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4 BEFORE THE CITY OF SEATTLE  
5 OFFICE OF HEARING EXAMINER

6 In the Matter of the Appeal by

7 THE LAURELHURST COMMUNITY CLUB,

8 of the Fort Lawton Army Reserve Center  
9 Redevelopment Project Final Environment Impact  
10 Statement

**File No.**

NOTICE OF APPEAL

11 **1. APPELLANT/AUTHORIZED REPRESENTATIVE INFORMATION**

12 Laurelhurst Community Club (LCC), a Washington nonprofit corporation, is the  
13 Appellant. It is represented in this appeal by its attorney, Peter J. Eglick of Eglick and Whited  
14 PLLC whose contact information is:

15  
16 Peter J. Eglick  
17 Eglick & Whited PLLC  
18 1000 Second Avenue, Suite 3130  
19 Seattle, WA 98104  
20 (206) 441-1069

21 To minimize the possibility of non-delivery, documents from the Office of Hearing Examiner  
22 should be sent to Peter Eglick at [eglick@ewlaw.net](mailto:eglick@ewlaw.net), as well as to paralegals Fred Schmidt and  
23 Rae Charlton at, respectively, [schmidt@ewlaw.net](mailto:schmidt@ewlaw.net) and [charlton@ewlaw.net](mailto:charlton@ewlaw.net).

24 **2. DECISION BEING APPEALED**

25 This appeal concerns the City of Seattle Fort Lawton Army Reserve Center  
26 Development Project Final Environmental Impact Statement (FEIS) issued on March 29,  
2018. As part of this appeal, LCC seeks review of the adequacy of the EIS including its  
substance as well as whether required SEPA procedures were followed in its preparation. This

1 appeal is being filed because the Seattle Office of Housing, the City agency responsible for  
2 issuance of the FEIS, has announced that it is now proceeding to rely on the FEIS as the basis  
3 for planning and decision-making for the Fort Lawton site:

4 **Final Environmental Impact Statement:** On March 29<sup>th</sup>, we issued the Final  
5 Environmental Impact Statement (FEIS) for the project, which included revisions to  
6 the DEIS as a result of comments received, and responses to public comments.

7  
8 **Next Steps: Proposed Redevelopment Plan (Spring - Summer 2018)**

9 **Proposed Redevelopment Plan:** Based on the FEIS, OH will work to  
10 draft a proposed Redevelopment Plan for Fort Lawton. Public comment  
11 on the plan will be taken before the plan is forwarded to the City Council.

12 <https://www.seattle.gov/housing/ft-lawton>

13 This appeal is therefore submitted pursuant to, *inter alia* SMC 25.05.680–Appeals  
14 including but not limited to SMC 25.05.680.A.2 as well as the governing SEPA statute and  
15 regulations.  
16

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18 **3. APPELLANT’S INTERESTS**

19 In usual circumstances LCC would not find itself filing an appeal concerning an EIS  
20 about Fort Lawton. LCC is compelled to do so in this instance because the EIS purports to  
21 provide SEPA review for “alternatives” involving development on the Talaris (former  
22 Battelle) site in Laurelhurst. As explained below, the portions of the EIS that address this are  
23 fundamentally flawed and inadequate and the manner in which the EIS came to do so are  
24 inconsistent with SEPA requirements.  
25

26 Since 1922 the Laurelhurst Community Club, originally formed as the Laurelhurst

1 Improvement Club, has represented the interests of the Laurelhurst community, particularly in  
2 matters concerning land use, development, and the welfare of the community.<sup>1</sup> In that  
3 capacity, Laurelhurst Community Club has a long history of involvement in the Talaris  
4 (formerly Battelle) site.

5 Because of its location and size, the Talaris site is pivotal to Laurelhurst as a whole. It  
6 is located at the east entrance to Laurelhurst and depends on the Five Corners intersection and  
7 Mary Gates Boulevard, both key components of access to Laurelhurst. Its use effects  
8 transportation and parking patterns in Laurelhurst and its current structures and designs are  
9 important landmarks in the community. Site redevelopment would have impacts throughout  
10 the community.<sup>2</sup>

11  
12 LCC has for several decades been an active, consistent participant in legal and  
13 planning proceedings concerning the Talaris site. For example, thirty years ago LCC found  
14 itself in disagreement with the site's then-owner, the Battelle Memorial Institute, as well as  
15 the City of Seattle Department of Construction and Land Use (now DCI) concerning proposed  
16 site use and expansion. That disagreement resulted in an appeal to the Seattle Hearing  
17 Examiner by LCC. The outcome was a ruling by then Seattle Hearing Examiner (now King  
18 County Superior Court Judge) Leroy McCullough upholding LCC's objection that Battelle's  
19 purported "Institute for Advanced Study" use of the site was nonconforming under the Seattle  
20 Land Use Code.

21  
22 Battelle immediately challenged Hearing Examiner (now Judge) McCullough's  
23 decision in superior court, but also entered into negotiations, facilitated by the City of Seattle,  
24

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25 <sup>1</sup> Barrett, A History of Laurelhurst (1989) at 53.

26 <sup>2</sup> In addition to the involvement described in the text, LCC members, including LCC Trustees, own and reside on property in immediate proximity or adjacent to the site that would be significantly impacted by site redevelopment.

1 with Laurelhurst Community Club. These culminated in a 1991 “Settlement Agreement and  
2 Covenants Running With the Land” executed by the City of Seattle, Laurelhurst Community  
3 Club, Battelle Neighbors, and Battelle Memorial Institute, and recorded under King County  
4 Recording No. 199111150998.<sup>3</sup> In return for LCC’s support of zoning legislation to remedy  
5 Battelle’s nonconforming status, Battelle agreed to covenants, explicitly enforceable by LCC,  
6 and recorded to run with the land and bind Battelle as well as successors such as 4000 LLC,  
7 the current owner of the Battelle site (now known as Talaris). These covenants specify where,  
8 how, and under what circumstances additional development and use may occur on the site.  
9  
10 Physical requirements including limits on expansion, designation of areas for parking, and  
11 mandatory landscape and buffering plans are imposed as part of the running covenants  
12 enforceable by LCC. In addition, the Settlement Agreement gives LCC special rights for  
13 review of plans for proposed new construction on the site as well as a prescribed right of  
14 access to the site.

15  
16 More recently, LCC and many of its members supported the Seattle Landmarks  
17 Preservation Board nomination and proceedings that led to the Board’s November 6, 2013  
18 designation of the site in its entirety as a landmark.<sup>4</sup> This designation required the site owner  
19 to enter into negotiations with the City for mandatory “incentives and controls” pursuant to  
20 SMC Ch. 25.12 to protect the site’s landmark features.

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23  
24 <sup>3</sup> See King County Recording Nos. 199111150998, as well as Nos. 199205120374, and 200510005002547.

25 <sup>4</sup> The 18 acre site was originally developed and for many years occupied by the Battelle Memorial Institute  
26 according to plans drawn up by a distinguished design team. The buildings were designed by architects David  
Hoedemaker, William Bain Senior and William Bain Junior and Floyd Naramore, all founders of NBBJ, an  
internationally preeminent Seattle architecture firm. The site’s grounds were developed according to a design by  
landscape architect Richard Haag, also locally and internationally renowned. Other of Mr. Haag’s notable local  
works include Gasworks Park and the Bloedel Reserve.  
<http://www.washington.edu/research/showcase/1958a.html>

1           When the site owner sued the City of Seattle in King County Superior Court to  
2 overturn the landmark designation, LCC moved for intervenor status, citing the community's  
3 longstanding participation in matters concerning use and disposition of the site and the Club's  
4 recorded legal rights concerning how the site could be used and developed. Despite  
5 opposition, the Court granted LCC's motion. See, e.g., Order Granting Motion to Intervene by  
6 Laurelhurst Community Club dated January 7, 2014 in *4000 Properties LLC v. City of Seattle*,  
7 King County Superior Court No. 13-2-40074-0 SEA.

8  
9           Most recently, LCC learned by happenstance despite lack of notice that the Fort  
10 Lawton DEIS had seized upon development of the Talaris site as an alternative. LCC  
11 therefore in the little time available submitted comments on the DEIS pointing out that its  
12 substance was inadequate and the procedures leading up to its issuance were legally  
13 noncompliant.

14           In sum, longstanding LCC community interests in use and development on the site, in  
15 its landmark status, in its potential as a generator of adverse traffic impacts, in its design, and  
16 in its natural areas are all vitally at stake and inadequately addressed in the FEIS.  
17

#### 18           **4. OBJECTIONS TO THE DECISION-- APPEAL GROUNDS**

19           The Office of Hearing Examiner Appeal Form requests as follows: "objections to the  
20 decision? (List and describe what you believe to be the errors, omissions, or other problems  
21 with this decision." LCC's objections for purposes of this appeal are laid out in its January 29,  
22 2017 DEIS comment letter as well as in the January 29, 2017 Discovery Park Community  
23 Alliance (DCPA) comment letter and the January 23, 2018 Friends of Battelle DEIS comment  
24 letter. All of these letters, which state detailed objections, are attached to this appeal and  
25 incorporated here by reference.  
26

1 The FEIS implicitly acknowledges many of the objections stated in these comment  
2 letters as well-taken, but does not remedy them, leaving the EIS inadequate and inconsistent  
3 with SEPA requirements. Whether this is appropriate will be a subject of the appeal hearing.  
4 However, LCC offers the following as further support for the objections stated in the letters  
5 and incorporated here:

- 6 1. Scoping for the EIS was fatally flawed in failing to include LCC and other  
7 stakeholders and agencies, in notice and, consequently, participation.
- 8 2. The FEIS analysis still does not acknowledge or provide information concerning  
9 the LCC/Battelle (now Talaris) Settlement Agreement and Covenants Running  
10 with the Land that apply and govern significant aspects of site use and  
11 development.
- 12 3. The FEIS analysis glosses over the basis and scope of the Seattle landmark  
13 designation for the Talaris site (it is not just about buildings) and how it would  
14 apply in the context of the FEIS Talaris alternatives.
- 15 4. Similarly, the issues raised by the redesignation and rezones necessary for the  
16 Talaris development alternative are left for later review.
- 17 5. The alternatives requirement for an EIS is pivotal. It is not fulfilled when an  
18 “alternative” leaves significant blanks to be filled in later. The FEIS is based on  
19 numerous such “pass-ons” of fundamental issues, rendering it inadequate.
- 20 6. The inadequacies are sufficiently fundamental that the Talaris alternative is  
21 essentially a sham or straw man that does not serve the function SEPA intends.  
22 The alternative is neither reasonable nor realistic.
- 23  
24  
25  
26

