BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of: **NEIGHBORS TO MIRRA HOMES DEVELOPMENT** From decisions issued by the Director, Seattle Department of Construction and Inspections	Hearing Examiner File: **MUP-19-019 (P) & MUP 19-020 (P) & MUP 19-021 (P)** Department Reference 3032834-LU, 3032833-LU, & 3032857-LU **SDCI RESPONSE TO SUBPOENA** **Certificate of Service**

The undersigned certifies the following:

1. I am a Senior Land Use Planner at Seattle Department of Construction and Inspections (SDCI), representing SDCI in the above - entitled appeal proceedings; I am over the age of majority and am able to testify as to the matters stated herein;
2. On Monday, July 22, 2019, I delivered available 2006 SDCI's interpretation relating to platting issues in response to the Hearing Examiner's subpoena of 7-15-19 issued on behalf of David Moehring. I have also included two interpretations from 2005 that appear to be responsive to the intent of the subpoena request.

Appellant
David Moehring
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Applicant Legal Counsel
Brandon Gribben
E-mail: bgribben@helsell.com

Both e-mail copy and hand delivered hard copy are provided to the Office of Hearing Examiner.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 22nd day of July 2019.

David Landry, AICP, Senior Land Use Planner
Seattle Department of Construction and Inspections

.....

Cc: David Moehring, for appellant
Brandon Gribben, for applicant

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1. Pursuant to the Hearing Examiner's Order (July 15th, 2019), The Seattle Department of Construction and Inspections SDCI submits the following in response to Hearing Examiner Ehrlichman's subpoena of 7-15-19 issued on behalf of David Moehring for digital copies of all interpretations previously issued (since 2006) by the Department regarding departures, exceptions or variances from the Short Plat Subdivision requirements of Chapters 23.09, 23.24, 23.53, and 23.84.
2. There is only one interpretation from 2006 (Exhibit A) or later but we have included two from 2005 Exhibit B and C that appear responsive to the intent of the subpoena request and are close to the cutoff date specified.

Entered this 19th day of July 2019.

David Landry, AICP, Senior Land Use Planner
Seattle Department of Construction and Inspections

Cc: David Moehring, for appellant
Brandon Gribben, for applicant

Exhibit A

INTERPRETATION OF THE DIRECTOR
PURSUANT TO TITLE 23 OF SEATTLE MUNICIPAL CODE

In the Matter of	)	
the Use of the	)	Interpretation
Property at	)	No. 07-010
13034 – 39th Avenue Northeast	)	DPD Project No. 3007851

Background

This interpretation was requested by attorney Jeffrey M. Eustis on behalf of a group of neighbors of the subject property (the "Cedar Park Hillside Association"). Under a related Master Use Permit application, Department of Planning and Development (DPD) Project 3005162/3005087, applicant Randy Spaan proposes construction of four new single-family residences on an existing lot. The lot is presently developed with one single family residence and several accessory structures. It contains a wetland and steep slopes, as described in Seattle Municipal Code (SMC) Chapter 25.09, Regulations for Environmentally Critical Areas (hereafter referenced as "ECA regulations"). Mr. Spaan has applied for a master use permit to establish use for future construction of the four houses, which includes the following discretionary land use approvals: an application for environmental review under the State Environmental Policy Act (SEPA); an application for an administrative conditional use permit under the ECA regulations to allow clustered development on the site; and a unit lot subdivision of one parcel into four unit lots.

The request for interpretation raises the following interpretable issues:

1. Whether SMC Section 25.09.260 A of the critical areas conditional use regulations applies to applications for a critical areas conditional use permit that include a unit lot subdivision proposal and thus are not subject to the subdivision and short subdivision standards for critical areas as set forth in Section 25.09.240.

2. Whether the area of a private access easement serving lots within a unit lot subdivision may be counted towards the total area of the parent parcel for purposes of determining the total number of unit lots into which the parcel may be subdivided.

Findings of Fact

1. The site is located on 39th Ave NE between NE 130th St and NE 135th St in the northeastern area of the Cedar Park neighborhood. The property is described as Lot 9, Block 5 of Cedar Park Division No. 2 (hereafter referred to as Lot 9). According to two surveys submitted by the applicant, the site measures approximately 100' wide by 406' long (total lot area of 40,709 square feet). The parcel is developed with a single family structure which was constructed in 1927. A detached garage, shed, and gazebo are also located on the site.

2. The zoning is SF-9600: Single-Family Residential, with a minimum lot size of 9,600 square feet. According to the Arcview land use map maintained by DPD, as well as a site plan and surveys submitted by the project applicant, the site slopes slightly down to the east for the western portion of the lot, then drops sharply to the east in the eastern portion of the lot. The eastern portion of the lot contains steep slope, potential slide, and wetland environmentally critical areas. The wetland straddles the south property line, approximately halfway down the slope.

3. According to the site plan provided by the applicant, the total steep slope area is about 17,500 square feet, located on the eastern portion of the 40,709-square-foot site. About 1,500 square feet of the steep slope was granted a "limited exemption" and waiver of steep slope development standards for previous legal grading activities, per DPD Application Number 6097357, dated May 5, 2006. Thus, as shown on the applicant's site plan, a total of 24,775 square feet of lot area is located outside the non-exempt steep slope Environmentally Critical Area.

4. On June 20, 2006, Mr. Spaan applied for DPD Project No. 3005162, which was a proposal to establish use for future construction of four new single-family residences on Lot 9. The project included SEPA review, because the proposal was to develop two or more single-family residences in an Environmentally Critical Area (see SMC Section 25.05.908 C 1). Mr. Spaan also filed an application for an environmentally critical areas administrative conditional use permit, per SMC Section 25.09.260 and a unit lot subdivision of one parent lot into four unit lots pursuant to SMC Section 23.24.045.

5. According to the project plans, the proposed four residences would include two residences facing the street, and two located to the east of those. The structures range from 4,042 square feet to 4,662 square feet of floor area, with attached 3-car garages. The two western residences would be located 20.48' from the front property line at 39th Ave NE. All structures would be located 5 feet from the north and south property lines, with a shared driveway between the western structures. The site plan sheet number 1 also shows the houses arranged around an interior auto court with minimum distance between the two proposed southerly structures of 22 feet. The distance between the two proposed northerly structures is about 29 feet. Total proposed lot

coverage is 21.6% for all structures. The development area is proposed on approximately the westerly 60% of Lot 9, with the remaining easterly 40% of the lot to be designated as a "nondisturbance area" by restrictive covenant.

6. The site plan and the survey provided for the unit lot subdivision application show that the easement for the shared driveway between the two westerly structures, over proposed unit lots A and B, is proposed to be 20 feet wide by about 117 feet deep to the westerly edge of proposed unit lots C and D. The paved area of the easement between the two westerly houses is shown as 12 feet. Additional easement area for maneuvering into the parking garages for all four houses is then depicted in the "parking court" area primarily on the easterly unit lots C and D, with small portions at the east end of unit lots A and B.

