

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

In the Matter of the Appeals of

Hearing Examiner Files:

**SEATTLE DISPLACEMENT COALITION, et al.,
and
UNIVERSITY DISTRICT ADVOCATES**

W-15-001 and W-15-004

From a Determination of Adequacy of a Final Environmental
Impact Statement issued by the Department of Planning and
Development

Introduction

The Department of Planning and Development issued a determination of adequacy concerning the Final Environmental Impact Statement for the U District Urban Design Alternatives, and the Appellants timely appealed.

The appeal hearing was held on May 5, 6, 12 and 22, 2015, before the undersigned Deputy Hearing Examiner. Parties represented at the proceeding were: the Appellants Seattle Displacement Coalition, Interfaith Task Force on Homelessness, University District Community Council, and University Park Community Club (Seattle Displacement Coalition, et al.) by Ryan Vancil, attorney at law; Appellant U District Advocates (UDA) by Cory Crocker, pro se; and the Director, Department of Planning and Development (DPD), by Elizabeth Anderson, Assistant City Attorney. The record was held open through June 8, 2015, to receive the parties' written closing statements.

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 Examiner enters the following findings of fact, conclusions and decision on this appeal.

Findings of Fact

1. The subject of the EIS on appeal is a proposal to amend the map and text of the City's Comprehensive Plan and Land Use Code. The proposal would allow greater height and density in the U District study area, an area bounded by Interstate 5 on the west, 15th Avenue NE on the east, Portage Bay on the south, and Ravenna Boulevard NE on the north. The area is approximately 405 acres in size and is described in detail in the documents in the record. The study area is described in greater detail in the filings in the record.

2. In addition to the map and text amendments, DPD has indicated that "zoning changes would be accompanied by an affordable housing incentive program, incentives

for open space and other neighborhood amenities, and by development standards regulating setbacks, tower separation and street frontage." Final Environmental Impact Statement (FEIS), p. 2-1.

3. The U District Urban Design Framework was developed by DPD and members of the public who participated in a series of meetings in 2012 and 2013. Ex. 30 states that "This U District Urban Design Framework (UDF) presents recommendations from an ongoing community dialogue about the future of the U District. The UDF will guide City actions like changes to the neighborhood's zoning and design guidelines, as well as City investments. It will also guide the private development and community dialogue about the future of the U District." Page 4, Ex. 30. The UDF includes recommendations for building height, public spaces, incentive zoning, and housing choices.

4. The City's Comprehensive Plan was adopted in 1994 and has been updated over the years, with the last major update in 2004. The current Plan provides policy guidance through 2024. Currently, the City is preparing a major update to the Plan that will incorporate updated estimates of job and population growth since the 2004 update, and will provide policy guidance through 2035.

5. Some Urban Centers and Urban Villages have already exceeded their 2024 targets for population or jobs; Ex. 37.

6. The King County Countywide Planning Policies provide the basis for planning estimates of growth. The 2035 estimates for growth Citywide are 70,000 households and 115,000 jobs. The 2024 growth estimates for the University Community Urban Center are for 2,450 housing units and 6,140 jobs. The 2024 estimates for the University District Northwest Urban Village are for 2,000 housing units and 500 jobs.

7. The U District Urban Design Alternatives study area comprises a portion of the overall Urban Center and overlaps with the University District Northwest Urban Village. See Figure 2-1, FEIS at p. 2-1.

8. The Link Light Rail U District Station, located on Brooklyn Avenue NE between NE 43rd and NE 45th Streets, is projected to begin operation in 2021. By 2030, approximately 12,000 people a day are expected to board light rail at the U District station. The area within a 10-minute walk of the station extends from the NE 45th Street freeway overpass to UW's Central Campus, and from NE 52nd Street in the north to NE Pacific Street in the south.

9. The Draft Environmental Impact Statement (DEIS) on the proposal was prepared by DPD and was issued on April 24, 2014. The DEIS identified potential amendments to the Future Land Use Map (FLUM) and the University Community Urban Center Neighborhood element. The DEIS included a no action alternative, which retained existing Code standards, and two action alternatives.

10. Alternative 1 would allow high rise development in the core area (described as the area between NE 50th Street and NE 41st Street), with maximum building heights between 125 and 160 feet, including along University Way NE. The proposed zoning would generally focus growth around the new transit station.

11. Alternative 2 would allow a maximum building height between 240 and 340 feet in the core area, but building heights along the University Way NE corridor would be limited to 65 to 85 feet. Proposed development standards, including street-level and upper-level setbacks, and facade lengths, would reduce bulk, and increase building separation, compared with Alternative 1.

