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BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE

In the Matter of the Appeal of:	)	Hearing Examiner File:
DISCOVERY PARK COMMUNITY	)	<b>W-18-002</b>
ALLIANCE, <i>et al.</i> ,	)	NOTICE OF APPEARANCE,
From a decision of the City of Seattle, Final	)	REQUEST TO REOPEN
Environmental Impact Statement.	)	DISCOVERY, AND OPENING
	)	BRIEF
	)	
	)	

**NOTICE OF APPEARANCE**

Undersigned counsel now appears for Appellant, Elizabeth Campbell, and requests that all future papers and pleadings in this matter, be served on this attorney at the address stated below. Appellant accepts the City of Seattle’s offer for mutual service via email to Nathan@JJALaw.com, with a copy to Lesley@JJALaw.com.

**REQUEST TO REOPEN DISCOVERY**

1 On September 28, 2018 the Hearing Commissioner ordered that Appellant's inadvertent  
2 failure to timely file a witness and exhibit list bars Appellant from presenting any evidence at  
3 hearing and that only legal issues may be presented. Appellant respectfully requests, now that an  
4 attorney has been engaged, that discovery in this matter be reopened so that Appellant's Due  
5 Process right to confrontation can be exercised.

6 In almost every setting where important decisions turn on questions of fact, due process  
7 requires an opportunity to confront and cross-examine adverse witnesses. *E.g., ICC v. Louisville &*  
8 *N.R. Co.*, 227 U.S. 88, 93–94, 33 S.Ct. 185, 187–88, 57 L.Ed. 431 (1913); *Willner v. Committee on*  
9 *Character & Fitness*, 373 U.S. 96, 103–04, 83 S.Ct. 1175, 1180–81, 10 L.Ed.2d 224 (1963).

10 Certain principles have remained relatively immutable in our jurisprudence.  
11 One of these is that where governmental action seriously injures an individual,  
12 and the reasonableness of the action depends on fact findings, the evidence  
13 used to prove the Government's case must be disclosed to the individual so  
14 that he has an opportunity to show that it is untrue. While this is important in  
15 the case of documentary evidence, it is even more important where the  
16 evidence consists of the testimony of individuals whose memory might be  
17 faulty or who, in fact, might be perjurers or persons motivated by malice,  
18 vindictiveness, intolerance, prejudice, or jealousy. We have formalized these  
19 protections in the requirements of confrontation and cross-examination. They  
20 have ancient roots. They find expression in the Sixth Amendment. This Court  
21 has been zealous to protect these rights from erosion. It has spoken out not  
22 only in criminal cases, but also in all types of cases where administrative  
actions were under scrutiny.

*Greene v. McElroy*, 360 U.S. 474, 496–97, 79 S.Ct. 1400, 1413, 3 L.Ed.2d 1377 (1959).

18 In the alternative, Appellant respectfully submits that the City could not conceivably be  
19 prejudiced by a limited hearing where Appellant would be able to call only those witnesses, and  
20 rely on only those exhibits, specifically designated by the City itself in its September 7, 2018 Final  
21 Witness & Exhibit List, of whose existence and relevance the City thus was clearly well aware.

## OPENING BRIEF

1           On October 24, 2018, the Hearing Commissioner ordered Appellant to file an opening brief  
2 in this matter by the date below, which, under the Hearing Commissioner's September 28, 2018  
3 Order, must be confined to legal issues based on the Final Environmental Impact Statement only.  
4 If the above request to re-open discovery is not granted, Appellant hereby respectfully re-submits  
5 her April 11, 2018 Notice of Appeal as her opening brief, attached hereto as an appendix, and  
6 challenges the City to refute the arguments and analysis therein.

7  
8                           **DATED** this 2nd day of November 2018.

9   **JOHNSTON JACOBOWITZ & ARNOLD, PC**

10   /s/ Nathan J. Arnold  
11   Nathan J. Arnold, WSBA #45356  
12   Johnston Jacobowitz & Arnold, PC  
13   2701 First Avenue, Suite 200  
14   Seattle, WA 98121  
15   Tel.: 206-866-3230  
16   Fax: 206-866-3234  
17   Nathan@JJALaw.com  
18   *Counsel for Appellant*

**CERTIFICATE OF SERVICE**

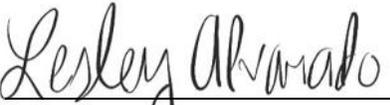
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The undersigned declares under penalty of perjury that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the above-entitled action.

On November 2, 2018, I served or caused to be served a copy of the foregoing upon counsel for the City of Seattle, by email, as agreed at patrick.downs@seattle.gov.

EXECUTED this 2nd day of November 2018 at Seattle, Washington.

  
\_\_\_\_\_  
Lesley Alvarado

# **APPENDIX**

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BEFORE THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In Re: Appeal by  
  
DISCOVERY PARK COMMUNITY ALLIANCE, a  
nonprofit corporation, and ELIZABETH A. CAMPBELL,  
an individual  
  
Of the CITY OF SEATTLE, FINAL ENVIRONMENTAL  
IMPACT STATEMENT for the Fort Lawton Army  
Reserve Center Redevelopment Project

NO.  
  
NOTICE OF APPEAL

**I. INTRODUCTION**

1. Appellant Discovery Park Community Alliance (DPCA) is an alliance of people and organizational interests that altogether represent Seattle residents who will be significantly and adversely impacted by the proposed City of Seattle’s Fort Lawton Redevelopment Project.

2. Appellant Elizabeth Campbell is a resident of Seattle who will be significantly and adversely impacted by the proposed City of Seattle’s Fort Lawton Redevelopment Project.

