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6 BEFORE THE HEARING EXAMINER
7 FOR THE CITY OF SEATTLE

8 In the Matter of the Appeal of:

9 **SEATTLE MOBILITY COALITION**

10 From a Decision by the Seattle City Council
11 Central Staff

Hearing Examiner No. _____:

DPD Reference:

Determination of Nonsignificance for 2023
Amendments to the Seattle Comprehensive
Plan Related to Transportation Impact Fees and
the Adoption of Existing Environmental
Documents

NOTICE OF APPEAL

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16 **Introduction**

17 In 2018, the City of Seattle (“City”) proposed amendments to its comprehensive plan
18 (“2018 Proposal”) that would have imposed, for the first time, a transportation impact fee in the
19 City. The City issued a State Environmental Policy Act (“SEPA”) Determination of
20 Nonsignificance (“2018 DNS”) for the 2018 Proposal. The Seattle Mobility Coalition
21 (“Coalition”) appealed the 2018 DNS to the Hearing Examiner. The City moved to dismiss the
22 appeal for lack of standing, but the Examiner denied the motion because the Coalition had
23 alleged concrete injury due to adverse environmental impacts that would result from the
24 transportation projects (“Eligible Projects”) that would be funded by the fee. After a hearing, the
25 Examiner reversed the 2018 DNS, holding that the City had failed to demonstrate prima facie
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1 compliance with the requirements of SEPA because its environmental checklist (“2018
2 Checklist”) included no response to relevant questions.

3 The City has now put forward a new version of the impact fee proposal: the 2023
4 Amendments to the Seattle Comprehensive Plan Related to Transportation Impact Fees and the
5 Adoption of Existing Environmental Documents (“Proposal”). On February 13, 2023, the City
6 issued a DNS (“DNS”) and accompanying environmental checklist (“Checklist”) for the
7 Proposal. Like the 2018 Proposal, the Proposal would amend the Comprehensive Plan to, among
8 other things, prescribe the use of the “existing system value methodology” in setting impact fee
9 rates. Unlike the 2018 DNS, however, the new DNS includes a Seattle Impact Fee Study (“Rate
10 Study”), prepared in January 2023 by Fehr & Peers, that provides details of the methodology to
11 be used in calculating fees and prospective rates, including maximum rates.
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13
14 Despite the additional detail regarding the highly specific parameters of the fee policy
15 embodied in the Proposal, the 2023 Checklist and DNS still fail to meet the requirements of
16 SEPA: most notably, they fail to demonstrate consideration of the relevant questions being asked
17 in the Checklist. The new Checklist includes language in places where it was absent from the
18 2023 Checklist, but none of this language does what SEPA requires: considers the actual impacts
19 of the proposal under review. Instead, the language is non-responsive filler, using more words to
20 say the same thing the City used silence to say the last time around: that the City does not have to
21 consider any actual impacts of the Proposal because of its non-project nature and because
22 different versions of future implementing legislation are possible. As the Examiner has already
23 ruled, however, the City does need to grapple with the implications of the Project that can be
24 known at this time, including whether it will impact housing. Because the DNS fails to do this, it
25 must be reversed.
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1 **Decision being appealed.**

2 The Coalition appeals the DNS on the Proposal. The DNS was issued on February 13,
3 2023 and is attached as Exhibit A. The accompanying SEPA Checklist (“Checklist”) is attached
4 as Exhibit B. The comment letter submitted by the Coalition on February 27, 2023 is attached as
5 Exhibit C. The Examiner’s decision in the prior appeal (“2019 Examiner Decision”) is attached
6 as Exhibit D.
7

8 **Property address of decision being appealed.**

9 Not applicable

10 **Elements of decision being appealed.**

11 EIS not required; Adequacy of conditions; Other (procedural compliance with SEPA).
12

13 **Appellant’s interest.**

14 The Coalition is an unincorporated association with members who own and develop
15 property and live in Seattle. Members of the Coalition are adversely affected by the Proposal
16 because they own property or live near street improvement projects which will proceed as a
17 direct result of the Proposal and will impact them. These impacts include noise, dust, and
18 congestion from construction, as well as long term noise, traffic, and aesthetic impacts. These
19 interests are squarely within the zone of interests protected by SEPA. *See, e.g.*, Items 1, 2, 7, 10,
20 and 14 on the environmental checklist set forth at WAC 197-11-960.
21

22 Coalition members also own property on which development projects are proposed that
23 must be physically modified or are rendered infeasible as a direct result of the Proposal. In
24 addition, they are prospective residents of these projects and neighbors who will be impacted by
25 loss of housing and amenities that would have been provided by these projects but for the
26 Proposal. Coalition members are in the process of developing projects that would increase the
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1 supply of housing in Seattle, thereby increasing housing affordability, or directly provide
2 affordable housing, and would redevelop existing vacant or underdeveloped properties with new
3 buildings that are aesthetically pleasing and consistent with the City’s land use goals and
4 policies. These projects would be prevented or altered due to the additional fees effected by the
5 Proposal. The Proposal will cause specific and perceptible harm to Coalition members’ ability to
6 contribute to Seattle’s housing supply and develop property consistent with the City’s goals and
7 policies.
8

9 **Objections to Decision.**

10 **A. The DNS Fails to Demonstrate Prima Facie Compliance With SEPA**

11 A threshold determination must be “based upon information reasonably sufficient to
12 evaluate the environmental impact of a proposal.” WAC 197-11-335. SEPA requires “actual
13 consideration of environmental factors before a DNS can be issued.” *Norway Hill Preservation*
14 *and Protection Ass’n v. King County*, 87 Wn.2d 267, 275, 552 P.2d 674 (1976). The record must
15 “demonstrate that environmental factors were considered in a manner sufficient to amount to
16 prima facie compliance with the procedural requirements of SEPA.” *Id.* at 276. As the
17 Examiner ruled in the appeal of the prior matter, “[t]here is no exemption of non-project actions
18 from SEPA review, or from adequate environmental review directed at identifying potential
19 significant environmental impacts.” Exhibit D at 9 (emphasis added). In contrast to the
20 flexibility afforded preparation of an EIS, “there is no comparative softening of the analysis
21 required at the time of the threshold determination for nonproject proposals.” *Id.* SEPA requires
22 consideration of direct, indirect and cumulative impacts. WAC 197-11-060(4)(d), (e).
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26 In the latest version of the Checklist, Section B is not left blank as before. Nonetheless,
27 just like the 2018 Checklist, it contains no consideration of the impacts of the proposal under
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1 review. Instead, the Checklist consists only of general statements about the City (*e.g.* p. 16,
2 “Seattle’s urban area is developed with a wide range of structures, ranging from single-family
3 residences to high-rise office towers to large industrial structures.”) along with statements
4 disclaiming the necessity of engaging in substantive analysis due to the nature of the proposal
5 (*e.g.* p. 19, “Potential adverse housing impacts, if any, of future specific transportation
6 improvement projects would be addressed through regulations and/or separate project-specific
7 environmental review.”). This fails to satisfy the requirements of SEPA and the 2019 Examiner
8 Decision because it simply uses additional words to reach the same conclusion rejected in the
9 previous appeal: the Proposal has no impacts that need to be analyzed at this time. But as before,
10 “mere conclusory statements about impacts in a DNS do not convey analysis on the part of the
11 City.” Exhibit D at 10.

12
13
14 The Coalition objects to the lack of consideration regarding construction impacts from
15 construction of the transportation improvement projects identified in the Proposal. These
16 projects will result in temporary construction-related impacts to the following elements of the
17 environment, among others: earth (due to earth movement for construction), air (due to
18 emissions from construction and other vehicles), water (due to increased impervious surface), the
19 built environment (including noise, light and glare, and aesthetics), and transportation, among
20 others, and long-term traffic, noise and aesthetic impacts. The City failed to analyze these
21 impacts and to identify potential mitigation.
22

23
24 In addition, the Coalition objects specifically to the lack of consideration demonstrated in
25 response to questions concerning the Proposal’s potential to limit housing production and
26 exacerbate sprawl, including questions 6(c) (proposed measures to reduce or control energy
27 impacts); 8(k) (proposed measures to avoid or reduce displacement impacts); 8(l) (proposed
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1 measures to ensure compatibility with existing and projected land uses and plans); 9(b)
2 (elimination of housing units); 9(c) (proposed measures to reduce or control housing impacts);
3 14(f) (vehicular trips generated due to proposal); and 14(h) (measures to reduce or control
4 transportation impacts). Questions 9(c) and 14(h) were noted specifically in the Examiner
5 Decision as requiring consideration in the case of this non-project proposal. *See* Exhibit D at 10.
6

7 **B. The Proposal will have Significant Adverse Environmental Impacts**

8 The City may issue a DNS only when the proposal under consideration will not have
9 significant adverse environmental impacts. WAC 197-11-340(1); SMC 25.05.340.A. In
10 contrast, if a proposal will have a significant adverse impact on the environment, the City must
11 issue a Determination of Significance (“DS”) and prepare an Environmental Impact Statement
12 (“EIS”). WAC 197-11-360(1); SMC 25.05.360.A. Here, the Proposal will have significant
13 adverse environmental impacts that were not analyzed in the DNS.
14

15 First, the Proposal will entail significant construction impacts because it will lead to the
16 construction of the transportation improvement projects identified in the Proposal. These
17 projects will result in significant construction-related impacts to the following elements of the
18 environment, among others: earth (due to earth movement for construction), air (due to
19 emissions from construction and other vehicles), water (due to increased impervious surface), the
20 built environment (including noise, light and glare, and aesthetics), and transportation, among
21 others, and long-term traffic, noise and aesthetic impacts. The City failed to analyze these
22 impacts and to identify potential mitigation.
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24

25 Additionally, the Proposal will significantly impact the built environment in the City. A
26 transportation impact fee would raise the cost of development in Seattle across the board,
27 amounting to a tax on new housing, which will reduce housing production, increase housing
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1 costs and undermine the goals of the Mandatory Housing Affordability (“MHA”) program.
2 Adding further costs to the already expensive and challenging process of building new housing
3 of all types – whether affordable or market rate – will result in the construction of fewer new
4 units than would occur without the added fee. The effects are likely to be significant because
5 housing affordability challenges in Seattle are driven by shortages and the resulting bidding-up
6 of available units. As a result, both designated affordable units and market-rate units contribute
7 to alleviating housing shortages. The Proposal will further significantly impact affordable
8 housing (even if designated affordable housing projects are exempted from the fee) because
9 development projects that would otherwise pay MHA fees would be rendered infeasible by the
10 additional cost burden imposed by the Proposal. As a result, fees that would otherwise be used
11 to construct affordable housing will be lost. This is not merely an economic impact as the loss of
12 these fees will translate to a loss of affordable housing units, an impact on the built environment.
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15 The Proposal’s impacts on housing will go beyond direct impacts on the feasibility of
16 housing projects in the City. The population of the Seattle metropolitan area continues to grow,
17 and new residents will continue to require places to live. If these residences are not built in the
18 City, they will be built in nearby cities and suburbs. The resulting sprawl will have its own
19 adverse environmental impacts, including increased vehicle miles traveled, and accompanying
20 pollution. Moreover, increasing housing development in the suburbs will result in bidding up
21 land prices in those locations, further exacerbating affordability issues.
22

23 The Proposal will therefore have significant adverse impacts to housing and
24 accompanying significant impacts regarding displacement; compliance with land use plans and
25 policies; energy use; and transportation. If the City believes it does not have information
26 sufficient to analyze significant adverse impacts at this juncture, it must conduct a worst-case
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1 analysis and “generally indicate in the appropriate environmental documents its worst case
2 analysis and the likelihood of occurrence.” WAC 197-11-080(3)(b).

3 **C. Piecemealing**

4 WAC 197-11-060 provides that proposals “related to each other closely enough to be, in
5 effect, a single course of action” must be considered together under SEPA if they “are
6 interdependent parts of a larger proposal and depend on the larger proposal as their justification
7 or for their implementation.” Similarly, WAC 365-196-805(1) provides that when “amendments
8 to comprehensive plans are adopted, consistent implementing regulations or amendments to
9 existing regulations should be enacted and put into effect concurrently.” *See also King Cty. v.*
10 *Wash. State Boundary Review Bd.*, 122 Wn.2d 648, 662-64, 860 P.2d 1024, 1032-33 (1993)
11 (improper to defer environmental review if the proposal will generate momentum and result in
12 probable significant adverse environmental impacts). This underscores the importance of
13 evaluating the Proposal with the anticipated development regulations and transportation
14 improvement projects as a “single course of action” for SEPA review.
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17
18 The Examiner previously ruled that the 2018 Proposal was not an interdependent part of a
19 larger proposal because the proposed comprehensive plan amendments “seem to lack sufficient
20 detail to identify the environmental impacts that may be associated with a subsequent
21 implementing program,” “do not ensure the adoption of a [fee] program, and do not establish
22 important elements of such a program, such as fee amounts and potential exemptions.” Exhibit
23 D at 9. The current Proposal, by contrast, includes the 32-page Rate Study detailing how fee
24 amounts will be calculated and mentions a potential exemption for affordable housing. The
25 inclusion of this material provides confirms the scope of the decision before the City – a decision
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1 that must be supported by environmental analysis before key details of an impact fee program
2 are adopted.