12. Alternative 3 would retain the zoning designations in the neighborhood, with no increased potential for building height or development capacity.

13. For each alternative, the DEIS assumed a growth estimate of 3,900 housing units and 4,800 jobs. The DEIS stated that the estimates are based on the residential and employment growth targets in the City's Comprehensive Plan, the KC Planning Policies, historic development trends, sites that are identified as susceptible to redevelopment (Ex. 40), and the Heartland study (Ex.6). The DEIS stated that the growth estimate "assumes a conservatively high demand for future office and residential high-rise development." DEIS, page 2-12.

14. Mr. Weinman, the planning consultant who advised DPD on the preparation of the EIS, noted that the use of the same growth assumption across alternatives was helpful, if not necessary, in comparing the impacts of the alternatives. He noted that the population targets, not development capacity, were the reasonable basis for growth assumptions.

15. Estimated growth was allocated within the study area based on certain assumptions, e.g. new development would likely occur on large sites and smaller easily aggregated sites; new development would likely cluster around the future light rail station; likely development sites based on the potential development map for the U District Urban Design Framework of June 2013. FEIS p 2-17.

16. The DEIS included estimates of development capacity under each alternative. The alternatives assume one job per 350 square feet of commercial development, and an average dwelling unit size of 850 square feet. The development capacity for Alternative 1 is estimated at 9,130 dwelling units and 16,435 jobs. For Alternative 2, the capacity estimate is 9,802 dwelling units and 17,832 jobs. For the No-Action Alternative, capacity was estimated at 6,606 dwelling units and 8,401 jobs.

17. Neither Ms. Munkberg, the consulting planner who assisted in the preparation of the EIS, nor Mr. Weinman, believed that maximum development capacity or maximum buildout would reliably predict future growth. Both were of the opinion that any analysis of maximum buildout at some undetermined date would lead to a very speculative result.

18. The Determination of Adequacy for the FEIS on the U District Design Alternatives was issued on January 26, 2015. The FEIS identified a no action alternative, and three action alternatives. Alternatives 1 and 2 as described in the DEIS were considered. However, the FEIS included additional alternatives. Alternatives 1B and 2B, which assume the same zoning designations, setbacks and widened sidewalks as those discussed under Alternatives 1 and 2, respectively, assumed that 5,000 housing units could be added under the alternative (i.e., 1,100 more units than assumed in the DEIS). The additional housing units were added in order to test the sensitivity of impacts identified in the DEIS to increased growth; FEIS at p.1-4.

19. The FEIS identified map and text amendments that might be adopted as part of the proposed action at pp. 2-17 and 2-18. Incentive zoning was also mentioned, including specific measures for the U District based on the Framework.

20. The FEIS noted that for the study area, the UDF identified a list of incentive measures that included new public and private opens spaces and affordable housing. FEIS, p. 2-19. DPD considers incentive zoning to be a part of the proposal, along with the text and map amendments; testimony of Munkberg.

21. Ex. 39 shows graphs of Citywide housing growth and U District housing growth, comparing estimates and actual development over 20 years. The estimated growth in the FEIS of 5000 additional units over a 20-year period, is considerably higher than growth that has occurred in the past.

22. Ex. 6 is a June 2013 document entitled "U District Urban Design Framework Support Analysis Memo" prepared by Heartland. DPD engaged Heartland to provide an assessment as to whether high-rise development (greater than seven stories) was likely to be financially feasible in the U-District over the planning horizon. DPD sought an assessment of the amount of land available for potential high-rise development and an examination of the demographic characteristics and housing mix in the study area. The report's conclusions were mixed, but noted that while the development of high-rise projects was not feasible at present, the "odds are good that residential high-rise development will be financial[sic] feasible by the time the Sound Transit LINK Light Rail (LINK) service arrives in the U-District in 2021." Ex. 6, p. 1.

23. Ex. 38 is entitled "Seattle 2035 Development Capacity Report." The report identifies the City's development capacity at 224,000 housing units, and 232,000 jobs, which is enough to accommodate the 70,000 housing units and 115,000 jobs assigned to the City under the countywide planning policies. The report discusses how development capacity is estimated, and the difference between development capacity and the maximum amount of development allowed by zoning. The report also notes that "it is impossible to know when actual redevelopment will happen. The model only tells us how much development could occur, not when." Ex. 38.

24. The DEIS at section 3.2.5 discussed "Housing Affordability." According to the DEIS, 81 percent of the households in the study area are renter-occupied. Of the renter households in the study area, 66 percent of those paid over 30 percent of their household income on rent (compared with 47 percent of households citywide.) The DEIS stated at page 3.2-10 that "between 2009 and 2011, the study area saw a substantial jump in the proportion of households who are severely cost burdened. These figures are substantially higher than the city as [a] whole. It is likely that the income share spent on housing is higher due [to] the high prevalence of students in the area, which is common in many university and college communities across the U.S."