**II. APPELLANT INFORMATION**

**1. Appellant #1**

Name: Discovery Park Community Alliance (DPCA)  
Address: c/o Elizabeth Campbell  
4027 21<sup>st</sup> Avenue West Suite 205  
Seattle, WA 98199  
Phone: 206.769.8459  
Email: dpcacontact@gmail.com

1 I wish to receive documents from the Office of the Hearing Examiner by  
2 Email Attachment.

3 **2. Appellant #2**

4 Name: Elizabeth A. Campbell  
5 Address: 4027 21<sup>st</sup> Avenue West Suite 205  
6 Seattle, WA 98199  
7 Phone: 206.769.8459  
8 Email: neighborhoodwarrior@gmail.com

9 I wish to receive documents from the Office of the Hearing Examiner by  
10 Email Attachment.

11 **III. DECISION BEING APPEALED**

- 12 1. **Decision Appealed:** DPCA and Campbell are appealing the City of Seattle Office of  
13 Housing's Final Environmental Impact Statement (FEIS), dated March 29, 2018, for  
14 the proposed Fort Lawton Army Reserve Center Redevelopment Project (hereinafter  
15 referred to as the "FLARC FEIS" or the "FEIS") that it is inadequate, as is the US  
16 Army Corps of Engineer 2012 Environmental Assessment upon which the FEIS is in  
17 large part predicated upon and vis-a-versa.
- 18 2. **Property address of Decision being appealed:** The study area for the FLARC FEIS  
19 includes the approximately 34-acre Fort Lawton Army Reserve site, bordered by West  
20 Lawton Street to the north, 36<sup>th</sup> Avenue West to the east, West Government Way to the  
21 south and Discovery Park to the west.
- 22 3. **Elements of decision being appealed.** Check one or more as appropriate:
- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Adequacy of Conditions | <input type="checkbox"/> Other (specify:_)                  |
| <input type="checkbox"/> Design Review and Departure       | <input type="checkbox"/> Variance (Departures)              |
| <input type="checkbox"/> Conditional Use                   | <input checked="" type="checkbox"/> Adequacy of EIS         |
| <input type="checkbox"/> EIS not required                  | <input type="checkbox"/> Interpretation (See SMC 23.88.020) |
| <input type="checkbox"/> Major Institution Master Plan     | <input type="checkbox"/> Short Plat                         |
|  | <input type="checkbox"/> Rezone                             |

23 **IV. APPEAL INFORMATION**

24 1. **What is your interest in this decision: (State how you are affected by it)**

25 Appellant Discovery Park Community Alliance (DPCA) is an alliance of people and  
26 organizational interests that together represent Seattle residents, property owners, local and  
regional stakeholders of every kind who will be significantly and adversely impacted by the  
proposed City of Seattle Fort Lawton redevelopment project.

1 The DPCA, its officers, members, partners, associates, and supporters jointly and severally  
2 participate in a range of Discovery Park related matters as an oversight and advisory  
3 organization, as a park programming partner, as a critical community partner, in the  
4 administration and maintenance of Discovery Park, as an advocate and caretaker of Discovery  
Park's historical legacy, and as users and consumers of the natural and structured environment  
located at Discovery Park and nearby.

5 Chief among DPCA's roles at Discovery Park it is acting as an advocate for the completion  
6 of the park's decades old Discovery Park Plan element, that of annexing the last remaining  
7 piece of land of the former Fort Lawton army base to Discovery Park, the natural, practical, and  
historically correct outcome of this matter – that will benefit the people of Seattle and the Puget  
Sound region for the next century.

8 DPCA is an all volunteer organization of passionate citizens that includes many property  
9 owners adjacent to the Fort Lawton Army Reserve and community partners as its members – all  
10 dedicated to sustaining the Discovery Park legacy, land base, and expanding it to include the  
addition of the Fort Lawton property to Discovery Park.

11 Appellant Elizabeth Campbell is a local resident of the Magnolia neighborhood of Seattle  
12 wherein Discovery Park is located. Campbell is an advocate for citizen, neighborhood, and  
13 general community rights and interests. She is a longtime user and patron of Discovery Park  
and a longtime advocate for annexing the Fort Lawton property to Discovery Park.

14 Campbell is the founder and executive director of the Discovery Park Community Alliance.  
15 She is also the founder and director of the Magnolia Neighborhood Planning Council that in  
16 2009 led a lawsuit on behalf of that organization and property owners against the City of Seattle  
17 seeking to compel the City to conduct a SEPA review of the City's redevelopment plans for  
18 Fort Lawton. That lawsuit was successfully prosecuted, upheld on appeal, and is case law,  
referenced in many court and administrative cases involving environmental law procedure as  
Magnolia Neighborhood Planning Council v. City of Seattle 155 Wn. App. 305, 230 P.2d 190,  
review denied, 170 Wn.2d 1003, (2010).

19 Both appellants believe that the subject Fort Lawton property is a natural extension of the  
20 existing Discovery Park and that using the land for park and recreational purposes is preferable  
21 to using it instead for an out of scale housing development that will foreclose any opportunity to  
22 for the final time add to the land base of Discovery Park, that will foreclose any expansion of  
the natural and recreational opportunities and experiences at the park.

23 The appellants are advocating to utilize the connected space of Fort Lawton to expand on  
24 the natural, social, and recreational elements of Discovery Park, and for the preservation of as  
much of the existing structures and natural environment at Fort Lawton as is possible.

25 The appellants believe that building a 238 unit, intensive mixed use, residential, shelter,  
26 medical, behavioral, and custodial care housing and social services compound with upwards of  
600 residents, an untold number of off-site clients that will visit the site for services, with  
upwards of 60 support staff required to be onsite daily in order to operate and maintain the

1 peace, order, and sustainability of the compound, along with the concomitant vehicles owned  
2 and operated as part of the compound's existence, estimated to be upwards of over 325 vehicles,  
3 and hundreds of road trips daily to and from the location, all directly next to Discovery Park as  
4 proposed by the City of Seattle, that severally, collectively, and cumulatively, that the cited  
5 project elements will have very adverse effects, an untold number of negative impacts upon the  
6 natural environment of Discovery Park *and* even upon its likewise nature-based and oriented  
neighbor, Daybreak Star, *and* upon the surrounding natural common areas of the residential  
neighborhood, the West Point shoreline area, the Kiwanis Memorial Preserve Park and its  
ravine and heron habitat, the Salmon Bay body of water proper and its estuaries, and upon the  
northwest region of the Magnolia neighborhood in general.

