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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In Re: Appeal by

MASTER BUILDERS ASSOCIATION OF
KING AND SNOHOMISH COUNTY,
LEGACY GROUP CAPITAL, LLC,
BLUEPRINT CAPITAL SERVICES, LLC, AA
ASHWORTH DEVELOPMENT LLC,
BLACKWOOD BUILDERS GROUP LLC,
AND BUILD SOUND, LLC,

of the SEPA Threshold Determination of Non-
Significance for the Tree Protections Update.

NOTICE OF APPEAL

I. APPELLANT INFORMATION

A. Appellants:

Master Builders Association of King and Snohomish County

Legacy Group Capital, LLC

Blueprint Capital Services, LLC

AA Ashworth Development LLC

Blackwood Builders Group LLC

Build Sound, LLC

1 (Contact only through authorized representative)

2 **B. Authorized Representative:**

3 Name: Brandon S. Gribben, N. Chance Laboda and Samuel M. Jacobs of Helsell
4 Fetterman, LLP

5 Address: 1001 Fourth Avenue, Suite 4200, Seattle, WA 98154

6 Phone: 206.689.2113 (BSG); 206.689.2116 (NCL); 206.689.2121 (SMJ)

7 Fax: 206.340.0902

8 Email: bgribben@helsell.com; claboda@helsell.com; sjacobs@helsell.com

9 **II. DECISION BEING APPEALED**

10 **A. Decision being appealed:**

11 The SEPA Threshold Determination of Non-Significance for the Tree Protections
12 Update, bearing Record Number 000268-22 PN. A copy of the decision is attached as Exhibit

13 A.

14 **B. Property address:**

15 The Tree Protections Update is non-project action, application City-wide.

16 **C. Elements Being Appealed:**

17 SDCI is proposing to amend Title 23 (Land Use Code) and Title 25 (Tree Protection)
18 and adopted two related Director's Rules to increase tree protection. At the onset, the
19 Appellants support enhancing the Seattle tree canopy for the benefit of the City and its
20 residents while also encouraging development. The proposed amendments and Director's
21 Rules, however, ultimately sacrifice the Appellants' ability to develop and build affordable
22 housing and other types of development by imposing enhanced tree protections for existing
23 trees by establishing stringent regulations on the removal of far more trees and in other ways
24 making development more expensive, uncertain, and problematic. In addition, the code
25 amendments and Director's Rules are being proposed without any meaningful analysis into

1 the total number of lots and trees affected by these amendments and the proposed
2 amendments' potential negative impacts on elements of the environment or the 2035
3 Comprehensive Plan that support the creation of housing. Because of the severe impacts on
4 housing and other elements of the environment that are apparent from this proposal as well
5 as the fact that the full environmental impacts are unknown at this time, an environmental
6 impact statement must be performed. Thus, the DNS is inappropriate, not based upon
7 sufficient environmental review, and the proposed code amendments and Director's Rules
8 should not be approved before an environmental impact statement is prepared.

9 III. APPEAL INFORMATION

10 A. Appellants' interest in the decision.

11 Master Builders Association of King and Snohomish Counties ("MBAKS"), the
12 nation's oldest and largest local homebuilders' association is a membership organization that
13 represents the interests of its members related to land use and development regulations,
14 among other issues. Many of its members develop residential and other types of projects in
15 Seattle and would be significantly affected by the provisions in the proposed amendments to
16 the Tree Protection Ordinance. Legacy Group Capital, LLC, LLC, Blueprint Capital
17 Services, LLC, AA Ashworth Development, LLC, Blackwood Builders Group, LLC and
18 Build Sound, LLC (together, the "Developers") are local developers that build a variety of
19 housing and other types of projects in the City of Seattle. The provisions in the proposed
20 Tree Protections Update will significantly affect the Developers, including, without
21 limitation, causing uncertainty and increasing the cost of development and, ultimately,
22 housing and decreasing the lots available for reasonable development or redevelopment.
23 MBAKS and the Developers are intimately familiar with the Seattle Land Use Code and
24 Tree Protection Code and related Director's Rules, and how the City's regulations can,

1 sometimes unintentionally, inhibit development and contribute to the increasing costs of
2 housing and other development and decrease the availability and affordability of housing.

3 **B. Errors of the decision.**

4 The provisions in the proposed Tree Protections Update, individually and
5 collectively, will have probable significant adverse impacts on the environment that will not
6 be sufficiently mitigated by the City's existing environmental regulations. The total number
7 of existing trees that will now be offered protection is unknown, as well as the total number
8 of residential and other lots where development will become significantly more expensive,
9 uncertain, and problematic. And because the total number of protected trees and affected lots
10 is unknown, it is equally unknown how the new protection measures will impact housing
11 and other elements of the environment. However, because the proposal will reduce the size
12 threshold for more than two dozen species of trees to be considered "exceptional" (and
13 therefore strictly protected), it is apparent that many residential and other lots will be
14 affected. This presents significant adverse impacts on potential development and the cost of
15 housing. Additionally, these proposed amendments are at odds with portions of the 2035
16 Comprehensive Plan that seek to support the creation of housing. As a result, a Declaration
17 of Significance must be issued, and an environmental impact statement must be prepared.

18 **C. Objections to the decision and issues on Appeal.**

19 1. The following is a preliminary list of the objections to the decision and issues
20 on appeal. Because of the complexity and interrelationship of proposed changes, MBAKS
21 and the Developers reserve the right to supplement this list. Examples of issues contained in
22 the following list are for illustrative purposes only and are not exclusive of other examples
23 which may be offered at the hearing or other appropriate point in the appeal process.