25. The DEIS concluded that "Examining the data on rental prices in Seattle shows a relationship between vacancy rates in rental housing and the rents charged. While the factors that influence residential investment and pricing are complex and subject to both macro- and micro-economic factors, the basic relationship between supply and demand effectively sets market prices." DEIS at 3.2-11.

26. The DEIS examined a process known as "filtering," as a factor in housing affordability. Filtering is the process whereby as rental units age and depreciate, they command lower rentals compared with new housing. The DEIS noted that "For example, rents for buildings constructed in the 1970s rent for about 40% the value of units constructed during the last decade." DEIS, p. 3.2-14. Table 3.2-10 in the DEIS (p. 3.2-14) depicts price filtering in the University Submarket. The DEIS noted that this process is not adequate to addressing lagging incomes and the impact of rising housing cost burdens.

27. In evaluating the alternatives with regard to housing affordability, the DEIS identified "two dimensions" that would affect housing affordability: (1) does "the regulatory framework expand the potential supply of housing above the likely market demand?" and (2) "does the regulatory framework expand the potential use of housing affordability tools?" DEIS, pp 3.2-17-18. The DEIS concluded that all alternatives provided zoned capacity to support a supply of housing above the planning growth estimates established by the City, and that expansion of incentive zoning, implementing new programs for preservation of existing affordable housing, and prioritizing local funding for construction and preservation of housing for income-eligible household were steps the City could take to address housing affordability.

28. The DEIS included an estimate of "housing displacement" for each of the alternatives, noting that potential re-developable sites were identified based on historic development trends and the market potential for the sites. DPD identified a representative development pattern for each alternative and concluded that redevelopment under Alternatives 1 and 2 would displace about 40 housing units and under Alternative 3, 60 housing units. DEIS, p. 3.2-19.

29. The displacement calculation was based on an estimate of housing units demolished, which in turn was based on the County Assessor's data for the redevelopable sites for each alternative. The most likely redevelopment sites were identified based on ratios of improvement value to land value, and existing land uses (large sites with surface parking lots, or older low-rise buildings were deemed the most likely to redevelop). After identifying these sites, the existing housing units on the "redevelopable" sites were identified, leading to the calculation of housing units that would be displaced; testimony of Munkberg, LaClergue.

30. In contrast with the 40-60 units that were estimated to be displaced by the alternatives, the DEIS also identified the "redevelopment reduction" associated with the gross development capacity and the growth assumptions for each alternative; DEIS Table 3.2-3 at p. 3.2-5. The reduction under Alternative 1 was 274 units; under Alternative 2, 278; and under the no-action alternative, 256 units.

31. The DEIS compared the amount of affordable housing that could be generated through incentive zoning under each alternative with different bonus area assumptions. At present, incentive zoning is only available in the MR zone within the study area. Under the No-Action Alternative, 8 new units were projected to be generated through incentive zoning, but expansion of incentive zoning with the upzones in Alternatives 1 and 2 could generate between 111 and 410 units, as shown in Table 3.2-11; DEIS page 3.2-20.

32. The FEIS added Table 3-2 at page 3-4, which suggested that Alternative 1B could result in creation of 214 affordable housing units, and Alternative 2B could produce 271 affordable units, assuming utilization of incentive zoning provisions for residential development. If the potential bonus commercial area were included, the estimated potential housing unit creation through incentive zoning would be 394 units under Alternative 1B, and 504 units under Alternative 2B. The FEIS also stated: "It should be noted that the additional affordable housing is solely a function of increased residential growth. Under the assumptions of this analysis, increased residential growth under any alternative would result in additional affordable housing. While the assumptions provide a common basis for comparison, individual developer decisions about how to achieve the bonus area will vary and incentive zoning provisions for the study area may provide options that differ from these assumptions." FEIS, page 3-4.

33. The FEIS reiterated that no significant impacts to housing affordability were identified for any of the alternatives. The mitigation measures identified were:

Expanding the geographic eligibility of the MFTE program to cover more residential developments to create more income-eligible and lower cost housing units.

Pending a rezone, expanding incentive zoning to include more eligible commercial and residential zones to create more income-eligible and lower cost housing units.

Directing additional federal, state, and local housing funding to build and preserve affordable housing units for income-eligible households (especially structures that face redevelopment pressures). FEIS, pp. 1-14 and 1-15.

