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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeals of
**WALLINGFORD COMMUNITY COUNCIL, ET
AL.,**

of the City of Seattle Citywide Implementation of
Mandatory Housing Affordability (MHA) Final
Environmental Impact Statement,

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

APPELLANT FRIENDS OF NORTH
RAINIER NEIGHORHOOD PLAN'S
MOTION FOR SUMMARY JUDGMENT
AND JOINDER IN SCALE'S MOTION
FOR SUMMARY JUDGMENT

(Appellant in No. W-17-014)

Appellant Friends of North Rainier Neighborhood Plan ("FNR") hereby submits its Motion
For Summary Judgment and Joinder in SCALE's Motion For Summary Judgment.

I. STATEMENT OF THE CASE

The Friends of North Rainier Neighborhood Plan (FNR) joins in the Statement of the
Case provided by SCALE, and supplements that Statement with the following background pertinent to
its own Motion For Summary Judgment. Where possible, links are provided in lieu of PDF exhibits.

In 2014, the City of Seattle adopted Ordinance 124513, and created a transit oriented rezone
over the area known as the Mount Baker Town Center. See Exhibit 2 ([Ordinance](#) linked here); Ex.

1 27, p. 4 ([Mount Baker Town Center Urban Design Framework](#), linked here). The Ordinance expands
2 the City’s Station Area Overlay District (SAOD), imposing a series of supplemental development
3 regulations designed for transit stations. See Ex. 3, p. 5 ([Director’s Analysis DPD](#) linked here); Ex.
4 27, p. 6 (linked above). The Ordinance rezoned 109 parcels on approximately 26 acres of land, with
5 the aim of increasing growth and density in and around the Mount Baker transit center, within the
6 North Rainier Hub Urban Village, with dense mixed use development reaching up to 125 feet high.
7 See Ex. 1 ([Fiscal Note](#), linked here); Ex. 27, p. 14 (linked above).

8 **Mount Baker Town Center.** On its face, the rezone aims to create a vibrant walkable transit
9 oriented development in an area that has long been recognized as suffering from major deficits in
10 pedestrian oriented infrastructure. This blighted area is unwelcoming and unsafe to both pedestrians
11 and residents. Even before the rezone, the area was in need of substantial investment to overcome
12 serious deficits in infrastructure and public amenities. See Ex. 27, App. C at pp. 14 and 16-17 (North
13 Rainier Neighborhood Plan Update, linked above); Ex. 27, pp. 15 and 20 (linked above).

14 For example, for more than a decade, the City has documented the North Rainier
15 Neighborhood as suffering from serious gaps in open space, worse than other areas of the Southeast
16 Sector. See Ex. 59 ([Mount Baker Station Area Open Space Nexus Analysis](#), linked here); Ex. 58, pp.
17 27-30 and App. B (Gap Report 2001); Ex. 58 (2011 Gap Report Update).

18 One major challenge to Town Center livability is the dominance of the automobile. The Town
19 Center is divided by the intersection of two major traffic corridors: Rainier Avenue South and MLK
20 Jr. Way. Each corridor carries over 30,000 vehicle trips per day. These traffic volumes presented
21 challenges for the areas considerable pedestrian traffic, which included students from nearby Franklin
22 High School, the transit center and light link station, and a surrounding residential population in which
23 30% of the residents do not have a car. See Ex. 56a, p. 4 ([DPD Heffron Transport Bus Report](#), linked

1 here). Suffice it to say that even before the rezone, the environment was “very uninviting” to
2 pedestrians and residents, “as there are very few areas to rest or relax.” Ex. 59, p. 3 (linked above).

3 **Neighborhood Planning.** In the early 1990’s, Seattle began a neighborhood planning effort
4 that spanned 38 Seattle neighborhoods. Ex. 56g ([North Rainier Neighborhood Plan, 1999](#), linked
5 here). The plans provided the City with direction on a broad range of subjects important to the
6 neighborhoods, which would be incorporated into the City’s Comprehensive Plan. The North Rainier
7 Neighborhood Plan was completed in 1999. Ex. 3, p. 10 (linked above). The City recognized the
8 North Rainier Neighborhood as one of the most diverse neighborhoods in the City. See Ex. 27,
9 Appendix B (Resolution 31204, linked above); Ex. 56f, p. 2 ([Demographic Summary](#), linked here).

10 In 2009, the North Rainier Neighborhood Plan was updated to take into account changed
11 circumstances, including the new light link rail service. The update process engaged a broad cross
12 section of the community. This update resulted in revisions to the Neighborhood Plan, which were
13 reflected in Comprehensive Plan amendments adopted by the City Council. See Ex. 53,
14 Neighborhood Planning Element, Section B-21; Ex. 27, App. C (North Rainier Neighborhood Plan
15 Update, linked above); Ex. 56f (North Rainier Baseline Report, linked above); Ex. 3, p. 10 (linked
16 above); Ex. 27, p. 5 (linked above). The City prepared a document explaining, in detail, how the
17 North Rainier planning process was relied upon to update the Comprehensive Plan. See Ex. 73
18 ([North Rainier Goals and Policies](#), linked here).