3 **Relief Requested.**

4 The Coalition respectfully asks the Hearing Examiner to reverse the DNS and remand to
5 the Director with instructions to comply with WAC 197-11-060, WAC 197-11-335, and other
6 SEPA requirements. Only after these steps are complete, the Director should render a new
7 threshold determination.
8

9 **Appellant/Representative.**

10 Appellant is the Seattle Mobility Coalition. Pursuant to Hearing Examiner Rules of
11 Practice and Procedure 5.02(b), Appellant may be contacted c/o its designated representatives
12 Courtney Kaylor and David Carpman, McCullough Hill PLLC, 701 5th Avenue, Suite 6600,
13 Seattle, WA 98104, 206 812 3388, courtney@mhseattle.com, dcarpman@mhseattle.com.
14

15 Dated this 6th day of March, 2023.

16 SEATTLE MOBILITY COALITION

17
18 By: s/Courtney Kaylor
19 Its: Designated Representative

20 MCCULLOUGH HILL PLLC

21
22 s/Courtney Kaylor
23 Courtney Kaylor, WSBA #27519
24 David P. Carpman, WSBA #54753
25 Attorneys for Appellant
26
27
28

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EXHIBIT A



SEATTLE CITY COUNCIL

Determination of Non-significance (DNS) for 2023 Amendments to the Seattle Comprehensive Plan Related to Transportation Impact Fees and the Adoption of Existing Environmental Documents

Proposal	Adoption of Transportation Impact Fee-related Amendments to the Seattle Comprehensive Plan, <i>Seattle 2035</i>
Date of Issuance	February 13, 2023
Proponent / Lead Agency	Seattle City Council
SEPA Contact	Ketil Freeman, AICP, (206) 295-3827 ketil.freeman@seattle.gov
Location	Non-project – Areas within the Seattle Corporate Limits

Background

In October 2018, the Council issued a threshold Determination of Non-significance (DNS) pursuant to the State Environmental Policy Act (SEPA) for amendments to the Comprehensive Plan to establish a list of transportation projects the completion of which would mitigate some growth-related impacts to the transportation network. That list was derived from a Seattle Impact Fee Rate Study prepared by Fehr and Peers. The threshold determination was appealed by the Seattle Mobility Coalition, and, in October 2019, the Hearing Examiner reversed the DNS.¹ The reversal was informed, in part, by the lack of information in Part B of the SEPA checklist. Generally, Part B of the SEPA checklist is intended to disclose project-level impacts to elements of the environment.

In January 2023, the Council updated the impact fee rate study to eliminate projects that have been completed and update estimated costs for the remaining projects. In February 2023, Council staff updated and revised the SEPA checklist to provide disclosures in Part B and make other edits and additions. Changes from the 2018 checklist are shown in [track-changes](#) in the revised checklist dated February 7, 2023.

Proposal Description

The 2023 amendments to Seattle 2035 related to transportation impact fees are non-project in nature, primarily procedural, and will have citywide applicability. The proposed amendments would (1) amend the Transportation Element of the Comprehensive Plan and related appendix to identify deficiencies in the transportation system associated with new development; (2)

¹ See the Amended Findings and Decision of the Seattle Hearing Examiner, October 24, 2019, Hearing Examiner File W-18-03.

incorporate a list of transportation infrastructure projects that would add capacity to help remedy system deficiencies; and (3) establish a policy of considering locational discounts for urban centers and villages and exemptions for low-income housing, early learning facilities and other activities with a public purpose for future rate-setting, if any.

Projects included in the list would be eligible for future investments with revenue from a transportation impact fee program, if one is established. The amendments to *Seattle 2035* are a necessary, but not sufficient, step to establish an impact fee program under RCW 82.02.050.

The proposed amendments and related documents are available at:

<http://www.seattle.gov/council/issues>

Threshold Determination

The lead agency has determined that this proposal will **not** have probable, significant adverse impacts on the environment. An environmental impact statement (EIS) is not required by RCW 43.21C.030(2)(c). This finding is made pursuant to RCW 43.21C, SMC 25.05 and WAC 197-11 and based on the attached SEPA environmental checklist and attachments and review of existing environmental documents.

As disclosed and described more fully in the environmental checklist, the proposed amendments are of a non-project nature, primarily procedural, and have a citywide effect, rather than a site-specific effect. As such, the amendments would not affect the extent, intensity or rate of impacts to the built and natural environments.

For project-specific actions, impacts to elements of the environment, including impacts to housing and other activities with a public purpose, such as public facilities, would be addressed through regulations and project-specific environmental review, if applicable.

Future potential programmatic impacts, if any, to low-income housing, childcare, and activities with public purposes may be addressed in any future implementing proposal setting rates. The proposed Comprehensive Plan amendments would direct decision-makers to:

Consider exemptions from transportation impact fees for low-income housing, early learning facilities, and other development activities with a public purpose, as authorized by RCW 82.02.060.

The amendments would accomplish the procedural requirements of RCW 82.02.050(5)(a) for establishing a transportation impact fee program to help mitigate a portion of the impacts attributable to planned residential and employment growth. Projects listed in the Comprehensive Plan would guide investment decisions by the City for mitigation payments made pursuant to a transportation impact fee program. Projects included in the list are drawn from capacity-improvement projects that are partially funded by the Move Seattle levy, projects identified in adopted modal plans, and Move Seattle vision projects identified through the Move Seattle levy planning process. The amendments would not, in and of themselves,

create a transportation impact fee program. For future development of an impact fee program and a fee schedule, estimates for growth in trips on the transportation network would be based on growth estimates for *Seattle 2035*.

Documents Adopted

The following additional documents support environmental review and provide necessary SEPA disclosures and are hereby adopted for the purposes of this threshold determination of non-significance. The information in these documents is reasonably sufficient to evaluate whether the proposal will have probable, significant adverse impacts.

- City of Seattle Department of Construction and Inspections, Final Environmental Impact Statement for the Seattle Comprehensive Plan Update, May 2016.
- City of Seattle Department of Construction and Inspections, Draft Environmental Impact Statement for the Seattle Comprehensive Plan Update, May 2015.
- Seattle Department of Transportation, Seattle Transit Master Plan, Determination of Non-significance, February 2012.
- Seattle Department of Transportation, Seattle Bicycle Master Plan, Determination of Non-significance, December 2013.
- Seattle Department of Transportation, Seattle Freight Master Plan, Determination of Non-significance, February 2016.
- Seattle Department of Transportation, Seattle Pedestrian Master Plan, Determination of Non-significance, January 2017.
- City of Seattle, Office of Planning and Community Development, Final Environmental Impact Statement for the Seattle Industrial & Maritime Strategy, September 2022.

Description of Adopted Documents

The Environmental Impact Statement (EIS) for the Seattle Comprehensive Plan Update analyzes the full range of impacts associated with four alternatives, including a no action alternative, for allocating 70,000 new housing units and 115,000 new jobs across the city by 2035. The EIS identifies implementation of a transportation impact fee program as a potential mitigation measure.

The DNSs for the modal plans identify actions, strategies, and projects the City can take to improve the capacity, speed, reliability, and safety of the transit, bicycle, pedestrian, and freight transportation networks. The EIS for the Comprehensive Plan update also identifies implementation of the modal plans as a potential mitigation measure. The Final EIS for the Seattle Industrial & Maritime Strategy identifies transportation impact fees as a potential mitigation measure funding option.

Comments

Comments regarding this DNS or potential environmental impacts may be submitted through February 27, 2023. Comments may be sent to:

Seattle City Council Central Staff

Attn: Ketil Freeman

P.O Box 34025

Seattle, WA 98124-4025

(206) 295-3827

ketil.freeman@seattle.gov

Responsible Official

Signature: <u><i>Ketil Freeman</i></u>	February 10, 2023
Ketil Freeman, AICP	Date

EXHIBIT B

SEPA Environmental Checklist

A. Background

1. Name of proposed project, if applicable:

~~2018-2023~~ Transportation Impact Fee-related Amendments to the Seattle Comprehensive Plan, *Seattle 2035*.

2. Name of applicant:

City of Seattle Legislative Department

3. Address and phone number of applicant and contact person:

Seattle City Council Central Staff

~~Attn: Ketil Freeman, AICP~~ Calvin Chow and Lish Whitson

P.O Box 34025

Seattle, WA 98124-4025

(206) 684-~~81788888~~

ketil.freeman@seattle.gov

lish.whitson@seattle.gov

calvin.chow@seattle.gov

4. Date checklist prepared:

~~October 21~~ February 7, 2018 ~~2023~~

5. Agency requesting checklist:

City of Seattle, this checklist has been prepared to satisfy the Amended Findings and Decision of the Seattle Hearing Examiner dated October 24, 2019.

6. Proposed timing or schedule (including phasing, if applicable):

Amendments to the Comprehensive Plan for ~~2018-2023~~ are scheduled to be adopted by the City Council ~~on December 17, 2018~~ by June 2023.

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.

The proposed amendments provide the procedural basis for establishing a transportation impact fee program. The amendments are a necessary, but not sufficient, step to establish such a program under RCW 82.02.050. For a program to be fully established, the City must take future action to amend the municipal code to establish substantive and procedural standards for a program, including fees charged by land use. For future development of a fee schedule, estimates for growth in trips on the transportation network would be based on growth estimates for *Seattle 2035*.

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.

A transportation impact fee program would include a project list informed by adopted modal plans and the growth strategy in the Comprehensive Plan. Those policy documents are informed by environmental review specific to each, including:

- City of Seattle Department of Construction and Inspections, [Final Environmental Impact Statement for the Seattle Comprehensive Plan Update](#), May 2016.
- City of Seattle Department of Construction and Inspections, [Draft Environmental Impact Statement for the Seattle Comprehensive Plan Update](#), May 2015.
- Seattle Department of Transportation, [Seattle Transit Master Plan, Determination of Non-significance](#), February 2012.
- Seattle Department of Transportation, [Seattle Bicycle Master Plan, Determination of Non-significance](#), December 2013.
- Seattle Department of Transportation, [Seattle Freight Master Plan, Determination of Non-significance](#), February 2016.
- Seattle Department of Transportation, [Seattle Pedestrian Master Plan, Determination of Non-significance](#), January 2017.
- [City of Seattle, Office of Planning and Community Development, Final Environmental Impact Statement for the Seattle Industrial & Maritime Strategy, September 2022](#)

[The Office of Planning and Community Development is preparing an environmental impact statement for major updates to the Comprehensive Plan. The Seattle Department of Transportation is also preparing an environmental impact statement for updates to, and consolidation of, the various modal plan. Those environmental review processes are ongoing and likely will not be complete until late in 2023 or 2024, after Council consideration of 2023 Comprehensive Plan amendments.](#)

Individual transportation projects that may be funded by an impact fee program would be subject to project-specific environmental review as appropriate.

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.

None are pending.

10. List any government approvals or permits that will be needed for your proposal, if known.

None are needed. However, if the City implements an impact fee program, the City will need to adopt a fee schedule and regulatory program through separate legislation. That ~~could occur in~~ would be unlikely to occur ~~the~~ before the first fourth quarter of ~~2019~~ 2023.

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

The ~~2018-2023~~ amendments to *Seattle 2035* related to transportation impact fees are non-project in nature, primarily procedural, and will have citywide applicability. The proposed amendments would (1) amend the ~~Capital Facilities and~~ Transportation Elements of the Comprehensive Plan and related appendices to identify deficiencies in the transportation system associated with new development; ~~and~~ (2) incorporate a list of transportation infrastructure projects that would add capacity to help remedy system deficiencies; and (3) establish a policy of considering locational discounts for urban centers and villages and exemptions for low-income housing, early learning facilities and other activities with a public purpose for future rate-setting, if any.

Projects included in the list would be eligible for future investments with revenue from a transportation impact fee program. The amendments to *Seattle 2035* are a necessary, but not sufficient, step to establish an impact fee program under RCW 82.02.050.

The proposed amendments and related documents are available at:
<http://www.seattle.gov/council/issues>

A preliminary project list with project descriptions and maps showing most locations is ~~attached~~ contained in the January 2023, Seattle Impact Fee Study (Rate Study), prepared by Fehr and Peers (Attachment A). ~~and a map showing the location of some, but not all, of the projects on the list is also attached (Attachment B).~~ Draft Comprehensive Plan Amendment legislation with proposed policy language is shown in Attachment B.

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

This is a non-project action. ~~The proposal would inform that could lead to~~ future implementation of an impact fee program that could apply in all areas of the city. The locations of major transportation projects, which could be partially funded by an impact fee program, are shown in ~~Attachment B~~ the attached Rate Study.

B. Environmental Elements

~~THIS IS A NON-PROJECT PROPOSAL WITH NO PARTICULAR DEVELOPMENT SITE. THIS SECTION IS LEFT BLANK PURSUANT TO WAC 197-11-315(1)(e). POTENTIAL IMPACTS ARE DISCUSSED AND DISCLOSED IN SECTION D.~~**

1. Earth

a. General description of the site:

(circle one): Flat, rolling, hilly, steep slopes, mountainous, other _____

Flat Rolling Hilly Steep Slopes Mountainous
 Other: (identify)

The geographic area affected by this proposed non-project action includes areas of the City of Seattle, Washington where transportation improvements may be needed to accommodate future residential and employment growth. The topography includes all types of terrain, from flat land to steep slopes. Most of this area has been substantially graded, developed, or otherwise disturbed.

b. What is the steepest slope on the site (approximate percent slope)?