34. Mr. Hauger of DPD is the manager of the 2035 Comprehensive Plan update and he described how the growth targets were identified. He also noted that DPD and the City's Office of Housing, as part of the 2035 comprehensive planning process, have prepared a "Growth and Equity Analysis" that includes a displacement risk index for the City's urban villages.

35. SDC's Mr. McLaren and Mr. Fox prepared a survey of housing in the study area; Ex. 3. Mr. McLaren at hearing explained the methodology and assumptions that went into preparing the report, and described it as a pathway to show the kind of empirical study the City could do to determine the upzone's impact on housing affordability. The report identified 1,250 units of affordable low- and moderate-income that was "vulnerable" to loss on account of Alternative 2. Specifically, the authors concluded that the units were "vulnerable to demolition or significant rent increases due to increased land values and speculative market forces over the planning period (thru 2035)."

36. Mr. Shook, the economist who prepared the EIS section on population, housing and employment, was of the opinion that SDC's survey was not persuasive to show that affordable housing was at risk on account of the upzones. He stated that there was no empirical evidence to show that the rezones drive rents; that the study co-mingled the pressures for redevelopment or displacement with rents; and that the survey did not take into account household expenditures within the households in order to determine affordability.

37. The Low Income Housing Institute (LIHI) is a non-profit developer of low-income housing. LIHI developed housing in South Lake Union prior to the recent zoning change for the area, but according to its executive Director, Ms. Lee, LIHI "cannot touch properties" in that area now because of land costs. She expects the U District will also be off-limits to low-income housing developers because of increased land costs associated with the upzones, particularly because of per-unit cost limits for using public funding to build low-income housing. Rezones to highrise or midrise would not help LIHI to build more low-income housing.

38. Environmental reviews that have included consideration of impacts on housing affordability include the Harborview expansion EIS, South Lake Union rezone EIS; and the analysis in the City's downtown plan (done in the 1980's, which included an inventory of the existing conditions and potential impacts on affordable housing; testimony of Lee, Fox.

39. Mr. Grothaus, a former director of Seattle's planning office, stated that the DEIS and FEIS lacked documentation of low rent properties that would be subject to demolition or redevelopment. He stated that the DEIS estimate of 40-60 units of housing subject to demolition was not realistic, and noted that the upzoning would drive up land costs but that subsidies for low-income housing development would not keep up with increased land costs.

40. The City's incentive zoning program is described in Exhibit 52. The program has been successful in producing affordable housing; testimony of Alvarado. However, the City is considering changes to the incentive zoning program and it is not clear whether the current program will continue to exist; testimony of Fox.

41. Section 3.7 of the DEIS discussed Open Space and Recreation. Section 3.7.1 identified the existing and planned open spaces and parks within the U District and vicinity, and the Comprehensive Plan open space goals. The DEIS concluded that the U District currently does not meet Comprehensive Plan goals for open space and indoor recreational facilities. The target for 2035 is 11.15 acres of village open space; 6.04 acres are anticipated to be available, leaving a deficit of 5.1 acres. The "village commons" goal of at least one village commons was deemed met by the University Playground. The City-wide goal for "Breathing Room Open Space" would experience an increased deficiency by 2035, given the expected population increase.

42. The DEIS concluded that deficits in Village Open Space and Breathing Room Open Space would be true for all alternatives, including the no-action alternative. The DEIS therefore concluded that because the deficits "result from anticipated growth, not the proposed rezone and related actions, they are not significant impacts for purposes of this EIS." DEIS p. 3.7-8.

43. The DEIS referred to mitigation measures that could increase open space and recreational opportunities, including: new property acquisition by Seattle Parks; publicly accessible open space as part of private development (through development standards or incentive zoning); additional community gardens; improvement of green streets or festival streets; improved access to UW campus. DEIS, p. 3.7-11.

44. The FEIS included analysis of Alternatives 1B and 2B, noting that the total 2035 Village Open Space target would be 12.25 acres, and the shortfall would be 5.8 acres. Otherwise, the FEIS concluded that the two alternatives' impacts would be similar to those identified in the DEIS.

45. The community places a high priority on the creation of a centrally-located open space, one that is large enough to accommodate concerts, farmers markets, and other activities. UDA noted at hearing that the 2015 University District Parks Plan shows that the highest priority of the community is a centrally-located town square.