7. SMC Section 25.09.240 provides in part as follows:

> "A. This section applies to all applications for short subdivisions and subdivisions, excluding unit lot subdivisions, on parcels containing any part of a riparian corridor, shoreline habitat, shoreline habitat buffers, wetlands, wetland buffers, or steep slope areas in addition to the standards in Title 23.
>
> B. Parcels shall be divided so that each lot contains an area for the principal structure, all accessory structures, and necessary walkways and for access to this area that are outside all environmentally critical areas and buffers identified in subsection A above except as follows:
>
> 1. The required area and access may be located in the footprint of an existing lawful principal structure used for residential use that encroaches into an environmentally critical area or buffer identified in subsection A, provided it does not further alter or increase the impact to the environmentally critical area or buffer.
>
> 2. Access may be provided by a bridge over a riparian corridor when the Director determines no other access is available and (a) access is provided by a freestanding structure that maintains the natural channel and floodway of the watercourse and (b) the disturbance of the riparian corridor and any other adjacent environmentally critical area or buffer is kept to a minimum.
>
> 3. Development may encroach into that portion of a steep slope area or its buffer for which the Director has determined that criteria in subsection 25.09.180 B2a, b, or c are met for the particular short subdivision, or subdivision under consideration.
>
> . . .

C. Lots shall be configured to preserve the environmentally critical areas and their buffers identified in subsection A by:

1. Establishing a separate buffer tract or lot with each owner having an undivided interest; or

2. Establishing non-disturbance areas on individual lots.

D. The environmentally critical areas and buffers identified in subsection A above, except for areas qualifying for development under subsection B1-4, shall be designated non-disturbance areas on the final plat. A notice that these non-disturbance areas are located on the lots, including the definition of "non-disturbance area," shall be recorded in the King County Office of Records and Elections along with the final plat in a form approved by the Director. At the same time, a covenant protecting non-disturbance areas shall be recorded as set out in Section 25.09.335.

E. In computing the number of lots a parcel in a single family zone may contain, the Director shall exclude the following areas:

1. Easements and/or fee simple property used for shared vehicular access to proposed lots that are required under Section 23.53.005.

2. The area of the environmentally critical areas and buffers identified in subsection A, unless they are on a lot that meets one of the following standards:

a. the provisions of subsection B; or

b. an Administrative Conditional Use is obtained under Section 25.09.260, if it is not practicable to meet the requirements of subsection B considering the parcel as a whole." [Emphasis added.]

8. SMC Section 25.09.260 provides in part as follows:

"A. When the applicant demonstrates it is not practicable to comply with the requirements of Section 25.09.240 B considering the parcel as a whole, the applicant may apply for an administrative conditional use permit, authorized under Section 23.42.042, under this section to allow the Director to count environmentally critical areas and their buffers that would otherwise be excluded in calculating the maximum number of lots and units allowed on the parcel under Section 25.09.240 E.

B. Standards. The Director may approve an administrative conditional use for smaller than required lot sizes and yards, and/or more than one (1)

dwelling unit per lot if the applicant demonstrates that the proposal meets the following standards:

. . .

3. Neighborhood Compatibility.

a. The total number of lots permitted shall not be increased beyond that permitted by the underlying single-family zone.

. . .

C. Conditions.

1. In authorizing an administrative conditional use, the Director may mitigate adverse negative impacts by imposing requirements and conditions necessary to protect riparian corridors, wetlands and their buffers, shoreline habitats and their buffers, and steep slope areas and their buffers, and to protect other properties in the zone or vicinity in which the property is located.

2. In addition to any conditions imposed under subsection 1, the following conditions apply to all administrative conditional uses approved under this subsection:

a. Replacement and establishment of native vegetation shall be required where it is not possible to save trees or vegetation.

b. Where new lots are created, the provisions of Section 23.22.062, Unit lot subdivisions, or Section 23.24.045, Unit lot subdivisions, apply, regardless of whether the proposal is a unit lot subdivision, so that subsequent development on a single lot does not result in the development standards of this chapter being exceeded for the short subdivision or subdivision as a whole."

9. SMC Section 23.24.035 provides in part as follows:

"C. Convenient pedestrian and vehicular access to every lot by way of a dedicated street or permanent appurtenant easement shall be required."

SMC Section 23.24.040 provides in part:

"A. The Director shall, after conferring with appropriate officials, use the following criteria to determine whether to grant, condition or deny a short plat:

1. Conformance to the applicable Land Use Code provisions, as modified by this chapter;

2. Adequacy of access for vehicles, utilities and fire protection as provided in Section 23.53.005, Access to lots;"

SMC Section 23.44.010 A sets forth the minimum lot area requirements for lots in the Single Family zones, including the minimum of 9,600 square feet in the SF-9600 zone. Section 23.44.010 B provides several exceptions to minimum lot area requirements, including Section 23.44.010 B 6, as follows:

"B. Exceptions to Minimum Lot Area. The following exceptions to minimum lot area are subject to the limits of subsection B5. A lot which does not satisfy the minimum lot area requirements of its zone may be developed or redeveloped as a separate building site according to the following:

6. Lots contained in a clustered housing planned development (Section 23.44.024), a planned residential development (Section 23.44.034), or a clustered development in an environmentally critical area."

10. Access easement standards are set forth in SMC Chapter 23.53. SMC Section 23.53.005 provides in part as follows:

A. Street or Private Easement Abutment Required.

1. For residential uses, at least ten (10) feet of a lot line shall abut on a street or on a private permanent vehicle access easement meeting the standards of Section 23.53.025; or the provisions of Section 23.53.025 F for pedestrian access easements shall be met.

Section 23.53.025 provides in part as follows:

"When access by easement has been approved by the Director, the easement shall meet the following standards. Surfacing of easements, pedestrian walkways required within easements, and turnaround dimensions shall meet the requirements of the Right-of-Way Improvements Manual.

A. Vehicle Access Easements Serving One (1) or Two (2) Single-Family Dwelling Units or One (1) Duplex.

1. Easement width shall be a minimum of ten (10) feet, or twelve (12) feet if required by the Fire Chief due to distance of the structure from the easement.

2. No maximum easement length shall be set. If easement length is more than one hundred fifty (150) feet, a vehicle turnaround shall be provided.