- 1 7. This inadequacy is not remedied by the FEIS acknowledgement in several places  
2 that its treatment of the Talaris site is inadequate for SEPA purposes -- except  
3 supposedly for purposes of including Talaris development as an alternative to Fort  
4 Lawton development.
- 5 8. There are several assurances in the FEIS that the Seattle Office of Housing, the  
6 agency issuing the FEIS, agrees that conducting proposed development on the  
7 Talaris site would have to be preceded by, as variously stated, more SEPA review  
8 and/or an EIS. Such promises of future SEPA review, however, cannot substitute  
9 for current compliance. **Having chosen Talaris for a development alternative**  
10 **under SEPA, the Office of Housing cannot treat it as a throwaway – and suggest**  
11 **that the concerned public, such as LCC, do the same.**
- 12
- 13 9. Further, another City agency might not agree with or view as binding the Office of  
14 Housing’s assurances about later SEPA review. Or it might interpret them as  
15 requiring only a brief addendum or supplement, potentially evading appellate  
16 review of the EIS as a whole and piece-mealing SEPA review of Talaris  
17 development.
- 18
- 19 10. The FEIS continues to include “analysis” concerning the Laurelhurst community  
20 as if it is a venue for discrimination. In doing so it singles out Laurelhurst with  
21 regard to practices that were widespread in Seattle many generations ago, ignores  
22 the factors applicable to the Seattle real estate market in recent decades, and  
23 distorts City policies as if they require set percentages of races, ethnic groups, or  
24 income levels in each City neighborhood.
- 25
- 26

1 11. The FEIS analysis of traffic impacts associated with the Talaris alternative is  
2 incomplete and understated.

3 **5. RELIEF REQUESTED**

4 As relief, LCC requests that the Examiner issue a decision to the effect that:

5 5.1 The EIS was not prepared in compliance with SEPA requirements;

6 5.2 The EIS is inadequate;

7 5.2 The EIS may not be used by the City as a basis for planning, project review, or  
8 decision making and is remanded for a new scoping and EIS preparation process;

9 5.3 Appellant LCC is entitled to such further relief as the law authorizes with  
10 regard to an inadequate EIS and SEPA noncompliance.  
11

12 Respectfully submitted this 10<sup>th</sup> day of April, 2018.

13 EGLICK & WHITED PLLC

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15 By \_\_\_\_\_

16 Peter J. Eglick, WSBA #8809  
17 Attorney for Appellant  
18 Laurelhurst Community Club  
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**Peter J. Eglick**  
[eglick@ewlaw.net](mailto:eglick@ewlaw.net)

January 29, 2018

*Via email (OH\_Comments@seattle.gov  
and lindsay.masters@seattle.gov)*

Lindsay Masters  
City of Seattle  
Office of Housing  
PO Box 94725  
Seattle, WA 98124-4725

Re: Preliminary Comments on Behalf of The Laurelhurst Community Club Regarding the Fort Walton Army Reserve Center Redevelopment Project Draft Environmental Impact Statement

Dear Ms. Masters:

The following initial comments are submitted on behalf of the Laurelhurst Community Club (LCC), a nonprofit Washington corporation, concerning the Fort Lawton Army Reserve Center Redevelopment Project Draft Environmental Impact Statement (DEIS). For a century, the Laurelhurst Community Club has represented the interests of its members, the Laurelhurst community, in matters concerning land use, development, and transportation. LCC is governed by a twelve member Board of Trustees, drawn from the community and representative of Laurelhurst's approximately 4500 residents.

In usual circumstances LCC would not necessarily comment on this DEIS concerning a proposal so geographically removed from its boundaries. It is doing so in this instance because the DEIS purports to provide SEPA review for "Alternatives" 2 and 3 involving intense development on the Talaris (former Battelle) site. As explained below, the portions of the DEIS that address this are fundamentally flawed and inadequate.

DEIS review of intense Talaris site development has been carried out on a stealth basis. Its inclusion as a proposed development alternative in the DEIS occurred without compliance with basic SEPA procedures including notice to agencies and known community stakeholders in the site.

For example, the various notices leading up to issuance of the DEIS made no mention of Talaris. DEIS Technical Appendix A contains elaborate documentation of scoping process notices given to Magnolia residents at their home addresses, but no such measures were undertaken for Laurelhurst residents. The DEIS Chapter 6 Distribution List does not include in its list of “Local Agencies” the Seattle Landmarks Preservation Board and does not list Friends of Battelle or the Laurelhurst Community Club as organizations to which the DEIS was circulated for comment. In fact, LCC only learned about the DEIS intense Talaris site development proposal a few days ago by happenstance and has not been able in the few days available to bring to bear the expert consultant comment that would otherwise be incorporated here.

As a result of these and related fundamental shortcomings the DEIS was not prepared in accordance with WAC 197-11-455. LCC reserves all rights in this regard.

The DEIS states: “In considering potential off-site locations for Alternatives 2 and 3, Office of Housing determined that property in the Laurelhurst neighborhood in NE Seattle, the Talaris site was a good candidate. The Talaris site, which was recently put on the market, is one of the few large, contiguous sites available in a residential area of Seattle that would meet the Office of Housing's objectives and the purpose and need for the project.” However that Office of Housing evaluation apparently did not include basic research concerning the legal status of the site. DEIS at 2-6. The procedural shortcomings in preparation of the DEIS are paralleled by its substantive fundamental flaws. **One such flaw is in the DEIS' failure to disclose the status of the site vis a vis LCC which has a long history of involvement in it.**

The site's status includes LCC's legal rights as a beneficiary and holder of covenants running with the Talaris site, established per the “Settlement Agreement and Covenants Running with the Land” recorded by Talaris' predecessor, Battelle Memorial Institute, on the property under King County Recording No. 9111150998. As a result of this binding, recorded Settlement Agreement the site is subject to covenants running with the land governing its development and use. Per the Settlement Agreement, LCC has the right to enforce those covenants. The DEIS Talaris development proposal assumes a rezone of the site, but certain of the Settlement Agreement covenants apply regardless of the site zoning.

Issues concerning use and development of the site and/or the Settlement Agreement have been the subject of at least three superior court lawsuits over the last four decades involving LCC and the site owners. All of this is a matter of legal record, readily found in superior court files and the land records for the Talaris site. It is therefore particularly disappointing that the DEIS provides none of this information which directly informs on the non-feasibility of such intensive development of the site.

The DEIS description of the Talaris site's status under the Seattle Landmarks Preservation Code is also deficient. The Seattle Landmarks Preservation Board's 2015 minutes mentioning prior designation of the site and the “controls and incentives” process are cited/noted

in passing. That designation includes not just specific buildings but the site as a whole. However, there is neither full description of the landmark nomination and the Board's designation decision based on it, nor useful discussion of their scope and broad effect. The mistaken impression given is that the designation is not a significant obstacle to intensive development along the lines of Alternatives 2 and 3. However, as a matter of law and fact, it is. Landscape elements, roadway/access configurations, and the like are not only subject to the Settlement Agreement, but are also subject to preservation per the landmark designation. See DEIS Section 3.6-40. The DEIS mentions this in passing, but does not provide decision-makers a reasoned discussion of what these protections mean and the consequences both for the Talaris site and for the City's landmarks program were the City to sweep them aside as the DEIS suggests can occur. In addition to compliance with City code as a factor, the Seattle landmarks program's federal certification, which periodically comes up for renewal, depends on showing a record of implementation. This could be questioned if a significant site designation such as for the Talaris site could be as easily swept aside as implied by the DEIS.

Per WAC 197-11-792(1)(b)(ii) EIS alternatives are supposed to be "reasonable courses of action." WAC 197-11-786 defines "reasonable alternative" as "an action that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation." Had proper scoping notice been given and had that notice included entities with a recorded legal and/or regulatory interest in the site, such as LCC, they would have explained that the Talaris site does not meet this definition. Further, the targeting of the Talaris site is particularly ill-advised, even odd, when considered in light of the City's current and longstanding ownership of Magnuson Park. Magnuson Park conspicuously was not selected for "alternative" consideration, even though it is a large holding, is already owned by the City, and contains substantial areas less encumbered and more suited as an alternative than the Talaris site.

The DEIS states that:

Potential redevelopment of the Talaris site is studied only as an example of a possible off-site alternative. It is provided in order to conceptually analyze probable adverse impacts that would be expected with redevelopment at that site or other off-site locations in the City. As allowed by SEPA, the analysis of the Talaris site is less detailed than the analysis of the Fort Lawton site. Additional more detailed SEPA review of the Talaris site, or another off-site location, would be required should that or another site ultimately be selected for the affordable and formerly homeless housing.

DEIS at 2-6. What is missing from this statement is a clear commitment that the "additional more detailed SEPA review of the Talaris site" would require preparation and circulation for comment of a new DEIS – not just adoption of an MDNS or Addendum. If this acknowledgment were included in the Fort Lawton FEIS it would go far to address concerns. In its absence, the Fort Lawton EIS must be recognized as inadequate with regard to its review of the Talaris development alternatives.

The DEIS analysis is skewed by repeated references such as the one quoted below to “environmental justice” as a factor supporting intensive Talaris development:

The site would not be redeveloped at this time, and environmental justice conditions would continue as under existing conditions. The opportunity to provide affordable housing in the Laurelhurst neighborhood, and the positive impacts of diversifying a neighborhood that is disproportionately occupied by higher income households, would not be realized.

DEIS at 1-16.

Such references are political statements rather than objective analyses of recognized environmental factors that are properly included in an EIS.

Further, the DEIS offers only flimsy bases unsupported by valid comparative data for its “environmental justice” premises. The “study” relied upon in the DEIS is not a typical peer-reviewed academic study, but combines historical reportage with advocacy journalism. Further, what it reports concerning the past history of racially restrictive covenants throughout the City of Seattle does not support the DEIS assumption that Laurelhurst is currently a venue for true “environmental injustice”. The economic realities attendant to a neighborhood with numerous water views and other amenities of value in the post-“Boeing bust” real estate market do not equate to “environmental injustice.”

