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BEFORE THE HEARING EXAMINER  
FOR THE CITY OF SEATTLE

In the Matter of the Appeals of	)	Hearing Examiner File:
	)	<b>W-17-006 through</b>
WALLINGFORD COMMUNITY	)	W-17-014
COUNCIL, ET AL.	)	
	)	FRIENDS OF RAVENNA-COWEN (W-17-008)
Of Adequacy of FEIS Issued by the	)	REPLY RE MOTION FOR PARTIAL
	)	SUMMARY JUDGEMENT
Director, Office of Planning and	)	
Community Development	)	

SUMMARY OF APPELLANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Friends of Ravenna-Cowen moved for partial summary judgement as a matter of law that the Respondent's (hereafter "City") proposed expansion of the Roosevelt Urban Village east of 15<sup>th</sup> Ave. NE violates SEPA requirements, and is, therefore, inadequate because the EIS does not discuss the relationship between the proposed expansion of the Roosevelt Urban Village several blocks east of 15<sup>th</sup> Ave. NE and the 2035 Comprehensive Plan, which excludes the area east of 15<sup>th</sup> Ave. NE from the urban village. The City also violated the SEPA requirement under WAC-197-11-444(2)(d)(i), which states:

- (d) This section shall incorporate whenever appropriate:
- (i) A summary of existing plans...applicable to the proposal, and how the proposal is consistent and inconsistent with them.

Appellant's Reply re Appellant's Motion for Partial SJ- 1

1 As Appellant's motion for partial summary judgment explained, the inconsistency  
2 between the EIS proposal and the 2035 Comprehensive Plan was not disclosed in the draft EIS.  
3 The MHA DEIS was issued on June 18, 2017. The City did not address the inconsistencies with  
4 the neighborhood plans adopted by the City Council in the 2035 Comprehensive Plan. The scant  
5 reference to possible amendments to the Comprehensive Plan is found only in final EIS; a new  
6 sentence was added in Appendix F which states: "Amendments to these [Comp. Plan] policies  
7 will be docketed and policies modified to remove any potential inconsistencies." But in fact,  
8 there were not any policies docketed. (See discussion below). Because there was no discussion  
9 in the DEIS of the inconsistencies, the public had no opportunity to point these out. The  
10 Appellant pointed out that the failure of the DEIS and FEIS to address at all the relationship, *ie.*,  
11 the inconsistency between the proposed expansion of the Roosevelt Urban Village and the  
12 Comprehensive Plan, renders the EIS inadequate as a matter of law.

#### 13 CITY'S RESPONSE AND REPLY<sup>1</sup>

14  
15 In its response, pp.9 10,for almost two full pages, the City cites Chapter 3 of the EIS and  
16 cites the actual language from provisions of the 2035 Comprehensive Plan that are consistent  
17 with the Plan. At the bottom of p. 10 to 11, mid-page the Reply identifies maps that change the  
18 neighborhood village boundaries. Within the body of the EIS, there is no mention of  
19 inconsistencies with Neighborhood Plans. The reference to Neighborhood Plans is found in the  
20 FEIS, Appendix F, p. F-11, which the City cites in its Reply:

21 Several policies in individual urban villages contained in the Neighborhood Plan policies  
22 section of the Comprehensive Plan may conflict with elements of the proposed actions

23 <sup>1</sup> The City continues to assert (Response, p. 17), as it did in its motion to dismiss, that Friends of Ravenna-  
24 Cowen asserts that the City Council's process and decisions when it adopted the 2035 Comprehensive now precludes  
25 the City Council from amending its Plan in the future. That is incorrect and a complete mischaracterization. The  
City Council may always amend its Plan, and the Appellant has never argued to the contrary.

Appellant's Reply re Appellant's Motion for Partial SJ- 2



1 concerning changes to single family zones within urban villages. Amendments to these  
2 policies are docketed and the policies would be modified to remove potential  
inconsistencies. The potential impacts of these policy amendments is considered in this  
EIS.