3. Curbcut width from the easement to the street shall be the minimum necessary for safety and access.

B. Vehicle Access Easements Serving at Least Three (3) but Fewer Than Five (5) Single-Family Dwelling Units.

1. Easement width shall be a minimum of twenty (20) feet;

2. The easement shall provide a hard-surfaced roadway at least twenty (20) feet wide;

3. No maximum easement length shall be set."

11. The definitions of "lot" and "lot area" are found at SMC Section 23.84A.024 and read in part as follows:

> " 'Lot' means except for the purposes of a TDR sending lot for Landmark TDR or housing TDR, platted or unplatted parcel or parcels of land abutting upon and accessible from a private or public street sufficiently improved for vehicle travel or abutting upon and accessible from an exclusive, unobstructed permanent access easement. A lot may not be divided by a street or alley . . . ."
>
> " 'Lot area' means the total area of the horizontal plane within the lot lines of a lot."

Conclusions

1. The first issued raised in the interpretation request is answered as follows. SMC Sections 25.09.260 A and 25.09.260 B (see Finding of Fact No. 8) are intended to be read independently. Section 25.09.260 A is to be used in analyzing permit applications for short subdivisions and subdivisions pursuant to Section 25.09.240 and specifically cross references the standard and purpose set out in subsection 25.09.240 E. The standards set out in SMC Section 25.09.260 B, however, apply to all applications, not only those for subdivisions and short subdivisions under Section 25.09.240, but also applications for "unit lot subdivisions" under SMC Title 23, which are distinguishable from "short subdivisions," and also

applications for "more than one dwelling unit per lot," which would not necessarily involve any platting action. Since the applicant in Project 3005162 is not proposing any kind of application under SMC Section 25.09.240, the analysis required in Section 25.09.260 A does not apply to the project.

2. The analysis in Conclusion 1 is supported by the plain language of SMC Section 25.09.240 A, which says, in part, that it applies to all applications for short subdivision and subdivisions, excluding unit lot subdivisions." (See Finding of Fact No. 7.) Since the applicant in Projects 3005162 and 3005087 has not applied for a short subdivision under Section 25.09.240 but has only applied for a unit lot subdivision, further analysis of the application under Section 25.09.240 is not required. No showing that "it is not practicable to comply with the requirements of Section 25.09.240 B" as stated in Section 25.09.260 A is needed if the applicant is not applying for a subdivision under Section 25.09.240 but instead is applying for a unit lot subdivision under Section 23.24.045 and an administrative conditional use permit under the standards set out in Section 25.09.260 B.

3. This interpretation of how Section 25.09.260 is intended to apply is further supported by the language in Subsection 25.09.260 C 2 b. Subsection C 2 b specifically says that "where new lots are created, the provisions of 23.22.062 and 23.24.045, governing unit lot full subdivision and unit lot short subdivisions apply, *regardless of whether the proposal is a unit lot subdivision*." [Italics added.] The italicized phrase in subsection 25.09.260 C 2 b would not be needed unless the intent in 25.09.260, read as a whole, was to allow the critical areas conditional use process not only to apply to short subdivisions and subdivisions in critical areas under Section 25.09.240 but also in other situations as contemplated in Section 25.09.260 B, such as unit lot subdivisions and "clustering" of more than one dwelling unit per lot.

4. Since Section 25.09.260 B applies independently of 25.09.240 and 25.09.260 A, it is unnecessary to decide whether it is "practicable" for the applicant in Project 3005162 to comply with Section 25.09.240 B "considering the parcel as a whole."[1] It is also unnecessary to exclude the critical areas and buffers, or any easements or fee simple property used for shared vehicular access, as set forth in SMC Section 25.09.240 E, since Section 25.09.240 E does not apply to unit lots but only to short subdivisions and subdivisions as set forth in Section 25.09.240 A.

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[1] However, the Hearing Examiner's treatment of a similar project on appeal is instructive. In Matter of Appeal of Stanley Krohn, MUP-07-021 (ECA), decided by the Hearing Examiner on August 20, 2007, and the related MUP decision in Project 3005237, a specific finding of "practicability" under subsections 25.09.240 E and 25.09.260 A was not included in the DPD decision approving a conditional use under Section 25.09.260 for property not being subdivided pursuant to Section 25.09.240 ("clustering" of two houses on one lot was proposed). Evidence was allowed at the hearing on whether the application satisfied those criteria, and the Hearing Examiner ruled that the evidence showed it did (Conclusion 4 of MUP-07-021). In that case, DPD had not been asked to issue an Interpretation whether subsections 25.09.240 E and 25.09.260 A apply to conditional uses on property that is not being subdivided pursuant to Section 25.09.240, and had an interpretation been requested, DPD would have concluded these provisions do not apply under those circumstances.

5. However, it must be noted that the applicant has proposed a development that is located outside of all environmentally critical areas and required buffers (an area of steep slope near the west edge of the critical area that does include some proposed development was determined to be exempt from steep slope development standards under Section 25.09.180 B and thus could be developed under 25.09.240 B, see Finding of Fact No. 3). Accordingly, the standard in Section 25.09.240 B is met for the subject project anyway, and the analysis required by Sections 25.09.240 E 2 b and 25.09.260 A is meaningless with respect to the subject project, since no property would be excluded under this proposal. (See Finding of Fact No. 5.)

6. As demonstrated in Conclusions 1-5 above, the subject critical areas conditional use application and unit lot subdivision application is analyzed independently of Section 25.09.240. Thus, the second issue raised by the request for interpretation, whether the private access easement within the proposed unit lot subdivision should be included in the total lot area for determining the number of lots the parcel may contain, is moot. The applicant specifically opted out of Section 25.09.240 and applied for a conditional use and unit lot subdivision including smaller than required lot sizes and yards under Section 25.09.260 B. The number of "lots permitted" and therefore the number of houses permitted on the property is controlled by Section 25.09.260 B 3 a. The total area of the property exceeds 38,400 square feet, and therefore sufficient area is available for four lots, each developed with one house, meeting the underlying minimum lot area standard. (Finding of Fact No. 1.)

7. Having said this, it is nevertheless clear that the lot area is sufficient even if the easement area required to be excluded by Section 25.09.240 E 1 is subtracted from the total area of the lot to be used in computing the number of lots the parcel may contain. Section 25.09.240 E 1 requires exclusion only of easements "used for shared vehicular access to proposed lots that are required under Section 23.53.005," not the total easement area proposed by the applicant for both access and driveway/maneuvering space. According to the applicants' site plan, proposed unit lots A and B have street frontage and therefore meet the definition of a lot without needing frontage on an access easement. (See Findings of Fact Nos. 6, 9, 10, and 11.). Only unit lots C and D must have frontage on an access easement to meet Code standards, since they will not have street frontage as proposed. The easement proposed for shared vehicular access to proposed lots is the approximate 20-foot by 117-foot strip that crosses unit lots A and B to reach unit lots C and D. Under SMC Section 23.53.025 (Finding of Fact No. 10), a vehicular access easement required for two lots need not exceed 12 feet in width. The required access easement area is thus only about 12 feet by 117 feet, or 1,404 square feet. If this area is excluded from the total lot area of 40,709 square feet, the applicant still has about 39,305 square feet of lot area to include in the calculation required by Section 25.09.240 E 1, and this is sufficient area for four lots as proposed. The fact that a wider easement is proposed in this case, and that that easement would provide driveway access for the front houses as well as access in lieu of street frontage for the two rear houses, does not mean that the entire easement area must be subtracted from the lot area under the language of Section 25.09.240 E 1. Even if that section applied to this project, only that portion of the easement required under Section 23.53.005 would need to be excluded.