19 A central theme of the Neighborhood Plan was the creation of a vital, pedestrian friendly,
20 “transit oriented development” within the Town Center. Ex. 53, Sec. B-21 (including NR-P1). The
21 Mount Baker Town Center was envisioned as a vibrant neighborhood core, with open space and
22 parks, and development standards to accommodate a vibrant pedestrian environment for people of all
23 ages and abilities. Ex. 53, NR-G1 and NR-P1, NR-G8, NR-G13 and G14, NR-P32 to P35, NR-P12,

1 NR-P37 to NR-P40; Ex. 27, App. C at Goals 6 and 8 (Plan pp. 11 and 14-15, linked above); and Ex.
2 27, p. 5 (linked above). These goals and policies were needed to help make the Town Center the
3 “heart of the neighborhood” -- an inviting and livable place, where people could gather and engage in
4 physical activity. Ex. 27, App. C Strategy 8.2 (linked above); Ex. 56g, p. 57 (linked above). The
5 Town Center was to help the blighted area achieve qualities enjoyed by other more affluent Seattle
6 neighborhoods, “where public places and open spaces help create a sense of identity and welcome.”
7 See Ex. 27, p. 5 (linked above).

8 **Planning Commission Guidance On “Transit Oriented Development”.** The Seattle
9 Planning Commission, appointed by the Mayor and City Council, serves as “the steward of the Seattle
10 Comprehensive Plan”. In that capacity the Commission advises the Mayor, Council and City
11 Departments in their efforts to plan for and manage growth in Seattle. Ex. 64 ([Seattle Transit](#)
12 [Communities](#), linked here), preface.

13 In 2010, the Seattle Planning Commission issued a report to guide the City in transit oriented
14 development: “Seattle Transit Communities: Integrating Neighborhoods With Transit”. Ex. 64
15 (linked above). The Report was designed to guide the City in its mission to fulfill Comprehensive
16 Plan goals related to the creation of livable and sustainable transit oriented communities. Ex. 64,
17 Introduction (linked above). The Report emphasized the need for the City to support “essential transit
18 infrastructure like parks”, and prioritized transit communities “where timely investment is urgent and
19 will create the most impact.” Id. The Commission provided guidance on land use strategies needed
20 to achieve the essential components for livability, “such as adequate open space”. Ex. 64, p. 13
21 (linked above). These essential components were necessary to prevent urban life from becoming
22 “unattractive and inhospitable”. Ex. 64, p. 32 (linked above).
23

1 The Mount Baker rezone area was identified as a “Mixed Use Center”, with urgent near-term
2 planning needs. Ex. 64, pp. 42, 45, 48 (linked above). According to the Commission, the success of a
3 Mixed Use Center depends upon a number of factors, including:

4 Generous high quality shared public spaces which are critically important to livability
5 and soften the effects of greater density and make urban living more attractive.

6 Public open space typically includes large public plazas, semi-public plazas at the base
7 of tall buildings, and smaller pocket parks. ...

8 Ex. 64, pp. 14, 16-18 (linked above). As a strategy to create public open space for livability, the
9 Commission recommended “zoning incentives and density bonuses to allow taller buildings and
10 higher densities”. Ex. 64, p. 19 (linked above). The Commission’s report reinforced the City’s
11 commitments to transit oriented development within the Town Center, as set forth in the City’s
12 Comprehensive Plan. See Ex. 53, Sec. B-21. See also Josh Brower, Planning Commissioner,
13 interview with KUOW: <http://kuow.org/post/building-seattles-future-around-transit> (April, 2014).

14 **DPD’s Urban Design Framework.** In 2010, the City Council directed DPD to develop an
15 urban design framework based on the North Rainier Neighborhood Plan, “to inform Council decisions
16 related to land use and the built environment.” The Framework was, at minimum, to include
17 preferred use locations, proposed incentive structures for public benefits, open space concepts, and an
18 analysis of transferable development rights. See Ex. 65. The Council planned to implement the
19 framework plans through legislation. Ex. 27, App. B (Res. 31204, linked above).

20 In 2011, DPD issued the Mount Baker Town Center Urban Design Framework, intended to
21 carry out key actions identified by the community during the recent update of the North Rainier
22 Neighborhood Plan. Ex. 27 (linked above); Ex. 3, p. 3 and 12 (linked above). The Urban Design
23 Framework was to provide a blueprint for how the physical elements of the neighborhood plan update

1 can be realized. “The Urban Design Framework’s analysis and recommendations provide the basis
2 for the proposed rezones and text amendments” proposed by DPD. Ex. 3, p. 12 (linked above).

