

BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE

In the Matter of the Appeal of:

DAVID MOEHRING

from a decision issued by the Director, Seattle  
Department of Construction and Inspections.

Hearing Examiner File:  
MUP-18-0022

Department Reference:  
3029611-LU

APPLICANT AND OWNER'S  
MOTION TO DISMISS LAND USE  
APPEAL

COMES NOW the applicant, Julian Weber, and the property owner, Isola Real Estate VII LLC, by and through their undersigned attorneys, Brandon S. Gribben and Samuel M. Jacobs of Helsell Fetterman LLP, and moves the Hearing Examiner to dismiss this land use appeal with prejudice.

**I. INTRODUCTION AND RELIEF REQUESTED**

This matter concerns a land use appeal of the Seattle Department of Construction and Inspections ("SDCI") Director's Determination of Non-Significance (the "Decision"<sup>1</sup>) for the proposed development of a 6-unit and 3-unit rowhouse project on a 7,000 square foot parcel of property, under SDCI Project No. 3029611-LU (the "Project"). The Project is located at 2300 West Emerson Street in the Magnolia neighborhood of Seattle (the "Premises"). The Decision determined that the Project would not have a probable

<sup>1</sup> The Decision is attached as Exhibit A.



1 significant adverse impact upon the environment, determining that no Environmental Impact  
2 Statement (“EIS”) would be required under the State Environmental Policy Act (“SEPA”)  
3 for the Project. The Decision imposed no conditions under SEPA.

4 David Moehring, on behalf of himself and “with and for” Bonnie McDonald and  
5 Richard Brownfield, (“Moehring”) filed an “Appeal to the Determination of Non-  
6 Significance for the development of 2300 W Emerson Street and discretionary decision at  
7 and EIS is not required under RCW 43.21.030(2)(c)” (the “Appeal”<sup>2</sup>). The issues raised by  
8 Moehring on appeal are without merit on their face and are woefully insufficient to refute  
9 the Decision. For these reasons, the Appeal must be dismissed in its entirety. In addition to  
10 these substantive deficiencies, Moehring has failed to set forth facts that, assuming  
11 *arguendo* are true, satisfy the high burden that would authorize the Hearing Examiner to  
12 require an EIS – which is the sole relief sought by Moehring. The Appeal must be  
13 dismissed for this reason as well.

## 14 II. STATEMENT OF FACTS

15 The Premises is located in the Magnolia neighborhood of Seattle and is zoned  
16 Lowrise 1 (LR 1). Because of the size of the Project, it is subject to SEPA review under  
17 SMC Chapter 25.05 et seq. On January 19, 2018, the Applicant submitted a SEPA  
18 environmental checklist containing information about the potential impacts of the Project.  
19 SDCI later annotated the SEPA checklist. The Project then went through a period of public  
20 comments. After the public comment period and review by SDCI and other City  
21 departments, the SDCI Director issued the Decision on September 13, 2017. The Decision  
22 contained a Determination of Non-Significance, finding that the Project would not have  
23 significant adverse impacts upon the environment, and that an EIS was not required. The  
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2 The Appeal is attached as Exhibit B.



1 Decision imposed no conditions on the Project. On September 26, 2018, Moehring filed the  
2 Appeal.

### 3 III. STATEMENT OF ISSUES

- 4 1. Should the Appeal be dismissed where it is meritless on its face? Yes.
- 5 2. Should the Appeal be dismissed where, assuming *arguendo* that Moehring's  
6 objections to the Decision are true, they are insufficient to require an EIS – the sole relief  
7 requested? Yes.

### 8 IV. EVIDENCE RELIED UPON

9 This motion is based upon the Decision, the Appeal, the file in this matter, and the  
10 exhibits attached hereto.

### 11 V. AUTHORITY

12 Under Hearing Examiner Rules of Practice and Procedure (“HER”) 3.02(a), the  
13 Hearing Examiner has authority to dismiss the Appeal “if the Hearing Examiner  
14 determinates that it...is without merit on its face...” The objections raised by Moehring,  
15 which will be discussed in turn below, are without merit on their face and should be  
16 dismissed.

#### 17 A. The Decision correctly concludes that the Project will not have a significant 18 adverse impact upon the environment.

19 Only Projects that will have a significant adverse impact on the environment are  
20 required to perform an EIS under RCW 43.21C.030(2)(c). Because SDCI correctly  
21 concluded that the Project will not have a significant adverse impact upon the environment,  
22 an EIS was not required. Moehring argues in his Appeal that the Applicant did not  
23 adequately disclose the environmental impacts in the SEPA Environmental Checklist,<sup>3</sup>  
24 which deprived SDCI from adequately determining the Project's impacts and, therefore,

25 \_\_\_\_\_  
<sup>3</sup> The annotated SEPA Environmental Checklist is attached as Exhibit C.



SDCI should have required an EIS. For the reasons discussed below, SDCI had more than sufficient information to analyze the Project's potential environmental impacts, Moehring's objections are without merit on their face, and the Appeal should be dismissed.

Moehring alleges that there are 11 specific disclosures in the SEPA Environmental Checklist that are inadequate. They are addressed in turn below.

1. SEPA Environmental Checklist Item #1.

The Appeal alleges that the Applicant's response to checklist question B.1.b (What is the steepest slope on the site (approximate percent slope?)) is insufficient because it does not address the slope of the rockery, which is primarily located on the right-of-way. As an initial matter, the checklist requires information related to the Premises, not the abutting right-of-way. Second, the response specifically addresses the rockery and states that: "Barring areas retained by rockery, and excluding existing site stairs, 22%."

The purpose of this question is to determine the natural geographic features of the Premises, not manmade features. Even if the checklist required disclosure of man-made features on the site and in the adjoining right-of-way, that information was disclosed to SDCI during the permitting process and was considered by SDCI when it issued the Decision.

SMC 25.05.330 – Threshold determination process – states that:

An EIS is required for proposals for legislation and other major actions significantly affecting the quality of the environment. The lead agency decides whether an EIS is required in the threshold determination process, as described below.

A. In making a threshold determination, the responsible official shall:

1. Review the environmental checklist, if used:

- a. Independently evaluating the responses of any applicant and indicating the result of its evaluation in the DS, in the DNS, or on the checklist, and
- b. Conducting its initial review of the environmental checklist and any supporting documents without requiring additional information from the applicant;



1 A preliminary assessment site visit (“PASV”) was required for this Project and an SDCI  
2 representative visited the Premises. Photographs of the Premises were also uploaded to  
3 SDCI’s permitting website.<sup>4</sup> The photographs clearly disclose the rockery and steps. Thus,  
4 the information was adequately disclosed to SDCI and considered by the Director when the  
5 Decision was issued.

6 2. SEPA Environmental Checklist Item #2.

7 Next, Moehring argues that the Applicant’s response to checklist question B.1.d (Are  
8 there surface indications or history of unstable soils in the immediate vicinity?) is deficient  
9 because the Applicant responded “none.” Despite Moehring’s allegations to the contrary,  
10 there is no history of landslides or unstable areas in the immediate vicinity. This is  
11 confirmed by Dean Griswold, SDCI’s geotechnical reviewer for the Project, and the Land  
12 Use Report for the Premises.<sup>5</sup> Mr. Griswold and the Land Use Report confirm that the  
13 Premises is not in a potential slide area and there have not been any known slide events.  
14 This is also supported by Moehring’s own Appeal. The SDCI document linked to in the  
15 Appeal further supports the lack of a known slide event in the area.<sup>6</sup> There is a complete  
16 absence of a known slide event in or immediately near the Premises.

17 3. SEPA Environmental Checklist Item #3.

18 In response to checklist question B.1.g (About what percent of the site will be  
19 covered with impervious surfaces after project construction (for example, asphalt of  
20 buildings)?), the Applicant disclosed in the SEPA Environmental Checklist that the  
21 Premises will be covered in approximately 55% of impervious surfaces. The Applicant also  
22 disclosed that he was working with the civil engineer to confirm the pavement permeability,  
23 which could result in less than 55% of impervious surfaces.

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25 <sup>4</sup> Photographs of the Premises along with the PSV request is attached as Exhibit D.

<sup>5</sup> The Land Use Report is attached as Exhibit E.

<sup>6</sup> The City of Seattle Landslide Prone Areas (along with a close up of the Premises) is attached as Exhibit F.



1 Moehring identifies that the building footprint and parking spaces will result in  
2 approximately 3,700 square feet of imperious surface, which is less than the 55% disclosed  
3 by the Applicant. There will be a separate drainage and grading review that will take place  
4 during the building permit review process. During this phase, SDCI will confirm that the  
5 Project drainage complies with the applicable ordinances. The purpose of the SEPA  
6 Environmental Checklist is to disclose potential environmental impacts, not to disclose the  
7 specific type of materials that will be used during the construction of the Project.

8 4. SEPA Environmental Checklist Item #4.

9 In response to checklist question B.4.b (What kind and amount of vegetation will be  
10 removed or altered?), the Applicant responded that one tree will be removed along with  
11 shrubs and grass to be disturbed during construction with planting replacement to be  
12 coordinated with the landscape architect. Moehring argues that the Project will likely result  
13 in the loss of more than one tree. In support of this argument, he relies on sheet A 1.0 of the  
14 Applicant's plan set. Regardless of the number of trees that will ultimately be removed, the  
15 potential impacts of the Project were disclosed. It is undisputed that SDCI: (a) visited the  
16 Premises and saw the number and type of trees; (b) received an arborist report identifying  
17 the type and location of the trees; (c) issued a correction notice<sup>7</sup> requesting identification of  
18 the trees in the right-of-way and asking the arborist to consult with SDOT Forestry  
19 regarding the right-of way trees; and (d) received a response to its correction notice<sup>8</sup>  
20 addressing each of the items raised by SDCI. So, SDCI had extensive information about the  
21 Project and its potential impact on the trees located on the Premises and in the abutting  
22 right-of-way.

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25 <sup>7</sup> A copy of the SDCI correction notice is attached as Exhibit G.

<sup>8</sup> A copy of the Applicant's correction response is attached as Exhibit H.



1 SEPA is concerned with the Project's potential environmental impacts. The  
2 Decision does not authorize the Applicant to remove any trees. SMC Chapter 25.11, the  
3 Tree Protection Ordinance, governs the protection of trees on development sites and  
4 prescribes the circumstances under which trees may be removed. Furthermore, SMC Title  
5 15 governs the removal of trees in the right-of-way that SDOT has authority over. The only  
6 question before the Examiner is whether the potential environmental impacts were  
7 disclosed, which they were.

8 5. SEPA Environmental Checklist Item #5.

9 The Applicant responded to checklist question B.8.a (What is the current use of the  
10 site and adjacent properties? Will the proposal affect current land uses on nearby or  
11 adjacent properties?) by answering that the "current use is multi-family residence, adjacent  
12 properties are multi-family residential." Moehring argues that the adjacent properties are  
13 zoned SF 5000 and that the height bulk and scale of the development must be considered  
14 within an EIS.

15 As an initial matter, there is no basis for requiring an EIS because an LR1 zone abuts  
16 a SF 5000 zone. That is quite common. Second, SDCI was well aware that the Premises  
17 abutted a SF 5000 zone when it issued the Decision. In fact, the first page of the Decision  
18 describes the vicinity zoning as having SF 5000 to the south and to the west of the Premises.

19 6. SEPA Environmental Checklist Item #6.

20 In response to checklist question B.8.h (Has any part of the site been classified as a  
21 critical area by the city of county?), the Applicant disclosed that there was a tiny portion of  
22 steep slope in the northeast section of the Premises. SDCI then provided an annotation to  
23 the checklist clarifying that the Premises is not mapped as a steep slope. Moehring argues  
24 that SDCI's annotation that the Premises is not mapped as a steep slope undermines the  
25 requirement to disclose steep slopes. This is not correct. SDCI's determination that there is



1 not a steep slope on the Premises is based upon site specific information. The Land Use  
2 Report,<sup>9</sup> which is generated based upon the City's most up to date information, concludes  
3 that there is not a steep slope on the Premises. This fact is confirmed by SDCI's  
4 geotechnical expert, Dean Griswold.

5 Mr. Griswold also reviewed the surveyor's topographical survey and concluded that  
6 the Premises did not contain at least 10 feet of elevation difference with slopes averaging 40  
7 percent or steeper.<sup>10</sup> Even if there was a steep slope on the Premises, which there is not, that  
8 (mistaken) fact was disclosed by the Applicant to SDCI.

9 7. SEPA Environmental Checklist Item #7.

10 The Applicant responded "none" in response to checklist question B.10.b (What  
11 views in the immediate vicinity would be altered or obstructed?). Moehring objects to this  
12 response on the basis that the Project will obstruct private views. SDCI, however, is not  
13 concerned with, and does not have jurisdiction over, unprotected views of neighboring  
14 property owners; SDCI is concerned with, and has jurisdiction over, SEPA view corridors.  
15 The Land Use Report confirms that there are not any SEPA scenic routes within 100 feet of  
16 the Premises.<sup>11</sup> SMC 25.05.675.P specifically identifies "Public View Protection" as one of  
17 the environmental impacts to be considered under SEPA. Even if SDCI was concerned with  
18 impacts to the views of private property owners, these impacts were disclosed in the  
19 Applicant's plan set, which details the height, bulk and scale of the Project. If Moehring is  
20 able to discern the potential impacts to the neighboring property owners' views, then so is  
21 SDCI.

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24 <sup>9</sup> See Ex. E.

25 <sup>10</sup> A copy of an email from Mr. Griswold to Ms. King confirming the lack of a steep slope on the Premises is  
attached as Exhibit I; a copy of the topographic survey is attached as Exhibit J.

<sup>11</sup> A map detailing the SEPA Scenic Routes within 100 feet of the Premises is attached as Exhibit K.



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8. SEPA Environmental Checklist Item #8.

The Applicant responded “none” to checklist question B.10.c (Proposed measures to reduce or control aesthetic impacts, if any?). Moehring objects to this disclosure on the basis that it ignores the fact that private views of property owners in the vicinity might be impacted. Again, the Applicant has no duty to mitigate for its Projects’ potential impacts to its neighbors’ unprotected views.

9. SEPA Environmental Checklist Item #9.

In response to checklist question B.15.a (Would the project result in an increased need for public services (for example: fire protection, police protection, public transit, health care, schools, other)?), the Applicant stated that there was a potential 12 person increase to all public services, but unlikely any increase in actual demand. Moehring objects that this disclosure is inadequate and suggests that there will be an increase of 24 persons as a result of the Project. SDCI was aware of the size and number of units and, therefore, was well aware of the potential range of new residents and their potential impacts on public services.

10. SEPA Environmental Checklist Item #10.

The Applicant responded “none” to checklist question B.15.b (Proposed measures to reduce or control direct impacts on public services, if any). For the reasons discussed in item number 9 above, Moehring’s objection to this response is unavailing.

11. SEPA Environmental Checklist Item #11.

Finally, Moehring claims that the checklist is incomplete because the Applicant did not complete pages 32 – 36. These pages are the supplemental sheet for non-project actions. Because this is not a non-project action, the Applicant was not required to complete pages 32 through 36.



1 **B. The Applicant’s plan sets are complete and accurate. Regardless, they do not**  
2 **have a bearing on the DNS and whether an EIS should be required for the**  
3 **Project.**

4 Moehring argues, without any evidence, that “there is no room for the new building  
5 foundations to clear the existing right of way (ROW) designated tree root protection  
6 areas.”<sup>12</sup> As an initial matter, SDOT has jurisdiction over the trees in the right-of-way, not  
7 SDCI. More to the point, tree protection will addressed during the review of the  
8 construction permit under SMC Chapter 25.11 – the Tree Protection Ordinance.

9 Next, Moehring claims that a SEPA evaluation was not conducted to determine if  
10 protection of the trees is possible. This is the province of the construction permit review  
11 process, not a SEPA environmental determination. The purpose of SEPA is to disclose  
12 potential environmental impacts to determine if the City’s regulation is sufficient to address  
13 them. The SEPA Overview Policy – SMC 25.05.665.D – states that: “Where City  
14 regulations have been adopted to address an environmental impact, it shall be presumed that  
15 such regulations are adequate to achieve sufficient mitigation...” The Tree Protection  
16 Ordinance – SMC 25.11 – specifically addresses the retention and protection of trees on the  
17 Premises. SMC 25.11 acknowledges that the removal of street trees are governed by Title  
18 15 of the SMC.<sup>13</sup> Moehring has failed to allege, much less demonstrate, that the existing  
19 tree protections under SMC Chapter 25.11 and SMC Title 15 are inadequate and that  
20 additional restrictions should be applied to the Project.

21 **C. SDCI adequately considered the potential impacts from removing trees and the**  
22 **potential impacts on the Premises.**

23 Moehring claims that the DNS is insufficient because SDCI did not consider any  
24 reports concerning the removal of trees and the potential impacts that might have on the  
25 Premises. This, too, is incorrect. As discussed above, the Premises is *not* located on a steep

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<sup>12</sup> Appeal, 6:19-20.

