

## LAND USE/SEPA DECISION APPEAL FORM

You do not have to use this form to file an appeal. However, if you do not use it, please make sure that your appeal includes all the information requested on this form. The appeal, along with any required filing fee, must reach the Office of Hearing Examiner, no later than 5:00 p.m. of the last day of the appeal period.

## APPELLANT INFORMATION (Person or group making appeal)

1.	Appellant:  If several individuals are appealing together, list the additional names and addresses on a separate sheet and identify a representative in #2 below. If an organization is appealing, indicate group's name and mailing address here and identify a representative in #2 below.  Name  Maple Leaf Community Council Executive Board								
	Address PO Box 75595, Seattle, WA, 98175								
	Phone: Work: _n/a Home: _n/a								
	Fax: Email Address: n/a								
2.	Authorized Representative:  Name of representative if different from the appellant indicated above. Groups and organizations must designate one person as their representative/contact person.  Name David Miller, Chair, Land Use & Transportation Subcommittee, MLCC  Address PO Box 75595, Seattle, WA, 98175								
	Phone: Work:Home: 206-517-5520								
	Fax:Email Address: david.miller@mapleleafcommunity.org								
DECI	SIONBEINGAPPEALED								
1.	Decisionappealed (Indicate MUP#, Interpretation#, etc.):3006101								
2.									
3.	Elements of decision being appealed. Checkone or more as appropriate:								
	Adequacy of conditions Variance								
	Design Review and Departure X Adequacy of EIS								
	Conditional Use Interpretation (See SMC 23.88.020)								
	EIS not required Short Plat								
	Major Institution Master Plan X Rezone								
	X Other (specify: See appeal								

## **APPEALINFORMATION**

Answer each question as completely and specifically as you can. Attach separate sheets if needed and refer to questions by number.

1.	What is your interest in this decision? (State how you are affected by it)  The Maple Leaf Community Council Executive Board is elected to represent the 4,000
	homes and businesses in the Maple Leaf Community of North Seattle, the Northgate Urban
	Center is at the northwestern part of our neighborhood. What happens in the Northgate
	Urban Center directly affects quality of life in the Maple Leaf Neighborhood.
. 2.	What are your objections to the decision? (List and describe what you believe to be the errors, omissions, or other problems with this decision.)  Please see attached document
3.	What relief do you want? (Specify what you want the Examiner to do: reverse the decision, modify conditions, etc.)
	Please see attached document.
	Malil David Miller
Signati	
Date_	April 9, 2012
Appella	ant or Authorized Representative David D. Miller
Deliver	or mail appeal and appeal fee to:
P.O. Bo	OF HEARING EXAMINER

SEATTLE MUNICIPAL TOWER - 700 5th Avenue, Suite 4000

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www.seattle.gov/examiner

The Maple Leaf Community Council Executive Board (MLCC) appeals the SEPA determination and upzone decision made by the Seattle Department of Planning and Development (DPD or the Department) under their project number 3006101 covering the property sited within the boundaries of 1st Ave NE, NE Northgate Way, and 3rd Ave NE.

The decision was based upon inaccurate and out-of-date previous environmental analyses. Additionally, the conditions placed by DPD inadequately mitigate the significant adverse environmental impacts of the proposal.

We request the Seattle Hearing Examiner remand the decision to DPD for further work as outlined below.

## 1. Improper reliance on prior environmental analyses

DPD's decision relies on the 2009 Northgate EIS and a December 2011 EIS Addendum for much of the environmental analysis and basis for mitigation. DPD is allowed by SMC 25.05.600 such references for subsequent proposals. This allowance is limited to situations where the existing documents are "accurate and reasonably up-to-date" (SMC 25.05.600B).

As study areas turn into specific parcel rezones and turn into specific project applications, new details are added. Prior environmental analyses are "accurate and up-to-date" in compliance with SMC 25.05.600.B only insofar as they accurately anticipate the scope of the projects at hand. The currently proposed rezone fails this test.

DPD's Preface to the December 2011 EIS Addendum specifically states the proposal at hand is consistent with to Alternative 2 of the 2009 Northgate EIS (December 2011 Addendum, page i).

