

RECEIVED BY
2016 DEC 14 PM 2:12

OFFICE OF
HEARING EXAMINER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In re the Approval of Application No. 3021625
for Project Located at 1706 Alki Ave SW.

Hearing Examiner File No. _____

NOTICE OF APPEAL

I. APPELLANT INFORMATION

A. Scott Francis

Appellant is Scott Francis, 1710 Alki Avenue SW, Seattle, WA 98116, (206) 935-0264 (telephone); e-mail: scott.alki@gmail.com. Appellant's preferred form of service is via U.S. mail.

B. Respondent

Respondent City of Seattle, Department of Construction and Inspections, is the department that made the decision that is subject to this appeal.

C. Appellant's Legal Representative

Mr. Francis' authorized representatives are Bradford Doll and Sarah Mack of Tupper Mack Wells PLLC, 2025 First Avenue, Suite 1100, Seattle, WA 98121; (206) 493-2300 (telephone), (206) 493-2310 (facsimile). Preferred form of service is via e-mail to doll@tmw-law.com, with copies to the following: mack@tmw-law.com; schulz@tmw-law.com; and barragan@tmw-law.com.

1 **II. DECISION BEING APPEALED**

2 The decision being appealed is the decision (“Decision”) by the Director (“Director”) of
3 the Department of Construction and Inspections (“DCI” or “Department”) to approve an
4 Environmentally Critical Areas Variance to allow the construction of two three-story townhouse
5 structures (the “Project”). The decision is attached as Exhibit A.

6 **III. APPEAL INFORMATION**

7 **A. Appellant’s Interest in the Decision**

8 Mr. Francis owns and resides in a single-family home located immediately adjacent to
9 and southwest of the Project along Alki Avenue. The Project, if built as currently designed and
10 without further conditions, will have significant adverse impacts on Mr. Francis’ property as well
11 as on habitat for protected species.

12 **B. Issues and Objections**

13 Approval of the Environmentally Critical Area (“ECA”) Steep Slope Area Variance is
14 inconsistent with the requirements for a variance in Seattle Municipal Code (“SMC”) SMC
15 25.09.180.E.

16 Under SMC 25.09.180.E the Director can reduce the steep slope area buffer when the
17 development meets the criteria for a variance under Section 25.09.280.B. Approval of the ECA
18 Steep Slope Variance is inconsistent with applicable requirements. The variance is not
19 accompanied by appropriate conditions regarding the location, character and other features of the
20 proposed development.

21 The ECA Steep Slope Area Variance does not meet the requirements of SMC
22 25.09.180.E.1. Under that subsection the Director may grant a variance from the steep slope
23 buffer only if reducing the front setback will not maintain the full steep slope buffer. The
24 Decision provides that intrusion into the steep slope buffer is warranted because setbacks could
25 not be further minimized as a result of design review adjustments analyzed during the
26 Streamlined Design Review process. However, the front and side setbacks were not

1 appropriately granted pursuant to SMC 23.41.018.B.3. Specifically, the setback adjustment
2 requests should have been denied based on their inconsistency with the SDR design guidance
3 report, adopted design guidelines and existing adjacent uses. Because the underlying setbacks
4 are unresponsive to SDR design guidance and inconsistent with the Code, the Director should not
5 have approved the variance.

6 The Decision fails to analyze the need for and include appropriate conditions on the
7 Project to address habitat for heron and other protected species. The Decision is inconsistent
8 with the City's ECA regulations in relation to protection of habitat.

9 Approval of the ECA Steep Slope Area Variance is inconsistent with the Code and based
10 on inaccurate and insufficient information. The Project will alter the natural drainage in the area,
11 resulting in the artificial collection and dispersal of stormwater onto adjacent properties. The
12 Department's evaluation of the Project failed to sufficiently analyze this issue, and the design
13 fails to provide adequate mitigation measures to avoid drainage impacts to adjacent properties.

14 According to the Project's Geotechnical Investigation, a large earthquake would cause
15 soil liquefaction and structural damage to the Project. The Geotechnical Investigation calls for
16 the foundation to rest on piles driven to depths of 25 feet. The Decision fails to analyze or
17 provide mitigation measures to avoid damage to adjacent foundations and structures resulting
18 from this pile driving occurring so close to adjacent structures.

