



November 8, 2017

RE: Accessory Dwelling Units EIS Scoping

Dear Councilmembers:

I am writing to provide Sightline's comments on scoping for the Environmental Impact Statement (EIS) on proposed changes to rules governing accessory dwelling units (ADUs). In general, we support the scoping as described for Alternative 2. However, to achieve a more accurate assessment of the potential impacts on affordability and displacement, we believe that the city must expand the analysis to more closely study effects on the citywide housing market, as explained below.

One of the most contentious issues regarding homebuilding is the concern that affordability may suffer when older, cheaper homes are demolished and replaced with new housing that's more expensive. Case in point, the hearing examiner ruled to require the EIS in question in part because, "the evidence here shows that the legislation would adversely affect housing and cause displacement of populations."

As I noted in an [April 20, 2017 Sightline article](#), that evidence was paper thin:

"The hearing examiner's conclusion... relies on one witness' opinion that the proposed liberalization would push the teardown economics across a tipping point, an opinion that cannot be supported by on-the-ground data because there is none."

Worse, the hearing examiner's ruling ignores impacts at the citywide scale. Paraphrasing my article:

"Economic displacement (caused by rising rents) is displacing far more, probably at least ten times more, people in Seattle than is physical displacement (caused by demolition of existing low-cost housing). In the (likely rare) cases when an existing home is replaced by a new house with an ADU, the net effect citywide is less displacement, because creating more homes addresses the primary cause of rising rents: not enough homes for all the people who want to live in Seattle.

"The teardown of a low-value house might cause the physical displacement of that house's tenants. But preserving that existing house and forgoing a new ADU (or two) will only speed the increase of rents in cheap houses by exacerbating the housing shortage that is driving up prices across the board. There is no escaping the fact that every home not added to Seattle's housing stock leads to one fewer low-income family that can live in the city. The people who are indirectly displaced when construction of new homes is prevented are every bit as harmed as the people displaced by teardowns."

[This short animation](#) illustrates the above housing market and displacement dynamics. Furthermore, if one ignores these dynamics, then one can just as easily speciously claim that not only ADU liberalization, but *any* rezone that raises allowed housing density will cause displacement. Paraphrasing again:

“If teardowns for the sake of ADU construction are a threat to affordability, the same is true for any other form of homebuilding. When there’s demand for housing, any change of laws that allows larger buildings will accelerate redevelopment. And the homes that get replaced first will be the cheap, worn-out, neglected ones—the ones with the lowest rents. But that’s not all there is to the story, because when redevelopment yields a larger number of homes, it eases competition. The pressure pushing up rents is relieved, from the top of the market all the way to the bottom. Thus, as tempting as it may be to impose restrictions in the hope of saving low-cost homes, doing so only makes things worse for affordability overall.”

In other words, if the city can’t defend the liberalization of ADU rules against claims that it causes displacement of marginalized populations, then it can’t defend *any* proposed upzone for the same reasons.

To accurately reveal net impacts on displacement, we request that the city broaden its scope to include analysis at the neighborhood and citywide scales that fully accounts for the market-wide effects of increased supply on prices, rents, and *economic* displacement under the conditions of a housing shortage. The city’s analysis must answer this fundamental question: What is the net effect of increasing the supply of ADUs on rents, prices, and displacement on average throughout the city?

The city recently conducted related analyses in EISs for the U District rezone and the citywide MHA rezones, both indicating that changing rules to allow more homebuilding reduces displacement. These findings likewise suggest that the net impact of the proposed ADU legislation would be less displacement, not more. The city can reference and build upon these prior studies for the ADU analysis.

Regarding the potential impacts on marginalized communities specifically, the city’s EIS analysis for citywide MHA shows a greater rate of single-family home demolitions for redevelopment in higher cost neighborhoods. These data suggest that single-family teardowns for replacement with a new house and ADU would also be more prevalent in expensive neighborhoods than in the lower-cost neighborhoods that typically have higher populations of people of color (POC). The city should compare the real estate development economics in high- versus low-rent areas of the city to assess the potential rate of single-family teardowns in communities of color. The city should also analyze how, conversely, under the No Action Alternative, fewer ADUs could accelerate rent increases of existing housing and result in greater economic displacement of POC, compared to Alternative 2.