The DEIS assumes without analysis that any “environmental injustice” in Laurelhurst, e.g. in the form of a scarcity of affordable housing, is a consequence of covenants and discrimination of almost 100 years ago. At the same time, the DEIS fails to acknowledge or analyze the far more immediate effect of City policies and approvals. For example, the City has allowed demolition of affordable housing in Laurelhurst, such as Laurelon Terrace, over the strong objections of LCC. In general, the City’s zoning actions and approvals of Major Institution expansions, causative agents for loss of affordable housing, are not recognized at all. Meanwhile, the DEIS improperly includes politically expedient, unfair and inflammatory accusations that any lack of affordable housing in the Laurelhurst neighborhood is the community’s fault and a product of bigotry.

Finally, it appears that the DEIS consideration of traffic with regard to intensive Talaris development is based on “quick and dirty” analysis without detailed fresh data to take into account the effects of recent developments. This is a fundamental shortcoming especially for a street system known to be heavily impacted already, with failing intersections.

The DEIS should be revised and recirculated for public comment before an FEIS is issued. Failure to do so could result in litigation that would have not been necessary but for the

EGLICK & WHITED PLLC

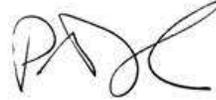
January 29, 2018

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fundamental and needless flaws in preparation of the DEIS and in the failures to give notice to obvious local agency and community stakeholders.

Sincerely,

EGLICK & WHITED PLLC

A handwritten signature in black ink, appearing to read 'P. Eglick', written over a light gray background.

Peter J. Eglick

cc: Laurelhurst Community Club

LETTER 2

FOSTER PEPPER PLLC

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January 29, 2018

Via E-Mail and U.S. Mail

Ms. Lindsay Masters  
Office of Housing  
City of Seattle  
P.O. Box 94725  
Seattle, WA 98124-4725  
Email: [OH\\_Comments@seattle.gov](mailto:OH_Comments@seattle.gov)

Re: Comments on the Draft Environmental Impact Statement for the Fort Lawton Army Reserve Center Redevelopment Project issued on December 14, 2017

Dear Ms. Masters:

This law firm represents the Discovery Park Community Alliance (“DPCA”) on matters related to the Seattle Office of Housing’s (“Housing’s”) Fort Lawton Redevelopment proposal. This letter provides DPCA’s comments on the Draft Environmental Impact Statement prepared for the Fort Lawton Army Reserve Center Redevelopment Project (“DEIS”) prepared by Housing and issued on December 14, 2017.

In September 2017, we sent a letter to you on behalf of DPCA setting forth reasons why Fort Lawton should be preserved as a public park. A copy of the letter is enclosed as Attachment A. We never received a response from Housing to our letter.

1

On January 9, 2018, Housing held a public meeting to accept comments on the DEIS. The public meeting was so crowded that very few supporters of DPCA or residents of the area surrounding the Fort Lawton site had any opportunity to speak, let alone even get into the building. The demonstrated public interest in the proposal and lack of opportunity for public participation in the single public meeting necessitates additional public meetings to comment on the DEIS to ensure that comments from diverse community members are fully heard and considered.

2

This letter incorporates the comments in our September 2017 letter by reference and sets forth additional reasons why the DEIS does not meet the requirements of the State Environmental Policy Act (“SEPA”), Chapter 43.21C RCW.

Fort Lawton presents a rare opportunity to provide additional public park space that Seattle’s rapidly growing population desperately needs. The current DEIS ignores the environmental benefits that preservation of Fort Lawton as a park would have, and ignores the adverse environmental impacts that development of hundreds of units of housing on one of the City’s last remaining opens spaces will have. As set forth below, the DEIS is deficient for the

3

following reasons: (1) Alternatives 2, 3, and 4 are not “reasonable alternatives” required by SEPA; (2) the DEIS fails to disclose and analyze significant adverse impacts associated with the Seattle Public School uses at Fort Lawton; (3) the DEIS fails to fully evaluate numerous environmental impacts of the four alternatives; (4) the DEIS fails to address the irreconcilable conflicts between the preferred Alternative 1 and the federal government’s Defense Base Closure and Re-alignment Act of 1990 (“BRAC”) process, as well as the federal government’s considerations under the National Environmental Policy Act (“NEPA”).

3,  
cont.

For all of these reasons, DPCA is asking Housing to revise the DEIS to fully and fairly consider the environmental impacts of the project before issuing a Final Environmental Impact Statement (“FEIS”).

**1. Alternatives 2, 3, and 4 are not “reasonable alternatives” as required by SEPA.**

The DEIS does not comply with the requirements of SEPA because it fails to propose “reasonable alternatives” to the preferred Alternative 1 and fails to provide the City of Seattle, as the decision maker, with sufficient information to make a reasoned decision between the four alternatives.

The underlying purpose of SEPA is to avoid environmental degradation, to preserve, and even to enhance environmental quality by requiring the actions of local government agencies to be based on sufficient environmental information and be in accord with SEPA’s substantive polices. RCW 43.21C.030(2), .030(1), .060. To accomplish this, SEPA requires preparation of an environmental impact statement (“EIS”) to provide the decision maker with “sufficient information to make a reasoned decision.” *Citizens Alliance To Protect Our Wetlands v. City of Auburn*, 126 Wn.2d 356, 362, 894 P.2d 1300 (1995). The process of preparing an EIS

is intended to assist the agencies and applicants to improve their plans and decisions, and to encourage the resolution of potential concerns or problems prior to issuing a final statement. An environmental impact statement is more than a disclosure document. It shall be used by agency officials in conjunction with other relevant materials and considerations to plan actions and make decisions.

4

WAC 197-11-400(4).

An adequate EIS clearly, concisely, and impartially describes a proposal’s significant impacts and environmentally preferable alternatives, including mitigation measures. WAC 197-11-400(3), 400(4). The EIS must be reliable and backed by sufficient environmental analysis. WAC 197-11-400(2)-(3). The EIS must be prepared early enough to inform and guide decision makers, rather than simply rationalize or justify decisions already made. WAC 191-11-406. *See Barrie v. Kitsap County*, 93 Wn.2d 843, 613 P.2d 1148 (1980). SEPA seeks to inform and guide

decisions in part through the consideration of “reasonable alternatives,” which are defined by the SEPA regulations as:

an action that could feasibly attain or approximate a proposal’s objectives, but at a lower environmental cost or decreased level of environmental degradation. Reasonable alternatives may be those over which an agency with jurisdiction has authority to control impacts, either directly, or indirectly through requirement of mitigation measures. (See WAC 197-11-440(5) and 197-11-660.)

WAC 197-11-786.

If there is information on significant adverse impacts that is essential to a reasoned choice among alternatives and the costs of obtaining such information are not exorbitant, the lead agency must obtain the information and include it in an environmental impact statement. WAC 197-11-080(2). *See Methow Valley Citizens Council v. Regional Forester*, 833 F.2d 810 (9<sup>th</sup> Cir. 1987).

Housing states that “[t]he purpose of the project is to create an affordable, livable community with safe, high quality housing options for those with low or no incomes, and to meet the growing demand for open space and recreational opportunities.” DEIS at p. 2-18. Housing selected Alternative 1 as the preferred alternative, which calls for the construction of 238 units of high-density affordable housing and limited park uses on the Fort Lawton site.

The DEIS provides three alternatives to the preferred Alternative 1, none of which are “reasonable alternatives” as required by SEPA for the reasons discussed below. Alternative 2 proposes development of 113 market-rate single-family units on the Fort Lawton site with no park space, and off-site affordable housing at the Talaris site. Alternative 3 propose a public park on Fort Lawton, and off-site affordable housing at the Talaris site. Thus, Alternatives 2 and 3 rely entirely on the feasibility of developing 238 units of affordable housing at the Talaris site.

The DEIS fails to evaluate any other potential off-site location for affordable housing besides Talaris, stating that the Talaris site:

is included only as an example of a possible off-site alternative for the affordable and formerly homeless housing. It is provided in order to conceptually analyze probably adverse impacts that would be expected with redevelopment at that site or other off-site locations in the City. Additional more detailed SEPA review of the Talaris site, or another off-site location, would be required should that or another site ultimately be selected for the affordable and formerly homeless housing.

DEIS at p. 1-1 (emphasis added).

4,  
cont.

5

Under the DEIS, Alternatives 2 and 3 do not present “reasonable alternatives” because there is absolutely no information in the DEIS that allows a decision maker to make a reasoned decision as to whether the off-site affordable housing of those alternatives, combined with the proposed uses of the Fort Lawton site, could feasibly attain or approximate the affordable housing objectives of Alternative 1, but at a lower environmental cost or decreased level of environmental degradation. *See* WAC 197-11-786. This vital information is not difficult or expensive to obtain. Housing could identify and evaluate specific sites in Seattle in addition to Talaris that offer opportunities for affordable housing development to offer feasible alternatives to the proposed Alternative 1.

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Furthermore, as raised in our September 2017 letter, Housing’s reliance on acquiring the Talaris site – one of the most expensive properties in the City (last sold for \$15.6 million in 2000) and zoned for single-family residential use – for off-site affordable housing as the *only* alternative that would preserve Fort Lawton as a public park is inherently unreasonable. Moreover, it is now impossible.

This month, it was publically announced that Quadrant Homes has agreed to buy Talaris and proposes building 63 single-family homes on large lots on the site, estimated to sell for about 2 million dollars each.<sup>1</sup> With Talaris off the market and no other off-site opportunities identified or evaluated by Housing for affordable housing, Alternatives 2 and 3 cannot meet the definition of “reasonable alternatives.” Without Alternative 3, the only alternative that would provide park space, the DEIS utterly fails to address the adverse environmental impacts that development of hundreds of units of housing will have on some of the last remaining open space in the City.

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The lack of reliable analysis of the preferred Alternative 1 against Alternatives 2 and 3 suggests that the DEIS is simply rationalizing or justifying a decision already made by Housing to pursue 234 units of affordable housing at Fort Lawton without regard for reasonable alternatives that would avoid the irreversible environmental degradation that Alternative 1 will cause. This is impermissible under SEPA. WAC 197-11-406 (EIS “will not be used to rationalize or justify decisions already made”).

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Without Alternatives 2 and 3, only preferred Alternative 1 and Alternative 4 of “no-action” remain. SEPA mandates that the “no-action” alternative be evaluated and compared to the other alternatives. WAC 197-11-440(5)(b)(ii). The EIS must “[p]resent a comparison of the environmental impacts of the reasonable alternatives, and include the no action alternative.” WAC 19-11-440(5)(b)(vi). An EIS that evaluates only a proposed Alternative and no-action alternative may be deemed inadequate for not analyzing a sufficient range of alternatives. *Town of Woodway v. Snohomish Cty.*, 180 Wn.2d 165, 171, 322 P.3d 1219 (2014) (“growth board found that the county’s EIS was faulty because it did not consider multiple alternatives . . . —the only alternative it considered was no change at all.”); *Davidson Serles & Assocs. v. Cent. Puget*

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<sup>1</sup> *See* <https://www.seattletimes.com/business/real-estate/seattles-largest-batch-of-single-family-homes-in-decades-is-pitched-for-oasis-site/>.