3 The Urban Design Framework included a section on “Open Space and Gateways”. The
4 Framework recognized the area suffers from one of the “largest gaps in Usable Open Space”, and
5 discussed the importance of “open spaces that invite people to gather and encourage physical
6 activity”. Ex. 27, pp. 20 and 23 (linked above); accord Ex. 53, Sec. B-21 (Open Space Goals and
7 Policies). To achieve this vision, the Framework called for creation of new open space in the Town
8 Center core through future development and public infrastructure improvements. Ex. 27, pp. 20 and
9 22 (linked above). To address the open space goals and policies, the Framework proposed
10 designating the 13-acre Lowe’s site for “an open space and pathways system”. Ex. 27, p. 22 (linked
11 above). In Figure 5, “Proposed Open Space and Gateways”, the Urban Design Framework marks the
12 Lowe’s building with a green tree to designate “Open Space within New Development”. Ex. 27, p.
13 21 (Fig. 5, linked above). The Framework also calls for animation of an underutilized station plaza
14 southeast of the light link station as additional open space, helpful for residents and for business
15 development. Ex. 27, pp. 21-22 (linked above). Open space was identified as important to the
16 Neighborhood Plan commitment to an environmentally sustainable community. Ex. 27, p. 23 (linked
17 above). For implementation, the Framework called for a rezone to encourage redevelopment of
18 parcels surrounding the light rail station in a manner that would incorporate the needed open space
19 amenities, with “incentive structures for public benefits” where building heights approach 125 feet.
20 Ex. 27, pp. 24 and 27 (linked above). The Framework’s matrix of action items and responsible parties
21 for open space reiterated the need to “Establish new open space in the core of the Town Center”, and
22 “Animate and enhance the station plaza”. Ex. 27, p. 30 (linked above).

1 The City’s consultants likewise assumed that the City’s proposed changes would help bring
2 urban vitality to the challenged Town Center through the creation of public open space. Ex. 56a, p. 4
3 (linked above); Ex. 56b, p. 1 ([Station Area Transportation Analysis](#), linked here).

4 **DPD’s Open Space Nexus Analysis.** On December 5, 2012, DPD prepared an internal
5 document entitled, “Mount Baker Station Area Open Space Nexus Analysis”. Ex. 59 (linked above).
6 In the analysis, DPD recognized open space as a “priority amenity” for the Town Center’s rezone.
7 Ex. 59, p. 1 (linked above). The Nexus Analysis notes that the City’s “Comprehensive Plan affirms
8 the importance of a variety of open space opportunities”, and reviews the “overall need of the
9 neighborhood” in light of standards established by Parks and Recreation. Ex. 59, p. 1 (linked above).

10 The Nexus Analysis estimated “the level of existing open space needs in the Station Area and
11 the likely open space need generated by new projects in order to evaluate the appropriateness of
12 proposed open space incentives allowed through the incentive zoning program.” Ex. 59, p. 1 (linked
13 above). The Nexus Analysis confirmed the high need for open space in and around the Town Center:

14 [T]he North Rainier Hub Urban Village is very auto-oriented neighborhood with a
15 substantial amount of parking lots and driveways. The environment is very uninviting
16 to pedestrians as there are very few areas to rest or relax. In order to maximize the
17 investment of the light rail station in this area, it will very important to develop more
open space opportunities that can help to make this area a more pleasant place for
pedestrians. Small, local open space opportunities will be especially important since
the large roads and auto-oriented environment discourage walking.

18 Ex. 59, p. 3 (linked above). The analysis notes “a substantial existing open space need within the
19 Mount Baker Station Area” which justified the use of incentive zoning for public open space
20 amenities. Ex. 59, p. 4 (linked above). After confirming existing open space needs, the Nexus
21 Analysis analyzed the additional open space demands created by the rezone itself, and the extent to
22 which the currently proposed incentive zoning would address the open space gap. The analysis
23 assumed the “maximum” open space provided by the proposed incentive zoning, assuming buildings

1 achieved 125 feet or higher. Ex. 59, p. 4-5 (linked above). The report determined that under each
2 proposed zone, “the maximum open space provided through incentive zoning would be less than total
3 estimated need generated by each project.” Ex. 59, p. 5 (linked above). In other words, DPD’s
4 proposed formulas for transit oriented incentive zoning would not bridge the open space gap at all –
5 instead, DPD’s rezone formula only served to worsen the Town Center’s already blighted open space
6 situation.

7 Another internal open space analysis by DPD proposed an incentive formula that sought to
8 achieve comparable open space amenities found in the Pearl District, a successful transit oriented
9 development. See Ex. 62 (DPD SM Additional Height Language). The author of this analysis
10 proposed a formula that would address the open space needs in the Town Center, with creation of a
11 civic square for Town Center residents. These analyses do not appear to have been shared with the
12 community, or with the Council.