19 **C. SEPA Environmental Determination**

20 The appellant has appealed the simultaneously-issued Shoreline Substantial Development
21 Permit to the Shorelines Hearings Board, and the Department's SEPA Environmental
22 Determination in conjunction with the shoreline permit appeal, as required by City Code. The
23 Department failed to conduct an adequate analysis under SEPA. A DNS was improperly issued
24 because the proposal will have significant adverse environmental impacts. WAC 197-11-340(1);
25 SMC 25.05.340.A. To the extent relevant to the issues before the Hearing Examiner in this
26 appeal, the appellant's objections are as follows:

1 SEPA requires that a threshold determination must be “based upon information
2 reasonably sufficient to evaluate the environmental impact of a proposal.” WAC 197-11-335.
3 Here, the Checklist and DNS fail to identify such information. Deficiencies include a failure to
4 adequately analyze the probable adverse impacts of the Project on resident sensitive or
5 endangered species, including herons that roost in the environmentally critical area adjacent to
6 and east of the proposed Project. The SEPA Checklist erroneously states that only pigeons live
7 in the area. Herons can be observed on and near the Property and are listed by the Washington
8 Department of Fish & Wildlife as a Priority Species and a species of local importance in Seattle.
9 Construction will also have probable adverse impacts on eagles which roost nearby.

10 The Department’s SEPA analysis for the Project also fails to analyze and address the
11 impacts on adjacent property of extensive pile driving for the Project. The Decision was based
12 on insufficient information and analysis regarding impacts of construction on adjacent
13 residences, and fails to include mitigation measures to avoid or redress damage.

14 The Project will result in probable significant adverse impacts to the built environment
15 and land use. Adverse impacts on adjacent residential properties include increased noise and
16 light and reduced privacy. The Project’s design and use is inconsistent with the pattern of
17 residential development in the area.

18 IV. RELIEF REQUESTED

19 Mr. Francis requests that the Hearing Examiner provide the following relief:

- 20 a. Reverse the Decision and remand this matter to DCI for review and design consistent
21 with City code;
- 22 b. In the alternative, impose appropriate mitigation conditions; and
- 23 c. Grant such other relief as the Hearing Examiner deems just and proper.
- 24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DATED this 14th day of December 2016.

TUPPER MACK WELLS PLLC

By: s/ Bradford Doll
Bradford Doll, WSBA No. 38479
Sarah Mack, WSBA No. 12731
Attorneys for Appellant

CERTIFICATE OF SERVICE

I certify that on this date I filed the foregoing document with the Office of the Hearing Examiner by delivering the same via messenger to:

Office of the Hearing Examiner
700 Fifth Avenue
Suite 4000
Seattle, WA 98104

I further certify that on this date I delivered copies of the foregoing document via messenger to:

Nathan Torgelson, Director
Seattle Department of Construction & Inspections
700 5th Avenue, Suite 1800
Seattle, WA 98124-4019

Dated at Seattle, Washington this 14th day of December, 2016.


Nico Schulz

Exhibit A



City of Seattle
Edward B. Murray, Mayor

Department of Construction and Inspections
Nathan Torgelson, Director

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

Application Number: 3021625
Applicant Name: David Neiman
Address of Proposal: 1706 Alki Avenue Southwest

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development application to allow two, three-story townhouse structures with a total of seven units (one four unit and one three unit) in an environmentally critical area. Parking for ten vehicles to be provided. Existing buildings to be demolished. SEPA review includes future unit lot subdivision.

The following approvals are required:

Environmentally Critical Areas Variance –to allow development in a steep slope buffer (SMC 25.09.180.E.)

Shoreline Substantial Development – to allow residential development in the Urban Residential (UR) Shoreline Environment (Seattle Municipal Code (SMC) 23.60A)

SEPA - Environmental Determination (SMC 25.05)

SEPA DETERMINATION

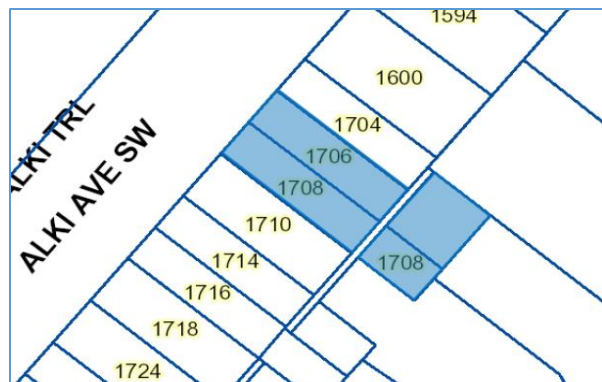
Determination of Non-significance

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

BACKGROUND

Site and Vicinity

Site Zone: Low Rise 3 (LR3)
Nearby Zones: (North) LR3
(South) LR3
(East) Single Family 7200 (SF 7200)
(West) LR3
Lot Area: 6,900 sq. ft.



