGANIZATION'S MOTION FOR SUMMARY JUDGMENT AND CITY'S CROSS-MOTION FOR SUMMARY JUDGMENT REGARDING NOTICE

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I. INTRODUCTION AND RELIEF REQUESTED

In its "Motion for Summary Judgment Regarding City's Failure to Provide Adequate Notice of Determination of Significance Relating to MHA EIS" ("JuNO's Motion"), the West Seattle Junction Neighborhood Organization ("JuNO") contends the City's notice was inadequate. Its arguments are not based upon any requirements of SEPA. Instead, JuNO's Motion amounts to a request for more or different notice than is required under SEPA or the Seattle Municipal Code ("Code" or "SMC"). JuNO is not entitled to the relief it seeks. Indeed, as demonstrated below and in the attached Declaration of Geoffrey Wentlandt ("Wentlandt Dec." or "Wentlandt Declaration"), the steps in the process that JuNO characterizes as alleged defects are consistent with the City's code and SEPA. Thus, the City submits a Cross-Motion for Summary Judgment to establish the adequacy and reasonableness of: (1) the DS and scoping notice; (2) the City's publication in the Daily Journal of Commerce; and, (3) the scoping meetings. Because JuNO seeks relief to which it is not entitled under the law, the Examiner should grant the City's Cross-Motion and dismiss JuNO's issue.

JuNO's Motion also rests on mischaracterizations of the facts and even speculation and conjecture. The Wentlandt Declaration describes the City's outreach efforts, and establishes that throughout the MHA proposal's development, the City was candid and open about MHA's principles and actively sought input from members of the public. The Wentlandt Declaration demonstrates that there is a genuine material dispute over the facts upon which JuNO relies. Ultimately, that dispute is not relevant because JuNO's fundamental legal claim exceeds what is required by law. Nevertheless, even if the Examiner were to consider JuNO's legal theory, there is a genuine issue of material fact such that the Examiner should, at the very least, deny JuNO's Motion.

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Therefore, the City respectfully requests that the Examiner deny JuNO's Motion, and enter summary judgment affirming the City's actions on the three notice issues that JuNO's Motion challenges.

II. STATEMENT OF FACTS

The Wentlandt Declaration sets forth in detail the actions the City took with respect to the issues JuNO raises. First, consistent with SMC 25.05.510's requirement to publish in "the City's Official newspaper," the City published notice of the Determination of Significance ("DS Notice") in the Daily Journal of Commerce. The Office of the City Clerk publically identifies the Daily Journal of Commerce as the City's official newspaper, selected pursuant to the Seattle City Charter, and it is the Office of Planning & Community Development's ("OPCD") practice to publish legal notices in the Daily Journal of Commerce.[1]

During the scoping period, OPCD invited comments through the project website; via mail and email; and at two public scoping meetings held at the Seattle Summer Parkways Events in Rainier Valley on August 13, 2016, and in Ballard on August 27, 2016. In total, the OPCD received 59 scoping comments.[2]

The two public scoping meetings were attended by the lead EIS consultant, staff from the Office of Housing, and Geoffrey Wentlandt, senior planning manager with the Office of Planning and Community Development who participated in the City's outreach and helped prepare the FEIS.[3] At the meetings, the City's attendees actively answered questions and engaged in discussions with members of the public.[4] The City also provided scoping comment forms and handouts with more detailed information regarding the MHA

[1] Wentlandt Dec., ¶3.
[2] *Id.* ¶ 4.
[3] *Id.*, ¶ 1, 5.
[4] *Id.*, ¶ 5.

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proposal, including a clear statement that the proposal would consider "single-family rezones."[5] The decision to hold two scoping meetings at the Seattle Summer Parkways Events was a deliberate decision by OPCD designed to make the meetings more accessible and to reach a broader audience. The Seattle Summer Parkways Events were held on Saturdays and were widely attended by a broad range of citizens. By holding the scoping meetings at these events, OPCD intended to engage members of the public who may not have been aware of the scoping notice or the proposal.[6]

Additionally, at the time of scoping, the City was holding a number of community engagement events regarding MHA and HALA, including four HALA Community Focus Groups held in August that were open to the public. Though these events were not formally identified as part of the scoping process, these events included discussion of scoping as part of the events' agendas, and the City considered comments received from these events as part of the scoping process and integrated the comments to inform the scope of the EIS.[7]