The 2009 Northgate EIS Alternative 2 based its environmental assumptions on a net increase of 1,069 new residential units across the entire covered Study Area<sup>1</sup> over the no action alternative (Table 2-3, page 2-22).

Condition 4 of DPD's March 26, 2012 decision requires "massing Option 3 in Section E of the December 2011 Addendum" (page 33). The applicant has filed a plan sheet (updated January 10, 2008, received by DPD February 16, 2010, attached) wherein on sheet 4 ("Zoning Summary Sheet") the applicant says this Option 3 would provide 2,190,240 sq. ft. of buildable space, including 57,596 sq. ft. of commercial. The net residential space would be 2,132,644 sq. ft.

Using DPD's 700 sq. ft. unit assumption, this works out to 3,046 total projected units under Option 3 NC3-85 zoning. Assuming the applicant uses all incentive zoning bonuses, DPD calculates the total residential space under the no action alternative to be 1,551,420 (pg. 14 of decision). If we assume the same 3% commercial usage reflected in the applicant's documents, this results in 1,504,877 sq. ft. of residential space. Again using DPD's 700 sq. ft. unit

<sup>&</sup>lt;sup>1</sup> The "Study Area" is outlined in map form on page 2-5 of the 2009 Northgate EIS and covers approximately 98 acres. This project cover 8 acres, or less than 10% of the area, but accounts for nearly all the unit development contemplated by the 2009 Northgate EIS.

assumption, this proposal represents an increase over the no action alternative of more than 896 new residential units.

Table 1 – Unit calculations							
	Unit count						
2009 EIS Alternative 2	1,069 new units						
No action MR-60 w/ incentive bonus	2,150 units						
3006101 NC3-85 proposal	3,046 units						
Net increase	Over 896 new units						

Combined with two other projects within the Northgate Study Area near 5<sup>th</sup> Avenue NE and NE Northgate Way (one 161-unit built, one 225-unit in design review) subsequent to the 2009 Northgate EIS, the total projected unit net increase studied under the 2009 Northgate EIS Alternative 2 will be exceeded as a result of this proposal. This is problematic because there are nearly 100 acres of redevelopable property contemplated under the 2009 Northgate EIS, yet the assumptions used for the environmental analysis of this proposal are already exceeded with this property.

Therefore, reliance on the 2009 Northgate EIS is faulty because of outdated assumptions in that EIS. Since the December 2011 Addendum also relies on the 2009 EIS, it is also suspect. The Hearing Examiner should remand this decision and require a new environmental analysis specifically for traffic and public infrastructure (but not limited only to those aspects), using projections based upon the new information the alternatives studied in the 2009 Northgate EIS significantly understate the number of units likely to be built within the study area.

## 2. Inadequate mitigation of the loss of affordable housing

SMC 25.05.675.I encapsulates Seattle SEPA code covering housing. The Policy Background stated in SMC 25.05.675.I.1 is worth reviewing as a code-based overall framework for this portion of our appeal:

Demolition or rehabilitation of low-rent housing units or conversion of housing for other uses can cause both displacement of low-income persons and reduction in the supply of housing.

## SMC 25.05.675.I.2.a provides the following:

a. It is the City's policy to encourage preservation of housing opportunities, especially for low income persons, and to ensure that persons displaced by redevelopment are relocated.

None of DPD's four conditions meets the requirement in SMC 25.05.675.I.2 for relocation of persons displaced by redevelopment. It might be argued relocation mitigations would better be part of a project-specific decision or perhaps a demolition permit decision, but this argument does not hold water.

DPD acknowledges there are 207 affordable units existing. DPD's (inadequate) Condition 1 requires fewer than 92 of these units be replaced at a comparable level of affordability.

To: Seattle Hearing Examiner

Therefore, at this level of DPD decision-making we already know there will be a loss of over 100 affordable units. The 'nexus', if you will, of the link between loss of affordable housing and the SEPA requirement for relocation has been met at this point in the process.

While it is true any eventual developer may build more than the required number of affordable units, it is also true DPD may devise mitigation rules flexible enough to handle this outcome, however unlikely. At this level of review, for example, the mitigation condition may be as simple as, "If fewer than 207 units affordable at 50-60% 2011 AMI are built, the applicant shall provide 'X' in terms of relocation benefits to 'Y' number of units."