<sup>13</sup> See SMC 25.11.030.G



1 slope, nor have there been any recent landslides in the immediate vicinity. In addition to  
2 these lack of risk factors, the Applicant provided SDCI with the plan sets, a geotechnical  
3 report,<sup>14</sup> and an arborist report.<sup>15</sup> Thus, all of the issues raised by Moehring were disclosed  
4 to, and considered by, SDCI.

5 **D. The arborist report is sufficient and adequately discloses the number and type**  
6 **of trees on the Premises and abutting right-of way.**

7 Moehring concludes his Appeal by denigrating the fact that the arborist is from  
8 Bothell, claiming that he is not qualified to evaluate trees, and alleging that he provided  
9 unreliable information to SDCI. In support of these specious allegations, Moehring points to  
10 the lack of photographs included in the arborist report yet, tellingly, does not reference any  
11 requirement that photographs be included. As discussed above, SDCI has performed a  
12 preliminary assessment site visit and has numerous photographs of the property. The  
13 Decision does not authorize the removal of any trees, much less exceptional trees. SMC  
14 Chapter 25.11 governs tree protection and prescribes the circumstances under which trees  
15 may be removed. The Tree Protection Ordinance will be applied to the Project during the  
16 review of the construction permit. Moehring goes on to argue that the arborist failed to  
17 recognize the impact of tree removal in the steep slope right-of-way, but, again, the Premises  
18 is not located on a steep slope. And Moehring fails to allege that the tree protection  
19 measures under Chapter 25.11 are insufficient.

20 **E. Moehring fails to demonstrate that the Director had insufficient information to**  
21 **evaluate the Project's potential environmental impacts.**

22 To meet the high burden of proof under SEPA, Moehring must present evidence of  
23 the Project's probable significant adverse environmental impacts. *Boehm v. City of*  
24 *Vancouver*, 111 Wn. App. 711, 719, 47 P.3d 137 (2002); *Moss v. City of Bellingham*, 109

25 <sup>14</sup> The geotechnical report is attached as Exhibit L.

<sup>15</sup> The arborist report is attached as Exhibit M.



1 Wn. App. 6, 23, 31 P.3d 703 (2001). “Significance” is defined as a “reasonable likelihood  
2 of more than a moderate adverse impact on environmental quality.” WAC 197-11-794.

3 In the *Matter of the Appeal of 7300 Woodlawn Ave NE Condominium Homeowners*  
4 *Association et al.*, MUP 17-002, Examiner Vancil held that a determination of non-  
5 significance was appropriate for a six-story, mixed-use building with commercial space and  
6 45 residential units.<sup>16</sup> In affirming the Director’s Decision and determination of non-  
7 significance, Examiner Vancil held that:

8 The burden of proving the inadequacy of a threshold determination is  
9 high...This burden is not met when an appellant only argues that they have  
concern about a potential impact, and an opinion that more study is necessary.<sup>17</sup>

10 Examiner Vancil goes on to rule that:

11 The Appellants alleged that the Director had insufficient information to  
12 evaluate the proposal’s environmental impacts and make a threshold  
13 determination, because the SEPA checklist contained errors. However, mere  
14 error in the checklist (assuming the allegations are correct) is insufficient cause  
15 to remand a threshold determination. Appellants must demonstrate that the  
Director had insufficient information to evaluate the proposal’s environmental  
impacts in the context of the *entire* record considered in the threshold  
determination, e.g. the checklist and other project documents.<sup>18</sup> (emphasis in  
the original)

16 Even if the SEPA checklist errors alleged by Moehring were correct, Moehring has  
17 failed to demonstrate that the Director did not have sufficient information to evaluate the  
18 potential environmental impacts. It is undisputed that the documents uploaded to SDCI’s  
19 website, including the project plans and survey, were available to and considered by SDCI  
20 when it issued the Decision. As noted above, mere mistakes in the SEPA Environmental  
21 Checklist are insufficient to remand a determination of non-significance if the environmental  
22 impacts were considered by SDCI. Because Moehring has failed to demonstrate that SDCI  
23 did not consider the potential environmental impacts, the Appeal should be dismissed.

24 \_\_\_\_\_  
25 <sup>16</sup> A copy of the Findings and Decision is attached as Exhibit N.

<sup>17</sup> See, Ex. N, Decision, ¶6.

<sup>18</sup> *Id.*, ¶7.



1 **F. Assuming all facts in favor of Moehring, the Hearing Examiner does not have**  
2 **authority under SMC 25.05.680 to require SDCI to prepare an EIS for the**  
3 **Project. Thus, the relief requested is without merit on its face.**

4 In the Appeal, Moehring seeks the following relief: “That the Hearing Examiner  
5 vacate the Determination of Non-Significance with instructions to [] SDCI to prepare an  
6 Environmental Impact Statement [] to adequately address the environmental impacts and  
7 mitigation to meet the objective of providing adequate protections to Seattle’s right-of ways  
8 and the nearby residents.” Moehring raises numerous objections to the Decision. For the  
9 reasons discussed above, each of these objections are without merit and should dismissed.  
10 If, however, each of the objections raised by Moehring were found to be valid, they are still  
11 woefully insufficient to require an EIS for the Project. In other words, assuming that every  
12 single objection raised by Moehring was correct, there would still not be any basis for  
13 requiring an EIS, which is the sole relief requested.

14 There is absolutely no precedent for requiring an EIS for a small 9-unit rowhouse. In  
15 fact, there is no precedent for requiring an EIS for much larger projects, including mixed-use  
16 buildings with commercial space and over 50 residential units. To claim that a 9-unit  
17 residential development merits a determination of significance and preparation of an EIS is  
18 simply without merit on its face and is subject to dismissal under HER 3.02(a).

19 **VI. CONCLUSION**

20 For Moehring to survive this motion to dismiss, the Hearing Examiner must  
21 conclude that (a) Moehring has raised a valid objection to the Decision, and (b) he has  
22 requested relief that (i) the Hearing Examiner has jurisdiction to grant, and (ii) directly  
23 relates to that valid issue raised on appeal. In other words, even if Moehring raises a valid  
24 issue on appeal, but has not requested relief directly related to that issue that the Hearing  
25 Examiner has authority to award, or vice versa, then the motion to dismiss must be granted,  
and the Appeal dismissed.



1 HER 3.02(a) allows the Hearing Examiner to dismiss an appeal prior to the hearing if  
2 the appeal fails to state a claim for which the Hearing Examiner has jurisdiction to grant  
3 relief, is without merit on its face or is frivolous. The Appeal fails to raise a valid objection  
4 to the Director's Decision and is without merit on its face. Even assuming each of  
5 Moehring's objections were true and valid, they are inadequate to sustain the relief  
6 requested – that SDCI be required to prepare an EIS for the Project. Thus, it is respectfully  
7 requested that the Hearing Examiner affirm the Decision and DNS and dismiss the Appeal  
8 with prejudice.

9 Respectfully submitted this 26<sup>th</sup> day of October, 2018.

10  
11 HELSELL FETTERMAN LLP

12 By: s/ Brandon S. Gribben

13 Brandon S. Gribben, WSBA No. 47638

14 Samuel M. Jacobs, WSBA No. 8138

15 Attorneys for the Applicant and Owner  
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CERTIFICATE OF SERVICE

I, Gennifer Holland, certify under penalty of perjury under the laws of the State of Washington that the above pleading was served on the parties listed below via the indicated method:

*David Moehring*  
[DMoehring@consultant.com](mailto:DMoehring@consultant.com)

- ☐ Via first class U. S. Mail
- ☐ Via Legal Messenger
- ☐ Via Facsimile
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- ☐ Via first class U. S. Mail
- ☐ Via Legal Messenger
- ☐ Via Facsimile
- ☒ Via Email

DATED this 26<sup>th</sup> day of October, 2018.

s/Gennifer Holland  
Gennifer Holland, Legal Assistant



# Exhibit A





**CITY OF SEATTLE  
ANALYSIS AND DECISION OF THE DIRECTOR OF  
THE SEATTLE DEPARTMENT OF CONSTRUCTION AND INSPECTIONS**

**Record Number:** 3029611-LU  
**Applicant Name:** Julian Weber  
**Address of Proposal:** 2300 West Emerson Street

**SUMMARY OF PROPOSAL**

Land Use Application to allow one 6-unit rowhouse and one 3-unit rowhouse (9 units total).  
Parking for 9 vehicles proposed. Existing structure to be demolished.

The following approval is required:

**SEPA - Environmental Determination** (Seattle Municipal Code Chapter 25.05)

**SEPA DETERMINATION:**

Determination of Non-significance:

- ☒ No mitigating conditions of approval are imposed.
- ☐ Pursuant to SEPA substantive authority provided in SMC 25.05.660, the proposal has been conditioned to mitigate environmental impacts.

**SITE AND VICINITY**

**Site Zone:** Lowrise 1 (LR1)

**Vicinity Zoning:** North: LR1  
East: LR1  
South: SF5000  
West: SF5000

**Environmental Critical Areas:** None

**Site Description:** The subject site is located on the northwest corner of W Emerson Street and 23<sup>rd</sup> Avenue W. The lot proposed for development is comprised of one parcel containing an existing residential structure. The subject lot and lots to the north are zoned Lowrise (LR1). Lots



to the south and west are zoned Single Family (SF5000). The subject site is bound by W Emerson Street to the south, 23<sup>rd</sup> Avenue W to the east, an alley along the west property line, and adjacent residential developments along the shared north lot line. Across the alley are residential units. W Emerson Street is a collector arterial street. The site contains approximately 11 feet of grade change from the northwest corner, the high point of the site, to the southeast corner, the low point of the site.

#### PUBLIC COMMENT:

The public comment period ended on April 9, 2018. Comments were received and carefully considered, to the extent that they raised issues within the scope of this review. These areas of public comment related to density and tree retention. Comments were also received that are beyond the scope of this review and analysis.

### **I. ANALYSIS – SEPA**

Environmental review resulting in a Threshold Determination is required pursuant to the State Environmental Policy Act (SEPA), WAC 197-11, and the Seattle SEPA Ordinance (Seattle Municipal Code (SMC) Chapter 25.05).

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated 1/18/2018. The Seattle Department of Construction and Inspections (SDCI) has annotated the environmental checklist submitted by the project applicant; reviewed the project plans and any additional information in the project file submitted by the applicant or agents; and any pertinent comments which may have been received regarding this proposed action have been considered. The information in the checklist, the supplemental information, and the experience of the lead agency with the review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665 D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, and certain neighborhood plans and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority. The Overview Policy states in part: "*where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation*" subject to some limitations.

Under such limitations/circumstances, mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate.

#### Short Term Impacts

Construction activities could result in the following adverse impacts: construction dust and storm water runoff, erosion, emissions from construction machinery and vehicles, increased particulate levels, increased noise levels, occasional disruption of adjacent vehicular and pedestrian traffic, a



small increase in traffic and parking impacts due to construction related vehicles, and increases in greenhouse gas emissions. Several construction-related impacts are mitigated by existing City codes and ordinances applicable to the project such as: The Stormwater Code (SMC 22.800-808), the Grading Code (SMC 22.170), the Street Use Ordinance (SMC Title 15), the Seattle Building Code, and the Noise Control Ordinance (SMC 25.08). Puget Sound Clean Air Agency regulations require control of fugitive dust to protect air quality. The following analyzes construction-related noise, air quality, greenhouse gas, as well as mitigation.

#### Greenhouse Gas Emissions

Construction activities including construction worker commutes, truck trips, the operation of construction equipment and machinery, and the manufacture of the construction materials themselves result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, no further mitigation is warranted pursuant to SMC 25.05.675.A.

#### Construction Impacts - Noise

The project is expected to generate loud noise during demolition, grading and construction. The Seattle Noise Ordinance (SMC 25.08.425) permits increases in permissible sound levels associated with private development construction and equipment between the hours of 7:00 AM and 7:00 PM on weekdays and 9:00 AM and 7:00 PM on weekends and legal holidays in Lowrise, Midrise, Highrise, Residential-Commercial and Neighborhood Commercial zones.

The limitations stipulated in the Noise Ordinance are sufficient to mitigate noise impacts and no additional SEPA conditioning is necessary to mitigate noise impacts per SMC 25.05.675.B.

#### Environmental Health

The project includes demolition of existing structures. Should asbestos be identified on the site, it must be removed in accordance with the Puget Sound Clean Air Agency (PSCAA) and City requirements. PSCAA regulations require control of fugitive dust to protect air quality and require permits for removal of asbestos during demolition. The City acknowledges PSCAA's jurisdiction and requirements for remediation will mitigate impacts associated with any contamination. No further mitigation under SEPA Policies 25.05.675.F is warranted for asbestos impacts.

#### Long Term Impacts

Long-term or use-related impacts are also anticipated as a result of approval of this proposal including: greenhouse gas emissions; parking; potential blockage of designated sites from the Scenic Routes nearby; possible increased traffic in the area. Compliance with applicable codes and ordinances is adequate to achieve sufficient mitigation of most long-term impacts and no further conditioning is warranted by SEPA policies. However, greenhouse gas warrants further analysis.



Greenhouse Gas Emissions

Operational activities, primarily vehicular trips associated with the project's energy consumption, are expected to result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, no further mitigation is warranted pursuant to SMC 25.05.675.A.

**DECISION – SEPA**

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

- ☒ Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21.030(2) (c).
- ☐ Mitigated Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21.030(2) (c).

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030 (2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

This DNS is issued after using the optional DNS process in WAC 197-11-355 and Early review

**CONDITIONS – SEPA**

None.

Lindsay King, Land Use Planner Date: September 13, 2018  
Seattle Department of Construction and Inspections

LK:bg

King/3029611-LU



## IMPORTANT INFORMATION FOR ISSUANCE OF YOUR MASTER USE PERMIT

### Master Use Permit Expiration and Issuance

The appealable land use decision on your Master Use Permit (MUP) application has now been published. At the conclusion of the appeal period, your permit will be considered “approved for issuance”. (If your decision is appealed, your permit will be considered “approved for issuance” on the fourth day following the City Hearing Examiner’s decision.) Projects requiring a Council land use action shall be considered “approved for issuance” following the Council’s decision.

The “approved for issuance” date marks the beginning of the **three year life** of the MUP approval, whether or not there are outstanding corrections to be made or pre-issuance conditions to be met. The permit must be issued by SDCI within that three years or it will expire and be cancelled. (SMC 23-76-028) (Projects with a shoreline component have a **two year life**. Additional information regarding the effective date of shoreline permits may be found at 23.60.074.)

All outstanding corrections must be made, any pre-issuance conditions met and all outstanding fees paid before the permit is issued. You will be notified when your permit has issued.

Questions regarding the issuance and expiration of your permit may be addressed to the Public Resource Center at [prc@seattle.gov](mailto:prc@seattle.gov) or to our message line at 206-684-8467.



# **Exhibit B**



BEFORE THE HEARING EXAMINER  
FOR THE CITY OF SEATTLE

In Re: Appeal by

David Moehring and adjacent neighbors  
to 2300 W Emerson Street, Seattle  
WA 98199

of the September 13, 2018  
Determination of Non-Significance by  
Lindsay King, Land Use Planner,  
Seattle Department of Construction and  
Inspections.

NOTICE OF APPEAL

Appeal to the Determination of Non-  
Significance for development at  
2300 W Emerson Street and  
discretionary decision that an EIS is  
not required under RCW  
43.21.030(2) (c).

**MUP-18-022**

**I. INTRODUCTION**

The primary appellant, David Moehring, resides approximately one block south of the proposed 9-dwelling rowhouse development of 2300 W Emerson Street (Hereafter the "Subject Property" which is located at the northwest corner of the intersection of W. Emerson St. and 23<sup>rd</sup> Avenue West. The appellant lives within a potential landslide zone that borders this development and is concerned for the retention of large trees that are along the public right-of-way. Aesthetic and soil stability issues as identified in the SEPA checklist will affect the adjacent neighbors on the block of the development.

Each appellant will be adversely impacted by enactment of the proposed development notwithstanding the determination by the responsible party's discretionary decision that an EIS is not required under RCW 43.21.030(2) (c). The appellant with adjacent neighbors (hereafter "Appellant") asks that the Hearing Examiner require the Applicant's development be considered for its environmental impact pursuant to SEPA substantive authority provided in SMC 25.05.660 that may lead this proposal to be conditioned to mitigate the environmental impacts.



This appeal is related to the Subject Property as follows:

1. Decision Elements: SEPA determination and the Adjacent Environmentally Critical Areas
2. Interest: See Section II
3. Objections: See Section III
4. Desired Relief: See Section IV

## II. APPEAL INTERESTS

### 1. What is your interest in this decision?

The Appellant are within the neighboring blocks and have standing in the decision being appealed. David Moehring is an architect with 30 years of experience and resides approximately one block south of the proposed 9-dwelling rowhouse development of the Subject Property. His property falls within a designated Seattle potential landslide zone. This zone continues to the north-northwest and runs approximately within 250-feet of the Subject Property multifamily development. Such development, without a thorough assessment of the environmental impacts, could trigger impacts to the area including the Appellant's properties.