13 **DPD’s Director’s Analysis.** On June 14, 2013, DPD issued its Director’s Analysis and
14 Recommendation on the Rezone Proposal for an Ordinance with incentive formulas that actually
15 worsened the open space blight. Ex. 3 (linked above). DPD summarized the intent of the proposed
16 Ordinance as “to provide for a pedestrian-oriented town center by concentrating commercial and
17 residential growth in the Mount Baker Town Center.” Ex. 3, p. 14 (linked above). The proposed
18 development standards were ostensibly intended to “create an environment that supports the vision of
19 the neighborhood plan and update to create a town center that is pedestrian-oriented, vibrant and
20 livable.” Ex. 3, pp. 51 and 56 (linked above); Ex. 63. In doing so, DPD noted that its ordinance
21 sought to apply existing South Lake Union standards to North Rainier. Ex. 3, p. 51 (linked above)
22 Ex. 33, Attachment C.
23

1 **The City’s Analyses of Open Space and Incentive Zoning.** On the subject of “Bonus floor
2 are for open space amenities”, the Director’s Analysis noted that while the City’s current code did not
3 contain standards for areas outside of Downtown, the Downtown standards “are a good fit for the
4 proposed site.” Ex. 3, p. 52 (linked above). The Director’s Analysis reported on the “Large Lot
5 Opportunity” presented by the Lowe’s parcels, and indicated that increasing the allowed development
6 height to 125 feet would encourage “open space at the ground floor. ... The higher heights would
7 provide more flexibility for creating open spaces surrounding the buildings.” Ex. 3, p. 14 (linked
8 above). DPD indicated it was implementing special standards that would “include a requirement for
9 open space corridors interior” to two large parcels (the “Lowe’s Parcels”) which would be rezoned to
10 allow development to reach 125 feet in height. The Director’s Analysis further indicated that public
11 benefits in the form of open space would be available through incentive zoning on these two parcels.
12 See Ex. 3, p. 6 (linked above). The Director’s Analysis of “Incentive Zoning” posited that the
13 proposed regulations would incentivize developers to provide public open space benefits for the
14 residents and pedestrians of the dense high rise Town Center. Ex. 3, Part VII, pp. 54-55 (linked
15 above).

16 However, the DPD’s Director’s Analysis did not reveal that the proposed Ordinance actively
17 defeats the open space policies which the neighborhood and City experts had deemed essential for the
18 Comprehensive Plan’s vision of transit oriented development in the Town Center. Ex. 3 (linked
19 above); see also Ex. 10. In fact, the Ordinance provides “zero” publicly usable open space unless
20 development on the Lowe’s parcels were to exceed the economically impractical height of 85 feet. To
21 the extent that development exceeds 85 feet, the proposed DPD formula focused almost
22 predominantly on the public benefit of “affordable housing”. Rather than achieve the essential
23 components of livability, DPD’s formula for incentive zoning effectively marginalized Town Center

1 residents to an unfriendly living environment of unmanaged density where the City’s open space gaps
2 are worsened.

3 **Capital Planning.** The Seattle Planning Commission stressed the City’s obligation to
4 coordinate the Comprehensive Plan Urban Village strategy with the Capital Improvement Plan and
5 other City capital investments. Ex. 64 (linked above), p. 38; Ex. 53, Capital Facilities Element.
6 However, the City completely failed to plan for capital facility investment needed to overcome the
7 worsening open space gaps created by its self-defeating and ineffective open space incentive formulas.

8 The lack of capital facility planning is also reflected in the Department of Parks and
9 Recreation’s Adopted Capital Improvement Program (2014-2019), which sets forth a plan for
10 expenditures on parks and open space throughout the City of Seattle between now and 2019. Ex. 74
11 ([Parks and Rec CIP](#), linked here). The Parks CIP identifies budget sheets for each project. The
12 voluminous Parks CIP includes only one project connected with the North Rainier Valley
13 Neighborhood Plan / Urban Village. See Ex. 74 – Jimi Hendrix Park Improvements (linked above).
14 The project lies distant from the rezone area, and adds no open space to offset the density targeted for
15 the blighted Town Center, or to bridge any of the open space gaps recognized in the North Rainier
16 Urban Village.

17 **Adoption.** On June 23, 2014, the Council approved the Ordinance by majority vote, and
18 issued a Divided Report in favor of Council Bill 118111. Ex. 50. With respect to the controversy
19 over 125 foot high development, the majority explained that the high rise development was important
20 to advance the incentive zoning provisions, which were “important to help provide open space and
21 resources for affordable housing”. Ex. 50, p. 3. The Ordinance passed over the objection of now
22 Council President Bruce Harrell.

1
2 The Friends of North Rainier Neighborhood Plan (FNR) joins in the Statement of the Case provided
3 by SCALE, and supplements that Statement with the following background pertinent to its own
4 Motion For Summary Judgment.

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6 over the area known as the Mount Baker Town Center. See Exhibit 2 ([Ordinance](#) linked here); Ex.
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9 regulations designed for transit stations. Ex. 3, p. 5 (Director’s Analysis DPD); Ex. 27, p. 6 (linked
10 above). The Ordinance rezoned 109 parcels on approximately 26 acres of land, with the aim of
11 increasing growth and density in and around the Mount Baker transit center, within the North Rainier
12 Hub Urban Village, with dense mixed use development reaching up to 125 feet high. Ex. 1; Ex. 27,
13 p. 14.

14 **Mount Baker Town Center.** On its face, the rezone aims to create a vibrant walkable transit
15 oriented development in an area that has long been recognized as suffering from major deficits in
16 pedestrian oriented infrastructure. This blighted area is unwelcoming and unsafe to both pedestrians
17 and residents. Even before the rezone, the area was in need of substantial investment to overcome
18 serious deficits in infrastructure and public amenities. See Ex. 27, App. C at pp. 14 and 16-17 (North
19 Rainier Neighborhood Plan Update); Ex. 27, pp. 15 and 20.

