BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeals of END PRISON INDUSTRIAL COMPLEX, et al.	)	Hearing Examiner File No.: **MUP-17-001**
	)	DPD Project No. 3020845
From a decision by the Director, Department of Planning and Development, on a Master Use Permit	)	DECLARATION OF KNOLL LOWNEY SUPPORTING MOTION TO STRIKE

I, Knoll Lowney, hereby declare the following under penalty of perjury under the laws of the State of Washington.

1. I am an attorney of record for EPIC and other Appellants in this matter.

2. In the pre-hearing conference, King County stated that it would present dispositive motions on similar issues as Mr. Donnelly, even though King County was unable to hear what issues Mr. Donnelly specified as topics for his motion. Mr. Donnelly also said that he would put on 3-5 experts in addition to the 4-6 experts that King County said it would present.

3. Attached as exhibits are true and correct copies of the following documents received from the internet.

Exhibit 1: The two copies of the Statement of Financial Responsibility/Agent Authorization that the City of Seattle's website includes for this project. The signed version only included the first page.

Exhibit 2: The Plan Cover Sheet for MUP 3020845, and an excerpt magnified for readability.

Smith & Lowney, p.l.l.c.
2317 East John Street
Seattle, Washington 98112
(206) 860-2883

Exhibit 3: Notice of Appearance for King County.

Exhibit 4: Notice of Appearance for Patrick Donnelly.

Exhibit 5. No Protest Agreement.

Exhibit 6. Letter from Mayor Murray on the youth jail project.

Exhibit 7: Op-Ed by councilmembers on youth jail project.

4. Attached for the convenience of the Examiner in the LUBA decision cited in the motion.

DATED this third day of February 2017

By:_____
Knoll Lowney

SMITH & LOWNEY, P.L.L.C.
2317 EAST JOHN STREET
SEATTLE, WASHINGTON 98112
(206) 860-2883

EXHIBIT 1

City of Seattle
Department of Planning and Development
700 Fifth Avenue, Suite 2000
P.O. Box 34019
Seattle, WA 98124-4019
(206) 684-8850

RECEIVED
JUN 09 2015
City of Seattle
Dept. of Planning and Development

DPD Project Number
3020845

Statement of Financial Responsibility/ Agent Authorization

Original form must be submitted

Project Address	1211 East Alder St, Seattle, WA 98122

NAME AND ADDRESS OF PROPERTY OWNER (Required)

Name	Anthony Wright, Director, Facilities Management Division (FMD), King County		
Address	500 4th Avenue Ste 800		
City/State/Zip Code	Seattle, WA 98104		
Telephone	206-477-9365	**Email**	Anthony.Wright@KingCounty.gov

To whom it may concern:

I, Anthony Wright, declare that I am (please check the box that applies):

— The owner of the above mentioned property and financially responsible party for all permit fees associated with this project.

✓ The Director of FMD (authorized title) of the owner, King County (business entity) and have the authority under my title to bind the owner as the financially responsible party.

I understand and agree that the owner is responsible for payment of all fees associated with this project including all hourly or other fees which may accrue during the review and/or post-issuance whether the permit is issued or whether the application is canceled or denied before the permit is issued.

— The property owner or officer of business entity but not the financially responsible party. The applicant as defined by Director's Rule 5-2003 is listed on the reverse and is solely responsible for all applicable fees.

I understand and agree that the owner (or the applicant if the reverse is completed) must notify DPD of any address change which may occur at any time prior to payment of all fees associated with this project.

ANTHONY O. WRIGHT		5/20/2015
Owner's Printed Name	Owner's Signature	Date

AGENT AUTHORIZATION (Optional):

I hereby authorize PAT DONNELLY INTEGRUS ARCH.S to act as my agent for this project. My agent is the applicant on this project for contact purposes only and does not have a financial interest in this project.

ANTHONY O. WRIGHT		5/29/15
Owner's Printed Name	Owner's Signature	Date

City of Seattle
Department of Planning and Development
700 Fifth Avenue, Suite 2000
P.O. Box 34019
Seattle, WA 98124-4019
(206) 684-8850

DPD Project Number

Statement of Financial Responsibility/ Agent Authorization

Original form must be submitted

Project Address	

NAME AND ADDRESS OF PROPERTY OWNER (Required)

Name	The original signed version of this form has been submitted, and should be in project file. If not, Contact Tami Garrett or Megan Neuman.	
Address		
City/State/Zip Code		
Telephone		**Email**

To whom it may concern:

I, _____ declare that I am (please check the box that applies):

___ The owner of the above mentioned property and financially responsible party for all permit fees associated with this project.

___ The _____ (authorized title) of the owner, _____ (business entity) and have the authority under my title to bind the owner as the financially responsible party.

I understand and agree that the owner is responsible for payment of all fees associated with this project including all hourly or other fees which may accrue during the review and/or post-issuance whether the permit is issued or whether the application is canceled or denied before the permit is issued.

___ The property owner or officer of business entity but not the financially responsible party. The applicant as defined by Director's Rule 5-2003 is listed on the reverse and is solely responsible for all applicable fees.

I understand and agree that the owner (or the applicant if the reverse is completed) must notify DPD of any address change which may occur at any time prior to payment of all fees associated with this project.

Owner's Printed Name	Owner's Signature	Date

AGENT AUTHORIZATION (Optional):

I hereby authorize Patrick Donnelly to act as my agent for this project. My agent is the applicant on this project for contact purposes only and does not have a financial interest in this project.

Owner's Printed Name	Owner's Signature	Date

Revised: March 2015

THIS SIDE TO BE COMPLETED ONLY IF THE PROJECT IS BEING SUBMITTED BY AN "APPLICANT" WHO IS NOT THE OWNER

*This side to be completed **ONLY** if the project is being submitted by an "applicant" as defined by Director's Rule 5-2003: 1) A person or entity with a financial interest in the project. "Applicant" shall not include any person who is acting solely as an employee, contractor, subcontractor or consultant of the property owner or another person or entity with an independent financial interest in the project. 2) A person or entity who is petitioning for a rezone.*

"Applicant", under this definition does not include architects, agents or other design professionals who submit applications on behalf of a property owner. Such persons may not sign in lieu of the Owner or the Applicant as defined by the rule.

NAME AND ADDRESS OF APPLICANT (As defined in DR 5-2003)

Name		
Address		
City/State/Zip Code		
Telephone		Email

To whom it may concern:

I, _____ declare that I am (please check the box that applies):

___ The applicant as defined in DR 5-2003, with a direct financial interest in the project. I am not acting even in part as an agent of the property owner.