The protection of existing trees along the right-of-way of the Subject Property is of interest for soil retention, storm water runoff, neighborhood aesthetics, natural habitats, and thermal local heat island affects. The Appellant will be adversely impacted by enactment of the proposed development notwithstanding the determination by the responsible party's discretionary decision that an EIS is not required under RCW 43.21.030(2).

Given typical properties within this area are either single-family or lowrise multi-family residential with a maximum density of one dwelling/household for every 1,600 square foot of property lot area, having this development which proposes 225-percent more dwellings/households<sup>1</sup> must be evaluated for its impact to utility services provided to the area should the area be developed to its zoned density potential, and similar corner lots go beyond typical zoning density limits. Members of Appellants live, own property, and drive through the area will be directly, indirectly, and cumulatively impacted by permanently damaged trees or unstable soil conditions.

## III. APPEAL DECISION OBJECTIONS

### 2. What are your objections to the decision?

#### A. Reference Documents

1. All SDCI documents recorded for the development proposed at 2300 W Emerson Street.
2. SDCI Public Notice of Decision

<sup>1</sup> Lot of 7,000 square feet divided by 9 dwellings is equivalent to 1 dwelling per every 775 square feet of lot area. This exceeds the typical number of households per LR1-zoned lot by 225%.



3. ANALYSIS AND DECISION OF THE DIRECTOR OF THE SEATTLE DEPARTMENT OF CONSTRUCTION AND INSPECTIONS
4. Arborist Report and including all amendments from discovery.
5. Site Plan and including all amendments from discovery.
6. Annotated Sheet A1.0
7. Other supporting documents presented subsequent to discovery.

## **B. Inadequate Evaluation of the SEPA Checklist**

The DNS must consider short- and long-term effects of the development. The definition of “significant” is not limited to just “long-term” per WAC 1978-11-794 and SMC 25.05.794. This development is not just limited to the area within the property line, but also the right-of-way and adjacent properties. Significant trees within the right-of-way, if damaged due to the proximity of the new construction to the critical elements of the trees, may take many years to replace even assuming they can be replaced with similar quality resources and in the same geographical location.

The decision states that the “lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030 (2) (c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.”

Excluding further requested discovery, the completed SEPA checklist (with limited SDCI comments) appears to be available on the SDCI website for this project. However, this checklist includes numerous inaccurate or vague responses that would prohibit the lead agency from properly discerning the impacts of the development. This is problematic as the stated purpose of checklist is for “Governmental agencies [to] use this checklist to help determine whether the environmental impacts of your proposal are significant. This information is also helpful to determine if available avoidance, minimization or compensatory mitigation measures will address the probable significant impacts or if an environmental impact statement will be prepared to further analyze the proposal.” Hence, if the checklist includes inaccurate and vague responses as this proposal does, the lead agency will not be able to accurately discern if the environmental impacts of the proposal are significant.

Within part A.8. of the Checklist, only two documents are listed that define the environmental information directly related to the Subject Property proposal. Those documents listed include (a) the Arborist report provided by Shoffner Consulting; and (b) the Geotechnical Information Summary, provided by Geotech Consultants, Inc. As elaborated within the subsequent sections of this appeal, these two documents are woefully substandard and incomplete from what is typically provided for projects of this size and geographical characteristics.



1 Included in the checklist are the following inadequacies in the checklist responses by part  
2 within the checklist (Q. = question; A.= response):

3 Inadequacy Item 1:

Q: B. 1. b. What is the steepest slope on the site (approximate percent slope)?

4 A: Barring areas retained by rockery, and excluding existing site stairs, 22%.

Appellant Concern: The rockery – most of which is within the street right-of-way – has not  
5 been addressed. The northeast corner of the site is a pre-designated steep slope ECA as  
6 noted within Item 6 below. The slopes of the rockery exceed 40-percent. In addition, the  
7 existing contour lines within the designated steep slope areas are equivalent to the spacing  
8 of contour lines outside the steep slope areas. This means a consistent steep slope rather  
than only a portion. See architectural drawings including section A4.1 and a visit to the site  
is recommended to confirm this document inconsistency.

9 Inadequacy Item 2:

Q: B. 1. d. Are there surface indications or history of unstable soils in the immediate  
10 vicinity? If so, describe.

11 A: None.

Appellant Concern: reference Seattle's official landslide information<sup>2</sup> maps along with  
12 subsequent updates by the SDCI Director. There was at least one recorded landslide at  
13 most one block from the Subject Property and another three landslides within three blocks  
14 south of the Subject Property. Other checklists prepared for the Department include  
15 incidences within such proximities. The applicant's response may be an attempt to avoid  
further questioning or investigation from the Department or from triggering a need for an  
EIS.

16 Inadequacy Item 3:

Q: B. 1. g. About what percent of the site will be covered with impervious surfaces after  
17 project construction (for example, asphalt or buildings)?

18 A: Roughly 55%, but we are working with a civil engineering firm to help confirm pavement  
permeability, infiltration rate, etc.

Appellant Concern: With a lot of 7,000 square feet, the designated yard areas is only 925  
19 sq. ft. (sheet A1.1) which could suggest as high as 85% impervious surfaces. The building  
20 structures account for at least 2,600 square feet of the impervious area (sheet A2.0). The  
21 nine parking spaces (sheet A1.0) account for another 1,100 square feet of the impervious  
22 area as well as the paved drive areas between the spaces. There is no record of civil  
23 engineering documents identifying permeable pavement or the pavement attributes. This is  
open-ended and could result in significant storm water issues at a busy arterial intersection  
with low visibility due to the street slope of Emerson to the east. A visit to the site would  
confirm these concerns.

26 <sup>2</sup> See link to city information at

[https://www.seattle.gov/dpd/cs/groups/pan/@pan/documents/web\\_informational/dpdd017622.pdf](https://www.seattle.gov/dpd/cs/groups/pan/@pan/documents/web_informational/dpdd017622.pdf)



1 Inadequacy Item 4:

2 Q: B. 4.b. Plants - What kind and amount of vegetation will be removed or altered?

3 A: One (1) tree will be removed, plus shrubs and grass to be disturbed or removed during construction. Planting replacement will be coordinated with the landscape architect.

4 Appellant Concern: Referencing the inadequate arborist report and the conflicts between the architectural drawings and the landscape drawings, there is more than one significant tree that will be lost. As many as four significant trees have buildings being constructed within the code-defined root feeder zone. Excavations for building foundations also extend another 3 to 5 feet beyond the edge of the proposed building that even further carve into the root feeder zones. This conflict has not been addressed or identified within the Checklist. Reference the appeal inadequacies of the drawings below, Part C.

8 Inadequacy Item 5:

9 Q: B. 8. A. Land and shoreline use - What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe.

10 A: Current use is a multi-family residence, adjacent properties are multi-family residential.

11 Appellant Concern: per architectural drawings, the property also is adjacent to Single Family SF-5000 zones. The height, bulk and scale of this development must be considered within an EIS accordingly.

13 Inadequacy Item 6:

14 Q: B. 8. h. Has any part of the site been classified as a critical area by the city or county? If so, specify.

15 A: Yes, there is a tiny portion of Steep Slope in the Northeast corner of the site.

16 SDCI comment: "Site is not mapped as an environmentally critical area." LMK 8/29/18

17 Appellant Concern: SDCI comment undermines the requirements and the site survey information indicates steep slopes along the entire lot along West Emerson Street.

18 Inadequacy Item 7:

19 Q: B. 10. b. Aesthetics - What views in the immediate vicinity would be altered or obstructed?

20 A: None

21 Appellant Concern: According to the drawings and checklist, the properties to the north of the Subject Property will have their views of the Elliott Bay and Downtown Seattle obstructed by a long wall of nine rowhouses as tall as 39 feet – 11 inches. The DNS was based on no impacts to views being altered or obstructed. A visit to the property will demonstrate this fact.

23 Inadequacy Item 8:

24 Q: B. 10.c. Aesthetics - Proposed measures to reduce or control aesthetic impacts, if any:

25 A: None

26 Appellant Concern: Given the above, no mediation of the obstructed views are being considered.



1 Inadequacy Item 9:

2 Q: B.15. Public Services

3 a. Would the project result in an increased need for public services (for example: fire  
4 protection, police protection, public transit, health care, schools, other)? If so, generally  
5 describe.

6 A: A potential 12 person increase to all public services, but unlikely any increase in actual  
7 demand.

8 Appellant Concern: As the existing three dwelling property is increased to a nine dwelling  
9 property, the Applicant suggests that each additional dwelling will have just two occupants.  
10 This miscalculation is off by a magnitude of two. Whether it is 12 persons or 24 persons  
11 being added to the site, the Department has failed to recognize that this response is  
12 inadequate. The significant increase in the number of occupant planned for this lot will also  
13 have an impact to the locally provided public services and actual demand.

14 Inadequacy Item 10:

15 Q: B.15. b. Proposed measures to reduce or control direct impacts on public services, if  
16 any.

17 A: None

18 Appellant Concern: Given the above, no mediation of the obstructed views are being  
19 considered.

20 Inadequacy Item 11:

21 Missing from the checklist are pages 32-36.

22 Appellant Concern: Given all of the above, the remaining portions of the SEPA Checklist  
23 should not be excluded.

24 **C. Inaccurate, incomplete and uncoordinated drawings to define limits of areas  
25 affected**

26 The proposal compresses nine dwellings into this property within a LR1-zoned lot that  
typically only accommodate four dwellings per the SMC. As a result, there is no room for  
the new building foundations to clear the existing right-of-way (ROW) designated tree root  
protection areas. Although the developer's landscape drawings shows a detail of the  
protection of existing trees being at the extent of the tree's dripline, the architect's drawings  
show the new building significantly encroaches into the trees' drip lines. Again, this overlap  
only worsens when excavations carve out more in this sloping property and cut deeper and  
further into the existing trees' critical root feeder zones. Thus, the existing trees will very  
likely not survive. Case studies have shown tall trees with excavations into root areas tend  
to tip and displace ultimately resulting in removal without mitigation. Reference the  
annotated sheet A1.0 attached with the appeal.

The drawings (sheet L1) identify the phone number of Seattle staff Ben Roberts as the  
person who will inspect tree protection at the time of construction. The two problems with  
that is (a) the SEPA evaluation has not been conducted to determine if the protection is even



possible given the location of the proposed buildings to the tree; and (b) as of September 21, 2018, Mr. Roberts had no information or knowledge of this project or DNS.

In addition, the geotechnical evaluation of this site is woefully inadequate to discern the impacts to trees and slopes caused during construction. Historically speaking, property in West Seattle, Queen Anne, Magnolia and Madrona faces the highest risk of landslides, though every incident depends on a number of different factors. This Subject Property is no exception. Adding to the presence of steep slopes and soil, human influence also impacts the chance of a landslide. A major concern for landslide experts remains the construction projects that occur throughout the rainy season. Taring up the ground and changing the land's natural layout tends to mobilize sediment. In some parts of the state, construction starts shutting down in the middle of October. Removing trees intentionally or by oversight may loosen soil within the property, especially when located on an at-risk a slope with an incline greater than 40 degrees. Severe storms can cause the loose soil to saturate, and subsequently slide away. This has not been considered by any reports leading to the DNS.

#### **D. Incomplete and uncoordinated arborist evaluation**

The arborist report (included for reference in the appeal attachment) has been prepared by Shoffner Consulting [ISA Certified Arborist #PN-0909A CTRA #1759]. The developer's arborist is from Bothell, and apparently does not appear to fully identify the requirements for street trees in Seattle. This arborist does not appear to be qualified to evaluate trees on the ROW on behalf of SDOT, providing unreliable information for the Department to provide a DNS for the Subject Property.

The arborist report includes no photographs of the site to verify that they have examined all significant trees on the property, the adjacent right-of-way, and numerous trees along the property line on the adjacent lot to the north. Instead, the arborist states within the report, "None of the trees are exceptional, therefore, *no retention is required and if any trees are retained, no protection is required.*" (Emphasis added). The arborist lumps the SDOT ROW trees along with the trees on the private site; and looks only at the size of the trees per the SDCI Director's Rule and not the requirements of SDOT. Nor does the arborist recognize that the DBH of the tree has reduced thresholds when on a designated steep slope area of the right-of-way. As a result, the two spruce and one fir all must follow higher levels of protection than identified.

Per the arborist report, these trees are in the Right of Way include:

1. Blue Colorado spruce (*Picea pungens* 'glauca'), 18" dbh, 24' crown spread. Good condition and health. Not exceptional.
2. Blue Colorado spruce, 18" dbh, 24' crown spread. Good condition and health. Not exceptional.
3. Noble fir (*Abies procera*), 5", 8' crown spread. Fair condition and health. Not exceptional.
4. Noble fir, 14" dbh, 12' crown spread. Poor condition, multiple tops. Not exceptional.



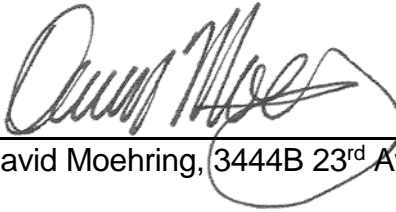
1 The DNS fails to evaluate the impacts of removing protections for significant trees on the  
2 steeply sloped right-of-way (SMC 25.11). The DNS does not evaluate the increase in  
3 impermeable surfaces that will increase stormwater runoff as a result of trees being removed.  
4 The DNS does not mention or assess increased health impacts as a result of increased  
removal of trees under the proposed action.

5 **IV. RELIEF REQUESTED**

6 Appellant requests that the Hearing Examiner vacate the Determination of Non-Significance  
7 with instructions to the SDCI to prepare an Environmental Impact Statement EIS to  
8 adequately address the environmental impacts and mitigation to meet the objective of  
providing adequate protections to Seattle's right-of-ways and the nearby residents.

9 Filed on behalf of the Appellants this 26<sup>th</sup> day of September, 2018.

10  
11  
12 By:



David Moehring, 3444B 23<sup>rd</sup> Avenue West

13  
14 With and for:

15 BONNIE MCDONALD  
16 3823 23RD AVE W 98199

17 RICHARD BROWNFIELD  
18 3807 23RD AVE W 98199  
19  
20  
21  
22  
23  
24  
25  
26



# Exhibit C



# SEPA ENVIRONMENTAL CHECKLIST

## UPDATED 2016

### ***Purpose of checklist:***

Governmental agencies use this checklist to help determine whether the environmental impacts of your proposal are significant. This information is also helpful to determine if available avoidance, minimization or compensatory mitigation measures will address the probable significant impacts or if an environmental impact statement will be prepared to further analyze the proposal.

### ***Instructions for applicants:*** [help]

This environmental checklist asks you to describe some basic information about your proposal. Please answer each question accurately and carefully, to the best of your knowledge. You may need to consult with an agency specialist or private consultant for some questions. You may use "not applicable" or "does not apply" only when you can explain why it does not apply and not when the answer is unknown. You may also attach or incorporate by reference additional studies reports. Complete and accurate answers to these questions often avoid delays with the SEPA process as well as later in the decision-making process.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

### ***Instructions for Lead Agencies:***

Please adjust the format of this template as needed. Additional information may be necessary to evaluate the existing environment, all interrelated aspects of the proposal and an analysis of adverse impacts. The checklist is considered the first but not necessarily the only source of information needed to make an adequate threshold determination. Once a threshold determination is made, the lead agency is responsible for the completeness and accuracy of the checklist and other supporting documents.

### ***Use of checklist for nonproject proposals:*** [help]

For nonproject proposals (such as ordinances, regulations, plans and programs), complete the applicable parts of sections A and B plus the [supplemental sheet for nonproject actions \(part D\)](#). Please completely answer all questions that apply and note that the words "project," "applicant," and "property or site" should be read as "proposal," "proponent," and "affected geographic area," respectively. The lead agency may exclude (for non-projects) questions in Part B - Environmental Elements -that do not contribute meaningfully to the analysis of the proposal.

## **A. BACKGROUND** [help]

1. Name of proposed project, if applicable: [help] 2300 W Emerson St

2. Name of applicant: [help] Northwest Builders Finance

3. Address and phone number of applicant and contact person: [help]

Applicant: Northwest Builders Finance  
7900 SE 28th St  
Suite 320  
Seattle, WA 98122  
Contact: Julian Weber, AIA  
1257 S King Street/ Seattle, WA 98144/ dpd@jwaseattle.com



4. Date checklist prepared: [help] Jan 19, 2018
5. Agency requesting checklist: [help] City of Seattle, SDCI
6. Proposed timing or schedule (including phasing, if applicable): [help]

Construction to begin shortly after permit approval. Dependant on corrections cycle, with building permit intake date tentatively scheduled for 3/09/2018.

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain. [help]

None.

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal. [help]

Arborist report provided by Shoffner Consulting, ISA Certified Arborist #PN-0909A  
Geotechnical Information Summary, provided by Geotech Consultants, Inc.

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain. [help]

None.