At the project level, when the final accounting of lost affordable units is known, this condition can be further detailed. The fact it can be further detailed with more specific numbers does not forgive the requirement for DPD to mitigate at **this** level the significant environmental impact of loss of low-income housing we know now to be very likely.

The City's Comprehensive Plan has much to say about affordable housing. As a reminder, the Comprehensive Plan is an integral and non-separable part of all City land use decisions. Under the State Growth Management Act, cities are not only required to create Comprehensive Plans but to base their land use decisions on their plans. Seattle's own SEPA code makes consistent references to the Comprehensive Plan, especially in the land use section.

WAC 197.11.158 specifically references Comprehensive Plan use in project-level decisions—including whether potential impacts have been identified in the Comprehensive Plan (WAC 197.11.158.2.b.i). Further, that project conditions may be based upon "requirements or mitigation measures" in the Comprehensive Plan (WAC 197.11.158.2.b.ii.C). In terms of threshold determinations, WAC 197.11.330.1.c specifically states mitigations may be based upon Comprehensive Plans. Given this, it is inaccurate to determine appeal arguments based upon Seattle's Comprehensive Plan are out of order.

With that background, the following Seattle Comprehensive Planitems are germane to the issue of affordable housing.

- The Values Statement of the plan specifically ties affordable housing to the environment: "The emphasis on affordable housing and neighborhood planning assumes that if citizens have access to affordable housing inside the urban area and can find employment and shopping in their neighborhoods, the need to travel by car is less frequent. Each of these aspects of the Plan helps to conserve natural areas, open space, and wildlife habitat."
- UV30 requires the balancing of growth objectives with "maintaining affordable housing"
- LU11: "In order to maintain the character of Seattle's neighborhoods and retain existing affordable housing, discourage the demolition of residences and displacement of residents, while supporting redevelopment that enhances its community and furthers the goals of this Plan."
- Segment HG2 calls on Seattle to "maintain" affordable housing.
- Segment H9 discusses the need for affordable housing in proximity to transit hubs, such as the one within easy walking distance of this property.

- Segment HG14 specifically calls for the preservation of existing low-income housing in urban centers like the Northgate Urban Center.
- Segment H29 addresses the "replacement" of occupied housing.
- Segment H30 outlines Scattle's responsibility to create new affordable housing.
- Segment H30.a calls for "at least 20% of expected housing growth to be affordable to households earning up to 50% of median income."
- Segment H31 directs the City to "promote the continued production and preservation of low-income housing through incentive zoning mechanisms, which include density and height bonuses and the transfer of development rights. Consider expanding the use of incentive zoning for affordable housing in neighborhoods outside downtown, particularly in urban centers."
- Segment H34 asks "at least one-quarter of the housing stock in the city to be affordable to
  households with incomes up to 50 percent of the area median income, regardless of
  whether this housing is publicly assisted or available in the private market."

Given these SEPA and Growth Management Plan requirements, DPD's Condition 1 is wholly inadequate to mitigate the significant adverse environmental impact of losing a significant amount of very affordable housing because of this proposal.

The December 2011 Addendum identifies 207 units on site and their rents. DPD's decision notes these units rent at the 50% of Average Median Income (AMI) level (50-60% if utilities are not included in the rent). These units are actually *more* affordable than other, similarly-priced units elsewhere in the city because of their close proximity to transit affords the occupants significant additional savings from reduced reliance on private vehicle(s).

Table 1 above summarizes the unit calculations under various alternatives across the environmental documents. Table 2 below uses those figures as a basis to derive the impact of this proposal on affordable housing.

Table 2 - Affordable Housing Impact - 50% AMI							
	Unit count						
Existing	207						
No action MR-60 w/ incentive bonus	262						
3006101 NC3-85 proposal	92						

Clearly, DPD's mitigations are inadequate as they allow for the loss of a significant number of affordable housing units. SEPA and Comprehensive Plan requirements are best met by remanding this decision back to DPD for more appropriate mitigation of this significant adverse environmental impact.