___ The _____ (authorized title) of the applicant, _____ (business entity and have the authority under my title to bind the applicant as the financially responsible party.

I understand and agree that the applicant is responsible for payment of all fees associated with this project including all hourly or other fees which may accrue during the review and/or post-issuance whether the permit is issued or whether the application is canceled or denied before the permit is issued. (Note: If an applicant as defined by the Director's Rule is not the owner and is not acting even in part as agent for the owner, that applicant is solely responsible for payment of applicable fees.)

I understand and agree that the applicant must notify DPD of any address change which may occur at any time prior to payment of all fees associated with this project.

Applicant's Printed Name	Applicant's Signature	Date

AGENT AUTHORIZATION (Optional):

I hereby authorize _____ to act as my agent for this project. My agent is the applicant on this project for contact purposes only and does not have a financial interest in this project.

Applicant's Printed Name	Applicant's Signature	Date

City of Seattle
Department of Planning and Development (DPD)

PLAN COVERSHEET

Updated 05/06/14

INSTRUCTIONS: Complete all areas of sections 1 - 7 that pertain to your project. Please note that sections 8 - 14 are to be completed by DPD staff.
*Mac users fill out this form with Acrobat not Reader

1. APPLICANT INFORMATION

PROJECT ADDRESS: 1211 East Alder | PROJECT #: 3020845

DESCRIPTION OF WORK: Demolition of all existing buildings on site. Construction of two new structures: 1) New courthouse & Detention Housing facility (approx. 283,000 sf) and a four level parking structure (approx. 126,000 sf). New site work consisting of driveway access to parking structure and paved and landscaped pedestrian pathway across entire site, east to west.

OWNER	King County	ADDRESS	500 4th Ave. Suite 800
PHONE	206-477-4365	E-MAIL	anthony.wright@kingcounty.gov
CONTACT PERSON	Patrick Donnelly	ADDRESS	117 South Main Street
PHONE	206-628-3137	FAX: 206-628-3138	E-MAIL: pdonnelly@mlagrp.com
PREVIOUS RELATED MUPs	None on record		
RELATED STANDARD PLANS	None on record		

2. LAND USE CODE INFORMATION

ZONE: NC3P-65, LR3 | ASSESSOR'S PARCEL NO.: 7549300105, 2905 | DESIGN REVIEW? ☐ Yes ☒ No

OVERLAY ZONING: No | If yes, please provide: Planner:

HISTORIC OR LANDMARK DISTRICT: No | Planner's phone no.:

SHORELINE ZONE: No ☐ Exempt ☐ Requires Shoreline review

SEPA: Completed. Lead agency: King County. Full report attached. ☐ Exempt ☐ Requires review

EXISTING USE	SQ. FT.	PROPOSED USE	SQ. FT.
Alder Tower: court rooms, offices	173,800	Courts, offices, detention housing, school	258,000
Spruce Wing: detention housing	103,000	4 level open parking structure	126,000
Alder Wing: offices (partially vacant)	38,000		

DEPARTMENT OF NEIGHBORHOODS CERTIFICATE OF APPROVAL REQUIRED? ☐ Yes ☒ No

STREET/ALLEY IMPROVEMENTS OR WORK IN THE RIGHT OF WAY REQUIRED? ☒ Yes ☐ No

PARKING SPACES: Existing: Onsite 514, Offsite, Accessible 16 | Proposed: Onsite 580, Offsite, Accessible 16 | Offsite Location: No offsite parking

NUMBER OF DWELLING UNITS: Existing: None | Demolished: None | TOTAL | Proposed New: None | Una/Work: None

3. HOUSING UNIT OCCUPANCY

DEFINITION: Housing unit means any dwelling unit, housekeeping unit, guest room, dormitory, or single room occupancy unit, and may include a residential unit in a commercial building, an artist's studio dwelling unit, or a live/work unit

CHECK ONLY ONE BOX BELOW TO INDICATE HOUSING OCCUPANCY AT DATE OF PERMIT APPLICATION.

☐ Unit(s) unoccupied
☐ Unit occupied by property owner
☒ No units on property
☐ Unit(s) on property not affected by permit scope
☐ Unit(s) occupied by residential tenant
☐ Do not know
☐ Refer to property owner/tenant assistance

I certify, under penalty of perjury under the laws of the State of Washington, that the above information is true and correct.

Patrick Donnelly | 06/[illegible]/15 | Seattle, WA

Owner/Applicant Signature | Printed Name | Date | Place

4. GROUND DISTURBANCE

GROUND DISTURBANCE: ☒ Yes ☐ No | Excavation - cubic yards: 80,000 | Maximum height: 16.5' | Fill - cubic yards: 35,000 | Maximum height: 12'

DISPOSAL SITE: ☒ Outside City of Seattle ☐ Inside City of Seattle | Address and/or permit #: TBD

Erosion control is required PRIOR to any ground disturbance. Please refer to Construction Stormwater Control and Soil Amendment Standard Plan.

CUSTOMER ALERT!

Site Inspection Required Prior to First Ground Disturbance - Call (206) 684-8900
A DPD site inspection is required prior to any ground disturbance related to this permit, including clearing, grubbing or grading.

Preconstruction Conferences, When Required - Call (206) 684-8900
A DPD preconstruction conference should be scheduled prior to beginning work. A conference is required for the following types of work:
1. When any special inspections are indicated on the plan
2. When land use or design review conditions are indicated on the plan
3. When a DPD plans examiner specifies on plans unusual or complex inspection or occupancy requirements

Rules for Use Grounds - Call (206) 684-4392
If you have any questions or concerns regarding the rules (2005 NEC) for installation of offer grounds, please contact DPD's Electrical Technical Backup Monday - Friday, 7:00 a.m. to 4:30 p.m.

Required SDOT Permits and Inspections
Street Tree Inspections
Protection and/or planting/pruning/removal of street trees requires Seattle Department of Transportation (SDOT) inspection and approval. Call prior to construction: Commercial/Multifamily Zones, (206) 684-5693; Single Family Zones, (206) 684-7867
Street Use Permits Call prior to construction: (206) 684-5253

Water Service Inspection by SPU Required
All water service piping on property must be inspected prior to backfilling trench. For information and inspection, call Seattle Public Utilities (SPU) at (206) 684-5800. For water quality backflow protection information and inspection, call SPU at (206) 684-3538.