To more fully understand the impacts liberalized ADU rules may have on POC, the city should also expand the analysis to explore the widest possible range of effects. For example, could a greater number of ADU rentals help stabilize communities of color by providing lower cost housing options in the single-family neighborhoods of southeast Seattle? Could they also provide better access for POC to the more segregated, high opportunity neighborhoods prevalent in the northern parts of the city? Could the option of adding an ADU help African Americans hold on to their single-family homes by supplementing their incomes? There are likely other factors to consider. The important question the city must answer is: all told, could the No Action alternative actually result in greater net adverse impacts on POC?

We also request that the city focus additional analysis specifically on the owner occupancy requirement. What impact would it have on the rate of ADU production? Since it would preclude the possibility of ADU construction in the one in five single-family houses in Seattle that are currently rentals, how many ADU units would be sacrificed just for that reason? Would it make banks more wary of financing the construction of ADUs? If analysis shows that an owner occupancy requirement would reduce ADU production, the city must assess the effects of the *loss* of the new ADU homes on affordability and displacement--that is, could an owner occupancy requirement intended to reduce displacement actually have the net opposite effect?

Lastly, we believe that the city should expand the ADU EIS scope to analyze related zoning changes that would allow duplex, triplex, and small apartments in single-family zones citywide, as proposed in the 2015 HALA report. These rule changes raise concerns about demolitions and displacement that are similar to those raised by the proposed ADU legislation in question here. So it would be relatively straightforward to expand the analysis on ADUs to cover additional small-scale building types.

Thank you for the opportunity to provide comments on the ADU EIS scoping.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan Bertolet". The signature is fluid and cursive, with a long horizontal stroke at the end.

Dan Bertolet
Senior Researcher



NOT IN YOUR BACKYARD: COTTAGES, IN-LAW APARTMENTS, AND THE PREDATORY DELAY OF HALA'S ADU RULES

Abuse of a 1971 environmental law is displacing hundreds of low-income families from Seattle this year.



Author: **Dan Bertolet**

(@danbertolet) on April 20, 2017 at 9:30 am

When it comes to urban homes, it's hard to imagine anything less threatening than [granny flats](#). But surprisingly, in Seattle last year instill fear they did, provoking a handful of anti-housing activists to [appeal proposed rule changes](#) intended to spark construction of in-law apartments and backyard cottages. And in an exasperating turn of events, the appeal was upheld.

Of all the 65 recommendations in Seattle's [Housing Affordability and Livability Agenda](#) (HALA) plan, these homes—collectively known as [accessory dwelling units](#) (ADUs) in urban planner-speak—should have been one of the easiest wins. Tucked away on single-family lots, ADUs expand access to great neighborhoods for families who can't afford a pricey, larger detached house. At the same time, they let more people live near jobs and services, shortening carbon pollution-spewing commutes and reining in sprawl.

Still, in many cities throughout Cascadia and the United States, [the road to legalizing ADUs has been long](#). In Seattle's case, that road [hit a wall](#) made of outdated thinking on urban development encoded in state laws that, ironically, were enacted to protect the environment. Because of the appeal, the city must now go back and conduct an exhaustive environmental review that is unlikely to substantially change the proposed ADU reforms. All it will do is squander time, postponing the fixes by about two years to [mid-2018](#).

And every year of delay is a lost opportunity to create hundreds of new homes for people who do, or who want to, call this city home, all because a tiny minority of residents don't want their neighbors to offer small rentals in their basements and backyards. It's a phenomenon reminiscent of what writer Alex Steffen calls "[predatory delay](#)," in which the fossil fuel industry has stalled action on climate change for its own benefit.

There are consolation prizes available to Seattle from this damaging setback, and I'll get to them. But first, I'll review the policies that can unlock ADU homebuilding, then tell the disheartening story of the appeal of Seattle's proposed ADU rule changes, and finally, lay out the flaws in the obsolete regulations that led to all the trouble.

What's holding back Seattle's ADUs?

In a previous article I surveyed ADUs in Cascadia's three biggest cities, finding that **Vancouver trounces both Seattle and Portland** in the ADU race. As of a year ago, a third of Vancouver's single-family houses had a permitted in-law apartment or backyard cottage, compared to only about one percent of the houses in both Seattle and Portland. Vancouver reigns supreme mostly because officials simply ceased banning ADUs. They:

- 1) stopped mandating an off-street parking spot for each ADU;
- 2) did not require the owner to live on-site;
- 3) allowed both an in-law apartment (constructed within the main house) and a separate backyard cottage on each lot; and
- 4) provided great latitude on size, height, and placement of ADUs.