It is worth mentioning neither the applicant nor DPD did a survey of tenants living in the existing units. It should be noted SEPA does not focus on tenant socioeconomic status as the test for affordability. In fact, SEPA code specifically disclaims socioeconomic status as a part of SEPA tests (WAC 197.11.448.2, SMC 25.04.448.B). Therefore, the lack of data on tenants is immaterial to this analysis and should not be used to defend the inadequate mitigations for the significant adverse harm to affordable housing this decision represents.

The failure to properly mitigate the loss of affordable housing on the site results in significant adverse impacts on the following partial list of items in the natural and built environments:

- Air quality
- Climate
- Water
- Runoff/absorption
- Energy and natural resources
- Amount required/rate of use/efficiency of energy and natural resources
- Source/availability of energy and natural resources
- Nonrenewable resources
- Scenic resources
- Built environment
- Environmental health
- Relationship to existing land use plans and to estimated population
- Housing
- Agricultural crops
- Transportation
- Transportation systems
- Vehicular traffic
- Parking
- Movement/circulation of people or goods
- Traffic hazards
- Public services and utilities
- Water/storm water

## 3. Inadequate mitigation for toxic dust from demolition

DPD's decision relies on the 2009 Northgate EIS and a December 2011 EIS Addendum for much of the environmental analysis and basis for mitigation. DPD is allowed by SMC 25.05.600 such references for subsequent proposals. This allowance is limited to situations where the existing documents are "accurate and reasonably up-to-date" (SMC 25.05.600B).

Neither prior document addresses the issues of toxic dust resulting from demolition of the 24 buildings on the site. While one could argue demolition could not be assumed in the 2009 Northgate EIS, that argument is less persuasive for the December 2011 Addendum as the loss of the existing buildings is certainly implied. DPD's current analysis, which specifically contemplates removal of the units, is deficient because it does not address this significant adverse environmental harm.

The decision fails to consider the significant adverse impacts of the demolition of the buildings currently on the site because the decisions were based upon incomplete information. The DNS inadequately mitigates the project, exposing citizens – particularly children and elderly who are most at risk from certain toxins such as lead and/or asbestos – and the environment to significant

health hazards. These failures result in significant impacts on the following partial list of items in the natural and built environments:

- Soils
- Air
- Air quality
- Ground water movement/quantity/quality
- Public water supplies
- Plants and animals
- Habitat for and numbers or diversity of species of plants, fish, or other wildlife
- Unique species
- Fish or wildlife migration routes
- Amount required/rate of use/efficiency of energy and natural resources
- Source/availability of energy and natural resources
- Nonrenewable resources
- Conservation and renewable resources
- Environmental health
- Releases or potential releases to the environment affecting public health, such as toxic or hazardousmaterials
- (a) The Department erred by issuing a decision without first obtaining information sufficient to adequately evaluate environmental risks of demolishing buildings at the site. Fundamentally, it is impossible for the SEPA-responsible official in the Department to make an accurate determination of potential environmental harm without first knowing what toxins exist at the site. Given the age of the buildings, dust from interior and exterior lead-based paint released during demolition, dust from soils contaminated with lead leached from exterior paint, and asbestos from the steam-based heating systems are probable toxins present. There may be more, and without an analysis the responsible official has no basis with which to make a recommendation.
- (b) Under the likely assumption toxins exist, the Department erred by issuing a decision without first obtaining information sufficient to adequately evaluate environmental risks of demolishing buildings at the site. Fundamentally, it is impermissible for the SEPA-responsible official in the Department to make an environmental determination of potential environmental harm without also having a complete demolition mitigation plan in advance of making an environmental determination (Maple Leaf Community Council v. City of Seattle, 2009, KC Superior Court). DPD may not leave these issues to the demolition permit application process as the issues must be addressed in the environmental determination.
- (c) SEPA allows reliance on environmental rules promulgated by other responsible agencies as sufficient mitigation for potential environmental harm. Where the release of toxic dust into the community is concerned, there are no Federal, State, regional, or City of Seattle regulations or controls. There are regulations at the State and Federal level for worker exposure, but these levels assume extensive training and significant protective gear neither of which is automatically supplied to those in the community. There are also Federal, State, and regional controls on particulate density, but these cover only generic particles and not

toxic particles of the type that may be present on the site. Given the lack of existing rules and standards, the entire responsibility for mitigating this significant adverse environmental impact falls to the SEPA-responsible official. Yet, there is no mitigation and no analysis of this environmental harm included in this decision.

