

1 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
2 CENTRAL PUGET SOUND REGION
3 STATE OF WASHINGTON
4

5 SEATTLE COALITION FOR
6 AFFORDABILITY, LIVABILITY, AND EQUITY
7 (SCALE), et al.,

8 Petitioners,

9 v.

10 CITY OF SEATTLE,

11 Respondent.
12
13

CASE No. 19-3-0011c

FINAL DECISION AND ORDER

14
15 **SYNOPSIS**

16 *Petitioners Seattle Coalition for Affordability, Livability, and Equity (SCALE), et al.,*
17 *Wallingford Community Council, Duwamish Valley Neighborhood Preservation Coalition,*
18 *Seniors United for Neighborhoods, and Fremont Neighborhood Council challenged City of*
19 *Seattle Ordinance Nos. 125790 and 125791 implementing a Citywide Mandatory Housing*
20 *Affordability (MHA) program. The Growth Management Hearings Board concluded: (1) the*
21 *MHA Environmental Impact Statement is adequate and complies with the requirements of*
22 *the State Environmental Policy Act, (2) Growth Management Act (GMA) planning goals*
23 *guided the development of Seattle's MHA legislation, (3) Seattle's MHA legislation complies*
24 *with the GMA requirement that the comprehensive plan shall be an internally consistent*
25 *document and all elements shall be consistent with the future land use map, (4) Seattle's*
26 *MHA legislation complies with the GMA requirement that any amendment of or revision to*
27 *development regulations shall be consistent with and implement the comprehensive plan,*
28 *and (5) Seattle's MHA legislation complies with the GMA requirements for early and*
29 *continuous public participation in the development and amendment of comprehensive land*
30 *use plans and development regulations implementing such plans.*
31
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I. INTRODUCTION

In October 2016, the City of Seattle adopted the *Seattle 2035 Comprehensive Plan* which anticipates growth of 120,000 new residents, 70,000 net new housing units, and 115,000 jobs by 2035. The Comprehensive Plan established an “Urban Village Strategy” that concentrates most of the anticipated housing and employment growth within Seattle’s 6 Urban Centers and 24 Urban Villages, as compact mixed-use neighborhoods with a variety of housing types and affordable rent levels, located within a 10-minute walk of light rail and other very good transit.¹

In November 2017, Seattle finalized an Environmental Impact Statement (EIS) on Citywide Implementation of Mandatory Housing Affordability, which studied the potential for even greater housing and job growth than planned for in the Seattle 2035 Comprehensive Plan. This EIS considered an updated projection of total household growth of about 95,000 citywide over 20 years and referred to a hypothetically increased growth scenario of 100,000 new housing units.² More than 45,000 of Seattle households, or about one in seven, currently pay more than half of their income on housing, a condition referred to as severe cost burden. Average rent for a one-bedroom apartment has increased 35 percent over the last five years and is unaffordable by conventional measures to a worker earning a \$15 minimum wage.³

On March 20, 2019, the City of Seattle enacted two ordinances seeking to provide more affordable housing for all economic segments of society by increasing overall production of both market rate housing and subsidized housing:

Ordinance 125790 amends Seattle’s Comprehensive Plan to:

- Expand the boundaries of certain urban villages in areas near high frequency transit, as studied in the Seattle 2035 Comprehensive Plan, and
- Modify certain neighborhood plan policies concerning single family zoning in urban villages.

Ordinance 125791 amends Seattle’s Land Use Code to:

- Adopt requirements for developers either to build affordable housing on-site or to make an in-lieu payment to support the development of rent- and income-

¹ Seattle 2035 Comprehensive Plan at 13, 22-28; MHA EIS, Appendix G, at G.2.

² MHA EIS at 1.4, 1.9, 3.99-3.100, and Appendix G at G.2.; Seattle Comprehensive Plan Update Final EIS May 5, 2016, Sensitivity Analysis, at 3.1-29, officially noticed under WAC 242-03-630(4).

³ MHA EIS at 1.1.

1 restricted housing when constructing new development meeting certain
2 thresholds,

- 3 • Make area-wide zoning map changes,
- 4 • Modify development standards throughout the City of Seattle to provide additional
5 development capacity, such as increases in maximum building height and floor
6 area ratio limits, and
- Modify certain rezone criteria.

7 With these two ordinances, Seattle seeks to increase housing development capacity
8 to serve a broad range of household incomes, mostly in expanded urban villages, and to
9 create 6,200 net new rent- and income-restricted housing units for households at or below
10 60 percent of area median income, while distributing the benefits and burdens of growth
11 equitably. Affordable housing options will increase in urban villages with high access to
12 social and economic opportunity while moderating development capacity increases in urban
13 villages with high economic displacement or gentrification risk. Development capacity
14 increases are limited in areas with environmental constraints.

15
16 Between May 13 and June 3, 2019, various Petitioner groups filed appeals with the
17 Growth Management Hearings Board seeking review of Ordinance Nos. 125790 and
18 125791 and a Determination of Invalidity of the Ordinances, alleging that Seattle failed to
19 comply with the State Environmental Policy Act and the Growth Management Act. These
20 Petitioner groups assert the City failed to adequately consider adverse environmental
21 consequences resulting from urban village boundary changes and upzones in many areas
22 of the City of Seattle, including adverse impacts to: traditional single family neighborhoods;
23 historic landmarks and early Twentieth Century homes clustered in urban villages;
24 community aesthetics and land use compatibility; trees and open space; public services and
25 facilities; and gentrification, economic displacement, and segregation trends. Some
26 Petitioners also raised concerns about the public participation process for Ordinance Nos.
27 125790 and 125791.
28
29
30

31 II. BOARD JURISDICTION

32 The Board finds the Petitions for Review were timely filed pursuant to RCW

1 36.70A.280 and RCW 36.70A.290. The Board finds the Petitioners have standing to appear
2 before the Board pursuant to RCW 36.70A.280(2). The Board also finds it has jurisdiction
3 over the subject matter of the petition pursuant to RCW 36.70A.280 and RCW 36.70A.290.
4

5 **III. HEARING PROCEDURE**

6 A two-day Hearing on the Merits was held on November 5, and 7, 2019, before the
7 Growth Management Hearings Board, Central Puget Sound Panel, consisting of Board
8 members Raymond L. Paoella, Deb Eddy, and Cheryl Pflug. Attorneys David A. Bricklin
9 and Claudia M. Newman appeared on behalf of Petitioners Seattle Coalition for Affordability,
10 Livability, and Equity, et al. (SCALE). Attorney G. Lee Raaen appeared on behalf of
11 Petitioner Wallingford Community Council (Wallingford). Non-attorney, Authorized
12 Representative Ira B. Appelman appeared on behalf of Petitioner Duwamish Valley
13 Neighborhood Preservation Coalition (DVNPC). Attorney Judith E. Bendich appeared on
14 behalf of Petitioner Seniors United for Neighborhoods (SUN). Attorney Toby Thaler
15 appeared on behalf of Petitioner Fremont Neighborhood Council (Fremont). Attorneys
16 Jeffrey S. Weber, Tadas A. Kisielius, and Clara Park appeared on behalf of Respondent
17 City of Seattle (Seattle).
18
19

20 Just prior to the November 5 Hearing on the Merits, SUN filed a motion to: (1) Strike
21 portions of Seattle's Prehearing Brief, (2) Supplement the Record, and (3) Prohibit Seattle
22 from raising an oral motion at the hearing. SUN's motion is DENIED because it was not
23 supported by any legal authorities or legal argument. Similarly, Seattle's November 1, 2019,
24 request to strike portions of Petitioners' Reply Briefs is DENIED.
25

26 **IV. STATE ENVIRONMENTAL POLICY ACT (SEPA)**

27 **A. Standard of Review and Applicable Law**

28 SEPA is an environmental full disclosure law. SEPA's procedural provisions promote
29 the policy of fully informed decision making by government bodies when undertaking major
30 actions significantly affecting the quality of the environment.⁴
31

32 RCW 43.21C.030(2)(c) requires the City to prepare a detailed Environmental Impact

⁴ *Norway Hill Pres. & Prot. Assn. v. King County Council*, 87 Wn.2d 267, 272 (1976).

1 Statement (EIS) on major actions significantly affecting the environment – the EIS analyzes
2 the environmental impacts of and alternatives to the proposed action.⁵ The EIS must
3 present decision makers with a "reasonably thorough discussion of the significant aspects of
4 the probable environmental consequences" of the proposal so that City officials can make
5 an informed decision and reasoned choice among alternatives.⁶

6
7 Whether an EIS is adequate is a question of law, subject to review de novo. The
8 adequacy of an EIS is tested under the "rule of reason" standard.⁷ The Rule of Reason is in
9 large part a broad, flexible cost-effectiveness standard, similar to the reasonableness inquiry
10 in a negligence claim.⁸ The City's determination that an EIS is adequate under SEPA shall
11 be accorded "substantial weight."⁹

12 13 **B. Nonproject Action**

14 Ordinances 125790 and 125791 are "nonproject" actions under WAC 197-11-
15 704(2)(b) and WAC 197-11-774.

16 The lead agency shall have more flexibility in preparing EISs on nonproject
17 proposals, because there is normally less detailed information available on their
18 environmental impacts and on any subsequent project proposals.¹⁰ WAC 197-11-442(2)
19 articulates the expectations for environmental review of nonproject actions:

20
21 The lead agency shall discuss impacts and alternatives in the level of detail
22 appropriate to the scope of the nonproject proposal and to the level of planning
23 for the proposal. Alternatives should be emphasized. In particular, agencies
24 are encouraged to describe the proposal in terms of alternative means of
25 accomplishing a stated objective (see WAC 197-11-060(3)). Alternatives
26 including the proposed action should be analyzed at a roughly comparable
27 level of detail, sufficient to evaluate their comparative merits (this does not

28 ⁵ WAC 197-11-440.

29 ⁶ *Barrie v. Kitsap County*, 93 Wn.2d 843, 613 P.2d 1148 (1980); *Klickitat County Citizens Against Imported*
30 *Waste v. Klickitat County*, 122 Wn.2d 619, 866 P.2d 1256 (1993). *Solid Waste Alternative Proponents v.*
31 *Okanogan County*, 66 Wn. App. 439, 442, 832 P.2d 503 (1992).

32 ⁷ *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 632–33, 860 P.2d 390,
398 (1993); *Org. to Preserve Agric. Lands [OPAL] v. Adams County*, 128 Wn.2d 869, 875, 913 P.2d 793
(1996).

⁸ *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 633, 860 P.2d 390
(1993); Richard L. Settle, *The Washington State Environmental Policy Act: A Legal and Policy Analysis* §
14.01[3] at 14-73 (2016).

⁹ RCW 43.21C.090.

¹⁰ WAC 197-11-442(1).

1 require devoting the same number of pages in an EIS to each alternative).

2 For non-project proposals such as comprehensive plans and area-wide zoning, the
3 EIS's discussion of alternatives "shall be limited to a general discussion of the impacts of
4 alternate proposals for policies contained in such plans, for land use or shoreline
5 designations, and for implementation measures."¹¹ A nonproject EIS "defines alternatives
6 and evaluates environmental effects at a relatively broad level."¹²

7 The EIS should identify subsequent actions that would be undertaken by other
8 agencies as a result of the nonproject proposal, such as transportation and utility systems.¹³

9 **C. Discussion and Analysis of Legal Issues**

10
11 **Legal Issue 1.1 – Comprehensive Plan consistency: Does the EIS fail to include an**
12 **adequate summary of the comprehensive plan, neighborhood plans and relevant**
13 **development regulations; fail to adequately analyze the alternatives' consistency or**
14 **inconsistency with them; and fail to adequately assess alternatives to the proposed**
15 **amendments?**

16
17 "Relationship to existing land use plans" is an "element of the environment" under
18 WAC 197-11-444(2)(b)(i).¹⁴ WAC 197-11-440(6)(d)(i) provides that the EIS section on
19 affected environment, significant impacts, and mitigation measures "shall incorporate, when
20 appropriate: (i) A summary of existing plans (for example: Land use and shoreline plans)
21 and zoning regulations applicable to the proposal, and how the proposal is consistent and
22 inconsistent with them."

23
24 SCALE alleges that the EIS does not comply with WAC 197-11-440(6)(d)(i) because:
25 (a) the EIS on pages 3-107 to 3-108 only lists six policies from the 2035 Comprehensive
26 Plan, (b) has no reference to neighborhood plan policies, and (c) does not assess
27 consistency or inconsistency with specific policies.¹⁵

28
29 Seattle responds that it did provide a summary of particularly relevant comprehensive
30

31 ¹¹ WAC 197-11-442(4).

32 ¹² *Cascade Bicycle Club v. Puget Sound Reg'l Council*, 175 Wn. App. 494, 514, 306 P.3d 1031, 1040 (2013);
Heritage Baptist Church v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd., 2 Wn. App. 2d 737, 755, 413 P.3d
590, 600 (2018).

¹³ WAC 197-11-442(3).

¹⁴ See also RCW 43.21C.110(1)(f).

¹⁵ SCALE's Prehearing Brief at 13-15.

1 plan policies, and the EIS specifically noted in Appendix F that (1) the portions of the
2 proposal concerning changes to single-family zones within urban villages may conflict with
3 several policies in the neighborhood plan policy section of the Comprehensive Plan; (2)
4 those specific plan policies are docketed for amendment to remove inconsistencies; and (3)
5 the potential impacts of those amendments is evaluated in the FEIS.¹⁶

6
7 The Board notes that WAC 197-11-440(6)(d)(i) specifies a “summary of existing
8 plans” when it is “appropriate,” as opposed to a detailed analysis – the City has more
9 flexibility for nonproject proposals, and the EIS discussion “shall be limited to a general
10 discussion of impacts.”¹⁷ Moreover, only significant impacts must be discussed in the EIS.¹⁸
11 SCALE did not present specific evidence that the MHA ordinance would have a significant
12 impact on the “Relationship to existing land use plans.”

13 EIS Chapter 3.2 on “Land Use” states that “overall land use patterns in Seattle have
14 not changed significantly” since publication in 2016 of the Seattle 2035 Comprehensive Plan
15 EIS.¹⁹ The Seattle 2035 Plan renewed the City’s commitment to the Urban Village Strategy.
16 Challenged Ordinance 125790 recites that Seattle made changes to Neighborhood Plan
17 policies and the boundaries of urban villages by “strengthening the Urban Village Strategy.”
18 Several goals and policies from the Seattle 2035 Plan assist in the implementation of MHA:
19

- 20 • Land Use Goal 1 from the Seattle 2035 Plan is to “Achieve a development pattern
21 consistent with the urban village strategy, concentrating most new housing and
22 employment in urban centers and villages, while also allowing some infill
23 development compatible with the established context in areas outside centers and
24 villages.” (LU G1)
- 25 • Urban Center, Hub Urban Village, and Residential Urban Village were established
26 as Future Land Use designations on the Future Land Use Map (FLUM) (Exhibit
27 3.2–1). Prior to this, the FLUM indicated other use-specific designations (e.g.,
28 Single Family, Multifamily) in urban centers and urban villages.
- 29 • Seattle 2035 renewed the policy commitment for urban centers and urban villages
30 to flourish as compact mixed-use neighborhoods designed to accommodate most
31 of Seattle’s new jobs and housing. (GS 1.2)
- 32 • 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)

¹⁶ EIS Appendix at F-11.

¹⁷ WAC 197-11-442.

¹⁸ WAC 197-11-440(6)(b)(i).

¹⁹ EIS at 3.99.

- 1 • Seattle 2035 considered expansions of certain urban villages with very good
2 transit service. The Plan includes new land use policies that support aligning
3 urban village boundaries generally with a 10-minute walk of light rail and other
4 very good transit. (GS 1.12)²⁰

5 The EIS says MHA Action Alternatives would modify the Comprehensive Plan’s
6 Future Land Use map to include more land in certain Hub and Residential Urban Villages
7 within a 10-minute walk of light rail or very good transit service.²¹

8 Taken together, the text and maps in EIS Chapter 3.2 outline various MHA actions
9 that are intended to achieve consistency with and implement the City’s existing land use
10 plans and growth strategies. The Board finds and concludes the EIS complies with WAC
11 197-11-440(6)(d)(i) by providing an adequate summary of existing land use plans, when
12 appropriate, and how MHA is consistent and inconsistent with them. Issue 1.1 is dismissed.
13

14 **Legal Issue 1.2 – Phased review:** This issue was abandoned and is dismissed.

15 **Legal Issue 1.3: Does the EIS violate WAC 197-11-060(5) (phased review) by failing to**
16 **indicate it is implementing prior ordinances adopted without SEPA review as**
17 **indicated in the EIS cover letter: “In 2015 and 2016, the City Council unanimously**
18 **adopted ordinances that established the framework for MHA.”**

19 Fremont Neighborhood Council (Fremont) refers to this legal issue statement on
20 phased review in a footnote.²² WAC 197-11-060(5) provides that environmental review may
21 be phased, indicates when phased review is appropriate or inappropriate, and sets forth
22 other provisions regarding use of phased review. However, Fremont presents no legal
23 argument as to phased environmental review of the challenged Ordinances 125790 and
24 125791. Under WAC 242-03-590(1), failure by a party to brief an issue shall constitute
25 abandonment of the unbriefed issue. Accordingly, the Board deems Legal Issue 1.3 to have
26 been abandoned. Legal issue 1.3 is dismissed.
27
28

29 **Legal Issue 1.4 -- Alternatives/segmentation: Does the EIS fail to include a reasonable**
30 **range of alternatives, by starting with the assumption that some form of the MHA**
31 **ordinance would be adopted and not analyzing other reasonable means of**
32 **accomplishing the City’s affordable housing goals?**

²⁰ EIS at 3.100

²¹ *Id.*

²² Fremont’s Prehearing Brief at 16, n.78.

1 The range of alternatives considered in an EIS must be sufficient to permit a
2 reasoned choice.²³ Reasonable alternatives shall include actions that could feasibly attain or
3 approximate a proposal's objectives, but at a lower environmental cost or decreased level of
4 environmental degradation.²⁴ For non-project proposals such as comprehensive plans and
5 area-wide zoning, the EIS's discussion of alternatives "shall be limited to a general
6 discussion of the impacts of alternate proposals for policies contained in such plans, for land
7 use or shoreline designations, and for implementation measures."²⁵ A nonproject EIS
8 "defines alternatives and evaluates environmental effects at a relatively broad level."²⁶
9

10 Comprehensive Plan Amendments – Ordinance 125790

11
12 Petitioner SCALE alleges that the 2017 EIS for Seattle's Mandatory Affordable
13 Housing (MHA) program did not describe the principal features of and alternatives to the
14 Comprehensive Plan Amendments adopted by Ordinance 125790 on March 18, 2019.²⁷
15 SCALE asserts WAC 197-11-440(5) requires a description of the "principal features" of the
16 proposal.
17

18 In 2016, Seattle adopted the *Seattle 2035 Comprehensive Plan* which anticipates
19 growth of 120,000 new residents, 70,000 net new housing units, and 115,000 jobs by 2035.
20 The Comprehensive Plan establishes an "Urban Village Strategy" that concentrates most of
21 the anticipated housing and employment growth within Seattle's Urban Centers and Urban
22 Villages, as compact mixed-use neighborhoods with a variety of housing types and
23 affordable rent levels, while allowing some compatible infill development outside Urban
24 Villages.²⁸ The Seattle 2035 Comprehensive Plan EIS (Seattle 2035 EIS) evaluated the
25 environmental impacts of alternative boundary configurations for Seattle's 6 Urban Centers
26
27

28
29 ²³ *Solid Waste Alternative Proponents (SWAP) v. Okanogan County*, 66 Wn. App. 439, 444, 832 P.2d 503
30 (1992); see also *Methow Vly. Citizens Coun. v. Regional Forester*, 833 F.2d 810, 815 (9th Cir. 1987), rev'd on
31 other grounds sub nom. *Robertson v. Methow Vly. Citizens Coun.*, 490 U.S. 332, 104 L. Ed. 2d 351, 109 S. Ct.
32 1835 (1989).

²⁴ WAC 197-11-440(5)(b).

²⁵ WAC 197-11-442(4).

²⁶ *Cascade Bicycle Club v. Puget Sound Reg'l Council*, 175 Wn. App. 494, 514, 306 P.3d 1031, 1040 (2013);
Heritage Baptist Church v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd., 2 Wn. App. 2d 737, 755, 413 P.3d
590, 600 (2018).

²⁷ SCALE's Prehearing Brief at 40 (Sep. 18, 2019).

²⁸ Seattle 2035 Comprehensive Plan at 22-28; MHA EIS at 3.99 and Appendix G, at G.2.