10. List any government approvals or permits that will be needed for your proposal, if known. [help]

City of Seattle SDCI – SEPA Approval  
City of Seattle SDCI – Building Permit

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.) [help]

7,000 SF PROJECT SITE. DEMO EXISTING STRUCTURE, CONSTRUCT (9) ROWHOUSES WITH (8) OPEN PARKING STALLS AND (1) GARAGE. FUTURE UNIT LOT SUBDIVISION.

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist. [help]

2300 W Emerson St, Seattle, WA 98199



## B. ENVIRONMENTAL ELEMENTS [help]

### 1. Earth

#### a. General description of the site [help]

(check one): ☐ Flat, ☐ rolling, ☒ hilly, ☐ steep slopes, ☐ mountainous,

☐ other \_\_\_\_\_

#### b. What is the steepest slope on the site (approximate percent slope)? [help]

Barring areas retained by rockery, and excluding existing site stairs, 22%.

#### c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any agricultural land of long-term commercial significance and whether the proposal results in removing any of these soils. [help]

At the western boring location, there were 0-3' Brown, gravelly slightly silty sand, damp, loose [FILL over Weathered] 3-8' Gray SAND, fine-grained, moist, medium-dense to dense [SP]  
Bottom of Hole at 8 feet. No Groundwater.

The eastern boring location found 0-3' Brown, gravelly slightly silty sand, damp, loose [FILL over Weathered] 3-9' Gray SAND, fine-grained, moist, medium-dense [SP]  
- becomes gray, medium-dense to dense at 6 feet.  
Bottom of Hole at 9 feet. No Groundwater.

#### d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe. [help]

None.



e. Describe the purpose, type, total area, and approximate quantities and total affected area of any filling, excavation, and grading proposed. Indicate source of fill. [help]

Excavation, 50 cubic yards +/-  
Fill, 50 cubic yards +/-  
Stepped grading to happen, to create yards, as well as access for parking.

f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe. [help]

Erosion control measures will be in place prior to the start of excavation

g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)? [help]

Roughly 55%, but we are working with a civil engineering firm to help confirm pavement permeability, infiltration rate, etc.

h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any: [help]

Erosion control measures will be in place prior to the start of excavation, as well as the disturbed areas being planted for erosion control.



## 2. Air

a. What types of emissions to the air would result from the proposal during construction, operation, and maintenance when the project is completed? If any, generally describe and give approximate quantities if known. [help]

Nothing beyond typical wood framed construction emissions.

b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe. [help]

None known.

c. Proposed measures to reduce or control emissions or other impacts to air, if any: [help]

Recycling solid waste



### 3. Water

#### a. Surface Water: [help]

1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into. [help]

No

2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans. [help]

No

3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material. [help]

None



4) Will the proposal require surface water withdrawals or diversions?  
Give general description, purpose, and approximate quantities if  
known. [help]

No

5) Does the proposal lie within a 100-year floodplain? If so, note  
location on the site plan. [help]

No

6) Does the proposal involve any discharges of waste materials to  
surface waters? If so, describe the type of waste and anticipated  
volume of discharge. [help]

No



b. Ground Water:

1) Will groundwater be withdrawn from a well for drinking water or other purposes? If so, give a general description of the well, proposed uses and approximate quantities withdrawn from the well. Will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known. [help]

No

2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals. . . ; agricultural; etc.). Describe the general size of the system, then number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve. [help]

None



c. Water runoff (including stormwater):

- 1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe. [help]

We are working with our civil engineers to determine the possible rainwater mitigation strategies, but generally speaking will route rooftops to bioplanterers or other on-site infiltration BMPs, or out to public stormwater system.

- 2) Could waste materials enter ground or surface waters? If so, generally describe. [help]

No

- 3) Does the proposal alter or otherwise affect drainage patterns in the vicinity of the site? If so, describe.

No



d. Proposed measures to reduce or control surface, ground, and runoff water, and drainage pattern impacts, if any:

We are working with our civil engineers to determine the possible rainwater mitigation strategies, but generally speaking will route rooftops to bioplanters or other on-site infiltration BMPs, or out to public stormwater system. Permeable pavement will be used if the infiltration rate allows.

#### 4. **Plants** [help]

a. Check the types of vegetation found on the site:

- ☒ deciduous tree: alder, maple, aspen, other
- ☐ evergreen tree: fir, cedar, pine, other
- ☒ shrubs
- ☒ grass
- ☐ pasture
- ☐ crop or grain
- ☐ Orchards, vineyards or other permanent crops
- ☐ wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other
- ☐ water plants: water lily, eelgrass, milfoil, other
- ☐ other types of vegetation

b. What kind and amount of vegetation will be removed or altered? [help]

(1) tree will be removed, plus shrubs and grass to be disturbed or removed during construction. Planting replacement will be coordinated with the landscape architect.

c. List threatened and endangered species known to be on or near the site. [help]

None known



d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any: [help]

+/- 875 SF of planted ground cover, possibly new trees if recommended by landscape architect, and a mix of native and drought tolerant plantings.

e. List all noxious weeds and invasive species known to be on or near the site.

None known

## 5. Animals

a. List any birds and other animals which have been observed on or near the site or are known to be on or near the site. Examples include: [help]

birds: hawk, heron, eagle, songbirds, other:

mammals: deer, bear, elk, beaver, other:

fish: bass, salmon, trout, herring, shellfish, other

None

b. List any threatened and endangered species known to be on or near the site. [help]

None



c. Is the site part of a migration route? If so, explain. [help]

No

d. Proposed measures to preserve or enhance wildlife, if any: [help]

Planting of trees and shrubs & using bioretention facilities.

e. List any invasive animal species known to be on or near the site.

None

## 6. Energy and natural resources

a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc. [help]

Natural gas heating, cooking & clothes drying. Residential electric use.



b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe. [help]

Minimal impact. The largest mass of the building is setback from the northern property line, which is the only adjacent lot.

c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any: [help]

Energy Star Appliances, High efficiency space and water heating, as well as Built Green 4 Star construction standards.

## 7. Environmental health

a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe. [help]

None

1) Describe any known or possible contamination at the site from present or past uses.

None



2) Describe existing hazardous chemicals/conditions that might affect project development and design. This includes underground hazardous liquid and gas transmission pipelines located within the project area and in the vicinity.

None

3) Describe any toxic or hazardous chemicals that might be stored, used, or produced during the project's development or construction, or at any time during the operating life of the project.

None

4) Describe special emergency services that might be required.

None



5)Proposed measures to reduce or control environmental health hazards, if any:

No health hazards present.

**b. Noise**

1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)? [help]

None

2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site. [help]

(8) months wood-framed residential construction noise. 7am – 6pm M-F, 9am – 5pm Saturday



3) Proposed measures to reduce or control noise impacts, if any: [help]

None

## 8. Land and shoreline use

a. What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe. [help]

Current use is a multi-family residence, adjacent properties are multi-family residential.

b. Has the project site been used as working farmlands or working forest lands? If so, describe. How much agricultural or forest land of long-term commercial significance will be converted to other uses as a result of the proposal, if any? If resource lands have not been designated, how many acres in farmland or forest land tax status will be converted to nonfarm or nonforest use? [help]

No



1) Will the proposal affect or be affected by surrounding working farm or forest land normal business operations, such as oversize equipment access, the application of pesticides, tilling, and harvesting? If so, how:

No

c. Describe any structures on the site. [help]

One single story, multi-family residence.

d. Will any structures be demolished? If so, what? [help]

Yes, the existing multi-family residence.



e. What is the current zoning classification of the site? [help]

LR1

f. What is the current comprehensive plan designation of the site? [help]

Not known

g. If applicable, what is the current shoreline master program designation of the site?  
[help]

None



h. Has any part of the site been classified as a critical area by the city or county? If so, specify. [help]

Yes, there is a tiny portion of Steep Slope in the Northeast corner of the site.

Site is not mapped as an environmentally critical area. LMK 8/29/18

i. Approximately how many people would reside or work in the completed project? [help]

Between 9 - 27 people, depending on family sizes

j. Approximately how many people would the completed project displace? [help]

Six people

k. Proposed measures to avoid or reduce displacement impacts, if any: [help]

None



l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any: [help]

None

m. Proposed measures to ensure the proposal is compatible with nearby agricultural and forest lands of long-term commercial significance, if any:

None

## 9. Housing

a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing. [help]

9 middle-income housing units



b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing. [help]

3 middle-income housing units.

c. Proposed measures to reduce or control housing impacts, if any: [help]

None



## 10. Aesthetics

a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?  
[help]

39'-11" tall , hardie-panel and cementitious lap siding with cedar accents

b. What views in the immediate vicinity would be altered or obstructed?  
[help]

None

c. Proposed measures to reduce or control aesthetic impacts, if any: [help]

None



## 11. Light and glare

a. What type of light or glare will the proposal produce? What time of day would it mainly occur? [help]

Typical residential lighting

b. Could light or glare from the finished project be a safety hazard or interfere with views? [help]

Not likely

c. What existing off-site sources of light or glare may affect your proposal? [help]

None



d. Proposed measures to reduce or control light and glare impacts, if any:

Shielded lighting to not fall onto neighboring sites.

## 12. Recreation

a. What designated and informal recreational opportunities are in the immediate vicinity? [help]

Lawton Park and Magnolia Manor Park are within walking distance.

b. Would the proposed project displace any existing recreational uses? If so, describe. [help]

None



c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any: [help]

None

### 13. Historic and cultural preservation

a. Are there any buildings, structures, or sites, located on or near the site that are over 45 years old listed in or eligible for listing in national, state, or local preservation registers located on or near the site? If so, specifically describe. [help]

None

b. Are there any landmarks, features, or other evidence of Indian or historic use or occupation? This may include human burials or old cemeteries. Are there any material evidence, artifacts, or areas of cultural importance on or near the site? Please list any professional studies conducted at the site to identify such resources. [help]

None



c. Describe the methods used to assess the potential impacts to cultural and historic resources on or near the project site. Examples include consultation with tribes and the department of archeology and historic preservation, archaeological surveys, historic maps, GIS data, etc. [help]

None

d. Proposed measures to avoid, minimize, or compensate for loss, changes to, and disturbance to resources. Please include plans for the above and any permits that may be required.

None

#### 14. **Transportation**

a. Identify public streets and highways serving the site or affected geographic area and describe proposed access to the existing street system. Show on site plans, if any. [help]

Parking will be accessed via an alley off of W Emerson Street.



b. Is the site or affected geographic area currently served by public transit? If so, generally describe. If not, what is the approximate distance to the nearest transit stop? [help]

Yes, a bus stop at the corner of 22nd Ave W & Gillman Ave W, within .1 miles. Services bus lines 31 & 33.

c. How many additional parking spaces would the completed project or non-project proposal have? How many would the project or proposal eliminate? [help]

(9) parking spaces proposed, which replaces the current (3) provided spaces.

d. Will the proposal require any new or improvements to existing roads, streets, pedestrian, bicycle or state transportation facilities, not including driveways? If so, generally describe (indicate whether public or private). [help]

None



e. Will the project or proposal use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe. [help]

No

f. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks (such as commercial and nonpassenger vehicles). What data or transportation models were used to make these estimates? [help]

Given the (9) proposed units, with (9) provided stalls, if everyone commutes to work and back in one day, that would be 18 daily trips generated. If we assume that (4) of those people will make a commute after work, we can estimate 26 daily trips.

Give or take 25 trips per day, averaged. No commercial or truck use.

g. Will the proposal interfere with, affect or be affected by the movement of agricultural and forest products on roads or streets in the area? If so, generally describe.

No



h. Proposed measures to reduce or control transportation impacts, if any: [help]

None

#### 15. Public services

a. Would the project result in an increased need for public services (for example: fire protection, police protection, public transit, health care, schools, other)? If so, generally describe. [help]

A potential 12 person increase to all public services, but unlikely any increase in actual demand.

b. Proposed measures to reduce or control direct impacts on public services, if any. [help]

None



## 16. Utilities

a. Check utilities currently available at the site: [help]

- ☒ electricity ☒ natural gas ☒ water ☒ refuse service ☒ telephone ☒ sanitary sewer  
☐ septic system,  
☐ other \_\_\_\_\_

b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed. [help]

Water, sewage, gas, telephone, refuse service, and electricity are currently available on-site.

## C. Signature [help]

The above answers are true and complete to the best of my knowledge.  
I understand that the lead agency is relying on them to make its decision.

Signature: \_\_\_\_\_

Name of signee: Julian Weber, AIA

Position and Agency/Organization: JW Architects

Date Submitted: Jan 19, 2018

This checklist was reviewed by:

Lindsay King

Land Use Planner, Department of Construction and Inspections



# **Exhibit D**





## PASV Request for Project #3029611

**Project Number:** 3029611      **Address:** 2300 W EMERSON ST  
**Application Template:** Project      **AP Type:** LAND USE  
**Type of Work:** FULL C      **Description of Work:** Demo existing structure, construct (9) row houses with (8) open parking stalls and (1) carport. Future unit lot subdivision.  
**Dept of Commerce:** MULTIFAMILY  
**Cut Depth in Feet (maximum):** 5      **Foundation Type:** Spread Footing  
**Fill Depth in Feet (maximum):** 5      **Is site occupied?** Y  
**\*Cumulative (in cubic yards):** 75

### Primary Applicant

Contact ID	Name	Address	City	E-Mail	Phone	Fax
AC91539	JULIAN WEBER	1257 S KING STREET	SEATTLE	jw@jwaseattle.com	(206)953-1305	

### Owner

ID	Name	Address	City	E-Mail	Phone	Fax
AC299771	JOHN JACKELS	7900 SE 28TH STREET SUITE 320	MERCER ISLAND	jackelsj@nwbf.com	(206)858-2189	

### Authorization to Conduct Site Visit

I, the owner or owner's authorized representative of the above-addressed property, give the City of Seattle Department of Construction and Inspections permission to conduct a Pre-Application Site Visit. I agree that: 1) electronic filing constitutes an authorizing signature; 2) I will inform all tenants of the site visit prior to the inspection being conducted; and 3) if conditions such as uncontrolled dogs or uncooperative tenants hinder the inspector's ability to conduct the site visit, the site visit will not occur and the site visit fee may be forfeited.

Authorized by WEBER, JULIAN on 9/22/2017







































































# **Exhibit E**





Subject site is highlighted

## Land Use data

**PIN: 2770600190**

**3801 23RD AVE W 2300 W EMERSON ST 2302 W EMERSON ST 2304 W EMERSON ST 2306 W EMERSON ST**

<b>Zoning:</b>	LR1
<b>SEPA unit count threshold:</b>	4
<b>SEPA square footage threshold:</b>	4,000

Source: City of Seattle Geographic Information Systems

Department of Construction and Inspections, Land Use Team

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<b>Design Review square footage threshold:</b>	<a href="#"><i>New Design Review Thresholds in effect SMC 23.41.004</i></a>
<b>Shoreline district?</b>	No
<b>Incentive zoning?</b>	No
<b>Pedestrian P suffix zone:</b>	No
<b>Pedestrian future "P" area 23.47A.005C:</b>	No
<b>Zoning Special Street:</b>	No
<b>Zoning history (most recent):</b>	LR1,ORD123495,04/19/2011 L-1
<b>Public Benefit Features:</b>	No
<b>ECA1 Steepslope:</b>	No
<b>ECA2 Potential slide:</b>	No
<b>ECA3 Riparian corridor:</b>	No
<b>ECA4 Wetland:</b>	No
<b>ECA5 Liquefaction:</b>	No
<b>ECA6 Flood prone:</b>	No
<b>ECA7 Abandoned landfill:</b>	No
<b>ECA8 Knownslide event:</b>	No
<b>ECA8 Knownslide area:</b>	No
<b>ECA9 Wildlife habitat:</b>	No
<b>ECA11 Peat settlement prone:</b>	No
<b>Urban village or Manuf/Ind Center?</b>	No
<b>Future land use?</b>	Multi-Family Residential Areas
<b>Light rail station overlay district?</b>	No
<b>Alki Parking Overlay District?</b>	No
<b>University District Parking Impact Area?</b>	No
<b>Downtown Fire District?</b>	No
<b>Urban Harborfront Historic Character Area?</b>	No
<b>International Special Review District?</b>	No
<b>Stadium Transition Area Overlay District?</b>	No
<b>Northgate Overlay District?</b>	No
<b>Pike Pine Conservation Core SMC 23.73.010?</b>	No
<b>Pike Pine Conservation Overlay?</b>	No
<b>Southeast Seattle Reinvestment Area?</b>	No
<b>Rainier Genesee Business District?</b>	No
<b>Sand Point Overlay District?</b>	No
<b>Sand Point Park Area?</b>	No
<b>Frequent Transit Service Area?</b>	No
<b>Historic landmark district?</b>	No

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Source: City of Seattle Geographic Information Systems