46. The DEIS analyzed transportation impacts in Section 3.5.2. The deficiencies of the No Action Alternative were identified, and this alternative served as the baseline for the impact analysis of Alternatives 1 and 2. The DEIS identified what would constitute a significant transportation impact at pp. 3.5-49-51. The DEIS discussed the impacts on vehicle travel times, transit, pedestrian and bicycle system, safety and parking, noting that at the programmatic level, it was not possible to know how transit and freight might be affected. Impacts on auto travel times along study corridors would not be so different from the baseline as to constitute a significant impact, and safety impacts were not expected to increase so as to be a significant impact. The increase in pedestrian and bicycle trip mode share under the action alternatives was expected to be a significant impact. Potential impacts to parking were expected, since the action alternatives would create a less dispersed land use pattern than would the baseline no-action alternative.

47. The analysis relied in part on the "mixed-use development" (MXD) model to analyze trip generation. The MXD method considers the Institute of Transportation Engineers (ITE) trip generation formulas, but modifies it for use in an urban, high-density, mixed use area. The MXD model attempts to capture the effects of variables such as density, diversity of land use, pedestrian and bicycle design, distance to transit service, and other factors that are not accounted for in other trip generation models. Thus, the MXD method was considered to be appropriate for the mixed-use, multi-modal conditions presented in the study area; DEIS at section 3.5-39; testimony of Breiland; O'Neill.

48. The FEIS noted that increased travel time for transit on NE 45th Street from Roosevelt Way NE to NE 5th Avenue is a significant impact of Alternatives 1B and 2B, but that all other impacts of those two alternatives are the same as those identified for Alternatives 1 and 2 in the DEIS. The FEIS also noted that the Transit Master Plan identifies speed and reliability improvements on the NE 45th Street corridor that would reduce travel times, and would mitigate the impact to NE 45th Street.

49. The DEIS identified transportation impact mitigation measures in section 3.5.3. The DEIS concluded that the identified mitigation measures "would reduce the magnitude of all identified impacts of the alternatives to a less-than-significant level. Therefore, there are no significant unavoidable adverse impacts to transportation."

50. SDC's transportation expert, Mr. Brown, reviewed the transportation analyses in the impact statements and found them lacking. Mr. Brown noted that LOS by intersection was not identified, and he took issue with the construction of a separate bicycle facility and treatment of bicycle lanes as traffic mitigation measures, asserting that a bicycle was a single occupancy vehicle. He believed that the description of accident frequency was not a reliable way of describing hazards associated with the proposal. Mr. Brown also took issue with the curb bulbs proposed for U District Green Streets along Brooklyn Avenue NE, and felt that the fire department would have difficulty accessing Brooklyn Avenue NE.

51. The DEIS discussed impacts on public services at section 3.8, and on utilities at section 3.9. The FEIS included an analysis of the impacts from Alternatives 1B and 2B, and concluded that the mitigating measures identified in the DEIS were adequate to address the potential impacts and that no significant unavoidable adverse impacts would result from the new alternatives.

52. Section 3.3 of the DEIS addressed aesthetics, including neighborhood character, height, bulk and scale, views, and shadows. Both the DEIS and FEIS included illustrations depicting possible development under the alternatives from different vantage points, both at street level and more distant views.

53. A shadow study was conducted to identify the impacts of shadows on the University Heights open space, University Playground, Christie Park, and Peace Park; Appendix F, DEIS. The DEIS concluded that there would be some shadow impacts to all of these except Peace Park (where no shadow impacts were anticipated because development would occur on the north side of the park), but no significant unavoidable adverse impacts were expected. DEIS pp. 3.3-44-45. The FEIS concluded that the potential shadowing impacts for Alternatives 1B and 2B would as described in the DEIS; FEIS p. 3-15.

54. The University Plaza is a high rise within the study area; the structure is much taller than surrounding buildings. The structure's relationship with the surrounding area, and the shadows it casts, are shown in the photographs in Ex. 10, and were described at hearing by Ms. Nixon, who resides in the building.

55. SDC witness Mr. Bennett provided illustrations that he believed better depicted the development that will occur as a result of the proposed upzones. He noted that views depicted in the EIS tended to be too distant and he did not believe that they captured the impacts of the height, bulk and scale from the development that is possible under the action alternatives.

56. A study entitled "Seattle-UW Incubator Study," dated July 2103, was prepared by a consultant at the request of the University of Washington (UW) and the City to determine "the feasibility and desirability of starting an incubator in the environs of the University District to stimulate start-up activity and economic growth." Ex. 5, page. 1. The report ends with several "recommendations and best practices" that outlined next steps, including forming a steering committee, developing a budget, finding staff, etc.

57. The University of Washington Major Institution Master Plan (MIMP) is expected to be updated in 2018 or 2019. The MIMP was not considered in the environmental review of the U District map and text amendments, but City review of the MIMP will take into account the U District plans and zoning; testimony of LaClergue.