7 Housing compounds of the scales and types proposed by the City of Seattle and its  
8 partners, Catholic Community Services and Habitat for Humanity and others at Fort Lawton  
9 location, be they market rate or otherwise, will severely impact the natural urban park  
10 experience at Discovery Park, not to mention will negatively impact the natural, social, cultural,  
and built environments, locally and citywide.

11 The appellants also believe that the FEIS is fatally flawed, that it does not adequately  
12 identify and examine the impacts of the preferred alternative, number one, or that of number  
13 two, that in either case they would be a fatal and irreversible departure from the goals of the  
Discovery Park Master Plan. None of which was addressed in the FEIS.

14 For all the reasons enumerated above and for those detailed below, appellant Discovery  
15 Park Community Alliance and appellant Elizabeth Campbell are appealing the Fort Lawton  
16 Final Environmental Impact Statement, declaring that it is inadequate, as is its companion the  
17 US Army Corps of Engineers NEPA Environmental Assessment that the City of Seattle FEIS is  
18 in part predicated upon, and that in the process of this matter the USACE and the City of Seattle  
19 have failed to comply with the legally mandated procedures for the Base Realignment and  
Closure processes – all of which dictates that the administrative and environmental review  
processes associated with the redevelopment of Fort Lawton must be remanded back to the City  
and USACE, restarted and done in a legally proper and sufficient manner.

19 **2. What are your objections to the decision? (List and describe what you believe to  
20 be the errors, omissions, or other problems with this decision.)**

21 Paragraphs I through IV above are incorporated herein by reference in their entirety and  
22 for any and all purposes as if fully set forth herein.

23 The City of Seattle Office of Housing's decision that the FLARC FEIS is adequate was  
24 made in error and was made in violation of the State Environmental Policy Act (SEPA), RCW  
43.21C, for the following reasons:

25 **A. Alternatives 2, 3, and 4 are not "reasonable alternatives" as required by SEPA.**

26 The FEIS 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

1 the decision maker, with sufficient information to make a reasoned decision between the four  
2 alternatives.

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

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

11 WAC 197-11-400(4).

12 An adequate EIS clearly, concisely, and impartially describes a proposal's significant  
13 impacts and environmentally preferable alternatives, including mitigation measures. WAC 197-  
14 11-400(3), 400(4). The EIS must be reliable and backed by sufficient environmental analysis.  
15 WAC 197-11-400(2)-(3). The EIS must be prepared early enough to inform and guide decision  
16 makers, rather than simply rationalize or justify decisions already made. WAC 191-11-406. *See  
17 Barrie v. Kitsap County*, 93 Wn.2d 843, 613 P.2d 1148 (1980). SEPA seeks to inform and guide  
18 decisions in part through the consideration of "reasonable alternatives," which are defined by the  
19 SEPA regulations as:

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

20 WAC 197-11-786.

21 If there is information on significant adverse impacts that is essential to a reasoned choice  
22 among alternatives and the costs of obtaining such information are not exorbitant, the lead agency  
23 must obtain the information and include it in an environmental impact statement. WAC 197-11-  
24 080(2). *See Methow Valley Citizens Council v. Regional Forester*, 833 F.2d 810 (9<sup>th</sup> Cir. 1987).

24 Housing states that "[t]he purpose of the project is to create an affordable, livable  
25 community with safe, high quality housing options for those with low or no incomes, and to meet  
26 the growing demand for open space and recreational opportunities." FEIS at p. 424. 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.

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

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

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

16 FEIS at p. 1-1 (emphasis added).

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

26 Furthermore, 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), it is zoned for single-family residential  
use and subject to a 1991 binding *Settlement Agreement and Covenants Running With the Land*  
and includes amendments thereto between the property owner and the Laurelhurst Community  
Club which set parameters for expansion at the site and provide for mitigation. The site is  
designated as an Institute for Advanced Study under the Settlement Agreement as well as under  
the City’s Land Use Code. There are also covenants in the Settlement Agreement that apply to  
the Talaris site regarding wetlands and landscape maintenance. In 2013 the site received a  
landmark designation, with “controls and incentives” which implement the landmark designation  
in the offing. The Settlement Agreement and its control over the development of the Talaris site  
and other issues associated with it was not analyzed in the FEIS. Housing claims in the FEIS that  
the Talaris site is a mere example, however it goes on to analyze the site as its off-site affordable  
housing alternative as if it were a realistic, reasonable, and achievable alternative, as the *only*  
alternative that would preserve Fort Lawton as a public park is inherently unreasonable.

At the same time the Talaris site is not a reasonable site because the City of Seattle does  
not control it or even have a chance of acquiring it. In January, 2018 it was publicly announced

1 that Quadrant Homes has agreed to buy Talaris and proposes building 63 single-family homes on  
2 large lots on the site, estimated to sell for about 2 million dollars each. With Talaris off the market  
3 and no other off-site opportunities identified or evaluated by Housing for affordable housing,  
4 Alternatives 2 and 3 cannot meet the definition of “reasonable alternatives.” Without Alternative  
5 3, the only alternative that would provide park space, the FEIS utterly fails to address the adverse  
6 environmental impacts that development of hundreds of units of housing will have on some of  
7 the last remaining open space in the City.

8  
9 The lack of reliable analysis of the preferred Alternative 1 against Alternatives 2 and 3  
10 suggests that the FEIS is simply rationalizing or justifying a decision already made by Housing  
11 to pursue 238 (237) units of affordable housing at Fort Lawton without regard for reasonable  
12 alternatives that would avoid the irreversible environmental degradation that Alternative 1 will  
13 cause. This is impermissible under SEPA. WAC 197-11-406 (EIS “will not be used to rationalize  
14 or justify decisions already made”).