3 Although the EIS quotes the complete language of six policies in the Comprehensive Plan and  
4 quotes verbatim five other provisions of the Plan, remarkably the EIS does not quote the actual  
5 language of inconsistent Policy LUs, inconsistent Goals, and inconsistent provisions of the  
6 Neighborhood Plans contained in the 2035 Comprehensive Plan.  
7

8 The City's excuse for not complying with the plain words of WAC-197-11-444(2)(d)(i) is  
9 "the City's standard practice." (Resp. at 11.) The City does not cite any SEPA provisions or  
10 WACs that could possibly justify its "standard practice" or why the specific regulatory language  
11 can be ignored. The City's explanation is that its "practice" is to "include a summary-level  
12 identification of the most relevant comprehensive planning policies and regulations and discuss  
13 the proposal's general consistency with the Comprehensive Plan and zoning regulations," but that  
14 is not what the WACs explicitly require. It is true that the City identified and cited the language  
15 of Comprehensive Plan provisions of "general consistency" with its EIS. The problem is that the  
16 WAC 197-11-444(2)(d)(i) has two parts. The WAC states that the agency is required to provide  
17 "[a] summary of existing plans...applicable to the proposal [in other words a general summary of  
18 the 2035 Comprehensive Plan]." Then, the word "proposal" is followed by a comma, and the  
19 sentence continues, "and how the proposal is consistent and inconsistent with them." The City  
20 complied with the first part of the clause and ignored the second part of the clause – how "the  
21 proposal ... is inconsistent with them."  
22

23 The Appellant's motion for partial summary judgment cites and discusses an essential  
24 "element of the environment" identified at WAC 197-11-444(2)(b)(i), the "relationship to  
25 existing land use plans." The EIS must identify the action proposed, the relationship to the  
Appellant's Reply re Appellant's Motion for Partial SJ- 3

1 existing land use plans (whether it is consistent with the plan or not), how the proposal impacts  
2 the plans, and the requisite changes needed to amend the plans. The "existing land use plan"  
3 here is the 2035 Comprehensive Plan and amendments. (By comparison, development codes and  
4 development maps must be consistent with the adopted comprehensive plan, RCW  
5 26.70A.040(3), whereas an EIS must be either fully consistent with the plan, or fully address the  
6 inconsistencies with respect to the comprehensive plan. The City' Reply (p. 15) falls back on the  
7 same argument it makes for everything inadequate in the EIS, to wit, it is a non-project proposal  
8 (a programmatic EIS), and it does not have to comply with the WACs, even when the WAC  
9 explicitly states it does - WAC 197-11-444(2)(d)(i), how "the proposal ... is inconsistent with  
10 them."

11 The Appellant also pointed out in its motion that the City recognized after the draft EIS  
12 was issued (June 8, 2017) that it failed to include, except in the most general and uninformative  
13 way, inconsistencies with the Comprehensive Plan, and how the City hoped to "cure" this  
14 omission by changing the sentence in Appendix F (cited above) of the final EIS (issued in  
15 November 2017), "Amendments to these policies [will be] are docketed and the policies and the  
16 policies would be modified to remove any potential inconsistencies." [Words "will be" are  
17 stricken and underlined language added], MHA FEIS App. F at F-11. The statement that  
18 amendments to these policies are docketed [by the City] is a fabrication. The City did not docket  
19 any amendments; neighborhoods did. The only thing OPCD submitted occurred *after* the draft  
20 EIS issued, and this was a letter to the City Council Land Use and Zoning Committee from Sam  
21 Assefa dated July 10, 2017. That letter contains no proposed amendments. (The full citation to  
22 the legislative record is at Appellant' motion at p. 10, lines 20 -21, Council Resolution 31762,  
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24  
25

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1 [https://seattle.legistar.com/LegislationDetail.aspx?ID=3103800&GUID=D174BE9D-092C-](https://seattle.legistar.com/LegislationDetail.aspx?ID=3103800&GUID=D174BE9D-092C-4C80-829D-348D10296DED&Options=&Search.)  
2 [4C80-829D-348D10296DED&Options=&Search.](https://seattle.legistar.com/LegislationDetail.aspx?ID=3103800&GUID=D174BE9D-092C-4C80-829D-348D10296DED&Options=&Search.))

3 Thus, the City concedes the public was not informed about inconsistencies between its  
4 proposals and the Comprehensive Plan when the draft EIS issued. Then, in the final EIS it  
5 further misled the public and the City Council by asserting amendments to the Comprehensive  
6 Plan were docketed when they were not.