24 SDCI failed to analyze the entirety of the proposed amendments. Every paragraph of
25 the SEPA checklist aside from "4. Plants" was answered: "This is a non-project action." SDCI

1 has not conducted any meaningful analysis under SEPA on the environmental impacts,
2 including, without limitation, the impacts on development and the cost of housing regarding
3 any of the proposed code amendments and Director’s Rules. Specifically, paragraph 9
4 (Housing) of the DNS states that: “The proposal is a non-project action that does not include
5 construction or development of housing.” It appears that SDCI believes that because no
6 singular project is identified, no environmental impacts can be identified. Answering every
7 SEPA checklist question with “This is a non-project action” is dismissive, inaccurate, and
8 insufficient to support a determination of non-significance. The proposed amendments
9 absolutely affect the cost of development, will introduce more uncertainty into the
10 development process and will make the process more problematic and as a result will have a
11 significant impact on housing and the housing market. These answers indicate that the
12 responsible official believes that only projects can adversely affect the environment. This is
13 patently incorrect and contrary to SEPA requirements.

14 As a result, the DNS fails to adequately disclose, discuss, and analyze the direct,
15 indirect, and cumulative impact that the proposed Tree Protection amendments and
16 Director’s Rules will have on Seattleites, developers and, most importantly, the
17 environment. More specifically, the proposed amendment to SMC 25.11.020 adds an
18 expansive definition of “significant trees.” A significant tree would be defined as any tree
19 that is 6 inches or greater in diameter at standard height (DSH). Based on this new
20 definition, SDCI has proposed significant amendments to the code, that if adopted, will
21 increase the time and costs of development. The proposed amendments to 25.11.040 restrict
22 the removal of all significant trees on all undeveloped lots and limit tree removal of
23 significant trees less than 12 inches DSH when no development is proposed to three trees a
24 year. The proposed amendment to 25.11.050 requires that all significant trees 12 inches
25 DSH or greater be listed on site plans.

1 Finally, the proposed Director’s Rule regarding exceptional trees lowers the
2 exceptional tree threshold generally to 24 inches. The proposal also expands the definition
3 of exceptional trees to include tree groves and heritage trees. This change will greatly
4 increase the number of trees that are considered exceptional and the number of lots,
5 including residential lots, where development will be more expensive, uncertain, and
6 problematic and on which fewer residential units will be developed. Compounding the
7 impact from the expanded definition of exceptional trees, is the new requirement that a
8 permanent covenant be recorded prohibiting development within an exceptional tree
9 protection area. And there is no provision for how the covenant may be removed, even if the
10 exceptional tree becomes a hazard or dies. The environmental impacts from this covenant
11 requirement will be permanent.

12 The SEPA DNS attempts to quantify the number of lots impacted by these proposed
13 changes based off the GIS of the City’s 2016 tree canopy layer, SDCI’s zoning and lot
14 layers, statistics from the US Forest Service study of tree canopies and an Accella query of
15 SDCI tree review from 2020 and 2021. The DNS concludes that residential and commercial
16 lots containing exceptional trees would rise from 4% to 5% and that residential and
17 commercial lots containing regulated trees would rise from 5% to 16%. The City’s 2016
18 Tree Canopy Assessment does not identify the size and types of trees in the City; it only
19 identifies the then existing canopy cover. The DNS attempts to estimate the diameter at
20 standard height of trees (and therefore how many trees will be subject to strict regulation
21 under the proposal) by tree canopy. This analysis is fatally flawed. Tree canopy does not
22 equate to tree diameter.

23 This analysis is woefully deficient and fails to consider how every neighborhood and
24 lot is different. It also failed to consider trees that are considered exceptional at less than 24
25 inches in diameter such as the Sitka Alder, Pacific Dogwood, Black Hawthorn, Madrona,

1 Dwarf Maple, and Oregon White Oak, that are considered exceptional at only 6 inches in
2 diameter. Even if GIS or similar information is used to determine the number of trees
3 affected by this proposal, SDCI is not using the most recent information available.
4 Appellants understand that SDCI has tree canopy GIS information from 2020 or 2021,
5 which is obviously more up to date than the 2016 information it is relying upon. The City's
6 failure to identify the number of trees implicated in these new regulations, and the resulting
7 number of lots that will be affected, mandates reversal of the SEPA DNS.

8 2. One of the stated goals of the amendments to the Tree Protection ordinance is
9 to increase tree protection consistent with the goals and policies of the 2015-2035
10 Comprehensive Plan. The DNS, however, fails to identify probable, significant, adverse
11 environmental impacts that the proposed amendments will have on the housing goals
12 included in Comprehensive Plan. In fact, the DNS fails to address *any* of the housing goals
13 or policies included in the Comprehensive Plan. As a result, many of the proposed
14 amendments are directly at odds with the goals and policies that support the creation of
15 housing. Specifically, the proposed amendments are directly at odds with the following
16 policies:

17 H 2.3 – Consider Land Use Code and Building Code regulations
18 that allow for flexible reuse of existing structures in order to
19 maintain or increase housing supply, while maintain lifestyle
standards.

20 H 2.4 – Encourage use of vacant or underdeveloped land for
21 housing and mixed-use development, and promote turning
vacant housing back in the safe places to live.

22 H 5.13 – Seek to reduce cost burdens among Seattle
23 households, especially lower-income households and
24 households of color.

1 H 5.16 – Consider implementing a broad array of affordable
2 housing strategies in connection with new development,
3 including but not limited to **development regulations**,
inclusionary zoning, incentives, property tax exemptions, and
permit fee reductions.

4 The above policies from the Comprehensive Plan are just a few examples of policies
5 that seek to increase housing availability in the City of Seattle. The proposed amendments to
6 the Tree Protection Ordinance are directly at odds with the above policies and will
7 ultimately sacrifice housing for increased, and unnecessary, tree protection regulations.

8 The proposed amendments to the Tree Protection regulations will increase the cost
9 burden for Seattle households as the proposed amendments would protect more trees and
10 require additional mitigation efforts that will be both time consuming and costly. The
11 proposed amendments also could not be considered an affordable housing strategy
12 especially when you consider the fact that lower income, higher density neighborhoods tend
13 to have less trees than more affluent single-family neighborhoods. These proposed
14 amendments will raise the costs of development in more dense neighborhoods as the
15 proposed amendments will require additional permitting and mitigation regarding protected
16 trees.