1 and 24 Urban Villages, located within a 10-minute walk of light rail and other very good
2 transit.²⁹ The 2035 EIS evaluated the environmental impacts of alternative urban village
3 expansion scenarios, plus no-change alternatives, which would convert lower-intensity land
4 uses to higher-intensity land uses.³⁰ The Seattle 2035 EIS was formally adopted into the
5 MHA EIS.³¹ In order to promote efficient environmental review, WAC 197-11-600 allows
6 such adoptions of existing SEPA documents.
7

8 The MHA EIS relies upon and incorporates information from the Seattle 2035 EIS.
9 The MHA EIS states that Comprehensive Plan policies for individual urban villages may
10 need to be modified because they conflict with MHA-proposed changes to single family
11 zones within urban villages.³² The MHA EIS includes, for all action alternatives, detailed
12 maps showing the proposed changes to single-family-zoned areas within various urban
13 villages and proposed urban village expansions.³³ This information satisfies the rule of
14 reason because it provided full disclosure to City officials and the public of the contemplated
15 land use changes to single-family-zoned areas in existing and expanded urban villages.
16

17 Ultimately, the City Council adopted revisions to Comprehensive Plan policy
18 language and future land use maps that enabled the MHA changes to single-family-zoned
19 areas within urban villages, consistent with the EIS disclosures. The Board finds and
20 concludes that the EIS adequately describes the principal features of and alternatives to the
21 Comprehensive Plan Amendments adopted by Ordinance 125790.
22

23 MHA Rezones– Ordinance 125791

24 SCALE, Fremont, and Wallingford allege the EIS is inadequate because Seattle
25 failed to analyze an adequate range of reasonable alternatives.³⁴ This is a question of law
26 that the Board reviews de novo.
27

28 The MHA program seeks to increase capacity for multifamily residential and
29 commercial development in certain areas of Seattle through several related actions:
30

31 _____
32 ²⁹ IN 519, Seattle 2035 Comprehensive Plan EIS at 2-15 (May 4, 2015).

³⁰ *Id.* at 2-15 to 2-33.

³¹ MHA EIS at 1.3 and 2.4.

³² EIS, App. F at F.11.

³³ EIS, App. H.

³⁴ SCALE's Prehearing Brief at 40-43; Fremont's Prehearing Brief at 16; Wallingford's Prehearing Brief at 2-9.

- 1 • Adopt requirements in the Land Use Code (SMC Title 23) for developers either to
2 build affordable housing on-site or to make an in-lieu payment to support the
3 development of rent- and income-restricted housing when constructing new
4 development meeting certain thresholds.
- 5 • Modify development standards in the Land Use Code to provide additional
6 development capacity, such as increases in maximum height and floor area ratio
7 (FAR) limits.
- 8 • Make area-wide zoning map changes.
- 9 • Expand the boundaries of certain urban villages on the Comprehensive Plan's
10 Future Land Use Map (FLUM) near high-frequency transit, as studied in the
11 Seattle 2035 Comprehensive Plan.
- 12 • Modify certain rezone criteria in the Land Use Code and policies in the
13 Neighborhood Plans section of the Comprehensive Plan, concerning single family
14 zoning in urban villages.³⁵

13 Under the MHA program EIS, Seattle's stated objectives are to:

- 14 • Address the pressing need for housing affordable and available to a broad range
15 of households.
- 16 • Increase overall production of housing to help meet current and projected high
17 demand.
- 18 • Leverage development to create at least 6,200 net new rent- and income-
19 restricted housing units serving households at 60 percent of the area median
20 income (AMI) in the study area over a 20-year period.
- 21 • Distribute the benefits and burdens of growth equitably.³⁶

22 In essence, Seattle has two overarching goals under MHA to: (1) **increase overall**
23 **production of housing** available to a **broad range of households** (hereinafter "Broad-
24 Income-Range Housing" or "Market Rate Housing"), and (2) **create 6,200 net new rent-**
25 **and income-restricted housing units** serving households at **60 percent of AMI**
26 (hereinafter "Income-Restricted Housing" or "Subsidized Housing"), while distributing the
27 benefits and burdens of growth equitably.

28 SCALE initially focuses its arguments regarding reasonable alternatives on just the
29 City's second goal to create more Income-Restricted Housing:
30
31
32

³⁵ EIS at 1.2.

³⁶ EIS at 1.3. The majority of MHA rent-restricted affordable units will serve the 60% AMI level, although some small studio units will serve 40% AMI, and some home-ownership units may serve households up to the 80% AMI level.

1 Here, the EIS considers three action alternatives to the MHA Legislation
2 (Ordinance 125791) that are so similar that real choices are not
3 presented. All rely on upzones and Urban Village expansions to create a
4 pot of money to help fund construction of affordable housing for the
5 poorest households in the city (those unable to pay for market rate
6 housing). The variations among the alternatives are minor, shifting
7 rezone areas slightly among the various Urban Villages. IN 517 (EIS at
8 1.6-1.8).³⁷

9 Seattle responds:

10 The alternatives evaluated in the FEIS differ in the intensity and location
11 of development capacity increases and the pattern and amounts of
12 housing growth across the city that could result. There are also
13 differences between the alternatives in their approach to the size of
14 urban village expansions. . . . Exhibits 2–9, 2-10, and 2–11 of the FEIS
15 describe the different approaches to development capacity increases
16 and urban village expansions in narrative form; Exhibits 2–12 through 2–
17 15 of the FEIS demonstrate graphically the differences between the
18 alternatives in terms of the overall amounts of development capacity
19 increases of different intensity; and Exhibits 3.3–23, 3.3–25, and 3.3–27
20 of the FEIS show the differences between the alternatives in terms of the
21 locations of development capacity increases of different intensities.³⁸

22 In reviewing the environmental record, the Board notes that the EIS focuses on
23 Seattle’s objective to increase *both* subsidized and market-rate housing. The EIS discloses
24 land use impacts that the action alternatives would have in Urban Village expansion areas,
25 plus mitigation measures, at pages 3.117—3.158. As to Aesthetics, the EIS discloses
26 impacts using maps at EIS Exhibits 3.3-23, 3.3-25, and 3.3-27 to show variations in M-suffix
27 intensity zone changes for each alternative, while the maps at Exhibits 3.3-24, 3.3-26, and
28 3.3-28 show the varied distribution of height limit changes by alternative.³⁹

29 SCALE further argues that Seattle failed to analyze the following three alternatives
30 that achieve Seattle’s objectives with fewer adverse impacts (i.e., no upzones):

- 31 • Higher in lieu fees or a tiered system of in lieu fees (higher fees for units
32 constructed further away) to create incentives for more on-site units and
thereby increase integration and social equity

³⁷ SCALE’s Prehearing Brief at 40-41.

³⁸ Seattle’s Prehearing Brief at 37 (October 16, 2019).

³⁹ EIS at 3.194–3.205.

- Higher affordability requirements (to increase both on-site and off-site units)
- Affordability requirements imposed without upzones (e.g., inclusionary zoning and/or linkage fees) to provide more affordable housing without the adverse impact of the upzones.⁴⁰

SCALE's witness, David Levitus, testified before the Seattle Hearing Examiner that Seattle failed to consider these three alternatives -- Levitus asserted they are "reasonable alternatives" to accomplish Seattle's stated objectives without the negative impacts of upzoning such as segregation and displacement.⁴¹

The Board now examines whether evidence in the record supports Mr. Levitus' opinion that Seattle failed to analyze "reasonable alternatives" to achieve Seattle's housing objectives without the adverse impacts of upzones. The verbatim transcript of Levitus' Hearing Examiner testimony contains much discussion of how linkage fees, in-lieu fees, and inclusionary zoning can increase the supply of affordable (subsidized) units for income-restricted or low-income households.⁴²

While he testified at length on Seattle's goal to create more **Income-Restricted Housing** (i.e., Subsidized Housing), Levitus presented no analysis on how to achieve Seattle's twin goal to increase **Broad-Income-Range Housing** (i.e., Market-Rate Housing). Mr. Levitus did not prepare any written report on Seattle's MHA program, and he did no economic analysis of the Seattle market. Rather, in oral testimony he extrapolated from affordable housing experience in Los Angeles, Montgomery County, MD, and Fairfax, VA.⁴³

In contrast, Seattle obtained an independent economic analysis of the Seattle housing market from a consultant with expertise in development economics. Seattle contracted with Community Attributes, Inc. (CAI) to prepare a report evaluating development feasibility based on increased zoning capacity (or upzones) for areas of Seattle outside of the Downtown and South Lake Union neighborhoods. This feasibility analysis evaluated project viability across an array of 23 realistic development prototypes that were

⁴⁰ SCALE's Prehearing Brief at 41.

⁴¹ Index 385 (Tr. vol. 7, pp. 56-63, July 24, 2018 (Levitus)).

⁴² *Id.* at 60, 66-67, 77, and 74-75.

⁴³ *Id.* at 73-74, 156. Mr. Levitus has a bachelor's degree in history and economics and a PhD in history but no professional experience in economics; he is the director of a social justice advocacy nonprofit group. *Id.* at 52-53.

1 representative of Seattle’s market conditions and zones.⁴⁴ The CAI report stated that there
2 are a variety of complex market conditions in Seattle’s neighborhoods but in general,
3 increased development costs will have the effect of reducing developer interest or
4 increasing rents for market-rate units.⁴⁵

5 The EIS states that Seattle initially considered an alternative “with significantly
6 increased MHA payment and performance requirements” but ultimately excluded it from
7 further EIS analysis because “an alternative with this approach would not plausibly achieve
8 the proposed objectives.”⁴⁶

9
10 Housing market analyses determined that MHA performance requirements between
11 5% and 7% were amounts that could be supported without negatively impacting
12 development feasibility; however, based on CAI’s Technical Memorandum, MHA
13 performance requirements of 25% would render most development prototypes in strong and
14 moderately strong Seattle markets “infeasible given prevailing land prices.”⁴⁷ An “alternative
15 with markedly increased MHA amounts would be likely to negatively affect real estate
16 markets and undermine economic feasibility for many projects, in turn depressing the
17 housing market and limiting the affordable units generated.”⁴⁸

18
19 The EIS says no other viable alternatives were identified by commenters that could
20 meet the key project objective to **increase zoning capacity**, since MHA requirements are
21 “inextricably tied to granting additional development capacity under the definition of the
22 proposal and its objectives.”⁴⁹

23
24 Based on this evidence, Seattle argues that SCALE’s proposed alternative to
25 increase fees and affordability requirements, without upzones, fails to achieve the objective
26 of increasing overall housing supply.⁵⁰ Seattle contends upzones and density increases are
27 necessary to increase development capacity.
28
29
30

31 ⁴⁴ Index 741 (Technical Memorandum, Community Attributes Inc. (Nov. 29, 2016).

32 ⁴⁵ *Id.* at 4.

⁴⁶ EIS at 2.65.

⁴⁷ EIS at 2.64-2.65.

⁴⁸ *Id.*

⁴⁹ EIS at 4.12.

⁵⁰ Seattle’s Prehearing Brief at 45-49.

1 SCALE failed to adduce evidence to show that significantly higher fees and
2 affordability requirements (without upzones) could achieve Seattle’s objective of increasing
3 overall housing supply across a broad range of both market-rate and income-restricted
4 housing. In contrast, Seattle pointed to evidence that significantly higher fees/requirements
5 would undermine feasibility and would not achieve the Broad-Income-Range Housing
6 objective. As to Seattle’s objective to increase overall housing supply across a broad
7 income range, SCALE’s witness Levitus acknowledged on cross examination that linkage
8 fees would be unlikely to generate more overall production of housing.⁵¹
9

10 Regarding SCALE’s argument that significantly higher fees and affordability
11 requirements could achieve Seattle’s key housing objectives without the adverse
12 socioeconomic impacts of upzones such as housing segregation, evidence in the record
13 shows that payment-funded units are not likely to be concentrated in low-cost areas, but
14 rather will be located in a way that advances social equity goals. Seattle has a 35-year
15 track record of affordable housing investments in high land-cost areas and also in areas that
16 have a high risk of displacement with high access to opportunity.⁵² Going forward, Seattle
17 has social equity policies to encourage developers to locate affordable housing in high land-
18 cost areas such as the recent addition of almost 250 affordable units in the high land-cost
19 Roosevelt neighborhood.⁵³
20

21 Under the SEPA rules, “[r]easonable alternatives shall include actions that could
22 **feasibly attain or approximate a proposal’s objectives**, but at a lower environmental cost
23 or decreased level of environmental degradation.”⁵⁴ SEPA does not require the City to
24 evaluate alternatives that would not achieve the City’s objectives.⁵⁵
25

26 After considering the parties’ legal arguments regarding alternatives, together with
27 evidence in the record, and applying the Rule of Reason to test the adequacy of this
28 nonproject EIS, the Board finds and concludes as follows:
29
30

31 ⁵¹ Index 385 (Tr. vol. 7, pp. 157–158, July 24, 2018 (Levitus)).

32 ⁵² Index 441 (Tr. vol. 15, at 66, Aug. 24, 2018 (Alvarado)); *see also* Index 787 (Office of Housing Annual Investment Report), Maps F and G (showing that 2017 investments were concentrated in areas with high displacement risk and high access to opportunity).

⁵³ Index 441 (Tr. vol. 15, at 74-76, Aug. 24, 2018 (Alvarado)).

⁵⁴ WAC 197-11-440(5)(b); SMC 25.05.440.D.2.

⁵⁵ EIS at 412.

- 1 1. The alternatives evaluated in the EIS differ in the intensity and location of
2 development capacity increases, the pattern and amounts of housing growth, and
3 the size of urban village expansions.
- 4 2. The EIS analyzed a reasonable range of alternative actions that could feasibly
5 attain or approximate Seattle’s objectives to: increase overall production of
6 housing available to a broad range of households, and create 6,200 net new rent-
7 and income-restricted housing units serving households at 60 percent of AMI,
8 while distributing the benefits and burdens of growth equitably.
- 9 3. SEPA does not require Seattle to evaluate alternatives that would not achieve the
10 City’s objectives.
- 11 4. Seattle reasonably chose not to analyze SCALE’s proposals for higher in lieu fees
12 and higher affordability requirements without upzones because substantial
13 evidence in the record showed that higher fees or higher affordability
14 requirements, without upzones, would not feasibly attain or approximate Seattle’s
15 objective to increase overall production of both market-rate housing and
16 subsidized income-restricted housing.
- 17 5. SCALE’s suggested EIS alternatives were not reasonable for this nonproject EIS.
- 18 6. Seattle’s EIS evaluated an adequate range of alternatives that satisfy the Rule of
19 Reason under SEPA.
- 20 7. Legal Issue 1.4 is dismissed.

21 **Legal Issue 1.5: Is the City of Seattle excused from SEPA requirements to consider**
22 **alternatives to the proposed action (Ordinance 125791) in its Final Environmental**
23 **Impact Statement based on the City’s claim that the legislation was “formally**
24 **proposed” based on the City’s interpretation of WAC 197-11-442(4) (SMC**
25 **25.05.442.D)?**

26 Ordinance 125791 enacted area-wide zoning changes and modified development
27 standards throughout the City of Seattle, and the ordinance included 54 maps showing
28 rezoned areas. Zoning ordinances are nonproject actions.⁵⁶

29 Wallingford Community Council (Wallingford) alleges the law requires that
30 consideration of meaningful alternatives to a proposed action be part of environmental
31 review under SEPA. Wallingford asserts Seattle admits it did not consider alternatives to
32 MHA for reaching the City’s claimed objectives of affordable housing but instead, according
to Wallingford, the City did not consider other alternatives based on the “alternatives which
have been formally proposed” language in WAC 197-11-442(4). Wallingford did not,

⁵⁶ WAC 197-11-704(2)(b)(ii).

1 however, point to any evidence showing that there were other, un-analyzed alternatives that
2 fulfill one of Seattle’s key objectives, i.e., to increase development capacity across a broad
3 range of household incomes, both subsidized and market-rate housing.

4 The EIS indicates that Seattle did detailed analysis of three action alternatives and
5 the no action alternative. After 19 days of testimony, the Seattle Hearing Examiner
6 concluded that “[t]he range of alternatives considered by the FEIS satisfies the rule of
7 reason in relation to the City’s stated objectives.”⁵⁷

8 Under SEPA Rules for nonproject proposals, the EIS content may be limited to a
9 discussion of alternatives which have been formally proposed or which are, while not
10 formally proposed, reasonably related to the proposed action.⁵⁸

11 Under Resolutions 31612 and 31622, Seattle chose to limit affordable housing
12 initiatives to those that provide additional development capacity *and* create at least 6,000
13 net new rent- and income-restricted housing units serving households at 60 percent of AMI
14 over ten years. Resolution 31612 was formally adopted by a unanimous City Council and
15 approved on by Mayor Murray on November 17, 2015.⁵⁹ Resolution 31622 was formally
16 adopted by a unanimous City Council and approved on by Mayor Murray on October 16,
17 2015.⁶⁰

18 Applying the Rule of Reason to test the adequacy of this nonproject EIS, the Board
19 finds and concludes as follows:

- 20
- 21 1. The EIS analyzed three action alternatives and the no action alternative, which
22 allowed Seattle’s legislative body to make a reasoned choice among alternatives
23 that fulfill Seattle’s affordable housing objectives.
 - 24 2. Seattle City Council Resolutions 31612 and 31622 formally proposed legislative
25 changes to provide additional development capacity and create at least 6,000 net
26 new rent- and income-restricted housing units serving households at or below 60
27 percent of AMI over ten years.
 - 28 3. Under WAC 197-11-442(4), Seattle was allowed to limit EIS content to a
29 discussion of alternatives which have been formally proposed or which are, while
30 not formally proposed, reasonably related to the proposed action.
- 31

32 ⁵⁷ IN 515, Revised Findings and Decision of the Hearing Examiner for the City of Seattle at 24 of 38 (Dec. 6, 2018).

⁵⁸ WAC 197-11-442(4).

⁵⁹ IN 780.

⁶⁰ IN 779.

- 1 4. Seattle's EIS evaluated an adequate range of alternatives that satisfy the Rule of
2 Reason under SEPA.
3 5. Legal Issue 1.5 is dismissed.

4 **Legal Issue 1.6 – Impacts outside Urban Villages and Urban Village expansion areas:**
5 **Does the EIS fail to adequately address impacts caused by the text amendments (and**
6 **alternatives and mitigation related to those text amendments), focusing instead on**
7 **impacts caused by the map amendments.**

8 SCALE argues the MHA EIS does not adequately assess and disclose impacts that
9 will be caused by the text amendments as opposed to the map amendments and as
10 examples, SCALE states all parcels in the City previously zoned NC1-30 were changed to
11 NC1-40, increasing height limits and density, and similarly all NC1-40 zones were changed
12 to NC1-55. According to SCALE, the EIS does not adequately disclose impacts from text
13 amendments affecting all commercial and multi-family zoned areas throughout the entire
14 City of Seattle.⁶¹

15 Seattle responds that the EIS states that the study area includes not only areas in
16 existing urban villages, but also multi-family and commercial-zoned areas that are outside of
17 urban villages and expansion areas. Seattle points to EIS Ex. 2-1 showing the study area,
18 urban villages, and areas outside of urban villages. Finally, Seattle asserts the EIS
19 disclosed impacts outside of urban villages relating to transportation and air quality,
20 greenhouse gas emissions, public services and utilities, school attendance zones, and
21 critical areas.⁶²

22 In reviewing SCALE's prehearing brief, the Board notes SCALE did not identify any
23 specific evidence demonstrating that the text amendments caused significant probable
24 environmental impacts to areas outside of urban villages. For example, SCALE did not point
25 to any evidence that a zoning change increasing building height from 30 feet to 40 feet
26 causes a probable significant environmental impact. Elements of the environment that are
27 not significantly affected need not be discussed in the EIS.⁶³

28 Upon reviewing the EIS, the Board finds it discloses impacts resulting from increased
29 building heights such as greater visual bulk, reduction in the amount of light and air at
30
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⁶¹ SCALE's Prehearing Brief at 52.

⁶² Seattle's Prehearing Brief at 59-60.

⁶³ WAC 197-11-440(6)(a).

1 ground level, and shading effects that could occur at transitions between urban villages and
2 single family areas.⁶⁴ The EIS discloses edge impacts that could occur in transitions to
3 single family locations outside the zone change such as noise, increased pedestrian and
4 vehicle traffic, competition for on-street parking, and changes to building form.⁶⁵ The EIS as
5 a whole discloses various impacts affecting neighborhoods in the study area, both within
6 and outside Urban Villages, although such impacts are described more generally and not
7 tied to specific locations nor attributed to map amendments versus text amendments. This
8 approach is consistent with SEPA's prescription for a "general discussion of the impacts" in
9 a nonproject EIS.⁶⁶

11 Applying the Rule of Reason to test the adequacy of this nonproject EIS, and in
12 accordance with WAC 197-11-442, the Board finds and concludes that the MHA EIS
13 contained a reasonably thorough discussion and adequately disclosed to City decision
14 makers and to the public the environmental impacts caused by text amendments outside
15 Urban Villages and Urban Village expansion areas.

17 **Legal Issue 1.7 – Aesthetics: Does the EIS fail to adequately describe the existing**
18 **environment in each of the individual neighborhoods with respect to aesthetics and**
19 **land use and fail to take the required "hard look" at the aesthetic impacts of the MHA**
20 **proposal? This includes height, bulk, and scale impacts, shadow impacts, scenic and**
21 **other view impacts, noise and edge effects.**

22 SEPA has been described as an environmental full disclosure law. The fundamental
23 purpose of an EIS is to inform government decision makers and the public about the
24 environmental consequences of proposed action alternatives in order to promote well-
25 reasoned, environmentally protective decisions.