*Sound Growth Mgmt. Hearings Bd.*, 159 Wn. App. 148, 152–53, 244 P.3d 1003 (2010) (noting that the Growth Board found an EIS inadequate because it did not analyze a sufficient range of alternatives).

Alternative 4 is not a reasonable alternative to the proposed Alternative 1 because it does not attain any of the objectives of the proposal. WAC 197-11-786 (a reasonable alternative is “an action that could feasibly attain or approximate a proposal’s objectives”); *Friends of First United Methodist Church v. City of Seattle*, 130 Wn. App. 1031 (2005) (decision not reported in P.3d) (alternative was not reasonable because it did not attain the project goals). Under Alternative 4, Fort Lawton would remain in its existing condition, not serving any public open space, recreational, or housing purposes and, therefore, not fulfilling any of the objectives of Housing’s Fort Lawton Reserve Center Redevelopment Project.

Because Alternatives 2, 3, and 4 are not reasonable alternatives, as defined under the SEPA rules, proposed Alternative 1 is the only real alternative left in the DEIS. With Alternative 1 standing alone with no reasonable alternative to compare its environmental impacts against, the DEIS accomplishes nothing more than rubber-stamping approval of Housing’s proposed Alternative 1. This is inadequate under SEPA. See WAC 191-11-406. See *Barrie v. Kitsap County*, 93 Wn.2d 843, 613 P.2d 1148 (1980). The entire purpose of an EIS is to provide reasonable alternatives of a reasonable number and range to provide essential information on adverse environmental impacts that allows for a reasoned choice among alternatives. *Weyerhaeuser v. Pierce Cty.*, 124 Wn.2d 26, 41, 873 P.2d 498 (1994) (“There must be a reasonably detailed analysis of a reasonable number and range of alternatives.”). The DEIS for the Fort Lawton Reserve Center Redevelopment Project fails to meet this standard because it offers only one feasible alternative: preferred Alternative 1. Contrary to SEPA, the DEIS leaves no opportunity for a reasoned choice among other alternatives that could be feasibly attained or approximate the project’s objectives.

Housing should, at a minimum, revise the DEIS to offer and evaluate “reasonable alternatives that would mitigate adverse effects of proposed actions on the environment,” as required by SEPA. WAC 197-11-030(1)(g). The alternatives should include at least one off-site alternative that could feasibly attain or approximate the goals of the project. See WAC 197-11-400(5)(d). To have fully evaluated the impacts to the environment, the DEIS should include at least one reasonable alternative that preserves all of Fort Lawton as public park space. If preservation of Fort Lawton as a park must be tied to the provision of affordable housing, Housing should propose an off-site location that presents a feasible opportunity for development of affordable housing.

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**2. The DEIS fails to disclose and analyze probable significant adverse impacts associated with Seattle Public School uses at Fort Lawton.**

On November 20, 2017, the City of Seattle and Seattle Public Schools (“SPS”) entered into a Partnership Agreement<sup>2</sup> whereby the City and SPS agreed to a collaborative partnership to “jointly achieve unique opportunities for developing SPS facilities, including SPS [*sic*] in the Fort Lawton Redevelopment Plan.” The detailed agreement includes provisions for a joint development agreement, partnership and financial commitments, and mobility planning. While the agreement sets forth plans to utilize a portion of the Fort Lawton property for a range of school-related uses, the DEIS states that the environmental impacts of such a partnership would be evaluated at a later date. DEIS at p. 2-8. This position is untenable under SEPA. SEPA requires that a proposal identify all the related and interdependent pieces of the proposal. Actions are related if they are dependent on each other. In this case, SEPA dictates that Alternative 1 and the SPS proposal must be considered together as one proposal in the same environmental document. *See* WAC 197-11-060(3)(b).

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SEPA requires agencies to disclose the reasonably foreseeable impacts of its proposals. The disclosure of impacts related to SPS uses is governed by WAC 197-11-080, which necessitates additional disclosure, or a worst case analysis be advanced, concerning the impacts of SPS uses at Fort Lawton.

**3. The DEIS fails to evaluate numerous significant, adverse environmental impacts of each of the proposed alternatives.**

In addition to the failure of the DEIS to provide reasonable alternatives to preferred Alternative 1, as described in Section 1 above, the DEIS is inadequate in its analysis of numerous adverse environmental impacts of each of the alternatives. Without sufficient analysis, it is impossible for a decision maker to make a reasoned decision on the proposal. The deficiencies of the DEIS in its analysis of adverse environmental impacts are summarized below. Revision of the DEIS before publishing the FEIS is required to address each of these deficiencies.

**a. Land Use**

The DEIS does not adequately address the land use issues accompanying its preferred Alternative 1, or Alternatives 2 or 3. As the City acknowledges, the Fort Lawton property is currently zoned Single-Family 7200, surrounded by areas zoned 7200 and SF 5000, with minimal Lowrise 3, NC1 and NC2 to the southeast. Even if the City rezones the Fort Lawton area away from single-family, such a rezone would remain inconsistent with the rezone factors in the Land Use Code and cut against many of the policies of the Comprehensive Plan. Development in the Fort Lawton area of high-density housing will have irreversible negative

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<sup>2</sup> The agreement is titled, “Seattle Public Schools and City of Seattle Public Process Partnership Agreement: School District Facilities, Fort Lawton, Memorial Stadium, and Seattle Center.”

impacts, and will undermine the growth in urban centers and urban villages envisioned by in the Comprehensive Plan.

The Key Findings in the Land Use section of the DEIS (§ 3.6) state:

Alternative 1 would require that a portion of the Fort Lawton site be rezoned from the existing SF 7200 zoning to Lowrise residential zoning (e.g. LR 3)

...

Alternative 1 and 2 [*sic*, believed to refer to Alternatives 2 and 3] would require that a portion of the Talaris site be rezoned from SF 5000 to lowrise residential zoning; a Comprehensive Plan amendment would also be required.

In the DEIS's discussion of the fact that both sites require a rezone under one or more of the alternatives, Housing has not met its obligation to weigh and balance the provisions of the rezone criteria laid out in SMC 23.34. SMC 23.34.007.A. The Code states:

The most appropriate zone designation shall be that for which the provisions for designation of the zone type and the locational criteria for the specific zone match the characteristics of the area to be rezoned better than any other zone designation.

SMC 23.34.008.B.

Specifically, the Code states that an area zoned single-family may *not* be rezoned to multifamily. SMC 23.34.013. A rezone to something more intensive than single-family is not appropriate unless the City Council determines the single-family zoned area does not meet the criteria for single family designation. SMC 23.34.010.

The rezone criteria also indicate a gradual transition between zoning categories is preferred. SMC 23.43.008.E. The City's proposal to alter the zoning of the Fort Lawton site is not in alignment with the rezone policy of gradual transition, as evidenced by the City's Figure 3.6-3; a rezone would dramatically alter the greater Fort Lawton and Magnolia area.

When discussing the rezones that would be required for both sites under Alternatives 1, 2 and 3, the DEIS states that the applicant will prepare a rezone proposal for Alternative 1, and City Council approval would be required. The DEIS relies speculatively on future actions, such as amendments to Subchapter II of SMC 23.42, and summarily states that "the relationship of the project to the criteria in SMC 23.34.008 will be evaluated" when an application for a rezone is made. This does not adequately address the Code's rezone criteria. While the DEIS addresses some aspects of the rezone criteria—describing the historic land use patterns and current zoning—it does not provide a reasoned and complete analysis of how such a rezone application would conform to the Code. Given that a rezone would be pivotal to using either Fort Lawton or

Talaris for affordable housing development, Housing’s failure to specifically address the rezone criteria in SMC 23.34 fails to provide the decision maker with information needed to make a reasoned decision on the proposal.

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With respect to the Talaris site (or some other, unidentified site for off-site affordable housing), the DEIS again fails to analyze the criteria for rezoning the site from Single-Family 5000 to Lowrise. The Talaris site is surrounded by areas zoned primarily SF 5000, with some NC2 and LR3 to the north. The *City of Seattle 2035 Comprehensive Plan* designates future land use of Talaris as single-family residential, not Lowrise. As with the Fort Lawton site, without any analysis of the rezone criteria and feasibility of a rezone, it is impossible for Housing to make a reasoned decision among preferred Alternative 1 and Alternatives 2 and 3.

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#### **b. Recreation and Open Space**

The DEIS fails to address how its alternatives conform to the City’s Comprehensive Plan and other goals for open space, points raised in our September 2017 letter. City policies include, “[p]reserve and reclaim park property for public use and benefit, and ensure continued access to parkland for the growing population,” with goals of considering “retaining City-owned properties that are in environmentally critical areas as natural areas.” *Comprehensive Plan* (P. 3.6); *id.* at 70 (LU 17.26). Developing Fort Lawton with affordable or market-rate housing works against the identified policy to “[e]nhance wildlife habitat by restoring forests and expanding the tree canopy on City-owned land.” *Id.* at 142 (P 3.4).

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The DEIS forecloses a park-only alternative. The DEIS points out that, during the scoping process, requests for a park-only alternative were turned away because such an analysis did not further the City’s mission to increase affordable housing within the City. DEIS at p. 2-8. However, the Comprehensive Plan states it is a policy of the city to “[m]ake the most of the limited available land by developing parks and open spaces so that they can accommodate a variety of active and passive recreational uses.” *Comprehensive Plan* at 140 (P 1.13). The City has a unique opportunity in the Fort Lawton site to demonstrate its commitment to open space and recreation for all future residents. The significance of open space is apparent now more than ever, as Seattle is one of the fastest-growing cities in the country. Housing’s decision to disregard a park-only alternative, and to disregard the opportunity to increase Discovery Park by nearly ten percent, demonstrates a lack of commitment to its stated objective of preserving open space.

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Despite the fact that the 1986 Discovery Park Master Plan is not binding on Fort Lawton,<sup>3</sup> Fort Lawton, as part of the former base, is inextricably linked to Discovery Park. Housing does not provide adequate analysis of how developments at the Fort Lawton site – either affordable housing or market-rate housing – complement or impede the future of Discovery Park. Nor does the DEIS contemplate how forfeiting open space plans at Fort Lawton

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<sup>3</sup> The City acknowledges that this was stated in *Magnolia Neighborhood Planning Council v. City of Seattle*, 155 Wn. App. 305 (2010).

may negatively impact development within Discovery Park itself in the future. Such an analysis is important for understanding the future of Discovery Park, the future of open space in Seattle, and the potential for future efforts to chip away at the park.