17 Because more trees will be subject to strict regulation as “exceptional” and other
18 trees will be subject to protection, development of many lots will also be subject to
19 uncertainty, which will mean that they will not be developed or redeveloped or will not be
20 developed or redeveloped to their full potential. These amendments will likely
21 disproportionately affect high density areas, thereby raising the cost of development and
22 increasing the cost of housing.

23 3. The SEPA DNS fails to properly consider the direct, indirect and cumulative
24 impacts that the proposed Tree Protection amendments and Director’s Rules would have on
25 the environment including the displacement and destruction of affordable housing, the

1 displacement of populations, the change in neighborhood character, the unstudied stresses
2 on existing utilities, the unstudied stresses on existing infrastructure, the unstudied stresses
3 on the amount of available street parking and the unstudied ability of residents and
4 emergency vehicles to navigate through the neighborhoods.

5 The SEPA DNS acknowledges that proposal will impact housing but does not
6 recognize the full extent that it will impact development. For example, the DNS provides
7 that: “City staff are not able to anticipate and analyze all possible locations and
8 arrangements of trees on all potentially affected individual properties and development sites.
9 Similarly, the extent to which an individual property owner may need to or be able to
10 reconfigure a development proposal to accommodate exceptional trees cannot be fully
11 known and described.” Because the City admits that it is not able to quantify the
12 environmental impacts, an environmental impact statement must be required.

13 4. The public comment period for the proposal ends April 4, 2022, which is after
14 the deadline to appeal the SEPA DNS. The Appellants intend on submitting a public comment
15 by the April 4 deadline. Under SMC Chapter 25.05.340, SDCI should reconsider and
16 withdraw the DNS based upon the public comments it receives including the Appellants’.

17 **D. Relief Requested.**

18 MBAKS and the Developers request that the Hearing Examiner reverse the
19 determination of non-significance, find that the proposal requires a determination of
20 significance, and remand the decision so that SDCI can prepare an environmental impact
21 statement for the proposed Code amendments Director’s Rules. In the alternative, the
22 Hearing Examiner should remand the decision for further environmental review consistent
23 with state and city SEPA provisions.

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Respectfully submitted this 10th day of March, 2022.

HELSELL FETTERMAN LLP

By: s/ Brandon S. Gribben
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EXHIBIT A



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

**SEPA Threshold Determination
for
Tree Protections Update**

Project Proponent: City of Seattle

BACKGROUND

The Seattle Department of Construction and Inspections (SDCI) in consultation with the Office of Sustainability and Environment (OSE) is proposing updates to the Land Use and Tree Protection Codes that would implement the strategies from Resolution 31902, adopted September 16, 2019, to increase tree protection consistent with the goals and policies of the 2015-2035 Comprehensive Plan and the 2020 Urban Forest Management Plan (UFMP). Throughout this work, the Urban Forestry Commission (UFC) has been engaged about tree protection needs and potential strategies, and has provided input to SDCI and OSE. This legislation would respond to the direction in the resolution from City Council and allow for the expansion of the tree protections by accomplishing the objectives and actions listed in the proposal description below.

Overview of existing tree categories (Seattle Municipal Code Chapter 25.11) on private property:

- “Exceptional” trees: The most ecologically and culturally important trees in the city, defined primarily by species and trunk size. Current rules protect these types of trees from removal unless they are hazardous or if removal is necessary to achieve the full development potential of a site. If removed for development, tree replacement is required, to result in canopy cover that is at least equal to the canopy cover prior to tree removal.
- “Significant” trees: Trees over 6 inches in diameter that are not already considered exceptional. These trees are an important component of the city’s canopy. Current rules limit the number of these trees that can be removed in single-family zones unless development is proposed.
- “Heritage” trees: Trees that have been given special designation by the Heritage Tree Program, co-sponsored by Plant Amnesty and Seattle Department of Transportation.
- Other: Trees under 6 inches in diameter are not regulated or protected unless located in an environmentally critical area.

PROPOSAL

This is a non-project legislative action proposing amendments to Titles 23 (Land Use Code) and 25 (Tree Protection Code). The purpose of the code amendments is to update tree protections. In addition, the proposal would correct errors and improve the clarity and readability of the code.

Summary Description of the Proposal

- A. Expand the types and sizes of trees that are regulated, including a new definition of significant trees;
- B. Apply replacement requirements to include significant trees 12 inches in diameter and larger;
- C. Simplify provisions, including allowing development standards to be modified to aid in tree preservation as an administrative process without requiring Design Review, while maintaining Design Review as an option in multifamily and commercial zones;
- D. Establish a payment option for tree replacement (payment in lieu);
- E. Support tracking of tree preservation, removal, and replacement; and
- F. Increase penalties for violations of tree regulations.

Outline of the Proposal's Contents

Titles 23 (Land Use Code) and 25 (Tree Protection Code) would be updated by this proposal. The following summarizes the proposed amendments to these codes.

1. Expand the definition of an exceptional tree by lowering the minimum size threshold for certain tree species from 30 inches to 24 inches as measured by diameter at standard height (DSH) and adding tree groves and heritage trees to the definition of exceptional trees (and certain existing exceptional tree species with thresholds smaller than 24 inches would continue to be defined as exceptional).
 - a. The key part of the proposed revisions indicates, "Exceptional trees include all heritage trees, individual trees that comprise tree groves, and all trees identified by Director's Rule."
 - b. The proposal reviewed here includes the draft Director's Rule written to fulfill the purpose indicated above.
2. Newly define "significant tree" as any tree that has a DSH of six inches or greater and is not defined as an exceptional tree, and require mitigation for removal of significant trees that are 12 inches or greater. Limit removal of significant trees outside of development to trees smaller than 12 inches.
 - a. When no development is proposed, limit to three the number of significant trees less than 12 inches DSH that may be removed in any one-year period on lots in Lowrise, Midrise, commercial, and Neighborhood Residential (formerly "single-family") zones.
 - b. The proposal declares the protection of exceptional trees and trees 12 inches or greater as follows: "Significant trees 12 inches or greater in diameter at standard height and exceptional trees that are not allowed to be removed pursuant to Section 25.11.060 or 25.11.085 and that do not preclude access to development or provision of utility services shall be protected."
 - c. Include demolition permits in the range of permits relevant to tree protection.
3. Add a new section that establishes a payment option (voluntary payment-in-lieu)

when tree replacement is required.