27 For nonproject proposals such as comprehensive plans and area-wide zoning, the
28 EIS's discussion of alternatives "shall be limited to a general discussion of the impacts of
29 alternate proposals for policies contained in such plans, for land use or shoreline
30 designations, and for implementation measures."⁶⁷ A nonproject EIS "defines alternatives
31
32

⁶⁴ EIS at 3.186-3.187.

⁶⁵ EIS at 3.117.

⁶⁶ WAC 197-11-442(4).

⁶⁷ WAC 197-11-442(4).

1 and evaluates environmental effects at a relatively broad level.”⁶⁸

2 The Board now reviews the EIS adequacy by applying the rule of Reason to the
3 following sub-issues raised by SCALE:
4

5 Baseline Aesthetics and Land Use

6 SCALE asserts the EIS fails, as a matter of law, to meet the requirements of SEPA
7 because the description of the baselines for aesthetics and land use are incomplete and
8 inaccurate. According to SCALE, the MHA EIS: (1) does not include a description of the
9 actual character, architectural aesthetic, or height/bulk/scale of the neighborhoods that are
10 affected by the MHA Proposal; (2) does not describe the locations of light rail stations, the
11 existing street networks, or the location of green streets in each neighborhood; (3) has no
12 discussion of the location and character of specific view sheds in each neighborhood; and
13 (4) has description of specific buildings and areas of visual interest, scenic routes, shadows
14 on specific public parks, or historic landmarks in each of the neighborhoods.⁶⁹
15

16 Seattle responds that the description of existing conditions relies on a combination of
17 the “Affected Environment” sections in EIS Chapters 3.2 and 3.3 (respectively titled Land
18 Use and Aesthetics), neighborhood-specific paragraphs, and the very specific, city-wide
19 analysis of existing conditions that was recently completed with the environmental review for
20 Seattle 2035 that is expressly incorporated into the EIS.⁷⁰
21

22 SEPA promotes efficiency in government decisions affecting the environment by
23 allowing agencies to incorporate and use existing SEPA documents.⁷¹ WAC 197-11-442(1)
24 says the lead agency shall have more flexibility in preparing EISs on nonproject proposals,
25 because there is normally less detailed information available on their environmental impacts
26 and on any subsequent project proposals.
27

28 Chapters 3.2 and 3.3 of the EIS discuss the “Affected Environment” under the
29
30

31 _____
32 ⁶⁸ *Cascade Bicycle Club v. Puget Sound Reg'l Council*, 175 Wn. App. 494, 514, 306 P.3d 1031, 1040 (2013);
Heritage Baptist Church v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd., 2 Wn. App. 2d 737, 755, 413 P.3d
590, 600 (2018).

⁶⁹ SCALE'S Prehearing Brief at 16-17.

⁷⁰ Seattle's Prehearing Brief at 63.

⁷¹ WAC 197-11-600.

1 respective categories of Land Use and Aesthetics.⁷²

2 The Land Use Chapter relies primarily on the background information contained in
3 the Seattle 2035 Comprehensive Plan (adopted in October 2016) because while some
4 changes to existing land use have likely occurred since publication of the Comprehensive
5 Plan EIS, the MHA EIS states “overall land use patterns in Seattle have not changed
6 significantly” from 2016 to the 2017 MHA EIS issuance.⁷³ The Seattle 2035 Plan’s Growth
7 Strategy Element seeks to accommodate growth by guiding new development to Urban
8 Villages so as to maximize efficient use of infrastructure and services. The MHA EIS
9 implements several Comprehensive Plan goals and policies, including Seattle’s Urban
10 Village Strategy. Urban Village boundaries are shown on EIS Exhibit 3.2-1 “Future Land
11 Use Map (FLUM),” and the MHA study area with Urban Village boundaries are shown on
12 Exhibit 2-1 in EIS Chapter 2. The EIS Land Use Chapter discusses Seattle’s six (6)
13 designated Urban Centers, six (6) Hub Urban Villages, 18 Residential Urban Villages, other
14 land use designations, and existing land use categories (mapped on Exhibit 3.2-2).
15

16
17 The Aesthetics Chapter 3.3, Affected Environment section, discloses that height,
18 density, scale, and character of development vary considerably across Seattle, and zoning
19 regulations limit height, density, floor area ratio⁷⁴ (FAR), lot coverage, and minimum
20 setbacks. Exhibit 3.3-1 is a baseline map showing citywide allowed building heights,
21 including for the 6 Urban Centers and the 24 Urban Villages.⁷⁵ The varying relationships
22 between building height and FAR are discussed for different neighborhoods as a shorthand
23 for “bulkiness” of a building. Physical forms vary across the 3,000 acre MHA study area, and
24 the EIS discusses common built forms as a baseline for analyzing MHA’s aesthetic impacts.
25 Existing condition urban forms include: Established Single Family Housing, New Infill Single
26 Family Housing, Lowrise Multifamily Infill Housing, and Mixed Use Commercial Corridors.⁷⁶
27 Seattle has a three tiered Design Review Program to evaluate the appearance of new
28
29
30

31
32

⁷² EIS at 3.99-3.108 and 3.159-3.169.

⁷³ *Id.* at 3.99.

⁷⁴ Floor Area Ratio (FAR) = gross floor area of a building divided by the total area of the site. Seattle 2035 Comprehensive Plan at 194.

⁷⁵ EIS at 3.161.

⁷⁶ *Id.* at 3.163-3.164.

1 buildings and their relationship to adjacent sites.⁷⁷

2 Finally, the EIS discloses existing Comprehensive Plan goals and policies plus
3 regulations for the protection of public views of important landmarks, natural and human-
4 made features, views from designated City viewpoints, and scenic qualities along mapped
5 scenic routes. SMC § 25.05.675 lists the public views that should be considered for
6 protection during project level review under SEPA. Many of the identified sites are within the
7 study area.⁷⁸

9 SCALE expressed concern that five images on EIS page 3.163 “do not accurately or
10 adequately describe the current aesthetics in the actual neighborhoods that are impacted by
11 the MHA legislation.”⁷⁹ According to the EIS, a comprehensive summary of the 3,000 acre
12 study area is not possible, but these pictures show representative examples of common
13 physical forms that exist in the study area.⁸⁰ The Board notes that typically nonproject EISs
14 are more general and less detailed than subsequent project proposals.⁸¹

16 SEPA Rules allowed Seattle to incorporate and primarily rely on the 2016
17 Comprehensive Plan EIS for baseline land use information that had already been compiled.
18 Applying the Rule of Reason to test the adequacy of the nonproject EIS sections on
19 “Affected Environment,” the Board finds and concludes that the MHA EIS, including
20 incorporated portions of the Comprehensive Plan EIS, adequately disclosed to City decision
21 makers and to the public the baseline environmental land use and aesthetics conditions for
22 the 18 Urban Villages, six (6) Hub Urban Villages, and three (3) Urban Centers in the MHA
23 Study Area.
24

25 Height, Bulk, and Scale Impacts

27 SCALE alleges the graphics on 3.178–3.179 of the EIS, which are meant to show
28 height, bulk, scale and character impacts of the proposal, are incomplete and not credible,
29 and the mid-level perspective (instead of head-on street level perspective) downplays the
30

31
32 ⁷⁷ *Id.* at 3.164-3.167.

⁷⁸ *Id.* at 3.168-3.169.

⁷⁹ SCALE’s Prehearing Brief at 19.

⁸⁰ EIS at 3.162.

⁸¹ See WAC 197-11-442(1).

1 height impacts.⁸²

2 Seattle responds that the graphics focus on impact rather than area, and there was
3 no technical or expert testimony to challenge the accuracy of the portrayal of development
4 allowed by existing code and by the proposal. Further, Seattle states it would be
5 unreasonable to require the City to prepare graphics for the many more permutations and
6 combinations of development possibilities for each zoning change in each area, despite the
7 fact that the precise location and details of any specific project are unknown.⁸³

8
9 The EIS section on impacts to Aesthetics says “[g]iven the large scale of the study
10 area, impacts to aesthetics and urban design are primarily discussed in a qualitative and
11 generalized manner.” Because MHA is a broadly defined, citywide program, the EIS does
12 not provide a detailed analysis of aesthetic impacts at any specific location because the
13 exact form of future development cannot be accurately predicted.⁸⁴ EIS section 3.3.2
14 discusses impacts common to all alternatives and discloses that the action alternatives will
15 result in an incremental increase in the scale and intensity of development. Zoning changes
16 are classified into three “M Suffix” categories based on the magnitude of the changes.
17 Detailed information is presented on code amendments on height, FAR, scale, setback, and
18 intensity of development, using graphics, text, and tabular information.⁸⁵ One example on
19 page 3.186-3.187 is the disclosure that the primary impact of the (M) Tier capacity increase
20 to NC-55 is the increased height, which allows for the presence of a 5 story building across
21 the street from the residential zone, with an additional story that contributes to greater visual
22 bulk and has some reduction to the amount of light and air at ground level.

23
24
25 Impacts to development character, height, and scale are detailed with text and maps
26 for each action alternative on EIS pages 3.191-3.209. As to the preferred alternative, for
27 example, the EIS discloses that maximum building height in the HR (Highrise multifamily)
28 zone within the First Hill-Capitol Hill Urban Center would increase from 300 feet to 440 feet.
29 This is 100 feet taller than would be allowed under Alternative 2 or Alternative 3, and would
30 increase the maximum FAR from 14 to 15. The EIS discloses this as a “significant aesthetic
31
32

⁸² SCALE’s Prehearing Brief at 22.

⁸³ Seattle’s Prehearing Brief at 67-68.

⁸⁴ EIS at 3.169.

⁸⁵ EIS at 3.170-3.190.

1 impact on adjacent development and neighborhood character,” and Exhibits 3.3-29 and 3.3-
2 30 are graphics showing examples of the potential infill development in the HR Zone for the
3 preferred alternative compared to the no action alternative.

4 Applying the Rule of Reason to test the adequacy of the nonproject EIS section on
5 impacts to Aesthetics, and in accordance with WAC 197-11-442(4), the Board finds and
6 concludes that the MHA EIS contained a reasonably thorough discussion and adequately
7 disclosed to City decision makers and to the public the height, bulk, and scale
8 environmental impacts associated with the action alternatives.
9

10 Edge Impacts

11 SCALE points to testimony that there is a significant number of places where the
12 proposal will increase the zoning to above 40 feet in areas that are immediately adjacent to
13 single-family areas, and some single-family zones are immediately adjacent to areas that
14 are being upzoned to heights of up to 75 feet.⁸⁶ According to SCALE, when the City Council
15 adopts a rezone the Seattle Municipal Code requires a transition or buffer between zones,
16 and a gradual transition, including height limits, is preferred.⁸⁷
17

18 Seattle responds that the EIS provides extensive discussion of these “edge” effects,
19 including these examples:
20

- 21 • Significant land use impacts would be most likely to occur near frequent transit
22 stations, at transitions between existing commercial areas and existing single-
23 family zones, and in areas changing from existing single-family zoning in urban
24 villages and urban village expansion areas.⁸⁸
- 25 • Existing single family areas at the outer edges of urban villages with proposed
26 expansion—including Rainier Beach, North Beacon Hill, Othello, and 23rd &
27 Union—Jackson—would experience land use impacts similar to those of
28 Alternative 2. Land use would become denser with more varied housing types,
29 which could result in moderate land use impacts.⁸⁹
- 30 • Because expansion areas are at the edges of urban villages, they would likely
31 function as transitional areas, forming a buffer between the most intense
32 development in the urban village and the low-intensity neighborhoods surrounding
it. However, expanding urban villages would, over time, lead to the conversion of
existing development to higher intensity uses, development of taller buildings, and

⁸⁶ SCALE’s Prehearing Brief at 25.

⁸⁷ SMC § 23.34.008E.

⁸⁸ EIS at 1.21.

⁸⁹ *Id.* at 3.142.

1 establishment of a more urban character in the expansion areas, compared with
2 existing conditions.⁹⁰

- 3 • Land use changes that create more gradual transitions between higher- and
4 lower-scale zones, may mitigate land use impacts over the long term as this may
5 achieve less abrupt edges between land uses of different scales and intensity.⁹¹

6 The EIS also discloses and analyzes neighborhood-specific edge and transition
7 impacts.⁹² Zoning near Urban Village edges can be identified using an online mapping tool
8 that is part of the EIS.⁹³

9 Applying the Rule of Reason to test the adequacy of the nonproject EIS section on
10 impacts to Aesthetics, and in accordance with WAC 197-11-442(4), the Board finds and
11 concludes that the MHA EIS contained a reasonably thorough discussion and adequately
12 disclosed to City decision makers and to the public the environmental edge and transition
13 impacts associated with the action alternatives.

14
15 View Impacts

16 SCALE asserts that the EIS does not adequately disclose and analyze the view
17 impacts of the MHA Proposal, does not identify viewsheds, and does not provide
18 meaningful information for the public and decision makers to understand the view impacts.⁹⁴
19 SCALE states “the entire discussion about view impacts is contained in two paragraphs.”
20 However, the Board notes that In addition to the discussion of impacts to views common to
21 all alternatives, the EIS includes discussion of view obstruction (including from scenic
22 routes) and shading effect for all the action alternatives.⁹⁵ The EIS also discloses that scale
23 could result in view blockage, decreased access to light and air at ground level, reductions
24 in privacy, and increases in light and glare.⁹⁶ The EIS includes discussion of the influence of
25 topography on impacts to views, such as taller buildings blocking views.⁹⁷

26
27
28
29
30 _____
31 ⁹⁰ *Id.* at 3.190.

32 ⁹¹ *Id.* at 3.156.

⁹² *Id.* at 3.122-3.130.

⁹³ Seattle’s Prehearing Brief at 70; Index 459 (Tr. vol. 18, 93:7—96:11, Sep. 4, 2018 (Gifford)).

⁹⁴ SCALE’s Prehearing Brief at 26-27.

⁹⁵ EIS at 3.196, 3.199, and 3.209.

⁹⁶ EIS at 3.111.

⁹⁷ EIS at 3.118.

1 Applying the Rule of Reason to test the adequacy of the nonproject EIS section on
2 impacts to Views, and in accordance with WAC 197-11-442(4), the Board finds and
3 concludes that the MHA EIS contained a reasonably thorough discussion and adequately
4 disclosed to City decision makers and to the public the environmental impacts on Views
5 associated with the action alternatives.
6

7 Shadow Impacts

8 SCALE argues the EIS has only one grossly inadequate paragraph on shadow
9 impacts and that the EIS needed to identify specific public parks, schools, and street ends
10 that will be affected by shadows considering that SMC 25.05.675.Q.2 indicates that these
11 are explicitly protected areas under SEPA.⁹⁸
12

13 However, beyond the summary of shadow impacts common to all alternatives, the
14 EIS has multiple sections disclosing how tier zoning changes can create shading impacts.⁹⁹
15 Increased shadowing onto adjacent single family areas was disclosed for the Upper Queen
16 Anne and Greenwood-Phinney Ridge areas.¹⁰⁰ Shading and shadow impacts on adjacent
17 parks are discussed and shown graphically on EIS pages 3.184-3.185. Finally, the EIS
18 includes mitigation to address protection of public views (including from scenic routes) and
19 to mitigate shading, acknowledging the Seattle Municipal Code provisions that protect open
20 space areas from shading and proposing changes to the Design Review Program to
21 address shading/shadow impacts.¹⁰¹
22

23 Applying the Rule of Reason to test the adequacy of the nonproject EIS section on
24 Shadow impacts, and in accordance with WAC 197-11-442(4), the Board finds and
25 concludes that the MHA EIS contained a reasonably thorough discussion and adequately
26 disclosed to City decision makers and to the public the environmental impacts on Shadows
27 associated with the action alternatives.
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⁹⁸ SCALE's Prehearing Brief at 28.

⁹⁹ EIS at 3.176, 3.177, and 3.186.

¹⁰⁰ EIS at 3.147-3.148.

¹⁰¹ EIS at 3.211-3.212.

1 Conclusion

2 WAC 197-11-442 states that the lead agency shall have more flexibility in preparing
3 EISs on nonproject proposals because there is normally less detailed information available
4 on their environmental impacts and on any subsequent project proposals. Since this is a
5 nonproject proposal for which the discussion shall be limited to a general discussion of the
6 impacts, and applying the Rule of Reason to test the adequacy of the EIS, the Board finds
7 and concludes that the MHA EIS provides a reasonably thorough discussion of
8 environmental impacts and adequately disclosed significant aspects of the probable
9 environmental consequences on Aesthetics so that City officials could make an informed
10 decision and reasoned choice among alternatives. Issue 1.7 is dismissed.
11

12
13 **Legal Issue 1.8 – Historic resources: Does the EIS fail to adequately identify the**
14 **existing historic resource environment; fail to adequately analyze the impacts of the**
15 **alternatives on those resources; and fail to adequately address mitigation related to**
16 **those resources?**

17 As a threshold matter, the Board considers dueling arguments by the parties relating
18 to the City's February 7, 2019, Historic Resources Addendum to the EIS.¹⁰² SCALE asserts
19 that Seattle improperly used the Historic Resources Addendum to analyze impacts, and
20 SCALE argues that Seattle was instead required to prepare a Supplemental EIS (SEIS) on
21 historic resources.¹⁰³ Seattle asserts that it was legally entitled to analyze historic impacts in
22 a published Addendum rather than an SEIS and further, Seattle alleges that Petitioners
23 failed to raise the Addendum as a legal issue in their consolidated Petitions for Review.¹⁰⁴
24

25 SCALE and other parties appealed Seattle's Final EIS to the City of Seattle Hearing
26 Examiner. After 19 days of hearings, the Hearing Examiner affirmed the adequacy of the
27 EIS in all aspects with the exception of the historic resources analysis, which the Hearing
28 Examiner remanded for the following:

- 29
- 30 1. include City designated landmarks information in Exhibit 3.5-2 in the FEIS, and
 - 31 2. provide a more detailed and clear analysis identifying the contents of the City
- 32

¹⁰² IN 80.

¹⁰³ SCALE's Prehearing Brief at 37.

¹⁰⁴ Seattle's Prehearing Brief at 91-92.

1 database resource (e.g. all properties in the database not just the designated
2 landmarks) and how they have been utilized to inform the FEIS analysis; and
3 3. ensure that the FEIS analysis adequately analyses all probable significant
4 adverse impacts to City designated landmarks where Code protections are not
5 assured, including but not limited to those associated with SEPA exempt projects
6 and redevelopment that impacts the setting or character of a designated historic
7 landmark property.

8 The City should also correct the typo in FEIS Exhibit 3.5-4 that failed to
9 indicate that a Context Statement has been prepared for North Beacon Hill.

10 The City should also ensure that all NRHP [National Register of Historic
11 Places] properties are depicted on FEIS Exhibit 3.5-2, if any are missing (as
12 alleged by Appellants at hearing).

13 Given the opportunity of the FEIS historic resources section remand the City
14 may also wish to address cumulative impacts to historic resources, if any, in its
15 revisions to this FEIS chapter.¹⁰⁵

16 On remand from the Hearing Examiner, Seattle prepared a Historic Resources
17 Addendum to the EIS containing 36 pages of narrative with tabular data plus 105 pages of
18 appendices with 90 urban village maps and tables disclosing historic resources including
19 City of Seattle Landmarks, NRHP Determined Eligible Resources, National Register Historic
20 Districts, and City of Seattle Historic Preservation Districts.¹⁰⁶ The urban village maps also
21 show many green diamonds and green dots, denoting respectively “inventoried resources”
22 and “hold resources” from the City’s database, which have been disclosed for future
23 reference as possibly meeting the criteria for designation as a City Landmark.¹⁰⁷ For each
24 urban village, the Addendum maps show the differences between the three action
25 alternatives.

26 SEPA Rules define "Addendum" as “an environmental document used to provide
27 additional information or analysis that does not substantially change the analysis of
28 significant impacts and alternatives in the existing environmental document. The term does
29 not include supplemental EISs. An addendum may be used at any time during the SEPA
30 process.¹⁰⁸

31 _____
32 ¹⁰⁵ Index 515 (Revised Findings and Decision of Hearing Examiner, at 36 of 38.)

¹⁰⁶ IN 80.

¹⁰⁷ IN 80 Historic Resources Appendix.

¹⁰⁸ WAC 197-11-706.