In the 1972 Discovery Park Master Plan, the following statement was made:

In the years to come there will be almost irresistible pressure to carve out areas of the park in order to provide sites for various civic structures or space for special activities. There will in the future be structures and activities without number for which, it will be contended, this park can provide an “ideal site” at no cost. The pressures for those sites may constitute the greatest single threat to the park. They must be resisted with resolution. If they are not, the park will be so fragmented that it can no longer serve its central purpose. Only those activities and only those structures should be accepted which are in harmony with the overall theme, character and objective of the park. There must be a deep commitment to the belief that there is no more valuable use of this site than as an open space.<sup>4</sup>

While Fort Lawton is not presently part of Discovery Park, the spirit of this quote resonates today. Housing should evaluate at least one reasonable alternative that preserves Fort Lawton as a public park space, which may include the provision of community services such in a park setting.<sup>5</sup>

### c. Transportation

The DEIS does not adequately address transportation concerns relating to traffic, public transit, and parking. Additional review and analysis of these effects is important in order to provide an accurate picture of how development on either site will cause transportation-related impacts. The DEIS’s consideration of adverse impacts on transportation is deficient in the following ways:

- **The DEIS fails to reasonably analyze impacts to local intersections.** By focusing on a limited number of street intersections, the DEIS has not adequately addressed the full scope of the impact of additional cars on the existing over-burdened transportation infrastructure in the area surrounding Fort Lawton. The DEIS states that Alternative 1 would generate an estimated additional 1,260 vehicle trips per day going to and from the Fort Lawton area. DEIS at p. 3.10-9. It concludes that no significant traffic impacts are anticipated at the

<sup>4</sup> Discovery Park Master Plan, Fort Lawton Park Plan (1972) (emphasis added), available at: <https://www.seattle.gov/Documents/Departments/ParksAndRecreation/Parks/masterplan1.pdf>

<sup>5</sup> The BRAC process provides the City with the opportunity of pursuing a Public Benefit Conveyance for park use. See BRAC Manual Section C.5.4.10.

Fort Lawton site because all studied intersections are expected to continue to operate at “LOS B,” which is an acceptable level of operation. DEIS at p. 3.10-10. The DEIS chose four intersections to evaluate for purposes of traffic volume.<sup>6</sup> DEIS at p. 3.10-3. Housing expects these study area intersections to handle direct access to and from the site, but the DEIS fails to account for impacts to other important access roads in the greater Magnolia area. These include Commodore Way—an existing two-lane, winding road through residential area that is already overburdened, and W. Emerson Pl and Gilman Ave. W., both of which provide irreplaceable access to Fort Lawton. Impacts with respect to traffic on these roadways have not been addressed. Magnolia is served by a finite number of access points, which already experience congestion. The addition of approximately 600 new residents, and approximately 1,200 new vehicles per day, will have a significant impact both on ingress and egress to the site for residents and visitors, as well as to the surrounding area and existing residents. Housing should provide a more thorough analysis of these impacts, expanding its traffic review to include greater numbers of streets and intersections.

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➤ **The DEIS fails to reasonably analyze cumulative traffic impacts.** The assessment of Alternative 1 also fails to disclose and analyze cumulative adverse impacts caused by pipeline projects and anticipated growth in the greater Magnolia area. The DEIS states, “there is little growth from new development expected in the immediate vicinity.” DEIS at p. 3.10-4. However, this assertion ignores the effects of the Mandatory Housing Affordability zoning changes and changes to accessory dwelling unit regulations on the immediate vicinity. It also undercuts the City’s goals of ensuring there are sufficient services and resources for residents, by anticipating there will be little growth from the new development. Beyond City policy changes, public and private developments in the Interbay area will very likely impact transportation and public services, yet the DEIS does not account for such impacts. A thorough disclosure and analysis of the potential adverse traffic impacts on the greater Magnolia community has not been developed. The analysis must disclose and assess reasonably foreseeable growth and density changes in the vicinity of the proposal.

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➤ **The DEIS fails to reasonably analyze traffic impacts at Talaris or another site.** Similarly, the DEIS did not adequately discuss the impacts of traffic near the Talaris site. It concludes that development at Talaris would only result in a less than one second delay at two intersections, which Housing does not consider a significant impact. However, two intersections near Talaris will operate at LOS F and E (which constitute the worst ratings and indicate poor traffic operations with long delays). Additional information describing how the City expects to mitigate increases in traffic is necessary to provide a more adequate picture of how development at Talaris will affect the transportation grid. The DEIS provides no analysis of traffic impacts on any other off-site location for affordable housing.

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<sup>6</sup> These four intersections are: (1) 40<sup>th</sup> Avenue E/Texas Way; (2) Discovery Park Boulevard/Texas Way; (3) W Government Way/36<sup>th</sup> Avenue W; and (4) Discovery Park Boulevard/34<sup>th</sup> Avenue W.

➤ **The DEIS fails to reasonably analyze impacts to bus routes.** The information provided in the DEIS demonstrates that public transit service will be inadequate to serve anticipated demand. Presently, only one bus line services the area—the Metro Transit 33. King County Metro’s Long Range Plan does not anticipate adding additional bus routes: “[T]he existing level of local bus service is planned to remain through its long range planning year of 2040.” DEIS at p. 3.10-5. Alternative 1 is expected to accommodate approximately 596 new residents. DEIS at p. 2-21. One bus line cannot adequately accommodate this increase in demand. The DEIS does not adequately account for the impact of only one bus route on future residents and traffic congestion. The Long Range Plan’s identification of “frequent” bus service by 2040 does not constitute adequate consideration of transit impacts—and with full build-out at Fort Lawton expected by 2025, potential frequent service by 2040 does not adequately address or mitigate impacts. The DEIS lists Metro Route 24, half a mile away from the site, as a bus route for consideration. However, it is unrealistic that hundreds of residents, many of whom will be senior citizens, will be able to walk a half mile for the transit they must rely on.

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➤ **The DEIS fails to reasonably analyze impacts to residential transit trips.** The DEIS cites 2010 Census data for the fact that 25% of residential trips in Magnolia occur by transit. Based on this projection, it concludes the existing bus service would be adequate, which overlooks the reality that many senior citizen residents may not drive, many residents may not own vehicles, and many residents may not have a driver’s license. The fact that 25% of residential trips in Magnolia occur by transit right now is not a transferrable fact in light of the proposed uses at Fort Lawton. The DEIS does not adequately disclose and assess the impacts of increased transit demand as a result of the proposal.

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➤ **The DEIS fails to reasonably analyze the feasibility of bike share programs.** It is not realistic for the City to incorporate bike share programs as an adequate measure of alternative means for residents to transit in and out of the Fort Lawton area. As described above, many residents will be senior citizens who will not be able to utilize bike share programs. Furthermore, the topography of the area, distance to resources and services, and practicality generally do not lend themselves to assuming residents of the new development will use a bike share program. As stated in the September 2017 letter, expansion of bike lanes and routes is not envisioned by the City in the area around Fort Lawton. It is unlikely that young children and/or their parents will be able to utilize a bike share program to ride to the grocery store or carry out other essential errands. Mitigation of this kind is not realistic.

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➤ **The DEIS fails to reasonably analyze parking impacts.** The DEIS also raises issues with respect to parking and does not fully address them. Under Alternative 1, 266 parking spaces would be provided, with peak parking demand ranging from 257-294 spaces, indicating parking demands would exceed available parking. DEIS at p. 3.10-12. The DEIS concludes that no significant impacts are expected as a result, citing that the parking demand from the affordable housing could be addressed through parking management strategies. DEIS at p. 3.10-12. Yet there is no adequate disclosure or analysis of these parking management

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strategies, and how they might truly mitigate parking concerns. In order to fully understand the impacts of development under Alternative 1, additional disclosure and analysis is required.

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**d. Historic and cultural preservation**

The Fort Lawton property has a long history of use as a forested natural area and a military base. Development of housing on the Fort Lawton site under Alternatives 1 and 2 is inconsistent with both the current use of the site and the historic context of the site. Nor is it in alignment with City policies to allow multifamily development on a property that was historically public and located in a single-family residential area. *See* SMC 23.34.008.F.1.g; *see also* Comprehensive Plan at 66 (LU G14 aims to “[m]aintain the city’s cultural identity and heritage”).

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The disclosure and assessment of historic and cultural resources on both properties is inadequate. The DEIS concedes that buildings on the Fort Lawton site may be eligible for Landmark designation. DEIS at p. 3.9-1. The DEIS continually describes the historic nature of the Fort Lawton area, but concludes that the existing buildings lack significant associations, design characteristics or prominence, or do not meet the threshold of 25 years to qualify for landmark designation. However, the DEIS indicates at least one hall, Harvey Hall, could meet the criteria for Seattle Landmark. The impacts of designating Harvey Hall or Leisy Hall as landmarks and converting the Fort Lawton to high-density housing is not adequately studied in the DEIS.

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The DEIS fails to adequately address the potential impacts on the Fort Lawton Cemetery. Under “other possible measures” of mitigation, the DEIS mentions the potential of retaining undeveloped buffer to avoid affecting the integrity of the Cemetery setting by the introduction of new built environment elements. DEIS at p. 3.9-15. It is unclear from the DEIS how the introduction of hundreds of housing units and hundreds of new residents would impact the setting of the Fort Lawton Cemetery. Particularly, under Alternative 2, market-rate housing would be built directly across the street, seemingly tens of feet away from the cemetery. The effects of this action are not adequately discussed. Additionally, the Fort Lawton Cemetery is eligible for listing on the National Register of Historic Places. The DEIS does not explore how the addition of housing at Fort Lawton, affordable or market-rate, would impact the Cemetery as a historic piece of the greater Fort Lawton area.

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Talaris was already designated as an historic landmark by the City of Seattle in 2013, and is eligible for listing in the National Register for Historic Places. DEIS at p. 3.9-8. The DEIS points out that alterations to the existing site would be inconsistent with the siting and design of existing buildings and the surrounding neighborhood. DEIS at p. 3.9-13. Taking into account the fact that Certificates of Approval would need to be obtained for alterations to the site, these impacts contribute to the unreasonableness of Talaris as an alternative site.

