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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In Re: Appeal by
ESCALA OWNERS ASSOCIATION
of Decisions Re Land Use Application
for 1903 5th Avenue, Project 3018037

NO. MUP-19-031 (DD, DR, S, SU,W)
ESCALA OWNERS ASSOCIATION'S
STATEMENT OF REMAINING SEPA
ISSUES

On January 28, 2020, the Hearing Examiner issued an oral ruling on subject matter jurisdiction pursuant to RCW 43.21C.500. Escala Owners Association is submitting this document in response to a request by the Examiner as a follow up to that ruling.

After receiving evidence and legal argument in the bifurcated hearing on the jurisdiction issue on January 28, 2020, the Examiner orally ruled that, among other things, the Altitude Project meets the criteria in RCW 43.21C.500(1)(b)(ii). That provision states that certain project actions are exempt from appeal under the State Environmental Policy Act (SEPA) on the basis of the evaluation of or impacts to transportation elements of the environment so long as it is a project for which traffic or parking impacts are expressly mitigated by an ordinance that has been adopted by the City of Seattle. RCW 43.21C.500(1)(b)(ii).

In his ruling, the Examiner concluded that the Altitude Project is one for which traffic or parking impacts are expressly mitigated by provisions in the Seattle Municipal Code. This ruling was

1 based on the Examiner’s conclusion that the plain language of the statutory provision at issue does not
2 require that the specific impacts that are alleged in the appeal actually be mitigated, but rather that the
3 traffic or parking impacts that are alleged are generally mitigated by the code. The Examiner
4 concluded that the City demonstrated that the traffic and parking impacts that were presented in the
5 appeal in this matter are expressly mitigated by provisions in the City of Seattle Municipal Code. The
6 Examiner’s conclusion was based on code provisions that were identified in Hearing Examiner Exhibit
7 5, titled “City Codes that Expressly Mitigate Transportation Impacts.”
8

9 At the close of the hearing on January 31, 2020, the Hearing Examiner asked Escala Owners
10 Association to indicate whether there were any SEPA issues that remained subject to the Examiner’s
11 jurisdiction notwithstanding the Examiner’s ruling on the interpretation of RCW 43.21C.500(1)(b)(ii).
12 At that time, Escala orally identified a number of SEPA issues that were presented in the Notice of
13 Appeal that remain subject to the Examiner’s jurisdiction. With respect to identifying specific
14 significant adverse environmental impacts that were not mitigated by code provisions notwithstanding
15 the Examiner’s interpretation of RCW 43.21C.500(1)(b)(ii), Escala requested an opportunity to
16 identify those issues in writing. The Examiner granted that request and asked Appellants to submit
17 that list by today, February 4, 2020.
18

19 Following up on that direction, the specific significant adverse environmental impacts that
20 were not mitigated by code provisions notwithstanding the Examiner’s interpretation of RCW
21 43.21C.500(1)(b)(ii), and the following:
22

- 23 1. The Altitude Project will cause conflicts with the new Seattle Streetcar on Stewart
24 Street causing significant adverse traffic impacts on Stewart and in the alley.

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1 2. The Altitude Project will cause congestion and safety problems at the intersection of
2 the alley and Stewart Street which, in turn, will have significant adverse impacts to pedestrians,
3 bicyclists, and drivers on Stewart Street.

4 3. The Altitude Project will cause conflicts between trucks attempting to access the
5 Altitude loading bay and residents attempting to access the Altitude residential parking garage which
6 will, in turn, cause significant adverse impacts in the alley.

7 4. The lack of curbside parking and loading/unloading opportunities in the near vicinity
8 of the Altitude Project will cause significant adverse traffic impacts.

9 5. The existing obstructions in the alley, including but not limited to solid waste and
10 recycling containers, ducts, electrical boxes, will obstruct vehicle access and will, in turn, cause
11 significant adverse impacts in the alley.

12 6. The cumulative impacts of the Altitude Project, the Escala, and the proposed 5th and
13 Virginia project will cause congestion problems in the alley that will have significant adverse impacts
14 to residents, hotel guests, emergency vehicles, solid waste and recycling vehicles, delivery vehicles,
15 and other users of the alley.

16 These issues are meant to be incorporated into the appeal issues as described and identified by
17 Appellant orally on the record at the close of the hearing on January 31, 2020.

18 For the record, Appellant reserves the right to amend or change this list as necessary and
19 appropriate to address any nuanced arguments related to the Hearing Examiner's jurisdictional ruling
20 that may arise if this matter is appealed and litigated further in court. Because a ruling on jurisdiction
21 has not been issued in writing and because there remains some ambiguity over the parameters of the
22 oral ruling, Appellants should not be restricted or limited by this list in future appeals.
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Dated this 4th day of February, 2020.

Respectfully submitted,

BRICKLIN & NEWMAN, LLP

By: 

Claudia M. Newman, WSBA No. 24928
Attorneys for Escala Owners Association