- a. The proposal includes a Director's Rule that defines a method for calculating in-lieu payments, and draft payment amounts for exceptional trees, and significant trees 12 inches and greater.
 - b. The proposed code section also indicates that off-site planting is allowed for planting of replacement trees.
4. Proposed adjustments to development standards that may be made:
- a. For development not subject to design review:
 - 1) Setbacks and separation requirements may be reduced by a maximum of 50 percent;
 - 2) Amenity areas may be reduced by a maximum of 10 percent;
 - 3) Landscaping and screening may be reduced by a maximum of 25 percent; and
 - 4) Structure width, structure depth, and facade length limits may be increased by a maximum of 10 percent.
 - b. For development subject to design review, the departures permitted in Section 23.41.012.
 - c. Parking reduction. A reduction in the parking quantity required by Section 23.54.015 and the modification of standards for safe access of any required parking of Section 23.54.030 may be permitted in order to protect an exceptional tree if the reduction would result in a project that would avoid the tree protection area.
 - d. In Lowrise zones, an increase in base height limit of 40 feet to 50 feet; for a building that is subject to the pitched roof provisions of subsection 23.45.514.D, for the ridge of a pitched roof with a minimum slope of 6:12 to extend up to a height of 50 feet if the increase is needed to accommodate, on an additional story, the amount of floor area lost by avoiding development within the tree protection area.
5. Simplify processes and update enforcement provisions for tree regulations, including increasing penalties for violations.
6. Add "Application of tree provisions pursuant to Chapter 25.11" as a Type I decision.
7. Add new definitions of terms, including but not limited to: canopy cover, diameter at standard height (DSH), emergency action, excessive pruning, invasive tree, responsible party, and tree grove.
8. Adding tree removals, off-site replanting outside the boundaries of the MPC-YT zone, and voluntary payment-in-lieu of replanting undertaken as part of redevelopment that meets the planned action ordinance within the MPC-YT zone for Yesler Terrace, as actions exempt from Chapter 25.11.
9. Add tree replanting and voluntary payment-in-lieu of replanting undertaken as part of development by permanent supportive housing providers as regulated by Title 23, as

- actions exempt from Chapter 25.11.
10. Add a new section addressing emergency actions that may be undertaken without obtaining a permit in advance from the City.
 11. Add a new section addressing provisions related to hazardous tree removal.
 12. A new section addressing tree protection on sites in Major Institution Overlay Districts, moving existing provisions to a new Section.
 13. Delete the requirement for streamlined design review to occur if an exceptional tree is present on a site proposed for development.

Included with this proposal are two draft Director's Rules addressing: 1) Payment-in-lieu of tree replacement pursuant to Tree Protection Code and 2) Designation of Exceptional Trees that are 24" DSH and smaller.

- The purpose of the Draft Director's Rule on the voluntary payment-in-lieu option is to provide further guidance for payments in lieu of tree replacement pursuant to Seattle Municipal Code (SMC) Chapter 25.11, Tree Protection.
- For the Draft Director's Rule related to exceptional trees, the purpose is to provide additional guidance for exceptional trees that are 24" DSH and smaller pursuant to SMC Chapter 25.11. Table 1 of the Rule provides a list of size thresholds for selected specimen exceptional trees that are 6" DSH or greater up to 24" DSH. All trees that are not on this list are exceptional at 24" DSH. In addition, any named cultivars or subspecies of species listed in Table 1 have the same diameter threshold as the species specifically named in Table 1 of the Rule. For example, a Japanese maple cultivar (*Acer palmatum* "Burgundy Lace") has the same threshold diameter as Japanese maple (*Acer palmatum*).

The reader should also note that SMC Chapter 25.11 does not apply to tree removal approved as part of an Environmentally Critical Area tree and vegetation plan as provided for in SMC 25.09.070. Tree removal in Environmentally Critical Areas must comply with the provisions of SMC 25.09.070. In addition, the Draft Director's Rule titled "Designation of Exceptional Trees that are 24" DSH and smaller" does not apply to trees located within the right-of-way, as those trees are regulated under Title 15.

Trees under 6" DSH are not regulated or protected unless located in an environmentally critical area.

Public Comment

The Urban Forestry Commission (UFC) have been engaged through a series of deliberative sessions with SDCI about tree protection needs and potential strategies explored per Resolution 31902 over the past two years. The UFC have provided input to SDCI and OSE on the Urban Forest Management Plan update and strategies outlined in the Resolution relevant to this proposal. In addition, SDCI has briefed Commissioners at over a dozen regular UFC meetings on the status of the tree protection updates including processes. There will be future opportunities for SDCI to continue to work with the UFC to further refine the draft proposal in the upcoming quarter of 2022.

ANALYSIS – OVERVIEW

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 following report describes the analysis conducted to determine that the proposal is not likely to result in *probable significant adverse environmental impacts*. This threshold determination is based on:

- the language of the proposed amendments and related contents as described above;
- the information contained in the *SEPA checklist* (dated February 10, 2022), including annotations made by SDCI staff;
- review of materials prepared as background information about the code amendments, prepared by City staff; and
- the experience of the SDCI analyst in reviewing similar documents and actions.

ELEMENTS OF THE ENVIRONMENT

Short-Term and Long-Term Impacts

A. Natural Environment

Earth, Water, Water Quality, Plants/Animals/Fisheries and Marine Life

The proposal is not expected to generate significant adverse impacts on these natural environmental elements, at a non-project level or in its potential for indirect or cumulative impacts related to future development.

Earth, Water, Water Quality

Seattle is mostly urbanized in its development patterns, but it also has retained greenbelts, hillsides, stream, river, bay, and lake environments with diverse kinds of plant, animal, fish, and marine habitats. This includes many shoreline edges hosting birds, fish, and other marine life. In some portions of the city such as north Seattle, the City's drainage system relies in part on natural stream and creek drainages to direct urban stormwater runoff toward Lake Washington and Puget Sound.