Vicinity Map

Environmentally Critical Areas: The entire site is mapped as an ECA Potential Slide Area, with a majority of the site mapped as an ECA Liquefaction Prone Area and ECA Known Slide Area. The majority of the site is also located in an Urban Residential Shoreline Environment.

SURROUNDING DEVELOPMENT AND NEIGHBORHOOD CHARACTER

The surrounding development and neighborhood is characterized by a mix of early 20th century, single family, wood beach bungalow structures and more contemporary low rise multi-family structures. The developed properties adjacent to Alki Ave SW are relatively flat with a large, vegetated slope to the south separating this area of development from the development to the south. There is no development across Alki Ave SW, providing unobstructed views of Puget Sound and the Olympic mountains.

DESCRIPTION OF PROPOSAL

The project involves the construction of two, three-story townhouse structures (for a total of seven units) in an environmentally critical area. Parking for ten vehicles will be located in attached garages and at grade. Access is proposed from Alki Ave SW, at the northwestern corner of the site.

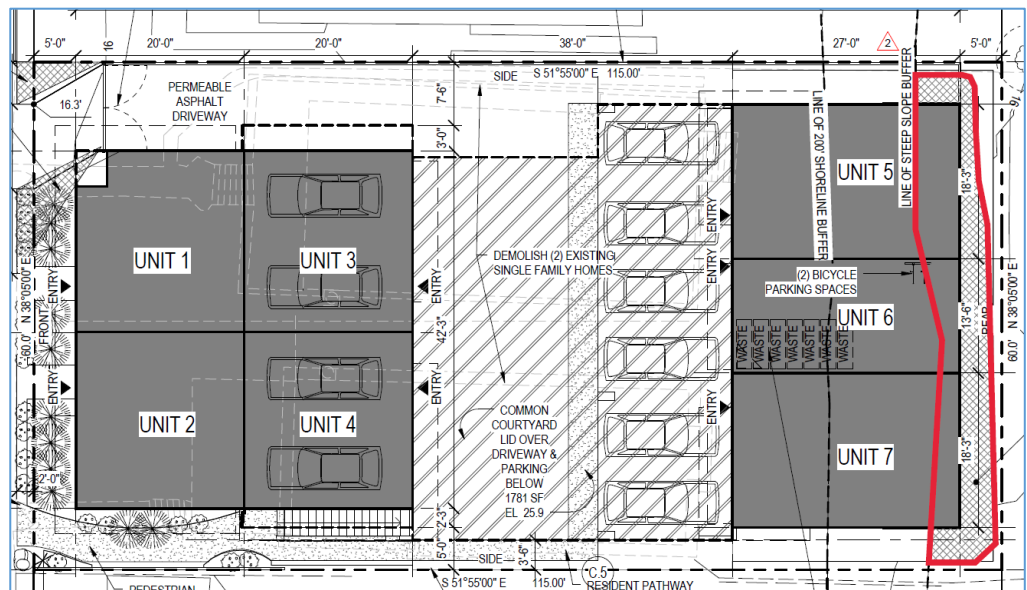


Image I

The rear proposed structure would be located within the steep slope buffer. The proposed development would disturb 68% of the steep slope buffer (approximately shown in Image I, highlighted by a bold, red line). Pursuant to SMC 25.09.180, 25.09.080 and 25.09.320, the proposal is required to comply with ECA requirements for steep slopes and potential landslide areas.

Step slope critical areas (SMC 25.09.180)

The applicant has provided a topographical survey and geotechnical reports that identify and delineate the steep slopes areas and buffers. These documents have been reviewed by SDCI geotechnical engineers.