In addition to the above notice and comment actions the City undertook as part of the SEPA environmental review process, the City extensively engaged the community regarding HALA's recommendations generally and the MHA proposal specifically.[8] During this community engagement process, well before and after the DS Notice and the commencement of scoping, the City openly and expressly informed the public about the development of the MHA proposal and its key elements, including the proposed rezones of single-family zones in urban villages. For example:

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[5] *Id*., ¶ 6, Exh. 1.
[6] *Id*., ¶ 7.
[7] *Id*., ¶ 8.
[8] JuNo's Motion, Declaration of Christine M. Tobin-Presser ("Tobin-Presser Dec."), Exh. L (list of meetups relating to HALA and MHA).

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- On January 26, 2016, the City held a large public event at which the City displayed a map of the area for proposed MHA implementation and a map of the proposed urban village expansions. Staff were on hand to discuss what those changes could mean to participants. These maps, or ones similar to them, were used in multiple presentations and events.[9]
- On April 19, 2016, the City held a major community open house at the Museum of History and Industry about HALA and MHA. The event's display boards included a map of where MHA zoning changes would take place, along with a clear statement that single family areas would be changed to Residential Small Lot or a Lowrise Multifamily zone. The City also published these materials on the City's website well before the scoping process.[10]
- Between April and August 2016, the City sought input from the community to shape the principles to guide MHA's implementation. These principles were discussed during multiple community meetings, focus group meetings open to the public, and in an online dialogue platform called Consider.it that received hundreds of comments. Highlighted as one of the key MHA principles was "Allow[ing] more variety of housing types in existing single-family zones within urban villages."[11]

III. ARGUMENT

A. Standard of Review.

HER 1.03 states that for questions of practice and procedure not covered by the HER, the Examiner "may look to the Superior Court Civil Rules for guidance." Civil Rule

[9] Wentlandt Dec., ¶ 9, Exh. 2.
[10] *Id.*, ¶ 10, Exh. 3.
[11] *Id.*, ¶ 11, Exh. 4.

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56(c) provides that a motion for summary judgment is properly granted where "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law."

When seeking summary judgment, "[a] party may not rest on formal pleadings, but must affirmatively present the factual evidence upon which he relies." *Leland v. Frogge*, 71 Wn.2d 197, 200–01, 427 P.2d 724, 727 (1967). For purposes of a summary judgment motion, a fact "is a reality rather than supposition or opinion." *McBride v. Walla Walla Cty.*, 95 Wn. App. 33, 37, 975 P.2d 1029, 1031 (1999).

B. JuNO's Criticisms of the City's Notice Are Not Based On SEPA's Requirements.

JuNO requests summary judgment regarding the City's alleged failure to provide notice of the DS based on the following assertions: "(1) that the DS Notice failed to adequately describe a main element of the City's MHA proposal as required by WAC 197.11.360 and SMC 25.05.360A; (2) that the City failed to provide notice of the determination of significance by a reasonable method as required by WAC 197.11.510(1); and (3) that the City failed to hold a public scoping meeting as required by SMC 25.05.409."[12] None of these assertions have merit and the City is entitled to judgment on those claims as a matter of law.

1. The DS Notice "describe[s] the main elements of the proposal" and is therefore sufficient.

SMC 25.05.360.A and WAC 197-11-360 describe what is required in a DS notice and state, "The DS shall describe the main elements of the proposal, the location of the site, if a site-specific proposal, and the main areas the lead agency has identified for

[12] JuNO's Motion at 3.

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discussion in the EIS." The DS Notice described the main elements of the proposal as follows:

> Description of proposal: The City of Seattle is **proposing amendments to Land Use Code (Seattle Municipal Code Title 23)** to implement a proposed new program, Mandatory Housing Affordability (MHA). MHA would require that all new multifamily and commercial developments meeting certain thresholds to either build affordable housing units on-site or make an in-lieu payment to support the development of new affordable housing. The MHA program would focus primarily on creating housing reserved for community members earning 60% of the Area Median Income (AMI) or below. MHA is expected to create a total of 6,000 new affordable housing units over the next 10 years. In order to implement the new MHA program, the City is **considering zoning code amendments to allow developments to build slightly higher or slightly more floor area in certain zones**.
>
> Alternatives to be addressed in the EIS include No Action, or continued growth as guided by the City's Comprehensive Plan and Land Use Code standards; and two action alternatives that will consider growth under different development patterns and Land Use Code standards. Both action alternatives will evaluate **increased allowable height and floor area in commercial and multi-family zones, as well as single family zones in designated urban villages and potential urban village expansion areas identified in the Seattle 2035 Comprehensive Plan.** It is likely that one action alternative will consider MHA implementation, and one alternative will consider MHA implementation with program measures seeking to reduce potential for displacement in high risk areas.