58. The "West Campus Development Framework" at Ex. 4, is a slide presentation apparently provided to the CUCAC as part of the planning for the MIMP. One of the

slides depicts a building height scenario if the gross square footage (gsf) allowed under the Master Plan is increased to 4.4 million gsf, from the 2003 plan limit of 2.7 million gsf.

Codes

59. SMC 25.05.782 provides that:

"Probable" means likely or reasonably likely to occur, as in "a reasonable probability of more than a moderate effect on the quality of the environment" (see Section 25.05.794 (Significant)). "Probable" is used to distinguish likely impacts from those that merely have a possibility of occurring, but are remote or speculative. This is not meant as a strict statistical probability test.

60. SMC 25.05.794.A provides that: *"Significant," as used in SEPA, means a reasonable likelihood of more than a moderate adverse impact on environmental quality.*

61. SMC 25.05.442 addresses the preparation of a nonproject EIS:

The lead agency shall have 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. The EIS may be combined with other planning documents.

B. The lead agency shall discuss impacts and alternatives in the level of detail appropriate to the scope of the nonproject proposal and to the level of planning for the proposal. Alternatives should be emphasized. In particular, agencies are encouraged to describe the proposal in terms of alternative means of accomplishing a stated objective (see Section 25.05.060 C). Alternatives including the proposed action should be analyzed at a roughly comparable level of detail, sufficient to evaluate their comparative merits (this does not require devoting the same number of pages in an EIS to each alternative).

C. If the nonproject proposal concerns a specific geographic area, site specific analyses are not required, but may be included for areas of specific concern. The EIS should identify subsequent actions that would be undertaken by other agencies as a result of the nonproject proposal, such as transportation and utility systems.

D. The EIS's discussion of alternatives for a comprehensive plan, community plan, or other areawide zoning or for shoreline or land use plans shall be limited to a general discussion of the impacts of alternate proposals for policies contained in such plans, for land use or shoreline

designations, and for implementation measures. The lead agency is not required under SEPA to examine all conceivable policies, designations, or implementation measures but should cover a range of such topics. The EIS content may be limited to a discussion of alternatives which have been formally proposed or which are, while not formally proposed, reasonably related to the proposed plan.

62. SMC 25.05.444.B.2.b identifies housing as an element of the environment.
63. SMC 25.05.448.A provides that an EIS is not required to evaluate and document *"all of the possible effects and considerations of a decision or to contain the balancing judgments that must ultimately be made by the decisionmakers. Rather, an environmental impact statement analyzes environmental impacts and must be used by agency decisionmakers, along with other relevant considerations or documents, in making final decisions on a proposal."*
64. SMC 25.04.448.B and C provide that
- B. The term "socioeconomic" is not used in the statute or in these rules because the term does not have a uniform meaning and has caused a great deal of uncertainty. Areas of urban environmental concern which must be considered are specified in RCW 43.21C.110(1)(f), the environmental checklist (Section 25.05.960) and Sections 25.05.440 and 25.05.444. (See Section 25.05.440 E6.) "*
- C. Examples of information that are not required to be discussed in an EIS are: Methods of financing proposals, economic competition, profits and personal income and wages, and social policy analysis such as fiscal and welfare policies and nonconstruction aspects of education and communications. EIS's may include whether housing is low, middle, or high income.*

Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to SMC 25.05.680. The appeal of an EIS is to be considered de novo, but the Hearing Examiner must give substantial weight to the agency's determination of adequacy, and reviews the EIS under the "rule of reason." Under the rule of reason, an EIS must present decisionmakers with a reasonably thorough discussion of the significant aspects of the probable environmental consequences of the agency's decision; *Glasser v. City of Seattle*, 139 Wash.App 728, 740, 162 P.3d 1134, 1140 (2007).
2. A nonproject EIS is accorded more flexibility, as there is normally less detailed information available concerning the proposal and impacts; SEPA does not require

examination of all conceivable policies, designations or implementation measures; SMC 25.05.442.

Growth assumptions

3. Both Appellants assert that the EIS is flawed because it assumes the same growth estimates for different alternatives, and therefore fails to acknowledge the impacts related to that growth. Appellants argue that the proposed upzones will result in far more growth than the 1,100 additional units assumed (i.e., 5,000 units under the action alternatives compared with 3,900 units under the existing zoning). (Although SDC's notice of appeal did not explicitly mention the growth assumptions, it asserted that the EIS did not adequately review the proposal's impacts related to population and density.)

4. The EIS growth assumptions are based on the growth targets used in the Comprehensive Plan, although new target numbers will be identified soon. DPD has noted that holding the growth assumptions constant across all alternatives makes it possible to compare the impacts of the development and design standards, including the distribution and form of development, associated with each alternative. While this is an elegant planning assumption, the issue is whether it is sufficiently accurate for purposes of identifying and evaluating environmental impacts of the proposal.