1 The SEPA Rules anticipate a situation where an agency may wish to use a
2 previously issued final EIS for a proposal that is the same as, or different than, the proposal
3 analyzed in the previously issued final EIS. SEPA Rules in **WAC-197-11-600 When to use**
4 **existing environmental documents** provide that an Addendum is the appropriate vehicle
5 for adding analyses or information about a proposal that "do not substantially change the
6 analysis of significant impacts and alternatives in the existing environmental document." By
7 contrast, the City must prepare a Supplemental Environmental Impact Statement (SEIS) if
8 there are "substantial changes so that the proposal is likely to have significant adverse
9 environmental impacts," or if there is "new information indicating a proposal's probable
10 significant adverse environmental impacts."¹⁰⁹

11
12 In the present case, the proposal (MHA Ordinance No. 125791) has not changed.
13 The Addendum does not substantially change the analysis of significant impacts and
14 alternatives in the existing environmental document; rather it adds additional information
15 about historic resources. Also, and contrary to SCALE's argument, the Hearing Examiner's
16 remand is not "new information" about probable significant adverse environmental impacts.
17 Potentially significant impacts to historic resources were known and analyzed in the EIS but
18 the Hearing Examiner determined that the EIS discussion was not "reasonably thorough"
19 and needed to include additional information on City designated landmarks and City
20 database resources in order to better inform City decision makers and the public.¹¹⁰

21
22 The Board finds and concludes that under these facts, the City was not required to
23 use an SEIS and was authorized to use an addendum to add analyses or information about
24 MHA that "do not substantially change the analysis of significant impacts and alternatives."
25 The Addendum to the EIS together with the final EIS constitute the SEPA environmental
26 record made available to inform City decision makers and the public about the
27 environmental consequences of the proposed MHA legislation. The City issued a Notice of
28 Availability of the EIS Addendum¹¹¹ for public review, and Seattle received public comments
29 on the Historic Resources Addendum, including from Petitioner SCALE.¹¹²

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¹⁰⁹ *Thornton Creek Legal Fund v. Seattle*, 113 Wn. App. 34, 40 (2002); SMC 25.05.600.

¹¹⁰ Revised Findings and Decision of the Hearing Examiner for the City of Seattle at 29 of 38 (Dec. 6, 2018).

¹¹¹ IN 81.

¹¹² IN PC11188.

1 Regarding Seattle’s claim that Petitioners cannot challenge the Addendum because
2 the Petitions for Review did not mention the word “Addendum,” the Board disagrees. Issue
3 Statement 1.8 uses the words “identify the existing historic resource environment . . .
4 analyze the impacts of the alternatives on those resources . . . address mitigation related to
5 those resources.” The record shows that Seattle’s Addendum was issued in response to the
6 Hearing Examiner’s remand to add additional information to the SEPA record to more fully
7 disclose impacts to the affected historic environment. The Addendum identifies historic
8 resources and analyzes impacts on those historic resources together with potential
9 mitigation. The Addendum, along with related SEPA documents, were provided to the City
10 Council and made available to citizens who commented on the draft EIS. The Board finds
11 and concludes that the Addendum falls within the scope of Petitioner’s Issue 1.8 and thus
12 may be challenged in this proceeding.
13

14 Turning now to the substantive arguments about the adequacy of the historic
15 resources analysis, SEPA requires a reasonably thorough discussion of the *significant*
16 aspects of the probable environmental consequences.
17

18 SCALE argues that the City should have included more information on the
19 “assemblage of fine homes that are not on any [historic] register,” including surveying pre-
20 1940 houses in all urban villages and expansion areas.¹¹³ The Hearing Examiner heard
21 extensive expert level testimony describing early Twentieth Century homes clustered in the
22 Ravenna-Cowen, North Rainier, Ballard, South Park, and Morgan Junction
23 neighborhoods.¹¹⁴
24

25 The EIS and Addendum mapped by urban village and analyzed City historic
26 landmarks and historic districts together with properties listed or eligible for listing on the
27 National Register of Historic Places. Many of the pre-1940 houses referred to by SCALE
28 may have been altered so that they are not eligible for NRHP listing and therefore do not
29 have the “significance” that a listed or NRHP-eligible property would have. There were
30 10,449 households in single-family neighborhoods covered by the MHA proposal.¹¹⁵ SEPA
31
32

¹¹³ SCALE’s Prehearing Brief at 29, including n.6.

¹¹⁴ IN 515 at 9 of 38.

¹¹⁵ IN 1026.

1 does not require detailed analysis of all houses in 27 urban villages that are older than
2 1940. Applying the Rule of Reason the Board finds and concludes that it is reasonable to
3 focus SEPA analysis on significant historic properties as evidenced by being listed or
4 eligible for listing on a historic register. Moreover, for “nonproject” actions such as area-wide
5 zoning ordinances, SEPA requires the discussion be limited to a general discussion of the
6 impacts.¹¹⁶

7
8 The fundamental purpose of an EIS is to present decision makers with a "reasonably
9 thorough discussion of the significant aspects of the probable environmental consequences"
10 of the proposal so that City officials can make an informed decision and reasoned choice
11 among alternatives. The SEPA Rules state that *Environmental Impacts* may be: (i) Direct;
12 (ii) Indirect; or (iii) Cumulative.¹¹⁷ For a discussion of the impacts of alternate proposals,
13 Section 3.5.2 of the MHA EIS states in part:

14 The MHA program would not directly impact any historic or cultural resources,
15 but development allowed by the MHA program could impact these resources
16 indirectly by affecting decisions to demolish or redevelop historic-aged
17 properties or construct new properties on land that may contain belowground
18 cultural resources. . . .

19 Redevelopment, demolition, and new construction projects could occur in the
20 study area as a result of all Alternatives; these projects could impact historic
21 resources or result in ground disturbance. Any ground disturbance could
22 impact belowground cultural resources, if present. However, existing policies
23 and regulations regarding review of historic and cultural resources would not
24 change under any Alternative. For development projects within the study area
25 that would be subject to SEPA, potential impacts to historic and cultural
26 resources would still be considered during project-level SEPA review. . . .

27 Potential impacts to historic resources could occur from demolition,
28 redevelopment that impacts the character of a historic property, or
29 development adjacent to a designated landmark if the development alters the
30 setting of the landmark and the setting is a contributing element of that
31 landmark’s eligibility. Redevelopment could result in a significant adverse
32 impact for properties that have the potential to be landmarks if the regulatory
process governing the development does not require consideration of that
property’s potential eligibility as a Seattle Landmark, such as projects exempt
from review under SEPA. For example, projects with fewer than 20 residential

¹¹⁶ WAC 197-11-442(4).

¹¹⁷ WAC 197-11-792(2)(c).

1 units, or that have less than 12,000 square feet of commercial space, are
2 exempt from SEPA review.

3 Typical SEPA-exempt projects that could occur under the project would be
4 redevelopment or replacement of single-family residences and small buildings
5 with slightly larger residences and buildings. . . .

6 Potential decreases to the historic fabric of a neighborhood are likely to occur
7 if historic buildings are redeveloped or demolished and new buildings are
8 constructed that are not architecturally sympathetic to the existing historic
9 characteristics of a neighborhood.¹¹⁸

10 The EIS thus recognizes and discloses that MHA's increase in development capacity
11 has the potential for significant adverse impacts from redevelopment or replacement of
12 properties such as single-family residences in the affected urban villages or expansion
13 areas, and over time this could cumulatively alter the historic fabric of a neighborhood. The
14 EIS also discloses to City decision makers that smaller projects potentially impacting
15 historic resources may not go through project-level SEPA review because they are below
16 the SEPA-triggering thresholds, although historic preservation expert Eugenia Woo testified
17 that SEPA review thresholds are lower for potential historic landmarks.¹¹⁹

18 SCALE claims that the EIS's 50% growth rate threshold for significant impacts is
19 "arbitrary" and was created with no basis whatsoever."¹²⁰ However, SCALE does not point
20 to any evidence justifying a different threshold. Our Supreme Court has recognized the
21 difficulty in defining a significance threshold, observing, "a precise and workable definition
22 is elusive because judgments in this area are particularly subjective—what to one person
23 may constitute a significant or adverse effect on the quality of the environment may be of
24 little or no consequence to another."¹²¹ Applying the Rule of Reason to this record, the
25 Board finds that the 50% growth threshold was reasonable.

26 Finally, both SCALE and Fremont Neighborhood Council challenge the EIS
27 discussion of mitigation measures for historic resources.¹²² WAC 197-11-440(6)(c)(iv) says
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¹¹⁸ EIS at 3.304-3.306.

¹¹⁹ IN 342 (TR 1:203).

¹²⁰ SCALE's Prehearing Brief at 32.

¹²¹ *Norway Hill Pres. & Prot. Ass'n v. King Cty. Council*, 87 Wn.2d 267, 277 (1976).

¹²² SCALE's Prehearing Brief at 34–35; Fremont Neighborhood Council's Brief at 15.

1 the EIS may discuss the technical feasibility and economic practicability of mitigation but
2 the EIS need not analyze mitigation measures in detail unless they involve substantial
3 changes to the proposal causing significant adverse impacts. Petitioners presented no
4 specific arguments or evidence showing that the mitigation measures discussed on EIS
5 pages 3.311-3.312 are inadequate.

6 While the Board has reviewed *de novo* the MHA EIS and associated Addendum
7 pertaining to historic resources, the SEPA Rules say the City's determination that an EIS is
8 "adequate" under SEPA shall be accorded "substantial weight."¹²³ In this instance, the final
9 City determination on adequacy of the historic resources analysis, which shall be accorded
10 substantial weight, was made by Seattle's SEPA Responsible Official on remand from the
11 Hearing Examiner.

12 Since this is a nonproject proposal for which the discussion shall be limited to a
13 general discussion of the impacts, and applying the Rule of Reason to test the adequacy of
14 the EIS, the Board finds and concludes that the MHA EIS and Addendum together provided
15 a reasonably thorough discussion of environmental impacts and adequately disclosed
16 significant aspects of the probable environmental consequences on historic resources so
17 that City officials could make an informed decision and reasoned choice among
18 alternatives. Issue 1.8 is dismissed.

19
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21
22 **Legal Issue 1.9 – Displacement: Does the EIS fail to adequately analyze the**
23 **displacement impacts associated with the alternatives and fail to adequately address**
24 **mitigation related to those resources?**

25 "Displacement Impacts" was raised as a legal issue by multiple Petitioners alleging
26 the EIS analysis is inadequate. Economic displacement is sometimes referred to in the
27 record as "gentrification."¹²⁴ Expert testimony in the record explains that "economic
28 displacement is not physical displacement where buildings are torn down" but rather refers
29 to rising rents or rising property taxes so tenants or homeowners "can no longer afford to
30 live there."¹²⁵

31
32

¹²³ RCW 43.21C.090.

¹²⁴ IN 385 (TR 7:128, 140); IN 465 (TR 19: 150, 153).

¹²⁵ IN 385 (TR 7:127).

1 SCALE asserts a major displacement concern is that pricey, new development
2 spurred by MHA's upzones will cause an increase in rents and housing prices that will force
3 lower income households out of their homes and out of their established neighborhoods.¹²⁶
4 SCALE's socio-economic experts state that in terms of Seattle's equity objective, the largest
5 economic displacement impacts have been suffered by Seattle's African American
6 population.¹²⁷ SCALE points to a scatterplot in EIS Appendix M showing an apparent weak
7 positive correlation between change in housing production and change in households with
8 incomes between 50% and 80% of Area Median Income (AMI) for all Seattle census
9 tracts.¹²⁸ The parties disagreed on whether this citywide scatterplot showed any systematic
10 relationship between housing production and change of lower income households in the
11 MHA study area.¹²⁹

12
13 SUN asserts the EIS is inadequate in analyzing displacement impacts from
14 upzoning,¹³⁰ and SUN incorporates the discussion and argument re displacement at pages
15 43-52 of SCALE's Prehearing Brief.¹³¹ SUN points to EIS Appendix A data from 2007-2011
16 showing that 80% of Seattle's Census tracts had at least 10-15 % of their populations
17 experiencing a cost burden (30-50% of their income on housing costs) or a severe cost-
18 burden (over 50% of their income on housing costs), when housing values were going down
19 or static due to the recession.¹³² SUN alleges Seattle's failure to include 2015-2016 baseline
20 data renders the EIS an inadequate basis to evaluate current or future impacts.¹³³

21
22 Seattle asserts that although SEPA does not require the EIS to analyze economic
23 displacement, Seattle chose to evaluate economic displacement impacts, which exceeds
24 SEPA requirements and meets the Rule of Reason.¹³⁴

25
26 The City of Seattle and Petitioners appear to agree that economic displacement or
27 gentrification is an important issue to the citizens of Seattle. EIS Section 3.1 analyzes
28

29
30 ¹²⁶ SCALE's Prehearing Brief at 43-44.

¹²⁷ IN 348 (TR 2: 71); IN 385 (TR 7: 139).

¹²⁸ EIS Appendix M, at M.13, Exhibit M-15.

¹²⁹ SCALE's Prehearing Brief at 47-48; Seattle's Prehearing Brief at 82-83.

¹³⁰ Petitioner SUN' Prehearing Brief at 4.

¹³¹ *Id.* at 1.

¹³² *Id.* at 4.

¹³³ *Id.*

¹³⁴ Seattle's Prehearing Brief at 74-86.

1 Housing and Socioeconomics. Economic Displacement and Cultural Displacement is
2 analyzed in EIS pages 3.43 to 3.59. The EIS also contains a 68 page Growth and Equity
3 appendix analyzing impacts on displacement and opportunity related to Seattle’s Growth
4 Strategy.¹³⁵

5 An important threshold question the Board must now consider is whether Petitioners
6 can legally challenge the adequacy of those EIS sections that analyze socioeconomic
7 impacts of the MHA program.
8

9 In 1980, our Supreme Court held in *Barrie v. Kitsap County* that Kitsap County’s EIS
10 “discussion of socio-economic effects” (i.e., economic deterioration) was inadequate as to
11 potential economic competition from a retail center proposed to be located outside of the
12 City of Bremerton’s central business district.¹³⁶ In response to the *Barrie* decision, the
13 Legislature in 1983 amended SEPA to limit the scope of required EIS analyses to only a “list
14 of elements of the environment” as set forth in RCW 43.21C.110(1)(f) and as adopted by the
15 Department of Ecology in the SEPA Rules.
16

17 Under amended RCW 43.21C.110(1)(f) and SEPA Rules at WAC 197-11-444 and -
18 448(2), “Elements of the environment” are now limited to the “natural” and “built”
19 environments, which includes “housing” but does not include the term “socioeconomic.”
20 According to Professor Richard Settle, one purpose of the 1983 statutory amendments and
21 the SEPA Rule changes at WAC 197-11-444 and -448 was to “require only analysis of
22 impacts to elements of the environment listed in WAC 197-11-444 and to exclude from
23 mandatory EIS coverage purely economic, social, and other nonenvironmental impacts.”¹³⁷
24

25 Economic competition, socioeconomics, profits and income, fiscal policies, and social
26 policy analyses are not required to be discussed in an EIS.¹³⁸ An EIS is required to analyze
27 only significant adverse *environmental* impacts on the “Elements of the environment” as
28 listed in the SEPA Rules in WAC 197-11-444. Economics and socioeconomics are not listed
29 in the SEPA Rules as “Elements of the environment.”
30
31

32 ¹³⁵ EIS Appendix A (May 2016).

¹³⁶ 93 Wn.2d 843, 860 (1980).

¹³⁷ Settle, Richard L., *The Washington State Environmental Policy Act: A Legal and Policy Analysis*, § 14.01[2][a], p. 14-55 (rev. ed. 2002).

¹³⁸ WAC 197-11-448(2) and -448(3). See also Seattle Municipal Code § 25.05.448.

1 Case law interpreting the SEPA statutes and SEPA Rules holds that an EIS needs to
2 analyze significant adverse impacts on the **physical environment** or **built environment**
3 resulting from economic competition but the EIS does not need to analyze economic
4 competition, in and of itself.¹³⁹ Housing is an element of the environment, so an EIS should
5 analyze significant adverse housing impacts such as demolition of housing as part of the
6 built environment. For example, the SEPA Environmental Checklist calls for information on
7 the number of high, middle, or low-income housing units provided or eliminated.¹⁴⁰

8
9 Since economic displacement and social displacement are not identified as an
10 “Element of the environment” in RCW 43.21C.110(1)(f) nor in WAC 197-11-444, Seattle was
11 not required to analyze economic displacement or social displacement in the MHA EIS.
12 Seattle chose to include some analysis of socioeconomic impacts in the EIS but any
13 perceived inadequacies in this voluntary analysis cannot be the basis for finding a violation
14 of SEPA’s environmental disclosure mandates since SEPA does not require such analysis
15 of nonenvironmental impacts.¹⁴¹ Similarly, the Seattle Municipal Code states that the City
16 may at its option include EIS analysis of nonenvironmental impacts but such
17 nonenvironmental analysis “shall not be used in determining whether an EIS meets the
18 requirements of SEPA.”¹⁴²

19
20 Therefore, the Board cannot review Petitioners’ arguments that the EIS contains an
21 inadequate discussion of economic displacement, cultural displacement, social policies, or
22 other nonenvironmental impacts.

23
24 The Board now must consider Petitioners arguments that the EIS analysis of physical
25 housing impacts (e.g., demolition impacts) was inadequate. Demolition of housing is a
26 recognized impact to the “built environment.”¹⁴³

27 SCALE alleges that the EIS understates the risk of demolishing homes to make way
28 for new, higher priced units because the EIS used past trends to forecast future housing
29

30
31 ¹³⁹ *Indian Trail Property Owner’s Association v. City of Spokane*, 76 Wn. App. 430, 444 (1994); *W. 514 v.*
32 *County of Spokane*, 53 Wn. App. 838, 847-848 (1989).

¹⁴⁰ WAC 197-11-960 Environmental Checklist, Element 9 Housing.

¹⁴¹ See Settle, Richard L., *The Washington State Environmental Policy Act: A Legal and Policy Analysis*, §
14.01[2][a], p. 14-55 (rev. ed. 2002).

¹⁴² Seattle Municipal Code § 25.05.440(G).

¹⁴³ WAC 197-11-444(2)(b)(ii) and 197-11-960(B)(9).

1 demolitions. SCALE argues that past redevelopment primarily involved “low hanging fruit” of
2 empty lots or parcels that could be subdivided to create new buildable lots but much of that
3 supply is now exhausted, meaning that future redevelopment will more often displace
4 households than indicated by historic data.¹⁴⁴

5 SCALE points to testimony by land use economics consultant William Reid, who
6 opined that the EIS relied on historic demolition data that does not account for a “greater
7 rate of demolition” resulting from the MHA upzones creating far more development capacity
8 on each parcel.¹⁴⁵ As an example, Mr. Reid explained that if an old apartment house is torn
9 down and replaced with a new project, you may end up with equal or more housing units but
10 financial considerations typically result in a loss of lower-cost units that are replaced by units
11 at top of market cost.¹⁴⁶ Reid acknowledged that the EIS discussed this phenomenon
12 *qualitatively* but Reid suggested that the EIS did not contain an adequate *quantitative*
13 analysis of greater demolition rates resulting from MHA upzoning as compared to historic
14 demolition rates under pre-MHA zoning.¹⁴⁷

15 Seattle responds that the “historic trends” approach *overstated* the amount of
16 demolition that would occur in the future, since the increased capacity would allow more
17 new units to be built for each demolished unit. Even under the “historic trends” approach,
18 the number of additional demolitions under the preferred alternative only exceeds that under
19 “no action” by 82 units over the twenty-year study period (e.g., 2980 demolished units
20 versus 2898). The FEIS then estimated the number of additional physically displaced low-
21 income households that would result from demolitions under the proposal.¹⁴⁸ Seattle further
22 states that the EIS used two different methods to estimate the demolitions that would result
23 from the proposal: the “parcel allocation modeling” approach and the “historic trends”
24 approach.¹⁴⁹

25 EIS Appendix G explains the two alternate methodologies for estimating potential
26 demolitions: (1) modeling demolition by allocating growth to parcels, and (2) estimating
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¹⁴⁴ SCALE’s Prehearing Brief at 51.

¹⁴⁵ IN 348 (TR2: 99-104); IN 545.

¹⁴⁶ IN 348 (TR2: 87).

¹⁴⁷ *Id.* at 98, 104.

¹⁴⁸ Seattle’s Prehearing Brief at 75.

¹⁴⁹ *Id.* at 75-76.

1 demolition based on historic trends. The calculated demolitions under both methods are
2 presented in tabular format for all EIS alternatives in EIS Section 3.1.2 IMPACTS, Exhibit
3 3.1-41.¹⁵⁰

4 Seattle's land use and housing expert Kevin Ramsey said "that's why we chose a
5 parcel allocation method as the first method of analyzing, because it accounts for the fact
6 that there may be less empty parking lots than there were back in the year 2000, and it
7 accounts for what's actually available for development moving forward."¹⁵¹

8
9 SCALE's expert William Reid did not do any quantitative analysis of demolition
10 impacts but did opine that the EIS relies too much on estimating demolition based on
11 historic trends. However, SCALE's expert offered no critique of Seattle's alternate method of
12 estimating demolitions using parcel allocation modeling -- Reid simply acknowledged that
13 Seattle prepared a "detailed analysis" by modeling displacement in different urban
14 villages.¹⁵²

15
16 SCALE's expert and Seattle agree that demolition of existing housing due to
17 redevelopment has already occurred even before passage of the MHA ordinance,¹⁵³ but
18 they appear to disagree on the future rate of demolition resulting from upzoning for
19 increased development capacity.