Department of Construction and Inspections, Land Use Team

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<b>Historic landmark district?</b>	No
<b>Historic City landmark?</b>	No
<b>Arterial(s) within 100 ft of site?</b>	Yes, W EMERSON ST (Collector)
<b>SEPA Scenic Route within 100 ft?</b>	No
<b>Eagle management area w/in 400' of nest site?</b>	No
<b>Design Review Guideline area?</b>	No
<b>Design Review Equity Area?</b>	No
<b>Grading permit required - 25 cubic yards?</b>	No
<b>Grading permit required - All?</b>	No
<b>Fire hydrant - nearest (0° = due east)</b>	Yes, 66 feet east southeasterly
<b>Airport Height District? (generalized range)</b>	Yes, (1063-1068 feet), (Outer Approach Area)
<b>Archaeological buffer area? (DR2-98)</b>	No
<b>Tree canopy percentage?</b>	Yes, 12.2% tree canopy
<b>Heritage tree?</b>	No
<b>Heron habitat?</b>	No
<b>Salmon Watershed?</b>	No
<b>DWW flood event found (10/2/2004 data)?</b>	No
<b>Residential tax exemption area? (SMC5.72)?</b>	No
<b>Alaskan Way Tunnel Limited Access area?</b>	No
<b>Alaskan Way Viaduct Seawall Constr. Imp. Area?</b>	No
<b>Year built? (King County Assessor data)</b>	1969
<b>Adjacent to Park?</b>	No
<b>Within 100 feet of Park?</b>	No
<b>Within 500 feet of Park in ECA (1,2,3,4,6,8,11)?</b>	No
<b>Streetscape design concept plan?</b>	No
<b>Subject to Mandatory Housing Affordability?</b>	No, (LR1)
<b>Mandatory Housing Affordability (MHA) fees?</b>	Medium Areas (may apply, refer to Tables A and B for 23.58B.040/.050 and 23.58C.040/.050)
<b>Unreinforced masonry building (URM)?</b>	No







# **Exhibit F**



# City of Seattle Landslide Prone Areas



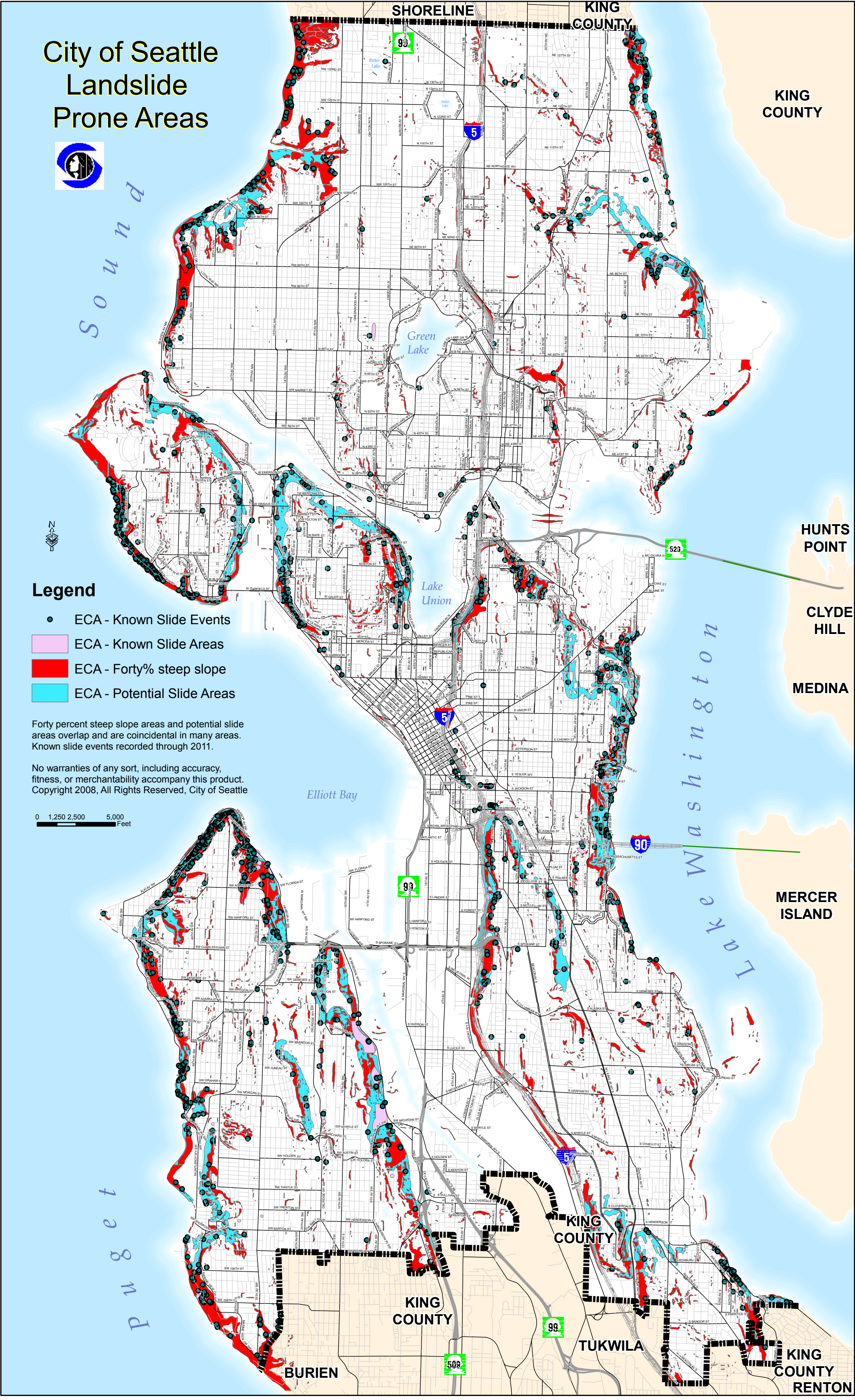
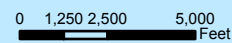
Sound

## Legend

- ECA - Known Slide Events
- ECA - Known Slide Areas
- ECA - Forty% steep slope
- ECA - Potential Slide Areas

Forty percent steep slope areas and potential slide areas overlap and are coincidental in many areas. Known slide events recorded through 2011.

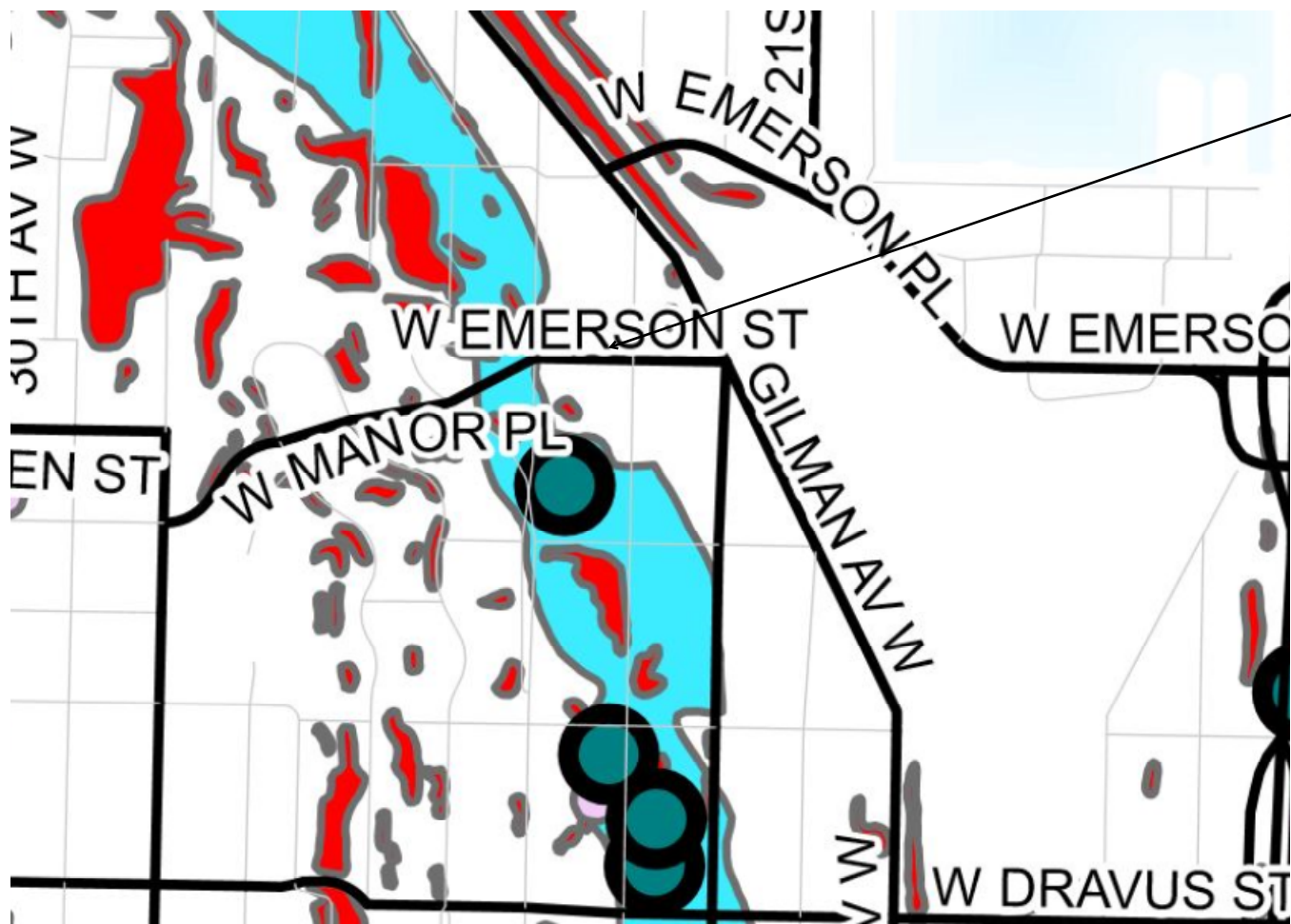
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# **Exhibit F(a)**





Premises



# Exhibit G





# City of Seattle

## Department of Construction and Inspections

### Land Use Review

JULIAN WEBER  
1257 S King Street  
Seattle, WA 98144

**Re: Project# 3029611**

#### Correction Notice #1

<b>Review Type</b>	LAND USE	<b>Date</b>	April 10, 2018
<b>Project Address</b>	2300 W Emerson St	<b>Contact Phone</b>	(206) 953-1305 x100
<b>Contact Email</b>	dpd@jwaseattle.com	<b>Contact Fax</b>	
<b>SDCI Reviewer</b>	Charles Benson III	<b>Address</b>	Seattle Department of Construction and Inspections 700 5th Ave Suite 2000 PO Box 34019 Seattle, WA 98124-4019
<b>Reviewer Phone</b>	(206) 272-3885		
<b>Reviewer Fax</b>			
<b>Reviewer Email</b>	charles.benson@seattle.gov		
<b>Owner</b>	JOHN JACKELS		

#### Applicant Instructions

Please see the attached flyer to learn "[How to Respond to a SDCI Correction Notice](#)".  
If the 3-step process outlined in this document is not followed, it is likely that there will be a delay in permit issuance and there is a potential for penalty fees.

#### Codes Reviewed

This project has been reviewed for conformance with the applicable development standards of the Land Use Code.

#### Corrections

- 1 Arborist Report.** Please revise the arborist report to identify which trees are located within the ROW, as protection/preservation standards differ in the ROW vs. private property.
- 2** Please consult with Ben Roberts of SDOT Forestry per tree preservation/retention requirements, particularly regarding the large spruce trees in the 23rd Avenue W ROW, as SDOT Forestry approval is required for any vegetative changes within City ROWs. He can be contacted via email at [Ben.Roberts@seattle.gov](mailto:Ben.Roberts@seattle.gov) or via phone at 206.233.8735 (office) or 206.423.3685 (mobile).





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### Step 1: Wait for all reviews to be completed

- You may check the status of any review at the following link:  
<http://web6.seattle.gov/dpd/permitstatus>
- All reviews must be completed before the applicant can respond, upload, or submit any correction responses.
- **Electronic Plans:** We will send correction letters to the Seattle DCI Project Portal. We will notify the primary contact for the project when all reviews in the review cycle are complete.
- **Paper Plans:** We will notify the primary contact for the project by email or phone when all reviews in the review cycle are complete and plans are ready to be picked up. Once you have been notified, pick up the plans at Plans Routing in the Applicant Service Center.

---

### Step 2: Make Corrections

**Provide a written response for each item on all correction notices. We will not accept corrected plans without written responses. Include the following information for each item:**

- Describe the change
- Say where the change can be found in the plan set
- If you have not made a requested change, give a code citation or provide calculations to explain why not
- Coordinate responses to correction items among all designers, architects, engineers, and owners
- If you make voluntary changes to your plans, describe the changes you have made in your response letter

#### **Correct your Plans:**

- Cloud or circle all changes
- You may add new sheets to the plan set if you have new information to show

#### **For Electronic Plans:**

- Always upload a complete plan set

#### **For Paper Plans:**

##### **If you replace sheets in the paper plan sets:**

- Remove the old sheets, mark them as "VOID," and include them loose at the back of each plan set
- All original sheets and plan pages must be returned to Plans Routing in the Applicant Service Center
- Insert the new sheets and staple the plan sets

##### **If you make changes to the original paper plan sheets:**

- Make all changes with ink (preferably red, waterproof ink). Do not use pencil to make changes
- Do not tape or staple anything to the plan sets

**Platting Actions:** Provide new copies of the survey when responding to a correction notice for a shortplat, lot boundary adjustment, or other platting action. Provide the same number of copies that were required when you submitted the project.

---

### Step 3: Submit Corrected Plans

#### **Electronic Plans:**

Upload your corrected plan set and correction response letter through your Seattle DCI Project Portal.

#### **Paper Plans:**

Return your corrected plans and your correction response letter to Plans Routing in the Applicant Services Center.

#### **If you don't follow these instructions:**

- **Plans Routing may not accept your corrected plans**
- **We may be delayed in starting corrected plan review, which can delay permit issuance**
- **We may charge a penalty fee**



# **Exhibit H**



Date: July 19<sup>th</sup>, 2018

Subject: Correction Notice #1

Project: 2300 W Emerson St  
SDCI project # 3029611

Leslie Orbino & Charles Benson III,

The following are issues and responses raised in the Zoning review dated March 27<sup>th</sup>, 2018, and the Land Use Review dated April 10<sup>th</sup>, 2018:

### Land Use Review

1. *The environmental Sign inspection was failed. Both signs sit too high to be seen at street level and are difficult to reach safely. Please look at a better location for both signs. Please resubmit a sign conformation online.*

The inspection has been passed, thank you.

### Zoning

1. **Floor Area Diagrams** – *Please provide one set of floor area diagrams that includes all gross floor area on the site (show all levels of the building).*

Please see the revised sheet A2.0 for updated FAR diagrams with dimensions and a table of individual units.

2. **Height** – *Add elevation dimensions for maximum height and all other height exception elevation dimensions on elevation plans.*

Please see the added spot elevations on the elevation sheets. The elevations already call out the maximum height allowed, within the elevation strings.

3. **Setback** - *Per SMC 23.53.015.D.1.b, a setback equal to half the difference between the current right-of-way width and the minimum right-of-way width established in subsection 23.53.015.A.6 is required (3 feet). Please review the code and address accordingly...*

Please see the site sheets for updated R.O.W setback adjacent to W Emerson St, and all of the corresponding plan changes that were made to accommodate.

4. **Projections permitted in required setbacks and separations** – *Per SMC 23.45.518.H1, please provide dimensions of these projections into setbacks that meet this code requirement...*

Please sheet A1.0 for the added awning dimensions.

5. **Rooftop feature** – *show rooftop calculations that meet SMC 23.45.514.J.4 for stair penthouse...*

Please see the existing calculation on sheet A2.5.



6. **Landscape plan** – on landscape plan, please show location of solid waste and recycle. Update score sheet after this has been added...

Please see the updated landscape sheet for trash location.

7. **Amenity area** – on amenity area diagram, please provide dimensions and matrix showing calculations to verify calculations on diagram...

Please see the updates on sheet A1.1 and the updates on sheet A0.0.

8. **Design standards** – provide color representation of design standards per SMC 23.45.529...

Please see the added images on sheet A3.0.

9. **Bicycle parking** – provide bicycle parking per Table D for 23.45.015.D.2...

Please see the added bike parking on sheet A1.0 & the Landscape plans.

## Land Use

1. **Arborist report** – Please revise the arborist report to identify which trees are located within the ROW, as protection/preservation standards different in the ROW vs private property.

Please see the last page of the original arborist report which numbers the trees in the R.O.W (trees #1 & #2) as well as the attached email with Ben Roberts regarding R.O.W tree protection, and updates made on the landscape sheets.

2. **SDOT** – Please consult with Ben Roberts of SDOT Forestry per tree preservation/retention requirements, particularly regarding the large spruce trees in the 23<sup>rd</sup> Ave West R.O.W, as SDOT Forestry approval is required for any vegetative changes within City R.O.W.'s...

Please see the attached email with Ben Roberts regarding R.O.W tree protection, and updates made on the landscape sheets.

Feel free to contact me at [dpd@jwaseattle.com](mailto:dpd@jwaseattle.com) or 206.953.1305.