15  
16 Without Alternatives 2 and 3, only preferred Alternative 1 and Alternative 4 of “no-  
17 action” remain. SEPA mandates that the “no-action” alternative be evaluated and compared to  
18 the other alternatives. WAC 197-11-440(5)(b)(ii). The EIS must “[p]resent a comparison of the  
19 environmental impacts of the reasonable alternatives, and include the no action alternative.”  
20 WAC 19-11-440(5)(b)(vi). An EIS that evaluates only a proposed Alternative and no-action  
21 alternative may be deemed inadequate for not analyzing a sufficient range of alternatives. *Town  
22 of Woodway v. Snohomish Cty.*, 180 Wn.2d 165, 171, 322 P.3d 1219 (2014) (“growth board found  
23 that the county’s EIS was faulty because it did not consider multiple alternatives . . . —the only  
24 alternative it considered was no change at all.”); *Davidson Serles & Assocs. v. Cent. Puget Sound  
25 Growth Mgmt. Hearings Bd.*, 159 Wn. App. 148, 152–53, 244 P.3d 1003 (2010) (noting that the  
26 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 FEIS. With Alternative 1  
standing alone with no reasonable alternative to compare its environmental impacts against, the  
FEIS 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

1 reasonably detailed analysis of a reasonable number and range of alternatives.”). The FEIS for  
2 the Fort Lawton Reserve Center Redevelopment Project fails to meet this standard because it  
3 offers only one feasible alternative: preferred Alternative 1. Contrary to SEPA, the FEIS leaves  
4 no opportunity for a reasoned choice among other alternatives that could be feasibly attained or  
5 approximate the project’s objectives.

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

15 **B. The FEIS fails to disclose and analyze probable significant adverse impacts associated**  
16 **with Seattle Public School uses at Fort Lawton.**

17 On November 20, 2017, the City of Seattle and Seattle Public Schools (“SPS”) entered  
18 into a Partnership Agreement<sup>1</sup> whereby the City and SPS agreed to a collaborative partnership to  
19 “jointly achieve unique opportunities for developing SPS facilities, including SPS [*sic*] in the Fort  
20 Lawton Redevelopment Plan.” The detailed agreement includes provisions for a joint  
21 development agreement, partnership and financial commitments, and mobility planning. While  
22 the agreement sets forth plans to utilize a portion of the Fort Lawton property for a range of  
23 school-related uses, and both the City and Seattle and SPS have made numerous public statements  
24 that a portion of the Fort Lawton property is being land banked for a future school; and in order  
25 to avoid having to include such a use in the FLARC EIS process Housing and SPS have agreed  
26 to a pretense that SPS is interested in the land only as “playfields” in order to avoid changing the  
makeup of Alternative 1, and by extension to avoid having to analyze that aspect in the present  
BRAC/EIS process. The FEIS states that the environmental impacts of such a partnership or  
independent action by SPS would be evaluated at a later date. FEIS at p. 2-6 to 2-8. This position,  
the piecemealing of a project, 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/partnership  
must be considered together as one proposal in the same environmental document. *See* WAC  
197-11-060(3)(b).

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

---

<sup>1</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.”

1 necessitates additional disclosure, or a worst-case analysis be advanced, concerning the impacts  
2 of SPS uses at Fort Lawton.

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

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

11 **Land Use**

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

21 The Key Findings in the Land Use section of the FEIS (§ 3.6 (1-7)) state:

22 Alternative 1 would require that a portion of the Fort Lawton site be rezoned  
23 from the existing SF 7200 zoning to Lowrise residential zoning (e.g. LR 2 (M1))

24 . . .

25 Alternative 1 and 2 [*sic*, believed to refer to Alternatives 2 and 3] would require  
26 that a portion of the Talaris site be rezoned from SF 5000 to lowrise residential  
zoning (e.g. LR 2 (M1); a Comprehensive Plan amendment would also be  
required to allow for a rezone to LR2 (M1) zoning. FEIS (§ 2 (2-39))

In the FEIS'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.

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

5 The rezone criteria also indicate a gradual transition between zoning categories is  
6 preferred. SMC 23.43.008.E. The City’s proposal to alter the zoning of the Fort Lawton site is  
7 not in alignment with the rezone policy of gradual transition, as evidenced by the City’s Figure  
8 3.6-3; a rezone would dramatically alter the greater Fort Lawton and Magnolia area.

9 When discussing the rezones that would be required for both sites under Alternatives 1, 2  
10 and 3, the FEIS states that the applicant will prepare a rezone proposal for Alternative 1, and City  
11 Council approval would be required. The FEIS relies speculatively on future actions, such as  
12 amendments to Subchapter II of SMC 23.42, and summarily states that “the relationship of the  
13 project to the criteria in SMC 23.34.008 will be evaluated” when an application for a rezone is  
14 made. This does not adequately address the Code’s rezone criteria. While the FEIS addresses  
15 some aspects of the rezone criteria—describing the historic land use patterns and current zoning—  
16 it does not provide a reasoned and complete analysis of how such a rezone application would  
17 conform to the Code. Given that a rezone would be pivotal to using either Fort Lawton or Talaris  
18 for affordable housing development, Housing’s failure to specifically address the rezone criteria  
19 in SMC 23.34 fails to provide the decision maker with information needed to make a reasoned  
20 decision on the proposal.