Slopes in Seattle range from 0% to greater than 40%. The steepest slopes occur

primarily on the sides of the major hills in the city, including Queen Anne Hill, Capitol Hill, West Seattle, and Magnolia.

- c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any agricultural land of long-term commercial significance and whether the proposal results in removing any of these soils.

Seattle has numerous soil types, including mineral soils dominated by clay, silt, or sand, as well as organic soils such as peats and mucks (see, for example, <http://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>). No agricultural soils or prime farmland are located within the Seattle corporate limits. As a densely urbanized area, much of Seattle's native soils have been extensively altered by filling, grading, and other activity.

- d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.

The Seattle area is known to be in an active seismic area, as is the entire Puget Sound region. The City's geologically hazardous areas are defined by SDCI as environmentally critical areas (ECA) (http://gisrevprxy.seattle.gov/wab_ext/DSOResearch_Ext/). Unstable soils and surfaces occur primarily in two contexts within the affected geographic area. The first context includes steep slopes and landslide-prone areas, where a combination of shallow groundwater and glacial sediments deposited in layers with variable permeability increases the risk of landslides. The second context includes areas of fill or alluvial soils where loose, less cohesive soil materials below the water table may lead to the potential for liquefaction during earthquakes.

- e. Describe the purpose, type, total area, and approximate quantities and total affected area of any filling, excavation, and grading proposed. Indicate source of fill.

The proposed non-project action does not include any construction or development that would require filling or grading. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or project-specific environmental review as appropriate.

- f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.

The proposed non-project action does not include any construction, development, or use that would cause erosion. Future, specific rights-of-way improvement proposals subject to the provisions of this proposal may involve clearing, construction, or uses that cause erosion. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or project-specific environmental review as appropriate.

- g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?

The proposed non-project action does not include any construction or development that would convert pervious to impervious surfaces or create new impervious surfaces. The proposal covers areas within the Seattle corporate limits where transportation improvements may be needed to accommodate future residential and employment growth. These are highly urbanized area with a comparatively high percentage of impervious surfaces. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or project specific environmental review as appropriate.

- h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

None proposed. The proposed non-project action does not involve construction activity, and contains no proposed measures related to reducing or controlling erosion or other impacts at any specific location.

2. Air

- a. What types of emissions to the air would result from the proposal during construction, operation, and maintenance when the project is completed? If any, generally describe and give approximate quantities if known.

The proposed non-project action does not include any construction or development that would directly produce emissions. As such, the proposal would not directly affect odors, greenhouse gas (GHG) emissions, or climate change. Potential emissions impacts of future, specific transportation improvement projects would be addressed through regulations and/or project specific environmental review as appropriate.

- b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.

No. The proposed non-project action does not include any construction or development that would be affected by emissions or odors.

- c. Proposed measures to reduce or control emissions or other impacts to air, if any:

No measures are proposed.

3. Water

- a. Surface Water:

- 1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)?

If yes, describe type and provide names. If appropriate, state what stream or river it flows into.

The proposed non-project action would affect watersheds and surface water bodies in the Seattle area. Most of this area is located within the Lake Washington/Cedar/Sammamish Watershed (Watershed Resource Inventory Area [WRIA] 8). The Duwamish Waterway and Elliott Bay, located in southwestern Seattle, are part of the Green/Duwamish and Central Puget Sound Watershed (WRIA 9). Seattle is characterized by a variety of surface water features, including marine areas, rivers, lakes, and creeks. Each type is briefly summarized below:

Marine: Seattle's west side is situated adjacent to Puget Sound, a major marine embayment.

Rivers: Portions of south Seattle drain to the lower reaches of the Duwamish River (also known as the Duwamish Waterway). The river receives flow from the South Park basin, Norfolk basin, Longfellow Creek, and other smaller urban creeks, and drains to Elliott Bay in south Puget Sound.

Lakes: Freshwater lakes and ponds, within or adjacent to the City, include the Lake Union/Ship Canal system, which links Lake Washington and Puget Sound through the Hiram Chittenden Locks. Other freshwater lakes include Green, Haller, and Bitter Lakes in the north portion of the City (also located in the Lake Union/Ship Canal drainage basin). Seattle also contains numerous small ponds and wetlands.

Creeks: Runoff from portions of Seattle's developed cityscape drains to creek systems of varying sizes. Major creeks in the western regions of the City drain directly to Puget Sound and include Pipers and Fauntleroy creeks. Longfellow Creek is a main creek in the southwest portion of the city that drains to the Duwamish River. Thornton Creek, Taylor Creek, and other smaller creeks drain runoff from the eastern portions of the City to Lake Washington.

2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.

The proposed non-project action does not include any construction or development that would require work over, in, or adjacent to the surface waters. Individual projects that may be subject to provisions of this proposal may be located over, in, or adjacent to these waters. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or project-specific environmental review as appropriate.

3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.

The proposed non-project action does not include any construction or development or any fill and dredge in or near surface waters or wetlands. Potential impacts of future, specific transportation improvement projects would be addressed through

regulations and/or project specific environmental review as appropriate.

- 4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.

Because this is a non-project action, there would be no construction or development that would withdraw or divert surface waters. Potential impacts of future, specific transportation improvement projects would be addressed through existing regulations and/or separate site-specific environmental review.

- 5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.

The proposed non-project action does not include any construction or development that would lie within a 100-year floodplain. Major streams and the Duwamish River have associated 100-year floodplains within the affected geographic area. Individual transportation improvement projects that may be subject to provisions of this proposal may be located over, in, or adjacent to these waters and their associated floodplains. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or project-specific environmental review as appropriate.

- 6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.

The proposed non-project action does not include any construction or development that would discharge waste material to surface waters. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or project-specific environmental review as appropriate.

b. Ground Water:

- 1) Will groundwater be withdrawn from a well for drinking water or other purposes?

If so, give a general description of the well, proposed uses and approximate quantities withdrawn from the well. Will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known.

The proposed non-project action does not include any construction or development that would withdraw groundwater. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or project-specific environmental review.

- 2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals. . . ; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

The proposed non-project action does not include any construction or development that would discharge waste material to ground waters. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or project-specific environmental review.

c. Water runoff (including stormwater):

- 1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow?

Will this water flow into other waters? If so, describe.

The proposed non-project action does not include any construction or development that would generate runoff. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or project-specific environmental review.

- 2) Could waste materials enter ground or surface waters? If so, generally describe.

No. The proposed non-project action does not include any construction or development that would generate waste materials that could enter ground or surface waters. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or project-specific environmental review.

- 3) Does the proposal alter or otherwise affect drainage patterns in the vicinity of the site? If so, describe.

The proposed non-project action does not include any construction or development that would alter or otherwise affect drainage patterns. Potential impacts of future transportation projects that may be funded through a possible future transportation impact fee would be addressed through regulations and/or project-specific environmental review.

d. Proposed measures to reduce or control surface, ground, and runoff water, and drainage pattern impacts, if any:

The proposed non-project action does not include any construction or development that would have impacts to surface, ground, runoff water, and drainage. No measures are proposed at this time. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or project specific environmental review.

4. Plants

- a. Check the types of vegetation found on the site:

<input checked="" type="checkbox"/>	Deciduous trees:	<input checked="" type="checkbox"/> alder;	<input checked="" type="checkbox"/> maple;	<input checked="" type="checkbox"/> aspen;	<input checked="" type="checkbox"/> other: cottonwoods, willow,
<input checked="" type="checkbox"/>	Evergreen trees:	<input checked="" type="checkbox"/> fir	<input checked="" type="checkbox"/> cedar	<input checked="" type="checkbox"/> pine	<input checked="" type="checkbox"/> other: spruce, hemlock, cedar,
<input checked="" type="checkbox"/>	Shrubs				
<input checked="" type="checkbox"/>	Grass				
<input type="checkbox"/>	Pasture				
<input type="checkbox"/>	Crop or grain				
<input type="checkbox"/>	Orchards, vineyards, or other permanent				
<input checked="" type="checkbox"/>	Wet soil	<input checked="" type="checkbox"/> cattail;	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> bulrush;	<input checked="" type="checkbox"/> skunk cabbage
<input checked="" type="checkbox"/>	plants:	<input checked="" type="checkbox"/> water	<input checked="" type="checkbox"/> eelgrass	<input checked="" type="checkbox"/> milfoi	<input type="checkbox"/> other:
<input checked="" type="checkbox"/>	Other types of vegetation: Various other vascular, non-vascular, native, and non-native				

The geographic area affected by the proposed non-project action is all areas of Seattle where transportation improvements may be needed to accommodate future residential and employment growth. A wide variety of native and non-native plant species and associated vegetation are found in the Seattle area. Generally, the Puget Sound basin is home to a wide diversity of plant species that depend upon marine, estuarine, freshwater, and terrestrial environments. The Seattle area has a broad variety of vegetation, including upland forest (deciduous, coniferous, and mixed), shrublands, riparian forests, and wetlands. This flora includes species native to the region, as well as many non-native species. Seattle is a densely developed urban area having few remaining areas of native vegetation and high-quality habitat. These remaining fragments of quality native vegetation are found in parklands and open spaces. The plants found in most urban and suburban areas are those native and non-native species that tolerate or benefit from habitat degradation and disturbance.

b. What kind and amount of vegetation will be removed or altered?

The proposed non-project action does not include any construction or development that would remove or alter vegetation. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or project-specific environmental review.

c. List threatened and endangered species known to be on or near the site.

The geographic area affected by the proposed non-project action is all areas of Seattle where transportation improvements may be needed to accommodate future growth. No federally-listed endangered or threatened plant species or State-listed sensitive plant species are known to occur within the municipal limits of this area. Most of the Seattle area has been intensively disturbed by development and redevelopment over the last 100 years. Seattle's original vegetation has been extensively cleared, excavated, filled, paved, or occupied by streets and other built structures. There is no habitat for threatened or endangered plants.

d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

The geographic area affected by the proposed non-project action is all areas of Seattle where transportation improvements may be needed to accommodate future residential and employment growth. No landscaping or other measures are proposed at this time. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or project specific environmental review.

- e. List all noxious weeds and invasive species known to be on or near the site.

The geographic area affected by the proposed non-project action is all areas of Seattle where transportation improvements may be required to accommodate future residential and employment growth. Many species of noxious and invasive species are found within King County and the City of Seattle. See, for example, the noxious weed lists of the King County Noxious Weed Board (<http://www.kingcounty.gov/services/environment/animals-and-plants/noxious-weeds/laws/list.aspx>).

5. Animals

- a. List any birds and other animals which have been observed on or near the site or are known to be on or near the site.

The geographic area affected by the proposed non-project action is all areas of Seattle where transportation improvements may be required to accommodate future residential and employment growth. Many species of birds, mammals, and fish are present. Generally, the Puget Sound basin is home to an extremely wide diversity of animal species that depend upon marine, estuarine, freshwater, and terrestrial environments. This fauna includes species native to the region, as well as many non-native species. The Seattle area is an intensely developed urban area having few remaining areas of native vegetation and high-quality habitat. These remaining fragments of quality wildlife habitat are found in parklands and open spaces throughout the planning area. The wildlife found in most urban areas are those native and non-native species that tolerate or benefit from habitat degradation or close association with humans.

Birds: Hawk Heron Eagle Songbirds
 Other: osprey, bald eagle, peregrine falcon, purple martin, owl (various species), pileated woodpecker, belted kingfisher, waterfowl species, Canada goose. Also, typical urban species associated with urban development such as starling and pigeon.

Mammals: Deer Bear Elk Beaver
 Other: California sea lion, river otter, muskrat, raccoon. Also, a variety of urban-adapted species such as possum and rat.

Fish: Bass Salmon Trout Herring
 Shellfish Other: perch, rockfish, etc.

- b. List any threatened and endangered species known to be on or near the site.

The geographic area affected by the proposed non-project action is all areas of Seattle where transportation improvements may be required to accommodate future residential and employment growth. In King County, five wildlife species are listed as endangered or threatened under the Endangered Species Act (ESA), but these species are not likely to be found in the Seattle Direct Water Service Area. These include Canada lynx (*Lynx Canadensis*; Threatened), gray wolf (*Canis lupus*; Endangered), grizzly bear (*Ursus arctos*; Endangered), marbled murrelet (*Brachyramphus marmoratus*; Threatened), and northern spotted owl (*Strix occidentalis caurina*; Threatened). King County contains federally designated critical habitat for marbled murrelet and northern spotted owl; no designated critical habitat is located in Seattle. Bald eagle (*Haliaeetus leucocephalus*) was removed from the federal list under ESA on August 8, 2007, but is federally protected under the Bald and Golden Eagle Protection Act. Bald eagles are known to reside in Seattle.

Fish species listed as endangered or threatened under the ESA and found in freshwater tributaries of Puget Sound (PS) include Chinook salmon (*Oncorhynchus tshawytscha*, Threatened, PS), steelhead (*O. mykiss*, Threatened, PS), and bull trout (*Salvelinus confluentus*, Threatened, PS). Coho salmon (*O. kisutch*) is a Candidate species for listing as Threatened. All of these species reside in or near the proposal area. Lake Washington contains federally designated critical habitat for bull trout and Chinook salmon. Because much of Seattle has been previously developed and the original habitats significantly altered or eliminated, the potential for threatened or endangered animal species to be present in Seattle is low.

c. Is the site part of a migration route? If so, explain.