20 For example, for more than a decade, the City has documented the North Rainier
21 Neighborhood as suffering from serious gaps in open space, worse than other areas of the Southeast
22 Sector. See Ex. 59 (Mount Baker Station Area Open Space Nexus Analysis); Ex. 58, pp. 27-30 and
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2 Center is divided by the intersection of two major traffic corridors: Rainier Avenue South and MLK
3 Jr. Way. Each corridor carries over 30,000 vehicle trips per day. These traffic volumes presented
4 challenges for the areas considerable pedestrian traffic, which included students from nearby Franklin
5 High School, the transit center and light link station, and a surrounding residential population in which
6 30% of the residents do not have a car. Ex. 56a, p. 4. Suffice it to say that even before the rezone, the
7 environment was “very uninviting” to pedestrians and residents, “as there are very few areas to rest or
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13 Plan was completed in 1999. Ex. 3, p. 10. The City recognized the North Rainier Neighborhood as
14 one of the most diverse neighborhoods in the City. See Ex. 27, Appendix B (Resolution 31204); Ex.
15 56f, p. 2 (Demographic Summary).

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17 circumstances, including the new light link rail service. The update process engaged a broad cross
18 section of the community. This update resulted in revisions to the Neighborhood Plan, which were
19 reflected in Comprehensive Plan amendments adopted by the City Council. See Ex. 53,
20 Neighborhood Planning Element, Section B-21; Ex. 27, App. C (North Rainier Neighborhood Plan
21 Update); Ex. 56f (North Rainier Baseline Report); Ex. 3, p. 10; Ex. 27, p. 5. The City prepared a
22 document explaining, in detail, how the North Rainier planning process was relied upon to update the
23 Comprehensive Plan. Ex. 73.

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2 “transit oriented development” within the Town Center. Ex. 53, Sec. B-21 (including NR-P1). The
3 Mount Baker Town Center was envisioned as a vibrant neighborhood core, with open space and
4 parks, and development standards to accommodate a vibrant pedestrian environment for people of all
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6 NR-P37 to NR-P40; Ex. 27, App. C at Goals 6 and 8 (Plan pp. 11 and 14-15); and Ex. 27, p. 5. These
7 goals and policies were needed to help make the Town Center the “heart of the neighborhood” -- an
8 inviting and livable place, where people could gather and engage in physical activity. Ex. 27, App. C
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10 by other more affluent Seattle neighborhoods, “where public places and open spaces help create a
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18 The Report was designed to guide the City in its mission to fulfill Comprehensive Plan goals related
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20 Report emphasized the need for the City to support “essential transit infrastructure like parks”, and
21 prioritized transit communities “where timely investment is urgent and will create the most impact.”
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2 were necessary to prevent urban life from becoming “unattractive and inhospitable”. Ex. 64, p. 32.

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4 planning needs. Ex. 64, pp. 42, 45, 48. According to the Commission, the success of a Mixed Use
5 Center depends upon a number of factors, including:

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10 recommended “zoning incentives and density bonuses to allow taller buildings and higher densities”.

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12 development within the Town Center, as set forth in the City’s Comprehensive Plan. See Ex. 53, Sec.
13 B-21. See also Josh Brower, Planning Commissioner, interview with KUOW:
14 <http://kuow.org/post/building-seattles-future-around-transit> (April, 2014).

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22 carry out key actions identified by the community during the recent update of the North Rainier
23 Neighborhood Plan. Ex. 27; Ex. 3, p. 3 and 12. The Urban Design Framework was to provide a

1 blueprint for how the physical elements of the neighborhood plan update can be realized. “The
2 Urban Design Framework’s analysis and recommendations provide the basis for the proposed rezones
3 and text amendments” proposed by DPD. Ex. 3, p. 12.

4 The Urban Design Framework included a section on “Open Space and Gateways”. The
5 Framework recognized the area suffers from one of the “largest gaps in Usable Open Space”, and
6 discussed the importance of “open spaces that invite people to gather and encourage physical
7 activity”. Ex. 27, pp. 20 and 23; accord Ex. 53, Sec. B-21 (Open Space Goals and Policies). To
8 achieve this vision, the Framework called for creation of new open space in the Town Center core
9 through future development and public infrastructure improvements. Ex. 27, pp. 20 and 22. To
10 address the open space goals and policies, the Framework proposed designating the 13-acre Lowe’s
11 site for “an open space and pathways system”. Ex. 27, p. 22. In Figure 5, “Proposed Open Space and
12 Gateways”, the Urban Design Framework marks the Lowe’s building with a green tree to designate
13 “Open Space within New Development”. Ex. 27, p. 21 (Fig. 5). The Framework also calls for
14 animation of an underutilized station plaza southeast of the light link station as additional open space,
15 helpful for residents and for business development. Ex. 27, pp. 21-22. Open space was identified as
16 important to the Neighborhood Plan commitment to an environmentally sustainable community. Ex.
17 27, p. 23. For implementation, the Framework called for a rezone to encourage redevelopment of
18 parcels surrounding the light rail station in a manner that would incorporate the needed open space
19 amenities, with “incentive structures for public benefits” where building heights approach 125 feet.
20 Ex. 27, pp. 24 and 27. The Framework’s matrix of action items and responsible parties for open space
21 reiterated the need to “Establish new open space in the core of the Town Center”, and “Animate and
22 enhance the station plaza”. Ex. 27, p. 30.