20 In conclusion, Seattle conducted a detailed analysis to estimate housing demolition
21 impacts for all EIS alternatives using two alternate methodologies -- historic trends and
22 parcel allocation modeling. In contrast, SCALE presented only conclusory statements about
23 housing demolitions without any quantitative analysis, and SCALE failed to adduce specific
24 evidence showing that the City's analyses were deficient.

25 Applying the Rule of Reason to test the adequacy of this nonproject EIS, the Board
26 finds and concludes as follows:

- 27
28
- 29 1. SEPA's mandate to analyze significant adverse environmental impacts is limited
30 to the "Elements of the Environment" listed in WAC 197-11-444.
 - 31 2. SEPA does not require that an EIS analyze purely economic, social policy,
32 socioeconomic, or other nonenvironmental impacts.

¹⁵⁰ EIS at 3.71.

¹⁵¹ Index 447 (Tr. vol. 16, 99:13–100:7, Aug. 30, 2018 (Ramsey)); IN 792.

¹⁵² IN 348 (TR2: 99).

¹⁵³ IN 348 (TR2: 87); EIS at 3.69.

3. Seattle chose to include some analysis of socioeconomic impacts in the EIS but any perceived inadequacies in this voluntary analysis cannot be the basis for finding a violation of SEPA's environmental disclosure mandates since SEPA does not require such analysis of nonenvironmental impacts.
4. Housing is an element of the environment so an EIS should analyze significant adverse housing impacts (e.g., number of high, middle, or low-income housing units provided or eliminated).
5. Seattle conducted a detailed analysis to estimate housing demolition impacts for all EIS alternatives using two alternate methodologies -- historic trends and parcel allocation modeling.
6. SCALE presented conclusory statements about housing demolitions without any quantitative analysis, and SCALE failed to adduce specific evidence showing that the City's physical demolition analyses were deficient.
7. The EIS contains a reasonably thorough discussion of potential housing units provided and eliminated under the EIS action alternatives using two alternate methodologies for estimating potential demolitions by modeling demolition through allocating growth to parcels and by estimating demolition based on historic trends.
8. Legal Issue 1.9 is dismissed.

Legal Issue 1.10 – Public facilities and Services: Does the EIS fail to adequately analyze the alternatives’ impacts on public facilities and services and mitigation for those impacts?

Seniors United for Neighborhoods (SUN) argues the EIS fails to adequately identify and analyze the impacts from upzoning on police, fire and emergency services, and water, sewers and drainage systems.¹⁵⁴ SUN points to the EIS statement that the overall effect of the Preferred Alternative would be an additional 17,015 housing units more than would be developed on the same number of existing parcels.¹⁵⁵ SUN presents evidence of inadequate levels of service for police, fire, emergency services, water, sewer, and drainage.¹⁵⁶ According to SUN, the true level of impact resulting from the MHA upzones and density increases cannot be determined without first identifying existing deficiencies in Seattle's public services and infrastructure. SUN alleges the EIS discussion of existing public services is not adequate as follows:

¹⁵⁴ SUN' Prehearing Brief at 11.

¹⁵⁵ EIS at 3.381.

¹⁵⁶ SUN' Prehearing Brief at 11.

- 1 • Police. The “2016 Berkshire Report” ranks Seattle number one in overall crime
2 rate, worst overall in crime clearance rate, and unable to meet response time
3 standards due to understaffing of police officers.¹⁵⁷
- 4 • Fire and Emergency Services. Fire/EMS response times are met only 77% of the
5 time and despite population increase during 2015-2018, medic staffing declined
6 and firefighter staffing was static.¹⁵⁸
- 7 • Water and Sewer. The vast majority of Seattle's sewer pipe is less than 12" and
8 thus is already at or over capacity, particularly so in West Seattle, South Park,
9 and Wallingford. A University of Washington professor testified that RSL rezoning
10 in the Ravenna/Roosevelt area will increase overflow/runoff – the combined
11 sewer overflow pipes are already at capacity and cannot handle greater density.
12 Upzones will increase population, impervious surfaces, and sewage flows, further
13 increasing rainwater runoff which overwhelms the pipes and spills sewage into
14 Puget Sound, Lake Washington, Lake Union, and the Duwamish. Rain that
15 previously would have filtered into the soil or run off into streams will instead be
16 conveyed to the combined sewer that leads to the plant, thus increasing the
17 amount of peak flows to the plant during storm events. Climate change may also
18 lead to more frequent and/or more intense rain events, resulting in increased
19 volumes and frequency of high flows to the plant.¹⁵⁹

17 Seattle responds to SUN' arguments as follows:

- 18 • The public services and utilities analysis applied reasonable and standard
19 methodologies, including use of analysis prepared for the 2035 Comprehensive
20 Plan EIS, which WAC 197-11-600 expressly allows.
- 21 • The Comprehensive Plan EIS's analysis was especially appropriate because of its
22 citywide scope and recent data.
- 23 • The EIS's public facilities and services analysis applied the same Level of Service
24 (LOS) standards set by the City and used in the Seattle 2035 Comprehensive
25 Plan EIS, and the City generally sets its LOS standards on a citywide level.
- 26 • SEPA does not require that an EIS include every piece of information available
27 from any source (e.g., the 2016 Berkshire Report), particularly in a nonproject EIS
28 where less detailed information is available and where the City has greater
29 flexibility in its analysis under WAC 197-11-442(1) and SMC 25.05.442.A.¹⁶⁰

28 The Board notes that EIS Chapter 3.8 on Public Services and Utilities relies on the
29 Seattle 2035 Comprehensive Plan EIS for information on existing conditions and public
30

31
32 ¹⁵⁷ *Id.* at 9-10; IN 716 Berkshire Advisors, Inc. *Assessment of Sworn Staffing Needs, Seattle, Washington* (March 2016).

¹⁵⁸ SUN' Prehearing Brief at 10-11.

¹⁵⁹ SUN' Prehearing Brief at 11-12; IN 369, IN 712, IN 713, IN 714.

¹⁶⁰ Seattle's Prehearing Brief at 98-101.

1 services capacities.¹⁶¹ Public services and utilities analyses from the adopted 2035 EIS
2 were supplemented and updated in the MHA EIS, and in order to accommodate growth,
3 some facility upgrades and/or increased resources will be needed for police, fire/EMS and
4 utilities.¹⁶² In particular, growth induced service demands will likely mean significant
5 upgrades or new facilities and resources are needed for the Police South Precinct, Fire
6 Stations 2 and 31, and added EMS services in multiple growing Urban Villages.¹⁶³ Seattle
7 Public Schools forecast the growth of 9,000 students, surpassing the existing capacity and
8 requiring 18 new or replacement schools and seismic upgrades for 37 additional schools. In
9 addition, 25 schools are missing sidewalk infrastructure needed for the *Safe Routes to*
10 *School* program.¹⁶⁴

11
12 The EIS discloses area-wide impacts from upzoning and density increases:

- 13 • Development resulting from implementation of proposed zoning changes would
- 14 cause substantial population increases in some areas.
- 15 • Population growth generally increases demand for public services, but more
- 16 compact pattern of growth can also reduce the distances that emergency vehicles
- 17 need to travel to respond to service calls.
- 18 • Higher capacity can concentrate demand and cause local capacity problems.
- 19 • Future MHA-induced development will likely result in greater demands on
- 20 localized areas of the water supply, sewer system, distribution system,
- 21 stormwater drainage, and electric power.
- 22 • Urban villages north of 85th Street have a large amount of informal drainage and
- 23 are inherently capacity constrained.¹⁶⁵

24 As to mitigation measures, the EIS discloses that the local or statewide regulatory
25 framework would apply at the time of development that would identify any specific project-
26 level impacts and would be addressed on a project-by-project analysis, and development
27 will not be endorsed without identification of demand and availability of utilities.¹⁶⁶

28 Since this is a nonproject proposal for which the discussion shall be limited to a
29 general discussion of the impacts, and applying the Rule of Reason to test the adequacy of
30 the EIS, the Board finds and concludes that the MHA EIS provided a reasonably thorough

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32 ¹⁶¹ EIS at 3.360.

¹⁶² EIS at 3.360-3.361, 3.377–3.384.

¹⁶³ EIS at 3.360-3.362.

¹⁶⁴ EIS at 3.362-3.364.

¹⁶⁵ EIS at 3.372-3.373.

¹⁶⁶ EIS at 3.372-3.373, 3.385.

1 discussion of environmental impacts and adequately disclosed significant aspects of the
2 probable environmental consequences on public facilities and services so that City officials
3 could make an informed decision and reasoned choice among alternatives. Issue 1.10 is
4 dismissed.

5
6 **Legal Issue 1.11 – Parks: This issue was abandoned and is dismissed.**

7
8 **Legal Issue 1.12 – Trees: Does the EIS fail to adequately analyze the alternatives’
9 impacts on trees and mitigation for those impacts?**

10 Fremont Neighborhood Council (Fremont) alleges that the EIS tree-loss analysis is
11 inadequate and unreasonable in several different respects: (1) The EIS did not include any
12 data on "tree" loss within the "study area" but outside urban villages; (2) the "tree" loss
13 calculation is unusable because the data include street trees on public property and large
14 shrubs on private property, greatly inflating the number of so-called "trees" per parcel; (3)
15 even if the data were valid, which they are not, data aggregation into four groups makes it
16 impossible to understand the impacts from upzoning in each urban village and in areas
17 outside urban villages; and (4) the EIS does not include data showing where large trees
18 ("exceptional" trees) and groves of trees on private property are located.¹⁶⁷ Fremont also
19 states that the EIS "used LiDAR¹⁶⁸ to calculate the impact of upzoning on tree cover
20 ("canopy") on parcels in 27 residential urban villages," and Fremont asserts this
21 methodology was inadequate.
22

23
24 In referring to *27 residential urban villages*, Fremont appears to misapprehend the
25 nomenclature used under Seattle’s Urban Village Strategy to classify three types of areas:
26 Seattle has designated 18 *Residential Urban Villages*, six (6) *Hub Urban Villages*, and six
27 (6) *Urban Centers*. *Residential Urban Villages* emphasize residential uses while allowing
28 commercial and retail services at a lower scale than in *Hub Urban Villages*; compared to
29 *Hub Urban Villages*, *Residential Urban Villages* have more land in single-family and
30

31
32 ¹⁶⁷ Fremont’s Prehearing Brief at 9-10.

¹⁶⁸ Light Detection and Ranging is a remote sensing method that uses light in the form of a pulsed laser to measure ranges (variable distances) to the Earth. These light pulses—combined with other data recorded by the airborne system— generate three-dimensional information about the shape of the Earth and its surface characteristics.

1 multifamily residential use.¹⁶⁹

2 This distinction in the number of *Residential* Urban Villages relates to part of
3 Fremont's assertion that the "vast majority of trees and large shrubs" are located in "Single
4 Family Residential areas."¹⁷⁰ Single Family Residential is the designated land use for more
5 than half of Seattle's total land area, and predominates outside of the MHA Study Area.¹⁷¹
6 Seattle contends that the MHA rezones affect just six percent of Seattle land with single-
7 family zoning.¹⁷² The EIS states: 72% of Seattle's tree canopy is located in residential
8 zones, and 23% of the tree canopy is with the public right-of-way.¹⁷³ Thus, the EIS record
9 suggests that only a small fraction of Seattle's tree canopy is located in MHA-rezoned
10 areas, outside of public right-of-way.
11

12 As to the inclusion of street trees on public property in the EIS analysis, Seattle
13 asserts that by including street trees in the calculation of trees that may be impacted by the
14 proposal (even though City regulations provide stronger protections for street trees than
15 private trees), the impacts analysis is more conservative and decision makers are better
16 informed.¹⁷⁴ The FEIS also explicitly acknowledges the existence of gaps in current tree
17 protections and includes mitigation measures that suggest improving enforcement,
18 expanding tree protections, and other measures to strengthen tree protections.¹⁷⁵
19

20 Fremont's claim that the EIS did not include any data on "tree" loss within the "study
21 area" but outside urban villages is disputed by the City and not supported by Mike Leech
22 who performed the tree canopy analysis and testified the analysis covered the areas within
23 each of the proposed zoning alternatives – within the project extent.¹⁷⁶
24

25 Fremont cites a report by the Green Cities Research Alliance finding that residential
26 areas have much more ecological diversity than other areas and play a key role in
27
28

29 ¹⁶⁹ EIS at 3.102-3.103 and 3.107.

30 ¹⁷⁰ Fremont's Prehearing Brief at 2, quoting from Index # 701 at 7, *Seattle's Forest Ecosystem Values: Analysis of the Structure, Functions, and Economic Benefits* (August, 2012).

31 ¹⁷¹ EIS at 2.3 and 3.103-3.105.

32 ¹⁷² Seattle's Prehearing Brief at 3, 5, 16, 112, and 152.

¹⁷³ EIS at 3.316-3.317.

¹⁷⁴ Seattle's Prehearing Brief at 105; Index 399 (Tr. vol. 9, 154:12–155:2 July 26, 2018 (Leech)). Index 399 (Tr. vol. 9, 201:13–205:23, July 26, 2018 (Rundquist)). See also Index 730 (Resume of Nolan Rundquist).

¹⁷⁵ EIS at 3.340–3.341.

¹⁷⁶ Index 399 (Tr. vol. 9, 156:24–158:24, July 26, 2018 (Leech)).

1 managing storm water runoff, thus reducing soil erosion, pollution loads, and sewage
2 overflows into water bodies.¹⁷⁷ Seattle says the City adequately addressed the impact of
3 increased impervious surface in its analysis of impacts to stormwater facilities that are
4 designed to mitigate new impervious surface and pollution generating surfaces.¹⁷⁸

5 According to the EIS, trees in the City are specifically valued and legally protected
6 under various regulations in addition to the Environmentally Critical Areas (ECA) code (SMC
7 25.09.320). These include the Tree Protection Ordinance (SMC Chapter 25.11),
8 landscaping requirements in each zoning category (SMC Title 23), and specific
9 environmental regulations (SMC 25.05.675) that implement the goals and policies of the
10 Seattle 2035 Comprehensive Plan for protection of the urban forest. As of 2016, Seattle had
11 a 28% tree canopy cover, and the Urban Forest Management Plan set a goal to increase
12 Seattle's tree canopy cover to 30 percent by 2037.¹⁷⁹

13 Under the EIS Preferred Alternative, the parcels changing from SF and LR to NC/C
14 would see the largest change in tree canopy cover if fully developed. Overall, there is
15 currently approximately 22 percent tree canopy coverage within the Preferred Alternative
16 expansion areas. With the zoning changes proposed in the Preferred Alternative, there is
17 the potential for a total loss of between 0.7 and 3.6 acres of tree canopy cover within those
18 expansion areas.¹⁸⁰

19 Under the worst case scenario of full development of the upzoned areas in the
20 Preferred Alternative, the EIS Tree Canopy Analysis discloses up to a 1.9% reduction in tree
21 canopy cover due to site disturbance during construction and through land use activities
22 after construction.¹⁸¹ The LR to NC/C zone change affecting 10.6 acres of tree cover would
23 have a high scenario tree cover change coefficient of -9.59%. The SF to NC/C zone change
24 affecting 6 acres of tree cover would have a high scenario tree cover change coefficient of
25 -12.16%. The SF to RSL zone change affecting 308.2 acres of tree cover would have a high
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¹⁷⁷ Index # 701, *Seattle's Forest Ecosystem Values: Analysis of the Structure, Functions, and Economic Benefits* (August, 2012).

¹⁷⁸ Seattle's Prehearing Brief at 103; See EIS at 3.368 – 3.370, 3.372, 3.385.

¹⁷⁹ EIS at 3.315-3.316.

¹⁸⁰ EIS at 3.338.

¹⁸¹ EIS at 3.321.

1 scenario tree cover change coefficient of -1.81%.¹⁸²

2 At the November 7, 2019 hearing, Fremont's attorney presented evidence from the
3 record showing in green shading the "East Fremont Tree Canopy Series" located just west
4 of Stone Way N between North 42nd Street and North 45th Street.¹⁸³ Fremont suggests that
5 some of this mature tree canopy could be lost as a result of rezone-induced development
6 and increased density in the Urban Village. However, given that the MHA EIS is a
7 nonproject EIS covering a large area of Seattle, and since SEPA calls for a more general
8 discussion of impacts in a nonproject EIS, there is no requirement for highly detailed, parcel-
9 by-parcel analyses of tree canopy impacts. Those site-specific tree impacts should be
10 considered at the project level SEPA review or under other tree protection ordinances.

11 Finally, Fremont alleges Seattle failed to disclose to the City's Urban Forestry
12 Commission a report titled "Tree Regulation Research Project," and relatedly failed to reveal
13 knowledge concerning lack of effectiveness of current and proposed mitigation.¹⁸⁴
14 According to Fremont, the report concludes that "Current code is not supporting tree
15 protection."¹⁸⁵ Fremont does, however acknowledge that the Tree Regulation Research
16 Project report was listed in the EIS reference section.¹⁸⁶ WAC 197-11-440(6)(c)(iv) says the
17 EIS may discuss the technical feasibility and economic practicability of mitigation but the
18 EIS need not analyze mitigation measures in detail unless they involve substantial changes
19 to the proposal or new information about significant adverse impacts. Fremont presented no
20 specific arguments or evidence showing that the mitigation measures discussed on EIS
21 pages 3.340-3.342 are inadequate.
22
23
24

25 Since this is a nonproject proposal for which the discussion shall be limited to a
26 general discussion of the impacts, and applying the Rule of Reason to test the adequacy of
27 the EIS, the Board finds and concludes that the MHA EIS provided a reasonably thorough
28 discussion of environmental impacts and adequately disclosed significant aspects of the
29 probable environmental consequences on trees so that City officials could make an
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¹⁸² *Id.* at 3.339.

¹⁸³ IN 623 at 2-3.

¹⁸⁴ Fremont's Prehearing Brief at 10.

¹⁸⁵ *Id.*; Index 588 at 3.

¹⁸⁶ Fremont's Prehearing Brief at 10.

1 informed decision and reasoned choice among alternatives. Issue 1.12 is dismissed.

2
3 **Legal Issue 1.13 – Cumulative effects: Does the EIS fail to adequately address the**
4 **cumulative effects of the proposal and the alternatives?**

5 SCALE and SUN argue the EIS failed to assess cumulative impacts to historic
6 resources (SCALE) and public services (SUN) by failing to evaluate the combination of
7 development that would occur under baseline conditions “even without MHA,” and the
8 “additional development catalyzed by MHA.”¹⁸⁷

9
10 The no action alternative covers growth and potential impacts that will occur
11 throughout the city without MHA; the action alternatives cover growth that will occur under
12 MHA.¹⁸⁸ Given that much development is driven by private market conditions, it is
13 impossible to predict the site sizes, or future development configurations that will take place,
14 and these could vary widely.¹⁸⁹

15 The MHA EIS formally adopted the Seattle 2035 Comprehensive Plan EIS from May
16 of 2016 to provide current and relevant environmental information. The MHA builds on the
17 prior Seattle 2035 analysis, which addresses growth patterns in the city as a whole. To
18 consider cumulative impacts of the MHA alternatives, the EIS analyzed impacts on a
19 citywide or systems scale. For example, the Transportation analysis in EIS Section 3.4 is
20 based on a citywide computer model of traffic for the city as a whole, including areas outside
21 of the study area and even outside of the city.¹⁹⁰

22
23 Applying the Rule of Reason to test the adequacy of this nonproject EIS, the Board
24 finds and concludes that the EIS discussion of cumulative impacts was reasonably thorough
25 and adequate. Legal Issue 1.13 is dismissed.
26

27
28 ***D. Conclusion – SEPA EIS Adequacy***

29 Applying the Rule of Reason to test the adequacy of Seattle’s nonproject MHA EIS,
30 the Board finds and concludes that the EIS is adequate and complies with the State
31

32

¹⁸⁷ SCALE’s Brief at 33–34; SUN’ Brief at 8, 11–13.

¹⁸⁸ IN 429 (Tr. Vol. 13, at 167.

¹⁸⁹ IN 80 at 17.

¹⁹⁰ EIS at 4.6

1 Environmental Policy Act.

2
3 **V. INCONSISTENCY AND COMPLIANCE WITH GMA PLANNING GOALS**

4 **A. Standard of Review and Applicable law**

5 Comprehensive plans and development regulations, and amendments to them, are
6 presumed valid upon adoption.¹⁹¹ This presumption creates a high threshold for
7 challengers as the burden is on the Petitioners to demonstrate that any action taken by the
8 City is not in compliance with the Growth Management Act.¹⁹² The scope of the Board's
9 review is limited to determining whether a City has achieved compliance with the GMA only
10 with respect to those issues presented in a timely petition for review.¹⁹³ The Board is
11 directed to find compliance unless it determines that the challenged action is clearly
12 erroneous in view of the entire record before the Board and in light of the goals and
13 requirements of the GMA.¹⁹⁴

14
15 RCW 36.70A.130(1)(d) provides that any amendment of or revision to development
16 regulations shall be consistent with and implement the comprehensive plan. RCW
17 36.70A.020 sets out a list of goals, not listed in any priority, and which are to be used
18 "exclusively for the purpose of guiding the development of comprehensive plans and
19 development regulations".