A wide variety of geologic resources, conditions, and environmentally critical areas are present in the City of Seattle. These range from steep slopes and soils that may pose landslide or erosion hazards, to presence of peat soils or old landfills or other features that may pose seismic or soil instability hazards.

- Seattle has numerous soil types, including mineral soils dominated by clay, silt, or sand, as well as organic soils such as peats and mucks. No agricultural soils or prime farmland are located within the Seattle corporate limits. As a densely urbanized area, much of Seattle's native soils have been extensively altered by filling, grading, and other activity.
- The Seattle area is known to be in an active seismic area, as is the entire Puget Sound region. The City's geologically hazardous areas are defined by SDCI as environmentally critical areas (ECAs). Unstable soils and surfaces occur primarily in two contexts: 1) steep slopes and landslide-prone areas, where a combination of shallow groundwater and

glacial sediments deposited in layers with variable permeability increases the risk of landslides; and 2) areas of fill or alluvial soils where loose, less cohesive soil materials below the water table with potential for liquefaction during earthquakes.

- Most of Seattle is located within the Lake Washington/Cedar/Sammamish Watershed (Watershed Resource Inventory Area [WRIA] 8). The Duwamish Waterway and Elliott Bay are part of the Green/Duwamish and Central Puget Sound Watershed (WRIA 9). Seattle's surface waters include marine areas (Puget Sound), rivers, lakes, and creeks. Rivers and creeks include but are not limited to the Duwamish waterway, Longfellow, Fauntleroy, Taylors, Thornton, and Pipers Creek. Freshwater lakes include the Lake Union/Ship Canal, Green, Haller, and Bitter Lakes and numerous ponds and wetlands.

This non-project proposal would result in no probable direct adverse or significant adverse impacts to earth, water, or water quality because it does not directly propose development. Similarly, regarding indirect and cumulative impacts, this analysis identifies no probable significant adverse environmental impacts for these elements.

Increased tree protections could result in positive impacts for these environmental elements, by increasing the number of trees that are protected by lowering the threshold for exceptional trees from 30 inches to 24 inches diameter at standard height (DSH). To the extent that increased tree protections could lead to more future individual outcomes where existing exceptional trees, significant trees, heritage trees and groves are preserved and not removed, the proposal would likely lead to fewer instances of tree removals and related soil disturbances. This would reduce the probability of adverse pollutant emissions to water from the relevant properties that otherwise might be caused by such disturbances.

At a minimum, the proposal is not expected to increase the likelihood of exceptional or significant tree removals in relation to any given future development site, compared to the application of existing development regulations and related practices. Therefore, the degree and direction of probable cumulative impacts to the natural environment related to earth and water elements citywide, is expected to be approximately neutral and more likely positive in direction.

Potential impacts of future, specific development proposals would be addressed through regulations and/or separate project-specific environmental review. The City's other current protective regulations would also tend to help avoid and reduce the potential for significant adverse impacts related to earth disturbances, pollutant washoff, water quality impacts and stormwater runoff-related impacts.

Plants/Animals/Fisheries/Marine Life

Seattle has a broad range of natural and landscaped vegetative environments, reflecting its status as a nearly fully-developed urbanized city, interspersed with a variety of greenbelts, forests, stream and riverine corridors, smaller and larger lakes. Even within developed areas, the presence of vegetation varies widely, from lesser-vegetated environments in non-residential and residential areas, to more-vegetated places that may have older-growth tree presence, wetlands, or newer-growth plantings and more manicured residential yard settings. In many cases, vegetation may include both native plant species as well as invasive species such as English ivy

and non-native tree and plant species planted for decorative purposes. Seattle's planning regarding trees and vegetation is informed by the 2020 Urban Forest Management Plan.

Wildlife on land largely includes those species habituated to urban areas and fragmented vegetated areas in the city, with common types including squirrels, opossum, coyotes, and a variety of bird species including hawks and eagles. Threatened, protected, or endangered species that could be present nearby to future development sites citywide, in some cases could include heron, and salmon in locations downstream via natural drainages. Salmon are also present in waterbodies in and near Seattle including Puget Sound, Elliott Bay, the Duwamish Waterway, Lake Union, and Lake Washington.

Amounts of Trees and Properties Affected by the Proposal

SDCI worked with Seattle IT to estimate the number of lots that might be affected by the change from a 30-inch to a 24-inch DSH threshold for most exceptional trees. The analysis also looked at the effect of using a threshold of significant trees at a 12-inch DSH. The GIS analysis employed the City's 2016 tree canopy layer, SDCI's lot and zoning layers, statistics from a U.S. Forest Service study of tree canopy DSH distribution in 30 US cities¹, and an Accela query of SDCI tree reviews in 2020 and 2021.

The following table estimates what proportion of additional development sites (e.g., properties) in the affected environment would be newly affected, and how many additional trees would be protected as a result of the proposal. Rows 2 and 3 of the table below relate to two different components of the proposal, either or both of which could be approved. The numbers in Row 3 of the table below reflect the adoption of the proposal regarding both exceptional and significant trees.

¹ Morgenroth, Justin, David J. Nowak, and Andrew K. Koeser 2020. "DBH Distributions in America's Urban Forests—An Overview of Structural Diversity" *Forests* 11, no. 2: 135. <https://doi.org/10.3390/f11020135>

Row #	Existing tree regulation compared to proposal	Percentage of lots* to be regulated during development	Number of trees** to be regulated during development
1	Regulating using existing definition of exceptional trees (varies by trunk size and species)	4% of lots in applicable zones	17,700 trees
2	Regulating with an expanded definition of exceptional trees (most at 24" or larger); groves and heritage trees	5% of lots in applicable zones	22,400 trees
3	Regulating trees 12" and larger plus exceptional trees***	16% of lots in applicable zones	70,400 trees

* The total number of approximately 162,000 applicable lots are in single family, multifamily and commercial zones.

** Estimated total number of trees 6" and larger on private property in the applicable zones: 175,013.

***The proposal defines the size range of significant trees to be 6" and larger, but replacement/ mitigation would only be required for significant trees 12" and larger, along with trees designated as exceptional trees, heritage trees, and trees in groves.