1 The City’s consultants likewise assumed that the City’s proposed changes would help bring
2 urban vitality to the challenged Town Center through the creation of public open space. Ex. 56a, p. 4;
3 Ex. 56b, p. 1.

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5 document entitled, “Mount Baker Station Area Open Space Nexus Analysis”. Ex. 59. In the
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7 p. 1. The Nexus Analysis notes that the City’s “Comprehensive Plan affirms the importance of a
8 variety of open space opportunities”, and reviews the “overall need of the neighborhood” in light of
9 standards established by Parks and Recreation. Ex. 59, p. 1.

10 The Nexus Analysis estimated “the level of existing open space needs in the Station Area and
11 the likely open space need generated by new projects in order to evaluate the appropriateness of
12 proposed open space incentives allowed through the incentive zoning program.” Ex. 59, p. 1. The
13 Nexus Analysis confirmed the high need for open space in and around the Town Center:

14 [T]he North Rainier Hub Urban Village is very auto-oriented neighborhood with a
15 substantial amount of parking lots and driveways. The environment is very uninviting
16 to pedestrians as there are very few areas to rest or relax. In order to maximize the
17 investment of the light rail station in this area, it will very important to develop more
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pedestrians. Small, local open space opportunities will be especially important since
the large roads and auto-oriented environment discourage walking.

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19 Station Area” which justified the use of incentive zoning for public open space amenities. Ex. 59, p.
20 4. After confirming existing open space needs, the Nexus Analysis analyzed the additional open
21 space demands created by the rezone itself, and the extent to which the currently proposed incentive
22 zoning would address the open space gap. The analysis assumed the “maximum” open space
23 provided by the proposed incentive zoning, assuming buildings achieved 125 feet or higher. Ex. 59,

1 p. 4-5. The report determined that under each proposed zone, “the maximum open space provided
2 through incentive zoning would be less than total estimated need generated by each project.” Ex. 59,
3 p. 5. In other words, DPD’s proposed formulas for transit oriented incentive zoning would not bridge
4 the open space gap at all – instead, DPD’s rezone formula only served to worsen the Town Center’s
5 already blighted open space situation.

6 Another internal open space analysis by DPD proposed an incentive formula that sought to
7 achieve comparable open space amenities found in the Pearl District, a successful transit oriented
8 development. See Ex. 62 (DPD SM Additional Height Language). The author of this analysis
9 proposed a formula that would address the open space needs in the Town Center, with creation of a
10 civic square for Town Center residents. These analyses do not appear to have been shared with the
11 community, or with the Council.

12 **DPD’s Director’s Analysis.** On June 14, 2013, DPD issued its Director’s Analysis and
13 Recommendation on the Rezone Proposal for an Ordinance with incentive formulas that actually
14 worsened the open space blight. Ex. 3. DPD summarized the intent of the proposed Ordinance as “to
15 provide for a pedestrian-oriented town center by concentrating commercial and residential growth in
16 the Mount Baker Town Center.” Ex. 3, p. 14. The proposed development standards were ostensibly
17 intended to “create an environment that supports the vision of the neighborhood plan and update to
18 create a town center that is pedestrian-oriented, vibrant and livable.” Ex. 3, pp. 51 and 56; Ex. 63. In
19 doing so, DPD noted that its ordinance sought to apply existing South Lake Union standards to North
20 Rainier. Ex. 3, p. 51; Ex. 33, Attachment C.

21 **The City’s Analyses of Open Space and Incentive Zoning.** On the subject of “Bonus floor
22 are for open space amenities”, the Director’s Analysis noted that while the City’s current code did not
23 contain standards for areas outside of Downtown, the Downtown standards “are a good fit for the

1 proposed site.” Ex. 3, p. 52. The Director’s Analysis reported on the “Large Lot Opportunity”
2 presented by the Lowe’s parcels, and indicated that increasing the allowed development height to 125
3 feet would encourage “open space at the ground floor. ... The higher heights would provide more
4 flexibility for creating open spaces surrounding the buildings.” Ex. 3, p. 14. DPD indicated it was
5 implementing special standards that would “include a requirement for open space corridors interior”
6 to two large parcels (the “Lowe’s Parcels”) which would be rezoned to allow development to reach
7 125 feet in height. The Director’s Analysis further indicated that public benefits in the form of open
8 space would be available through incentive zoning on these two parcels. See Ex. 3, p. 6. The
9 Director’s Analysis of “Incentive Zoning” posited that the proposed regulations would incentivize
10 developers to provide public open space benefits for the residents and pedestrians of the dense high
11 rise Town Center. Ex. 3, Part VII, pp. 54-55.