DECISION

When applying for a critical areas conditional use permit, a project applicant is not required to apply for a subdivision or short subdivision of property subject to SMC Section 25.09.240 and 25.09.260 A. Instead, the applicant may choose to apply for a critical areas conditional use for smaller than required lot sizes and yards, or to have more than one dwelling unit per lot, under SMC Section 25.09.260 B. When a critical areas conditional use is reviewed strictly under Section 25.09.260 B, it is not necessary to demonstrate that it is not practicable to comply with the requirements of Section 25.09.240 B, including location of building areas outside of all critical areas and buffers. Further, when a conditional use application under Section 25.09.260 alone is proposed, it is not necessary to perform the lot area calculation, including whether to count easements for shared vehicular access in lot area, required under Section 25.09.240 E. However, even if the standards of Section 25.09.240 E did apply to this project, the applicant's proposed developed is located outside of all regulated non-exempt critical area, and sufficient lot area for four houses remains after the access easement area required under Section 23.53.005 has been subtracted in accordance with Section 25.09.240 E.

Entered this 4th day of September, 2007.

William K. Mills.

William K. Mills
Senior Land Use Planner, Department of Planning and Development

WKM/07-010

Exhibit B

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of **MAGNOLIA ACTION GROUP** From a decision by the Director Department of Planning and Development Regarding a master use permit application	Hearing Examiner File Numbers: **MUP-05-025 (CU)** **MUP-05-026 (CUU)** **LAND USE CODE INTERPRETATION** **No. 05-004**

On behalf of the Magnolia Action Group, attorney Richard Aramburu has requested this interpretation in conjunction with an appeal of DPD's project decision and recommendation for Projects 2402617 and 2403714, a Clustered Housing Planned Development (CHPD) at 3901 West Dravus Street in the Magnolia area of Seattle, and a related full subdivision. Five questions are raised: [1] Whether reduced yards may be approved as a part of CHPD review; [2] Whether the proposed arrangement qualifies as "clustered housing"; [3] Whether the plans were adequate to describe the project; [4] Whether the development, as proposed, would exceed the applicable lot coverage limit and whether streets, alleys and easements within the CHPD were properly counted as lot area for this purpose; and [5] Whether streets to be dedicated were properly counted towards lot area in determining the number of houses allowed.

1. **The discretion to "require alternate spacing or placement of structures" includes the authority to approve reduced yards on a CHPD site.**

The yard standards for structures within a CHPD are codified at Section 23.44.024 E. The initial, general statement in this subsection is that "yards shall be required for structures within a CHPD."

Paragraphs 1 through 6 of this subsection specify required setbacks from the street property line of the CHPD, and from abutting lots that are not a part of the CHPD, and also between the separate houses within the CHPD. Paragraph 6 provides specific standards for "required yards" between structures in the CHPD. In the context of Section 23.44.024 E, "yards" thus includes both the setback areas around the perimeter of the CHPD and also the required area between structures within the CHPD. Paragraph 7 gives the Department the discretion to modify the yard requirements:

> **"The Director may increase the minimum required yards or require alternate spacing or placement of structures in order to preserve or enhance topographical conditions, adjacent uses and the layout of the project and to maintain a compatible scale and design with the surrounding community."**

In the context of the section, the "minimum required yards" referred to in Paragraph 7 clearly include all of the yards defined in the preceding six paragraphs, both around the perimeter of the CHPD and between the structures in the CHPD. The Appellants would have us read this to allow only an increase, rather than a decrease, of required yards. If we apply this reading to yards between the structures, as well as those around the perimeter, then the words "or require alternate spacing or placement of structures" become meaningless surplusage, as the only alternative available would be the increase in minimum required yards that is already mentioned.

This understanding would run counter to the stated intent of the section. The Department is meant to have flexibility to allow the houses in a CHPD to be "clustered" or concentrated, where doing so would preserve or enhance topographical conditions, adjacent uses and the layout of the project, and maintain a compatible scale and design with the surrounding community. An increased setback may be desirable in one part of a CHPD, in order to preserve an existing topographical feature or compatibility with a neighboring development on one side. In order to achieve that, yards may be decreased elsewhere on the CHPD property, either between structures or at the perimeter of the CHPD property.

In their request for interpretation, the Appellants themselves assert that, in order for the proposal to qualify as clustered housing, the housing must be "clustered in one portion of the site, leaving other portions of the site as open space or as areas to preserve sensitive environmental or design conditions." Although (as argued below) we don't agree that clumping of the structures is required in order for a proposal to qualify as a CHPD, we do agree that the Department is meant to have the discretion to approve such an arrangement, where it is warranted by the conditions. The Appellants' position would take away the very flexibility they argue we are required to apply.

The Appellants raise a separate question with respect to yards: After the proposed subdivision, some of the resulting individual lots would not have yards meeting the general requirements for the zone, under Section 23.44.014. In particular, the west side of Lots 1 through 6 and the south side of Lots 31 through 39 would provide ten-foot setbacks rather than standard 20-foot front yards. The CHPD standards for yards between structures, as provided in Section 23.44.024 E would be met in each of those cases. We conclude that the specific yard requirements in the CHPD section apply in lieu of the general standards. The code specifically allows subdivision of CHPDs, and thus implicitly allows creation of lots that do not individually meet the yard standards that would apply to lots that are not in CHPDs.

2. It cannot be said, as a matter of interpretation of the language of the Land Use Code, that the proposed arrangement fails to qualify as a clustered housing planned development.

The Appellants point out that the Briarcliff plat, as proposed, spreads the houses in a relatively uniform manner across the entire property, in a standard rectangular grid, rather than concentrating or clumping the houses, in order to provide some neighborhood, public interest, environmental, topographical or open space function. On this basis they assert that the proposal cannot fairly be approved as a clustered housing planned development.

Chapter 23.84, the Definitions Chapter of the Land Use Code, does not define "clustered housing planned development." It defines "cluster development" as follows at Section 23.84.006:

> **a development containing two or more principal structures on one lot, except that cottage housing developments shall not be considered a cluster development. In Highrise zones, two or more towers on one base structure shall also be considered a cluster development.**

Residential cluster developments are permitted in Multifamily zones, and development standards are found for these cluster developments in the Multifamily Chapter. Neither the definition nor the development standards require that units be concentrated in one area of a site in order for the development to qualify as a "clustered development." This definition does not bear directly on what qualifies to be a clustered housing planned development in a single family zone, but it illustrates that "clustered" is used in the Land Use Code to refer to multiple principal structures on a single site, as opposed to a requirement that the structures be particularly close to each other.