The proposal to expand the definition of an exceptional tree by lowering the threshold from 30 inches to 24 inches as measured by diameter at standard height (DSH) and add tree groves and heritage trees would result in the regulation of about 22,400 trees. Residential and commercial zoned lots containing exceptional trees would rise from 4% to 5%.

The proposal to expand the range of regulated trees for newly-defined significant trees with 12 inches diameter or larger, along with the exceptional trees proposal, would result in the regulation of about 70,400 trees. The proportion of residential and commercial lots containing regulated trees would rise from 5% to 16%.

Ecological Function

In addition to creating new and updating existing definitions of tree categories, the proposal would give SDCI arborist staff discretion to evaluate the ecological function of significant trees over 12 inches in diameter and all exceptional trees and potential exceptional trees and determine the likelihood that the trees will live to maturity due to factors including but not limited to:

1. Health and physical condition;
2. Development site constraints such as proximity to existing or proposed development, access and utilities, soil conditions, and solar access;
3. Environmental conditions external to the development site such as the likely occurrence of disease or insect infestation, landslide, or high water table.

Ecological function would be used to further determine whether trees in these two categories would be required to be protected, or allowed to be removed, or replaced according to the provisions of the tree code.

Fee-in-lieu option for replacement

The proposed amendments would require trees 12 inches or greater in diameter removed as part of development to be either replaced on-site or mitigated by payment-in-lieu of replacement, unless hazardous. These changes would primarily impact builders and property owners seeking to remove trees as part of development activity beyond the existing tree removal limit, which currently allows up to three non-exceptional trees to be removed per year.

Exceptional trees and trees 12 inches or greater in diameter are proposed to be protected from removal (e.g., in required yards or property line setbacks) unless they are authorized to be removed for a new building.

On-site replacement is preferable. However as an alternative, under the proposal, a builder could opt to make a payment-in-lieu to replant trees. The payment amounts would be based on the Guide for Plant Appraisal, 10th Edition, authored by the Council of Tree and Landscape Appraisers which is based on the size and species of the tree, ranging from several hundred to several thousand dollars for a regulated tree. Payment amounts could be adjusted in the future and may include City costs related to establishing the trees for a period, likely three to five years. Revenues would be used for City programs that would result in planting of new trees on public property with an emphasis on low-canopy neighborhoods, many of which are BIPOC communities.

Overall Conclusions on Plants and Animals Impacts

The proposed non-project action would not likely generate probable significant adverse impacts on plants, animals, fish, or marine life, directly, indirectly, or cumulatively. Rather, it would likely be neutral in overall impacts or generate positive impacts with respect to trees, by expanding the size range and definition of protected tree designations (exceptional and significant trees), and other related actions.

It is likely that by lowering threshold for exceptional trees from 30 inches to 24 inches DSH and adding tree groves and heritage trees to the definition, more trees could be preserved. There would also be a probable increase in the number of development sites subject to mitigation requirements in the future, if exceptional and/or significant trees are removed, which would be of net benefit to Seattle's urban forest.

This proposal would likely confer a greater degree of protection to trees due to the new definitions of regulated trees, and the increase in the number of development sites with regulated trees. Also, there would be stricter limits on removal of exceptional trees, and significant trees over 12 inches in diameter. This means more trees would meet the definition of exceptional and would often be retained without disturbance from development, due to a regulatory preference for exceptional trees to be preserved whenever possible. At a minimum, the proposal is not expected to increase the likelihood of exceptional or significant tree removals on any given typical development site, compared to the application of existing development regulations and related practices. Therefore, the degree and direction of probable cumulative impacts to plant and

animal habitats and resources citywide is expected to be at least neutral and more likely positive. Significant adverse impacts to plant and animal habitats would not be probable.

And if a regulated tree would be authorized for removal through permitting as part of a future development, proposed mitigation methods would likely contribute to a net plant and animal habitat benefit by increasing tree canopy cover and enhancing the ecological quality of Seattle's urban forest at a citywide or city sector level. This would likely occur if trees were replaced on-site, or off-site through in-lieu fee implementation or other off-site tree replacement regimen.

Given the neutral-to-positive nature of probable impacts upon the plant/vegetation element of the environment, the potential for animal and marine wildlife impacts is concluded to be approximately similar in direction and degree. This is because trees and vegetative environments typically provide habitat-supportive qualities and are habitat features in which animals and wildlife live, and influence the total habitat quality for wildlife. To the extent that the proposal may lead to increased preservation of treed environments, increased amounts of tree vegetation over time through new replacement planting, greater retention of existing environments and lesser likelihood of tree removal and disturbance, it is likely to maintain or enhance overall wildlife habitat quality citywide and avoid significant adverse impacts to wildlife habitat.

Energy, Natural Resources Depletion, Environmental Health, Air Quality, Noise

Energy, Natural Resources Depletion

The proposed non-project action would not directly, indirectly, or cumulatively generate significant adverse impacts on energy or natural resource depletion. None of its provisions or concepts are likely to adversely affect rates of energy usage or consumption of natural resources, because they have administrative, procedural, regulatory, or resource-designating purposes.

Environmental Health, Air Quality, Noise

The proposed non-project action would not directly, indirectly, or cumulatively generate significant increases in discharges or emissions of toxic or hazardous substances, to the air or water, or increase the production of noise. Rather, it would likely lead to fewer instances of tree removals and soil disturbances, which would likely avoid the possibility of adverse pollutant emissions to the air that might otherwise be caused by such disturbances. The contents of the proposal have no particular adverse impact potential with respect to noise generation or release of toxic substances.

B. Built Environment

Land and Shoreline Use, Height/Bulk/Scale, Aesthetics, Relationship to Plans and Policies

The proposed non-project action is not likely to generate significant adverse impacts on land use and shoreline use patterns, directly, indirectly, or cumulatively. Also, the proposal would not likely affect the arrangement and combinations of land uses that could occur with future development in a significant adverse manner.