## 4. Inadequate mitigation for stormwater and permeable surface loss

DPD's decision relies on the 2009 Northgate EIS and a December 2011 EIS Addendum for much of the environmental analysis and basis for mitigation. DPD is allowed by SMC 25.05.600 such references for subsequent proposals. This allowance is limited to situations where the existing documents are "accurate and reasonably up-to-date" (SMC 25.05.600B).

One could argue the lack of a specific project exempts the 2009 Northgate EIS from addressing stormwater and permeable surface loss. Less so the December 2011 Addendum. Condition 4 of DPD's decision requires massing Option 3 in Section E of the December 2011 Addendum. Given this requirement, DPD now has sufficient detail about permeable surface loss and resulting stormwater effects to make an environmental determination.

Despite this, DPD punts the analysis of this significant adverse environmental impact to the project level. This is inadequate. Recent decisions connected with the Burke-Gilman Trail extension suggest the courts agree with our analysis. There is enough new information because of this rezone request and DPD's own conditions to trigger the need for a specific environmental review.

The failure to perform an adequate review results in significant impacts on the following partial list of items in the natural and built environments:

- Soils
- Climate
- Surface water movement/quantity/quality
- Runoff/absorption
- Floods
- Ground water movement/quantity/quality
- Habitat for and numbers or diversity of species of plants, fish, or other wildlife
- Unique species
- Fish or wildlife migration routes
- Releases or potential releases to the environment affecting public health, such as toxic or hazardousmaterials
- Land and shoreline use
- Recreation
- Water/storm water
- Sewer/solid waste
- Other governmental services or utilities

## 5. Inadequate mitigation of traffic and pedestrian issues

DPD's decision relies on the 2009 Northgate EIS and a December 2011 EIS Addendum for much of the environmental analysis and basis for mitigation. DPD is allowed by SMC 25.05.600 such references for subsequent proposals. This allowance is limited to situations where the existing documents are "accurate and reasonably up-to-date" (SMC 25.05.600B).

The 2009 Northgate EIS traffic analysis was based upon a projected total 1,000 units on this property (December 2011 Addendum, page 47). Based on 1,000 units, DPD deemed adequate the mitigations in the Northgate Comprehensive Traffic Improvement Plan (CTIP).

As noted above, the proposed development will have 3,046 units – over three times the number of units contemplated by CTIP for this property.

Therefore, the mitigations referenced in the 2009 Northgate EIS, the December 2011 Addendum, and this proposal are certainly inadequate. The project will therefore, by definition, result in significant adverse environmental impacts to traffic and pedestrian safety. This decision should be remanded to DPD for accurate analysis of traffic, parking, and pedestrian impacts provided by this proposal.

These failures result in significant impacts on the following partial list of items in the natural and built environments:

- Air quality
- Climate
- Surface water movement/quantity/quality
- Runoff/absorption
- Ground water movement/quantity/quality
- Plants and animals
- · Habitat for and numbers or diversity of species of plants, fish, or other wildlife
- Unique species
- Fish or wildlife migration routes
- Amount required/rate of use/efficiency of energy or natural resources
- Source/availability of energy or natural resources
- Nonrenewable resources
- Environmental health
- Noise
- Risk of explosion
- Releases or potential releases to the environment affecting public health, such as toxic or hazardousmaterials
- Transportation systems
- Vehicular traffic
- Parking
- Parks or other recreational facilities
- Movement/circulation of people or goods

Traffic hazards

Page 11 of 15

Other governmental services or utilities

## 6. Inadequate mitigation of environmental harm to trees

DPD's decision relies on the 2009 Northgate EIS and a December 2011 EIS Addendum for much of the environmental analysis and basis for mitigation. DPD is allowed by SMC 25.05.600 such references for subsequent proposals. This allowance is limited to situations where the existing documents are "accurate and reasonably up-to-date" (SMC 25.05.600B).