12 However, the DPD’s Director’s Analysis did not reveal that the proposed Ordinance actively
13 defeats the open space policies which the neighborhood and City experts had deemed essential for the
14 Comprehensive Plan’s vision of transit oriented development in the Town Center. Ex. 3; see also Ex.
15 10. In fact, the Ordinance provides “zero” publicly usable open space unless development on the
16 Lowe’s parcels were to exceed the economically impractical height of 85 feet. To the extent that
17 development exceeds 85 feet, the proposed DPD formula focused almost predominantly on the public
18 benefit of “affordable housing”. Rather than achieve the essential components of livability, DPD’s
19 formula for incentive zoning effectively marginalized Town Center residents to an unfriendly living
20 environment of unmanaged density where the City’s open space gaps are worsened.

21 **Capital Planning.** The Seattle Planning Commission stressed the City’s obligation to
22 coordinate the Comprehensive Plan Urban Village strategy with the Capital Improvement Plan and
23 other City capital investments. Ex. 64, p. 38; Ex. 53, Capital Facilities Element. However, the City

1 completely failed to plan for capital facility investment needed to overcome the worsening open space
2 gaps created by its self-defeating and ineffective open space incentive formulas.

3 The lack of capital facility planning is also reflected in the Department of Parks and
4 Recreation's Adopted Capital Improvement Program (2014-2019), which sets forth a plan for
5 expenditures on parks and open space throughout the City of Seattle between now and 2019. Ex. 74.
6 The Parks CIP identifies budget sheets for each project. The voluminous Parks CIP includes only
7 one project connected with the North Rainier Valley Neighborhood Plan / Urban Village. See Ex. 74
8 – Jimi Hendrix Park Improvements. The project lies distant from the rezone area, and adds no open
9 space to offset the density targeted for the blighted Town Center, or to bridge any of the open space
10 gaps recognized in the North Rainier Urban Village.

11 **Adoption.** On June 23, 2014, the Council approved the Ordinance by majority vote, and
12 issued a Divided Report in favor of Council Bill 118111. Ex. 50. With respect to the controversy
13 over 125 foot high development, the majority explained that the high rise development was important
14 to advance the incentive zoning provisions, which were “important to help provide open space and
15 resources for affordable housing”. Ex. 50, p. 3. The Ordinance passed over the objection of now
16 Council President Bruce Harrell.

17 **Growth Management Act Decision.** On April 1, 2015, the Central Puget Sound Growth
18 Management Hearings Board decided an appeal arising from the City's failure to address Southeast
19 Seattle's worst open space gap at the heart of the North Rainier Town Center. *Abolins vs. City of*
20 *Seattle*, Central Puget Sound GMA Board Case No. 14-3-0009 – Final Decision and Order, pages 17-
21 20. With respect to the North Rainier open space gap, the Board found the need for a usable open
22 space within 1/8 mile of the Hub urban village. The Board went on to find that the City's open space
23

1 planning reflected a contradictory failure to address a clear need in North Rainier, at a time when a
2 major upzone was being proposed:

3 The [2011 Gap Report Update] report states that all the urban villages have sufficient
4 Usable Open Space, but contradicts itself on the same page by stating “**the North
5 Rainer Hub Urban Village has the largest gaps in Usable Open Space with over
6 half of the Urban Village located farther than 1/8 of a mile from park sites.**” The
7 Board fails to see how the Hub Urban Village can have sufficient useable open space if
8 the space that is being counted is too far away to qualify as useable. In fact, the area
being up-zoned for highest density appears to be furthest from existing parks. This
situation is made worse by the fact that existing open spaces are separated from the
urban Hub by two high-volume arterials, each carrying over 30,000 vehicle trips daily,
with inadequate pedestrian crossings. In one block of the upzoned Hub along Martin
Luther King Jr. Way, there is not even a sidewalk.

9
10 Final Decision and Order, pp. 18-19 (footnoted citations omitted). The Board also noted the City’s
11 internal documents found that the City’s own Comprehensive Plan and internal City documents
12 affirmed “the importance of a variety of open space opportunities” in the North Rainier Urban Village.
13 Decision and Order, p. 19. The GMA Board was not impressed with the City’s contradictory
14 positions, and found ample evidence that the City’s open space planning was a failure when it came to
15 identified gaps in the North Rainier Urban Village:

16 The City cannot have it both ways. Either there is a lack of open space that justifies
17 incentive zoning provisions, or there is plenty of open space such that provisions
incentivizing developers to provide public open space are not appropriate.

18 **The Board finds** the City’s extensive inventory, needs analysis, and planning
19 documents amply demonstrate that the current level of useable open space in the North
Rainier Hub Urban Village is inadequate to satisfy its distribution-based goals.