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**e. Biological Resources**

The DEIS does not adequately disclose and analyze probable significant adverse impacts on wildlife and wildlife habitat. The DEIS acknowledges that permanent displacement of certain wildlife “less tolerant of urban uses” may occur, but states that past military use of Fort Lawton and conference center uses at Talaris may also have impacted these species. SEPA requires a prospective, not retrospective, analysis of how the proposal will impact biological resources, including wildlife.

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In order to make a reasoned choice among alternatives, there must be a sufficient disclosure of biological resources, such as wetlands, and a comprehensive assessment of how the proposal would impact those resources. The DEIS summarily concludes that wetland or stream features may be present. However, it concludes, “additional studies would be needed to document wetlands and/or streams and their required buffers in the north portion of the site.” DEIS at p. 3.2-2. Such information should be provided now to assist with understanding impacts to biological resources. Relying on “preliminary site plans” the DEIS concludes no direct impacts to known wetlands will occur. Yet it acknowledges that the boundaries and classifications of the wetlands would need to be re-verified. DEIS at p. 3.2-8. The DEIS’s treatment of wetland and similar biological resources is inadequate on its face.

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The DEIS fails to disclose and adequately address adverse impacts on wildlife at both Fort Lawton and Talaris. The DEIS states that Great Blue Herons have been found on or near the site in the past, but does not describe how development at Fort Lawton might impact Great Blue Heron in the future. Also, the DEIS describes that site plans would avoid directly impacting a Bald Eagle nest tree, and surrounding areas, but bases its conclusion on “preliminary site plans” only. SEPA requires that additional information be obtained and disclosed with respect to probable significant adverse impacts to both listed and de-listed species, including the Bald Eagle.

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The potential for permanent displacement of species during and after construction is not adequately discussed, nor is the potential for disruption during breeding season. Fort Lawton is adjacent to over 500 acres of open park space that serves as wildlife habitat. The DEIS must address potential adverse impacts to wildlife and wildlife habitat at the Fort Lawton site in relation to Discovery Park. The Fort Lawton property presents a rare opportunity to restore wildlife habitat and provide contiguous wildlife habitat within Seattle. *See* Comprehensive Plan at 68 (LU 17.2, 17.20 Aim to promote and protect contiguous wildlife-habitat areas).

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**f. Earth**

The DEIS fails to adequately disclose the potential for landslides as a function of existing steep slopes and erosion hazards at the Fort Lawton site. This is a serious concern for neighboring residential properties.

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The DEIS also fails to adequately disclose and analyze the risk of methane migrating from the neighboring landfill onto the Talaris site. It concludes that the risk of methane migration is considered low, and that no impacts are expected under Alternatives 2 or 3. The potential for adverse impacts to human health is significant. The Talaris housing area would include numerous children and elderly with potential health issues. A more thorough analysis of this threat is important to understand the potential adverse impacts on the health and safety of future residents at the Talaris site.

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**g. Noise**

The DEIS fails to adequately address the adverse impacts of noise under all of the Alternatives. The DEIS states that because the Fort Lawton site is vacant, “the only existing sources of noise are wildlife that use the site and occasional maintenance of the facilities.” DEIS at p. 3.4-2. The DEIS identifies increases in noise from construction, including clearing and grading, demolition, and construction, but states these are “temporary increases in noise.” But with build-out occurring over several years, these impacts would be far from temporary. The DEIS does not adequately disclose and analyze the increased noise that will result from constructing a high-density development containing hundreds of housing units in what is now a quiet open space.

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**h. Public services**

The DEIS does not adequately disclose the impact on public services or the lack thereof for both sites. Specifically, the DEIS does not provide sufficient analysis of how on-site services will mitigate the need for a level of increased responsiveness on the part of local law enforcement. The DEIS contemplates that certain services will be provided on-site, including case management services by Catholic Community Services of Western Washington and residential counselors. DEIS at p. 3.11-12. The DEIS cites to these services as possible mitigation for the need to utilize police service, but does not adequately address how these services will work to prevent involvement by law enforcement, or serve medical needs. Any influx of nearly six hundred people to a small area will require an increased local law enforcement presence. An increase in elderly residents and children will also require additional medical services in close proximity to the site.

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The DEIS also fails to disclose probable adverse impacts on public schools. Overcapacity of schools is an issue at both sites: Fort Lawton Elementary school will be overcapacity, as well as Eckstein Middle School near Talaris. While the DEIS does identify that the Seattle Public Schools (SPS) anticipates opening additional schools near Fort Lawton, the DEIS does not adequately address how and exactly when SPS may exercise its ability to accommodate growth, including adjusting attendance area boundaries and meeting requirements of providing additional transportation services.

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**i. Aesthetics/Visual Resources**

The DEIS does not adequately disclose and analyze the amount of localized light spillage to areas adjacent to the Fort Lawton or Talaris sites. Additionally, shadow documentation is provided in the DEIS Appendix G, but such documentation does not adequately describe the effects of shadows from both sites onto surrounding areas in a way that is understandable and accessible. It is difficult to discern from the documentation the effects of increased shadows from new development under Alternatives 1 and 2 at Fort Lawton on neighboring areas to the North and East. Furthermore, shadow documentation is not provided for the Talaris site where site plans—showing housing built up to the property line (Figure 2011)—would likely result in impacts to neighboring areas with respect to shadows. Such a design is a dramatic change from the present configuration of the site, and the impacts on neighboring areas to the Talaris site are not adequately disclosed and analyzed.

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**j. Housing**

The DEIS’s disclosure and analysis of housing impacts is inadequate. The DEIS states that no significant housing impacts are expected to result from any of the redevelopment alternatives, in spite of the fact that over 200 housing units will be added to the Fort Lawton and/or Talaris sites under Alternatives 1-3, which includes an area that has historically never hosted housing (Fort Lawton) or hosted housing on the scale it is projected to host (Talaris).

The DEIS fails to adequately describe how high-density residential development at Fort Lawton makes sense based on its lack of designation as part of an Urban Center or Urban Village. Such growth cuts against the City’s goal to grow in designated Urban Centers or Urban Villages. Seattle’s Comprehensive Plan has goals of accommodating “a majority of the City’s expected household growth in urban centers and urban villages” and “a substantial portion of the city’s growth in hub and residential urban villages.” *See* Comprehensive Plan at 28, 32 (GS G2 and GS 2.3); *see also id.* at 42 (LU G1 aims to “[a]chieve a development pattern consistent with the urban village strategy”). While the area is designated for multi-family residential uses in the Seattle 2035 Comprehensive Plan, implementation of Alternative 1 remains inconsistent with the City’s Urban Center and Urban Village Strategy.

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**4. The City has failed to follow requirements under federal law.**

**a. The City has failed to follow BRAC procedures.**

The City’s DEIS is predicated on contracting with both Catholic Community Services (“CCS”) and Habitat for Humanity (“HH”) as service providers and housing construction and management partners. However, this assemblage of housing partners is not what the original Notice of Intent (“NOI”) contemplated in 2007. The Preferred Alternative is also a distinctly different project in configuration, programming and overall scope.

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In 2006-2007, 55 organizations submitted proposals as part of the NOI process. BRAC procedure affords all organizations a fair opportunity to submit proposals and have them evaluated on equal footing. Today, the Seattle Housing Authority is no longer the master developer at Fort Lawton. Instead, HH has expanded its role as the lead housing partner at Fort Lawton. The Office of Housing has simply ignored BRAC procedure and is now embracing a different master developer and a different housing proposal altogether.

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BRAC procedure warrants that the NOI process be re-opened to competitive bidding and that a new RFP solicitation process be undertaken to allow the many other stakeholders and providers who are players and entrants in the homeless and low-income housing fields to participate in the process.

**b. The City cannot incorporate and reasonably rely upon the previous NEPA Environmental Assessment for SEPA purposes.**

The U.S. Army Corps of Engineers' ("Corps") Environmental Assessment ("EA") and Finding of No Significant Impact ("FONSI") may no longer be relied upon by the City, HUD, the Department of the Interior or the Corps because they are based on a different project than what is now proposed among the EIS Alternatives. The FONSI relied upon an earlier Traditional Disposal and Reuse Alternative ("TDRA"). The October 18, 2012 FONSI was based on a smaller amount of total housing units (216) and a completely different range and size of housing types. Thus, the EA and FONSI were based on an analysis of different environmental impacts.

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The TDRA anticipated demolition of all existing structures, and the construction of 125 market-rate units ranging from smaller to large market rate single-family homes, 85 homeless units and 6 low-income townhomes. In contrast, none of the DEIS Alternatives mirror that proposal. Alternative 1 contemplates more housing units than that studied by the Corps (238 units). Alternatives 2 and 3 also each contemplate 238 housing units off-site. An increase in the number of total units to be constructed, the change in footprint or size of those structures, and their associated environmental impacts, is a fundamental change in a proposal that requires that any pre-existing environmental analysis be revisited. For these reasons, the City cannot incorporate and reasonably rely upon the previous NEPA Environmental Assessment. *See* WAC 197-11-635. The City acknowledged this fact in the DEIS by stating, ". . . updated National Environmental Policy Act (NEPA) review . . ." will be required. DEIS at IV.

**c. The Corps cannot rely on the DEIS as currently configured**

Under NEPA, the Military Departments must identify and consider the proposed action and reasonable alternatives and their respective environmental impacts. Not only does the City acknowledge in the DEIS that prior NEPA review is inadequate, to the extent that the Corps intends to rely on the City's flawed SEPA alternatives analysis in support of a new FONSI or ROD, that analysis is flawed for the reasons stated above. Accordingly, the City's

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January 29, 2018  
Ms. Lindsay Masters  
Office of Housing  
Page 17

Redevelopment Plan cannot be given substantial deference under BRAC regulations and federal law.

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cont.

## 5. Conclusion.

For all of the reasons set forth in Sections 1 through 4 above, Housing should host additional public comment sessions and revise the DEIS to provide reasonable alternatives and a full analysis of the environmental impacts of all of the alternatives. At least one of the reasonable alternatives should provide for the preservation of the entire Fort Lawton site as a park space – the alternative that will have the least adverse environmental impacts and provide the greatest number of environmental and widespread community benefits. The BRAC process provides a pathway for accomplishing this objective while also accommodating homeless assistance services, other than housing, on or off-site.