Consequently, Vancouverites have been adding roughly **1,000 ADUs per year** to their single-family neighborhoods and now have some 27,000 total. Portland got it right on three of these four rules. The exception is that the Rose City still limits ADUs to one per lot. But still, it has seen the number of **ADU homes ramp up** considerably, as shown in the chart below. The city issued about 600 permits in 2016, and by this year's end it will have an estimated 1,900 completed ADUs citywide, an increase of about 300 per year since 2015.

In 2016, a year when developers opened nearly 6,000 new apartments in the city, Seattle added only 156 ADUs, up from 116 the year before.

In contrast, Seattle's **current regulations** fail on all four counts. As a result, despite high and rising rents (and soaring home equity that owners could borrow against to finance ADU construction), recent ADU production lags well behind both Vancouver and Portland. In 2016, a year when developers opened nearly **6,000 new apartments** in the city, Seattle added **only 156 ADUs**, up from 116 the year before.

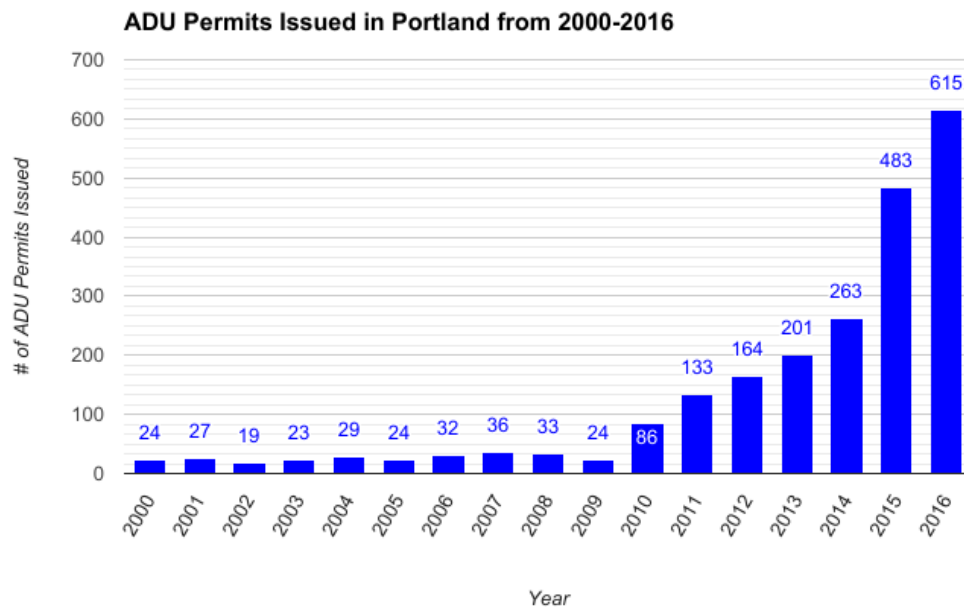


Chart created by accessorydwellingstrategies.com based on data collected by the Portland Bureau of Planning and Sustainability. Note that not all permitted ADUs are built, and some ADUs are built without a permit.

The ADU-blocking appeal

In May 2016, ten months after HALA recommended the four rule changes above, Seattle leaders released an [ADU plan](#) to implement those recommendations, with a few caveats. The city asserted that the proposed changes did not require completion of an Environmental Impact Statement (EIS) under the Washington State Environmental Policy Act (SEPA), because it would cause no appreciable harm to the environment—called a “determination of non-significance” (DNS).

A month later, the Community Council of Seattle’s affluent Queen Anne neighborhood [appealed the DNS](#). The case went to city hearing examiner Sue Tanner, who in December [sided with the Community Council](#). The city now must conduct a full-blown EIS, a process that typically takes at least a year and costs several hundred thousand dollars in city staff time and fees to consultants.

Tanner ruled that the city’s DNS was flawed for several reasons, some of which were procedural. Here, I’ll focus on the more pertinent and meatier allegations: that the DNS did not sufficiently analyze potential impacts on existing housing and displacement, parking, and public services.