Seattle's Critical Areas Ordinance, at Section 25.09.260, also addresses clustered development. Although the code limits the ability to subdivide property in certain environmentally critical areas, this provision, as a conditional use, allows on a single site the number of units that otherwise could have been achieved by short platting. The standards in that section allow the Department to require that structures be arranged on the site in a manner that preserves particular features or minimizes disturbance of the environment. (The provisions for clustered housing planned developments in the Single Family Chapter pre-date the Critical Areas Ordinance, and were modified in 1992 to reflect the adoption of the critical areas standards.) Again, although Section 25.09.260 creates broad authority to modify the placement of the houses on the property, it contains no requirement that the houses be particularly close to each other.

With the exception of amendments reflecting the adoption of critical area standards, the standards for CHPDs in Section 23.44.024 date back to 1986. Prior to that time, the code allowed "planned residential developments" (PRDs) as an administrative conditional use in Single Family zones. PRDs were similar to the current CHPDs, except that they also could include ground-related multifamily structures, and up to 20 percent more dwelling units than would otherwise be allowed, based on the zoning and the area of the PRD. In 1986, under Ordinance 112890, PRDs became a council conditional use, and the current

CHPD standards were adopted, allowing as an administrative conditional use a similar sort of development, but without the allowances for multifamily structures or 20 percent more dwelling units.

The pre-1986 standards for PRDs provided, at former Section 23.44.024 B:

> **Benefits provided. A proposed PRD shall provide one or more of the following elements or include other elements which further an adopted city policy and provide a demonstrable public benefit:**
>
> 1. **Preservation or enhancement of natural features;**
> 2. **Low-income housing;**
> 3. **Utilization of opportunities for solar exposure;**
> 4. **Usable open space, recreation, day care or meeting facilities for the surrounding community.**

These specific review criteria were eliminated under Ordinance 112890, and the new CHPD provisions adopted in that ordinance instead included a general statement of purpose: "A CHPD is intended to enhance and preserve natural features, encourage the construction of affordable housing, allow for development and design flexibility, and protect and prevent harm in environmentally critical areas."

This general statement of purpose is not presented either as a part of the definition of clustered housing planned development or as a criterion for the approval of a CHPD. This language was specifically adopted in the same section of the same ordinance that eliminated the former language, under which the benefits provided were listed as a review criterion and requirement for PRDs. The current language of Section 23.44.024 states, at the end of the introductory paragraph, "CHPDs shall be subject to the following provisions:" A list of standards follows, but none of those standards require a determination that the CHPD achieves any of the things mentioned in the general statement of purpose. If the City Council intends for the use of CHPDs to be limited in this manner, the Land Use Code must be amended to add specific conditions to achieve this.

In short, neither the proposed arrangement of the houses and lots nor the CHPD's alleged inadequacies with respect to the statement of purpose in Section 23.44.024 provides a basis for us to conclude, as a matter of code interpretation, either that the proposed development does not qualify as a CHPD, or that it fails to meet the criteria for approval of the administrative conditional use.

3. It cannot be said, as a matter of Land Use Code interpretation, that the submitted plans failed to adequately describe the proposal.

The Appellants point out that neither the application for the CHPD nor the decision include specific floor plans, elevation plans, dimensions, roof lines or other plans that show the nature of the houses that are to be built. They assert that greater detail is required under past City guidance on submittal requirements, such as Client Assistance Memo 211A, and that the plans provided in this case were inadequate for evaluating how

the houses will impact adjacent properties or whether the houses will be consistent with the intent of the CHPD provisions.

The procedural provisions of the Land Use Code, which are consolidated in Chapter 23.76, are not subject to the Land Use Code interpretation process, according to Section 23.88.020 A. The general application submittal requirements are provided at Section 23.76.010. The application submittal requirements of Chapter 23.76 qualify as procedural provisions, and thus are not subject to the Land Use Code interpretation process, according to Section 23.88.020 A.

In case the Hearing Examiner does not agree that this issue is not subject to interpretation, we will address the issue of submittal requirements.

The Appellants specifically ask that drawings showing building elevations and floor plans be required. It is quite possible that these materials could provide a more comprehensive understanding of the proposed development, or that the Department, in the course of its review, had the authority to require submittal of these materials. However, these materials were not necessary to determine compliance with the specific development standards provided for CHPDs.

Section 23.76.010 D lists many pieces of information that may be required as a part of an application submittal. The list is prefaced by the statement, "The following information shall also be required as further specified in the Director's Rule on Application Submittal Guidelines, unless the Director indicates in writing that specific information is not necessary for a particular application." Floor plans and elevations are among the items listed.

With the exception of a few rules covering very specific types of project application, not applicable here, there is no "Director's Rule on Application Submittal Guidelines." The Client Assistance Memo cited by the Appellants is intended to provide general, helpful information to applicants, but it is neither code nor a Director's Rule, and it is not binding, nor is it subject to the code interpretation process.

Section 23.76.010 E provides that the Director shall determine whether an application is complete, and notify the applicant in writing within 28 days of submittal whether it is deemed complete, or what additional information is needed. However, that subsection further provides that an application is to be deemed complete if the Director does not notify the applicant to the contrary, in writing, by the 28-day deadline.

In this case, the Department did not issue a formal written waiver of the requirement for complete floor plans and elevations. On the other hand, the Department did not specifically require that information, in writing, within 28 days of the application submittal. Notwithstanding the lack of a formal waiver of the requirement for the information, we believe the application must be considered complete, and, by implication, the requirement for any information not provided must be considered waived, once the 28-day deadline has passed.

The Appellants are technically correct the Department should waived the requirement of certain information in writing, under the language of Section 23.76.010 D. The Hearing Examiner may require the Department to cure this defect by issuing such a writing.

4. Although lot coverage limits would be met on the individual lots created through the subdivision, the CHPD as a whole is subject to a 35 percent lot coverage limit, and compliance with this standard has not been documented.

a. The CHPD as a whole is subject to a lot coverage limit of 35 percent of the lot area of the CHPD, and the streets and alleys that are to be dedicated count towards that lot area.

A table is provided on Sheet C10 of the approved plans, listing the maximum allowable lot coverage for each of the individual lots resulting from the proposed subdivision. However, no calculations are provided documenting that the CHPD, as a whole, complies with the applicable lot coverage limit of the zone. Section 23.44.024 D allows a CHPD to be subdivided so that each house is on a separate lot. Such a subdivision, though allowed, is not required at all, let alone required to occur concurrently with the CHPD approval. If a CHPD were proposed without a subdivision, applicable development standards would be applied to the CHPD property, as a single lot. Some development standards are specifically modified for CHPDs, such as yard requirements or the general limit of one house per lot. However, the 35 percent lot coverage limit is not modified, so the CHPD, as a whole, would be subject to that limit, according to the provisions of Section 23.44.010 C and D. A CHPD should not escape this standard merely because subdivision, either later or concurrent, is proposed.