20
21 The Department of Commerce has issued regulations to guide jurisdictions in
22 evaluating the consistency of their development regulations and comprehensive plan. WAC
23 365-196-210(8) *defines* consistency as meaning "that no feature of a plan or regulation is
24 incompatible with any other feature of a plan or regulation. Consistency is indicative of a
25 capacity for orderly integration or operation with other elements in a system."

26
27 WAC 365-196-800(1) describes the *relationship* between development regulations
28 and comprehensive plans:

29 Development regulations under the act are specific controls placed on
30 development or land use activities by a county or city. Development regulations

31
32

¹⁹¹ RCW 36.70A.320(1).

¹⁹² RCW 36.70A.320(2).

¹⁹³ RCW 36.70A.290(1).

¹⁹⁴ RCW 36.70A.320(3). In order to find the City's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

1 must be consistent with and implement comprehensive plans adopted pursuant
2 to the act.

3 "Implement" in this context has a more affirmative meaning than merely
4 "consistent." See WAC 365-196-210. "Implement" connotes not only a lack of
5 conflict but also a sufficient scope to fully carry out the goals, policies,
6 standards and directions contained in the comprehensive plan.

7 Over the years, the Board has applied the statute and regulations in a variety of
8 settings and in numerous decisions.

9 The Board has stated that "consistency can also mean more than one policy
10 not being a roadblock for another; it can also mean that the policies of a
11 comprehensive plan ... must work together in a coordinated fashion to achieve
12 a common goal."¹⁹⁵

13 Growth Management Act (GMA) also requires that development regulations
14 "implement" the policies and provisions of the comprehensive plan.

15 "Implement" has a more affirmative meaning than merely "consistent with."
16 Implement connotes not only a lack of conflict but sufficient scope to carry out
17 fully the goals, policies, standards and directions contained in the
18 comprehensive plan.¹⁹⁶

19 Perceived inconsistencies between a specific development regulation and
20 specific, isolated comprehensive plan goals does not violate RCW 36.70A.040.
21 Rather, an .040 violation results if the development regulations preclude
22 attainment of planning goals/policies.¹⁹⁷

23 In determining when an inconsistency exists between various parts of a local
24 jurisdiction's planning policies and regulations, we have held that consistency
25 means that no feature of the plan or regulation is incompatible with any other
26 feature of the plan or regulation. ... Said another way, no feature of one plan
27 may preclude achievement of any other feature of that plan or any other
28 plan.¹⁹⁸

29 A finding of inconsistency requires a showing of actual conflict between
30 competing provisions of a city's planning policies and development
31 regulations.¹⁹⁹

32 In analyzing whether there is a lack of consistency between a plan provision
and a development regulation, arising to a violation of the GMA, this Board has

¹⁹⁵ *Alberg, et al v. King County*, CPSGMHB No. 95-3-0041c (FDO, September 13, 1995) at 15. See also: *West Seattle Defense Fund, et al. v. Seattle*, CPSGMHB No. 94-3-0016c (FDO, April 4, 1995) at 27; *Children's Alliance v. City of Bellevue*, CPSGMHB No. 95-3-0011 (FDO, July 25, 1995).

¹⁹⁶ *Bertelsen and Raine v. Yakima County, et al.*, EWGMHB No. 00-1-0009 (FDO, November 2, 2000) at 7.

¹⁹⁷ *Cook & Heikkila v. Winlock*, CPSGMHB No. 09-2-0013c (FDO, October 8, 2009) at 35.

¹⁹⁸ *Ray, et al. v. City of Olympia and Dept. of Ecy*, WWGMHB No. 02-2-0013 (FDO, June 11, 2003) at 9.

¹⁹⁹ *Id.* at 1.

1 held that such a violation results if the development regulations preclude
2 attainment of planning goals and policies.²⁰⁰
3 The GMA's consistency requirement "means that differing parts of the
4 comprehensive plan 'must fit together so that no one feature precludes the
5 achievement of any other.'" ²⁰¹

6 This does not mean that any tension between the goals in a plan is
7 impermissible; courts recognize that "[g]oals considered by local governments
8 in comprehensive planning may be mutually competitive at times,' and "[t]he
9 weighing of competing goals and policies is a fundamental planning
10 responsibility of the local government." If an amendment "meaningfully
11 advances [some] comprehensive plan goals and policies,' the fact that it 'fails
12 to advance another ... cannot [alone] be an invalidating inconsistency" if the
13 latter goals are not precluded by the former. ²⁰²

14 Instead,

15 "[t]he GMA requirement for internal consistency means that the planning
16 policies and regulations must not make it impossible to carry out one provision
17 of a plan or regulation and also carry out the others."²⁰³

18 In *Cook & Heikkila*,²⁰⁴ the Board identified three questions to guide analysis of
19 consistency in any case:

- 20 • Do the development regulations **implement** the comprehensive plan goals and
21 policies?
- 22 • Do any of the development regulation's features **preclude achievement** of any of
23 the Comprehensive Plan policies?
- 24 • Have the Petitioners shown **actual conflict** between Comprehensive Plan policies
25 and the new developments regulations?

26 In answering these questions, the Board looks to the Petitioner's briefs for
27 identification of the *language* of the Ordinance alleged to be inconsistent with specific
28

29
30 _____
31 ²⁰⁰ *Martin v. Whatcom County*, GMHB No. 11-2-0002 (FDO, July 22, 2011) at 17.

32 ²⁰¹ *Brinnon Grp. v. Jefferson County*, 159 Wn. App. 446, 476-77; 245 P.3rd 789, 804 (2011), quoting WAC
365-196-500(1).

²⁰² *Spokane County v. E. Wash. Growth Mgmt. Hearings Bd.*, 173 Wn. App. 310, 333; 293 P.3d 1248, 1259-60
(2013).

²⁰³ *Futurewise v. Whatcom County*, WWGMHB No. 05-2-0013 (Final Decision and Order, January 9, 2012) at
169.

²⁰⁴ *Cook & Heikkila v. Winlock*, WWGMHB No. 09-2-0013c (FDO, October 8, 2009) at 34, 35.

1 language in the Comprehensive Plan (existing or newly adopted) or an explanation of how
2 *implementation* of the Ordinance precludes achievement of or is in direct conflict with the
3 Comprehensive Plan policy. Generally speaking, adequate briefing requires not only
4 identification of the inconsistency, but also legal analysis and an application of the law to the
5 facts.²⁰⁵
6

7 ***B. Abandoned Issues***

8 For any issues set out in the Prehearing Order but not specifically addressed here,
9 the briefing is insufficient to sustain the argument and the issues are deemed abandoned.
10 The Board cannot entertain an argument based on conclusory statements without shifting
11 the burden of proof from the Petitioners on to the City, an outcome that the statute does not
12 embrace. Specifically, of the issues set out in the Prehearing Order, no Petitioner offered
13 briefing on legal issues 2.1, 2.2, 2.3, 2.4, 2.7, 2.8; these issues are deemed abandoned and
14 are dismissed.
15
16

17 ***C. Discussion and Analysis of Legal Issues***

18 Ordinance 125790 amended the land use map to expand the boundaries of certain
19 urban villages and amended certain neighborhood plan policies.²⁰⁶ Ordinance 125791
20 amends the development regulations applicable and to these areas and the zoning map.²⁰⁷
21 Substantively, the impact or effect of these ordinances is to increase development capacity
22 in certain areas of the City and to require new development to either provide affordable
23 housing or make an in lieu payment to support development of such housing.
24

25 All Petitioners, with the exception of Wallingford, alleged that the MHA ordinance was
26 inconsistent with certain policies of the City's Comprehensive Plan, in violation of GMA
27 goals set out at RCW 36.70A.020 and with RCW 36.70A.130(1)(d) and implementing
28 regulations. Petitioner SUN limited its challenge to asserting that passage of the MHA
29 ordinance is in conflict with and was not guided by the GMA planning goals for open space,
30
31

32 ²⁰⁵ *Tulalip Tribes of Wash. v. Snohomish Cty.*, CPSPGMHB No. 96-3-0029 (Final Decision and Order, January 8, 1997) at 7; *Samson v. City of Bainbridge Island*, CPSPGMHB No. 04-3-0013 (Final Decision and Order, January 19, 2005) at 6.

²⁰⁶ Index 99, Ordinance 125790.

²⁰⁷ Index 100, Ordinance 125791.

1 recreation and public facilities.²⁰⁸ The discussion and analysis here is organized by
2 Petitioner, consistent with the organization of the issues as presented in the Petitioners’
3 briefs.

4
5 **SCALE**

6 **Legal Issue 2.6 – Historical Preservation**

7 **Is the MHA ordinance in conflict with and not guided by the GMA planning goals for**
8 **historic preservation, to identify and encourage the preservation of lands, sites, and**
9 **structures that have historical significance?**

10 **Legal Issue 2.14**

11 **Does the MHA ordinance violate GMA requirements in RCW 36.70A.130(1)(d) that a**
12 **development regulation be consistent with and implement the Comprehensive Plan**
13 **adopting regulations that are inconsistent and fail to implement the Comprehensive**
14 **Plan policies listed in Appendix A. The comprehensive plan consistency issues**
15 **include these major topics: 2.14.1 Historic Resources**

16 Petitioner SCALE alleges that the Ordinance is inconsistent with the GMA goal
17 concerning historic preservation, RCW 36.70A.020(13), which advises local jurisdictions to
18 “identify and encourage the preservation of lands, sites, and structures, that have historical
19 or archaeological significance.”

20
21 More specifically, SCALE alleges that the Ordinance is inconsistent with LU 14.1 of
22 the City’s Comprehensive Plan:

23 Maintain a comprehensive survey and inventory of Seattle’s historic and
24 cultural resources. Update the survey and inventory when developing a new
25 community plan or updating an existing plan, as appropriate.

26 SCALE alleges that the City has not complied with either the call to maintain a
27 comprehensive survey and inventory or the call to update these items when updating a
28 community plan. SCALE notes that the City did conduct historic surveys as called for in LU
29 14.1 before proposing zoning changes in two prior actions involving updating community
30 plans and rezones in the University District and Uptown/Queen Anne, but did not comply
31 with the policy here.²⁰⁹ The Petitioner asserts that the City has “never surveyed 17 of the 28
32

²⁰⁸ Prehearing Order at 4.

²⁰⁹ SCALE’s Prehearing Brief, p. 56.

1 ... urban villages” affected by the Ordinance, “nor the commercial areas outside the urban
2 villages.”²¹⁰

3 The City points out that the GMA goal does not mandate a specific action and LU
4 14.1 itself encourages action “as appropriate”, providing flexibility in application of the policy.
5 The City made a distinction in how it dealt with the potential impacts on historical resources
6 in the University District and Uptown/Queen Anne case and in the case of the Seattle MHA
7 ordinances.²¹¹

8
9 In response, Petitioner states that the City has not complied with the policy requiring
10 the City to maintain a comprehensive policy and inventory, but then limits its argument
11 concerning consistency only to the city’s failure to update the survey and inventory when
12 developing this legislation.²¹²

13 Petitioner’s argument rests on the assertion that the failure to perform same updates
14 for the land use zones affected by this Ordinance, as was done in other actions impacting
15 specific land use zones, is a direct conflict and thus proves the inconsistency.²¹³ But to
16 accept Petitioner’s conclusion is to negate the wording of the policy itself, which gives the
17 City the authority to use its judgment in deciding precisely where the policy concerning
18 updating the survey and inventory will be applied. Nor can the City’s action in adopting
19 these Ordinances be read to preclude achievement of the policy, as nothing in the
20 challenged Ordinances prevents such surveys and updates from being performed in the
21 future.
22

23
24 To the extent that the SEPA analysis reviewed by the hearing examiner required
25 additional work concerning historic resources, the City performed that work and issued an
26 Addendum. The argument made by the Petitioner for the necessity of the SEPA Addendum
27 cannot, in the absence of legal argument pertaining specifically to the GMA’s requirements,
28 sustain a finding of inconsistency here.
29
30

31
32 _____
²¹⁰ SCALE’s Prehearing Brief, pp. 55-56.

²¹¹ Seattle’s Prehearing Brief, p. 121.

²¹² SCALE’s Reply Brief, p. 23.

²¹³ *Id.* The argument about whether or not the survey was appropriate in part because it was cost-prohibitive is not a criteria or element which the Board chooses to pursue. Although a jurisdiction’s budget provides an expression of its policies, it is not a matter of evaluation or analysis by this Board.

1 **The Board finds and concludes** that the Petitioner has failed to demonstrate a
2 direct conflict between the Ordinance and policy LU 14.1, or that the Ordinance precludes
3 the achievement of the policy.

4 Legal Issue 2.6 is dismissed.

5
6 **Issues 2.14**

7 **Does the MHA ordinance violate GMA requirements in RCW 36.70A.130(1)(d) that a**
8 **development regulation be consistent with and implement the Comprehensive Plan**
9 **adopting regulations that are inconsistent and fail to implement the Comprehensive**
10 **Plan policies listed in Appendix A. The comprehensive plan consistency issues**
11 **include these major topics: 2.14.5 Height, Bulk, Scale, Edge Effects and Noise; 2.14.6**
12 **Land Use, and 2.14.7 – Urban form/ Aesthetics**

13 SCALE lists a number of Comprehensive Plan policies identified and testified to in
14 the record wherein the Comprehensive Plan envisioned urban villages as including single
15 family areas, as opposed to the Ordinance’s alleged elimination of single family zoning.²¹⁴
16 The brief lists the policies, GS 3.11, 3.21, GS 3.11, LU 1.4, R-HP1, GS 1.3, LU 7.1, GS 1.3,
17 and GS G3, but identifies no specific language of the Ordinance or of the policies alleged to
18 be in conflict nor any legal argument as to why the implementation of the Ordinance would
19 preclude or prevent the realization of these policies. Petitioner offers:

20 Due to page limit restrictions, the arguments and evidence provided above
21 regarding the analysis in the MHA EIS is incorporated herein for the purpose
22 of demonstrating that the MHA Legislation is inconsistent with all of these
23 identified policies.²¹⁵

24 The City notes the absence of explanation or legal analysis and points out that
25 arguments related to this case’s SEPA issues do not provide adequate argument on issues
26 of GMA compliance. The City asserts that the lack of discussion or legal argument
27 constitutes abandonment of the issues.²¹⁶ The Board agrees.

28 **The Board finds and concludes** that Petitioner SCALE has failed to satisfy its
29 burden of proof by abandoning the assertions of inconsistency in Issues 2.14.5, 2.14.6 and
30 2.14.7.
31
32

²¹⁴ Testimony by Peter Steinbrueck identified in Petitioner Scale’s brief at 56.

²¹⁵ SCALE’s Prehearing Brief, p. 57.

²¹⁶ Seattle’s Prehearing Brief, p. 130.

1 **Duwamish Valley Neighborhood Planning Council (DVNPC)**

2 **Legal Issue 2.9**

3 **By eliminating single-family zoning throughout South Park and other neighborhoods,**
4 **did the Citywide MHA ordinance violate the requirements of RCW 36.70A.130(1)(d)**
5 **and WAC 365-196-800(1) that a development regulation “shall be consistent with and**
6 **implement the comprehensive plan” which must “encourage preservation of existing**
7 **housing stock” (RCW 36.70A.020(4)) and must provide “mandatory provisions for the**
8 **preservation, improvement, and development of housing, including single-family**
9 **residences” (RCW 36.70A.070(2)(b))?**

9 **Legal Issue 2.10**

10 **By eliminating single-family zoning in South Park, but not amending the**
11 **Comprehensive Plan’s South Park neighborhood “subarea” plan (RCW**
12 **36.70A.080(2)), including SP-G8 to preserve single-family housing, SP-P8 to**
13 **encourage maintenance of existing housing, and the Future Land Use Map, did the**
14 **Citywide MHA ordinance violate requirements of RCW 36.70A.130(1)(d) and WAC-365-**
15 **196-800(1) that any “amendment or revision to development regulations shall be**
16 **consistent with and implement the comprehensive plan?”**

17 Petitioner DVNPC argues that the challenged Ordinance “eliminated all single-family
18 zoning in urban villages, including South Park”, and is in conflict with RCW 36.70A.070(2)(b)
19 requiring comprehensive plans to include a housing element with “mandatory provisions for
20 the preservation, improvement, and development of housing, including single family
21 residence.²¹⁷ The argument is conclusory; as the City points out in its response, the
22 legislation did not touch most of the single-family zoning in South Park and, indeed
23 preserves the opportunities for single-family housing.²¹⁸

24 In its response, the City notes that the introduction of the RSL zone is consistent with
25 the preservation and development of single-family detached housing, but modestly sized
26 and with on more than one single-family home allowed on any individual lot.²¹⁹ The Board
27 notes that the Ordinance advances a number of other housing policies,²²⁰ all of which serve
28 to support housing, including single family residences, across economic and demographic
29 groups.
30
31

32 ²¹⁷ DVNPC’s Prehearing Brief, p. 22.

²¹⁸ Seattle’s Prehearing Brief, pp. 124-126,

²¹⁹ *Id.* at 125.

²²⁰ *Id.* at 119, citing Housing goal 2, Housing Goal 5; Housing Policy 1.2, Housing Policy 5.2, Housing Policy 5.15, Housing Policy 5.16.

1 **The Board finds and concludes** that the Petitioner has failed to demonstrate a
2 violation of the GMA, a conflict between the Ordinance and existing policies in the
3 Comprehensive Plan, or that the Ordinance precludes the achievement of those policies.

4 Legal Issues 2.9 and 2.10 are dismissed.

5
6 **Legal Issue 2.11**

7 **Did the Citywide MHA ordinance violate the requirements of RCW 36.70A.130(1)(d)**
8 **and WAC 365-196-800(1) that development regulations must be “consistent with and**
9 **implement comprehensive plans” by failing to comply with the Comprehensive Plan’s**
10 **goals and policies CW 6.2, CI 1.2, CI 1.5, CI 2.1, and CI 2.4), including the failure to**
11 **translate significant portions of MHA legislation into the languages prevalent in**
12 **South Park and the surrounding Duwamish Valley neighborhoods?**

13 **Legal Issue 2.12**

14 **Does the Citywide MHA ordinance violate RCW 36.70A.020(13) and is it inconsistent**
15 **with WAC 365-196-450 and a variety of Comprehensive Plan goals and policies (GS**
16 **3.9, LU 14.2, LU 14.8, LU 14.9, LU G15, LU 15.1, LU 15.2, LU G16, H 4.5, and ED 1.4) to**
17 **preserve historic resources by rezoning South Park to encourage redevelopment**
18 **while DVNPC is working to create an historic district with the support of a King**
19 **County grant?**

20 **Legal Issue 2.13**

21 **Is the Citywide MHA Ordinance part of a continuing pattern of discrimination against**
22 **marginalized populations, which the City concedes occurred in the past, inconsistent**
23 **with the Comprehensive Plan goals and policies (GS 1.8 limit displacement, LU 2.7,**
24 **LU 2.8, CW 1.7, CI 1.4, CI 1.6) in violation of RCW 36.70A.130(1)(d) and WAC 365-196-**
25 **800(1), because rezoning South Park to RSL(M) will create additional displacement in**
26 **a neighborhood classified as having High Displacement risk?**

27 Petitioner DVNPC lists the policies with which the Ordinance is inconsistent, including
28 LU 14.2, LU 14.8, LU 14.9, LU G15, LU 15.1, LU 15.2, LU G16, H 4.5 and ED 1.4
29 concerning historical resources, LU 2.7, LU 2.8, CW 1.7, CI 1.4, and CI 1.6 concerning
30 marginalized populations and displacement.²²¹ Petitioner identifies no specific language in
31 the policies cited nor any argument as to precisely how the challenged Ordinance conflicts
32 with or would preclude achievement of any of these policies. Petitioner’s argument
throughout appears to be based on the idea that any diminution of single-family zoning is

²²¹ DVNPC’s Prehearing Brief, p. 24.

1 *per se* in conflict with the Comprehensive Plan’s policies encouraging the preservation of
2 single-family housing.²²²

3 **The Board finds and concludes** that the Petitioner has failed to demonstrate a
4 violation of the GMA, a conflict between the Ordinance and existing policies in the
5 Comprehensive Plan, or that the Ordinance precludes the achievement of those policies.

6 Legal Issues 2.11, 2.12, and 2.13 are dismissed.
7

8 **Legal Issue 3.7**
9

10 **Did the City violate the notice, public participation, and coordination provisions of**
11 **RCW 36.70A.020(11) and Comprehensive Plan policy GS 4.1 for adjacent jurisdiction**
12 **cooperation in violation of RCW 36.70A.035, RCW 36.70A.140, and RCW**
13 **36.70A.130(1)(d), by failing to notice South Park residents, failing to work with King**
14 **County, and failing to notice unincorporated King County residents to “ensure**
15 **coordination between communities and jurisdictions to reconcile conflicts” affected**
16 **by a pending annexation [ftn. omitted] previously approved by King County that**
17 **could be affected by Citywide MHA?**

18 DVNPC failed to brief and therefore abandoned that portion of Legal Issue 3.7
19 pertaining to notice and public participation. As to the requirement in RCW 36.70A.130(1)(d)
20 that development regulations “shall be consistent with and implement the comprehensive
21 plan,” DVNPC did not present any legal argument that specified language in the challenged
22 ordinance was inconsistent with specified language in the Comprehensive Plan. DVNPC
23 simply alleged that MHA rezoning could jeopardize that annexation because it requires
24 adjacent neighborhoods have similar zoning.²²³

25 The Board finds and concludes that Petitioners have failed to satisfy their burden of
26 proof to demonstrate that Seattle Ordinance Nos. 125790 and 125791 violate the
27 requirements of RCW 36.70A.130(1)(d) that “[a]ny amendment of or revision to
28 development regulations shall be consistent with and implement the comprehensive plan.”