JuNO's Motion, Declaration of Christine M. Tobin-Presser ("Tobin-Presser Dec."), Exh. DD (emphases added).

JuNO argues the description is insufficient because JuNO believes the notice did not describe the proposed rezoning of single-family zones with enough clarity. However, the DS Notice expressly advises that the proposal considers "zoning code amendments" and "increased allowable height and floor area" in certain zones, with a specific reference to single-family zones. SEPA only requires a description of the "main elements of the proposal," not a detailed description of the individual elements. JuNO's wish for greater emphasis or details with respect to single-family zoning does not render the notice

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insufficient. The City is entitled to summary judgment that its scoping notice was adequate.

The facts undermine JuNO's claim that the DS Notice was insufficient. Indeed, the scoping comments elicited by the DS Notice demonstrate that the Notice provided the public with a clear understanding of the aspect of the project that JuNO now argues was not sufficiently described:

- "Redevelopment of single family areas, whether near or in urban villages, should not be a City policy";
- "There are enough properties already zoned multifamily and LR to provide the affordable homes needed"; and
- "Consider alternative(s) that do not increase allowable height, floor area, or building footprint through upzones."[13]

Therefore, the scoping comments demonstrate the adequacy of the City's notice and that it informed commenters of the very aspects of the proposal that JuNO alleges were unclear. These comments identify the concerns that JuNO alleges it would have raised regarding rezoning single-family zones. Its allegation that notice was insufficient is disingenuous.

In its statement of facts, JuNO asserts that the alleged notice deficiency failed to elicit miscellaneous public "concerns" that might otherwise have been submitted, such as "impacts on water runoff," "impacts on air quality from the release of asbestos" from demolition of older buildings, and "provid[ing] for different levels of MHA fees."[14] These assertions are not "facts." They are purely conjectural and speculative, and are not supported by any evidence. Moreover, these speculative allegations are entirely

[13] Tobin-Presser Dec., Exhibit LL at 5, 9.
[14] JuNO's Motion at 19.

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undermined by the fact that commenters submitted comments that demonstrated they understood from the DS that the proposal involved the rezoning of single-family zones, as described above, and other comments that raised those same concerns.[15]

Summary judgment cannot be granted based on unsupported and irrelevant allegations in the Motion. Accordingly, JuNO has not met its burden and the City is entitled to summary judgment that its DS Notice was legally adequate.

2. The City's method of providing notice complied with SEPA and Code requirements, and was therefore reasonable and adequate as a matter of law.

SMC 25.05.360 and 25.05.510 set forth the methods for providing notice of a DS and require, among other actions, publication in "the City's Official newspaper." JuNO argues, without citation to authority, that the City should have published notice in the Seattle Times. But the Seattle Times is not "the City's Official newspaper." The Charter of the City of Seattle, Art. VII, Sec. 3 defines the City's official newspaper and provides, "The 'City Official Newspaper,' which shall publish all official proceedings required by law to be published, shall be designated annually after a call for bids from the daily newspapers of general circulation published in the City at least six (6) days per week." The Office of the City Clerk publically identifies the Daily Journal of Commerce as the City's official newspaper selected pursuant to the Charter, and it is OPCD's practice to publish legal notices in the Daily Journal of Commerce.[16]

Therefore, JuNO's claim that the City should have published notice in the Seattle Times is not based in any SEPA requirement and is irrelevant. Again, JuNO's wish for a

[15] Tobin-Presser Dec., Exhibit LL at 6-7, 14, 17. Scoping comments include "Analyze impacts on stormwater drainage and sewer system"; "Address increased risks to water quality, public health, and environmental safety due to increased runoff"; "Consider impact(s) of construction . . . on CO2 and other greenhouse gas emission levels"; "Quantify the environmental impacts of replacing existing housing stock types"; an entire sections of comments regarding the mix of housing, use of fees, and equity, displacement, and vulnerable populations.

[16] Wentlandt Dec., ¶ 3.