Landslide-prone critical areas (SMC 25.09.080)

The applicant has provided a geotechnical soils report, which has been reviewed by SDCI geotechnical engineers. Vegetation removal, replacement, and monitoring plan activities have been proposed by the applicant and are included as conditions of approval, per SMC 25.09.320.

Trees and Vegetation (SMC 25.09.320)

This code section is often referenced in other Environmentally Critical Area code sections, including those discussed above. The 50-foot by 30-foot remnant piece of property at the southeast corner of the site (shown in a blue dashed line in Image II) contains existing vegetation and two trees (a Fir (*Abies*) and Big Leaf Maple (*Acer macrophyllum*)). This area is to remain undisturbed.

The remaining 190 square feet of the steep slope buffer on site, the area to the east of the rear

townhouse structure (approximately shown in Image II, highlighted by a bold, red line), is proposed to be re-vegetated in accordance with the requirements of this section. The applicant proposes improving vegetation, including removing non-native vegetation or invasive plants and noxious weeds by hand, to promote maintenance or creation of a naturally functioning condition that prevents erosion, protects water quality, or provides diverse habitat. The decision has been conditioned to ensure compliance with this code section.

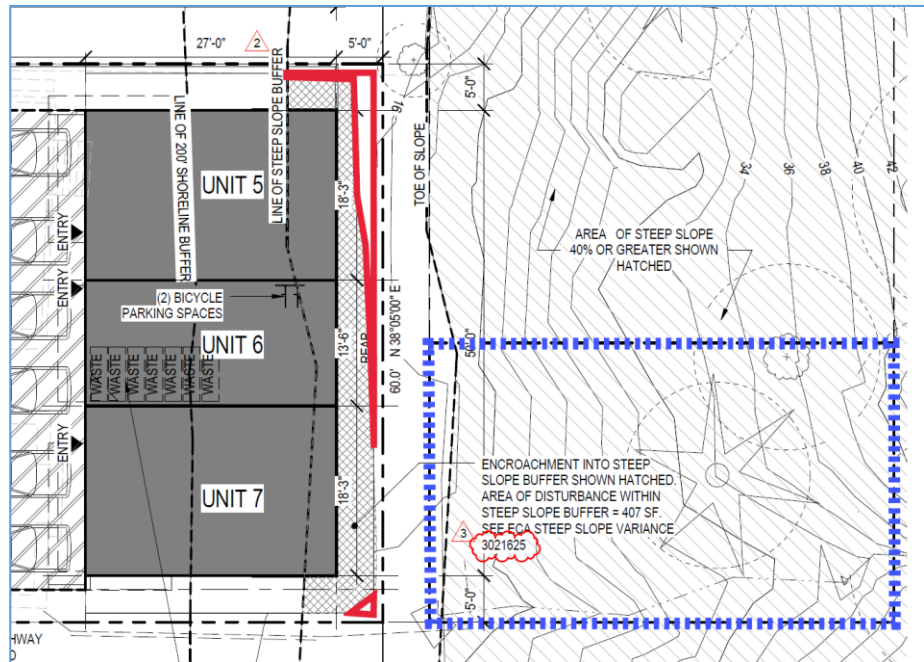


Image II

Environmentally Critical Areas Regulations

SMC 25.09.180 provides specific standards for all development on steep slopes and steep slope buffers on existing lots, including the general requirement that development shall be avoided in these areas whenever possible.

SMC 25.09.180.E authorizes variances to ECA development standards. Development may occur in the steep slope buffer with this variance, subject to specific criteria. Relevant criteria are discussed below. ECA Variance decisions are Type II decisions, subject to the provisions of SMC 23.76 and are appealable to the City Hearing Examiner.

General requirements and standards are described in Section 25.09.060 of the ECA ordinance and include the recording of conditions of approval, the recording of the identified ECA areas in a permanent covenant with the property as well as specific construction methods and procedures. The proposal must also comply with the specific requirements for development in areas with landslide potential areas (SMC 25.09.080), steep slopes (SMC 25.09.180) and trees and vegetation (SMC 25.09.320). All decisions subject to these standards are non-appealable Type I decisions made by the Director (or designee) of SDCI.

Public Comment

The Notice of Application comment period ended January 15, 2016. Several comments were received regarding location of parking, pedestrian circulation, adjacency and access to City owned property, adjacency to Park property, access to adjacent properties, use, noise, driveway location and associated noise, headlight screening, construction impacts to adjacent structures, and drainage.