29 Legal Issue 3.7 is dismissed.
30
31
32

²²² DVNPC’s Reply to City Prehearing Brief, p. 8.

²²³ DVNPC Prehearing Brief at 24.

1 **Seniors United for Neighborhoods (SUN)**

2 **Legal Issue 2.14**

3 **Does the MHA ordinance violate GMA requirements in RCW 36.70A.130(1)(d) that a**
4 **development regulation be consistent with and implement the Comprehensive Plan**
5 **adopting regulations that are inconsistent and fail to implement the Comprehensive**
6 **Plan policies listed in Appendix A. The comprehensive plan consistency issues**
7 **include these major topics: 2.14.2 Displacement and loss of affordable housing**

8 Petitioner SUN argued that the Ordinance is inconsistent with policy H 2.6 and LU
9 2.8.²²⁴

10 Policy H 2.6 admonishes the City to seek to identify affordable housing at risk of
11 demolition and work to mitigate the displacement of residents ahead of planned up zones;
12 LU 2.8 required the City to evaluate new land use regulations to determine if there are
13 adverse outcomes on certain populations “unfairly,” and seek to avoid or mitigate those
14 outcomes.

15 Petitioner acknowledges the City’s efforts in the EIS, but asserts that the City did not
16 identify specific housing at risk nor provide for avoidance or mitigation of those specific
17 adverse outcomes.²²⁵ Petitioner SUN thereafter concludes that the failure “will lead to
18 displacement of thousands of marginalized people, seniors, and others on fixed incomes,” in
19 addition to displacement middle and lower-wage workers, but without further proof of these
20 results.
21

22 The City replies that the FEIS not only evaluated physical displacement, but offers
23 evidence from the record that the Ordinance, the preferred alternative under evaluation, will
24 generate more new affordable housing than to “no action” alternative. The City argues that
25 the legislative itself links development capacity increases to the imposition of affordable
26 housing requirement.²²⁶
27

28 In reply, SUN emphasizes language in the policies that require the City to identify the
29 housing at risk and work to mitigate displacement ahead of planned up zones, interpreting
30

31
32 ²²⁴ SUN identifies other policies by number, but offers no analysis or legal argument. As noted, simply claiming
inconsistently without providing adequate argument is insufficient to offer the Board any basis to analyze the
claim. These issues are deemed abandoned.

²²⁵ Petitioner SUN’s Prehearing Brief, at 7.

²²⁶ Seattle’s Prehearing Brief, at 122.

1 this language to require rather specific identification of the properties that may be subject to
2 displacement and to provide mitigation addressing those specific displacements.²²⁷ The
3 problem with this argument is, of course, that it is patently impractical and, if interpreted as
4 SUN suggests, would essentially bar any rezones.

5 As the City notes, the entire thrust of the challenged Ordinance is to provide and
6 address housing scarcity, and the FEIS thoroughly evaluated physical displacement
7 especially as it impacts marginalized populations.²²⁸ The Board is persuaded that the
8 Petitioner has not met its burden to show that the Ordinance is in conflict with or precludes
9 achievement of Policy H 2.6.

10 As pertains to LU 2.8, the City offers somewhat the same defense, inasmuch as the
11 legislation is aimed at providing alternative housing to these potentially displaced
12 populations. In sum, however, the burden of proof is on the Petitioner, and the Board
13 cannot find that the Petitioner has met its burden to show how the Ordinance here
14 challenged is in conflict with or precludes achievement of the City's policies H 2.6 or LU 2.8.

15 **The Board finds and concludes** that the Petitioner has failed to demonstrate a
16 violation of the GMA, a conflict between the Ordinance and existing policies in the
17 Comprehensive Plan, or that the Ordinance precludes the achievement of those policies.

18 **Legal Issue 2.5**

19 **Is the MHA ordinance in conflict with and not guided by the GMA planning goals for**
20 **open space and recreation, and for ensuring adequate public facilities and levels of**
21 **service? RCW 36.70A.020(9) and (12)?**

22 Petitioner SUN alleges that the Ordinance violates the GMA Goal RCW
23 36.70A.020(9) which calls on local governments to retain open space, enhance recreational
24 opportunities and develop parks and recreational facilities. Petitioner SUN argues that the
25 EIS, Chapter 3.7, admits adverse impacts and thus provides the evidence in the record that
26 the Ordinance is noncompliant. Further, while the EIS identifies mitigation measures, SUN
27 argues that the City's failure to adopt any of those measures further supports
28
29
30
31
32

²²⁷ Petitioner SUN's Reply Brief, at 4-5.

²²⁸ Seattle's Prehearing Brief, at 122-123.

1 noncompliance.²²⁹

2 There is no specific GMA section or requirement implementing this goal. SUN's
3 argument seems to be a recitation that the City should have policies on this goal and, had
4 they had such policies, this Ordinance would have conflicted with them.²³⁰

5 **The Board finds and concludes that** the Petitioner has failed to demonstrate a
6 violation of the GMA, a conflict between the Ordinance and existing policies in the
7 Comprehensive Plan, or that the Ordinance precludes the achievement of those policies.
8

9 Legal Issue 2.5 is dismissed.

10
11 ***Fremont Neighborhood Association (FNC)***

12 **Issue 2.14**

13 **Does the MHA ordinance violate GMA requirements in RCW 36.70A.130(1)(d) that a**
14 **development regulation be consistent with and implement the Comprehensive Plan**
15 **adopting regulations that are inconsistent and fail to implement the Comprehensive**
16 **Plan policies listed in Appendix A. The comprehensive plan consistency issues**
17 **include these major topics: 2.14.3. Trees and tree canopy**

18 Petitioner FNC asserts that the Ordinance is in conflict with Comprehensive Plan
19 environmental policies in support of Goal EN G1 encouraging the preservation of tree
20 canopy throughout the City, thereafter listing policies EN 1.1, 1.2, 1.3 and 1.4. Fremont
21 argues that “[f]or many of the same reasons discussed in the section above” on
22 noncompliance with SEPA, the Ordinance is inconsistent with the Comprehensive Plan.²³¹

23 These policies are all phrased in aspirational terms:

- 24
- 25 • EN 1.1 Seek to achieve an urban forest ...
 - 26 • EN 1.2 Strive to increase citywide tree canopy coverage ...
 - 27 • EN 1.3 Use trees ... and other low-impact development features to ... reduce the
 - 28 impacts of development.
 - 29 • EN 1.4 Increase the amount of permeable surface by reducing hardscape
 - 30 surfaces where possible ...
 - 31
 - 32

²²⁹ Petitioner SUN's Prehearing Brief, at 14-15.

²³⁰ *Id.*

²³¹ Fremont Neighborhood Council Opening Brief, at 13.

1 Not one of these policies sets out an affirmative or quantitative duty. FNC in its opening
2 brief does offer significant argument for exactly how the Ordinance is deficient in
3 implementing the policies,²³² but the City counters by pointing out that FNC cannot show a
4 direct conflict with the policies, nor that the Ordinance precludes attainment of policies
5 relating to trees.²³³ The Board agrees.

6
7 The City points out that the FEIS for this Ordinance found that all the action
8 alternatives under consideration presented a potential to change the tree canopy cover over
9 the 20 year planning period as less than one percent.²³⁴ This level of impact of the
10 challenged Ordinance is insufficient to present either a direct conflict with or a preclusion of
11 the achievement of the cited policies.

12 As has been noted, the burden is on the Petitioner to show that the challenged action
13 either directly conflicts with existing policies or precludes their attainment.

14 **The Board finds and concludes** that the Petitioner FNC has failed to demonstrate a
15 violation of the GMA, a conflict between the Ordinance and existing policies in the
16 Comprehensive Plan, or that the Ordinance precludes the achievement of those policies in
17 Issues.

18
19 Legal Issue 2.14 is dismissed.

20
21 **Conclusion – Inconsistency and GMA Planning Goals**

22 As to Legal Issues 2.5 and 2.6, Petitioners have failed to satisfy their burden of proof
23 to demonstrate that Seattle Ordinance Nos. 125790 and 125791 are in conflict with and not
24 guided by the GMA Planning Goals for Open Space and Recreation (RCW 36.70A.020(9)),
25 Public Facilities and Services (RCW 36.70A.020(12)), and Historic Preservation (RCW
26 36.70A.020(13)). Legal Issues 2.5 and 2.6 are dismissed.

27
28 As to Legal Issues 2.9 and 2.10, 2.11, 2.12, 2.13, 2.14, and 3.7, Petitioners have
29 failed to satisfy their burden of proof to demonstrate that Seattle Ordinance Nos. 125790
30 and 125791 violate the requirements of RCW 36.70A.130(1)(d) that “[a]ny amendment of or
31 revision to development regulations shall be consistent with and implement the
32

²³² *Id.* at 14.

²³³ Seattle’s Prehearing Brief, at 123.

²³⁴ Seattle’s Prehearing Brief, at 123.

1 comprehensive plan.” Legal Issues 2.9 and 2.10, 2.11, 2.12, 2.13, 2.14, and 3.7 are
2 dismissed.

3 4 **VI. PUBLIC PARTICIPATION**

5 **A. Standard of Review and Applicable law**

6 Comprehensive plans and development regulations, and amendments to them, are
7 presumed valid upon adoption.²³⁵ This presumption creates a high threshold for
8 challengers as the burden is on the Petitioners to demonstrate that any action taken by the
9 City is not in compliance with the Growth Management Act.²³⁶ The scope of the Board’s
10 review is limited to determining whether a City has achieved compliance with the GMA only
11 with respect to those issues presented in a timely petition for review.²³⁷ The Board is
12 directed to find compliance unless it determines that the challenged action is clearly
13 erroneous in view of the entire record before the Board and in light of the goals and
14 requirements of the GMA.²³⁸

15
16 Cities “shall establish and broadly disseminate to the public a public participation
17 program identifying procedures providing for early and continuous public participation in the
18 development and amendment of comprehensive land use plans and development
19 regulations implementing such plans.”²³⁹ Public participation requirements “shall include
20 notice procedures that are reasonably calculated to provide notice” of proposed
21 amendments to comprehensive plans and development regulations to individuals, property
22 owners, and organizations.²⁴⁰ “Errors in exact compliance with the established program and
23 procedures shall not render the comprehensive land use plan or development regulations
24 invalid if the spirit of the program and procedures is observed.”²⁴¹ The GMA has a planning
25 goal to “[e]ncourage the involvement of citizens in the planning process”, and this goal
26
27
28

29
30

²³⁵ RCW 36.70A.320(1).

²³⁶ RCW 36.70A.320(2).

31 ²³⁷ RCW 36.70A.290(1).

32 ²³⁸ RCW 36.70A.320(3). In order to find the City’s action clearly erroneous, the Board must be “left with the firm and definite conviction that a mistake has been made.” *Dep’t of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

²³⁹ RCW 36.70A.140.

²⁴⁰ RCW 36.70A.035(1).

²⁴¹ RCW 36.70A.140.

1 guides the development of comprehensive plans and development regulations.²⁴²

2 Thus, Petitioners have the burden of proving that Seattle failed to use procedures
3 reasonably calculated to provide notice of the City Council's proposed enactment of
4 Ordinance Nos. 125790 and 125791.

5
6 ***B. Discussion and Analysis of Legal Issues***

7 **Legal Issue 3.1**

8 **Did the City Council violate the enhanced notice and public participation provisions**
9 **of RCW 36.70A.020(11), RCW 36.70A.035, and RCW 36.70A.140 by adopting the**
10 **Citywide MHA ordinance and the Citywide MHA Comprehensive Plan amendments on**
11 **March 18, 2019 before the expiration of the published comment period on March 25,**
12 **2019 or March 29, 2019?**

13 Petitioner Duwamish Valley Neighborhood Preservation Coalition (DVNPC) alleges
14 Seattle violated RCW 36.70A.140 which requires that Cities “shall establish and broadly
15 disseminate to the public a public participation program” identifying procedures that provide
16 for “consideration of and response to public comments.” DVNPC presented no legal briefing
17 as to RCW 36.70A.020(11) nor on RCW 36.70A.035 under legal issue 3.1.

18 DVNPC asserts (1) the City Council adopted the MHA ordinance on March 18th, 7 to
19 10 days before the end of the published comment period, (2) this cannot be considered
20 inadvertent error, and (3) at the official public hearing on February 21, 2019, a citizen read
21 and submitted written comments objecting to MHA passage before the end of the comment
22 period (Index No. 946, p. 21).²⁴³

23
24
25 Seattle responds: The notices published in advance of the February 21, 2019, City
26 Council public hearing mistakenly stated that final Council action was “not anticipated to
27 occur before March 25, 2019,” and that written comments would be accepted until that
28 point. However, subsequent notices published on March 4, 2019, expressly corrected the
29 date of the expected final Council action. The notices stated that the Council “may take
30 action” on March 18, 2019, and stated, “Written comments may be submitted at any time
31 until the final Council vote on the legislation. A previous notice incorrectly indicated that
32

²⁴² RCW 36.70A.020(11).

²⁴³ DVNPC's Prehearing Brief at 20.

1 comments would be accepted through March 25.”

2 Under the SEPA Rules, errors in exact compliance with the established program and
3 procedures shall not render the comprehensive land use plan or development regulations
4 invalid if the spirit of the program and procedures is observed. In this instance, the City
5 corrected the mistake in the comment deadline prior to the March 18, 2019, City Council
6 meeting, and there is no evidence that this error in exact affected the public’s ability to
7 comment on the ordinance or to participate in the February 21 public hearing. The Board
8 finds that Seattle followed the spirit of the public participation program and procedures.
9

10 Moreover, DVNPC asserts a violation of RCW 36.70A.140 but does not point to any
11 evidence, and does not provide any legal argument that Seattle failed to “establish a public
12 participation program” identifying procedures that provide for consideration of and response
13 to public comments. The record indicates that Seattle did “establish” a public participation
14 program and when a mistake was made on the comment deadline date, the City corrected
15 that error and notified the public that the Council “may take action” on March 18, 2019.
16 DVNPC submitted at least six comments on or before March 10, 2019.²⁴⁴
17

18 The Board finds and concludes as follows:

- 19 1. Seattle has an established public participation program codified in Seattle
20 Municipal Code Chapter 23.76 that includes procedures that provide for
21 consideration of and response to public comments.
- 22 2. Notices published in advance of the February 21, 2019, City Council public
23 hearing on the MHA legislation mistakenly stated that final Council action was “not
24 anticipated to occur before March 25, 2019”, and that written comments would be
25 accepted until that point.
- 26 3. At the official public hearing on February 21, 2019, Ira Appelman read and
27 submitted written comments objecting to MHA passage before the end of the
28 comment period.
- 29 4. Seattle corrected the mistake in the comment deadline prior to the March 18,
30 2019, City Council meeting when the MHA legislation was adopted.
- 31 5. There is no evidence that Seattle’s error in exact compliance with public
32 participation procedures affected the public’s ability to comment on the MHA
legislation prior to the March 18 adoption date or to participate in the February 21
public hearing.

²⁴⁴ Index PC07120, PC07594, PC08706, PC09284, PC11422, PC11428 (emails sent from Penni Cocking under the email address dvnpccoalition@gmail.com).

- 1 6. Errors in exact compliance with the established program and procedures shall not
2 render the comprehensive land use plan or development regulations invalid if the
3 spirit of the program and procedures is observed.
4 7. In enacting Ordinance Nos. 125790 and 125791, Seattle followed the spirit of the
5 public participation program and procedures.
6 8. DVNPC failed to satisfy its burden of proof to show that Seattle violated the RCW
7 36.70A.140 requirement to “establish and broadly disseminate to the public a
8 public participation program,” including procedures that provide for “consideration
9 of and response to public comments.”

Legal Issue 3.1 is dismissed.

10 Legal Issue 3.2

11 **Was it a violation of the enhanced public participation provisions of RCW**
12 **36.70A.020(11) and RCW 36.70A.140 for Councilmember Rob Johnson, the Chairman**
13 **of the Select MHA Committee, the Planning, Land Use, and Zoning (PLUZ) Committee,**
14 **and main advocate of Citywide MHA, to schedule a vacation on the hearing date,**
15 **missing the official public hearing for the Citywide MHA ordinance and Citywide MHA**
16 **Comprehensive Plan amendments, discouraging and avoiding public participation?**

17 Under Legal Issue 3.2, DVNPC states:

18 The sponsor of the MHA bills, Councilmember Rob Johnson, was absent from
19 the official public hearing. He was absent, not because he was sick or injured
20 or had a death in the family or because of any other emergency. He was
21 absent because he decided to take a vacation on the day of the official MHA
22 public hearing (Index No. 846).²⁴⁵

23 DVNPC alleges these facts violate the enhanced public participation requirements of
24 the GMA include the RCW 36.70A.140 mandate ... “for...consideration of and response to
25 public comments,” with the RCW 36.70A.020(11) goal to, “Encourage the involvement of
26 citizens in the planning process...”

27 DVNPC does not cite any GMA provision requiring the presence of a particular
28 public official when adopting amendments to comprehensive plans or development
29 regulations. City Councilmember Johnson attended multiple hearings and workshops, and
30 had ample opportunity to receive, consider, and respond to public comments in-person, in
31 addition to considering the written comments that the Council received.²⁴⁶
32

²⁴⁵ DVNPC Prehearing Brief at 21.

²⁴⁶ *E.g.*, Index 886, 887, 900, 901.

1 DVNPC failed to satisfy its burden of proof to show that Seattle violated the RCW
2 36.70A.140 requirement to “establish and broadly disseminate to the public a public
3 participation program,” including procedures that provide for “consideration of and response
4 to public comments.”

5 Legal Issue 3.2 is dismissed.
6

7 **Legal Issue 3.3**

8 **Does the Citywide MHA notice, which wasn’t reasonably available, wasn’t reasonably**
9 **likely to reach interested persons, and didn’t fairly and sufficiently apprise the public**
10 **of the disadvantages of MHA, but, instead promoted MHA and emphasized only the**
11 **alleged advantages, violate the notice and public participation provisions of RCW**
12 **36.70A.020(11), RCW 36.70A.035, WAC 365-196-600(6) and RCW 36.70A.140?**

13 DVNPC argues: “The City materials were advertisement or promotions, not notice,
14 because they didn’t ‘alert the public to the key questions in play.’ The ‘notice’ provided by
15 the City didn’t inform the public that single-family housing would be eliminated because it’s
16 racist, which, as the City Council discussion proves, were key questions in play. . . . Failure
17 to provide notice that alerts the public to the key issues at play fails to comply with RCW
18 36.70A.035 and RCW 36.70A.140 is clearly erroneous.”²⁴⁷

19
20
21 Seattle responds in pertinent part as follows:

22 The notices that the City published gave notice of the MHA ordinances’ key
23 features . . . and accurately described the rezones that would affect six
24 percent of Seattle land with single-family zoning. . . . For example, notice of
25 the Council’s public hearing provided a lengthy and detailed summary of the
26 bills, including specifically the rezones in “areas currently zoned Single Family
27 in existing urban villages” and “within expanded urban village boundaries.” The
28 notices also described the Council’s consideration of amendments of the goals
29 and policies in certain neighborhood plans; area-wide revisions to the official
30 zoning map; required contributions to affordable housing; amendments to the
31 various zones; amendments to general development standards, and other
32 features. . . . the City canvassed every household in areas currently zoned
single-family that were proposed for an increase in zoned capacity. . . .
materials used as part of that canvassing effort, such as the “door hanger” left
behind on residents’ doors, notified residents that zoning in their neighborhood
could change to RSL or Lowrise (LR1 – LR3) and provided a summary of what

²⁴⁷ DVNPC Prehearing Brief at 16.

1 those zoning changes could mean (e.g., allowing two to three attached
2 townhouses in areas zoned RSL, or three-story apartment buildings in LR1
3 zones).²⁴⁸

4 The Board finds and concludes that DVNPC failed to satisfy its burden of proof to
5 show that Seattle violated the RCW 36.70A.140 requirement to “establish and broadly
6 disseminate to the public a public participation program,” and DVNPC also failed to satisfy
7 its burden of proof to show that Seattle violated the RCW 36.70A.035 requirement to
8 “include notice procedures that are reasonably calculated to provide notice to property
9 owners and other affected and interested individuals, tribes, government agencies,
10 businesses, school districts, and organizations of proposed amendments to comprehensive
11 plans and development regulation.”