Waste Diversion Report to be submitted to SPU - Projects >750 square feet must submit a Waste Diversion Report to SPU within 60 days of DPD project final inspection approval. For information and submittal document: http://www.seattle.gov/util/EnvironmentConservation/CDWasteManagement/RecyclingRequirements/WasteDiversionReport/index.htm

5. BUILDING CODE INFORMATION

MULTIPLE BUILDINGS IN THIS PROJECT? ☐ Yes ☐ No
If yes, fill out separate sheets and attach. Shown on plan sheet:

CODE USED FOR DESIGN (select one)
☐ 2012 Seattle Building Code
☐ 2012 Seattle Residential Code
☐ 2012 SBC (struct) and 2012 SRC (arch)

PROVIDE THIS INFORMATION FOR EVERY BUILDING IN YOUR PROJECT

DPD building ID: (see building data sheet)

Existing # of above-grade stories | Proposed # of above-grade stories | Mezzanines? ☐ Yes ☐ No
Existing # of below-grade stories | Proposed # of below-grade stories | Location
Building code type of construction

FLOOR LEVEL	GROUP	OCCUPANCY/UNIT	FLOOR AREA	SPRINKLER (Y/N)	OTHER FIRE PROTECTION

Remodel: Construction project value: $
Sprinklers ☐ NFPA 13 ☐ NFPA 13 R ☐ Partial system ☐ Fire alarm ☐ Other system Type:
Change of occupancy ☐ Yes ☐ No From: To:
Posted occupancy:

EMERGENCY SYSTEMS PROVIDED
☐ Elevator presurrection ☐ Exit and pathway lighting ☐ Stairway presurrization ☐ Smoke removal system ☐ Emergency generator

6. ENERGY/MECHANICAL CODE

☐ HVAC mechanical system is NOT included with this application (If mechanical drawings are included with plans, please stamp "for reference only")
☐ HVAC mechanical system IS included with this application | Mechanical System Value$

GENERAL PROJECT INFORMATION

SCOPE OF CONSTRUCTION
☐ New construction ☐ Addition ☐ Alteration ☐ Substantial alteration (SSC CH 34)

APPLICABLE OCCUPANCY
☐ Single-family/duplex/townhouse ☐ Multi-family 1-3 stories ☐ Multi-family 4+ stories ☐ Non-residential

BUILDING ENVELOPE COMPLIANCE	HEATED	SEMI-HEATED	UNHEATED
☐ Existing Envelope - no change	☐	☐	☐
☐ Existing Envelope - altered	☐	☐	☐
☐ New Envelope	☐	☐	☐

SCOPE OF MECHANICAL WORK

LOCATION OF DUCTWORK OR MECHANICAL EQUIPMENT
☐ Interior ☐ Exterior ground mounted ☐ Rooftop ☐ Exterior wall mounted

MECHANICAL-ONLY PERMIT
Related building permit project #

COMMERCIAL BUILDINGS (Non-residential, R1 lodging, and Multi-family four stories and greater)

COMPLIANCE PATH:
☐ Prescriptive ☐ Component Performance UA/HSCA/VTA ☐ Total building performance (TBP) ☐ Target performance path (TPP)
SEC C402.1 | SEC C402.1.3 | SEC C407 | SEC C402.1.5

OTHER MECHANICAL EQUIPMENT INCLUDED IN THIS APPLICATION
☐ Commercial kitchen hood exhaust system ☐ Fume hood ☐ Spray paint booth ☐ Other Specify:

RESIDENTIAL BUILDINGS (Single family, duplex, townhouse, and multi-family 3 stories or less)

COMPLIANCE PATH:
☐ Prescriptive ☐ Total UA alternative ☐ Simulated performance alternative
Heating Equipment: Minimum Size: | Maximum Size: | Energy Credit (Table R406.2) Option:

DOCUMENTS INCLUDED
☐ Residential equipment sizing calc (each unit) ☐ Nonresidential cooling and heating load (whether from Group R)
☐ Target UA/HSCA/VTA Calculation ☐ Structural load calculation (for mechanical equipment) ☐ Commercial kitchen hood worksheet
☐ TBP or TPP Report ☐ Noise compliance report (for mechanical equipment) ☐ Other:

7. PRIORITY GREEN

(www.seattle.gov/dpd/prioritygreen)
Prior approval to participate in Priority Green is required. The following does not establish Priority Green status.

PRIORITY GREEN EXPEDITED
Screening required prior to building permit intake appointment.
Rating anticipated:
Built Green
☐ 4 star
☐ 5 star
LEED
☐ Gold
☐ Platinum
DPD Alternative Path for Single Family
☐ Using 3.5 credits for SED Table 9-1

PRIORITY GREEN FACILITATED
Screening required prior to building permit or MUP intake appointment.
Rating anticipated:
☐ Priority Green Building Metric - 10 points
☐ Living Building Challenge
☐ Built Green 5 Star + 2030 Challenge
☐ LEED Platinum + 30% Challenge
Other:
☐ Target Performance Path Compliance Method

8. LAND USE CONDITIONS (DPD staff use only)

Assigned planner | Phone

NEW CURB CUT REQUIRED ☐ Yes ☐ No ☐ Residential ☐ Commercial

9. SPECIAL INSPECTIONS (DPD staff use only)

10. DRAINAGE & SEWER REVIEW (DPD staff use only)

DPD REVIEW AND DRAINAGE REVIEW DESK: (206) 684-4382 or sidesewerinfo@seattle.gov

DRAINAGE REVIEW REQUIRED? ☐ Yes ☐ No
☐ Flow control required
☐ Impervious surface this project (new or replaced) in sq. ft.
☐

NOTE: The drainage system shown in these plans may be changed at the time of side sewer permit issuance to meet standard plans and methods.

SIDE SEWER REVIEW REQUIRED? ☐ Yes ☐ No
☐ No conflict with side sewer
☐ Construction conflicts with applicant's side sewer. Contact Public Health Department at (206) 233-7914
☐ Construction conflicts with side sewer serving another property. Contact DPD Sewer and Drainage Review Desk at (206) 684-5362
☐

Reviewed by | Date

NOTE: A separate side sewer permit is required from DPD for ALL new drainage and sewer installations. For more information, call the Sewer and Drainage Review Desk at (206) 684-4382 or sidesewerinfo@seattle.gov.