I. ANALYSIS - ECA STEEP SLOPE AREA VARIANCE

SMC 25.09.180.E. – ECA Steep Slope Area Variance

1. *Steep Slope Area Variance. The Director may reduce the steep slope area buffer and may authorize limited intrusion into the steep slope area and steep slope buffer to the extent allowed in subsection E2 only when the applicant qualifies for a variance by demonstrating that:*

a. *the lot where the steep slope or steep slope buffer is located was in existence before October 31, 1992; and*

The lot was in existence before October 31, 1992, and is part of the Alki Beach Addition platted in 1935.

b. *the proposed development otherwise meets the criteria for granting a variance under Section 25.09.280B, except that reducing the front or rear yard or setbacks will not both mitigate the hardship and maintain the full steep slope area buffer.*

The proposal includes reductions to the side, rear, and front setbacks. The Code requires a five-foot minimum side setback for facades greater than 40-feet in length. The applicant proposes a three-foot minimum and four-foot six-inch setback for the southwest façade. The Code requires a seven-foot average, five-foot minimum front setback. The applicant proposes two balconies on the front street-facing façade that would result in a two-foot six-inch front setback at the location of the balconies. For the rear setback, the Code requires seven-foot average, five-foot minimum; the applicant proposes a five-foot average rear setback. The reduction to the rear setback reduces the steep slope buffer. In other words, the proposed structure will intrude into the steep slope buffer as a result of the design review adjustments that were previously analyzed during the Streamlined Design Review process consistent with SMC 23.41.018.

Additionally, the applicant proposes re-vegetation of the remaining buffer on site (that area shown in a bold, red line in Image II), in accordance with the requirements of SMC 25.09.320.A.3, to include removing non-native vegetation or invasive plants and noxious weeds by hand. This area to be re-vegetated is 190 square feet in size.

The proposed development otherwise meets the criteria for granting a variance under SMC 25.09.280.B

2. *If any buffer reduction or development in the critical area is authorized by a variance under subsection E1, it shall be the minimum to afford relief from the hardship and shall be in the following sequence of priority:*

- a. *reduce the yards and setbacks, to the extent reducing the yards or setbacks is not injurious to safety;*

The proposal includes reductions to the side, rear, and front setbacks. The side setback is reduced to three-foot minimum and four-foot six-inches for the southwest façade; the rear setback is reduced to five-feet, and the front setback is reduced to two-foot six-inches at the location of the balconies on the street-facing elevation. The reduction to the rear setback reduces the steep slope buffer. These reductions were analyzed during the Streamlined Design Review process consistent with SMC 23.41.018.

- b. *reduce the steep slope area buffer;*

The steep slope area buffer is proposed to be reduced by 68%, reducing the buffer on site from 597 square feet down to 407 square feet. The remaining 190 square feet of the buffer on site, adjacent the rear townhouse unit (outlined by a bold, red line in Image II), is proposed to be re-vegetated by removing non-native vegetation or invasive plants and noxious weeds by hand, to promote maintenance or creation of a naturally functioning condition that prevents erosion, protects water quality, or provides diverse habitat, consistent with SMC 25.09.320.A.3.

- c. *allow an intrusion into not more than thirty percent (30%) of the steep slope area.*

Intrusion into the steep slope area is not proposed. The steep slope buffer will be permanently reduced to accommodate the footprint of the proposed townhouse structure, and catchment walls recommended by the applicant's geotechnical engineer consultant. The proposed development follows the required sequence of priority and does not exceed the maximum steep slope ECA intrusion. The steep slope on the 50-foot by 30-foot remnant piece of property at the southeast corner of the site (shown in a blue dashed line in Image II) contains existing vegetation and two trees (a Fir (*Abies*) and Big Leaf Maple (*Acer macrophyllum*)). This area is to remain undisturbed.

3. *The Director may impose additional conditions on the location and other features of the proposed development as necessary to carry out the purpose of this chapter and mitigate the reduction or loss of the yard, setback, or steep slope area or buffer.*

The owner and/or responsible party shall provide a signed and notarized ECA Covenant to the Seattle Department of Construction and Inspections for recording with the King County Recorder prior to the issuance of the building permit for this project. The covenant shall reference an approved site plan identifying the non-disturbance area of the steep slope ECA. The owner and/or responsible party shall also install the permanent visible ECA markers established at the edge of the non-disturbance area ECA. Markers shall be installed in accordance with instructions contained in Director's Rule 4-2007.