Thank you,

Julian Weber, AIA



# **Exhibit I**



**Gribben, Brandon S.**

---

**From:** Lindsay.King@seattle.gov  
**Sent:** Thursday, October 18, 2018 3:10 PM  
**To:** Jacobs, Sam M.; Gribben, Brandon S.  
**Subject:** FW: 2300 W Emerson Street 3029611-LU and 6620473-CN

FYI

---

**From:** Griswold, Dean  
**Sent:** Thursday, October 11, 2018 8:55 AM  
**To:** King, Lindsay <Lindsay.King@seattle.gov>  
**Subject:** RE: 2300 W Emerson Street 3029611-LU and 6620473-CN

Hi Lindsay,

Here is my reply to the questions in the email you sent to me about this project:

1. Position within SDCI. My position within SDCI is Senior Geotechnical Engineer. I've held this position for over 26 years.
2. Environmentally Critical Area Mapping. The City Mapping System indicates that a small amount of Steep Slope Environmentally Critical Area is located in the northeast portion of the site. The mapping system includes advisory Environmentally Critical Area mapping unit for Steep Slope Critical Area as well as site topography based on aerial surveys.
3. Environmentally Critical Area Status of subject property. Based on the topographic survey in the plan set, the property does not contain area with at least 10 feet of elevation difference with slopes averaging 40 percent or steeper. Because of the topographic conditions, the site does not contain Steep Slope Critical Areas or Steep Slope Buffers. Note that the actual ground conditions dictate whether or not a site is designated as Environmentally Critical, and the site conditions presented in the topographic survey are more accurate than the contours generated from aerial surveys, which also form the basis for the advisory mapping unit.
4. Based on a review of the property and vicinity as shown on the City Mapping System, including the Geologic Map of Seattle, the site is not designated as Environmentally Critical Area as Potential Landslide due to Geologic Conditions or Steep Slope. No Known Landslide Areas are mapped in proximity to affect the subject property.

Let me know if more information is needed about Environmentally Critical Area status.

Regards,

Dean





Dean Griswold, P.E.  
Senior Geotechnical Engineer

City of Seattle [Department of Construction and Inspections](#)

P.O. Box 34019, Seattle, WA 98124-4019

P: 206.233.7862 | [dean.griswold@seattle.gov](mailto:dean.griswold@seattle.gov)

---

**From:** King, Lindsay  
**Sent:** Thursday, October 11, 2018 8:08 AM  
**To:** Griswold, Dean <[Dean.Griswold@seattle.gov](mailto:Dean.Griswold@seattle.gov)>  
**Subject:** 2300 W Emerson Street 3029611-LU and 6620473-CN

Good morning Dean,

Thank you for speaking with me this morning. Enclosed are my follow up questions. Please feel free to answer in line by replying to this email.

1. What position to have within Seattle Department of Construction and Inspections.
2. Does the site located at 2300 W Emerson Street contain a mapped ECA Steep Slope area?
3. After reviewing the topographic survey does the site contain a mapped ECA Steep Slope area?
4. Is the site located in an ECA-Potential Landslide area?

Thank you for your help.

Sincerely,

Lindsay King

Lindsay King  
Senior Land Use Planner

City of Seattle [Department of Construction and Inspections](#)

P.O. Box 34019, Seattle, WA 98124-4019

P: 206.684.9218 | F: 206.233.7902 | [lindsay.king@seattle.gov](mailto:lindsay.king@seattle.gov)



*As stewards and regulators of land and buildings, we preserve and enhance the equity, livability, safety and health in our communities.*







# Exhibit J



# NWBF 2300 W Emerson St

2300 West Emerson Street  
SEATTLE, WA 98199

DCI PROJECT #3029611

**PROJECT DESCRIPTION:** DEMO EXISTING STRUCTURE, CONSTRUCT (9) ROWHOUSES WITH (8) OPEN PARKING STALLS AND (1) CARPORT. FUTURE UNIT LOT SUBDIVISION.

**LEGAL DESCRIPTION:** LOT 13, BLOCK 2, GILMAN'S ADDITION, CITY OF SEATTLE ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 5 OF PLATS, PAGE 93, RECORDS OF KING COUNTY, WA.

**TAX ID NUMBER:** 2770600195

## PROJECT TEAM:

### OWNER/APPLICANT:

NORTHWEST BUILDERS FINANCIAL  
7900 SE 28TH STREET, SUITE 320  
MERCER ISLAND, WA 98040

### ARCHITECT/PROJECT CONTACT:

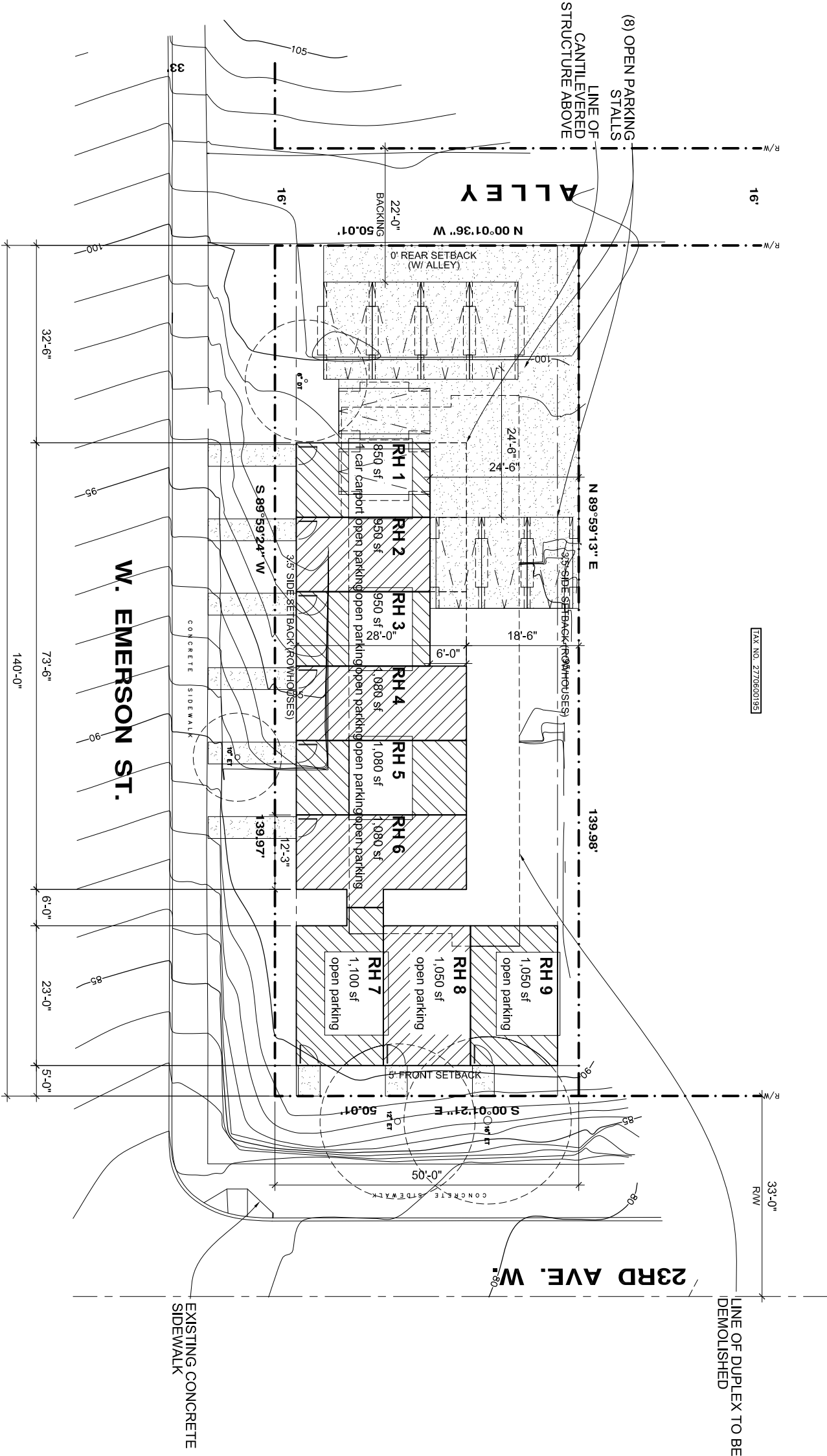
JULIAN WEBER, AIA  
1257 S KING ST  
SEATTLE, WA 98144  
p 206.953.1305

### SURVEYOR:

CHADWICK & WINTERS  
1422 N.W. 85TH ST.  
SEATTLE, WA 98117  
p 206.297.0996

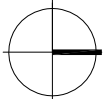
**ZONE:** LR1

**LOT AREA:** 7,000 SF



## PRELIMINARY SITE PLAN

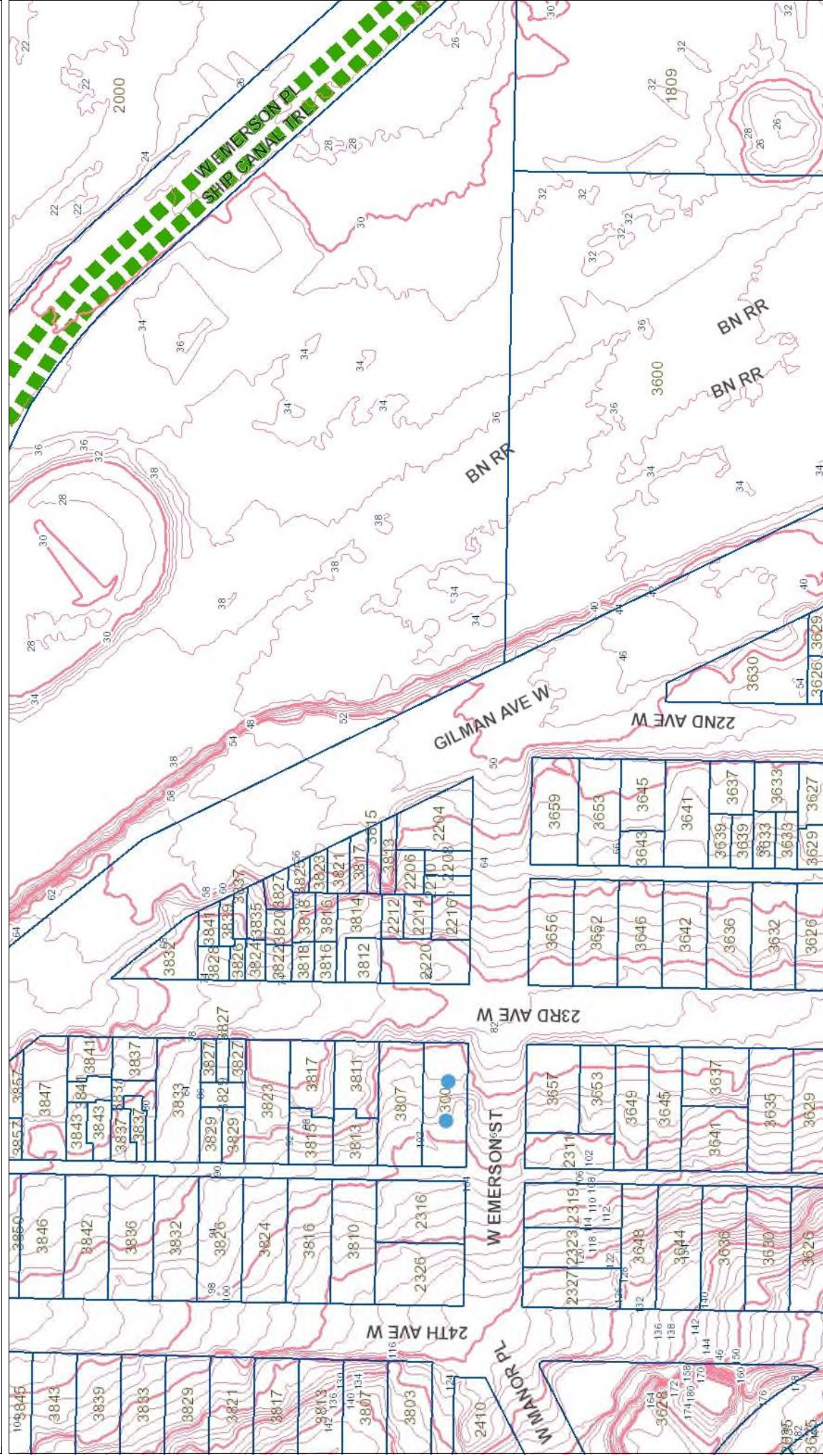
SCALE: 1" = 20'





# **Exhibit K**







# Exhibit L



September 13, 2017

JN 17484

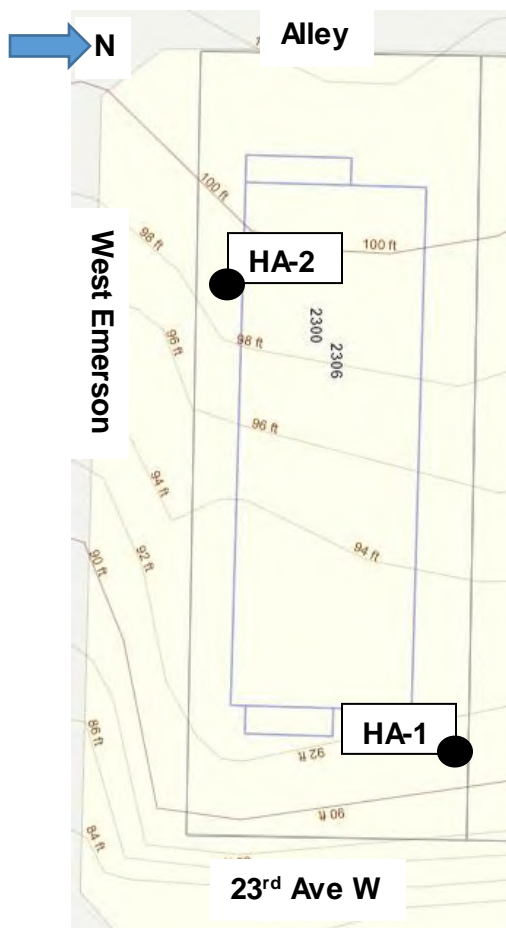
Northwest Builders Financial – Attention: John Jackels  
7900 SE 28<sup>th</sup> Street, Suite 320  
Mercer Island, WA 98040

**Subject: Executive Summary – Preliminary** Geotechnical Information  
Proposed Residential Buildings  
2300 West Emerson Street, Seattle, Washington

Dear Mr. Jackels:

via email:

We completed two Hand Auger (HA) test holes at the site on September 8, 2017 as shown in the sketch below:



**HA-1**

0-3' Brown, gravelly slightly silty sand, damp, loose [FILL over Weathered]  
3-8' Gray SAND, fine-grained, moist, medium-dense to dense [SP]  
Bottom of Hole at 8 feet. No Groundwater.

**HA-2**

0-3' Brown, gravelly slightly silty sand, damp, loose [FILL over Weathered]  
3-9' Gray SAND, fine-grained, moist, medium-dense [SP]  
- becomes gray, medium-dense to dense at 6 feet  
Bottom of Hole at 9 feet. No Groundwater.

The test holes revealed a soil profile that indicates that the surrounding grades at the street front were cut in to form the streets and this is confirmed by the street profiles for West Emerson and 23<sup>rd</sup> Avenue West. There is likely some fill to the east of the building as generated from the basement dig. Native soils beneath the fill are typical advanced outwash soils which fit the profile for the neighborhood. Conventional foundations are anticipated for the buildings, but some overexcavation to reach the bearing soils depending on proposed footing grades. Structural fill above the bearing soils to the footing grade and filling of the existing house basement will be necessary. Reuse of the onsite native soil for structural fill will likely be possible, but might not be possible in very poor weather and schedule conditions. The neighboring houses are not near the property lines. Cuts should be planned no steeper than 1:1 (H:V).

No groundwater was encountered to the depth explored. Foundation drainage would be standard.

If you have any questions, or if we may be of further service, please do not hesitate to contact us.

Respectfully submitted,

GEOTECH CONSULTANTS, INC.

James H. Strange, Jr., P.E.  
Associate

JHS: jhs



# **Exhibit M**



# SHOFFNER CONSULTING

21529 4<sup>TH</sup> AVE. W #C31 BOTHELL, WA 98021 MOBILE: (206)755-2871

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October 4, 2017

Brooke Friedlander  
Isola Homes  
1518 1st Ave. S. Suite 301  
Seattle, WA 98134

RE: Tree Inventory - 2320 W. Emerson St. Seattle, WA.

Brooke:

This report is provided to address the inventory of the trees on the property at the address of 2300 W. Emerson St. in the City of Seattle, Washington. For reference to this report, please see the accompanying map showing the approximate locations of the trees.

## 1. Site Conditions

The project site is located in the Magnolia of Seattle in a residential neighborhood. The property is developed with a multi-family residence. Most of the site is occupied by the building, but there are trees along the western and southern perimeters.

## 2. Tree Inventory, Condition Assessments and Exceptional Status

I conducted a tree inventory and condition assessment on all trees on the property. There are none just off-site with drip lines that extend onto the property. I conducted visual assessments of the trees to gather information on their health and condition. During my assessments, I took notes of any conditions that may present a defect putting a tree or a portion of it at risk of failure, or any conditions that may be symptoms of failing health.