Dedication of right-of-way – three alleys and an extension of 39th Avenue West through the CHPD property – is proposed in conjunction with the subdivision. However, if the CHPD alone were proposed, without the subdivision, no dedication would be required. Consistent with our analysis of the CHPD proposal separately from the subdivision, the areas to be dedicated as right-of-way should not be deducted from calculation of the lot area of the CHPD, for purposes of determining whether the CHPD, as a while, meets the 35 percent lot coverage limit.

The Appellants also argue that easements, such as the area designated as "Briarcliff Lane," should not be counted towards the area of individual lots within the CHPD, for purposes of calculating lot coverage. "Lot coverage" is defined at Section 23.84.024 as "that portion of a lot occupied by the principal structure and its accessory structures, expressed as a percentage of the total lot area (Exhibit 23.84.024 B)." "Lot area" is defined in the same section as "the total area of the horizontal plane within the lot lines of a lot." To the extent that the easements in question cross through an area within the lot lines of a particular lot, the area subject to that easement is still a portion of that lot, and is properly counted towards lot area. We find no support in the code for excluding the area occupied by easements from lot area calculations. Many properties throughout the

city are subject to easements for many purposes, including access easements, utility easements and side yard easements. It has never been our practice to exclude areas that are subject to private easements from lot area calculations for purposes of determining lot coverage.

The total area of the CHPD property, including the areas proposed for dedication, is approximately 199,425 square feet. The permissible lot coverage, for the CHPD as a whole, is 35 percent of that, or 69,799 square feet. A table on Sheet C10 of the approved plans lists calculations of maximum allowable lot coverage for each of the individual lots that would result from the proposed subdivision. The total of those figures comes to 71,841 square feet. If the individual lots resulting from the subdivision are each to be developed to the maximum provided in that table, the total coverage would exceed the permissible coverage for the CHPD as a whole. The Department requests that the CHPD approval be further conditioned to limit the total coverage by structures within the entire CHPD area to 69,799 square feet.

b. The individual lots resulting from the proposed subdivision would be consistent with applicable lot coverage limits.

Although Section 23.44.024 D allows subdivision of a CHPD into individual lots of less than the minimum lot area generally required in the zone, it does not exempt lots resulting from subdivision of a CHPD property from lot coverage limits. Coverage by principal and accessory structures on each individual lot is limited to either 35 percent of the lot area or 1750 square feet, whichever is greater. Because this standard would be applied to the lots resulting from the subdivision, areas to be dedicated as streets or alleys should not be counted towards the area of any of the lots. On the other hand, as discussed above, there is no basis for requiring easements, including Briarcliff Lane, to be excluded. The Appellants specifically argue that Lots 7 through 14 and 17 through 21 improperly include street area. By our calculations, it appears that dedicated streets or alleys adjacent to these lots were *not* counted as lot area. Each of these lots includes a portion of Briarcliff Lane, and appropriately counts the area subject to that easement as a part of the lot area.

"Limits of building envelopes" are shown, for each of the proposed lots, on Sheet C10 of the plans, and other pages, as well. A table is provided on Sheet C10, listing for each lot the "building envelope area" and the "maximum allowable lot coverage," which in most cases is less. The column listing the "maximum allowable lot coverage" in each case reflects the correct application of the code standard to a lot of the given area. It is our understanding that the proposal is to build a house with lot coverage no greater than the given maximum allowable lot coverage, somewhere within the building envelope area depicted on the plans in dotted lines. Our approval of the plans was not meant to authorize houses filling the entire "building envelope area" of each lot, where those areas exceed the maximum allowable lot coverage listed for the lot. We agree that the plans are confusing, and we would have no objection to a condition clarifying the intent by limiting the coverage on each lot to the maximum allowable lot coverage as stated on

Sheet C10. (As discussed above, the total coverage for the entire CHPD is further limited.)

5. Areas within the CHPD, proposed to be dedicated as right-of-way, were properly counted as lot area in determining the number of houses allowed.

Section 23.44.024 C 1 provides in part: "The number of dwelling units permitted in a CHPD shall be calculated by dividing the CHPD land area by the minimum lot size permitted by Section 23.44.010 in the single-family zone in which the CHPD is located...." Section 23.44.024 D provides: "A CHPD may be subdivided into lots of less than the minimum size required by Subsection A of Section 23.44.010."

The property that is the subject of this application is in an SF 5000 zone, subject to a minimum lot area of 5000 square feet. In this case, the area of the original parcel on which the CHPD was proposed is 199,425 square feet. That area, divided by 5000, is a fraction under 40. Thirty-nine houses are proposed.

Although some of the access to the houses, including Briarcliff Lane, would be in the form of easements, dedication of several rights-of-way has been required as a part of the subdivision, including three alleys and an extension of 39th Avenue West, which currently dead-ends to the south of the CHPD property, through to West Dravus Street. The total area to be dedicated is 27,376 square feet, according to Sheet C 10 of the plans. If that area is deducted from the total CHPD area, 172,049 square feet remains. That area divided by 5000 is 34.4. At issue is whether the applicants should be limited to 34 units rather than 39, as proposed.

The central question is whether the "CHPD land area" is the area controlled by the project applicant and called out as the CHPD site at the outset, or whether only the land that would remain in private ownership after the subdivision and dedication should be considered a part of the "CHPD land area." The code does not provide specific direction. Again, we believe this is because the dedication is required as a part of the subdivision approval rather than the CHPD approval. Approval of the CHPD does not hinge on approval of the subdivision, nor is any street dedication required as a condition to the CHPD approval. By the same analysis that we applied to the determination of the lot coverage for the entire CHPD, we conclude that the determination of the number of permissible homes is appropriately based on the entire CHPD area, including streets that may later be dedicated as right-of-way when the property is subdivided. In fact, Section 23.44.024 D, in providing that a CHPD may be subdivided into lots of less than the minimum size generally required by the zone, appears to anticipate this situation.

Although "CHPD land area" is not defined, the land area used to determine the number of permitted units presumably is the same two-or-more acres used to meet the minimum size area for a CHPD, under Section 23.44.024 A. Certain types of land, including submerged land and land in particular environmentally critical areas, are expressly excluded for purposes of meeting the minimum size requirement. Areas to be dedicated as rights-of-

way are not mentioned, and thus may be used to meet the minimum area requirement, and presumably counted in calculation of the permissible number of homes, as well.