12 Issue 3.3 is dismissed.

13
14 **Legal Issue 3.4**

15 **Was it a violation of the enhanced notice and public participation provisions of RCW**
16 **36.70A.020(11), RCW 36.70A.035, and RCW 36.70A.140 to fail to use site-specific**
17 **means of notification when Seattle had a list of specific addresses affected by the**
18 **proposed lot-by-lot MHA zoning and used site-specific means of notification for other**
19 **purposes and projects?**

20 **Legal Issue 3.6**

21 **Did the City violate the notice and public participation provisions of RCW**
22 **36.70A.020(11), RCW 36.70A.035, and RCW 36.70A.140 and the “spirit” of enhanced**
23 **public participation by failing to conduct surveys or measurements of any kind to**
24 **determine the effectiveness of the notice methods they adopted?**

25 **Legal Issue 3.11**

26 **Is the Citywide MHA ordinance part of an over 50-year pattern of attempts to eliminate**
27 **the single-family zoning and character of South Park where, in this latest Citywide**
28 **MHA round, the rezone to RSL(M) was predetermined and approved without proper**
29 **public participation in violation of RCW 36.70A.020(11), RCW 36.70A.035, and RCW**
30 **36.70A.140?**

31
32 ²⁴⁸ Seattle’s Prehearing Brief at 151-152. Seattle references the record as follows: Index 1130 (notice of public hearing in LUIB); Index 1131 (Aff. of Publ’n, Notice of City Council Hr’g); Index 1132 (LUIB Notice of Opportunity to Comment); Index 1133 (Aff. of Publ’n, Notice of Opportunity to Comment); Index 1026 (Final Report for Cmty. Outreach Project on the HALA Mandatory Housing Affordability Program); and Index 1039 (door hanger notice).

1 **Legal Issue 3.12**

2 **Did the City violate: (a) the requirements for enhanced notice and public participation**
3 **and “bottom up” effort of RCW 36.70A.020(11), RCW 36.70A.035, RCW**
4 **36.70A.130(2)(a), RCW 36.70A.140, and WAC 365-196-010(1)(c), and (b) the**
5 **requirements of RCW 36.70A.130(1)(d) and WAC 365-196-800(1) that development**
6 **regulations be consistent with and implement the Comprehensive Plan?**

7 In their legal argument section under Issue Statements 3.4 and 3.6, DVNPC alleges
8 Seattle “used deceptive tactics to promote MHA, which are inconsistent with effective notice
9 and enhanced public participation (RCW 36.70A.035, RCW 36.70A.140), by hiring a very
10 strong advocate of MHA to provide “notice” and “survey” the public and then claim
11 overwhelming public support for MHA. . . . We urge the Board to conclude that hiring an
12 extreme partisan to inform the public and determine public attitudes is clearly erroneous and
13 that a mistake has been committed.”²⁴⁹

14 Seattle responds that DVNPC’s theories of bias are wholly unsupported, however,
15 and its brief presents no evidence that suggests the canvassing effort was unreliable or
16 inaccurate.²⁵⁰

17
18 In their legal argument section under Issue Statements 3.11 and 3.12, DVNPC
19 asserts as follows:

20 [T]he decision to eliminate single-family zoning in South Park and the other
21 urban villages was predetermined in the secret and closed meetings of the
22 HALA Committee, a group of development insiders, and extraordinarily
23 codified in a documents, the Grand Bargain, signed by the Mayor,
24 Councilmember O’Brien, the HALA Co-Chairs and many development
25 insiders, that is a top-down rather than bottom-up process (WAC 365-196-
26 010(1)(c). We contend that this latest attempt to eliminate single-family zones
27 in South Park is just another example in an over fifty-year struggle, which
28 violates proper public participation requirements of RCW 36.70A.020(11),
29 RCW 36.70A.035, RCW 36.70A.140, WAC²⁵¹

30 Seattle states it followed all of the public participation and notice requirements in the
31 Seattle Municipal Code, and further alleges that DVNPC’s argument that the City violated
32 public participation requirements because the HALA Committee “predetermined” the City’s

²⁴⁹ DVNPC Prehearing Brief at 17, 20.

²⁵⁰ Seattle’s Prehearing Brief at 156.

²⁵¹ DVNPC Prehearing Brief at 23.

1 action is wrong because the HALA Committee made no binding decision about rezones,
2 has no legislative power, and just makes recommendations to the City Council.²⁵²

3 The Board notes that DVNPC's representative attended and participated in the
4 official City Council public hearing on February 21, 2019, and Ira Appelman read and
5 submitted written comments to the City Council.²⁵³

6 While DVNPC has expressed concerns about the HALA advisory committee,
7 Petitioners have failed to satisfy their burden of proof to demonstrate that Seattle did not
8 use procedures reasonably calculated to provide notice of the City Council's proposed
9 enactment of Ordinance Nos. 125790 and 125791, or that the City did not follow the
10 statutory requirement to establish and broadly disseminate a public participation program
11 with procedures for consideration of and response to public comments.

12 Legal Issues 3.4, 3.6, 3.11, and 3.12 are dismissed.

13
14
15 **Legal Issue 3.5**

16 **Did the City violate the enhanced notice and public participation provisions of RCW**
17 **36.70A.020(11), RCW 36.70A.035, and RCW 36.70A.140 by setting a standard for**
18 **notice and public participation for six, individual Seattle neighborhoods, but then**
19 **including 27 neighborhoods into an omnibus (ftn. omitted) process creating**
20 **confusion and suppressing public participation?**

21 **Legal Issue 3.8**

22 **Did the City violate the enhanced public participation provisions of RCW 36.70A.140,**
23 **RCW 36.70A.130(2)(a), RCW 36.70A.035, and RCW 36.70A.020(11) by failing to**
24 **establish and broadly disseminate a public participation program in each of the 27**
25 **Citywide MHA affected neighborhoods including South Park to provide for early and**
26 **continuous public participation in the development of Citywide MHA after effective**
27 **notice in the spirit of a "bottom up" effort (WAC 365-196-010(1)(c)?**

28 In Issue Statements 3.5 and 3.8, as originally submitted to the Board in the Petition
29 for Review filed on June 3, 2019, DVNPC alleged violations of RCW 36.70A.020(11) and
30 RCW 36.70A.140 in addition to two other statutes. In DVNPC's Prehearing Brief, however,
31 there is no mention of RCW 36.70A.020(11) and RCW 36.70A.140 in their legal argument
32 section for Issues 3.5 and 3.8. Accordingly, the Board deems this failure to brief the two

²⁵² Seattle's Prehearing Brief at 156-157.

²⁵³ Index 946.

1 statutes as an abandonment of legal arguments under both RCW 36.70A.020(11) and RCW
2 36.70A.140.²⁵⁴

3 DVNPC states “[w]e haven’t been able to find such a [public participation] program in
4 the Index of Record provided by the City.” DVNPC questions “if one actually exists and the
5 City claims it was followed.” DVNPC asserts “[f]ailure to adopt a public participation program
6 and use it in the consideration of comprehensive plan amendments and development
7 regulations fails to comply with RCW 36.70A.035(1) and RCW 36.70A.130(2)(a) and is
8 clearly erroneous.”²⁵⁵

9
10 In their legal argument section for Issues 3.5 and 3.8, DVNPC does not point to any
11 specific evidence that Seattle failed to use or follow an adopted public participation program.
12 DVNPC makes only the conclusory allegation that Seattle did not use or follow any public
13 participation program.

14 Seattle disputes this by saying it followed its adopted public participation program for
15 comprehensive plan amendments under Seattle Resolution 31117 and its public
16 participation program in Seattle Municipal Code Chapter 23.76 for amendments to the Land
17 Use Code and area-wide amendments to the Official Land Use Map.²⁵⁶

18 The Board finds and concludes that DVNPC failed to come forward with specific
19 evidence to satisfy its burden to prove that Seattle violated RCW 36.70A.035(1) and RCW
20 36.70A.130(2)(a).
21

22 Legal Issues 3.5 and 3.8 are dismissed.
23

24 **Legal Issue 3.9**

25 **Did the City violate the notice and public participation provisions of RCW**
26 **36.70A.020(11), RCW 36.70A.035, and RCW 36.70A.140 by failing to use notice**
27 **methods targeted at getting public participation of the marginalized populations (ftn**
28 **omitted) of South Park including low-income residents, persons of color, and non-**
29 **native English speakers?**

30
31
32 ²⁵⁴ “Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue.” WAC 242-03-590(1).

²⁵⁵ DVNPC Prehearing Brief at 16-17.

²⁵⁶ Seattle’s Prehearing Brief at 153-154; the Board officially notices City of Seattle Resolution 31117 pursuant to WAC 242-03-630(4).

1 DVNPC failed to provide any legal argument supporting alleged violation of RCW
2 36.70A.020(11), RCW 36.70A.035, and RCW 36.70A.140 under Legal Issue 3.9, and the
3 Board deems this to be an abandonment of this issue.²⁵⁷ Legal Issue 3.9 is dismissed.
4

5 **C. Conclusion – Public Participation and Notice**

6 DVNPC failed to satisfy its burden of proof to show that Seattle Ordinance Nos.
7 125790 and 125791 were not guided by the GMA Planning Goal in RCW 36.70A.020(11) to
8 encourage the involvement of citizens in the planning process. DVNPC failed to satisfy its
9 burden of proof to show that Seattle violated the public participation requirements of RCW
10 36.70A.035 and RCW 36.70A.140.
11

12 **VII. FINDINGS OF FACT**

- 13
- 14 1. In 2015, the Seattle City Council adopted Resolutions 31612 and 31622
15 establishing the City’s affordable housing objectives to provide additional housing
16 development capacity and create at least 6,000 net new rent- and income-
17 restricted housing units serving households at or below 60 percent of AMI over
18 ten years.
 - 19 2. In October 2016, Seattle adopted the *Seattle 2035 Comprehensive Plan* which
20 anticipates growth of 120,000 new residents, 70,000 net new housing units, and
21 115,000 jobs by 2035.
 - 22 3. The Comprehensive Plan established an “Urban Village Strategy” that
23 concentrates most of the anticipated housing and employment growth within
24 Seattle’s 6 Urban Centers and 24 Urban Villages, as compact mixed-use
25 neighborhoods with a variety of housing types and affordable rent levels, located
26 within a 10-minute walk of light rail and other very good transit.
 - 27 4. In November 2017, Seattle finalized an Environmental Impact Statement (EIS) on
28 proposed Citywide Implementation of Mandatory Housing Affordability (MHA),
29 which analyzed the environmental impacts of the MHA program, assuming
30 housing growth of up to 100,000 units and employment growth of 115,000 jobs by
31 2035.
 - 32 5. The EIS states that more than 45,000 of Seattle households, or about one in
seven, currently pay more than half of their income on housing, a condition
referred to as severe cost burden -- average rent for a one-bedroom apartment
has increased 35 percent over the last five years and is unaffordable by
conventional measures to a worker earning a \$15 minimum wage.

²⁵⁷ “Failure by such a party to brief an issue shall constitute abandonment of the unbriefed issue.” WAC 242-03-590(1).

6. A coalition of neighborhood groups administratively appealed the MHA EIS to the Seattle Hearing Examiner.
7. After 19 days of testimony, the Seattle Hearing Examiner affirmed the adequacy of the MHA EIS in all aspects except for the historic resources analysis which was remanded for certain specified additional work.
8. On February 7, 2019, Seattle issued an EIS Addendum on Historic Resources to address the Hearing Examiner's remand.
9. Seattle has established public participation programs for comprehensive plan amendments, pursuant to Resolution 31117, and for land use code amendments under Seattle Municipal Code Chapter 23.76, that include procedures to provide for consideration of and response to public comments.
10. Notices published in advance of the February 21, 2019, City Council public hearing on the MHA legislation mistakenly stated that final Council action was "not anticipated to occur before March 25, 2019" and that written comments would be accepted until that point.
11. At the official public hearing on February 21, 2019, Ira Appelman read and submitted written comments objecting to MHA passage before the end of the comment period.
12. Seattle corrected the mistake in the comment deadline prior to the March 18, 2019, City Council meeting when the MHA legislation was adopted; the public was notified in advance that the expected final action date for the MHA legislation was March 18, 2019, which exceeded the 30-day public comment period required by city code.
13. There is no evidence that Seattle's error in exact compliance with public participation procedures affected the public's ability to comment on the MHA legislation prior to the March 18 adoption date or to participate in the February 21 public hearing.
14. Prior to adoption of the MHA legislation and in response to public comments on the Draft MHA EIS, the City made changes to the proposed MHA legislation.
15. On March 20, 2019, Seattle enacted Ordinance No. 125790, amending the Seattle Comprehensive Plan Growth Strategy Element, Neighborhood Plans, and Future Land Use Map to incorporate changes to plan policies and urban village boundaries related to Mandatory Housing Affordability.
16. On March 20, 2019, Seattle enacted Ordinance No. 125791, rezoning certain land and modifying development standards throughout the City of Seattle in order to increase development capacity and implement Mandatory Housing Affordability requirements in Urban Centers, Urban Villages, and existing multifamily and commercial zones outside of Urban Centers and Urban Villages.
17. Between May 13 and June 3, 2019, various Petitioner groups filed appeals with the Growth Management Hearings Board seeking review of Ordinance Nos. 125790 and 125791 and a Determination of Invalidity of the Ordinances, alleging that Seattle failed to comply with the State Environmental Policy Act and the Growth Management Act.

VIII. CONCLUSIONS OF LAW

A. SEPA

1. The MHA EIS adequately describes the principal features of and alternatives to the Comprehensive Plan Amendments adopted by Ordinance 125790.
2. The EIS complies with WAC 197-11-440(6)(d)(i) by providing an adequate summary of existing land use plans, when appropriate, and how MHA is consistent and inconsistent with them.
3. The alternatives evaluated in the EIS differ in the intensity and location of development capacity increases, the pattern and amounts of housing growth, and the size of urban village expansions.
4. Under WAC 197-11-442(4), Seattle was allowed to limit EIS content to a discussion of alternatives which have been formally proposed or which are, while not formally proposed, reasonably related to the proposed action.
5. The EIS analyzed a reasonable range of alternative actions that could feasibly attain or approximate Seattle's objectives to: increase overall production of housing available to a broad range of households and create 6,200 net new rent- and income-restricted housing units serving households at 60 percent of AMI, while distributing the benefits and burdens of growth equitably.
6. SEPA does not require Seattle to evaluate alternatives that would not achieve both of the City's objectives to increase overall housing development capacity and to create at least 6,000 net new rent- and income-restricted housing units serving households at 60 percent of AMI.
7. Seattle reasonably chose not to analyze SCALE's proposals for higher in lieu fees and higher affordability requirements without upzones because substantial evidence in the record showed that higher fees or higher affordability requirements, without upzones, would not feasibly attain or approximate Seattle's objective to increase overall production of both market-rate housing and subsidized income-restricted housing.
8. SCALE's suggested EIS alternatives were not reasonable for this nonproject EIS.
9. Seattle's EIS evaluated an adequate range of alternatives that satisfies the Rule of Reason under SEPA.
10. The MHA EIS contained a reasonably thorough discussion and adequately disclosed to City decision makers and to the public the environmental impacts caused by text amendments outside Urban Villages and Urban Village expansion areas.
11. The MHA EIS provides a reasonably thorough discussion of environmental impacts and adequately disclosed significant aspects of the probable environmental consequences on Aesthetics so that City officials could make an informed decision and reasoned choice among alternatives.

- 1 12. The MHA EIS and Addendum together provided a reasonably thorough
2 discussion of environmental impacts and adequately disclosed significant aspects
3 of the probable environmental consequences on historic resources so that City
4 officials could make an informed decision and reasoned choice among
5 alternatives.
- 6 13. SEPA's mandate to analyze significant adverse environmental impacts is limited
7 to the "Elements of the Environment" listed in WAC 197-11-444.
- 8 14. SEPA does not require that an EIS analyze purely economic, social policy,
9 socioeconomic, or other nonenvironmental impacts.
- 10 15. The Board cannot review Petitioners' arguments that the EIS contains an
11 inadequate discussion of economic displacement or cultural displacement
12 because they are nonenvironmental impacts.
- 13 16. Seattle chose to include some analysis of socioeconomic impacts in the EIS but
14 any perceived inadequacies in this voluntary analysis cannot be the basis for
15 finding a violation of SEPA's environmental disclosure mandates since SEPA
16 does not require such analysis of nonenvironmental impacts.
- 17 17. Housing is an element of the environment so an EIS should analyze significant
18 adverse housing impacts (e.g., number of high, middle, or low-income housing
19 units provided or eliminated).
- 20 18. Seattle conducted a detailed analysis to estimate housing demolition impacts for
21 all EIS alternatives using two alternate methodologies -- historic trends and parcel
22 allocation modeling.
- 23 19. SCALE presented conclusory statements about housing demolitions without any
24 quantitative analysis, and SCALE failed to adduce specific evidence showing that
25 the City's physical demolition analyses were deficient.
- 26 20. The EIS contains a reasonably thorough discussion of potential housing units
27 provided and eliminated under the EIS action alternatives using two alternate
28 methodologies for estimating potential demolitions by modeling demolition
29 through allocating growth to parcels and by estimating demolition based on
30 historic trends.
- 31 21. The MHA EIS provided a reasonably thorough discussion of environmental
32 impacts and adequately disclosed significant aspects of the probable
environmental consequences on public facilities and services so that City officials
could make an informed decision and reasoned choice among alternatives.
22. The MHA EIS provided a reasonably thorough discussion of environmental
impacts and adequately disclosed significant aspects of the probable
environmental consequences on trees so that City officials could make an
informed decision and reasoned choice among alternatives.
23. The EIS discussion of cumulative impacts was reasonably thorough and
adequate.

1 24. The MHA EIS, together with Historic Resources Addendum, satisfied the Rule of
2 Reason, was adequate and complied with the requirements of RCW 43.21C.030,
3 the State Environmental Policy Act.

4 **B. Inconsistency and GMA Planning Goals**

5 25. Petitioners have failed to satisfy their burden of proof to demonstrate that Seattle
6 Ordinance Nos. 125790 and 125791 are in conflict with and not guided by the
7 GMA Planning Goals for Open Space and Recreation (RCW 36.70A.020(9)),
8 Public Facilities and Services (RCW 36.70A.020(12)), and Historic Preservation
9 (RCW 36.70A.020(13)).

10 26. Petitioners have failed to satisfy their burden of proof to demonstrate that Seattle
11 Ordinance Nos. 125790 and 125791 violate the requirements of RCW
12 36.70A.130(1)(d) that “[a]ny amendment of or revision to development regulations
13 shall be consistent with and implement the comprehensive plan.”

14 **C. Public Participation and Notice**

15 27. Petitioners have failed to satisfy their burden of proof to demonstrate that Seattle
16 Ordinance Nos. 125790 and 125791 violate the public participation requirements
17 of RCW 36.70A.020(11), RCW 36.70A.035, and RCW 36.70A.140.

18 28. Seattle Ordinance Nos. 125790 and 125791 are in compliance with the Growth
19 Management Act.

20 29. Errors in exact compliance with the established program and procedures shall not
21 render the comprehensive land use plan or development regulations invalid if the
22 spirit of the program and procedures is observed.

23 30. In enacting Ordinance Nos. 125790 and 125791, Seattle followed the spirit of the
24 public participation program and procedures.

25 31. DVNPC failed to satisfy its burden of proof to show that Seattle Ordinance Nos.
26 125790 and 125791 were not guided by the GMA Planning Goal in RCW
27 36.70A.020(11) to encourage the involvement of citizens in the planning process.

28 32. DVNPC failed to satisfy its burden of proof to show that Seattle violated the RCW
29 36.70A.035 requirement to include notice procedures that are reasonably
30 calculated to provide notice of proposed amendments to comprehensive plans
31 and development regulations to individuals, property owners, and organizations.

32 33. DVNPC failed to satisfy its burden of proof to show that Seattle violated the RCW
36.70A.140 requirement to “establish and broadly disseminate to the public a
public participation program,” including procedures that provide for “consideration
of and response to public comments.”

1 **IX. ORDER**

2 Based upon the Petitions for Review, the legal arguments and evidence submitted by
3 the parties, the goals and requirements of the State Environmental Policy Act and the
4 Growth Management Act, prior Board orders and appellate court case law, and having
5 deliberated on the matter, the Board orders:
6

- 7
- 8 • The City of Seattle Final Environmental Impact Statement on Citywide
9 Implementation of Mandatory Housing Affordability, including the Historic
10 Resources Addendum, is adequate and complies with the State Environmental
11 Policy Act,
 - 12 • City of Seattle Ordinance Nos. 125790 and 125791 comply with the Growth
13 Management Act, and
 - 14 • This case is closed.

15 SO ORDERED this 30th day of December 2019.

16 _____
17 Raymond L. Paolella, Presiding Officer

18 _____
19 Deb Eddy, Board Member

20 _____
21 Cheryl Pflug, Board Member

22
23 **Note: This is a final decision and order of the Growth Management Hearings Board**
24 **issued pursuant to RCW 36.70A.300.²⁵⁸**

25
26
27
28
29
30
31 _____
32 ²⁵⁸ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.