11. ENVIRONMENTALLY CRITICAL AREAS INFO (DPD staff use only)

ENVIRONMENTALLY CRITICAL AREAS (ECA)
☐ Site is not located in ECA
☐ Mapped ECA designation ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 ☐ 10 ☐ 11
☐ ECA identified by pre-application site visit report as
☐ ECA exemption (see review details in Hansen)
Reviewed by | Date
☐ Dented ☐ Grubbed Type
☐ Small project waiver
New development coverage this permit (sq. ft.)
Previous development coverage (after 10/31/92) Permit # | Sq. ft.
Permit # | Sq. ft.
Total

12. SHOP DRAWINGS, KEY AREA INSPECTION & BUILDING CONDITIONS (DPD staff use only)

Sprinkler drawings required for: ☐ NFPA 13 ☐ NFPA 13 R ☐ Partial system Location: ☐ Fire alarm
Required shop drawings/ key area inspections:

13. PERMIT ISSUANCE AUTHORIZATION (DPD staff use only)

REVIEW LOCATION	APPROVAL INITIALS	DATE	NOTES
ZONING (Incl. street improvements)			
CURB CUT			
ORDINANCE			
STRUCTURAL			
ENERGY			
MECHANICAL			
DRAINAGE			
ECA			
GRADING			
WATER (SPU)			
FIRE			
HEALTH (King County)			
NOISE			
CONVEYANCE/ELEVATOR			
SHORING (SDOT)			
STREET IMPROVEMENT (SDOT)			
PARKS			
PROTECTED DISTRICTS (DON)			
SEPA EXEMPTION			
LAND USE			

14. DEPARTMENT SIGN OFFS (DPD staff use only)

ISSUED BY | DATE

BUILDING PLANS EXAMINER | MECHANICAL PLANS EXAMINER | DATE RECEIVED AT INTAKE

EXHIBIT 2

City of Seattle
Department of Planning and Development (DPD)
PLAN COVERSHEET

Updated 05/06/14

INSTRUCTIONS: Complete all areas of sections 1 - 7 that pertain to your project. Please note that sections

*Mac users fill out this form with Acrobat not Reader

1. APPLICANT INFORMATION

PROJECT ADDRESS	1211 East Alder	PROJECT #	3020845
DESCRIPTION OF WORK	Demolition of all existing buildings on site. Construction of two new structures: 1) New courthouse & Detention Housing facility (approx. 263,000 sf) and a four level parking structure (approx. 126,000 sf). New site work consisting of driveway access to parking structure and paved and landscaped pedestrian pathway across entire site, east to west.		
OWNER	King County	ADDRESS	500 4th Ave. Suite 800
PHONE	206-477-9365	E-MAIL	anthony.wright@kingcounty.gov
CONTACT PERSON	Patrick Donnelly	ADDRESS	117 South Main Street
PHONE	206-628-3137	FAX	206-628-3138
E-MAIL	pdonnelly@integrusarch.com		
PREVIOUS RELATED MUPs	None on record		
RELATED STANDARD PLANS	None on record		

2. LAND USE CODE INFORMATION

ZONE	NC3P-65, LR3	ASSESSOR'S PARCEL NO.	7949300095, 29087
OVERLAY ZONING	No		
HISTORIC OR LANDMARK DISTRICT	No		
SHORELINE ZONE	No		

☐ Exempt ☐ Requires Shoreline review

DESIGN REVIEW? ☐ Yes ☒ No

If yes, please provide:

Planner

Planner's phone no

SEPA: Completed Lead agency: King County Full report attached ☐ Exempt ☐ Requires review

EXISTING USE	SQ. FT.	PROPOSED USE	SQ. FT.
Alder Tower: court rooms, offices	73,800	Courts, offices, detention housing, school	268,000
Spruce Wing: detention housing	103,000	4 level open parking structure	126,000
Alder Wing: offices (partially vacant)	38,000		

DEPARTMENT OF NEIGHBORHOODS CERTIFICATE OF APPROVAL REQUIRED? ☐ Yes ☒ No

STREET/ALLEY IMPROVEMENTS OR WORK IN THE RIGHT OF WAY REQUIRED? ☒ Yes ☐ No

MULTIPLE BUILDIN
☐ Yes ☐ No
If yes, fill out separat
PROVIDE THIS INFO
DPD building ID
Existing # of above-gr
Existing # of below-gr
Building code type of
FLOOR LEVEL

Remodel Construct
Sprinklers ☐ NFPA
Change of occupancy
Posted occupancy
EMERGENCY SYSTE
☐ Elevator pressuriz

☐ HVAC mechanic
☐ HVAC mechanic
GENERAL PROJEC
SCOPE OF CONSTR
☐ New constructior
APPLICABLE OCCU
☐ Single-family/dup
BUILDING ENVELOP
☐ Existing Envelop

EXHIBIT 3

BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeal of: EPIC, et al., From a Department of Construction and Inspections decision.	No. MUP-17-001 **NOTICE OF APPEARANCE**

TO: The Office of Hearing Examiner for the City of Seattle;

AND TO: All Counsel of Record.

YOU AND EACH OF YOU, will please take notice that CRISTY CRAIG, hereby appears on behalf of King County in the above-entitled action, without waiving the question of:

1. Lack of jurisdiction over the subject matter;
2. Lack of jurisdiction over the person;
3. Improper venue;
4. Insufficiency of process;
5. Insufficiency of service of process;
6. Failure to state a claim upon which relief may be granted;
7. Failure to join a party under Rule 19; and
8. Statute(s) of limitation.

Daniel T. Satterberg, Prosecuting Attorney
CIVIL DIVISION
W400 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 477-1120/FAX (206) 296-0191

You are hereby further notified that all further papers and pleadings herein, except for original process, shall be served upon the undersigned attorneys at the address below stated.

Delivery by mail:

CRISTY CRAIG
King County Prosecuting Attorney's Office
E554 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Delivery in person:

CRISTY CRAIG
King County Prosecuting Attorney's Office
W400 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Dated this 17th day of January, 2017.

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: _____
CRISTY CRAIG, WSBA #27451
Senior Deputy Prosecuting Attorney
Attorneys for King County

Daniel T. Satterberg, Prosecuting Attorney
CIVIL DIVISION
W400 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 477-1120/FAX (206) 296-0191

BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeal of: EPIC, et al., From a Department of Construction and Inspections decision.	No. MUP-17-001 CERTIFICATE OF SERVICE

I, Monica Erickson, hereby certify and declare under penalty of perjury under the laws of the state of Washington as follows:

1. I am a legal assistant employed by King County Prosecutor's Office, am over the age of 18, am not a party to this action and am competent to testify herein.