5. There is conflicting evidence in the record as to whether the assumptions are reasonable, and whether the upzones themselves will induce growth. DPD's revised growth assumptions are considerably higher than historical growth numbers and past growth targets, although Ex. 37 suggests there is uncertainty that is not captured by either the targets or the historical trends. Furthermore, the Appellants' witnesses, particularly Mr. Campbell, who has long had a business presence in the District, offered reasonable opinions as to why the upzones would spur more growth than that assumed in the FEIS. But DPD's evidence, including its analysis of likely redevelopment potential in the core area based on current site conditions and characteristics, historic levels of growth (both in employment and households) in the study area, and testimony of its experts concerning the unreliability of development capacity to predict growth, was sufficient to show that DPD's growth assumption of between 3,900 (no action) and 5,000 units (Alternatives 1B and 2B) over the next 20 years, was reasonable and did not render the EIS inadequate. Although it is a close question, the growth assumptions relied upon in the EIS do not render it inadequate.

6. The Appellants also argued that the EIS failed to account for the impacts of the University of Washington Master Plan and the UW's "incubator" plan. These plans are not complete, and the MIMP will have to go through the City's review and approval process. The UW proposals are separate and not dependent on the subject proposals, and the actual components of those proposals are not known yet; under these circumstances, DPD was not required to evaluate them as part of the EIS; SMC 25.05.060.2; *Gebbers v. Okanogan County Public Utilities District*, 144 Wn.App. 371, 183 P.3d 324 (2008), *rev den.* 165 Wn.2d 1004 (2008).

Housing

7. SDC argues that the EIS fails to adequately discuss impacts on housing affordability and displacement risk due to demolitions, increases in the cost of land for nonprofit housing developers, or higher rental increases that will displace low- and moderate income residents. SDC argues that the EIS should be based on additional empirical data, similar to the survey of buildings done by SDC within the study area. SDC also argues that that a displacement risk analysis needs to be done. Such measures would seem to be feasible and would provide decisionmakers with valuable information about the risks of displacement in the study area; but under SEPA, the question is whether the EIS is fatally flawed for lack of such information.

8. The EIS calculated that between 256-278 housing units would be lost through “redevelopment reduction,” if the full development capacity were achieved, and also estimated 40-60 units demolished as a result of representative development under the alternatives. It also estimated that up to 233 units of affordable housing could be created through incentive zoning, which is part of the underlying proposal.

9. The EIS discussed housing affordability in conjunction with the housing analysis. Housing is an element of the environment to be examined under SEPA, but it is less clear to what extent SEPA requires an analysis and mitigation of impacts on housing affordability, as opposed to identifying changes in the built environment resulting from housing demolitions or new housing development. Housing affordability and displacement risks are clearly critical issues for the City, but SEPA and the cited authorities do not identify what level of analysis, if any, must be performed in an EIS regarding affordability, and what criteria should be used to measure impacts. Even the City’s substantive SEPA policies regarding housing opportunity preservation, which do not directly apply in this procedural appeal, limit mitigation to compliance with applicable City ordinances, i.e., the Tenant Relocation Ordinance found in 22.210 SMC.

10. In this case, the EIS did discuss housing affordability. DPD, unlike the Appellants, did not examine each individual residential property within the study area.¹ Instead, DPD’s examination was at a broader level, but it was sufficient for a nonproject EIS. The EIS concluded that the proposal would not have a likely significant impact on housing; and that rent increases were a challenge presented by all alternatives, including the no-action alternative. Mitigation measures were identified, although the discussion is brief. With regard to impacts on housing, the EIS presents a reasonably thorough discussion of the significant aspects of probable environmental consequences.

11. The Appellants have noted that one of the mitigation measures, incentive zoning, may be eliminated by future legislation, and that the EIS does not address this possibility. The proposal as described by DPD and the EIS specify that an “incentive housing

¹ As DPD’s witnesses pointed out, the Appellants’ study relied on assumptions concerning household incomes, future behavior by the property owners, etc.; but any studies, including the Heartland study, which attempt to predict behavior by owners or investors, share this difficulty.

program” will accompany the height and density proposals. The EIS estimates the impact of incentive zoning if extended to the alternatives in the EIS. The proposal is reasonably discussed for purposes of SEPA. Whether to enact incentive housing programs for the study area will be up to the decisionmakers.