The geographic area affected by the proposed non-project action is all areas of Seattle where transportation improvements may be required to accommodate future residential and employment growth. The Puget Sound region is known to be an important migratory route for many animal species. Portions of the proposal area provide migratory corridors for bald eagles traveling to and from foraging areas in Puget Sound or Lake Washington. Marbled murrelets travel through the planning area between marine waters and their nests in late successional/old growth forests in the Cascade Mountains. Bull trout, steelhead, and Chinook, chum, pink, and coho salmon use the Puget Sound nearshore. Chinook, coho, and sockeye salmon use Lake Washington and Lake Union as migration corridors. Anadromous trout and salmon migrate through the area river and stream systems, including urban streams in Seattle. The Puget Sound region is also within the Pacific Flyway—a flight corridor for migrating waterfowl, migratory songbirds, and other birds. The Pacific Flyway extends from Alaska to Mexico and South America.

d. Proposed measures to preserve or enhance wildlife, if any:

No measures to preserve or enhance wildlife are proposed.

- e. List any invasive animal species known to be on or near the site.

Many species of invasive animal species are found within King County and the City of Seattle, including nutria (*Myocastor coypus*), rat (*Rattus spp.*), pigeon (*Columba livia*), New Zealand Mud Snail (*Potamopyrgus antipodarum*), and Asian gypsy moth (*Lymantria dispar*).

6. Energy and Natural Resources

- a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

The proposed non-project action does not include any construction or development that would require energy to operate. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or project-specific environmental review.

- b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.

The proposed non-project action does not include any construction or development that would affect potential use of solar energy by adjacent properties. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or project-specific environmental review. However, because the transportation projects identified under the proposal are predominantly changes to existing streets, solar impacts are unlikely.

- c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:

The proposed non-project action does not include any energy conservation features or other measures to reduce or control energy impacts. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or project-specific environmental review.

7. Environmental Health

- a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe.

The proposed non-project action does not include any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or project-specific environmental review.

- 1) Describe any known or possible contamination at the site from present or past uses.

The proposed non-project action does not include any construction or other activities that would encounter possible site contamination. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or project-specific environmental review.

- 2) Describe existing hazardous chemicals/conditions that might affect project development and design. This includes underground hazardous liquid and gas transmission pipelines located within the project area and in the vicinity.

The proposed non-project action does not include any construction or other activity that would cause exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or project-specific environmental review.

- 3) Describe any toxic or hazardous chemicals that might be stored, used, or produced during the project's development or construction, or at any time during the operating life of the project.

The proposed non-project action does not involve the storage, use, or production of toxic or hazardous chemicals. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or separate project-specific environmental review.

- 4) Describe special emergency services that might be required.

The proposed non-project action does not require any special emergency services. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or separate project-specific environmental review.

- 5) Proposed measures to reduce or control environmental health hazards, if any:

The proposed non-project action has no associated environmental health hazards. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or separate project-specific environmental review.

b. Noise

- 1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

The proposed non-project action would not be affected by noise. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or separate project-specific environmental review.

2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

The proposed non-project action does not include any construction or development that would generate noise. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or separate project-specific environmental review.

3) Proposed measures to reduce or control noise impacts, if any:

Because the proposed non-project action would not itself generate noise, no measures to reduce or control noise are proposed. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or separate project-specific environmental review.

8. Land and Shoreline Use

a. What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe.

The geographic area affected by the proposed non-project action is all areas of Seattle where transportation improvements may be required to accommodate future residential and employment growth. Generally, this area is characterized by urban uses. Existing uses include single-family and multifamily residential, commercial, industrial, recreational, and open space. Most city properties have been developed at urban densities and existing uses are often mixed. Downtown areas include many high-rise developments. Rights-of-way that may be subject to the provisions of this proposal may be located in any zone where transportation improvements are needed to accommodate future residential and employment growth. These include residential, commercial, multifamily, Seattle Mixed, industrial, and downtown zones. Project-specific impacts on land and shoreline use would be determined during permitting of individual transportation improvement projects.

b. Has the project site been used as working farmlands or working forest lands? If so, describe. How much agricultural or forest land of long-term commercial significance will be converted to other uses as a result of the proposal, if any? If resource lands have not been designated, how many acres in farmland or forest land tax status will be converted to nonfarm or nonforest use?

The proposed non-project action would not convert agricultural or forest land to other uses. There are no designated agricultural or forest lands in Seattle.

1) Will the proposal affect or be affected by surrounding working farm or forest land

normal business operations, such as oversize equipment access, the application of pesticides, tilling, and harvesting? If so, how:

The proposed non-project action would not affect or be affected by agricultural or forest land business operations. There are no designated agricultural or forest lands in Seattle.

c. Describe any structures on the site.

Seattle's urban area is developed with a wide range of structures, ranging from single-family residences to high-rise office towers to large industrial structures. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or separate project-specific environmental review.

d. Will any structures be demolished? If so, what?

The proposed non-project action does not include demolition of any structures. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or separate project-specific environmental review.

e. What is the current zoning classification of the site?

Zoning in Seattle includes a range of residential, commercial, and industrial designations. Zoning designations are found in Seattle's Land Use Code, Title 23 of the Seattle Municipal Code. Basic zone families include Neighborhood Residential Zones, Multifamily Residential Zones, Commercial Zones, Industrial Zones, Downtown Zones, and Seattle Mixed Zones. Basic zone designations in which projects subject to this proposal may be located are listed below, followed by their abbreviation:

Residential, Neighborhood 1, NR1
Residential, Neighborhood 2, NR2
Residential, Neighborhood 3, NR3
Residential, Neighborhood, Small Lot, RSL
Residential, Multifamily, Lowrise 1, LR1
Residential, Multifamily, Lowrise 2, LR2
Residential, Multifamily, Lowrise 3, LR3
Residential, Multifamily, Midrise, MR
Residential, Multifamily, Highrise, HR
Residential-Commercial, RC
Neighborhood Commercial 1, NC1
Neighborhood Commercial 2, NC2
Neighborhood Commercial 3, NC3
Master Planned Community—Yesler Terrace, MPC-YT
Seattle Mixed—South Lake Union, SMU-SLU
Seattle Mixed—Dravus, SM-D

Seattle Mixed—North Rainier, SM-NR
Seattle Mixed - Rainier Beach, SM-RB
Seattle Mixed—University District, SM-U
Seattle Mixed—Uptown, SM-UP
Seattle Mixed—Northgate, SM-NG
Commercial 1, C1
Commercial 2, C2
Downtown Office Core 1, DOC1
Downtown Office Core 2, DOC2
Downtown Retail Core, DRC
Downtown Mixed Commercial, DMC
Downtown Mixed Residential, DMR
Pioneer Square Mixed, PSM
International District Mixed, IDM
International District Residential, IDR
Downtown Harborfront 1, DH1
Downtown Harborfront 2, DH2
Pike Market Mixed, PMM
General Industrial 1, IG1
General Industrial 2, IG2
Industrial Buffer, IB
Industrial Commercial, IC

Areas within these zones include specific overlays to address areas-specific characteristics, such as proximity to shorelines, presence of major institutions, and light rail station areas.

Individual transportation improvements projects subject to the provisions of this proposed non-project action may be located in zones where transportation improvements may be needed to accommodate future residential and employment growth. This includes all zone designations within the City. Project-specific information on zoning would be determined during the permitting of individual projects.

f. What is the current comprehensive plan designation of the site?

The geographic area affected by the proposed non-project action is all areas of Seattle where transportation improvements may be needed to accommodate future residential and employment growth. Current comprehensive plan designations in the City of Seattle can be found in the Seattle Comprehensive Plan, adopted on July 25, 1994, and last amended in December 2022. Individual transportation improvement projects that may be subject to the provisions of the proposed non-project action may be located in areas shown with a Comprehensive Plan Designation of Urban Center, Hub Urban Village, Residential Urban Village, Industrial Areas, Neighborhood

Residential Areas, Multi-family Residential Area, and Commercial/Mixed Use Area. Project-specific information on Comprehensive Plan designations would be determined during the permitting of individual transportation improvement projects.

g. If applicable, what is the current shoreline master program designation of the site?

The proposed non-project action would apply in all areas of Seattle where transportation improvements may be needed to accommodate future residential and employment growth, this includes both freshwater and marine shorelines, resources that are regulated by the City's shoreline master program (SMP). Shoreline resources regulated under the SMP include all marine waters, larger streams and lakes, associated wetlands and floodplains, and upland areas called shorelands that extend 200 feet landward from the edges of these waters. Individual transportation improvement projects subject to the provisions of this proposal may be located in areas subject to the SMP. Project-specific information on land and shoreline use would be determined during permitting of individual projects.

h. Has any part of the site been classified as a critical area by the city or county? If so, specify.

The proposed non-project action would apply in all areas of Seattle where transportation improvements may be needed to accommodate future residential and employment growth, including in environmentally critical areas. Individual transportation improvement projects subject to the provisions of the proposed non-project action may be located in environmentally critical areas. Project-specific information on site classification would be determined during permitting of individual projects.

i. Approximately how many people would reside or work in the completed project?

The proposed non-project action would not create a completed project in which to reside or work. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or separate project-specific environmental review.

j. Approximately how many people would the completed project displace?

No people would be displaced by the proposed non-project action. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or separate project-specific environmental review.

k. Proposed measures to avoid or reduce displacement impacts, if any:

The proposed non-project action does not include any proposed measures to avoid or reduce displacement impacts. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or separate project-specific environmental review.

- L. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

Potential project-specific impacts of future, specific transportation improvement projects would be addressed through regulations and/or separate project-specific environmental review.

- m. Proposed measures to reduce or control impacts to agricultural and forest lands of long-term commercial significance, if any:

There are no designated agricultural or forest lands in Seattle.

9. Housing

- a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.

The proposed non-project action would not provide housing. Potential adverse housing impacts, if any, of future, specific transportation improvement projects would be addressed through regulations and/or separate project-specific environmental review.

- b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.

The proposed non-project action would not eliminate housing. Potential adverse housing impacts, if any, of future, specific transportation improvement projects would be addressed through regulations and/or separate project-specific environmental review.

- c. Proposed measures to reduce or control housing impacts, if any:

No measures to reduce or control housing impacts are proposed. Potential adverse housing impacts, if any, of future specific transportation improvement projects would be addressed through regulations and/or separate project-specific environmental review. Consideration of future implementation of a transportation impact fee program by the City would include whether to exempt low-income housing as authorized by RCW 82.02.060.

10. Aesthetics

- a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?

The proposed non-project action does not include construction or development. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or separate project-specific environmental review.

b. What views in the immediate vicinity would be altered or obstructed?

The proposed non-project action does not include construction or development that would produce light or glare. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or separate project-specific environmental review.

c. Proposed measures to reduce or control aesthetic impacts, if any:

The proposed non-project action does not include construction or development that would have aesthetic impacts. Potential impacts of future transportation projects that may be funded through a possible future transportation impact fee would be addressed through regulations and street design manuals, such as Streets Illustrated, and/or separate project-specific environmental review.

11. Light and Glare

a. What type of light or glare will the proposal produce? What time of day would it mainly occur?

The proposed non-project action does not include construction or development that would produce light or glare. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or separate project-specific environmental review.

b. Could light or glare from the finished project be a safety hazard or interfere with views?

The proposed non-project action does not include construction or development that would produce light or glare. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or separate project-specific environmental review.

c. What existing off-site sources of light or glare may affect your proposal?

Light or glare would not affect the proposed non-project action. Potential impacts of light or glare on future, specific transportation improvement projects would be addressed through separate project-specific environmental review.

d. Proposed measures to reduce or control light and glare impacts, if any:

No measures to reduce or control light and glare are proposed.

12. Recreation

a. What designated and informal recreational opportunities are in the immediate vicinity?

The proposed non-project action would be in effect throughout areas of Seattle

where transportation improvements may be needed to accommodate future residential and employment growth. Seattle Parks and Recreation operates and maintains a large number of city parks, trails, gardens, playfields, swimming pools, and community centers. In addition to these public facilities, public and private schools, outdoor associations, and commercial businesses provide residents of, and visitors to, Seattle with a variety of organized recreational facilities and activities, such as school athletic programs, hiking and gardening groups, and private health clubs and golf courses. Seattle is particularly rich in recreational opportunities focused on the area's natural features. Seattle's many parks and shorelines offer abundant recreational opportunities, including water contact recreational activities (such as swimming, wading, snorkeling, and diving); water-related and non-water-related recreational activities (such as walking, hiking, playing, observing wildlife, and connecting with nature); and recreational activities that involve consumption of natural resources (such as fishing and noncommercial shellfish harvesting).

- b. Would the proposed project displace any existing recreational uses? If so, describe.

The proposed non-project action does not include construction or development that would displace any recreational activities. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or separate project-specific environmental review.

- c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

No measures to reduce or control impacts on recreation are proposed.

13. Historic and cultural preservation

- a. Are there any buildings, structures, or sites, located on or near the site that are over 45 years old listed in or eligible for listing in national, state, or local preservation registers? If so, specifically describe.