2. On January 18, 2017, I did cause to be delivered by Electronic Mail and U.S. Postal Mail a true copy of the *Notice of Appearance* of Cristy Craig and this *Certificate of Service* to:

Daniel T. Satterberg, Prosecuting Attorney
CIVIL DIVISION
W400 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 477-1120/FAX (206) 296-0191

Knowll Lowney
Clair E. Tonry
Meredith Crafton
Katherine Brennan
Smith & Lowney, PLLC
2317 E. John St
Seattle, WA 98112
Knoll@igc.org
clairet@igc.org
meredithc@igc.org
katherineb@igc.org

Tami Garrett
SDCI
Tami.Garrett@seattle.gov

Jack McCullough
Laura Counley
Courtney Kaylor
McCullough Hill Leary, P.S.
701 5th Ave, Suite 6600
Seattle, WA 98104
Jack@mhseattle.com
lcounley@mhseattle.com
Courtney@mhseattle.com

Liza Anderson
Alicia Reise
Assistant City Attorney
701 5th Ave, Suite 2050
Seattle, WA 98104
Liza.anderson@seattle.gov
Alicia.reise@seattle.gov

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

DATED this 18th day of January, 2017 at Seattle, Washington.

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: _____
Monica Erickson, Legal Assistant to
CRISTY CRAIG, WSBA #27451
Senior Deputy Prosecuting Attorney
Attorneys for King County

Daniel T. Satterberg, Prosecuting Attorney
CIVIL DIVISION
W400 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 477-1120/FAX (206) 296-0191

EXHIBIT
4

BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeal of: EPIC, et al., From a Department of Construction and Inspections decision.	No. MUP-17-001 DCI Reference: 3020845 NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that John C. McCullough, Courtney A. Kaylor, McCullough Hill Leary, P.S., hereby enters their appearance in this matter on behalf of the applicant Patrick Donnelly and without waiving objections as to improper service, venue or jurisdiction and request that service of all further pleadings and papers herein, except original process, be made upon the undersigned attorneys of record at the address below stated.

We also take this opportunity to advise the Hearing Examiner and the parties that we consent to have documents served upon us via email.

Our contact information is set forth below.

DATED this 9th day of January, 2017.

s/John C. McCullough, WSBA #12740
s/Courtney A. Kaylor, WSBA #27519
Attorney's for Patrick Donnelly
McCULLOUGH HILL LEARY PS
701 Fifth Avenue, Suite 6600
Seattle, WA 98104
Tel: 206-812-3388
Fax: 206-812-3389
Email: jack@mhseattle.com
Email: courtney@mhseattle.com

EXHIBIT
5

No Protest Agreement

WHEREAS, King County
Hereinafter referred to as "Owner", owns certain property within the City of Seattle legally described as follows:

Legal description attached.

WHEREAS, Owner has applied for a permit(s) from the City of Seattle which will require, as a condition of approval of the permit(s), either that certain improvements be made to public rights-of-way or, in lieu of making the improvements, that the Owner execute a covenant consenting to the formation of a local improvement district for the improvement of such rights of way; and

WHEREAS, Owner has agreed to execute a covenant consenting to the formation of such a local improvement district in lieu of completing the improvements to the public rights of way adjacent to Owner's property;

NOW THEREFORE, as a condition of issuance of applicable City permit(s) pursuant to Title 23 of the Seattle Municipal Code and in lieu of constructing certain public right-of-way improvements, Owner consents to the formation of a local improvement district, hereafter formed by the City or other property owners for the improvement of the following right(s)-of-way or portions thereof:

Indicate Rights-of-Way: 12th Avenue, 14th Avenue, E. Remington Court, W. Spruce Street.
Site Address: 1211 Alder St.
Project Number: 3020845

Improvements which may be provided include:

The installation of all public facilities required to improve the street or alley to City design standards including grading, drainage, pavement, curb/gutter, sidewalk, streetlights, traffic signals, street trees and other necessary appurtenances. Such street or alley improvements shall not be limited to the half street or alley abutting the property for example, where no permanent street or alley improvements exists, the street or alley improvement shall be extended beyond the centerline a sufficient distance (10 foot minimum) to permit safe movement of traffic.

Owner specifically waives his or her right to protest formation of a local improvement district under RCW 35.43.180.

This Covenant waives legal protest only to formation of a local improvement district and does not affect Owner's rights to comment upon proposed public improvements or object to the owner's individual assessment therefore.

The City shall deliver a signed release of this Covenant to Owner after completion of public improvements as described above and after transmittal of the final assessment roll to King County.

This Covenant shall be a covenant touching, concerning and running with the land and shall be binding on Owner's heirs, assigns and successors in interest; however, in no event shall this Covenant be valid and binding after expiration often (10) years after the date of its execution.

IN WITNESS WHEREOF, Owner(s) has hereunto executed this Covenant this 7 day of AUGUST, 20 15.

(Owner)

BY: ANTHONY WRIGHT

Its: DIRECTOR, FACILITIES MANAGEMENT DIVISION, KING COUNTY

BY:

Its:

DECLARATION:

Know all people by these presents that we the undersigned, owner(s) in fee simple [and contract purchaser(s)] of the land herein described do hereby consent to a covenant forming a local improvement district, and that said covenant is made with the free consent and in accordance with the desire of the owner(s).

In Witness whereof we have set our hands and seals.

NAME_____ NAME_____

STATE OF WASHINGTON,)
) ss.
County of KING)

On this day personally appeared before me ANTHONY WRIGHT to me known to be the DIRECTOR of DIRECTOR, FMD, KC the Corporation that executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said Corporation, for the uses and purposes therein mentioned, and on oath stated that HE is authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

GIVEN under my hand and official seal this 7th day of AUGUST, 2015.

CONNIE M. WONG NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 10-13-17

CONNIE M. WONG
PRINT NAME:

NOTARY PUBLIC in and for the State of Washington residing at: Seattle

Commission Expires: 10-13-17

DECLARATION:

Know all people by these presents that we the undersigned, owner(s) in fee simple [and contract purchaser(s)] of the land herein described do hereby consent to a covenant forming a local improvement district, and that said covenant is made with the free consent and in accordance with the desire of the owner(s).

In Witness whereof we have set our hands and seals.