21 With respect to the Talaris site (or some other, unidentified site for off-site affordable  
22 housing), the FEIS again fails to analyze the criteria for rezoning the site from Single-Family  
23 5000 to Lowrise (LR2). The Talaris site is surrounded by areas zoned primarily SF 5000, with  
24 some NC2 and LR3 to the north. The *City of Seattle 2035 Comprehensive Plan* designates future  
25 land use of Talaris as single-family residential, not Lowrise; as well as its litigious neighbors, the  
26 Laurelhurst Community Club hold a Damacles Sword so to speak over the Talaris site, ready to  
challenge any development that does not meet with their approval. As with the Fort Lawton site,  
without any analysis of the rezone criteria, the feasibility of a rezone, or of the impact of the  
Settlement Agreement and Landmark designation it is impossible for Housing to make a reasoned  
decision among preferred Alternative 1 and Alternatives 2 and 3.

The FEIS fails to also consider the effect of the City’s Mandatory Housing Affordability  
(MHA) program on the Alternatives. The implementation of the MHA/HALA programs may  
allow for higher building heights and greater density at the Fort Lawton or Talaris site – none of  
which has been analyzed in the FEIS.

### **Recreation and Open Space**

The FEIS fails to address how its alternatives conform to the City’s Comprehensive Plan  
and other goals for open space. 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

1 with affordable or market-rate housing works against the identified policy to “[e]nhance wildlife  
2 habitat by restoring forests and expanding the tree canopy on City-owned land.” *Id.* at 142.

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

14 Despite the fact that the 1986 Discovery Park Master Plan is not binding on Fort Lawton,<sup>2</sup>  
15 the Fort Lawton Army Reserve property as part of the former army base, is inextricably linked to  
16 Discovery Park. Housing does not provide adequate analysis of how developments at the Fort  
17 Lawton site – either affordable housing or market-rate housing – complement or impede the future  
18 of Discovery Park. Nor does the FEIS contemplate how forfeiting open space plans at Fort  
19 Lawton may negatively impact development within Discovery Park itself in the future. Such an  
20 analysis is important for understanding the future of Discovery Park, the future of open space in  
21 Seattle, and the potential for future efforts to chip away at the park.

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

23 In the years to come there will be almost irresistible pressure to carve out areas  
24 of the park in order to provide sites for various civic structures or space for  
25 special activities. There will in the future be structures and activities without  
26 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>3</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

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<sup>2</sup> The City acknowledges that this was stated in *Magnolia Neighborhood  
Planning Council v. City of Seattle*, 155 Wn. App. 305 (2010).

<sup>3</sup> Discovery Park Master Plan, Fort Lawton Park Plan (1972) (emphasis added),  
available at:  
[https://www.seattle.gov/Documents/Departments/ParksAndRecreation/Parks/master  
plan1.pdf](https://www.seattle.gov/Documents/Departments/ParksAndRecreation/Parks/master<br/>plan1.pdf)

1 Fort Lawton as a public park space, which may include the provision of community services such  
2 in a park setting.<sup>4</sup>

### 3 **Transportation**

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

9 ➤ **The FEIS fails to reasonably analyze impacts to local intersections.** By focusing on a  
10 limited number of street intersections, the FEIS has not adequately addressed the full scope  
11 of the impact of additional cars on the existing over-burdened transportation infrastructure  
12 in the area surrounding Fort Lawton, or the impact of nearby transportation, commercial,  
13 and residential projects and how they will affect the intersections analyzed in the FEIS. The  
14 FEIS states that Alternative 1 would generate an estimated additional 1,260 vehicle trips per  
15 day going to and from the Fort Lawton area. FEIS at p. 3.10-10. It concludes that no  
16 significant traffic impacts are anticipated at the Fort Lawton site because all studied  
17 intersections are expected to continue to operate at "LOS B," which is an acceptable level of  
18 operation. FEIS at p. 3.6-51. The FEIS chose four intersections to evaluate for purposes of  
19 traffic volume.<sup>5</sup> FEIS at p. 3.10-3. Housing expects these study area intersections to handle  
20 direct access to and from the site, and what are referenced as "Beyond Site Study Area"  
21 intersections, including W. Emerson Pl and Gilman Ave. W., W. Dravus Street, and the  
22 Magnolia Bridge. Impacts with respect to traffic on these roadways have not been  
23 addressed. Magnolia is served by a finite number of access points, which already  
24 experience congestion. The addition of approximately 600 new residents, and  
25 approximately 1,200 new vehicles per day, will have a significant impact both on ingress  
26 and egress to the site for residents and visitors, as well as to the surrounding area and  
existing residents. Housing should provide a more thoroughly analysis of these impacts,  
expanding its traffic review to include a more in-depth analysis of the greater numbers of  
streets and intersections.

➤ **The FEIS fails to reasonably analyze cumulative traffic impacts.** The assessment of  
Alternatives 1, 2, 3 also fails to disclose and analyze cumulative adverse impacts caused by  
pipeline projects and anticipated growth in the greater Magnolia area. The FEIS states  
generally that "few sites are available for development/redevelopment and any development  
in the area generated indirectly by development of the Fort Lawton site and Talaris site  
would likely occur incrementally over time. New development in the vicinity would be  
controlled by existing Comprehensive Plan policies and zoning regulations. As a result,

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<sup>4</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.

<sup>5</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.

1 significant indirect/cumulative impacts to land uses in the area are not anticipated.” FEIS at  
2 p. 3.6-19 et seq. However, this assertion ignores the effects of the Mandatory Housing  
3 Affordability zoning changes, changes to accessory dwelling unit regulations on the  
4 immediate vicinity of the Fort Lawton Redevelopment Project including along Gilman  
5 Avenue West and Government Way. It also undercuts the City’s goals of ensuring there are  
6 sufficient services and resources for residents, by making the false assumption that there  
7 will be little growth from rezoning and new development. Beyond City policy changes,  
8 public and private developments in the Fishermen’s Terminal area, the Dravus Street-15<sup>th</sup>  
9 Avenue NW-Interbay corridor area, at the Port of Seattle’s North Bay property, all will very  
10 likely impact transportation and public services, yet the FEIS does not account for those  
11 projects and such impacts. Likewise missing in the analysis of traffic impacts is Sound  
12 Transit’s West Seattle and Ballard Link Extension project. Depending on the alignment  
13 selected by Sound Transit, the Ballard Link will include a station at Dravus Street and either  
14 at 15<sup>th</sup> Avenue NW or at 21<sup>st</sup> Avenue West, further creating traffic impacts. A thorough  
15 disclosure and analysis of the potential adverse traffic impacts on the greater Magnolia  
16 community has not been developed. The analysis must disclose and assess reasonably  
17 foreseeable growth and density changes, the impacts of specific transportation and major  
18 building projects in the vicinity of the proposal, as well as the City of Seattle’s Growth  
19 Management Act transportation concurrency obligations.