DPD's decision references the existence of several exceptional trees (as defined by SMC 25.11). In DPD's decision, they postpone analysis of any tree mitigations because there is no specific development proposal (page 32).

DPD has conditioned their decision on the adoption of massing Option 3 in Section E of the December 2011 Addendum. This is sufficient information about the likely position and ground coverage of any building (see the shadow analyses at the back of the December 2011 Addendum as an example) to trigger an environmental analysis and appropriate mitigation of significant environmental impacts to trees on the property.

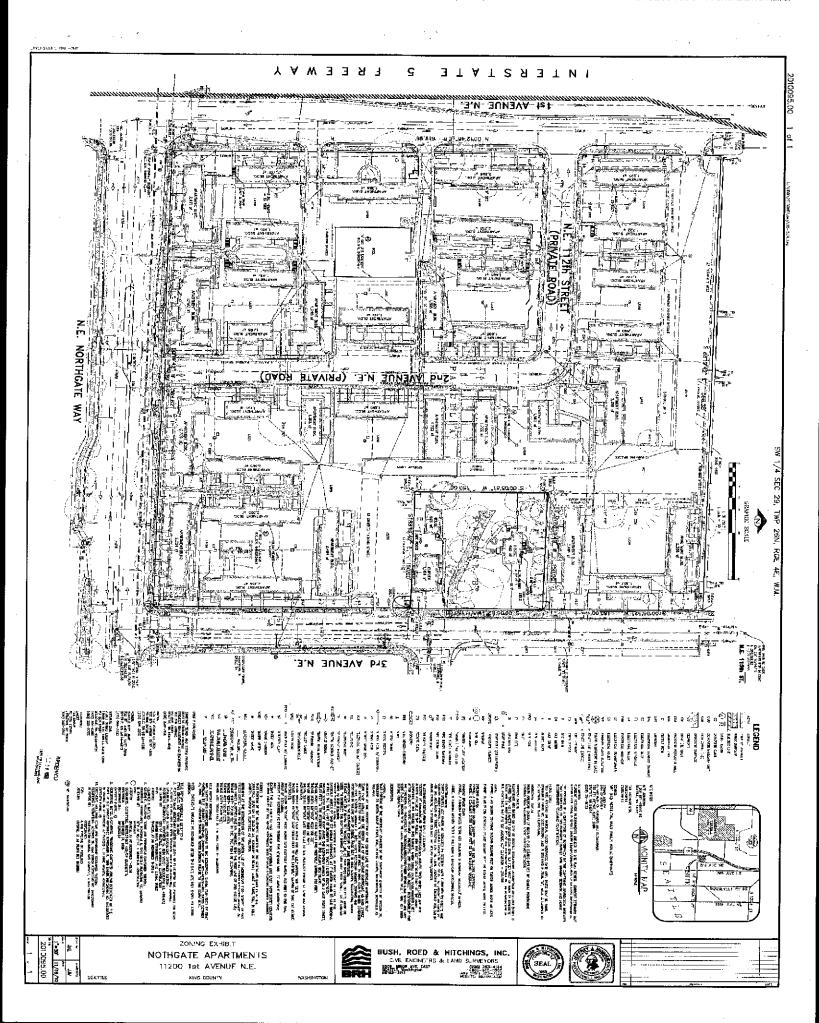
Additionally, DPD's analysis and the applicant's submission fails to mention the existence of a tree grove on the property as defined in Director's Rule 16-2008: "A grove means a group of 8 or more trees 12" in diameter or greater that form a continuous canopy." Page 4 of the plan sheet submitted by the applicant indicates there is a group of trees on the property that meet this definition.