NAME_____NAME _____

STATE OF WASHINGTON,)
) ss.
County of _____)

On this day personally appeared before me _____ to me known to be the individual(s) that executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said individuals, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this _____ day of _____, 20____.

_____
PRINT NAME:
_____
NOTARY PUBLIC in and for the State of Washington residing at:
_____
Commission Expires:
_____

EXHIBIT
6

City of Seattle
Mayor Edward B. Murray

January 30, 2017

The Honorable Dow Constantine
King County Executive
401 5th Ave. Suite 800
Seattle, WA 98104

The Honorable Laura Inveen
Presiding Judge, King County Superior Court
516 3rd Ave, Room C-203
Seattle, WA 98104

Dear Executive Constantine and Presiding Judge Inveen:

The City of Seattle and King County are partnering on several efforts that contribute to our shared goal to significantly reduce youth incarceration. It is in that spirit of collaboration that I am writing to share with you some thoughts about the proposed King County Youth Justice Center. Together, through our data and research driven strategic work, we have dramatically reduced youth incarceration in our communities. This is due in no small part to the work being done by the King County Juvenile Justice Steering Committee. The Committee should be credited for developing innovative programs that are reducing incarceration rates. This downward trend from our data suggests progress is being made. But, we have a long road ahead and the work is increasingly challenging to reach our vision of zero youth detention. We must ensure that all our respective policies, programs, and facilities, drive us towards that goal.

I have and will continue to respect that the City's role in the new youth detention center is a technical permitting function, legally separated from public policy decision making, and recognize that the fate of this project is not a discretionary decision the City can make. Beyond the City's official technical role, I also recognize that the County Executive and Judicial branch have more direct experience, expertise and analysis on related facility needs and policy priorities.

Furthermore, from what I have gathered in briefings with my staff, the project goals related to centralizing the various court and support services in the new facility represent productive efforts toward creating more seamless, accessible, and effective service delivery for the individuals and families who are impacted by the justice system.

Despite these positive intentions, public concern continues to grow about this project. Hearing this concern, I requested that my staff carry out additional analysis and research to provide me with a deeper understanding of the size and scope of King County's current project plans, as well as an examination of the latest work and policy research on zero youth detention.

I have learned that since the passage of the County-wide levy in 2012, a consensus has grown among juvenile justice experts that incarceration is harmful and counterproductive. Incarceration decreases the chances of high school completion, increases risk of recidivism, and is associated with worse physical and mental health outcomes for youth. Due to the racial disproportionately that exists in the youth detention center, these injuries are concentrated in the Black community.

The evidence points to systemic and structural issues that must be addressed if we are to create a community where young people can thrive, particularly for Black youth who have been negatively impacted by the systems and institutions that were put in place long before our time. Together, we must do more of the work that is necessary to address needs upstream – including increased investments in programs that address the education, economic, and health needs of young people. Together, we must increase diversion programming and community-based interventions so that young people can avoid incarceration altogether. And together, we must address the disproportionality in law enforcement that continues to persist. I readily acknowledge that we have work to do at the City level to address a range of disproportionate impacts on outcomes for youth of color. And I know that you share my urgency to advance new and innovative initiatives that will be data-driven and focused on results.

The City has much more work it can and must do. Data shows that the King County Youth Detention Center's admissions are disproportionate – minority youth are admitted at much higher rates than non-minority youth. With the guidance of a Federal District Court, the United States Department of Justice, and community partners, the Seattle Police Department continues striving towards bias-free policing. And the Seattle Police Department is now partnering with the DOJ and Dr. Jack McDevitt, Associate Dean for Research at Northeastern University and Director of the Institute on Race and Justice, to explore possible causes for disparities observed across law enforcement metrics and, critically, how SPD's advancing data may lead to knowledge and innovation in this important area.

Under our Zero Use of Detention for Youth resolution passed in 2015, the City committed to establishing a path forward to eliminate the City's reliance on detention. I would offer the City's Criminal Justice Equity Team tasked with supporting this work as an additional resource for King County to collaborate with and identify where we can better integrate our shared objectives on this topic. Recognizing connected systems and shared investments, this is an opportunity for us to continue to strengthen our partnership as we strive to reach this goal.

While I recognize that an immediate transition to zero youth incarceration is unrealistic, I have some concerns about the current plans for the detention facility given our joint goals of working toward zero detention. The landscape of research on best practices and intervention strategies points to mounting evidence against incarcerating young people that was not known at the time this facility was being planned. This new evidence, the continued decline of incarcerated youth in our community, and the need for considering public concerns all point toward reexamining aspects of this facility.

My request is for King County to consider a second look at the facility design and to convene a table for dialogue among various interests and perspectives to explore whether there are practical options or modifications to consider that will better create the kind of environment needed to meet the needs of those young people who become engaged in our criminal justice system. In addition to a multi-disciplinary team of experts that can inform best practices not just from a judicial and law enforcement perspective, but that of clinical and trauma-informed expertise, I believe that the communities who are most impacted must also have a seat at the table as the future of this facility is discussed.

Additionally, my office would be happy to work with your office to reach out to national experts on this topic to tap into additional technical advice or guidance that might be helpful for the County to utilize in any such reexamination. For example, as you are likely aware, the Annie E. Casey Foundation has conducted cutting-edge research on the topic of juvenile justice reform and juvenile detention alternatives. They may be able to provide technical assistance from a more objective third-party vantage point that could be helpful as we navigate a topic that is often fraught with high stakes and high emotions. I would be happy to take advantage of relationships staff in my administration have with the Foundation and other local and national experts to explore this possibility.

I hope you will take my request under consideration and look forward to our continued partnerships toward realizing a future system of zero detention – one that is safer, more humane, and more just for everyone in our community.

Sincerely,

Edward B. Murray
Mayor of Seattle

CC: Pete Holmes, Seattle City Attorney
Seattle City Council

EXHIBIT 7

SLOG

CRIME

Guest Editorial: King County Should Not Build a New Juvenile Detention Center

by Bruce Harrell and Rod Dembowski · Jan 31, 2017 at 9:34 am

The authors, King County Council member Rod Dembowski and Seattle City Council member Bruce Harrell, say "it is time to hit the reset button" on a new youth jail. KING COUNTY

In a speech titled “Remaining Awake Through a Great Revolution,” Dr. Martin Luther King, Jr. cautioned leaders to not sleep through revolutions unfolding before them, and reminded us that “the time is always right to do what is right.” This core principle of the civil rights movement should serve as a wake-up call to leaders in the county named after him.