The ADU opponents have it backwards on displacement

The ruling states: “The evidence here shows that the legislation would adversely affect housing and cause displacement of populations.” The evidence in question was provided by an economist who testified that allowing both an in-law apartment and a backyard cottage would attract “outside investors” enticed by the prospect of renting three units on a single lot, who would buy older cheaper houses, demolish them, and replace each with a new house and two ADUs. An urban planning consultant added that because investors would pick off the cheapest houses first, the proposed rule changes would cause displacement of lower-income “minority populations,” accelerating gentrification and diminishing the city’s diversity.

In response to previously voiced concerns about this “outside investor” scenario, Seattle’s proposal included a requirement that the owner live on-site for a period of one year after ADU construction was completed. **City planners wrote** that the rule would “ensure that speculative development interests are not able to develop single-family lots with ADUs and backyard cottages.” It turns out, though, as noted in **the appeal**, that there’s a workaround: an off-site owner could create a Limited Liability Corporation (LLC) and grant a tenant a tiny fraction of ownership.

The hearing examiner’s conclusion that the proposed ADU changes would increase displacement hinges on an assumption that this LLC workaround would be prevalent. The ruling also relies on one witness’ opinion that the proposed liberalization would push the teardown economics across a tipping point, an opinion that cannot be supported by on-the-ground data because there is none. No such sordid tales of **ADU speculators run amok** have yet to emerge from Vancouver, though home values are even higher there than in Seattle. Nevertheless, the appeal’s de-facto community leader Marty Kaplan hyperventilates that “**there would be a feeding frenzy** for anybody with a truck and a nail bag to go buy homes and convert them into three rental units and displace the population.”

In the majority of cases in-law apartments and backyard cottages are **added to existing homes**. But for the sake of argument, assuming that some amount of teardowns through speculative redevelopment would occur, even under those circumstances, is the ruling’s contention about displacement correct?

Short answer: no. That’s because the hearing examiner—like the plaintiffs’ expert witnesses—got it backwards: building more ADUs is not a cause of displacement; it’s a cure. As I detailed in a previous article, *economic* displacement (caused by rising rents) is **displacing far more, probably at least ten times more, people** in Seattle than is *physical* displacement (caused by demolition of existing low-cost housing). In the (likely rare) cases when an existing home is replaced by a new house with an ADU, the net effect citywide is less displacement, because creating more homes addresses the primary cause of rising rents: not enough homes for all the people who want to live in Seattle.

Sacrificing ADUs to stop teardowns won’t help

The teardown of a low-value house might cause the physical displacement of that house’s tenants. (It also might not: the previous residents may be the owners, or the teardown may be vacant because it is unfit for habitation. In any case, Seattle’s cheapest houses are already disappearing quickly to make way for exorbitantly expensive new houses built to the maximum size allowed.) But preserving that existing house and forgoing a new ADU (or two) will only speed the increase of rents in cheap houses by exacerbating the housing shortage that is driving up prices across the board. Low-income families will pay more to get the same low-quality housing.

Not only that, when there’s a shortage of homes, the housing market is like a **cruel version of the game of musical chairs**. Those with money always win; those without always lose. Across the city, every ADU that does not materialize is like another a chair taken out of the game, and that translates to a low-income family displaced. Conversely, when one home is transformed into two, even in the worst case scenario where a family gets physically displaced from the original house, those two open “chairs” mean that two low-income families elsewhere in the city will *not* be forced out.

I am not trivializing displacement caused by a teardown. As Seattle grows, city policies and investments can support vulnerable communities so that they can stay in place and benefit from that growth. However, there is no escaping the fact that every home not added to Seattle's housing stock leads to one fewer low-income family that can live in the city. The people who are indirectly displaced when construction of new homes is prevented are every bit as harmed as the people displaced by teardowns.

Worse yet, the hearing examiner's ruling not only has it backwards on ADUs and teardowns but also advances a perilous line of thinking for affordable housing in general. If teardowns for the sake of ADU construction are a threat to affordability, the same is true for any other form of homebuilding. When there's demand for housing, any change of laws that allows larger buildings will accelerate redevelopment. And the homes that get replaced first will be the cheap, worn-out, neglected ones—the ones with the lowest rents.

But that's not all there is to the story, because except for the case of single-family houses, redevelopment invariably yields a **larger number of homes**, easing competition. More players in the game of musical chairs get a seat—that is, a home they can afford in the city. The pressure pushing up rents is relieved, from the top of the market all the way to the bottom. Thus, as tempting as it may be to impose restrictions in the hope of saving low-cost homes, doing so only makes things worse for affordability overall.