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different form of notice, beyond what is required under SEPA, does not render the notice insufficient.

JuNO's claims that the City failed to use reasonable methods of providing notice as required under WAC 197-11-510(1) also have no merit. To the extent that JuNO claims the Code's notice methods are unreasonable JuNO appears to collaterally challenge the adequacy of the City's SEPA regulations. The Examiner is without jurisdiction to address challenges to the City's code in this limited appeal of the FEIS's adequacy.

3. The City's scoping meetings were sufficient.

SMC 25.05.409 provides;

> When a City department is lead agency for a City project or non-project action and the department determines that an EIS is required for the project, the department shall hold a public scoping meeting to determine the range of proposed actions, alternatives, possible mitigating measures, and impacts to be discussed in an EIS (see Sections 25.05.510 and 25.05.535).

JuNO does not dispute that the DS Notice provided notice of two public scoping meetings held in August 2016, and that the City held the meetings as announced in the DS Notice.[17] Rather, JuNO contends, without citation to authority, that the meetings were required to provide "a meaningful opportunity to gather with other impacted individuals, share thoughts and concerns with each other, [and] to present those ideas to the City within the context of an organized meeting," and that the scoping meetings here failed to provide such opportunities.

Again, JuNO's argument is unfounded. The state SEPA regulations do not require scoping meetings at all.[18] In SMC 25.05.409 the City has imposed on itself a requirement for one public scoping meeting for City-sponsored projects. However, neither the Code

[17] JuNO's Motion at 22, Tobin Presser Dec., Exh. DD.

[18] WAC 197-11-408(4) ("Meetings or scoping documents . . . may be used but are **not** required.") (Emphasis in original.).

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nor the SEPA regulations define or regulate the form of a scoping meeting or otherwise impose the specific requirements asserted by JuNO. To the contrary, the statutory scheme gives the City the discretion to choose what scoping process to apply and how to implement it. As Professor Settle explains;

> Scoping is **unfettered by process requirements**. The SEPA Commission intended "the scoping provisions to **allow the lead agency maximum discretion**" in soliciting comments which "may range from providing a telephone number for an official to take phone calls . . . to sending out information packets or holding meetings."[19]

Moreover, JuNO's characterization of the scoping meetings is again a purely subjective expression of opinion and argument that is unsupported by evidence. Contrary to JuNO's dismissive description of the meetings' substance, the City made available key players in the development of the MHA and the EIS.[20] These attendees did not simply passively receive comments, as JuNO portrays, but actively answered questions and engaged in discussions with members of the public.[21] At the meetings, the City provided handouts with more detailed information regarding the MHA proposal, including a clear statement that the proposal would consider "single-family rezones."[22]

JuNO also misses the point of the City's intention of holding the scoping meetings as planned. As detailed in the Wentlandt Declaration, by holding the meetings at the widely-attended Seattle Summer Parkways Events, the City intended to make the meetings more accessible and to reach a broader audience, including members of the public attending the event who may not have been aware of the scoping notice or the proposal.[23]

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[19] R. Settle, *The Washington State Environmental Policy Act: A Legal and Policy Analysis*, at 14-85 (2016). (Emphases added.).
[20] Wentlandt Dec., ¶ 1, 5.
[21] *Id*., ¶¶ 5-6.
[22] *Id*., Exh. 1.
[23] *Id*., ¶¶ 4, 7.

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Additionally, at the time of scoping, the City was holding a number of community engagement events regarding MHA and HALA, including four HALA Community Focus Groups held in August and which were open to the public. Though these events were not formally identified as part of the scoping process, these events included discussion of scoping as part of the events' agendas, and the City considered comments received from these events as part of the scoping process and integrated the comments to inform the scope of the EIS.[24] In light of the City's actions and the "maximum discretion" allowed to the lead agency when conducting scoping, the City's scoping meetings were sufficient.

C. JuNO's characterization of the City's outreach efforts are irrelevant and inaccurate.

JuNO dedicates a significant portion of its Statement of Facts to describing the City's outreach beyond SEPA's notice requirements, asserting that "the City misled the community with respect to MHA" and provided "inaccurate and misleading" information.[25] Preliminarily, JuNO implicitly recognizes the irrelevance of these matters because its "Legal Argument" section only raises issues relating to the DS Notice and scoping, not to the City's preliminary outreach.