The City of Seattle provides classifications of trees on private properties in Director's Rule 16-2008 which includes size thresholds for specific species to be classified as exceptional.

Following is information on these trees:

1. Blue colorado spruce (*Picea pungens 'glauca'*), 18" dbh, 24' crown spread. Good condition and health. Not exceptional.
2. Blue colorado spruce, 18" dbh, 24' crown spread. Good condition and health. Not exceptional.
3. Noble fir (*Abies procera*), 5", 8' crown spread. Fair condition and health. Not exceptional.



4. Noble fir, 14" dbh, 12' crown spread. Poor condition, multiple tops. Not exceptional.
5. Japanese maple (*Acer japonicum*), 4" dbh, 10' crown spread. Good condition and health. Not exceptional.
6. Japanese maple, multiple trunks (2, 2, 2, 2, 3, 4) 6.5" dbh, 18' crown spread. Good condition and health. Not exceptional.
7. Apple (*Malus domestica*), 5" dbh, 12' crown spread. Good condition and health. Not exceptional.

None of the trees are exceptional, therefore, no retention is required and if any trees are retained, no protection is required.

### **3. Use of This Report and Limitations**

This report is provided to Isola Homes as a means of reporting on the inventory of the trees located on the project site. While Shoffner Consulting has used every means available to determine tree health and development impacts, trees are dynamic and their conditions can change rapidly given changes in environmental factors and site development, therefore these assessments pertain only for those noted on the day of their evaluation, and no guarantee can be made against damage caused by unforeseen development-related impacts. Natural decline and failure of trees is not predictable, therefore, Shoffner Consulting and Tony Shoffner cannot be held liable for retained trees that die or fail prior to or following development of the property.

Cordially,



Tony Shoffner  
ISA Certified Arborist #PN-0909A  
CTRA #1759



# W. THURMAN ST.

N 89°57'16" E CALCULATED INTERSECTION



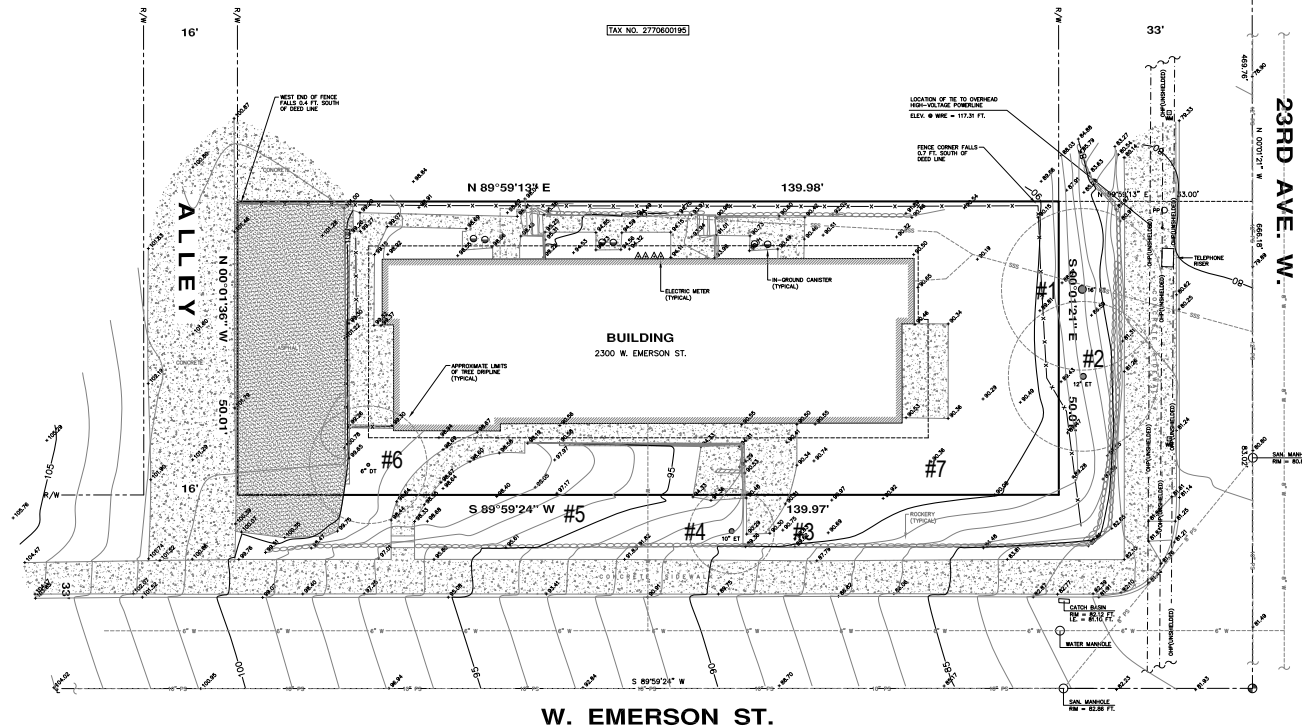
SCALE: 1"=10'  
0 5 10 20

## NOTES

1. THIS SURVEY WAS PERFORMED BY FIELD TRAVERSE USING A 10 SECOND "TOTAL STATION" THEODOLITE SUPPLEMENTED WITH A 100 FT. STEEL TAPE. THIS SURVEY MEETS OR EXCEEDS THE STANDARDS FOR LAND BOUNDARY SURVEYS AS SET FORTH IN WAC CHAPTER 332-130-090.
2. CONTOUR INTERVAL = 1 FT.
3. ELEVATION DATUM = NAVD'88, AS PER DIRECT OBSERVATIONS USING GPS EQUIPMENT ON SEPTEMBER 11, 2017.
4. PARCEL AREA = 7,000 SQ. FT.
5. THIS SURVEY IS RELIANT UPON THE INFORMATION CONTAINED WITHIN OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY ORDER NO. 5217022545, DATED AUGUST 17, 2017.
6. UNDERGROUND UTILITY INFORMATION AS SHOWN HEREON IS APPROXIMATE ONLY AND IS BASED UPON CITY OF SEATTLE GIS AND ALSO AS PER TIES TO ABOVE GROUND STRUCTURES.
7. TAX PARCEL NO. 2770600190
8. TREE DIAMETERS AND DRIP LINES DISPLAYED HEREON ARE APPROXIMATE. FOR SPECIFIC GENUS AND DIAMETER, TREES SHOULD BE EVALUATED BY A CERTIFIED ARBORIST.
9. WE HAVE DETERMINED TO THE BEST OF OUR ABILITY THE OVERHEAD HIGH VOLTAGE POWERLINE WHICH IS CLOSEST TO THE PROJECT SITE AND HAVE DISPLAYED ITS HORIZONTAL AND VERTICAL LOCATION HEREON. HOWEVER, ADDITIONAL OVERHEAD SERVICE LINES MAY EXIST WHICH ARE NOT OBVIOUS TO US BY FIELD OBSERVATION AND POTENTIALLY IMPACT PROJECT DESIGN. THEREFORE, PRIOR TO DESIGN AND CONSTRUCTION WE RECOMMEND THAT SEATTLE CITY LIGHT BE CONSULTED REGARDING THE POSSIBLE EXISTENCE OF ADDITIONAL SERVICE LINES NOT DISPLAYED HEREON WHICH SHOULD BE CONSIDERED FOR PROJECT DESIGN.

## PROPERTY DESCRIPTION

LOT 13, BLOCK 2, GILMAN'S ADDITION, CITY OF SEATTLE ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 5 OF PLATS, PAGE 93, RECORDS OF KING COUNTY, WA.



W. EMERSON ST.



DATE: 7/15/17

## TOPOGRAPHIC SURVEY 2300 W. EMERSON ST. SEATTLE, WASHINGTON

CHADWICK  
WINTERS

LAND SURVEYING AND MAPPING  
1422 N.W. 85TH ST., SEATTLE, WA 98117

PHONE: 206.297.0996

FAX: 206.297.0997

WEB: WWW.CHADWICKWINTERS.COM

PROJECT #: 17-5911

DRAWING: 17-5911TOPO.DWG

CLIENT: N.W. BUILDERS FINANCE

DATE: 09-15-17

DRAWN BY: SAL



# **Exhibit N**



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

In the Matter of the Appeal of

**7300 WOODLAWN AVE NE  
CONDOMINIUM HOMEOWNERS  
ASSOCIATION ET. AL.**

Hearing Examiner File:  
**MUP-17-002 (DR, W)**

Department Reference:  
3019917

from a decision and interpretation of the Director,  
Department of Construction and Inspections

**Introduction**

The Director ("Director") of the Department of Construction and Inspections ("Department") issued a State Environmental Policy Act ("SEPA") Determination of Non-Significance ("DNS") and design review approval for construction of a six-story structure ("Decision"), and the Appellants exercised their right to appeal the Decision and DNS.

The appeal hearing was held on April 25 and 26, 2017, before the Hearing Examiner. The Appellants, 7300 Woodlawn Ave. NE Condominium Homeowners Association et. al. ("Appellants"), were represented by David Sherrard, *pro se*; the Applicant, Brian Kim, Caron Architecture, was represented by Samuel Jacobs, and Brandon Gribben, attorneys-at-law; and the Director was represented by Bruce Rips, Senior Land Use Planner. The Hearing Examiner subsequently visited the site. The parties submitted written closing arguments on May 22, 2017, and the record closed on that date.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code ("SMC" or "Code") unless otherwise indicated. After considering the evidence in the record and reviewing the site, the Hearing Examiner enters the following findings of fact, conclusions and decision on the appeal.

**Findings of Fact**

**Site and Vicinity**

1. The subject site is addressed as 417 Northeast 73<sup>rd</sup> Street and is located near the confluence of Woodlawn Avenue NE, NE Maple Leaf Place and NE 73<sup>rd</sup> Street in the Green Lake neighborhood. The site is approximately 6,000 square feet in size and is currently utilized as a parking lot.
2. The site is flat with a slight slope of approximately three feet from the northeast corner to the southwest corner. Access is from a curb cut on NE 73<sup>rd</sup> Street, and from an alley on the south end of the site. Exhibit 35.
3. The site is located in the Green Lake Residential Urban Village, at the east edge of the Green Lake commercial district, and zoned Neighborhood Commercial Two Pedestrian with a 65 foot height limit ("NC2P-65"). Properties to the north and east are zoned Lowrise Three ("LR3"). To the south, properties are zoned NC2P-65 and Commercial One with a 40 foot height limit



("C1-40"). To the west, property is zoned NC2P-65. A two-story apartment building developed to the property line, with no windows on the west façade, is located adjacent to the east of the site, and is in the L3 zone. The Great Hall is located to the west of the site. The Great Hall is a three-story colonial style structure, formerly the Green Lake Congregational Church. That structure is built to the property line and features an arched stained-glass window on the west façade, along with four smaller windows. Other surrounding structures are a mix of older one to three story commercial uses, low and mid-rise residential structures, and more recently developed mixed use projects.

4. The site is one block east of Green Lake, and is located within 1,320 feet of frequent transit service. The Billings Middle School is located one block west of the site on NE 73<sup>rd</sup> Street.

#### Proposal

5. The proposal is for a six-story structure containing 35 apartments and 10 small efficiency dwelling units above 1,600 square feet of retail space. Parking for 12 vehicles will be located below grade. The existing 19 space surface parking lot will be removed.
6. The proposal includes a four foot eight inch step back after its first floor between the project building and the apartment building to the east, and a four foot eight inch step back of the wall adjacent to the Great Hall, as well as a light-well to allow light access for the stained glass window in the east wall of the Great Hall. An alley separates the project from structures to the south.
7. The Applicant's traffic consultant prepared a transportation and parking analysis for the proposal dated November 2, 2015. Exhibit 23. The traffic study was revised and supplemented in response to correction notices from the Department. *See* Exhibits 24, 25, 26, and 31 (collectively herein "traffic study"). The traffic study estimated peak parking demand for the proposal and determined on-street parking utilization within 800 feet of the project site. The Department has long utilized 800 feet as the distance people are generally willing to walk from parking to their destination. The traffic study indicated that on-street parking utilization was at approximately 75.5%. The evening peak in demand for the proposal would not be accommodated by the proposed 12 onsite parking spaces, resulting in spillover demand of five vehicles for on-street parking spaces. *See* Exhibit 25. However, the traffic analysis found that 93 on-street parking spaces would be available to the residential tenants.

#### Design Review

8. Public notice was issued for the Northeast Design Review Board ("Board") Early Design Guidance ("EDG") meeting on July 23, 2015. Exhibit 1.
9. The Board held an EDG public meeting on the proposal on August 10, 2015, at which it heard the Applicant's analysis of the site and proposal as well as comments from the public. The public comments included concerns about the project's impact on parking availability, traffic impacts, relation of the proposal to the Great Hall in the context of massing, compatibility with the neighborhood, and other issues. Written comments were also received which mirrored comments at the meeting, and also raised additional concerns regarding height of the proposal, viability of the commercial space, and structural materials.



10. The Board's early design guidance identified certain guidelines in the Citywide Guidelines as being of highest priority for the project. Among the guidelines, the Board called out were Citywide Guidelines CS2.D.3 and 4, CS3.A, DC2.A.2, and DC2.C.2, identified by the Appellants in their appeal. The Board expressed general support for the massing concept presented in Option 2 of the proposal. Exhibit 35 at 4. The Board's guidance from the EDG meeting included (1) suggesting that the proposal "minimize impacts to the Great Hall, and strive to maximize the west setback," (2) "that the massing should provide a sensitive transition to the adjacent LR3 zone," and (3) that the proposal use "setbacks and plane shifts, as well as change in materials, to further break down the verticality of the structure." *Id* at 4-5.
11. The Board's Initial Recommendation meeting occurred on May 9, 2016. The Board took public comment, which expressed concerns about parking, scale and massing, and height of the proposal. The Board indicated at this meeting that "height, bulk, and scale concerns was not adequately addressed," "that the proposed scheme does not appropriately reduce perceived height, bulk, and scale," and expressed concern regarding blank walls in the design. Exhibit 35.
12. The Board's Final Recommendation, meeting took place on August 8, 2016. The Board again took public comment and reviewed the Applicant's design packet. Exhibit 35. The Board indicated, "the design had adequately addressed the Board's previous concerns," and specifically noted that the "design response to the Great Hall, including setbacks, massing, and façade composition, had been adequately addressed." *Id*.
13. At the time of the Final Recommendation the Applicant requested building code departures for setback requirements for lots abutting residential zones, SMC 23.47A.014.B.1, and setback requirements for structures containing residential uses, SMC 23.47A.014B. The Board unanimously supported both departures, noting that the design departure from SMC 23.47A.014.B.1 "demonstrates a more appropriate transition to the adjacent Lowrise 3 zone," and that the design departure from SMC 23.47A.014B "better related to both the Great Hall to the west and LR3 zone to the east . . . the design would overall decrease the number of blank walls, creating more attractive facades and reducing the perceived scale of the structure. *Id*.

#### Director's Review and Decision

14. The Director reviewed the Board's recommendations and determined that they did not conflict with applicable regulatory requirements and law, were within the Board's authority, and were consistent with the design review guidelines. The Director therefore issued design review approval for the proposal with the Board's recommended conditions.
15. Following a public comment period, the Director reviewed the environmental impacts of the proposal and issued a determination of non-significance ("DNS") pursuant to SEPA, concluding that the proposal was not likely to have more than a moderate adverse impact on the environment. The Director's environmental analysis is found in Exhibit 2 at 17-23.
16. Because the proposal went through design review, with numerous adjustments that addressed the transition between the proposal and adjacent properties, the Director determined that additional mitigation of height, bulk and scale impacts pursuant to SEPA was not warranted.



17. Concerning height, bulk, and scale the Director's DNS analysis states:

The proposal has gone through the design review process described in SMC 23.41. Design review considers mitigation for height, bulk and scale through modulation, articulation, landscaping, and façade treatment.

Section 25.05.675.G.2.c of the Seattle SEPA Ordinance provides the following: 'The Citywide Design Guidelines (and any Council-approved, neighborhood design guidelines) are intended to mitigate the same adverse height, bulk, and scale impacts addressed in these policies. A project that is approved pursuant to the Design Review Process shall be presumed to comply with these Height, Bulk, and Scale policies. This presumption may be rebutted only by clear and convincing evidence that height, bulk and scale impacts documented through environmental review have not been adequately mitigated. Any additional mitigation imposed by the decision maker pursuant to these height, bulk, and scale policies on projects that have undergone Design Review shall comply with design guidelines applicable to the project.'

The height, bulk and scale of the proposed development and relationship to nearby context have been addressed during the Design Review process for any new project proposed on the site. Per the Overview policies in SMC 25.05.665.D, the existing City Codes and regulations to mitigate impacts to historic resources are presumed to be sufficient, and additional mitigation is not warranted under SMC 25.05.675.G.