Backyard cottage designed by Nest Architecture & Design, located in West Seattle. Photo by Alex Hayden Photography, used with permission.

Stopping SEPA from doing more harm than good

Adopted in 1971, Washington's [State Environmental Policy Act](#) (SEPA) comes from an era of horror stories about polluted cities that spawned a reflexive inclination to limit urban growth. It calls for an assessment of all the *negative* environmental consequences of major government decisions. Will more ADUs increase a city neighborhood's car trips, crowded street parking, local air pollution emissions, energy consumption, or noise? What SEPA doesn't require, though, is equal consideration of *positive* impacts.

Building more ADUs in Seattle's neighborhoods will:

- modestly **reduce car trips** across the metro area;
- decrease car dependence and increase transit ridership, walking, and cycling;
- slow sprawl and thereby protect forest and farmland from development on the metropolitan periphery;
- improve integration by class** (and therefore likely by race) in neighborhoods that currently exclude middle- and working-class people;
- allow less affluent families to live near the city's best parks, schools, and job opportunities;
- trim consumption of fossil fuels; and
- reduce pollution of water and air—and therefore **climate change**.

These **benefits of compact communities**—of density—are ubiquitous in the past three decades' research on cities. Indeed, the main lesson of that entire body of work is that compact, transit-rich, walkable, mixed-use, mixed-income cities are critical ingredients to a sustainable future. Seattle officials shouldn't have to prove this anymore than they have to prove that hydro- and wind-powered Seattle City Light electricity is better for the planet than the coal power that many rust belt cities rely on. So the fact that a handful of homeowners from an affluent neighborhood successfully used SEPA to stall ADU liberalization is, to understate the case, ironic.

Compact, transit-rich, walkable, mixed-use, mixed-income cities are critical ingredients to a sustainable future.

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If there is anything of redeeming value buried in the hearing examiner's decision, it is the chance for the City of Seattle to complete an EIS that once and for all lays to rest the ruling's spurious arguments and demonstrates how the net positive benefits of ADUs dwarf the negatives. Ideally, such an EIS could lay the foundation for city rule changes that would exempt infill housing construction from SEPA entirely.

The most important principle: New housing reduces displacement

First and foremost, the city can address the displacement issue directly to head off future attacks through SEPA against proposals to spur in-city homebuilding. Addressing it directly means establishing the fact that when there's a shortage of housing across a city, adding new homes reduces net displacement, full stop. Even if the new homes are more expensive than the old ones. Because it all comes down to basic math: the bigger the gap between the number of homes and the number of

people who want them, the more the competition for scarce housing floods down the market and pushes people with lower incomes out of the city.

It follows that every time a speculative developer replaces an existing house with a new one that includes an ADU (or two), it's a net win for housing equity. Conversely, every time a teardown is replaced with the largest, most expensive house that will fit on the lot but that can only accommodate one family, it's the worst possible outcome for equitable access to housing. If city officials fail to unequivocally demonstrate these fundamental truths, they will lose the argument from the start.

When there's a shortage of housing across a city, adding new homes reduces net displacement, full stop.

Removing the owner occupancy requirement is key

Seattle's HALA recommended completely removing the owner occupancy requirement because such restrictions hamper ADU production. Also, in 2016 the city conducted **two community meetings** on potential ADU rule changes, and public feedback was nearly 2:1 against owner occupancy rules. As noted above, planners opted for a compromise that mandates one year of owner occupancy. (Incidentally, such rules **may be illegal anyway.**)

Requiring the owner to live on-site removes the **20 percent of Seattle's single-family houses that are rentals** from the pool of possible new ADU sites—sites where adding ADUs to existing rental houses would cause zero physical displacement. Plus, compared to typical homeowners, landlords are more likely to have the financial resources and expertise to invest in new ADUs. For many private homeowners, **financing is the biggest obstacle** to developing an ADU on their own. Risk-taking investors can play a key role in jump starting ADU construction by blazing the trail and establishing the design, construction, and finance infrastructure for ADUs in Seattle that will then make it easier for homeowners to get into the game. Barring non-resident investors from building ADUs will kneecap production, stifling the potential for ADUs to ameliorate Seattle's housing shortage.