7 The City now attempts in its Response to rectify OPCD's misleading statements at  
8 Appendix F of the FEIS, and its disregard for WAC requirements, by referring to an irrelevant,  
9 unspecified neighborhood outreach process that the City alleges occurred between October and  
10 December, 2017. (Response, p. 15 and para. 21 and Ex. G to Wendtland Declaration). Mr.  
11 Wendtland's declaration refers to an entirely different community engagement process, not the  
12 MHA EIS process, does not identify the neighborhoods where OPCD allegedly held community  
13 meetings, and does not specify the extent of notice of the "meetings in a box." (JUNO's motions  
14 and replies may address notice inadequacy of this process.) And the City states that this  
15 "process" continued into December 2017, *after* the EIS issued in November 2017. Thus, this  
16 alleged "community engagement" is entirely irrelevant to the MHA EIS.

17  
18 The City is attempting to conflate different time periods and different processes to  
19 mislead this tribunal. The City recognizes that the OPCD did not comply with SEPA and SEPA  
20 regulations in the first instance.

### 21 UNDISPUTED MATERIAL FACTS

22 The following facts are undisputed and warrant summary judgment as a matter of law:

23 1. The City did not address inconsistencies between the 2035 Comprehensive Plan and  
24 the proposals in the draft MHA EIS.

25 Appellant's Reply re Appellant's Motion for Partial SJ- 5

1 2. The City did not discuss in the draft MHA EIS possible amendments needed to the  
2 Comprehensive Plan to cure the inconsistencies.

3 3. In the final EIS, the City made misleading statements that amendments to the  
4 Comprehensive Plan were docketed, but no City-proposed amendments were docketed.

5 4. The "amendments" the City references is a memorandum to the City Council's Land  
6 Use and Zoning Committee in July 2017, after the draft EIS had issued.

7 5. The MHA FEIS did not specify the document or legislative process the City was  
8 referring to or where to find these so-called "docketing" amendments to the 2035 Comprehensive  
9 Plan.

10 6. The proposed "amendments" to the Comprehensive Plan that were actually made and  
11 to which the City refers in the final MHA EIS were actually amendments proposed by  
12 neighborhoods and individuals unaffiliated with the City in an entirely different process  
13 unrelated to the MHA EIS process.  
14

15 RELIEF REQUESTED

16 For the reasons stated above, Friends of Ravenna-Cowen requests the Hearing Examiner  
17 to grant partial summary judgment holding that the MHA FEIS proposal to expand the Roosevelt  
18 Urban Village to the east of 15<sup>th</sup> Ave. NE violates SEPA, and the FEIS was inadequate because it  
19 is inconsistent with the 2035 Comprehensive Plan, failed to address Comprehensive Plan issues  
20 and failed to describe the impact of the proposed expansion as to the Comprehensive Plan.,

21 Respectfully, submitted this 15<sup>th</sup> day of May, 2018.

22   
23 JUDITH E. BENDICH, WSBA #3754

24 Authorized Representative for  
25 Appellant Friends of Ravenna-Cowen

Appellant's Reply re Appellant's Motion for Partial SJ- 6



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3 CERTIFICATE OF SERVICE

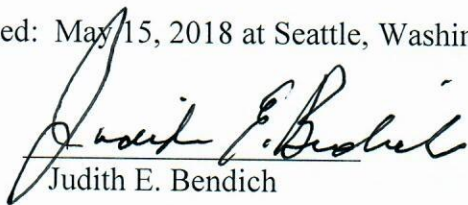
4 The undersigned certifies under penalty of perjury under the laws of the State of  
5 Washington that Friends of Ravenna-Cowen's Reply re Appellant's Motion for Partial Summary  
6 Judgement were served on all the parties' attorneys of record or on their authorized  
7 representatives of record at the email addresses listed below:

8 Beacon Hill Council [mira.latoszek@gmail.com](mailto:mira.latoszek@gmail.com); Seattle Coalition for Affordability, Livability  
9 and Equity (SCALE) [newman@bnd-law.com](mailto:newman@bnd-law.com); Dave Bricklin ([bricklin@bnd-law.com](mailto:bricklin@bnd-law.com));  
10 [cahill@bnd-law.com](mailto:cahill@bnd-law.com); [telegin@bnd-law.com](mailto:telegin@bnd-law.com); Fremont NC [toby@loupploup.net](mailto:toby@loupploup.net); Friends of North  
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18  
19 This document has been filed by E-file with the Seattle Hearing Examiner's Office, Ryan  
20 Vancil, Hearing Examiner.

21 Dated: May 15, 2018 at Seattle, Washington.

22  
23 By:

  
Judith E. Bendich

24  
25 Appellant's Reply re Appellant's Motion for Partial SJ- 7