Potential Impacts to Development Patterns

The analysis for plants and animals impacts summarizes how many properties could be newly affected by lowering the DSH from 30 inches to 24 inches for exceptional trees, and with respect

to properties with newly regulated significant trees (trees with a DSH 12 inches to 24 inches). Depending on the location of a regulated tree on the development site, such trees could in some cases lead to differences in how future new housing units (including detached accessory dwelling units) could be situated on existing lots.

This could potentially be viewed as creating competing interests between land use regulations and tree protection regulations, but would not fundamentally reshape the typical prevailing land use and development pattern within any given zoning designation or neighborhood. Development would still be possible in many or most cases, and protecting regulated trees, as proposed, would not prohibit development, but rather would require sensitivity in site design. Property owners may need to factor trees into site plans and design considerations in more future development proposals, to build structures that may accommodate regulated trees to remain on-site even after development. It should be noted that these aspects of the proposal do not alter the existing nature of the competing interests that are already present by virtue of the City's existing policies, codes, and practices regarding regulated trees. With respect to reasonably accommodating new development, these interests are partly addressed by accommodating flexibility in application of development standards and similar considerations regarding development capacity in individual developments; the proposal would continue to implement these principles in its regulations. And the proposal also includes the removal of a streamlined design review process requirement for sites in Lowrise, Midrise and Commercial zones, with the proposal instead being reviewed per Chapter 25.11.

The nature of the changes would be to increase the number of affected properties and the number of protected trees. This would increase the probability that future development would be more often subject to addressing tree protection requirements in the future design and permitting of development proposals. It could also increase the probability that prospective applicants for new development would evaluate the effect of the tree protection requirements (for example, relative to costs of mitigation) and decide against purchasing properties or submitting development proposals. In this fashion, the proposal might mean that properties with exceptional trees and other regulated trees would be less frequently selected for future development purposes, and thereby the regulated trees would more likely be preserved over the long-term.

The analysis above similarly applies to probable shoreline use impacts. Additionally, other code prescriptions and restrictions applicable to shoreline areas would continue to apply to review of future development proposals. The proposal would not inherently affect these shoreline-related codes, and thus its impact is likely to be relatively neutral on the nature of future development potential for properties in shoreline-designated areas.

The combination of proposed changes to increase development site plan flexibility through reduction in minimum development standards could lead to tangible physical differences in how development could occur, on a site-by-site basis. This would depend on the location of trees that can be preserved and the degree to which new buildings can be designed to fit into the remaining parts of a site. While the trees to be protected could remain, if reductions in development standards would occur on a more frequent basis under the proposal, new development could be:

- Up to twice as close in their setback (a 50% reduction) to adjacent properties and/or separations from other buildings;

- With reduced amounts of landscaped area and on-site amenity areas;
- With reduced amounts of parking and/or space allocated for vehicle access compared to otherwise minimum code requirements; and
- In Lowrise zones, allowed to be 50 feet in height (with pitched roof) rather than 40 feet in height, accommodating recovery of floor area that would otherwise be lost due to the preservation of a tree or trees.

In terms of land-use-related impacts on their surroundings, these differences could adversely alter perceptions about density of development in a given local setting. This might lead to, for example, a new building being located closer to an adjacent property's dwelling or structure, with added possible perception of building bulk depending on how long a building façade is, or in some cases an extra floor added to the new building. Reduced amenity space, landscaping area, and reductions in space for parking and access arrangements could similarly lead to a slightly greater potential for negative perceptions by nearby area residents and users about a denser occupation pattern or unusual arrangement of buildings on a property. These are evaluated in this analysis as representing potentially adverse but not significant adverse impacts, because their incidence would tend to occur intermittently and perhaps rarely in any given geographic vicinity where exceptional or significant trees would be present, and where such properties would be subject to future development and where such development would be adapted in design to retain an existing exceptional tree.

For the purposes of this programmatic-level impact analysis, City staff are not able to anticipate and analyze all possible locations and arrangements of trees on all potentially affected individual properties and development sites. Similarly, the extent to which an individual property owner may need to or be able to reconfigure a development proposal to accommodate regulated trees cannot be fully known and described. With the requirement to obtain a permit for removing an exceptional tree, for example, such situations would be evaluated and decided on a case-by case basis. As today, regulated trees that are deemed hazardous to existing buildings would be removable, with mitigation required. This principle would also be the same for significant trees. The limiting factors discussed in this paragraph limit the depth and specificity of analysis on potential land use and natural environmental impacts of this proposal. However, for the sake of programmatic-level impact analysis, there is sufficient information about the proposal and interpretation of its probable impacts to conclude that significant adverse land use and shoreline use impacts are not probable for this proposal.

Relationship to Plans and Policies

Seattle 2035: Comprehensive Plan

This overarching plan prepared by the Office of Planning and Community Development (OPCD) in consultation with all city departments is a comprehensive collection of City-adopted goals and policies about how the City will accommodate growth over the next twenty years.

Generally, the goals stated in the Comprehensive Plan define a future outcome that the City is aiming for, and the policies in the Plan provide guidance for more specific decisions that will be made over time. Washington's Growth Management Act (GMA) requires most counties and cities to prepare comprehensive plans that show how they will manage the population growth that the state has projected for each county. The GMA defines a set of goals for managing

growth and lays out the basic contents of comprehensive plans. The GMA goals include reducing urban sprawl, encouraging future development to occur in urbanized areas where public facilities and services already exist, maintaining transportation, housing, and open space opportunities, protecting property rights, and protecting the natural environment.