The proposed non-project action would be in effect throughout areas of Seattle where transportation improvements may be needed to accommodate future residential and employment growth. There are a number of landmarks, properties, or districts in Seattle that are listed on, or proposed for, national, state, and local preservation registers. In addition, while Seattle today comprises a highly urbanized and developed area, it is also an area with potential for Native American cultural artifacts. Project-specific information on site-specific historic buildings, structures, and sites would be determined during permitting of individual projects.

- b. Are there any landmarks, features, or other evidence of Indian or historic use or occupation? This may include human burials or old cemeteries. Are there any

material evidence, artifacts, or areas of cultural importance on or near the site?
Please list any professional studies conducted at the site to identify such resources.

There are a number of landmarks, properties, or districts in Seattle that are listed on, or proposed for, national, state, and local preservation registers. In addition, while Seattle today comprises a highly urbanized and developed area, it is also an area with potential for Native American cultural artifacts. Potential impacts of future, specific development proposals would be identified and addressed through regulations and/or separate project-specific environmental review.

- c. Describe the methods used to assess the potential impacts to cultural and historic resources on or near the project site. Examples include consultation with tribes and the department of archeology and historic preservation, archaeological surveys, historic maps, GIS data, etc.

The proposed non-project action does not involve construction or disturbance of any site. No methods were used to assess potential impacts to cultural and historic resources. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or separate project-specific environmental review.

- d. Proposed measures to avoid, minimize, or compensate for loss, changes to, and disturbance to resources. Please include plans for the above and any permits that may be required.

The proposed non-project action does not include construction or development, so there are no activities that would require the avoidance, minimization, or compensation for loss, changes to, and disturbance to historic and cultural resources. Individual projects developed pursuant to this proposal would be subject to environmental review (if they meet or exceed thresholds for environmental review) and to the State of Washington's and City's regulations related to the protection of historic and cultural resources.

14. Transportation

- a. Identify public streets and highways serving the site or affected geographic area and describe proposed access to the existing street system. Show on site plans, if any.

The proposed non-project action would be in effect throughout areas of Seattle where transportation improvements are needed to accommodate future residential and employment growth. The area has dense grids of urban streets (residential and arterials) that provide connections to major routes, including Interstate 5 and State Route 99, which run north and south through the City, and Interstate 90 and State Route 520, which connect Seattle to points east across Lake Washington. Specific streets or highways that may see improvements through a possible future transportation impact fee are shown in Attachment 2 to the proposed legislation

- b. Is the site or affected geographic area currently served by public transit? If so, generally describe. If not, what is the approximate distance to the nearest transit stop?

Seattle is served by bus, streetcar, monorail, and light rail public transit provided by multiple transit agencies, including King County Metro, and Sound Transit, and the City of Seattle. Many of the transportation projects that may be funded through a possible future transportation impact fee would make improvements to transit facilities. Impacts on public transit would be considered during future permitting and environmental review of individual projects.

- c. How many additional parking spaces would the completed project or non-project proposal have? How many would the project or proposal eliminate?

The proposed non-project action would not construct or eliminate parking spaces. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or separate project-specific environmental review.

- d. Will the proposal require any new or improvements to existing roads, streets, pedestrian, bicycle or state transportation facilities, not including driveways? If so, generally describe (indicate whether public or private).

The proposal is one of a number of actions that could lead to the creation of a transportation impact fee in the City of Seattle, which is intended to facilitate the development of improvements to roads, streets, pedestrian, bicycle and state transportation facilities. Specific projects are identified in Attachment 2 to the proposed legislation that is the subject of this environmental review. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or separate project-specific environmental review.

- e. Will the project or proposal use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

The proposed non-project action would take effect throughout areas of Seattle where transportation improvements may be needed to accommodate future residential and employment growth. Seattle is served by railroads, a sea port, and airports. Project-specific information on proximity to and use of water, rail, and/or air transportation would be determined during permitting of individual projects.

- f. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks (such as commercial and nonpassenger vehicles). What data or transportation models were used to make these estimates?

The proposed non-project action would not generate vehicle trips. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or separate project-specific environmental review.

- g. Will the proposal interfere with, affect or be affected by the movement of agricultural and forest products on roads or streets in the area? If so, generally describe.

The proposed non-project action would not affect or be affected by the movement of agricultural or forest products. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or separate project-specific environmental review.

- h. Proposed measures to reduce or control transportation impacts, if any:

The proposed non-project action is a necessary, but not sufficient step, to establishing a program to mitigate the transportation impacts of future residential and employment growth.

15. Public Services

- a. Would the project result in an increased need for public services (for example: fire protection, police protection, public transit, health care, schools, other)? If so, generally describe.

The proposed non-project action would not result in an increased need for public services. Potential impacts of future, specific transportation improvement projects would be addressed through regulations and/or separate project-specific environmental review.

- b. Proposed measures to reduce or control direct impacts on public services, if any.

Consideration of future implementation by the City would include whether to exempt early learning facilities and other development activities with a public purpose as authorized by RCW 82.02.060. No measures to reduce or control direct impacts on public services are proposed.

16. Utilities

- a. Circle utilities currently available at the site: electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other _____

The proposed non-project action would be in effect throughout areas of Seattle where transportation improvements are needed to accommodate future residential and employment growth. All areas of the proposal area have electricity, telephone, water and refuse service. Most (but not all) areas have cable/fiber optics, sanitary sewers, and natural gas. Project-specific information on site-specific utilities would be determined during the design, environmental

review, and permitting of individual projects.

- b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

The proposed non-project action does not include construction or development of any utilities. Specific impacts to utilities that could be affected by possible transportation projects that may be funded through a possible future transportation impact fee would be determined during the design, environmental review, and permitting of individual projects.

C. Signature

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: Lish Whitson _____

Name of signee _____

Position and Agency/Organization _____

Calvin Chow

Signature: _____

Name of signee _____

Position and Agency/Organization _____

Date Submitted: _____

D. Supplemental sheet for nonproject actions

- 1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

This non-project proposal would accomplish procedural steps necessary to implement a transportation impact fee program. Future actions by the City are required for full implementation. Because the current action is not sufficient to implement a program, in and of itself, it makes no incremental change to production, release or discharge of any pollutants.

If an impact fee program is implemented, program fees would be based on trip estimates derived from the 2016 update to the Comprehensive Plan, *Seattle 2035*, which allocated employment and residential growth estimates for a 20-[year](#) period ending in 2035. A transportation impact fee program is identified as [a](#) potential impact mitigation measure in the EIS for the 2016 update.

Implementation of such a program could improve, or reduce the rate of decline, of the speed, efficiency and reliability of the transportation network for all modes, [and in particular transit, pedestrian and bicycle facilities](#), resulting in reduced discharges of pollutants to water or air from idling vehicles and reduced noise.

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

This non-project proposal would accomplish procedural steps necessary to implement a transportation impact fee program. Future actions by the City are required for full implementation. Because the current action is not sufficient to implement a program, in and of itself, it has no effect on plants, animals, fish, or marine life.

If an impact fee program is implemented, program fees would be based on trip estimates derived from the 2016 update to the Comprehensive Plan, *Seattle 2035*, which allocated employment and residential growth estimates for a 20-[year](#) period ending in 2035. A transportation impact fee program is identified as [a](#) potential impact mitigation measure in the EIS for the 2016 update.

If a program is implemented, impact fee-eligible projects would be located primarily in existing rights-of-way. Consequently, implementation of such a program would have only marginal impacts on currently undisturbed habitat for plants, animals, fish, or marine life. Any construction-related impacts associated with potential future development of identified projects would be mitigated by existing environmental protection regulations and, for those projects that are not categorically exempt from SEPA, additional environmental review.

3. How would the proposal be likely to deplete energy or natural resources?

This non-project proposal would accomplish procedural steps necessary to implement a transportation impact fee program. Future actions by the City are required for full implementation. Because the current action is not sufficient to

implement a program, in and of itself, it makes no incremental change to use of energy and natural resources.

If an impact fee program is implemented, program fees would be based on trip estimate derived from the 2016 update to the Comprehensive Plan, *Seattle 2035*, which allocated employment and residential growth estimates for a 20-period ending in 2035. A transportation impact fee program is identified as potential impact mitigation measure in the EIS for the 2016 update.

If a program is implemented, it could reduce the depletion of energy and natural resources by improving the efficiency of the transportation network for all modes, and in particular transit, pedestrian and bicycle transportation.

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?

See response to D.2. Future implementation, should it occur, would facilitate improvements to transportation facilities primarily in existing rights-of-way.

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

This non-project proposal would accomplish procedural steps necessary to implement a transportation impact fee program. Future actions by the City are required for full implementation. Because the current action is not sufficient to implement a program, in and of itself, it makes no changes to land and shoreline use.

If an impact fee program is implemented, program fees would be based on trip estimates derived from the 2016 update to the Comprehensive Plan, *Seattle 2035*, which allocated employment and residential growth estimates for a 20-year period ending in 2035. A transportation impact fee program is identified as a potential impact mitigation measure in the EIS for the 2016 update.

Future implementation of the proposal would involve no changes to regulations governing the location of existing and planned land uses. Additionally, projects included the list are informed by the Comprehensive Plan and transportation modal plans that implement, among other things, Seattle's growth strategy.

Implementation of a future program may incorporate differential fees based on planning geography to recognize that the trip generation characteristics and mode choice of travelers in more densely urbanized areas, that are well-served by transit, are different from areas with less transit access.

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

This non-project proposal would accomplish procedural steps necessary to implement a transportation impact fee program. Future actions by the City are required for full implementation. Because the current action is not sufficient to implement a program, in and of itself, it would not increase demands on transportation, public services, and utilities.

If an impact fee program is implemented, program fees would be based on trip estimates derived from the 2016 update to the Comprehensive Plan, *Seattle 2035*, which allocated employment and residential growth estimates for a 20-year period ending in 2035. A transportation impact fee program is identified as a potential impact mitigation measure in the EIS for the 2016 update.

Future implementation of the proposal would mitigate demands on transportation infrastructure by adding and making improvements that benefit all modes of travel, and in particular transit, pedestrian and bicycle transportation. The proposal would not, in and of itself, increase demands on public services or utilities. Consideration of future implementation by the City would include whether to exempt low-income housing, early learning facilities, and other development activities with a public purpose as authorized by RCW 82.02.060.

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

The proposal is a necessary, but not sufficient, step to implementing a transportation impact fee program authorized by RCW 82.02.050. There are no known conflicts between this proposal and local, state or federal laws or requirements for the protection of the environment.

Signature: Lish Whitson
Lish Whitson (Feb 8, 2023 16:32 PST)

Email: LISH.WHITSON@SEATTLE.GOV

Signature: Calvin Chow
Calvin Chow (Feb 8, 2023 16:34 PST)

Email: CALVIN.CHOW@SEATTLE.GOV

EXHIBIT C

February 27, 2023

VIA ELECTRONIC MAIL

Seattle City Council Central Staff
Attn: Ketil Freeman
P.O. Box 34025
Seattle, Washington 98124-4025
ketil.freeman@seattle.gov

Re: Determination of Nonsignificance (“DNS”) for 2023 Amendments to the Seattle Comprehensive Plan Related to Transportation Impact Fees and the Adoption of Existing Environmental Documents

Dear Mr. Freeman:

We are writing on behalf of the Seattle Mobility Coalition (“Coalition”) to provide comments on the Determination of Nonsignificance (“DNS”), attached as Exhibit A, for the 2023 Amendments to the Seattle Comprehensive Plan Related to Transportation Impact Fees and the Adoption of Existing Environmental Documents (“Proposal”).

As noted in the DNS, the Coalition appealed the 2018 threshold determination issued for the prior version of the Proposal (“2018 DNS”). As a result of that appeal, the Seattle Hearing Examiner reversed the 2018 DNS, finding that the City had failed to consider required aspects of SEPA analysis. *See* Examiner Decision, attached as Exhibit B. Unfortunately, the environmental checklist prepared for the current Proposal (“Checklist”), attached as Exhibit C, fails to remedy the errors identified by the Examiner. In addition, the Checklist fails to recognize probable, significant adverse impacts of the Proposal and exhibits other procedural deficiencies.

A. Interests of Coalition

The Coalition is an unincorporated association with members who own and develop residential and commercial property and live in Seattle. Members of the Coalition are adversely affected by the Proposal because they own property or live near street improvement projects which will proceed as a direct result of the Proposal and will impact them. They also own property on which development projects are proposed that must be physically modified or are rendered infeasible as a direct result of the Proposal. In addition, they are prospective residents of these projects and neighbors who will be impacted by loss of housing and amenities that would have been provided by these projects but for the Proposal.

B. The Checklist Ignores the Proposal's Significant Impacts to Housing

A transportation impact fee would raise the cost of development in Seattle across the board, amounting to a tax on new housing, which will reduce housing production, increase housing costs and undermine the goals of the Mandatory Housing Affordability (“MHA”) program. Adding further costs to the already expensive and challenging process of building new housing of all types – whether affordable or market rate – will result in the construction of fewer new units than would occur without the added fee. The effects are likely to be significant because housing affordability challenges in Seattle are driven by shortages and the resulting bidding-up of available units. As a result, both designated affordable units and market-rate units contribute to alleviating housing shortages, and the adequate provision of new units of both types of housing is vital. Because a transportation impact fee would drive up the cost of housing for Seattle residents, it would do more harm than good.