SMC 25.09.280 – Yard and Setback Reduction and Variance to Preserve ECA buffers

B. The Director may approve a yard or setback reduction greater than five feet (5') in order to maintain the full width of the riparian management area, wetland buffer or steep-slope area buffer through an environmentally critical areas yard or setback reduction variance when the following facts and conditions exist:

1. The lot has been in existence as a legal building site prior to October 31, 1992.

The lot was in existence before October 31, 1992, and is part of the Alki Beach Addition platted in 1935.

2. Because of the location of the subject property in or abutting an environmentally critical area or areas and the size and extent of any required environmentally critical areas buffer, the strict application of the applicable yard or setback requirements of [Title 23](#) would cause unnecessary hardship; and

As shown by the topographic survey and site plan provided with the application, the eastern portion of the site is designated as a steep slope buffer. Strict application of the steep slope ECA development standards in the City of Seattle's Environmentally Critical Areas regulations would prohibit any land disturbing activity in the steep slope buffer, thus preventing building construction in the easterly 14% of the site. Under the current proposal, seven dwelling units are proposed, three within the steep slope buffer. Staying completely out of the steep slope ECA and buffer would eliminate one townhouse unit, depending on the altered design and construction methods used.

Extending the development into the front yard setback would only gain an additional five-feet of developable area, which would not allow the project to stay out of the steep buffer. Allowing development to extend into the required rear yard setback area would increase the amount of development in the steep slope buffer, rather than eliminate or reduce. In summary, reduction of the front yard or rear yards would not allow the building footprints to be constructed outside of the steep slope and steep slope buffers. Therefore, front and/or rear yard reductions would not fully mitigate the hardship created by the strict application of the steep slope standards.

3. The requested variance does not go beyond the minimum to stay out of the full width of the riparian management area or required buffer and to afford relief; and

The site is not located within or near a riparian management area or required buffer; therefore, this criterion is not applicable.

4. The granting of the variance will not be injurious to safety or to the property or improvements in the zone or vicinity in which the property is located; and

The applicant has provided a geotechnical report with several addenda, which address development on this site (*Geotechnical Investigation*, Robert M. Pride LLC, October 12, 2015; *Geotechnical Recommendations Addendum*, Robert M. Pride LLC, September 22, 2015; and *Supplemental Geotechnical Engineering Report*, Geotech Consultants Inc., May 6, 2016).

These reports include recommendations regarding excavation, foundations, drainage, utilities, and erosion control during construction. The SDCI geotechnical engineer reviewed and approved the geotechnical reports and proposed development configuration with no additional recommendations. Based on information and conclusions presented in these abovementioned reports, granting the variance to minimally intrude into the steep slope buffer will not be injurious to safety, property, or improvements in the zone or vicinity.

5. *The yard or setback reduction will not result in a development that is materially detrimental to the character, design and streetscape of the surrounding neighborhood, considering such factors as height, bulk, scale, yards, pedestrian environment, and amount of vegetation remaining; and*

The setback reductions were analyzed during the Streamlined Design Review process. SDCI determined that the reduction to setbacks would result in a design that better met the intent of the Design Guidelines by minimizing privacy impacts on adjacent properties, create more usable open space, and provide visual depth and interest. The setback reductions do not result in a development that is materially detrimental to the character, design and streetscape of the surrounding neighborhood.

6. *The requested variance would be consistent with the spirit and purpose of the environmentally critical policies and regulations.*

The environmentally critical area policies and regulations were created to protect ecological functions, prevent erosion, and protect the public health, safety and welfare in landslide-prone (including steep slope) areas, while permitting landowners to pursue reasonable development that does not cause injury to persons, property, public resources or the environment. The applicant is proposing to construct two three-story townhouse structures (one containing four units, and one containing three units for a total of seven units) on a site on which approximately 14 percent of the land is a steep slope buffer. Variance relief will allow a reduction of approximately 68 % of this steep slope buffer to allow reasonable development on the property. The remaining 190 square feet of the steep slope buffer will be re-vegetated with appropriate native vegetation. The proposal would be consistent with the spirit and purpose of the environmentally critical policies and regulations.