20 Final Decision and Order, pp. 17-20 (footnoted citations omitted). The Board went on to state that
21 “without the City’s commitment to investment in livability, the area is just as likely to remain blighted
22 and underdeveloped.” Decision and Order, p. 38. Despite the foregoing finding, the Board went on
23 and gave the City a break. The Board essentially concluded that an award of relief was premature, as

1 the City still had time to supply the capital planning needed to address open space needs for the North
2 Rainier Hub Urban Village rezone. Decision and Order, p. 39.

3 **The North Rainier Town Center Park.** One month before the GMA Board’s decision, the
4 City embarked on a significant project that, on its face, was clearly designed to finally bridge
5 Southeast Seattle’s worst open space gap. In coordination with the King County Conservation
6 Futures Program, the City created an acquisition project known as the [North Rainier Town Center](#)
7 [Park](#) (March 18, 2015, linked here). This project gave hope that, as suggested by the GMA Board,
8 the City was finally going to preserve an open space for the badly needed park, before development
9 pressures rendered that an impossibility. Consistent with this proposal, multiple departments from
10 the City came together with community members and developed a preliminary design showing how
11 the neighborhood park could serve current and future members of the North Rainier transit oriented
12 community. See Declaration of Abolins, attached Park Designs. The design work reflected support
13 from the Department of Transportation, with anticipated roadway investments, as well as input from
14 the Seattle Parks Foundation, Parks and Recreation, and the Friends of Seattle Olmsted Parks.
15 Declaration of Abolins. Community optimism about the proposed park continued for some time.
16 Meetings were held at the Hao Mai Bilingual Vietnamese Preschool to discuss, among other things,
17 how this proposal would allow the children of the preschool and the affordable Mount Baker Lofts to
18 have a healthy play area beyond the black metal caged play areas of the school, which were small and
19 impacted by noise and pollution from the adjacent Rainier Avenue. See Declaration of Abolins, photo
20 of Hao Mai play area.

21 **The MHA Proposal and its FEIS.** However, optimism for a credible open space planning
22 effort was sadly eclipsed with the release of the FEIS for the MHA. Although the FEIS contains a
23 section purporting to address “Open Space and Recreation”, there was no mention of the MHA’s

1 relationship to the North Rainier Town Center Park project. In fact, the FEIS narrative did not
2 mention the existence of the acquisition project at all, let alone provide a visual representation of
3 which parcels the City had identified for bridging the long-standing open space gap of the North
4 Rainier Urban Village. See FEIS, “Open Space and Recreation”.

5 Although the City did not identify the Park project or the specific parcels identified for
6 acquisition, those parcels were nonetheless a significant part of the MHA proposal. This is not to say
7 that the City left those proposed open space parcels alone. To the contrary, for the City’s proposed
8 park parcels the MHA proposed upzones between 75 feet and 95 feet high. See FEIS Appendix H,
9 Exhibit H-56, H-57, and H-58. The 95 foot upzone was the drafters’ “preferred” alternative. *Id.*

10 II. ARGUMENT

11 FNR joins in the legal authorities and standards provided by SCALE, and therefore does not
12 repeat those standards here, with the following additional arguments illustrating the need for summary
13 judgment from the perspective of the North Rainier Neighborhood Plan where, despite the “L” in
14 HALA, the hope for an essential element of Livability – Open Space -- remains more bleak than ever
15 before.

16 A. The City’s OPCD Cannot Use the “Programmatic” Nature of Its EIS to Avoid 17 Meaningful Review of the Proposal’s Staggering Environmental Impacts.

18 SCALE has explained why the City cannot use the label of a “Programmatic” EIS to avoid
19 meaningful environmental review for a sweeping set of specific upzones that will impact virtually
20 every parcel within the North Rainier Urban Village.

21 B. The Inadequacy of the Citywide FEIS is Plainly Illustrated by OPCD’s cursory 22 and Superficial Analysis of Open Space and Recreation.

23 SCALE’s Motion For Summary Judgment focuses on the City’s Historic and Cultural
Resources section as a glaring example of the legal inadequacy of the FEIS.

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Declaration of Service

Talis Abolins declares that on the 11th day of May, 2018, I filed with the Hearing Examiner and delivered by email as allowed by the Second pre-hearing order of February 16, 2018, Appellant FNR's Motion For Summary Judgment and Joinder in SCALE's Motion For Summary Judgment to the following email addresses:

Geoffrey Wentlandt <Geoffrey.wentlandt@seattle.gov>
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Copies were also sent to co-appellants at the following email addresses:

Wallingford Community Council (W-17-006): Lee Raen <lee@lraen.com>
Morgan Community Association (W-17-007): Deb Barker <djb124@earthlink.net>
Friends of Ravenna Cowen (W-17-008): Judith Bendich <jebendich@comcast.net>
West Seattle Junction Neighborhood Organization (W-17-009): Rich Koehler
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Seattle Coalition for Affordability, Livability, and Equity (W-17-010): Claudia Newman
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Fremont NC: Toby Thaler <toby@louploup.net>

I declare under penalty of perjury under the laws of the state of Washington that the foregoing information is true and correct.

DATED this 1st day of May, 2018, at Seattle, Washington.

/S/ Talis Abolins

Talis Abolins, Friends of North Rainier Neighborhood Plan