20 ➤ **The FEIS fails to reasonably analyze traffic impacts at Talaris or another site.**

21 Similarly, the FEIS did not adequately discuss the impacts of traffic near the Talaris site. It  
22 concludes that development at Talaris would only result in a less than one second delay at  
23 two intersections, which Housing does not consider a significant impact. However, two  
24 intersections near Talaris will operate at LOS F and E (which constitute the worst ratings  
25 and indicate poor traffic operations with long delays). The FEIS takes an “oh well”  
26 approach to this. 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 FEIS provides no analysis of traffic impacts  
on any other off-site location for affordable housing.

➤ **The FEIS fails to reasonably analyze impacts to bus routes.** The information provided in

the FEIS 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.” FEIS at p. 3.10-5. Alternative 1 is expected to accommodate approximately 596  
new residents. FEIS at p. 2-21. One bus line cannot adequately accommodate this increase  
in demand. The FEIS 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 FEIS 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.

- 1 ➤ **The FEIS fails to reasonably analyze impacts to residential transit trips.** The FEIS cites  
2 2010 Census data for the fact that 25% of residential trips in Magnolia occur by transit.  
3 Based on this projection, it concludes the existing bus service would be adequate, which  
4 overlooks the reality that many senior citizen residents may not drive, many residents may  
5 not own vehicles, and many residents may not have a driver's license. The fact that 25% of  
6 residential trips in Magnolia occur by transit right now is not a transferrable fact in light of  
7 the proposed uses at Fort Lawton. The FEIS does not adequately disclose and assess the  
8 impacts of increased transit demand as a result of the proposal.
- 9 ➤ **The FEIS fails to reasonably analyze the feasibility of bike share programs.** It is not  
10 realistic for the City to incorporate bike share programs as an adequate measure of  
11 alternative means for residents to transit in and out of the Fort Lawton area. As described  
12 above, many residents will be senior citizens who will not be able to utilize bike share  
13 programs. Furthermore, the topography of the area, distance to resources and services, and  
14 practicality generally do not lend themselves to assuming residents of the new development  
15 will use a bike share program. As stated in the September 2017 letter, expansion of bike  
16 lanes and routes is not envisioned by the City in the area around Fort Lawton. It is unlikely  
17 that young children and/or their parents will be able to utilize a bike share program to ride to  
18 the grocery store or carry out other essential errands. Mitigation of this kind is not realistic.
- 19 ➤ **The FEIS fails to reasonably analyze parking impacts.** The FEIS also raises issues with  
20 respect to parking and does not fully address them. Under Alternative 1, 266 parking spaces  
21 would be provided, with peak parking demand exceeding that supply by up to 28 spaces  
22 (FEIS at p. 1.12), indicating parking demands would exceed available parking. The FEIS  
23 concludes that no significant impacts are expected as a result, citing that the parking demand  
24 from the affordable housing could be addressed through parking management strategies.  
25 FEIS Ibid. Yet there is no adequate disclosure or analysis of these parking management  
26 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.

### **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”).

The disclosure and assessment of historic and cultural resources on both properties is inadequate. The DEIS stated 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. The DEIS indicated that at least one hall, Harvey Hall, could meet the criteria for

1 Seattle Landmark. The impacts of designating Harvey Hall or Leisy Hall as landmarks and  
2 converting the Fort Lawton to high-density housing is not adequately studied in the FEIS because  
3 it concludes that “Most of the buildings onsite are not expected to meet the criteria to be  
4 designated Seattle landmarks”. FEIS at p. 3.6-39.

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

16 Talaris was already designated as an historic landmark by the City of Seattle in 2013, and  
17 is eligible for listing in the National Register for Historic Places. FEIS at p. 3.6-9. The FEIS  
18 points out that alterations to the existing site would be inconsistent with the siting and design of  
19 existing buildings and the surrounding neighborhood. FEIS at p. 3.9-13. Taking into account the  
20 fact that Certificates of Approval would need to be obtained for alterations to the site, these  
21 impacts contribute to the unreasonableness of Talaris as an alternative site.

### 22 **Biological Resources**

23 The FEIS does not adequately disclose and analyze probable significant adverse impacts  
24 on wildlife and wildlife habitat. The FEIS acknowledges that permanent displacement of certain  
25 wildlife “less tolerant of urban uses” may occur, but states that past military use of Fort Lawton  
26 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.

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 FEIS 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.” FEIS 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 FEIS 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. FEIS at p. 3.2-8. The FEIS’s treatment of wetland and  
similar biological resources is inadequate on its face.

The FEIS fails to disclose and adequately address adverse impacts on wildlife at both Fort  
Lawton and Talaris. The FEIS states that Great Blue Herons have been found on or near the site

1 in the past, but does not describe how development at Fort Lawton might impact Great Blue Heron  
2 in the future. Also, the FEIS describes that site plans would avoid directly impacting a Bald Eagle  
3 nest tree, and surrounding areas, but bases its conclusion on “preliminary site plans” only. SEPA  
4 requires that additional information be obtained and disclosed with respect to probable significant  
5 adverse impacts to both listed and de-listed species, including the Bald Eagle.