DECISION – STEEP SLOPE ECAS VARIANCE

The ECA Variance is **GRANTED**.

II. ANALYSIS – SHORELINE SUBSTANTIAL DEVELOPMENT

SMC 23.60A.030 – Criteria for Obtaining Shoreline Substantial Development Permits

- A. *The Director may approve or approve with conditions an application for a development, shoreline modification, or use that requires a shoreline substantial development permit, shoreline conditional use permit, shoreline variance permit, or special use approval if the*

Director determines the applicant has demonstrated that the development, shoreline modification, or use:

1. *Is consistent with the policies and procedures of RCW 90.58.020;*

Chapter 90.58 RCW is known as the *Shoreline Management Act of 1971*. It is the policy of the State to provide for the management of the State's shorelines by planning for and fostering all reasonable and appropriate uses. This policy seeks to protect against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary incidental rights. Permitted uses in the shorelines shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water. Construction of the project will result in no direct impacts to nearby Elliott Bay and, by using appropriate Best Management Practices during construction for protection of the aquatic habitat, will not adversely impact the state-wide interest of protecting the resources and ecology of the shoreline. The subject application is consistent with the procedures outlined in RCW 90.58.

2. *Is not prohibited in any shoreline environment, underlying zone and overlay district in which it would be located;*

The use is residential, and is permitted in the UR Shoreline Environment (SMC 23.60A.540) and the underlying Lowrise 3 (LR3) zone (SMC 23.45.504).

3. *Meets the standards in this Chapter 23.60A and any applicable development standards of the underlying zone or overlay district, except where a variance from a specific development standard has been granted; and*

The Shoreline Management Act provides definitions and concepts, and gives primary responsibility for initiating and administering the regulatory program of the Act to local governments. The Department of Ecology is to primarily act in a supportive and review capacity, with primary emphasis on ensuring compliance with the policy and provisions of the Act. As a result of this Act, the City of Seattle adopted a local shoreline master program, codified in the Seattle Municipal Code at Chapter 23.60A that also incorporates the provisions of Chapter 173-27, WAC. Title 23 of the Municipal Code is also referred to as the Land Use Code. Development on the shorelines of the state is not to be undertaken unless it is consistent with the policies and provisions of the Act, and with the local master program. The Act sets out procedures, such as public notice and appeal requirements, and penalties for violating its provisions which have also been set forth in the Land Use Code.

In evaluating requests for substantial development permits, the Director must determine that a proposed use and subsequent development meets the relevant criteria set forth in the Land Use Code. The Shoreline Goals and Policies, part of the Seattle Comprehensive Plan, and the purpose and location criteria for each shoreline environment must be considered and this project with its upland location was found to comply. The purpose of the UR Environment (SMC 23.60A.220C.11) is to provide for single-family residential development and accessory structures, while protecting

ecological functions. Multifamily residential development is allowed in this environment where the underlying zone, as of the date of this ordinance, allows multifamily residential development. A proposal must also be consistent with the general development standards of SMC 23.60A.152, the specific standards of the shoreline environment (SMC 23.60A.540) and underlying zoning designation, which is discussed below.

SMC 23.60A.152 - Development Standards for all Environments

These general standards apply to all uses in the shoreline environments. The standards require that design and construction of all uses be conducted in an environmentally sound manner, consistent with the Shoreline Management Program and with best management practices for the specific use or activity. Compliance with applicable codes and ordinances for construction of the project (e.g., Building Code, Stormwater Code, Grading Code) will reduce or eliminate most potential adverse long-term impacts to the shoreline environment. The applicant will implement Best Management Practices during development to ensure, in part, protection of water quality and potential adverse impacts to the shoreline environment and nearby Elliott Bay during construction.

Standards for UR Environment and the Lowrise Three (LR3) underlying zone

The subject property is classified as an upland lot and is located within an Urban Residential (UR) Environment, as designated by the Seattle Shoreline Master Program. Pursuant to SMC 23.60A.540, multiple family residential uses are permitted outright on upland lots in the UR Environment. The project has been reviewed by Seattle DCI staff and found to be consistent with all applicable use and development standards such as height and rooftop features. The residential use is also consistent with all applicable standards in the underlying zone (SMC 23.45) where this project will be located.