As we approach the final decision about whether to proceed with construction of a new Children and Family Justice Center (CFJC) in Seattle’s Central District, we call on leaders to stop and rework this proposal. It must be redesigned to achieve our shared goal of ending the school-to-prison pipeline and ensure children and families in crisis are served with a model justice system in a courthouse that supports these objectives. While traditional wisdom certainly supports continuing down the current path of brick and mortar construction, so much recent data and research suggests we have the unique opportunity to construct a facility that not only embraces the fact that incarceration of our youth is not the goal, but has a design driven by this premise. Put another way, it can be driven by the lofty goal of zero use of detention.

The CFJC may have been a reasonable idea when it was first conceived many years ago. The project is comprised of two distinct parts: a new youth jail (let’s call it what it is) and unified family law courthouse, allowing for the consolidation and integration of our family law courts, to deliver better outcomes, more efficiently. The courthouse component of the construction would replace a run-down building that is at the end of its useful life. The rationale for a new youth jail facility

was less convincing – particularly since the current detention facility was built in 1992. The voters were told that the new center would better serve youth and families in crisis, help protect and heal children, and cost between $200 and $210 million. Residents of King County approved a new levy in 2012 with 55 percent voting yes.

Five years later, these promises now ring hollow. It is time to hit the reset button on this project for three primary reasons.

First, as Seattle Mayor Ed Murray **has recently pointed out**, contemporary knowledge calls for a radical rethinking about how and where we deliver juvenile justice. Second, the current project fails to deliver on the promise of a unified family court. Finally, the project's runaway budget violates the promises made to voters and calls for a reset.

King County's Youth Action Plan—the adopted policy for how King County supports our youth—calls for ending the school-to-prison pipeline. The County's Best Starts for Kids initiative invests $65 million per year in prevention, much of it aimed at preventing youth involvement in our justice system. Seattle's Family & Education Levy invests more than $30 million annually to upport young people. In hort, thi region i committed to doing right by our youth and familie . The CFJC should support and further these commitments.

The first major problem with the CFJC as proposed is that it relies too much on a traditional children's justice system. As recently as ten years ago, this system incarcerated 200 young people on an average day. It was designed to serve a significant number of youth from Seattle. Since then, King County has led the nation in reducing juvenile incarceration rates, cutting them by nearly 75 percent to about 50 on average per day. We did this in the current facility by radically changing practices to reflect contemporary understanding.

It bears repeating: our unparalleled success in reducing juvenile incarceration rates was accomplished in the current facility. And in 2016, only 23 percent of the youth in detention were referred by Seattle police.

While some modifications to reduce detention spaces in the new facility have been made, the revisions to the project continue to reflect an incarceration-centered approach to juvenile justice. It is universally accepted that outcomes from traditional "lock 'em up" justice are dismal. Sadly, not enough thought and planning has been given to designing a facility that would radically shift course in our juvenile justice system—and that is what we must do.

We don't believe that the county should spend another nickel building jail cells for kids. While we believe that our system will need to include confinement for some youth for the foreseeable future, we must continue to significantly reduce the use of incarceration. The current secured detention facility—again, built recently in 1992—could certainly continue to meet decreasing needs. Rather than build a new jail, we believe that further work is necessary to build a justice center that is fundamentally centered on contemporary juvenile justice practices, rather than punitive youth incarceration.

We need a dispersed, community-based juvenile justice system. We don't need a project that will perpetuate a centralized 1950s era kid jail system for another fifty years. A brand new, $225 million-plus juvenile jail and court facility in the Central District does nothing to address the burdens imposed on youth in the system from outside Seattle. And, there are no compelling arguments that new jail cells will further our shared goals to support children and youth.

Another major problem with the proposed CFJC is its failure to unify our family law court system, as was originally envisioned. Children and families in crisis (e.g. neglected children, dissolution cases with children, etc.) comprise a growing percentage of our cases. The core principal underlying the planning for the CFJC was that all family and children-related matters should be handled at the same site. But the City of Seattle has not issued construction permits for the two additional stories necessary to fulfill this objective, and the project is now over-budget.

The county is about to construct a family law courthouse that will not, and never will, meet the foundational family law principles underlying the entire project. The current justification is "something is better than nothing." We disagree.

County staff have recently informed elected officials that the CFJC is now over budget—before any construction has even commenced. This is a major issue, but may actually provide the opening to reassess this project. King County told the voters this project would be constructed at a cost of $200 to $210 million. Current estimates are that it will take at least $225 million—$15 million more than the high estimate provided to voters. The contractor's refusal to honor its "guaranteed maximum price" before construction commences is an ominous warning sign for the future budget for the building.

For these reasons, we can no longer support future actions to fund, finance, or permit this project. We must "awaken to the great revolution" in juvenile justice reform and hit the pause button. We must re-assess the wisdom of this project, working hand in hand with experts in juvenile and family law and community leaders.

54 Or. LUBA 782; 2007 Ore. Land Use Bd. App. LEXIS 76

Oregon Land Use Board of Appeals

May 23, 2007

LUBA No. 2007-073

Reporter
54 Or. LUBA 782 *; 2007 Ore. Land Use Bd. App. LEXIS 76 **

SHELLEY WETHERELL, Petitioner, vs. DOUGLAS COUNTY, Respondent, and TIMOTHY FOLEY, and MERYLUTZ FOLEY, Intervenors-Respondent

Core Terms

intervene, motion to intervene, original record, local government, intervenor

Opinion By: [1]** BASSHAM

Opinion

[*783]

ORDER

MOTION TO INTERVENE

On April 10, 2007, Timothy Foley and Merylutz Foley (the Foleys), who own the property at issue in this appeal, filed a motion to intervene in this appeal, pursuant to OAR 661-010-0050(1). [1] The motion to intervene was signed

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[1] OAR 661-010-0050 provides, in relevant part:

"(1) Standing to Intervene: The applicant and any person who appeared before the local government, special district or state agency may intervene in a review proceeding before the Board. Status as an intervenor is recognized when a motion to intervene is filed, but the Board may deny that status at any time.