Particularly in Urban Centers and Urban Villages, where the City’s future growth is intended to be focused, adding a transportation impact fee would increase development costs for housing of all densities, resulting in some of the densest possible projects becoming infeasible. In addition, the effects of the fee are likely to be magnified because of increasing development costs and other fees, including MHA fees. In the midst of a housing crisis, the Council should not make it even more expensive to develop both affordable and market-rate housing. Yet that is exactly what the Proposal would do. Impact fees are often framed as “requiring developers to do their part,” but developers are not the only ones who will be harmed by this proposal. Instead, the additional costs imposed by an impact fee will, in large part, be passed along to renters and homebuyers, placing housing further out of reach. The costs that are not passed on will make it more expensive to build housing, needlessly constraining the availability of new units despite the growing population. Either way, the negative effects of the Proposal will fall most heavily on people who need housing. These impacts are not reflected in the DNS.

The Proposal would also have an effect on affordable housing specifically. Development projects that would otherwise pay MHA fees would be rendered infeasible by the additional cost burden imposed by the Proposal. As a result, fees that would otherwise be used to construct affordable housing will be lost. Accordingly, beyond the adverse effect of reduction in housing production, there will be a specific significant, adverse effect on affordable housing.

The Proposal’s impacts on housing will go beyond direct impacts on the feasibility of housing projects in the City. The population of the Seattle metropolitan area continues to grow, and new residents will continue to require places to live. If these residences are not built in the City, they will be built in nearby cities and suburbs. The resulting sprawl will have its own adverse environmental impacts, including destruction of natural areas and habitat, increased vehicle miles traveled, and accompanying pollution. Moreover, increasing housing development in the suburbs will result in bidding up land prices in those locations, further exacerbating affordability issues. These interjurisdictional impacts, too, must be considered under SEPA.

These impacts are far from speculative. As the City testified in the appeal of the 2018 DNS, imposition of a fee set under the existing-system-value methodology prescribed by the Proposal could “have a negative effect on development, make development infeasible” and “might thwart achieving [the City’s] comprehensive plan objectives like accommodating 70,000 new households and 115,000 new jobs.” Freeman Testimony, attached as Exhibit D. And as the Examiner noted when reversing the 2018 DNS, the question of how potential housing impacts would be mitigated is relevant to consideration of a nonproject action. Nonetheless, the DNS makes no effort to engage with these questions, ignoring the significant impacts this Proposal is likely to have on housing in violation of SEPA and of City policy.

C. The DNS is Based on Inadequate Information and is Improperly Piecemealed

A threshold determination must be “based upon information reasonably sufficient to evaluate the environmental impact of a proposal.” WAC 197-11-335. Here, the DNS is based on inadequate or inaccurate information contained in the Checklist, and it fails to analyze the likely impacts that will result from subsequent phases of this proposal.

“A major purpose of the environmental review process is to provide environmental information to governmental decisionmakers for consideration *prior to* making their decision on any action.” SMC 25.05.055.B.2 (emphasis added). Courts recognize that initial policy actions, even if “no land use changes would occur as a direct result,” can “begin a process of government action which can ‘snowball’ and acquire virtually unstoppable administrative inertia.” *King County v. Wash. State Boundary Review Bd.*, 122 Wn.2d 648, 664, 860 P.2d 1024, 1032-33 (1993). Indeed, this is arguably even more important in the case of nonproject actions like comprehensive plan amendments and other policies, which will affect development and land use not just in one location but across the city. “The snowballing metaphor is powerful because it embodies the fundamental idea of SEPA: to prevent government agencies from approving projects and plans before the environmental impacts of doing so are understood.” *Int’l Longshore & Warehouse Union, Local 19 v. City of Seattle*, 176 Wn. App. 512, 522, 309 P.3d 654, 659 (2013). Thus, “SEPA review must precede approval of . . . an action . . . that will have impacts on the environment down the road.” *Id.*; see also, e.g., *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 80, 92, 392 P.3d 1025, 1030 (2017) (“SEPA’s primary focus is on the decision-making process.”); *Lassila v. Wenatchee*, 89 Wn.2d 804, 814, 576 P.2d 54, 59 (1978) (SEPA analysis “must precede governmental action.”).

In the checklist prepared for the 2018 DNS (“2018 Checklist”), the “City concluded that because the proposal was of a nonproject nature, it was not required to complete Section B of the environmental checklist.” Examiner Decision at 9. The Examiner reversed the 2018 DNS on this basis, noting that “the language of WA 197-11-315 does not indicate that the lead agency can simply ignore Section B.” *Id.* at 10. The Examiner noted that several questions in Section B could be applicable to non-project proposals, offering as specific examples questions about measures to reduce or control housing and transportation impacts. *Id.*

In the latest version of the Proposal, Section B is not left blank as before. Nonetheless, it fails to satisfy the requirements of WAC 197-11-335 and the Examiner Decision. As discussed below, the

Proposal is far from a vague, programmatic goal: to the contrary, it establishes a specific, prescriptive methodology for the calculation of fees that will lead to the construction of specifically identified transportation improvements. The proposal is developed at a level where it is possible to evaluate its worst-case impacts. Both aspects of this will have impacts on the environment. In addition to the direct environmental impacts of the improvements, the Proposal will discourage development in Seattle and will reduce the housing and other physical amenities provided in future development projects, resulting in adverse impacts to the built environment. “Implicit in the statute is the requirement that the decision makers consider more than what might be the narrow, limited environmental impact of the immediate, pending action.” *Cheney v. Mountlake Terrace*, 87 Wn.2d 338, 344, 552 P.2d 184, 188 (1976). “The agency cannot close its eyes to the ultimate probable environmental consequences of its current action.” *Id.*

The Checklist must evaluate these impacts, but it fails to do so. The responses provided in Section B consist of generalized statements that function as filler. They contain no substantive consideration, discussion, or analysis of the Proposal. Instead, they simply repeat, in different words, that the Proposal will have no impacts and all specific review will be conducted later. Section D of the Checklist repeats this error, containing only cursory responses. This is insufficient to satisfy the City’s obligation under SEPA. *See, e.g., Spokane Cty. v. E. Wash. Growth Mgmt. Hearings Bd.*, 176 Wn. App. 555, 579, 309 P.3d 673, 684 (2013) (“[F]or a nonproject action, such as a comprehensive plan amendment or rezone, the agency must address the probable impacts of any future project action the proposal would allow.”). Here, the City’s failure to engage with any impacts of its Proposal violated both these requirements and its own policy that “[a]gencies shall *to the fullest extent possible* . . . [p]repare environmental documents that . . . are supported by evidence that the necessary environmental analyses *have been made*.” SMC 25.05.030.B (emphasis added).

In addition, the environmental review of the Proposal as reflected in the City’s new Checklist is improperly piecemealed. Where a proposal will require a series of related actions that are reasonably understood at the outset, the checklist must consider the environmental impacts of all of the actions together, not just the first or second one in isolation. Specifically, WAC 197-11-060 provides that proposals “related to each other closely enough to be, in effect, a single course of action” must be considered together under SEPA if they “are interdependent parts of a larger proposal and depend on the larger proposal as their justification or for their implementation.” *See also King Cty. v. Wash. State Boundary Review Bd.*, 122 Wn.2d 648, 662-64, 860 P.2d 1024, 1032-33 (1993) (improper to defer environmental review if the proposal will generate momentum and result in probable significant adverse environmental impacts). Similarly, WAC 365-196-805(1) provides that when “amendments to comprehensive plans are adopted, consistent implementing regulations or amendments to existing regulations should be enacted and put into effect concurrently.” This underscores the importance of evaluating the Comprehensive Plan amendment component of the proposal with the anticipated development regulation as a “single course of action” for SEPA review.

Here, the Proposal is determinative of three things – whether to adopt a program, what rate methodology to use, and what projects to fund. This directly contradicts the assertion that it is too early to engage in environmental review. To the contrary, the inclusion of these determinations in the Amendments indicates definitively that substantive review at this stage is required. As the City

testified in the prior appeal, consideration of the Proposal will amount to a “go/no-go decision” for the Council regarding the adoption of a fee, because the Growth Management Act requires development regulations to be consistent with the Comprehensive Plan. Freeman Testimony.

Since the current proposed Comprehensive Plan amendments are expressly intended to be followed by development regulations imposing transportation impact fees under the methodology *expressly identified in the Proposal*, and, subsequently, by development of the transportation improvements *expressly identified in the Proposal*, there is no possible conclusion other than that these proposed amendments are interdependent parts of a larger proposal. The City has broken this single course of action into smaller pieces in order to avoid timely review of the impacts of its actions. SEPA requires the City to conduct adequate environmental review not only of the Comprehensive Plan Amendments themselves, but of the City’s entire course of action (the actual proposal), which includes adoption of the impact fee and construction of the specifically identified transportation improvements.

Alternatively, the City must acknowledge that it is conducting phased review and that environmental analysis of the impacts of a fee must be conducted when development regulations consistent with the Proposal are considered by the Council. However, this would not relieve the City of its obligation to consider those impacts that can be analyzed at this stage, including the worst-case scenario for a fee set at the proposed rates as discussed below.

D. The Proposal Will Result in Significant Adverse Impacts

The City may issue a DNS only when the proposal under consideration will not have significant adverse environmental impacts. WAC 197-11-340(1); SMC 25.05.340.A. In contrast, if a proposal will have a significant adverse impact on the environment, the City must issue a Determination of Significance (“DS”) and prepare an Environmental Impact Statement (“EIS”). WAC 197-11-360(1); SMC 25.05.360.A. Here, the Proposal will have significant adverse environmental impacts that were not analyzed in the DNS. These include the following:

- Construction impacts. The Proposal will lead to the construction of the transportation improvement projects identified in the Proposal. These projects will result in temporary construction-related impacts to the following elements of the environment: earth (due to earth movement for construction), air (due to emissions from construction and other vehicles), water (due to increased impervious surface), the built environment (including noise, light and glare, and aesthetics), and transportation, among others. The City failed to analyze these impacts and to identify potential mitigation.

The Checklist opines, without support, that “any construction-related impacts associated with potential future development of identified projects would be mitigated by existing environmental protection regulations and, for those projects that are not categorically exempt from SEPA, additional environmental review.” Checklist, p. 15. Yet, a “county, city, or town may not rely on its existing plans, laws, and regulations when evaluating the adverse environmental impacts of a nonproject action.” *Heritage Baptist Church v. Central Puget*

Sound Growth Management Hearings Board, 2 Wn. App. 737, 752, 413 P.3d 590 (2018). In addition, in making this statement with regard to future project actions, the City failed to comply with WAC 197-11-158.

- Impacts to the built environment. Development projects will be modified or rendered infeasible due to the burdensome fees resulting from the Proposal, causing loss of infill redevelopment, including housing, and amenities that would have been provided by these projects but for the Proposal. For those projects that proceed forward, impact fees will be passed along to future purchasers and tenants, increasing the cost of housing. This will result in long-term impacts to the built environment, including relationship to existing land use plans, housing, aesthetics and recreation, among other elements of the environment.

Courts have repeatedly held that physical impacts that result from economic effects are environmental impacts that must be considered under SEPA. *West 514, Inc. v. County of Spokane*, 53 Wn. App. 838, 847-848, 779 P.2d 1065 (1989); *Indian Trail Property Association v. City of Spokane*, 76 Wn. App. 430, 444, 886 P.2d 209 (1994). Here, the fees required as a result of the Proposal will reduce development in Seattle, causing some properties to remain vacant or underutilized, with buildings in a state of disrepair and serving as magnets for graffiti and other undesirable activities. Some housing projects will be rendered infeasible, reducing housing supply and decreasing affordability. Amenities (including expensive design features and materials, recreational spaces and improvements that enhance the pedestrian environment) will not be provided. Residents of Seattle will be impacted by reduced housing supply and neighborhoods by reduced redevelopment.

These direct physical impacts will also significantly impact the City's compliance with its land use plans and policies. During the threshold determination process, an agency must ask, "Is the project consistent with the . . . local development regulations, and the comprehensive plan?" Department of Ecology SEPA Handbook, Section 2.6. "Review of a nonproject proposal should include a consideration of other existing regulations and plans, and any other development." *Id.* at Section 4.1. As noted above, because the Proposal will negatively impact the City's production of housing, specifically affordable housing, it will also thwart the success of the City's MHA program, adopted under the GMA as a density bonus pursuant to RCW 36.70A.540.

In addition, by burdening development, including housing, the Proposal conflicts with the following Comprehensive Plan goals and policies, among others: GS G1 (keep Seattle as a city of unique, vibrant, and livable urban neighborhoods); GS 1.2 (encourage investments and activities in urban centers and urban villages that will enable those areas to flourish); GS 1.5 (encourage infill development); GS 1.22 (support healthy neighborhoods throughout the city so that all residents have access to a range of housing choices, parks, open space); LU G8 (allow a variety of housing types and densities that are suitable for a broad array of households and income levels); LU 8.3 (provide housing for Seattleites at all income levels in development that is compatible with desired neighborhood character and that contributes to high-quality, livable urban neighborhoods); LU G9 (create and maintain successful

commercial/mixed use areas); LU 9.2 (encourage the development of compact, concentrated commercial/mixed-use areas); TG 1 (ensure that transportation decisions, strategies and investments support the City's overall growth strategy and are coordinated with this Plan's land use goals); HG2 (help meet current and projected regional housing needs of all economic and demographic groups); HG5 (make it possible for households of all income levels to live affordably in Seattle); and ED G1 (encourage vibrant commercial districts).