There are significant adverse impacts of tree removal and disturbance on elements of the natural and built environments, including but not limited to impacts on:

- Storm water retention, runoff, absorption, flooding, groundwater
- Unique physical features and scenic resources
- Air quality
- Climate
- Plants and animals, including those in Critical Areas and Salmon Habitats
- Environmental health
- Noise
- Light and Glare
- Aesthetics
- Historic and cultural preservation
- Public services and utilities

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# **ZONING SUMMARY SHEET**

## PROJECT INFORMATION

11220 1st Avenue NE, Project No, 3006101 (Parcel A) Owner: Northgate Plaze ILC APN; 292604801\*

11205 31% Avenue NE, Project No. 3011842 (Percet B) Owner: T & M Jenn LP APN: 292649012

Amend Land Use Map to rezone both paroals from NR to NC3 85 to Impleme ti City of Scalab's Northale Urban Center Rezone proposal. City of Seethe's Environmente Impact Statement on that proposal included a rezone of both paroals to NC3-85 (Alternative 2)

## COMPARISON OF DEVELOPMENT OPTIONS

## Existing Site Development

Particle A – 34 buildings (generally 2 stories) with 207 apartment unless and 129 parking spaces. Suildings (exclusive of carports and other accessory structures) cores 19% of units of

45: 14'-15' from NE Northgate Way 1777: 38°2" from 1st Avenue NE 1377: 257" from 3rd Avenue NC 144'-50' from northern property line

Parcel B = 3 Jukings; 2 single family & 1 du; lex with 0 paiking spaces. Buildings cover 12% of parcel. Setheats from 3rd Averrue NE are 23 - 59

# Development Options under Existing MR and Rezone to NC3-85

 	R.S	=	ai	Option Zuning
ឧស្ថិ	器袋	MR-60	を記	Zuning
6.0 (mixed (689)	4.5 (single use)	4.25	ä	FAR
85	85	75 (with affordable housing)	8	Height
2,190,240	1,842,680	1,851.425	1.164.125	Nex. Alloweble Sq Ft
67.00%	54.30%	36.00%	%0e.95	Lot
57,596	0	56,463	52498	Ground Floor Commerced Sq.Ft
2,508	1,940	1,758	1307	Residendal Units (average 850 sf unit)

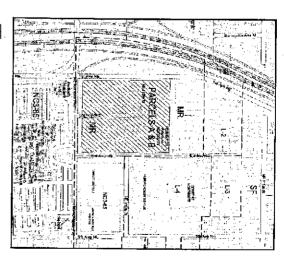
## Assumptions for site redevelopment under both MR and NC-85

Commercial scaces limited to street level - street feating fiscade, along NE Northgate Wey between 1st Avenue NE and 3rd Ave NE, and along 3rd Avenue NE between NE Northgate Way and NE 112th St.

Parking limited to 660 below grade statis due to high water table, 154 (mm.) to 231 (max.) being for commercial, with the belance being residential.

### Commercial Lises Permitted Residential Uses Parmitted mently Area Mazamum width and Height (exeraptions apply Base 607 (+5°1f floor to casing for rooftop features above heights greater than 9) height (inst) COMPARISON OF ZONING STANDARDS No parking required for residential; minimum and maximums set per Northgate Mex 76' (achievable only through provision of ef ordable housing per SMC Ch. 23.58A) Amount = to 5% of total gross floor area of residential use ΎBS Width: 150 Daugh: 75% of the depth of Ground floor only, size limits on all tenants Front and Side from smart lot Triangular front setback at NE lines: T average, 5' minimum conner of site; 10' from Rear: 15' northern kn insidential Misx 4.25 (archievable only brough provision of stillordable Max for mix of residential and frussing per SMC Cu. 23,58A) commercial: 6 No fanit on location; tey limits on loanint size Amount = 15% of lot area, post applicant's option, Same as MF. N/A (FAR commots instead) Max for either all resident's or eil commercial: 4.5 Yes, but limited to 20% of streat-level street facing additional set back above 65 AC3 65 (as modified by

## ZONING MAP

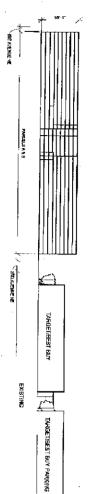


Proposed
anea c
of rezone
from
NR to
NC3-85

77

# HEIGHT, BULK, AND SCALE DIAGRAMS

ethecks and design features that would be part of an actual development pro



ALONG NE NORTHGATE WAY

SCALE 1" = 40"