6 The potential for permanent displacement of species during and after construction is not  
7 adequately discussed, nor is the potential for disruption during breeding season. Fort Lawton is  
8 adjacent to over 500 acres of open park space that serves as wildlife habitat. The FEIS must  
9 address potential adverse impacts to wildlife and wildlife habitat at the Fort Lawton site in relation  
10 to Discovery Park. The Fort Lawton property presents a rare opportunity to restore wildlife habitat  
11 and provide contiguous wildlife habitat within Seattle. *See* Comprehensive Plan at 68 (LU 17.2,  
12 17.20 Aim to promote and protect contiguous wildlife-habitat areas).

### 9 **Earth**

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

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

### 16 **Noise**

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

### 23 **Public services**

24 The FEIS does not adequately disclose the impact on public services or the lack thereof  
25 for both sites. Specifically, the FEIS does not provide sufficient analysis of how on-site services  
26 will mitigate the need for a level of increased responsiveness on the part of local law enforcement,  
emergency response providers, and other qualified medical or behavioral personnel. The FEIS  
contemplates that certain services will be provided on-site, including case management services  
by Catholic Community Services of Western Washington and residential counselors. FEIS at p.

1 3.6-42. The FEIS references these services as possible mitigation for the need to utilize police  
2 services, emergency medical services or other medical or behavioral personnel, but does not  
3 adequately address how these services will work to prevent involvement by law enforcement, or  
4 provide for the behavioral or medical needs of residents. Any influx of nearly six hundred people  
5 to a small area will require an increased local law enforcement presence and other public services.  
6 An increase in elderly residents and children will also require additional medical services in close  
7 proximity to the site.

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

### 15 **Aesthetics/Visual Resources**

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

### 17 **Housing**

18 The FEIS's disclosure and analysis of housing impacts is inadequate. The FEIS states that  
19 no significant housing impacts are expected to result from any of the redevelopment alternatives,  
20 in spite of the fact that over 200 housing units will be added to the Fort Lawton and/or Talaris  
21 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).

22 The FEIS fails to adequately describe how high-density residential development at Fort  
23 Lawton makes sense based on its lack of designation as part of an Urban Center or Urban Village.  
24 Such growth cuts against the City's goal to grow in designated Urban Centers or Urban Villages.  
25 Seattle's Comprehensive Plan has goals of accommodating "a majority of the City's expected  
26 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

1 2035 Comprehensive Plan, implementation of Alternative 1 remains inconsistent with the City's  
2 Urban Center and Urban Village Strategy.

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

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

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

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

16 BRAC procedure requires that the NOI process be re-opened to competitive bidding and  
17 that a new RFP solicitation process be undertaken to allow not just the many other stakeholders  
18 and providers who are players and entrants in the homeless and low-income housing fields since  
19 2007, but any other entity or organization that is eligible to participate in the BRAC process.

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

22 The U.S. Army Corps of Engineers' ("Corps") Environmental Assessment ("EA") and  
23 Finding of No Significant Impact ("FONSI") may no longer be relied upon by the City, HUD, the  
24 Department of the Interior or the Corps because they are based on a different project than what is  
25 now proposed among the EIS Alternatives. The FONSI relied upon an earlier Traditional  
26 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.

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 FEIS 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 FEIS by stating, ". . . updated National  
Environmental Policy Act (NEPA) review . . ." will be required. FEIS at iii and iv.

1 Under BRAC and NEPA, the Military Departments must identify and consider the  
2 proposed action and reasonable alternatives and their respective environmental impacts. Not only  
3 does the City acknowledge in the FEIS that the prior NEPA review is inadequate, to the extent  
4 that the Corps intends to rely on the City's flawed SEPA alternatives analysis in support of a new  
5 FONSI or ROD, that analysis is flawed for the reasons stated above. Accordingly, the City's  
6 Redevelopment Plan cannot be given substantial deference under BRAC regulations and federal  
7 law.

## 8 **F. Miscellaneous**

9 **Notice.** The SEPA review of the plans for the intense development of the Talaris site  
10 have been carried out on a relatively stealth basis. Its inclusion as a proposed development  
11 alternative in the scoping and subsequent DEIS and FEIS occurred without compliance with  
12 basic SEPA procedures including notice to agencies and known community stakeholders  
13 associated with the site. For example, the various notices leading up to issuance of the FEIS  
14 made no mention of Talaris. The FEIS contains elaborate documentation of scoping process  
15 notices given to Magnolia residents at their home addresses, but no such measures were  
16 undertaken for Laurelhurst residents. As a result of these and related fundamental shortcomings  
17 the FEIS was not prepared in accordance with WAC 197-11-455.

18 **BRAC Purpose.** The goal of the BRAC process is in part intended to alleviate the  
19 socioeconomic effects upon the local community that results from Defense base closures,  
20 realignments, and Defense contract-related adjustments. The FEIS fails to identify and analyze  
21 the socioeconomic impacts from the Army's closure of its Reserve Center, and accordingly  
22 establish mitigation plans and strategies for those impacts.

23 **Discovery Park Masterplan.** In 2009 the Honorable King County Superior Court  
24 Judge Catherine Shaffer made her oral ruling in matter of Magnolia Neighborhood Planning  
25 Council v. City of Seattle, which is incorporated herein for any and all purposes as if fully set  
26 forth herein, stating:

“I think that the petitioner [MNPC] has made a compelling case to me that much of the  
Master Plan indicates a desire that any future use of Discovery Park, including the usage within  
it at the time of the Plan's adoption and its changes in usage over time by others that were not  
for park purposes, be handled in accordance with the detailed provisions of the Master Plan and  
certainly, as I've just indicated in my Findings of Facts, the ARC property is discussed within  
the Master Plan and it's specifically discussed as one of those nonpark uses within Discovery  
Park.