Summary of Decision

After careful consideration of the issues raised, the Department concludes as follows:

1. **Yards.** The code creates discretion to modify yards both around the perimeter and between the structures in a CHPD, to achieve specified objectives. This includes the authority to reduce setbacks where appropriate, as well as the authority to require greater setbacks. The specific yard requirements provided for CHPDs apply in lieu of the general single-family yard requirements of Section 23.44.014. When a CHPD is subdivided, the resulting lots do not need to meet the general yard standards, so long as the CHPD is in compliance with the yard standards provided for CHPDs.

2. **Qualification as a CHPD.** Although the CHPD section includes language regarding the intent of CHPDs, that language is not set forth as standards or criteria for approval. There are no requirements that the houses within a CHPD be clustered or concentrated in any particular way. We cannot conclude, as a matter of Land Use Code interpretation, that the proposed development does not qualify as a CHPD.

3. **Completeness of Application Materials.** The question whether the submitted materials met the submittal requirements of the code is a procedural issue not subject to the Land Use Code interpretation process.

4. **Lot Coverage.** The CHPD, as a whole, is subject to a 35 percent lot coverage limit. This limit applies to the entire CHPD land area, and both easements and areas proposed for street or alley dedication under the proposed subdivision are appropriately counted as a part of that land area for purposes of this standard. If the CHPD area is to be subdivided, the individual lots within the CHPD are separately subject to lot coverage limits. To the extent that a portion of an individual lot is subject to an easement, the area subject to the easement is appropriately counted towards the area of that lot, but areas actually to be dedicated as streets or alleys, in conjunction with the subdivision, may not be counted as lot area for purposes of the calculating permissible coverage for individual lots resulting from the subdivision. The approved plans do not adequately document that the 35 percent lot coverage standard for the CHPD as a whole is met. The standards are met for the individual lots resulting from the subdivision, according to the table on Sheet C10, but that page creates confusion by outlining building envelope areas that exceed the maximum allowable lot coverage for certain of the lots. Revised plans should be required, clarifying the application of the lot coverage limits to the individual lots resulting from the

subdivision, and documenting that the CHPD, as a whole, will meet the standard as applied to the entire site.

5. **Number of houses.** Areas within the CHPD property proposed for street dedication under the related platting action are appropriately counted as a part of the CHPD land area, for purposes of determining how many homes the CHPD may include. On this basis, the Briarcliff CHPD may include 39 houses.

Motion

The Appellant has moved for a dispositive ruling on all of the issues raised in the request for interpretation, with the exception of whether the proposed development properly qualifies as clustered housing. By agreement at the Pre-hearing Conference, DPD is submitting this interpretation, and a further submittal by the applicant's counsel is anticipated. The Department agrees that these questions are adequately presented in the written submissions by the parties, and that additional argument at the hearing is unnecessary. If all parties are in agreement, the Department requests that the Hearing Examiner issue an order, prior to the hearing, resolving all of the issues subject to Land Use Code interpretation.

Respectfully submitted this 17th day of October, 2005.

Andrew S. McKim
Land Use Planner - Supervisor

Exhibit C

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of

61st and 36th NW NEIGHBORS

From a decision by the Director
Department of Planning and Development
Regarding a master use permit application

Hearing Examiner File Number:
MUP-05-030 (P)

LAND USE CODE INTERPRETATION
No. 05-005

This interpretation was requested by Dave Boyd, on behalf of a group of his neighbors ("61st & 36th NW Neighbors") in conjunction with their appeal of the Department's approval of a short subdivision (Project No. 2409599). The question raised is whether the proposed short subdivision is eligible for a limited exemption from steep slope regulations under Seattle's Environmentally Critical Areas Ordinance.

Under Project No. 2409599, subdivision of approximately 29,000 square feet of property into seven lots is proposed. This property is along the north side of Northwest 61st Street, extending from 36th to 37th Avenue Northwest, and is in an SF 5000 zone. The property is currently developed with two houses, addressed 6100 - 37th Avenue Northwest and 6105 - 36th Avenue Northwest. A portion of the property is mapped as an environmentally critical area due to slopes in excess of 40 percent. Based on a topographic survey provided by the project applicant, 4791 square feet of the site has slopes greater than 40 percent: most of the area within 20 to 30 feet of the south edge of the property, along Northwest 61st Street, and also the area within five to ten feet of the 36th Avenue Northwest right-of-way, over the south 110 feet of the property.

The language governing that limited exemption is set forth at Seattle Municipal Code Section 25.09.180, Paragraph D 4:

> **4. Limited Exemptions. Slopes with a vertical elevation of up to twenty feet and not part of a larger steep-slope system, or slopes which have been created through previous, legal grading activities, may be exempted by the Director from the steep-slopes regulations based on a geotechnical report demonstrating that no adverse impact will result from the exemption.**

A different exemption from steep slope regulations, found at Paragraph 2 of the same subsection, applies to steep slopes resulting from right-of-way improvements. That exemption does not require a geotechnical report, but it is specifically unavailable for short subdivision and subdivision applications.

The vertical elevation of the steeply-sloped area along the south edge of the property, adjacent to Northwest 61st Street, exceeds 20 feet in places, based on topographic survey information provided by the applicant. An area along the east edge of the property, adjacent to 36th Avenue Northwest, also has slope in excess of 40 percent, but the elevation differential is less than 20 feet in that area.

The limited exemption of Paragraph D 4 was applied in this case on the basis that the slope was created through previous legal grading activities, and that a geotechnical report demonstrated that no adverse impact would result from the exemption. The appellants challenge both of these determinations.

I. The areas of the subject site with slopes in excess of 40 percent qualify either as "slopes with a vertical elevation change of up to twenty feet and not part of a larger steep slope system" or "slopes which have been created through previous, legal grading activities."

The limited exemption was granted based on an assumption that the steep slopes on the property resulted from grading for the improvement of Northwest 61st Street, along the south edge of the property, and 36th Avenue NW, along the east edge of the property. The slopes in excess of 40 percent on the property are limited to the areas immediately adjacent to those rights-of-way. The property otherwise is relatively level, or gently sloping. Nearby blocks exhibit a similar pattern, with slopes concentrated adjacent to rights-of-way.

The appellants assert that a long-time resident has pointed out that steep slopes existed on the site prior to the grading for Northwest 61st Street, when a ravine existed in the area. On the other hand, a geotechnical study relating to this property, prepared in 2000 by Geo Group Northwest, Inc., concludes, at page 4:

> **"It is our opinion, based upon the construction of several terraced rockeries and landscaping on the steep slope, that the steep slopes are a result of previous legal grading activity. It is likely that right-of-way improvements including the installation of rockeries and construction of steep cut slopes occurred during the construction of 36th Avenue Northwest and Northwest 61st Street."**

Historical grade sheets from City records, from the time the streets were improved, provide support for the opinion that the steep slopes, along the south edge of the property, resulted from grading performed as a part of the street improvement for Northwest 61st Street. On the other hand, the grade sheet for the east portion of the property, adjacent to 36th Avenue Northeast, shows that there was a slope in that immediate area prior to the

street improvement. However, as noted above, the difference in elevation between the bottom and top of that sloped area is less than 20 feet. With the exception of slopes adjacent to improved rights-of-way, property in the vicinity is not steeply sloped. To the extent that there was a steep slope on this site adjacent to 36th Avenue Northeast prior to right-of-way improvements, that sloped area was not a part of a larger steep-slope system.