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Sincerely,

FOSTER PEPPER PLLC



Joseph A. Brogan

CC: DPCA

Enclosure: Attachment A – September 2017 Letter

**ATTACHMENT A**

September 27, 2017

Ms. Lindsay Masters  
Office of Housing  
City of Seattle  
P. O. Box 94725  
Seattle, WA 98124-4725

Re: Discovery Park Community Alliance's Comments on the Fort Lawton  
Redevelopment & Proposed EIS Alternatives

Dear Ms. Masters:

This law firm represents the Discovery Park Community Alliance ("DPCA") on matters related to the Seattle Office of Housing's ("Housing's") Fort Lawton Redevelopment proposal.

DPCA is a growing association of over 100 residents from the Magnolia neighborhood and from the city of Seattle at large who are dedicated to ensuring that the Fort Lawton Army Reserve Center ("FLARC") property is annexed to Discovery Park.

This letter addresses the following: (1) DPCA's reasons for supporting the expansion of Discovery Park through the federal government's Defense Base Closure and Re-alignment Act of 1990 ("BRAC") process; (2) Legal impediments to the City of Seattle ("City") and Housing's plans to rezone and redevelop the FLARC property; (3) Legal deficiencies in Housing's proposed Environmental Impact Statement ("EIS") Alternatives; and (4) Legal and procedural irregularities concerning the City's actions, past and present.

**I. Preserve & Expand Discovery Park.**

The members of DPCA sincerely believe that the BRAC process presents a rare and unique opportunity to make a reasoned choice about the legacy of one of the City's most treasured public spaces, Discovery Park. The City's long-range master plan for Fort Lawton calls for the park to be a place of quiet and tranquility. It is a sanctuary for wildlife, and an outdoor classroom for generations of Seattle's citizens to learn about the natural world.

The City's Comprehensive Plan includes a goal of providing one acre of "breathing room" open space for every 100 residents in Seattle. The City has continued to acquire select open spaces to meet the demands of future population growth and to preserve wooded hillsides,

creek corridors and other wildlife habitat. As recently as June, 2017, Housing presented data in support of this demonstrated need.

*The City estimates that Seattle's population will increase by 120,000 new residents over the next 18 years. Seattle Parks and Recreation (SPR) will need to continue to acquire parkland in order to maintain the desired citywide level of service.*

Office of Housing, Open House/EIS Scoping Meeting, June 19, 2017.

As the designated Local Redevelopment Authority (“LRA”), the City has the opportunity to make a substantial investment in planning for adequate parkland for present and future generations. The FLARC facilities are immediately adjacent to Discovery Park, and present a logical and ideal extension of public park property. No other EIS alternative meets this stated need.

Developing the FLARC property contradicts the City’s Comprehensive Plan policies that aim to protect and improve upon open space and environmentally critical areas, including:

- “Make the most of the limited available land by developing parks and open spaces so that they can accommodate a variety of active and passive recreational uses.” Comprehensive Plan at 140 (P 1.13).
- “Enhance wildlife habitat by restoring forests and expanding the tree canopy on City-owned land.” *Id.* at 142 (P 3.4). The Fort Lawton property includes Environmentally Critical Areas (ECAs) for wildlife habitat, among other ECAs. Areas to the north, west, and south of the property are covered in heavy tree canopy coverage. The Fort Lawton property presents a rare opportunity in the City to restore wildlife habitat and expand tree canopy coverage. *See* Comprehensive Plan at 68 (LU 17.2, 17.20 aim to promote and protect contiguous wildlife-habitat areas). This opportunity would be lost if the City were to develop the FLARC property with market rate or low-income housing.
- “Preserve and reclaim park property for public use and benefit, and ensure continued access to parkland for the growing population.” *Id.* (P. 3.6).
- “Consider retaining City-owned properties that are in environmentally critical areas as natural areas.” *Id.* at 70 (LU 17.26).

The Fort Lawton property has a long history of use as a forested natural area and a military base. It is inconsistent not only with the current use of the area but also the unique, historic context of the site to suddenly allow multifamily development on a property that was historically public and located in a single-family residential area. *See* SMC 23.34.008.F.1.g; *see also* Comprehensive Plan at 66 (LU G14 aims to “[m]aintain the city’s cultural identity and heritage”).

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BRAC procedure provides an avenue by which the LRA can pursue a Public Benefit Conveyance (“PBC”) for park purposes. BRAC Manual at C5.4.10.1.1 (2006). Consistent with BRAC procedure, Housing should have pursued this sponsorship with the National Park Service (“NPS”) for the entire FLARC property prior to completing the 2008 Redevelopment Plan. However, since the Washington State Court of Appeals rendered the 2008 Plan “void and without effect,” the City has an opportunity to engage once again with the NPS, Housing and Urban Development (“HUD”) and the Department of Defense (“DOD”) to pursue a PBC for the entire FLARC property.

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**II. Alternative 2 “Mixed Income Affordable Housing” is Inconsistent with Seattle’s Comprehensive Plan and Chapter 23 SMC.**

The FLARC property is currently zoned Single-Family 7200. The surrounding areas are zoned Single-Family 7200 or SF 5000. The property is surrounded by single-family residences to the north and east and by Discovery Park to the south and west. It would be inconsistent with the Land Use Code, the Comprehensive Plan, and the historic character of the Magnolia neighborhood and Discovery Park to rezone the Fort Lawton property for the multifamily, low-rise development, as proposed in Alternative 2.

When considering any rezone, the City Council must weigh and balance the provisions of Chapter 23.34 SMC. SMC 23.34.007.A. “The most appropriate zone designation shall be that for which the provisions for designation of the zone type and the locational criteria for the specific zone match the characteristics of the area to be rezoned better than any other zone designation.” SMC 23.34.008.B.

“An area zoned single-family that meets the criteria of Section 23.34.011 for single-family designation may **not** be rezoned to multifamily.” SMC 23.34.013 (emphasis added).<sup>1</sup> Additionally, single-family zoned areas “may be rezoned to zones more intense than Single-family 5000 only if the City Council determines that the area does not meet the criteria for single-family designation.” SMC 23.34.010.A.<sup>2</sup>

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The Fort Lawton property meets the criteria for single-family zoning as it is surrounded entirely by single-family residential and park uses. Any rezone of the property as would be necessary to carry out proposed Alternative 2 would violate SMC 23.34.013 and SMC 23.34.010.A.

Even if the City could rezone the Fort Lawton property for multifamily use, it would be inconsistent with the rezone factors set forth in the Land Use Code and the goals and policies of

<sup>1</sup> Except as otherwise provided in Section 23.34.010.B, which does not apply because the Fort Lawton property is not located in an urban village.

<sup>2</sup> Except as provided in subsections B or C of Section 23.34.010, which would not apply to a proposed rezone of the Fort Lawton property because it is not located in an urban village or the Northgate Overlay District.

the Comprehensive Plan. The Code requires examining the negative and positive impacts of every proposed rezone. *See* SMC 23.34.008.F. Allowing high-density development on the Fort Lawton property would create negative impacts and undermine the Comprehensive Plan’s goals of planning development around urban centers and urban villages, providing adequate transit, providing for recreational opportunities and protecting the natural environment, and protecting the historic character of the area.

Fort Lawton is not located in an urban center or urban village. To the contrary, the property is extremely removed from any urban centers or villages, separated from Ballard and the Downtown by the Ballard-Interbay manufacturing industrial center. Allowing multifamily development in a single-family zone outside of an urban center or urban village conflicts with the City’s Comprehensive Plan’s goals of accommodating “a majority of the city’s expected household growth in urban centers and urban villages” and “a substantial portion of the city’s growth in hub and residential urban villages.” *See* Comprehensive Plan at 28, 32 (GS G2 and GS 2.3); *see also id.* at 42 (LU G1 aims to “[a]chieve a development pattern consistent with the urban village strategy”).

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The Fort Lawton property is serviced by only one bus route that runs exclusively from Discovery Park to the Downtown. No priority corridors for transit investment are anticipated near the property by the Comprehensive Plan. *See* Comprehensive Plan at 79 (Transportation Figure 4). Nor does it appear that the City has any plan to implement or enhance bicycle access to the property. Without adequate access to public transportation, it will not be feasible for residents to access basic services, including various forms of public assistance and medical care, without a car. Additionally, the streets surrounding the Fort Lawton property are currently quiet, residential streets without sidewalks. The Comprehensive Plan treats areas around the Fort Lawton property as a low to moderately-low priority for pedestrian investments by the City, leaving the area lacking both the transit and pedestrian infrastructure necessary to effectively serve multifamily residents. *See id.* at 82 (Transportation Figure 7).

### **III. The Proposed EIS Alternatives are Flawed.**

The Proposed EIS Alternatives appear designed to lead inexorably to a single conclusion—Alternative 2, and the agency record supports this conclusion.

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As an initial matter, meaningful SEPA review cannot proceed without a clearly defined proposal, and nothing the City has circulated thus far defines the “proposal.” SEPA defines “proposal” as a “proposed action,” WAC 197-11-784, and none of the documents circulated at the recent scoping meetings describes the proposed action. As a result, the purported alternatives cover vastly disparate government actions that do not provide any meaningful understanding of the environmental impacts of what the City proposes to do.

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Under SEPA, a “reasonable alternative” is an action “that could feasibly attain or approximate a proposal’s objectives, but at a lower environmental cost or decreased level of environmental degradation.” WAC 197-11-440(5)(b). Without a clearly defined “proposal,” the public cannot ascertain the “proposal’s objectives,” and no set of project objectives could be met

by the three action alternatives identified in the scoping notice. The proposed alternatives read more like a visioning exercise that seeks the public’s input into the substantive decision the City should make, rather than an earnest attempt to identify ways to achieve a singular goal at the lowest environmental cost.

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The only common thread between the three action alternatives is the provision of affordable housing, either at Fort Lawton or at an offsite location. To be considered a “reasonable alternative,” the City must establish some hope of acquiring control of the alternative site. Yet, the City’s materials suggest affordable housing could be developed at the Talaris site without any showing that the City can compete on the open market for such prime real estate, or condemn it upon payment of fair market value. Neither has the City demonstrated the political will required to develop Talaris into low- or no-income housing. By way of example, the EIS would be no less informed by a study of the impacts of building homeless and affordable housing in the middle of Port of Seattle Terminal 5; it is unlikely the City will acquire the Talaris property even assuming the City has the authority to condemn it.

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All three action alternatives involve some development of Fort Lawton, but it is not clear that such development in each alternative is related to the proposal’s objective of providing affordable housing. Alternative 2.-the one that Council selected in 2008 and that the Office of Housing clearly prefers—develops Fort Lawton as a mix of single- and multi-family affordable housing, with accompanying park space.