“So there is a compelling argument here from the petitioner that there must be  
reference to the Plan when one deals with any of this nonpark uses within the park because  
that's what the Plan is for: it is for everything that happens within the park...The City must at  
least explain why it's not considering the Master Plan. There is enough here in the Master Plan  
to indicate that the Army Reserve was thought of as part of the nonpark uses within the  
Plan. No one contemplated as it appeared in 1972, 1974 or 1986, and why would they, that this  
particular nonpark use would ever become a potential park use. They thought the Army  
Reserve was going to stay there. But having said that, it seems to me that at a minimum, the  
City at least has to make a determination and it has to do it publicly, about whether or not the

1 Master Plan applies to the ARC property and if not, why not...there is a need here, however, for  
2 the City to acknowledge the Plan and talk about why it does or does not apply to what the City  
wants to do with the ARC [Army Reserve Center] property.”<sup>6</sup>

3 The FEIS fails to comply with the judge’s directive or guidance, and fails to fully  
4 explore, analyze, and otherwise identify and analyze the socioeconomic impacts from the  
Army’s closure of its Reserve Center, and accordingly establish mitigation plans and strategies  
5 for those impacts.

6 **Improper Project Identification and Characterization – Residential versus Multi-  
Use Behavioral Health, Medical Care, Substance Abuse Treatment, and Social Services  
7 Center with Shelter and Residential Components.** The FEIS mis-identifies, mis-  
8 characterizes, and misrepresents its “affordable, low income housing, homeless residence”  
9 alternative as being strictly residential in nature and thus subject to and controlled only those  
10 land use, planning, building and occupational permitting, building use, and operational elements  
that would apply if that were true. In reality a majority of the “housing” elements in the FEIS  
11 alternatives includes what best could be described as a multi-use healthcare center, providing  
for the treatment of behavioral, medical, social, and substance abuse disorders and needs, with  
12 shelter, custodial, sleeping, residential, and even possible in-patient services provided also.

13 The FEIS glosses over these aspects of the so-called affordable, low income, homeless  
14 housing alternative and fails to fully disclose, analyze, and propose mitigation plans for the fact  
that what is being proposed is not traditional, residential housing, not in the common and  
generally accepted definition of that, but instead a multi-use behavioral, medical, substance  
15 abuse treatment, and social services center that includes shelter and a range of  
16 residential/residential like components to it.

17 **Environmental Justice.** The EIS analysis is skewed by repeated references such as the  
18 one quoted below to “environmental justice” as a factor supporting intensive homeless and  
affordable housing development at Fort Lawton or the Talaris site:

19 “The site would not be redeveloped at this time, and environmental justice conditions would  
20 continue as under existing conditions. The opportunity to provide affordable housing in the  
[Magnolia or] Laurelhurst neighborhood[s], and the positive impacts of diversifying a  
neighborhood that is disproportionately occupied by higher income households, would not be  
21 realized.” FEIS at 1-16.

22 Such references are political statements rather than objective analyses of recognized  
23 environmental factors that are properly included in an EIS. Further, the FEIS like the DEIS  
before it offers only flimsy bases unsupported by valid comparative data for its “environmental  
justice” premises. The “study” relied upon is not a typical peer reviewed academic study, but  
24 combines historical reportage with advocacy journalism. Further, what it reports concerning the

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25 <sup>6</sup> King County Superior Court. “Honorable Catherine Shaffer: Summary Judgment Motion Oral  
26 Ruling”. Magnolia Neighborhood Planning Council v. City of Seattle. Pages KC Superior Court Case No.  
08-2-35092-4 SEA. March 13, 2009.

1 past history of racially restrictive covenants throughout the City of Seattle does not support the  
2 FEIS opinion that both Magnolia and Laurelhurst are currently venues for true “environmental  
3 injustice”. The economic realities attendant to these neighborhoods with numerous city and  
4 water views and other amenities of value in the post-“Boeing bust” real estate market do not  
5 equate to “environmental injustice.” The FEIS assumes without analysis that any  
6 “environmental injustice” in Magnolia or Laurelhurst, e.g. in the form of a relative scarcity of  
7 affordable housing, is a consequence of covenants and discrimination of almost 100 years ago.  
8 At the same time, the FEIS fails to acknowledge or analyze the far more immediate effect of  
9 City of Seattle urban planning policies and its voluminous amount of commercial and  
10 residential building project approvals. It likewise fails to acknowledge the City’s facilitating the  
11 demolition of affordable housing throughout the city. In general, the City’s zoning actions and  
12 approvals of Major Institution expansions, causative agents for loss of affordable housing, are  
13 not recognized at all. Meanwhile, the FEIS improperly includes politically expedient, unfair and  
14 provocative accusations that any lack of affordable housing in the Magnolia or the Laurelhurst  
15 neighborhoods is the result of those communities’ biases and bigotry.

## 10 V. RELIEF REQUESTED

11 **What relief do you want? (Specify what you want the Examiner to do: reverse the decision,  
12 modify conditions, etc.)**

13 Appellant requests that the Hearing Examiner remand the FEIS to the City of Seattle as  
14 the designated LRA with instructions to:

15 1. Re-start the BRAC Notice of Interest (NOI) process, release a new request for NOI’s  
16 and to competitive bidding accordingly, with a new RFP solicitation process undertaken to allow  
17 not just the many other stakeholders and providers who are providers and entrants in the homeless  
18 and low-income housing fields since 2007 an opportunity to propose their own uses and projects  
19 for the FLARC property, but also to allow any other entity or organization that are eligible for a  
20 public benefit conveyance to participate in the BRAC NOI process; and then proceed to  
21 administer the subsequent SEPA scoping and environmental review process.

22 2. Prepare a Supplemental EIS(s) as necessary with adequate, notice, review, and  
23 commenting period(s) in order to adequately address the myriad of deficiencies itemized above  
24 in this Notice of Appeal.

25 Filed on behalf of the Discovery Park Community Alliance on this 11<sup>th</sup> day of April,  
26 2018.



Elizabeth A. Campbell, MPA  
Founder and Director of DPCA

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Filed on behalf of Elizabeth A. Campbell on this 11<sup>th</sup> day of April, 2018.



Elizabeth A. Campbell, MPA  
Individually