This proposal supports the City's Urban Forest Management Plan and the Seattle Comprehensive Plan's environmental-related goals, as well as several Environment, Growth Strategy, and Land Use policies, detailed below:

Comprehensive Plan GOAL

- *Environment G1 Foster healthy trees, vegetation, and soils to improve human health, provide wildlife habitats, improve drainage, give residents across the city access to nature, provide fresh food, and increase the quality of life for all Seattleites.*

Comprehensive Plan POLICIES

- *Environment 1.1 Seek to achieve an urban forest that contains a thriving and sustainable mix of tree species and ages, and that creates a contiguous and healthy ecosystem that is valued and cared for by the City and all Seattleites as an essential environmental, economic, and community asset.*
- *Environment 1.2 Strive to increase citywide tree canopy coverage to 30 percent by 2037 and to 40 percent over time.*
- *Environment 1.3 Use trees, vegetation, green stormwater infrastructure, amended soil, green roofs, and other low-impact development features to meet drainage needs and reduce the impacts of development.*
- *Environment 1.5 Promote sustainable management of public and private open spaces, trees, and vegetation by preserving or planting native and naturalized vegetation, removing invasive plants, improving soil health, using integrated pest management, and engaging the community in long-term stewardship activities.*
- *Environment 1.7 Promote the care and retention of trees and groups of trees that enhance Seattle's historical, cultural, recreational, environmental, and aesthetic character.*
- *Growth Strategy 3.8 Encourage the preservation and expansion of the tree canopy throughout the city for the aesthetic, health and environmental benefits trees provide, considering first the residential and mixed-use areas with the least tree canopy in order to more equitably distribute the benefits to residents.*
- *Land Use 5.8 Establish tree and landscaping requirements that preserve and enhance the City's physical and aesthetic character and recognize the value of trees and landscaping in addressing stormwater management, pollution reduction, heat island mitigation, and other issues.*

Additional discussion of plans and policies

There is a consistent and supportive relationship between the City's Urban Forestry Commission recommendations, the 2020 Urban Forest Management Plan, the 2015-2035 Comprehensive

Plan, and the strategies in Resolution 31902. Both the UFMP and the Comprehensive Plan contain wide-ranging goals and policies that are consistent with citywide urban forestry practices and regulations that support other City and community goals. The UFC recommendations provide additional backing and advice to support the shared goals in those guiding documents for increasing tree protections.

Urban Forestry Commission (UFC) 2019 Recommendations

The UFC advises the Mayor and City Council on issues concerning the establishment of policy and regulations governing the protection, management, and conservation of trees and vegetation.

On October 9, 2019, the Commissioners recommended the following actions:

- Expand permit program
- Certify tree service providers
- Replace significant trees
- Track changes in the urban forest
- Protect exceptional trees, groves, and trees on undeveloped lots
- Encourage tree retention on already developed lots
- Fund and enforce

2020 Urban Forest Management Plan (UFMP)

This plan prepared by the City's Urban Forestry Core Team developed a set of overarching outcomes to guide urban forestry work in the next five years. These outcomes were informed by an inclusive engagement process. The UFMP has six outcomes that were prepared to represent a comprehensive approach to mobilizing informed and effective action:

1. ***Racial and social equity.*** Urban forestry benefits and responsibilities are shared fairly across communities, community trust is built, and decisions are guided by diverse perspectives, including those of environmental justice priority communities.
2. ***Ecosystems and human health.*** The urban forest improves air quality, human well-being, public health, and water quality; provides beauty, environmental and economic benefits, fish and wildlife habitat, food, outdoor fun; and helps store rainwater.
3. ***Human safety and property protection.*** In implementing the work, urban forestry teams use up-to-date practices to protect the safety of the public and staff.
4. ***Climate change.*** Urban forestry work helps people, and urban trees and vegetation adapt to, recover from, and mitigate the impacts of climate change.
5. ***Community care.*** The Seattle community, including all people, organizations, institutions, and businesses, works together to appreciate and care for the urban forest and to understand tree protection regulations.
6. ***Balance competing priorities.*** City government will work to grow, maintain, preserve, enhance, and restore Seattle's urban forest as it meets other priorities.

Urban forestry practices and policies work with and support other City and community goals including access to spaces, climate action, culturally appropriate resource provision, economic

development, environmental protection, social justice, food and medicine production, housing, balancing tree shade with light, public safety, recreation, transportation, and utility provision. The UFMP acknowledges that tree benefits and responsibilities should be shared across communities and that the City will work to grow, maintain, preserve, enhance, and restore Seattle's urban forest as it meets other priorities.

The above-stated outcomes and associated strategies were used to develop the specific actions included in the action agenda of the plan. The UFMP contains 19 actions to be undertaken within the next five years. These actions are in addition to and build upon the ongoing work of city departments.

Historic Preservation and Cultural Preservation

This non-project proposal would not directly, indirectly, or cumulatively generate probable significant adverse impacts on resources of this kind. The proposal would not increase the likelihood that existing historic buildings would be physically affected in any substantive adverse manner by tree-related requirements. The proposal's orientation toward preserving existing trees would also help avoid in more places the potential for future unearthing of cultural resources. It would also not affect the strength of the City's regulatory protection of those cultural sites or resources if they are discovered during future development, which is addressed by other State and local regulations, policies, and practices. With or without the proposal, such processes are mandated to stop construction, assess the resources, and take appropriate next steps for the cultural resources' protection or preservation.

Most cultural sites and resources at risk from future development in Seattle are in unknown locations due to their being buried under soils or existing buildings. Certain vicinities such as near-shore areas are known to have greater potential for presence of such resources given past activities of indigenous peoples. However, the proposal does not include provisions that would differently treat or alter the likelihood of future development or ground disturbances occurring in any near-shore areas.

Light and Glare, Recreation

This non-project proposed action would not result in any direct impacts relating to light and glare or recreation elements of the environment. Indirectly and cumulatively, the proposal is unlikely to lead to significant adverse impacts related to these environmental elements. The proposal would not likely lead to substantive adverse differences in use of light- or glare-producing elements in future development that might occur within the proposal's affected environment, or in the manner of providing recreation on a given property or in a neighborhood. This non-project proposal would also not have probable adverse impacts on municipal provision of recreation facilities and services.

Transportation, Public Services and Utilities

This non-project proposed action would not be likely to increase demands or impacts on transportation or public services and utilities systems in a significant adverse manner. This is due to a lack of a significant material relationship of the contents of the proposal to these environmental elements. In other words, this analysis does not identify outcomes that would generate probable adverse or significant adverse impacts upon the functioning of transportation systems, electrical, water or sewer utility systems, police, fire/emergency public services,