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Alternative 3, *Market Rate Housing*, as presented, is confusing. The Office of Housing has no authority to develop market-rate housing, so it could not, for example, build and sell market-rate, single-family housing at Fort Lawton as a revenue stream to fund affordable housing elsewhere. Perhaps the idea is to turn the City into a real estate speculator, acquiring Fort Lawton at no cost in exchange for a promise to build affordable housing elsewhere, then selling it undeveloped on the open market to pay for the affordable housing. Otherwise, the alternative requires the City to stand aside while the Army sells Fort Lawton to private developers. As such, it is no different from the no-action alternative, and it is no longer clear whether it is at all related to development of affordable housing offsite.

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Alternative 4 has even less of a link than Alternative 3 between acquisition of Fort Lawton and the development of affordable housing offsite. Alternative 4 would require the City to develop Fort Lawton into park space *and* acquire land elsewhere to develop as affordable housing. Particularly since the voters approved creation of the Seattle Parks District with its “Fix it First” mission, it is not obvious that the City has the ability to fund development of a new park *and* the ability to acquire an alternative site—presumably Talaris—for development as affordable housing.

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If the City’s selection of alternatives leads to confusion, at least the reason for selecting those alternatives is clear. The Office of Housing is papering over a decision the City Council made no later than 2008 to build an affordable housing project at Fort Lawton. But a lead agency cannot bias its analysis to make its favorite alternative appear to be the only viable

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alternative. SEPA may allow the City a preferred alternative, but it also requires an earnest study of “reasonable alternatives.” The City’s efforts thus far have not begun to meet this requirement.

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The City should acquire Fort Lawton and either develop it as a park or bank it as future park space. We understand that the BRAC allows the City to acquire the land at no cost for development meeting a public purpose, and expansion of Discovery Park is a public goal that the City should pursue.

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The City’s proposed Alternative 4 comes closest to the DPCA’s preferred use for the FLARC, development of the entire site as a public park. The objectionable component is that the proposal is inextricably linked to construction of homeless and affordable housing at an off-site location, the Talaris Conference Center. Housing acknowledges that the site would need to be acquired on the open real estate market at a premium given its location. DPCA is at a loss as to why the City would seek out some of the most expensive real estate in the City to provide affordable housing. Any alternative that relies on acquisition and construction of homeless and affordable housing at Talaris simply does not amount to a *reasonable alternative* under the SEPA Rules. See WAC 197-11440(5)(b).

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DPCA submits that the City should de-link the housing component from Alternative 4, *Public Park On-site*, and study an alternative in the Draft EIS that is strictly about the development of the entire FLARC site as a public park, with no linkage to constructing housing at an off-site location.

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#### IV. City Process: Additional Procedural Irregularities.

##### A. Lack of Transparency

A fundamental tenet of environmental review is that a lead agency provide complete disclosure of environmental consequences of a proposal. *King County v. Washington State Boundary Review Board for King County and City of Black Diamond*, 122 Wn.2d 648, 663-664, 860 P.2d 1024 (1993). In *Black Diamond*, the Washington State Supreme Court cautioned that without such disclosure, “the inertia made by government decisions (made without environmental impacts statements) may carry the project forward regardless.” That inertia is present here.

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In 2010, the Washington State Court of Appeals held that the City failed to provide complete disclosure of the environmental consequences of its decision to adopt Resolution 31086 and the 2008 Fort Lawton Redevelopment Plan, and the Court ordered the City to complete SEPA review. See *Magnolia Neighborhood Planning Council v. City of Seattle*, 155 Wn. App. 305, 316, 230 P.3d 190 (2010).

In 2008-2009, the City proceeded to draft two separate leases with the Archdiocesan Housing Authority (“AHA”), now Catholic Housing Services (“CHS”), to implement Alternative 2. CHS is now the lead developer for housing both homeless individuals and families at Fort

Lawton. The City has characterized these leases as “Legally Binding Agreements” in correspondence to the NPS.

Additional public records obtained by DPCA provide clear evidence that despite the fact that Housing is considering four alternatives in its 2017 EIS Scoping Process, it has already engaged and is actively working with its architect, SMR, to develop site plans to implement Alternative 2. (SMR, Site Plans dated June 19, 2017). DPCA submits this is further evidence that the City’s EIS process is nothing more than a procedural smokescreen to comply with the Court of Appeals’ mandate, while the City moves forward with plans to implement its preferred alternative, Alternative 2. This is precisely the type of governmental action the Court referred to as the “snowballing effect” in the *Black Diamond* case.

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B. Failure to Observe BRAC Procedures - Notice of Intent.

The City’s EIS is predicated on contracting with both Catholic Community Services (“CCS”) and Habitat for Humanity (“HH”) as service providers and housing construction and management partners. However, this was a product of the Notice of Intent (“NOI”) submission and selection process that occurred over ten years ago. The proposal that is now contemplated in Alternative 2 is not what the NOI partners proposed in 2007. It is a distinctly different project in configuration, programming and overall scope. It is not a sustainable proposition that the City can simply default to the earlier NOI partners even though the proposal is now different than what was evaluated under the competitive NOI BRAC process.

In 2006-2007, 55 organizations submitted proposals as part of the NOI process. BRAC procedure affords all organizations a fair opportunity to submit proposals and have them evaluated on equal footing. Today, the Seattle Housing Authority is no longer the master developer at Fort Lawton. Instead, HH has expanded its role as the lead housing partner at Fort Lawton. The Office of Housing has simply ignored BRAC procedure and is now embracing a different master developer and a different housing proposal altogether.

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BRAC procedure warrants that the NOI process be re-opened to competitive bidding and that a new RFP solicitation process be undertaken to allow the many other stakeholders and providers who are players and entrants in the homeless and low-income housing fields to participate in the process.

C. Improper Reliance Upon Army Corps Environmental Assessment.

The U.S. Army Corps of Engineers’ (“Corps”) Environmental Assessment (“EA”) and Finding of No Significant Impact (“FONSI”) may no longer be relied upon by the City (or the Corps) because they are based on a different project than what is now proposed among the EIS Alternatives. The Corps FONSI relied upon an earlier Traditional Disposal and Reuse Alternative (“TDRA”). The October 18, 2012 FONSI was based on a smaller amount of total housing units (216) and a completely different range and size of housing types. Thus, the EA and FONSI were based on an analysis of different environmental impacts.

58

The TDRA anticipated demolition of all existing structures, and the construction of 125 market-rate units ranging from smaller to large market rate single-family homes, 85 homeless units and 6 low-income townhomes. In contrast, none of the present Proposed EIS Alternatives mirror that proposal. Alternative 2, *Mixed Income Affordable Housing and Park*, proposes up to 235 units, with 75-100 units of affordable rental housing, 50 affordable ownership homes, and 85 units of senior supportive housing. Housing types include Lowrise apartments, rowhouses and townhouses. An increase in the number of total units to be constructed, the change in footprint or size of those structures, and their associated environmental impacts, is a fundamental change in a proposal that requires that any pre-existing environmental analysis be revisited. For these reasons, neither the City nor the Department of the Army can continue to rely on the previous environmental review to support a potential Record of Decision.

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V. Conclusion

Given the serious nature of the irregularities and deficiencies in the BRAC, SEPA, and planning processes outlined here, and given the lack of conformity that the alternatives proffered have to the City's zoning and growth management plans, DPCA believes that the City must revisit its compliance with BRAC, SEPA, and planning requirements and restart the FLARC redevelopment process in a manner that is in accordance with statutes and regulations which govern the process. Likewise, the City must revisit and develop realistic alternatives that are consistent with its zoning regulations, growth plans and master planning documents.

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In light of the above, DPCA requests a meeting with Housing to address these matters and to ensure that the City develop alternatives for the FLARC property that are based on an inclusive, public process.

I am available at (206) 447-6407, and look forward to working with you to schedule such a meeting.

Sincerely,

FOSTER PEPPER PLLC



Joseph A. Brogan

CC: DPCA

Jan. 23, 2018

Friends of Battelle/Talaris  
c/o Janice Sutter  
3933 NE Belvoir Place  
Seattle, WA 98105

City of Seattle  
c/o Lindsay Masters  
Office of Housing  
PO Box 94125  
Seattle, WA 98124-4725

[OH\\_Comments@seattle.gov](mailto:OH_Comments@seattle.gov)

I am a founding member of Friends of Battelle/Talaris. We are a group of Seattle residents responsible for the historic designation of the Battelle/Talaris campus by the State of Washington and the City of Seattle. Historic Seattle sponsored our nomination.

1

We are concerned that the Environmental Impact Statement (EIS) filed on behalf of the proposal to build affordable housing at Fort Lawton adjacent to Discovery Park includes development of low income and multifamily housing on the Battelle/Talaris property as an alternative to the Fort Lawton proposal. (See Alternative 2 and 3).

2

Alternatives 2 and 3 are not a reasonable comparison. The Battelle/Talaris campus has very little in common with the Fort Lawton property

- The Battelle/Talaris campus is private, not public property.

3

- The campus buildings and landscape together are an exceptional example of the influence of Japanese design in the northwest.

4

- The entire campus and buildings are designated historic by Washington State and the City of Seattle. As such, any alterations are subject to the national standards applicable to both designations. At this writing, no such changes have been authorized.

5

- The campus is zoned for only two uses: "An Institute of Advance Study" or "Single Family".

6

- The campus provides a unique opportunity to rehabilitate and daylight Yesler Creek, currently flowing under the property, by re-connecting it with historic Yesler Swamp, recently restored by extensive volunteer efforts.

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- The access roads to the campus, (also landmarked), are not capable of handling the traffic generated by a housing development. New roads would destroy the property.

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- The property supports wildlife – including wintering-over waterfowl, an active eagle’s nest, owls, occasional deer and coyotes.

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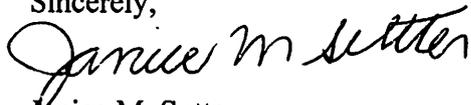
-Contrary to the EIS statement, there are no ‘preliminary plans’ of consequence to develop the property before the Landmarks board, but rather a brief presentation by a potential buyer to build houses and destroy portions of the landscape.

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For the reasons stated above, the appropriate ‘study’ for Fort Lawton affordable housing should be a publicly owned facility such as Magnuson Park... where such housing is now being developed by rehabilitating existing prior Naval Base housing. Battelle/Talaris is a unique treasure. It is not an appropriate alternative for the Fort Lawton EIS and should not be offered as such.

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Sincerely,



Janice M. Sutter  
For Friends of Battelle/Talaris