18. In considering the impacts of the proposal on parking, the Director's representative testified that he reviewed the traffic study and considered the opinion of the Department's Senior Transportation Planner, and public comments concerning the project's potential traffic impacts. The Department's Senior Transportation Planner testified that he reviewed the traffic study, and traffic reports from comparable projects submitted by the Applicant, and other projects proposed for the area. The Director determined that although there would be spillover of five vehicles from the proposal, there would still be approximately 93 on-street parking spaces available for residential tenants.

Appeal

19. The Appellants filed a timely appeal of the Director's Decision and DNS. After a decision on a motion to dismiss the appeal filed by the Applicant, the following appeal issues remained:
- Adequacy of public notice for the Decision and DNS;
  - Whether the Decision was consistent with design review criteria of approval; and
  - Whether the Director was sufficiently informed in issuing the DNS.



Applicable Law

20. The purpose of design review is to "[e]ncourage better design and site planning to help ensure that new development enhances the character of the city and sensitively fits into neighborhoods while allowing diversity and creativity." SMC 23.41.002.A.
21. The Citywide Guidelines and Council-approved neighborhood design guidelines "provide the basis for Design Review Board recommendations and City design review decisions." SMC 23.41.010.
22. SMC 23.41.014 describes the design review process. "Based on the concerns expressed at the early design guidance public meeting or in writing to the Design Review Board, the applicable guidelines of highest priority to the neighborhood, referred to as the 'guideline priorities,' shall be identified. The Board shall incorporate any community consensus regarding design expressed at the meeting into its guideline priorities, to the extent the consensus is consistent with the design guidelines and reasonable in light of the facts of the proposed development." SMC 23.41.014.C.1.
23. SMC 23.41.012.A provides for development standard departures, and states:

Departure from Land Use Code requirements may be permitted for new multifamily, commercial, and Major Institution development as part of a design review process. Departures may be allowed if an applicant demonstrates that departures from Land Use Code requirements would result in a development that better meets the intent of adopted design guidelines.
24. The Director must consider the Board's recommendation. If four or more members of the Board agree to a recommendation, the Director "shall issue a decision that makes compliance with the recommendation of the Design Review Board a condition of permit approval," unless the Director concludes that the recommendation inconsistently applies the design review guidelines, exceeds the Board's authority, conflicts with SEPA conditions or other applicable requirements, or conflicts with state or federal law. SMC 23.41.014.F.3.
25. Citywide Guideline CS2.D.3 and 4 read as follows:
  3. Zone Transitions: For projects located at the edge of different zones, provide an appropriate transition or complement to the adjacent zone(s). Projects should create a step in perceived height, bulk and scale between the anticipated development potential of the adjacent zone and the proposed development. Factors to consider:
    - a. Distance to the edge of a less (or more) intensive zone;
    - b. Differences in development standards between abutting zones;
    - c. The type of separation from adjacent properties (e.g. separation by property line only, by an alley or street or open space, or by physical features such as grade change);
    - d. Adjacencies to different neighborhoods or districts; adjacencies to parks, open spaces, significant buildings or view corridors; and
    - e. Shading to or from neighboring properties.



4. Massing Choices: Strive for a successful transition between zones where a project abuts a less intense zone. In some areas, the best approach may be to lower the building height, break up the mass of the building, and/or match the scale of adjacent properties in building detailing. It may be appropriate in other areas to differ from the scale of adjacent buildings but preserve natural systems or existing features, enable better solar

26. Citywide Guideline DC2.A.2 reads as follows:

Reducing Perceived Mass: Use secondary architectural elements to reduce the perceived mass of larger projects. Consider creating recesses or indentations in the building envelope; adding balconies, bay windows, porches, canopies or other elements; and/or highlighting building entries.

27. Citywide Guideline DC2.C.2 reads as follows:

Blank Walls: Avoid large blank walls along visible façades wherever possible. Where expanses of blank walls, retaining walls, or garage facades are unavoidable, include uses or design treatments at the street level that have human scale and are designed for pedestrians. These may include:

- a. newsstands, ticket booths and flower shops (even if small or narrow);
- b. green walls, landscaped areas or raised planters;
- c. wall setbacks or other indentations;
- d. display windows; trellises or other secondary elements;
- e. art as appropriate to area zoning and uses; and/or
- f. terraces and landscaping where retaining walls above eye level are unavoidable.

28. Citywide Guideline CS3.A reads as follows:

#### EMPHASIZING POSITIVE NEIGHBORHOOD ATTRIBUTES

1. Fitting Old and New Together: Create compatibility between new projects, and existing architectural context, including historic and modern designs, through building articulation, scale and proportion, roof forms, detailing, fenestration, and/or the use of complementary materials.

2. Contemporary Design: Explore how contemporary designs can contribute to the development of attractive new forms and architectural

DC2.C

3. Fit With Neighboring Buildings: Use design elements to achieve a successful fit between a building and its neighbors, such as:

- a. considering aspects of neighboring buildings through architectural style, roof line, datum line detailing, fenestration, color or materials,
- b. using trees and landscaping to enhance the building design and fit with the surrounding context, and/or
- c. creating a well-proportioned base, middle and top to the building in locations where this might be appropriate. Consider how surrounding buildings have addressed base, middle, and top, and whether those solutions—or



similar ones—might be a good fit for the project and its context.

29. SMC 23.76.022 provides that appeals of Type II MUP decisions are to be considered *de novo*, and that the Hearing Examiner "shall entertain issues cited in the appeal *that relate to compliance with procedures for Type II decisions as required in this Chapter 23.76*, compliance with substantive criteria," (emphasis added) and various determinations under SEPA.
30. SMC 25.05.330 directs that, in making a threshold determination under SEPA, the responsible official shall determine "if the proposal is likely to have a probable significant adverse environmental impact ...." "Probable" means "likely or reasonably likely to occur...." SMC 25.05.782. "Significant" means "a reasonable likelihood of *more than a moderate adverse impact* on environmental quality." SMC 25.05.794 (emphasis added). If the Director determines that there will be no probable, significant adverse environmental impacts from a proposal, a DNS is required. SMC 25.05.340.A.
31. The SEPA policy on height, bulk and scale explains that the City's adopted land use regulations are intended to provide "for a smooth transition between industrial, commercial, and residential areas," and to preserve neighborhood character and reinforce natural topography by controlling development's height, bulk and scale. The policy acknowledges that "zoning designations cannot always provide a reasonable transition in height bulk and scale between development in adjacent zones," SMC 25.05.675.G.1, and affords limited authority for requiring mitigation of height, bulk and scale impacts. SMC 25.05.675.G.2. However, the policy concludes by stating that a project approved through the design review process is presumed to comply with the SEPA policy on height, bulk and scale, and that the presumption may be rebutted "only by clear and convincing evidence that height, bulk and scale impacts documented through environmental review have not been adequately mitigated." SMC 25.05.675.H.2.c.
32. The SEPA policy on parking impacts states that "[i]t is the City's policy to minimize or prevent adverse parking impacts associated with development projects. Subject to the overview and cumulative effects policies ... the decision maker may condition the project to mitigate the effects of development in an area on parking; provided that ... no SEPA authority is provided for the decision maker to mitigate the impact of development on parking availability for residential uses located within ... portions of urban villages within 1,320 feet of a street with frequent transit service, measured as the walking distance from the nearest transit stop to the lot line of the lot." SMC 25.05.675.M. Outside this area, "parking impact mitigation for multifamily development ... may be required only when on-street parking is at capacity, as defined by the Seattle Department of Transportation or where the development itself would cause on-street parking to reach capacity as so defined." *Id.*
33. There is no evidence in the record of an SDOT definition for when on-street parking is at capacity. The Department has a longstanding practice of considering 85% utilization to be the point at which parking is at capacity and mitigation should be considered.
34. The SEPA cumulative effects policy provides, in relevant part, that "[t]he analysis of cumulative effects *shall include* a reasonable assessment of ... [t]he present and planned capacity of such public facilities as ... parking areas to serve the area affected by the proposal [and the] demand upon facilities ... of present, simultaneous and known future development



in the area of the project or action." SMC 25.05.670.B.1 (emphasis added). "Subject to the policies for specific elements of the environment ... an action or project may be conditioned or denied to lessen or eliminate its cumulative effects on the environment: a. When considered together with prior, simultaneous or induced future development; or b. When, taking into account known future development under established zoning, it is determined that a project will use more than its share of present and planned facilities ...." SMC 25.05.670.B.2.

### Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to Chapter 23.76 SMC. Appeals are considered de novo, and the Examiner must give substantial weight to the Director's decisions. SMC 23.76.022 C.6 and C.7; SMC 23.88.020.G.5. The Appellants bear the burden of proving that the Director's Decision, and DNS were "clearly erroneous." *Brown v. Tacoma*, 30 Wn. App. 762, 637 P.2d 1005 (1981). This is a deferential standard of review, under which the Director's decision may be reversed only if the Hearing Examiner, on review of the entire record, and in light of the public policy expressed in the underlying law, is left with the definite and firm conviction that a mistake has been made. *Moss v. Bellingham*, 109 Wn. App. 6, 13, 31 P.3d 703 (2001).
2. The Appellants alleged that a notice of application issued on January 7, 2016 did not meet the requirements of RCW 36.70B.110. However, the Hearing Examiner has not authority to determine whether a notice meets state law requirements. Further, Appellants did not introduce the notice into the record for consideration or review.
3. The Appellants assert that procedural prerequisites for the design review process set forth in Chapter 23.41 SMC were not met. Consequently, according to the Appellant, the Board acted outside its authority in making its recommendation on the proposal. The Appellants challenge the adequacy of the notice for the EDG meeting, and question compliance with the mandatory Board review of written public comments, SMC 23.41.014.E.1.c. However, procedural requirements under Chapter 21.41 are not within the Examiner's jurisdiction in an appeal of a design review decision. See SMC 23.76.022.C.6 (quoted in ¶ 29).
4. The Appellants challenge the Decision as being fundamentally inconsistent with the applicable design guidelines. The Citywide Guidelines cited by Appellants in its argument, CS2.D.3 and 4, CS3.A, DC2.A.2, and DC2.C.2, were all identified by the Board as having the highest priority for the project along with additional Citywide Guidelines. At the Board's Initial Recommendation meeting, the Board expressed some concerns similar to those of the Appellants regarding blank walls and project massing, but indicated at the time of the Board's Final Recommendation meeting that these concerns had been addressed. The Appellants have not shown that the Director's Decision accepting the Board's recommendations, and finding that they were consistent with the design review guidelines, was clearly erroneous.
5. The Appellants allege the proposal does not meet the criteria for a departure from development standards. The Appellants advocate that in their opinion Option 1 presented in the design review packet "better meets the intent of the adopted design guidelines," pursuant to SMC 23.41.012.A. However, after hearing public comment at three design review meetings the Board determined that Option 2, as altered by the design review process and conditioned by the Board's recommendations, met the SMC 23.41.012.A criteria for departures, and the



Director adopted this recommendation in his Decision. The Board specifically found that the departures provided a “*more appropriate* transition to the adjacent LR3 zone,” which transition is called for by Citywide Guideline CS2.D.3, and “that the resulting design *better* related to both the Great Hall to the west and LR3 zone to the east,” which relation is called for by Citywide Guidelines CS2.D.3 and CS2.D.3. Exhibit 35 (emphasis added). The Appellants would have the Hearing Examiner substitute their design opinion for the recommendations of the Board, and the Decision of the Director. The design review process strives to incorporate public comment, while also offering the oversight of experienced design professionals. The public has had the opportunity to provide their comments, and those comments are reflected in the record and in the Board’s recommendations. The Appellants have not shown that the Director’s Decision accepting the recommendations of the Board, including departures from the development standards, was clearly erroneous.

6. The burden of proving the inadequacy of a threshold determination is high, and can be particularly difficult to meet for a citizen group not familiar with the evidentiary standards that must be met to prevail on appeal. In this case Appellants are challenging, in part, the responsible official’s determination that there will be no probable significant adverse environmental impacts caused by the proposal. To meet their burden of proof under SEPA, the Appellants must present actual evidence of probable significant adverse impacts from the proposal. *Boehm v. City of Vancouver*, 111 Wn. App. 711, 719, 47 P.3d 137 (2002); *Moss v. City of Bellingham*, 109 Wn. App. 6, 23, 31 P.3d 703 (2001). As noted above, “significance” is defined as “a reasonable likelihood of more than a moderate adverse impact on environmental quality.” WAC 197-11-794. This burden is not met when an appellant only argues that they have a concern about a potential impact, and an opinion that more study is necessary.
7. The Appellants alleged that the Director had insufficient information to evaluate the proposal’s environmental impacts and make a threshold determination, because the SEPA checklist contained errors. However, mere error in the checklist (assuming the allegations are correct) is insufficient cause to remand a threshold determination. Appellants must demonstrate that the Director had insufficient information to evaluate the proposal’s environmental impacts in the context of the *entire* record considered in the threshold determination, e.g. the checklist and other project documents. The Appellants have not done and, in fact, did not produce a copy of the SEPA checklist for the record.
8. Appellants also alleged that the DNS analysis is inadequate, because the analysis of the proposal’s height, bulk, and scale impacts is incomplete. Appellants argue that the DNS reference to SMC 25.05.675.G.2.c is insufficient to demonstrate that the Director performed an analysis of these impacts. However, the DNS analysis demonstrates that the Director considered the proposal’s review by the Board according to the Design Review Process. Appellants made no showing that the Director’s consideration of the Board’s review was inadequate for purposes of demonstrating that the Director lacked sufficient information concerning the proposal’s potential height, bulk and scale impacts. In addition, Appellants did not provide “clear and convincing evidence that height, bulk and scale impacts documented through environmental review have not been adequately mitigated,” as a result of Design Review Process approval.

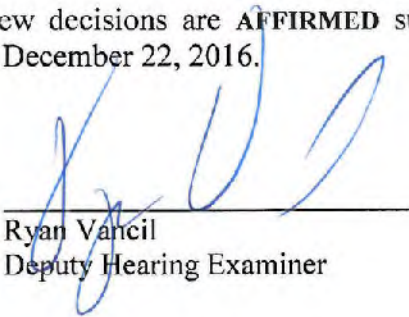


9. Appellants failed to meet their burden of demonstrating that the project would result in height, bulk, or scale impacts, or that such impacts had not been adequately mitigated by the Design Review Process. Appellants reference to Guidelines for the Visual Impact Assessment of Highway Projects (Exhibit 30) was inapposite to the impact analysis for this proposal. Evidence concerning environmental impacts must be related to actual impacts that are reasonably likely to be caused by the project at hand. Appellants did not demonstrate the reasonable likelihood of design impacts, and did not establish a link between the Highway Projects guidelines and the project impacts analysis. Further, expressions of concern about potential aesthetic impacts of the project do not rise to the level of demonstrating the likelihood of significant impacts.
10. The Appellants contend that the Director's DNS must be reversed because the record of parking impacts and cumulative parking impacts is incomplete and inaccurate. Appellants challenged the adequacy of some of the findings in the traffic report, but only by reference to additional reports and materials that were part of the record before the Director in his consideration of impacts, including public comments and the census tract data in Exhibit 11. The Appellants presented no evidence regarding probable significant adverse environmental impacts of the project's parking impacts, or cumulative parking impacts that was not in the record before the Director. "The nature of cumulative impacts is prospective and not retrospective. A cumulative impact analysis need only occur when there is some evidence that the project under review will facilitate future action that will result in additional impacts." *Boehm*, 111 Wn. App. at 719-720 (citations omitted). Appellants did not introduce any evidence that the project would facilitate future projects.
11. On review of the entire record, the Director's DNS and design review decisions were not shown to be clearly erroneous, and they should therefore be affirmed.

#### Decision

The appeal of the Director's DNS and design review decisions are **AFFIRMED** subject to the conditions set forth in the Director's Decision dated December 22, 2016.

Entered this 21<sup>st</sup> day of June, 2017.

  
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Ryan Vancil  
Deputy Hearing Examiner



**Concerning Further Review**

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

The decision of the Hearing Examiner in this case is the final decision for the City of Seattle. In accordance with RCW 36.70C.040, a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the decision is issued unless a motion for reconsideration is filed, in which case a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the order on the motion for reconsideration is issued.

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

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**BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE**

**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Findings and Decision** to each person listed below, or on the attached mailing list, in the matter of **7300 Woodland Ave NE CHA**. Hearing Examiner File: **MUP-17-002 (DR, W)** in the manner indicated.

Party	Method of Service
7300 Woodland Ave NE CHA c/o David Sherrard desherrard@yahoo.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Brian Kim, Caron Architecture c/o Sam Jacobs and Brandon Gribben Helsell Fetterman sjacobs@helsell.com bgribben@helsell.com  Kyna Gonzalez kgonzalez@helsell.com  Sarah Damianick sdamianick@helsell.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
Bruce Rips SDCI Bruce.Rips@seattle.gov	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
SCI Routing Coordinator SCI_Routing_Coordinator@seattle.gov  Sue Putnam Sue.Putnam@seattle.gov  SCI_LUIB SCI_LUIB@seattle.gov	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger



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Dated: June 21, 2017

  
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Tiffany Ku  
Legal Assistant