Despite the irrelevance, JuNO's assertions should be addressed insofar as they mischaracterize the City's actions in several key respects. First, as set forth above, the City clearly and explicitly announced the MHA proposal's consideration of rezoning of single-family zones, well before the DS Notice and the publication of the Draft MHA Maps on October 2016.

Second, JuNO characterizes several events as MHA-specific events dedicated to discussing MHA only, when that was not the case. The first, fifth, and sixth meetups

[24] *Id.*, ¶ 8.
[25] JuNO's Motion at 9, 12.

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described in JuNO's Motion were events titled "Comprehensive Plan Meeting – West Seattle," "Housing Levy & HALA," and the "West Seattle VIEWS," respectively.[26] Based on the events' title alone, it should not be a surprise that the events did not discuss the MHA proposal in detail or specifically mention rezones of single-family zones.[27] As an example, the purpose of the November 2015 Comprehensive Plan Meeting was to discuss the then-proposed updates to the City's Comprehensive Plan, as JuNO admits.[28] All of the presentation's statements—that no changes are proposed to neighborhood plans, or that there was no proposal to rezone single-family zones at this point—were accurate with respect to the Comprehensive Plan update. Taking these statements to apply to or bind the MHA proposal, however, is unsupported.

Third, JuNO misses the distinction between rezones of single-family zones in urban villages and single family zones in the entire City (most of which will be completely unchanged by the MHA proposal) and conflates the City's statements regarding the two. For example, in its description of Mayor Murray's telephone town hall, JuNO omits the question to which Mayor Murray was responding. The question asked, "[D]o you have any plans to upzone single family lots **outside of urban centers** . . . ?"[29] The question provides the full and necessary context to Mayor Murray's response that "There [are] no plans in our proposal to change or upzone our single family neighborhoods. **[I]t affects urban villages** . . . ."[30] With the full context, the statements are not "inaccurate and misleading," as JuNO claims.[31] Similarly, contrary to JuNO's

[26] Tobin-Presser Dec., Exh. L.

[27] Although JuNO's Motion characterizes these events as "MHA Meetups," JuNO's Motion at 9, the City characterized these events more broadly as "HALA Meeetups" and did not represent that these events were dedicated to discussions of MHA. Tobin-Presser Dec., Exh. L.

[28] JuNO's Motion at 9.

[29] Tobin-Presser Dec., Exh. V at 3 (emphasis added).

[30] *Id.* (emphasis added).

[31] JuNO's Motion at 12.

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assertions,[32] the following statements are accurate and not misleading: "Zoning changes will only occur in our designated growth areas which affect less than 6% of our current Single Family Zoning. All other Single Family will remain as is." As is demonstrated by the documentary evidence on which JuNO relies in its motion, the reference to "designated growth areas" refers to urban centers and urban villages.[33] As demonstrated in the exhibits to the Wentlandt Declaration, the City has been clear and consistent in describing the proposed rezones of single-family zones in urban villages.

Finally, JuNO ignores the fact that the City's extensive outreach and community engagement efforts exceed SEPA's requirements and provided additional avenues for notice and comment. JuNO does not dispute that the City held a significant number of events and meetings regarding HALA and MHA before, during, and after the scoping process.[34] Besides the public scoping meeting, JuNO ignores the fact that none of these outreach events are required under SEPA as part of the scoping process.[35] Although the City's compliance with SEPA's scoping requirements establishes reasonableness and adequacy as a matter of law, the fact that the City provided more notice than was required counters JuNO's claims of unreasonable notice.

IV. CONCLUSION

As explained above, the City's actions that JuNO's Motion challenges—the DS and scoping notice, the City's publication in the Daily Journal of Commerce and the scoping meetings—are consistent with the requirements of SEPA and the Code, and are therefore adequate as a matter of law. Based on the foregoing, the City respectfully

[32] JuNO's Motion at 14.

[33] Tobin-Presser Dec., Exh. PP (excerpt of Comprehensive Plan defining urban villages as follows: "The urban village strategy is the City's growth strategy. This strategy concentrates most of the City's expected growth in urban centers and urban villages.")

[34] Tobin-Presser Dec., Exh. L (list of meetups relating to HALA and MHA).

[35] *See* SMC 25.05.409 (requiring public scoping meeting only).

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requests that the Examiner deny JuNO's Motion and enter summary judgment in the City's favor affirming the City's actions with respect to the issues raised in JuNO's Motion.

DATED this 11th day of May, 2018.

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