Some cities have rationalized owner occupancy requirements as a means to "**preserve neighborhood character,**" based on the perception that rental units may not be well maintained. But if this argument were valid, it would also justify applying the same rule not just to ADUs but to all rental homes, including everything from single-family houses to duplexes, rowhouses, and large apartment buildings. Singling out ADUs is discriminating against renters in the most sought-after residential neighborhoods. In a similar vein, some Seattle officials hope to assuage fears that speculative developers would build "backyard cottages that **don't fit the character of the neighborhood.**" Such arguments prioritize some people's aesthetic tastes over other people's need for housing.

No one's parking is more important than another person's housing

Regarding parking, yes, removing the off-street requirement for ADUs might increase competition for street parking. A 2014 study in Portland found that on average, **each ADU generates 0.46 cars parked on**

the street. But requiring off-street parking has numerous and hefty adverse impacts. Overall, off-street parking quotas make housing more expensive and deepen car dependence—in direct contradiction to two of Seattle's most urgent aspirations for the future.

Besides, the City of Seattle has no obligation to provide convenient parking, free of charge, on publicly owned streets, to single-family homeowners—the vast majority of whom already have plenty of car-storage space on their own property. In an age of impending climate crisis, in a city where close to half of greenhouse gas pollution comes from cars, it's ludicrous that a policy change as benign as allowing more ADUs can be contested through the State Environmental Policy Act *over parking*.

Urban infill such as ADUs makes infrastructure more efficient

The SEPA appeal ruling also cited lack of analysis of public infrastructure, but most of these concerns are based on an outdated context. First of all, as an article I will publish soon details, in most of Seattle's single-family areas, population density has *decreased* over the past few decades with the decline in average household size. In other words, in the not too distant past, existing infrastructure adequately served more people in most neighborhoods where ADUs would be built. The ruling calls out stormwater management in particular, but today's stringent regulations ensure that any new construction will not increase polluted runoff, and in fact, will likely reduce it.

Furthermore, urban infill projects like ADUs typically cost less to serve with infrastructure compared with the alternative scenario of new homes forced out to more sprawling, suburban locations. Here again, the appeal ruling ignores modern reality—in this case, that urban infill housing lowers per-capita public expenditures on infrastructure.



Backyard cottage designed by live-work-play, located in Seattle's Columbia City neighborhood. Photo by Cindy Apple, used with permission.

Let's stop shooting ourselves in the foot with SEPA

That adding homes to existing cities is a net positive for both people and the planet is an utterly uncontroversial principle of urban planning. One of the gentlest ways to do that is by allowing ADUs into areas otherwise reserved for single-family houses. Yet in Seattle, Washington State's environmental laws

enabled an obstructionist minority to torpedo a policy change that would have unlocked these much-needed, flexible housing options.

The harm of delay is real: based on ADU construction rates in Vancouver and Portland, every year Seattle's ADU rules remain unfixed and impede production, hundreds of families are losing the opportunity to rent in-law apartments or backyard cottages. Instead, they are competing for existing homes, and as the bidding wars cascade down the market, the lowest-income families are being displaced from Seattle. Rents are rising faster for everyone. Seattle's most desirable neighborhoods are remaining as exclusive as ever, off-limits to people of modest means. The delayed densification of the city's most auto-dependent zones is hamstringing its progress beyond carbon.

Who is winning from the EIS delay? Almost no one, save for a few extreme NIMBYs who want to freeze their neighborhoods in amber, or who care more about street parking than welcoming new neighbors.

Who loses? All the city's renters, who in the best case will pay a little more because of the added competition for apartments that the ADU delay is intensifying, and in the worst case may be forced to find somewhere to live in a cheaper location outside Seattle. But most of Seattle's single-family homeowners lose, too: the majority of them support liberalizing ADU rules. ADUs not only fit Cascadians' tolerant, welcoming values and laidback lifestyles, but they increase home values and income potential for homeowners.

Oh, and the planet. The planet loses, too.

For all these reasons, ADUs should have been the easy part of the HALA agenda. There is a potential silver lining, though. Seattle planners now have the opportunity to craft a definitive EIS that lays the groundwork for preventing the **exploitation of SEPA** by small numbers of entitled residents at the expense of everyone else. Priority one for the EIS is to establish the fundamental truth that regulatory changes allowing more homes are a net positive because more homes are a net positive. Optimistically, this path could lead to the exemption of all future infill housing construction from SEPA, expanding on what the city council **recently approved** for small and mid-sized apartment buildings in Seattle's six official "urban centers."

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