12. In its closing statement, SDC asserted that the City was required to prepare the study described in RCW 43.21C.420(4)(f). This argument was not identified as part of the appeal, and cannot be explored at this stage. But in any event, RCW 43.21C.420(4) states that the study “must not be part of that [nonproject environmental impact] statement” and was not required to be part of the EIS.

Open Space

13. Under SEPA, environmental impacts on parks and recreation facilities, as part of the built environment, are to be evaluated. SMC 25.05.752; WAC 197-11-444.

14. UDA urges that the EIS take into account the planning efforts that address open space needs in the U District. UDA also argues that the EIS fails to consider that the upzone will increase the difficulty and expense of the City’s future acquisition of property for a central open space. But the City’s financial ability to acquire property in the future for a central open space is not an impact required to be evaluated in the EIS. The underlying proposal for the EIS does not implement the planning documents cited by UDA, and does not include the provision of the central open space so desired by many in the community. But the proposal’s wisdom is not before the Examiner in an appeal of the EIS; *Citizens Alliance to Protect Our Wetlands v. Auburn*, 126 Wn.2d 356, 362, 894 P.2d 1300 (1995).

15. The EIS identifies and discusses the proposal’s adverse impacts on open space, including how the alternatives will affect the goals for open space identified in the Comprehensive Plan, although there is a dispute over whether the Village Open Space goal is met by the University Playfield. A range of potential mitigation measures are described in the EIS, including a Sound Transit “festival street” adjacent to the light rail station. The impacts of the proposed alternatives are reasonably discussed to meet SEPA’s requirements.

16. It is clear that some members of the community supported the U District Framework as to building height and density because taken as a whole, the Framework balanced these proposals with considerations for public spaces which are not part of the proposal. However, the EIS disclosed that the open space deficit will become larger under the alternatives, and that the proposal does not include an alternative with central public open space. The EIS adequately discussed the impacts of the alternatives. The decisionmakers for this proposal will ultimately need to decide whether the open space deficit is unacceptable, and if a central open space should be created.

Transportation impacts

17. The Appellants disputed the adequacy of the transportation analysis, but no errors were shown in the EIS's disclosure or analysis of impacts. Some of the dispute arises from the use of MXD to calculate volumes, but that methodology was shown to be reasonable for the alternatives presented in the EIS. SDC took issue with the lack of project-level LOS calculations, but those are not required until specific projects are identified. Other criticisms raised by Appellants were directed at the policies regarding bicycles or the selected design, the purported difficulty for fire and emergency access, and the potential for hazards; but the evidence as a whole showed the EIS was adequate in its discussion of the transportation-related impacts of the proposal.

Shadows, height, bulk and scale

18. The EIS was not inadequate on account of its discussion concerning height, bulk and scale and shadows. The depiction of the potential development scenarios under the alternatives was not as dramatic as those prepared by Appellants, but the drawings in the EIS were not shown to be inaccurate or deceptive. The analysis of height, bulk and scale was also adequate and sufficiently detailed to apprise decisionmakers of the impacts associated with the alternatives. The shadow study and analysis of impacts was sufficient, and no errors were shown in the EIS on account of those impacts.


Other impacts

19. The EIS was not shown to be in error with regard to impacts on public services or any other impacts. Giving the decision the substantial weight it is to be accorded, the EIS was shown to be adequate.

Decision

The Determination of Adequacy of the EIS for the U District Urban Design Alternatives is hereby affirmed.

Entered this 19th day of June, 2015.



Anne Watanabe
Deputy 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.

The decision of the Hearing Examiner in this case is the final SEPA decision for the City of Seattle. Judicial review under SEPA must be of the decision on the underlying governmental action together with its accompanying environmental determination. Consult applicable local and state laws for further information.

The person seeking review must arrange for and initially bear the cost of preparing a verbatim transcript of the hearing. Instructions for preparation of the transcript are available from the Office of Hearing Examiner. Please direct all mail to: PO Box 94729, Seattle, Washington 98124-4729. Office address: 700 Fifth Avenue, Suite 4000. Telephone: (206) 684-0521.

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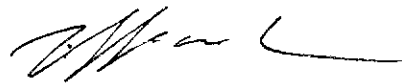
**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

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 **Findings and Decision** to each person listed below, or on the attached mailing list, in the matter of **Seattle Displacement Coalition et al. and U District Advocates**. Hearing Examiner Files: **W-15-001 and W-15-004**, in the manner indicated.

Party	Method of Service
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U District Advocates c/o Cory Crocker P.O. Box 85472 Seattle, WA 98145 appeal@udistrictsquare.org	<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
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Dated: June 19, 2015

A handwritten signature in black ink, appearing to read 'Tiffany Ku', positioned above a horizontal line.

Tiffany Ku
Legal Assistant