4. *If the development, shoreline modification, or use requires a special use approval, shoreline conditional use permit, or shoreline variance permit, the project meets the criteria for the same established in Sections 23.60A.032, 23.60A.034, or 23.60A.036, respectively.*

The proposed project does not require special use approval, a shoreline conditional use permit or a shoreline variance permit.

Conclusion

SMC Section 23.60A.063 provides authority for conditioning of shoreline substantial development permits as necessary to carry out the spirit and purpose of and assure compliance with the Seattle Shoreline Code, Chapter 23.60A, and with RCW 90.58.020 (State policy and legislative findings). To be consistent with shoreline general development standards for protection of the aquatic environment (SMC 23.60A.152), the project will be required to employ Best Management Practices during construction and installation to protect the shoreline environment. Thus, the proposal is consistent with the criteria for a shoreline substantial development permit and may be approved.

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT

The Shoreline Substantial Development Permit is **GRANTED**.

III. ANALYSIS – SEPA

The proposal site is located in an environmentally critical area, as noted above. Proposals located in landslide prone areas (i.e. known landslide areas, potential landslide areas, and steep slopes), wetlands, and fish and wildlife habitat conservation areas may require environmental review (SMC 25.05.908); thus this application is not exempt from SEPA review. However, the scope of environmental review of projects within these critical areas is limited to: 1) documenting whether the proposal is consistent with the City's Environmentally Critical Areas (ECA) regulations in SMC 25.09; and 2) Evaluating potentially significant impacts on the critical area resources not adequately addressed in the ECA regulations. This review includes identifying additional mitigation measures needed to protect the ECA in order to achieve consistency with SEPA and other applicable environmental laws.

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 Chapter 25.05).

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant on December 10, 2015 and the revised environmental checklist submitted by the applicant on July 14, 2016. The Seattle Department of Construction and Inspections (SDCI) has annotated the environmental checklist submitted by the project applicant; reviewed the project plans and any additional information in the project file submitted by the applicant or agents; and any pertinent comments which may have been received regarding this proposed action have been considered. The information in the checklist, the supplemental information, and the experience of the lead agency with the review of similar projects form the basis for this analysis and decision.

City codes and/or ordinances apply to the proposal and will provide mitigation for some of the identified impacts. Specifically, these are: the Stormwater Code (SMC 22.800-808), the Grading Code (SMC 22.170), the Street Use Ordinance (SMC Title 15), the Seattle Building Code, and Regulations for Environmentally Critical Areas (SMC 25.09).

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

Under such limitations or circumstances (SMC 25.05.665 D) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate. Short-term and long-term adverse impacts are anticipated from the proposal.

Short-term Impacts

The following temporary or construction-related impacts on the environmentally critical area are anticipated: temporary soil erosion; and increased vibration from construction operations and equipment. These impacts are not considered significant because they are temporary and/or minor in scope (SMC 25.05.794).

Earth / Soils

The ECA Ordinance and Director's Rule (DR) 5-2016 require submission of a soils report to evaluate the site conditions and provide recommendations for safe construction in landslide prone areas. Pursuant to this requirement the applicant submitted a geotechnical engineering study (*Geotechnical Investigation*, Robert M. Pride, LLC, October 14, 2015). The study has been reviewed and approved by SDCI's geotechnical experts who will require what is needed for the proposed work to proceed without undue risk to the property or to adjacent properties.

No additional conditioning is warranted pursuant to SEPA policies.

Long -term Impacts

Long term or use-related impacts on the environmentally critical area are also anticipated as a result of this proposal, including: increased surface water runoff due to greater site coverage by impervious surfaces; loss of plant and animal habitat. Compliance with applicable codes and ordinances will reduce or eliminate most adverse long-term impacts to the environment.

No additional conditioning is warranted pursuant to SEPA policies.

DECISION – SEPA

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

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

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

This DNS is issued after using the optional DNS process in WAC 197-11-355 and Early review DNS process in SMC 25.05.355. There is no further comment period on the DNS.

CONDITIONS – SEPA

None.

Carly Guillory, Land Use Planner
Seattle Department of Construction and Inspections

Date: November 17, 2016

CG:rgc
3021625.docx

IMPORTANT INFORMATION FOR ISSUANCE OF YOUR MASTER USE PERMIT

Master Use Permit Expiration and Issuance

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

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

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

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