E. The City Cannot Evade its SEPA Responsibilities by Claiming Lack of Information

Here, as noted above, the significant impacts of the Proposal are not speculative but were specifically acknowledged in City testimony during the prior appeal: the Proposal may “make development infeasible” and “might thwart achieving [the City’s] comprehensive plan objectives regarding housing.” The Council must be fully informed of these possibilities before making a “go/no-go” decision on whether to adopt an impact fee according to this methodology. The 2018 Checklist and DNS fail to provide this necessary information, instead repeatedly asserting that the analysis would come later. But, the City cannot wholly evade its SEPA responsibilities at this stage as it seeks to do. Instead, if the City believes it does not have information sufficient to analyze significant adverse impacts at this juncture, it must conduct a worst-case analysis and “generally indicate in the appropriate environmental documents its worst case analysis and the likelihood of occurrence.” WAC 197-11-080(3)(b). This information too is absent from the Checklist.

F. The Proposal Description is Inadequate

Under the State Environmental Policy Act (“SEPA”), “[p]roposals should be described in ways that encourage considering and comparing alternatives. Agencies are encouraged to describe public or nonproject proposals in terms of objectives rather than preferred solutions.” WAC 197-11-060(3)(iii); *see also* Department of Ecology SEPA Handbook (“SEPA Handbook”), Section 4.1. Contrary to this requirement, here the Proposal is described as specific Comprehensive Plan amendments. The Proposal is not described in terms of its objectives, in violation of WAC 197-11-060. Instead, it is put forward as a proposal for a specific, prescriptive methodology used to determine the amount of a fee: the Proposal would enshrine the existing system value methodology in the Comprehensive Plan, designating the methodology as the only permissible way of calculating transportation impact fees. The Proposal would require the Council not just to adopt a fee program but to set the rates on the basis of a specific methodology that has only been used previously in large cities outside of Washington. In addition, the Proposal would adopt the specific list of eligible projects to be funded.

G. Public Process

The purpose of SEPA is to inform the public and decision makers. The Proposal has numerous significant adverse impacts and unintended consequences that are not addressed in the Checklist. The Checklist fails to take into account information provided by affected stakeholders, including property owners, developers, and affected Seattle residents. The Coalition requests that the City extend the public comment period on the DNS to allow more time for stakeholders to comment.

H. Conclusion

The Environmental Checklist lacks crucial information. The Proposal will result in significant adverse environmental impacts. The City must withdraw the DNS and either (1) issue a DS and prepare further environmental analysis, which may include an EIS, addressing these impacts; or (2) make modifications to the Proposal or adopt mitigation measures to eliminate these significant adverse environmental impacts.

Thank you for your consideration of these comments.

Sincerely,

s/Courtney Kaylor

cc: Client
Liza Anderson, Office of the Seattle City Attorney

EXHIBIT D

**AMENDED FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE**

In the Matter of the Appeal of

Hearing Examiner File:
W-18-013

SEATTLE MOBILITY COALITION

from a Determination of Non-Significance issued
by the Seattle City Council

Introduction

The City of Seattle Council Central Staff Division of the City Council (“City”) issued a State Environmental Policy Act (“SEPA”) Determination of Non-Significance (“DNS”) for a proposed ordinance that would modify the Seattle Comprehensive Plan (“Ordinance”). The Appellant Seattle Mobility Coalition (“Appellant”), exercised the right to appeal pursuant to Chapter 25.05 Seattle Municipal Code.

The appeal hearing was held on June 10, 12 and 18, 2019, before the Hearing Examiner. The Appellant was represented by Courtney A. Kaylor, attorney-at-law, and the City was represented by Elizabeth E. Anderson, attorney-at-law. The parties submitted closing briefs on July 19, 2019, and response briefs on July 25, 2019. The hearing was reopened on August 28, 2019, and the parties filed supplemental briefing on September 6, 2019, and responses to supplemental briefing on September 11, 2019.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code (“SMC” or “Code”) unless otherwise indicated. After considering the evidence in the record, the Hearing Examiner enters the following findings of fact, conclusions and decision on the appeal.

Findings of Fact

1. The DNS describes the proposal identified in the Ordinance (“Proposal”) as:

The 2018 amendments to *Seattle 2035* related to transportation impact fees are non-project in nature, primarily procedural, and will have citywide applicability. The proposed amendments would (1) amend the Capital Facilities and Transportation Elements of the Comprehensive Plan and related appendices to identify deficiencies in the transportation system associated with new development and (2) incorporate a list of transportation infrastructure projects that would add capacity to help remedy system deficiencies.

Projects included in the list would be eligible for future investments with revenue from a transportation impact fee program. The amendments to *Seattle 2035* are a necessary, but not sufficient, step to establish an impact fee program under RCW 82.02.050.

Exhibit 8 at 1.

2. The Proposal's amendments to the Comprehensive Plan would not create a Transportation Impact Fee ("TIF") program, but, if adopted by the City Council, would be the first step toward authorizing such a program. If the City Council adopts the proposed amendments, the next step in creating a TIF program would be for the City Council to consider and adopt a TIF program plan and/or development regulations that implement the goals set by the Comprehensive Plan by setting the parameters of such a program, including applicability of the program, the cost of the fees and management of the program consistent with RCW 82.02.050-.110.
3. The Proposal concerns a nonproject action under SEPA. The City issued the DNS for the Proposal on October 25, 2018. The DNS concluded that the Proposal would not have any probable, significant adverse impacts on the environment. The DNS also stated:

the proposed amendments are of a non-project nature, primarily procedural, and have a citywide effect, rather than a site-specific effect. As such, the amendments would not affect the extent, intensity or rate of impacts to the built and natural environments. The amendments would accomplish the procedural requirements of RCW 82.02.050(5)(a) for establishing a transportation impact fee program to help mitigate a portion of the impacts attributable to planned residential and employment growth. Projects listed in the Comprehensive Plan would guide investment decisions by the City for mitigation payments made pursuant to a transportation impact fee program. Projects included in the list are drawn from capacity-improvement projects that are partially funded by the Move Seattle levy, projects identified in adopted modal plans, and Move Seattle vision projects identified through the Move Seattle levy planning process. The amendments would not in themselves create a transportation impact fee program. For future development of an impact fee program and a fee schedule, estimates for growth in trips on the transportation network would be based on growth estimates for *Seattle 2035*.

Exhibit 8 at 1-2.

4. Seattle Mobility Coalition appealed the DNS to the Hearing Examiner.

5. At the hearing, the Appellant called Morgan Shook to testify regarding the impacts of the Proposal on housing production and affordability. He testified concerning his experience with multiple impact fee programs in the region, and about a range of issues associated with different fee programs including some potential issues associated with the type of fee program identified in the Proposal. He discussed fee programs in the terms of their efficiency, and indicated the Proposal's cost-allocation basis was less efficient than a marginal-cost basis. A written analysis was prepared and discussed by Mr. Shook that analyzed the potential impact of the Proposal, and it identified loss of feasibility for certain of the densest development projects. Mr. Shook's analysis did not measure impacts of the Proposal on affordable housing. In addition, the identified loss of feasibility for certain of the densest development projects was not quantified such that it demonstrated a more than moderate effect on the quality of the environment.
6. The Appellant called Mike Swenson, a traffic and transportation expert who testified concerning the transportation infrastructure projects identified by the Ordinance, and the construction impacts that are likely to result from those projects. Impacts Mr. Swenson identified included, but were not limited to: construction related lane-closures and parking displacement; long-term parking loss; transit route closures and rerouting; construction impacts to pedestrians; construction related dust, noise, and glare. Mr. Swenson indicated that these projects were more likely to occur if identified as a result of the Ordinance. He testified that overlapping in sequence of the projects would exacerbate the potential impacts.
7. George Steirer, land use planner, testified regarding the City's procedural and substantive compliance with SEPA in relation to the Proposal with generalized statements about SEPA standards, and City SEPA practices.
8. Kendra Breiland testified concerning development of key components of the Proposal, in particular she testified to the use of cost-allocation methodology in other locations.
9. Andrew Bjorn responded on behalf of the City to Appellant's claims that the DNS should have analyzed impacts to housing and housing affordability.
10. Mark Mazzola testified for the City about the environmental review process typically used by the Seattle Department of Transportation, and about the status of projects identified as impact fee-eligible as an attachment to the proposal. He testified about the status for projects identified as impact fee-eligible as an attachment to the non-project action that is the subject of the appeal, and that this list of transportation infrastructure projects would be subject to additional SEPA review at the project level.

11. Ketil Freeman, Supervising Analyst, City Council Central Staff, testified concerning the SEPA review process for the Ordinance. Mr. Freeman conducts SEPA review for the legislative branch, and was the lead staff for the DNS. He also testified in response to Appellant's claims of procedural and substantive SEPA errors. Mr. Freeman testified that as part of the City's environmental review of the Ordinance, the City reviewed the proposed Ordinance and the SEPA checklist ("Checklist") prepared for the Ordinance, and determined that the Checklist contained sufficient information to make the threshold determination.
12. Andrew Bjorn testified in response to Appellant's claims that the DNS should have analyzed impacts to housing and housing affordability.
13. WAC 197-11-060.3.b provides:
 - (b) Proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same environmental document. (Phased review is allowed under subsection (5).) Proposals or parts of proposals are closely related, and they shall be discussed in the same environmental document, if they:
 - (i) Cannot or will not proceed unless the other proposals (or parts of proposals) are implemented simultaneously with them; or
 - (ii) Are interdependent parts of a larger proposal and depend on the larger proposal as their justification or for their implementation.
14. WAC 197-11-315 provides:
 - (1) Agencies shall use the environmental checklist substantially in the form found in WAC 197-11-960 to assist in making threshold determinations for proposals, except for:

. . .

 - (e) Nonproject proposals where the lead agency determines that questions in Part B do not contribute meaningfully to the analysis of the proposal. In such cases, Parts A, C, and D at a minimum shall be completed.
15. SMC 25.05.752 defines "impacts" as "the effects or consequences of actions. Environmental impacts are effects upon the elements of the environment listed in Section 25.05.444."
16. The impacts to be considered in environmental review are direct, indirect and cumulative impacts. SMC 25.05.060 D.

17. “A proposal’s effects include direct and indirect impacts caused by a proposal. Impacts include those effects resulting from growth *caused by a proposal*” SMC 25.05.060.D.4. (Emphasis added.)
18. “Probable” is defined in SMC 25.05.782 as “likely or reasonably likely to occur”
19. SMC 25.05.794 defines “significant” as “a reasonable likelihood of more than a moderate adverse impact on environmental quality. . . . Significance involves context and intensity The context may vary with the physical setting. Intensity depends on the magnitude and duration of an impact Section 25.05.330 specifies a process, including criteria and procedures, for determining whether a proposal is likely to have a significant adverse environmental impact.”
20. SMC 25.05.330 directs that, in making the threshold determination, the responsible official shall determine “if the proposal is likely to have a probable significant adverse environmental impact” If the responsible official “reasonably believes that a proposal may have” such an impact, an environmental impact statement is required. SMC 25.05.360.
21. SMC 25.05.665 D. Subparagraphs D.1 through D.7 cover situations where existing regulations may be inadequate or unavailable to assure mitigation of adverse impacts and thus, SEPA-based mitigation is appropriate.
22. The SEPA Cumulative Effects Policy, SMC 25.05.670, states that:
 - A. Policy Background.
 1. A project or action which by itself does not create undue impacts on the environment may create undue impacts when combined with the cumulative effects of prior or simultaneous developments;
 - B. Policies.
 1. The analysis of cumulative effects shall include a reasonable assessment of:
 - a. The present and planned capacity of such public facilities as sewers, storm drains, solid waste disposal, parks, schools, streets, utilities, and parking areas to serve the area affected by the proposal;
 - b. The present and planned public services such as transit, health, police and fire protection and social services to serve the area affected by the proposal;
 - c. The capacity of natural systems—such as air, water, light, and land—to absorb the direct and reasonably anticipated indirect impacts of the proposal; and
 - d. The demand upon facilities, services and natural systems of present, simultaneous and known future development in the area of the project or action.

Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to SMC 25.05.680.B, which also requires that the Hearing Examiner give substantial weight to the Director's determination.
2. The party appealing the Director's determination has the burden of proving that it is "clearly erroneous." *Brown v. Tacoma*, 30 Wn. App. 762, 637 P.2d 1005 (1981). Under this standard of review, the decision of the Director may be reversed only if the Hearing Examiner is left with the definite and firm conviction that a mistake has been committed. *Cougar Mt. Assoc. v. King County*, 111 Wn. 2d 742, 747, 765 P.2d 264 (1988).
3. SEPA requires "actual consideration of environmental factors before a DNS can be issued." *Norway Hill Preservation and Protection Ass'n. v. King County*, 87 Wn.2d 267, 275, 552 P.2d 674 (1976). The record must "demonstrate that environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA." *Id.* at 276 (citation omitted).
4. Nothing in SEPA requires that an agency's environmental review be completely contained within a checklist and DNS. A SEPA checklist is simply a variation of a prescribed form and normally does not include an analysis of the proposal. *See, e.g.* SMC 25.05.970. An agency is required to review the checklist, SMC 25.05.330 A.1, but it may also require more information of the applicant, conduct further study and consult with other agencies about the proposal's potential impacts. SMC 25.05.335. It is expected that the agency will utilize its own knowledge and expertise in analyzing the proposal. As noted above, the question on review is whether the agency actually considered environmental factors. *See Hayden v. City of Port Townsend*, 93 Wn. 2d 870, 881, 613 P.2d 1164 (1980), *overruled on other grounds, Save a Neighborhood Environment (SANE) v. City of Seattle*, 101 Wn.2d 280, 286, 676 P.2d 1006 (1984).
5. The Appellant argued that Council Central Staff had not been properly delegated authority to serve as the SEPA responsible official. There is no indication based on the Code or case law that the delegation of authority was improper for identifying a responsible official under SEPA.
6. Appellant through Mr. Shook's testimony indicated that impact fees would cause an increase in cost of housing, because they would reduce the feasibility of certain development projects. Mr. Shook testified, but did not introduce evidence demonstrating, that the cost of any housing would increase significantly, and that such increase would result in any negative significant environmental impact. The mere fact that an expert states that a proposal will have a significant adverse impact is not sufficient, when that statement is not accompanied by analysis or evidence that quantifies the level of impact. If such were the case, then hiring an expert who

parrots the words that identify the SEPA threshold for EIS review would be all that was necessary for SEPA appellants to prevail.

7. Further, Mr. Shook's testimony simply went to demonstrating the potential lack of feasibility of some development projects due to cost increases. SEPA environmental review is limited to analysis of potential impacts to the natural and built environment. Elements of the environment to be considered under SEPA review are listed in SMC 25.05.444. Economic impacts to property owners is not an element of the environment that is required to be studied under SEPA. Economic impacts are considered only when they will cause a probable significant adverse environmental impact to one of the elements of the environment. In this case Mr. Shook's testimony and written analysis did not demonstrate how lack of feasibility of development projects (in and of itself an economic impact on the development community) would translate into a significant impact on the availability of affordable housing or other elements of the environment subject to SEPA review.
8. Appellant's expert indicated that significant impacts would occur as a result of the projects identified with the Ordinance if all projects were developed at the same time or within a close time. However, nothing in the record indicates that such a development scenario is likely, and SEPA review is not required for speculative worst-case scenarios. In addition, Appellant did not take into account that some elements of such projects are exempt from SEPA review. Finally, even if the projects were developed within a close time period, Mr. Swenson's testimony was not supported by adequate evidence or analysis to demonstrate that any of the construction impacts would have a more than moderate negative impact on the environment. Mr. Swenson's testimony consisted of listing various construction and development related impacts, and delivering a conclusory statement that these impacts would be "significant." This later statement was not accompanied by analysis that quantified or measured impacts that are likely to be associated with potential project. Therefore, Mr. Swenson's testimony failed to demonstrate both the "probability," and the "significance" of the potential impacts raised in his testimony, and the Appellant failed to meet its burden with regard to these issues.
9. Appellant did not quantify the scale or probability of impacts related to parking, and did not meet its burden to demonstrate the proposal is likely to result in significant negative parking impacts.
10. Appellant raised the issue of a failure to consider cumulative impacts, but Appellant failed to demonstrate the probability of any negative significant environmental impacts arising as cumulative impacts. Appellant did not describe what the nature of cumulative impacts would be in scope, type, or scale of impacts.
11. There is no evidence in the record that the proposed Ordinance is likely to have a significant adverse impact.

12. The Hearing Examiner is not left with a definite and firm conviction that a mistake has been made concerning Appellant's allegations that the City has conducted SEPA review for the Ordinance in a piece-meal fashion. Appellant has not demonstrated that the proposed legislation "cannot or will not proceed unless" additional ordinances are adopted to implement a TIF program. The Proposal consists of amendments to the City's Comprehensive Plan. A comprehensive plan is a generalized land use policy statement, and development regulations are the implementation of that generalized statement. *See e.g.* RCW 36.70A.030(5). The City's Comprehensive Plan states:

Policies should be read as if preceded by the words It is the City's general policy to. A policy helps to guide the creation of or changes to specific rules or strategies (such as development regulations, budgets, or program plans). City officials will generally make decisions on specific City actions by following ordinances, resolutions, budgets, or program plans that themselves reflect relevant Plan policies, rather than by referring directly to this Plan. Implementation of most policies involves a range of actions over time, so one cannot simply ask whether a specific action or project would fulfill a particular Plan policy. For example, a policy that states that the City will give priority to a particular need indicates that the City will treat the need as important, not that it will take precedence in every City decision.

City of Seattle 2035 Comprehensive Plan at 17.

Adoption of generalized policies of a comprehensive plan do not require (or even guarantee) that implementing ordinances be adopted. Appellant presented no evidence that the Ordinance cannot or will not be adopted by Council unless additional ordinances are adopted to implement a TIF program.

13. Similarly, Appellant has not demonstrated that the proposal is an interdependent part of a larger proposal and depends on the larger proposal as its justification or for its implementation. The Appellant did not present caselaw or other argument that showed other cases wherein SEPA review for an amendment to a comprehensive plan was found inadequate because it did not include environmental review of implementing development regulations or programs. Based on the presentations of the parties, there is an absence of precedent requiring SEPA review for an amendment to a comprehensive plan to include environmental review of implementing development regulations or programs. One case cited by the parties, *Spokane City, v. E. Washington Growth Management Hearings Board*, 176 Wn. App. 555, 309 P.3d 673, (2013) does concern the adoption of a comprehensive plan amendment, and associated development regulations. In that case, the comprehensive plan amendment was done concurrently with a site-specific rezone. Comprehensive plan amendments addressing site-specific rezones are typically part-and-parcel with related site-

specific rezone development regulations – they can be viewed as essentially a single action. This is distinguishable from the case at hand where the Comprehensive Plan amendments are a goal for subsequent adoption of a program. The Comprehensive Plan amendments proposed in the Ordinance seem to lack sufficient detail to identify the environmental impacts that may be associated with a subsequent implementing program. The proposed Comprehensive Plan amendments do not ensure the adoption of a TIF program, and does not establish important elements of such a program, such as fee amounts and potential exemptions. In addition, the environmental impacts of development projects that may be funded by a TIF program are merely speculative at this time, because funding for those projects is not provided for by the Ordinance. The Ordinance is merely a directive to create a program to fund such projects.

14. TIF program plans and/or development regulations that may be adopted to implement the Ordinance have not been analyzed as part of the DNS SEPA review that is the subject of this appeal – both parties agree on this point. In addition, environmental analysis that must accompany any such proposed regulations was not addressed in the Environmental Impact Statement (“EIS”) for the City’s Comprehensive Plan. In that EIS, transportation impact fees were only identified as a potential mitigation tool, and the potential environmental impacts of a TIF program were not analyzed. New SEPA review must accompany any adoption of TIF program plans and/or development regulations implementing the Ordinance.
15. On the face of it, the City took an approach to the SEPA review in this matter that improperly truncated the required environmental analysis for the proposal. There is no exemption of non-project actions from SEPA review, or from adequate environmental review directed at identifying potential significant environmental impacts. The Code allows for “more flexibility in preparing EIS's on nonproject proposals, because there is normally less detailed information available on their environmental impacts and on any subsequent project proposals.” SMC 25.05.442. However, there is no comparative softening of the analysis required at the time of the threshold determination for nonproject proposals. The City concluded that because the proposal was of a nonproject nature, it was not required to complete Section B of the environmental checklist, stating:

This is a non-project proposal with no particular development site.
This section is left blank pursuant to WAC 197-11-315(1)(e).
Potential impacts are discussed and disclosed in Section D.

Exhibit 7 at 3.

WAC 197-11-315 directs agencies to utilize an environmental checklist to assist in making the threshold determination, but does provide an exception for:

- (e) Nonproject proposals where the lead agency determines that questions in Part B do not contribute meaningfully to the analysis

of the proposal. In such cases, Parts A, C, and D at a minimum shall be completed.

In addition, SMC 25.05.960 provides with regard to Section B of a SEPA checklist and nonproject proposals the agency may “exclude any question for the environmental elements (Part B) which they determine do not contribute meaningfully to the analysis of the proposal.”

While there is no bright-line rule or precedential caselaw preventing an agency from simply not answering any questions in Section B, the language of WAC 197-11-315 does not indicate that the lead agency can simply ignore Section B. Coupled with the directive under SEPA that a threshold determination must be supported by actual analysis and disclosure of the environmental impacts of a proposal, and that mere conclusory statements about impacts in a DNS do not convey analysis on the part of the City, the City’s mere reference to WAC 197-11-315(1)(e) with no demonstration that it considered, or made a determination with regard to, the questions in Section B is reversible error in this case. “Agencies shall to the fullest extent possible . . . [p]repare environmental documents that . . . are supported by evidence that the necessary environmental analyses have been made.” SMC 25.05.030.B.

The allowance for excluding questions in Section B for nonproject proposals is provided to allow an agency to skip questions directly related to project proposals. For example, many questions concern conditions at a specific “site,” and many nonproject proposal have no clearly identifiable site or cover such a broad area as to render a response to such questions meaningless. However, other questions are more general in nature (*See e.g.* “Proposed measures to reduce or control housing impacts, if any,” “How many additional parking spaces would the completed project or non-project proposal have?” or “Proposed measures to reduce or control transportation impacts, if any.” Exhibit 8 at 10, 12 and 13.), and could be applicable to a nonproject proposal. The DNS indicates no consideration for these questions.

16. In this case, the Checklist was identified by the City as central to the City’s threshold determination. Aside from the Ordinance, the Checklist was the only information identified by the City as part its consideration of the potential environmental impacts. No additional information was requested about the potential impacts of the Ordinance. Where Section B of the Checklist is left blank¹, and the DNS does not show a determination as to the questions therein, the DNS was not based on “information reasonably sufficient to evaluate the environmental impact” of the Ordinance, the record does not support a finding of prima facie compliance by the City, and the DNS should be reversed.
17. The City filed a motion to strike materials submitted by the Appellant with its Supplemental Post-Hearing Brief. The Hearing Examiner reopened the hearing “to

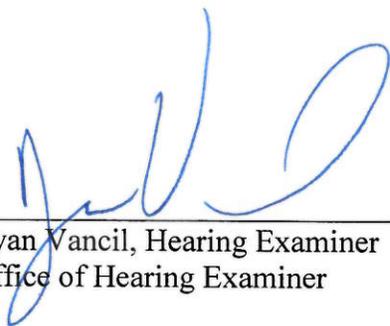
¹ Except a reference to the exemption and analysis in a different section of the Checklist.

address a narrow question of law not fully briefed by the parties in their closing arguments.” At the reopened hearing the Hearing Examiner emphasized that he was seeking additional briefing concerning case law. There was no indication by the Hearing Examiner that the record was open for additional evidence to be submitted. The Hearing Examiner did err in not stating at the end of the hearing that the record was closed, however, with the close of the hearing any party wishing to submit additional evidence for review should have done so by motion (under any of the theories presented by Appellant) rather than simply attaching it to closing arguments. Both counsel for the City and Appellant as experienced practitioners understand that it would be poor precedent to allow parties to submit new evidence with written closing after the hearing has closed, and in the absence of a motion to consider such materials. The City’s Motion to Strike is **GRANTED**.²

Decision

The Determination of Non-Significance is **REVERSED**. The City must issue a new threshold determination.

Entered this 24th day of October, 2019.



Ryan Vancil, Hearing Examiner
Office of Hearing Examiner

Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

Under RCW 43.21C.075 any appeal of the City’s threshold determination shall accompany the underlying governmental action. Consult applicable local and state law, including SMC Chapter 25.05 and RCW 43.21C.075, for further information about the appeal process.

² The City filed a reply to the Appellant’s response to the motion to strike. HER 2.16 provides “[t]he Hearing Examiner may provide for the filing of a reply or other additional briefing on a motion, and may call for oral argument prior to ruling.” The City did not request to submit the reply, and the reply is hereby not accepted in the record, and has not been reviewed by the Hearing Examiner.

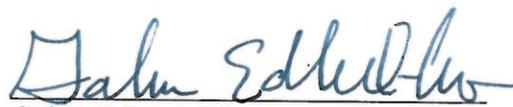
**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Amended Findings and Decision** to each person listed below, or on the attached mailing list, in the matter of **SEATTLE MOBILITY COALITION**, Hearing Examiner Files: **W-18-013**, in the manner indicated.

Party	Method of Service
Appellant Legal Counsel for W-18-013 Courtney Kaylor courtney@mhseattle.com Lauren Verbanik lverbanik@mhseattle.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Department Legal Counsel Liza Anderson liza.anderson@seattle.gov Alicia Reise alicia.reise@seattle.gov	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Department Ketil Freeman City Council Central Staff ketil.freeman@seattle.gov	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger

Dated: October 24, 2019



Galen Edlund-Cho
Executive Assistant