Based on the above information, we conclude that the steep slopes adjacent to Northwest 61st Street resulted from legal grading associated with improvement of that right-of-way. The steep slopes on the east edge of the property appear at least in part to have predated the improvement of that right-of-way, but any slope in that area that did not result from legal grading for the right-of-way has an elevation difference of less than 20 feet, and is not a part of a larger steep-slope system.

II. A right-of-way improvement may qualify as "previous legal grading activities" for purposes of the exemption in Section 25.09.180 D 4.

The appellants in their request for interpretation argue that it is inappropriate to apply the exemption in Paragraph D 4 in a case where the "previous legal grading" relied upon was associated with a street improvement, as a different categorical exemption is provided, in Paragraph D 2, for steep slopes resulting from right-of-way improvements, and that exemption is specifically unavailable for short subdivisions.

It is our assumption that when the rights-of-way adjacent to the subject property were improved, the grading was performed legally. It thus would appear to qualify as "previous legal grading" that may be a basis for an exemption under Paragraph D 4. Paragraph D 4 does not specifically exclude cases where the grading was done as a part of a right-of-way improvement.

The appellant may argue that this reading would render Paragraph D 2 meaningless, as grading that was performed as a part of right-of-way improvement would virtually always qualify as "previous legal grading," so the exemption in Paragraph D 4 could always be applied. As a rule of statutory construction, we assume that all of the language in the code is meant to have some potential application. We believe the Department's reading effectively harmonizes the provisions in these two paragraphs, however, in a manner that gives effect to both. Paragraph D 2, exempting steep slopes resulting from right-of-way improvements, requires no geotechnical report. The exemption in Paragraph D 4 is available for short subdivisions, but it may not be applied unless there is a geotechnical report demonstrating to the Department's satisfaction that no adverse impact will result from the exemption.

III. The Department appropriately relied on documentation in a geotechnical report in concluding that no adverse impact would result from the exemption.

The appellants also raise the question whether the 2000 geotechnical report by Geo Group Northwest, relied upon by the Department in granting the limited exemption, truly demonstrates that no adverse impacts will result from the exemption. As they point out, the soils report was prepared for a different development proposal for the same property. In particular, the report notes that the development under consideration at that time was to consist of townhouses. "Although the exact siting of the townhouses has not yet been determined the buildings will be constructed near the top of the steep slopes." (Page 1.)

At page 4, the report includes this opinion and recommendation:

> **"It is our opinion based upon our site investigation that the existing steep slopes at the project site are stable. We recommend that the spread-footing foundations for the proposed townhouses be located at a distance no closer than fifteen feet from the top of the steep slopes."**

The report concludes, at page 5:

> **"It is our opinion that the site is stable and will remain stable after the proposed construction. The proposed structure will not increase the potential for soil movement and will present a minimal risk of damage to the proposed development and adjacent properties from soil instability during or after the construction, provided that the recommendations contained herein are implemented."**

Again at page 6, the report concludes:

> **"Based on the results of our study, it is our professional opinion that the site is geotechnically suitable for the proposed development. The proposed structure can be supported on conventional spread footings bearing on the dense silty sand to sandy silt or on compacted structural fill. The loose silty sand soils and fill soils between 3 and 7 feet bgs located in the front yard of 6105 36th Avenue Northwest are not suitable to support foundations due to their loose condition. However, the loose silty sand soils may be able to be used for structural fill as discussed below in our geotechnical recommendations."**

(We take "bgs" to mean "below grade surface.")

The report reflects a general conclusion that the slope is stable, however, the conclusions regarding its suitability for development are limited to a particular development proposal. Although the report acknowledges that the exact location of the development for which it had been prepared had not yet been specified, it clearly was contemplated to be near the top of the steeply-sloped portion of the property. The report specifically recommended that spread-footing foundations for the structures be located no closer than 15 feet to the top of the slope.

The appellants have accurately observed, under the proposed subdivision, that a few of the proposed lots would have little potential building area that was not within the steeply-sloped area, and thus would result in development in steeply-sloped areas not contemplated by the geotechnical engineers who prepared the 2000 study. They have questioned whether this report qualifies as a "geotechnical report demonstrating that no adverse impact will result from the exemption," as required by Section 25.09.180 D 4.

In addition to opinions relating to the previous development proposal, the 2000 study included general observations about the site and the stability of the slope, as well as detailed information about the nature of the soils, taking from five test pits in various places on the site. Although the specific conclusions in that report related to a different development proposal, and may have little bearing on the current proposal, the report nevertheless contained geotechnical information about the site that a staff engineer at DPD could consider, in the context of the current proposal.

That is what occurred in this case: William Bou, a geotechnical engineer for the City, considered the report in the context of the current subdivision proposal, and determined, based on the report, that the slope was stable. He recognized that the subdivision would be likely to lead to future development that would entail cutting into the slope on some of the resulting lots, but he also considered, based on the information he had about the site, that that future development could be engineered in a way that would prevent adverse impacts, and, in fact, that such engineering would be required as a part of our review of future applications to build houses in those areas. In short, based on the data in the 2000 report, DPD's own geotechnical engineer was able to conclude that no adverse impact would result from granting the limited exemption from steep-slopes regulations, for the short subdivision.

Conclusion

The "limited exemption" from steep-slope standards provided at Section 25.09.180 D 4 may appropriately be applied to steep slopes resulting from right-of-way improvements, where the other requirements of Section 25.09.180 D 4 are otherwise met. This exemption is available for short subdivision applications. On the property that is the subject of this interpretation, the steep slopes adjacent to the Northwest 61st Street right-of-way along the south edge of the property resulted from legal grading at the time the right-of-way was improved. Some of the sloped area along 36th Avenue Northwest on the site predates improvement for that street, and cannot be attributed to previous legal grading. However, the vertical elevation change in that area was and is less than 20 feet, and the area is not a part of a larger steep-slope system. A geotechnical report was submitted documenting the stability of the site. Although that report was prepared with a different development in mind, and contained conditions and limitations based on that previously-proposed development, it also contained general information about the slope and the nature of the soils. DPD's geotechnical engineer appropriately granted the

limited exemption under Section 25.09.180 D 4, having concluded based on the information in the report that no adverse impact would result from the exemption.

Respectfully submitted this 14th day of November, 2005.

Andrew S. McKim
Land Use Planner – Supervisor