"(2) Motion to Intervene: A motion to intervene shall be filed within 21 days of the date the notice of intent to appeal is filed pursuant to OAR 661-010-0015, or the amended notice of intent to appeal is filed or original notice of intent to appeal is refiled pursuant to OAR 661-010-0021. When two or more intervenors join in a motion to intervene and are unrepresented by an attorney, a lead intervenor shall be designated as the contact person for the purpose of receiving documents from the Board and other parties. The motion to intervene (see Exhibit 3) shall:

"(a) List the names, addresses, and telephone numbers of all persons moving to intervene. If an attorney represents the intervenor(s), the attorney's name, address and telephone number shall be substituted for that of the intervenor(s);

"(b) State whether the party is intervening on the side of the petitioner or the respondent;

"(c) State the facts which show the party is entitled to intervene, supporting the statement with affidavits or other proof;

"(d) On the last page, be signed by each intervenor, or the attorney representing that intervenor, on whose behalf the motion to

by Timothy Foley and Valynn Currie (Currie). Currie is identified as "Intervenor-Representative Applicant." On April 16, 2007, LUBA received a second motion to intervene, signed by Timothy Foley, Merylutz Foley and Valynn Currie, the latter of whom is again identified as the Foleys' representative.

[*784]

Petitioner objects to the motions to intervene, arguing that Currie is not an attorney and cannot represent the Foleys before LUBA. OAR 661-010-0075(6). [2] In addition, petitioner argues that Currie appeared during the local proceedings only as a representative of the Foleys, and did not appear on her own behalf. Therefore, petitioner contends, Currie does not have standing to intervene in this appeal under OAR 661-010-0050(1).

The Foleys and Currie respond that Currie was the "applicant of record" during the proceedings below, and therefore she has standing to intervene under OAR 661-010-0050(1). The Foleys and Currie argue that Currie is the "lead intervenor" **[**3]** under OAR 661-010-0050(2). *See* n 1. Further, the Foleys state that they elect to accept all correspondence directed to them in this appeal proceeding at Currie's address. We understand the Foleys and Currie to argue that Currie is not representing the Foleys before LUBA in contravention of OAR 661-010-0075(6), but instead simply intervening on her own behalf, based on her status as the "applicant," and volunteering to be lead intervenor.

Valynn Currie is not member of the Oregon State Bar, and therefore cannot represent the Foleys before LUBA. OAR 661-010-0075(6). With respect to her standing as intervenor, Currie does not claim that she has any personal or property interest in the underlying land use application or the subject property, such as that of a contract purchaser or lessee. As far as we can tell, the record reflects that Currie's only role during the proceedings below was as an agent or representative of the Foleys. For example, the challenged decision states that "Valynn Currie, representing Timothy & Merylutz Foley," requested the plan and zoning amendments approved in the decision. Record 3. If there is any place in the record where Valynn Currie appeared on her **[**4]** own behalf, and not just as an agent or representative of the Foleys, no party cites us to it. **[*785]**

OAR 661-010-0050 implements ORS 197.830(7), which provides:

> "(a) Within 21 days after a notice of intent to appeal has been filed with [LUBA] under subsection (1) of this section, any person may intervene in and be made a party to the review proceeding upon a showing of compliance with subsection (2) of this section.
>
> "(b) Notwithstanding the provisions of paragraph (a) of this subsection, persons who may intervene in and be made a party to the review proceedings, as set forth in subsection (1) of this section, are:
>
> > "(A) The applicant who initiated the action before the local government, special district or state agency; or
> >
> > "(B) Persons who appeared before the local government, special district or state agency, orally or in writing."

LUBA has held that, with respect to the "appearance" requirement of ORS 197.830(7)(b)(B) and similarly worded requirement of ORS 197.830(2), an appearance before the local government by an attorney, representative, hired expert or similar agent on behalf of another person does not necessarily, in itself, constitute an appearance by that agent on his or **[**5]** her own behalf. *Doob v. Josephine County, 49 Or LUBA 724, 727 (2005)* (appearance as an expert on behalf of a participant to the local proceedings is not sufficient to satisfy the appearance requirement to intervene); *Friends of Douglas County v. Douglas County, 39 Or LUBA 156, 162-63 (2000)* (LUBA will not presume that a person representing an organization has appeared on her own behalf, where the local code requires

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intervene is filed[.]"

[2] OAR 661-010-0075(6) provides, in relevant part:

> "Appearances Before the Board: An individual shall either appear on his or her own behalf or be represented by an attorney. A corporation or other organization shall be represented by an attorney. In no event may a party be represented by someone other than an active member of the Oregon State Bar. * * *"

participants to declare their status and at no point did the person advise the local government that she was appearing on her own behalf as well as on behalf of the organization). Thus, to the extent Currie relies on the appearance prong of ORS 197.830(7)(b)(B), Currie has not established that she "appeared" before the local government within the meaning of that statute.

However, it is less clear whether an agent or representative who submits an application on behalf of the **[*786]** property owner thereby has standing to intervene as the "applicant" under ORS 197.830(7)(b)(A). The only case we find on point is *McConnell v. City of West Linn, 17 Or LUBA 502, 504 (1989),* in which LUBA allowed **[**6]** a consulting firm that represented a group of investors that allegedly owned the subject property to intervene as the "applicant," under ORS 197.830(5)(b), the then applicable version of ORS 197.830(7)(b)(A). The petitioners argued that the group of investors had no standing to intervene because they did not own the subject property, and thus the consulting firm that represented the investors also had no standing to intervene. However, LUBA noted that the petitioners did not dispute that the consulting firm had filed the underlying land use application, and therefore we allowed the firm to intervene as the "applicant" under ORS 197.830(5)(b).

Here, we understand petitioner to dispute that Currie was the "applicant" for purposes of ORS 197.830(7)(b)(A). If Currie were not the "applicant," she does not have standing to intervene as applicant under that statute. ORS 197.830(7) does not define "applicant" and there is no applicable statutory definition that we are aware of. If, as we have held, the legislature did not intend that someone who appears before the local government solely on behalf of another has "appeared" on their own behalf for purposes of ORS 197.830(7)(b)(B) and ORS 197.830(2), **[**7]** it seems reasonable to assume that the legislature also did not intend that a hired agent or planning consultant who files a land use application solely on behalf of the property owner is the "applicant" for purposes of ORS 197.830(7)(b)(A), and thus has standing to intervene in an appeal before LUBA under that statute. However, the text of ORS 197.830(7) does not clarify that point either way.

We need not resolve that issue in the present case, because the record does not reflect that Currie was the "applicant" under any reasonable definition of that term. To intervene as the applicant, the person must at a minimum have "initiated the action before the local government." ORS 197.830(7)(b)(A). The two applications at issue in this **[*787]** appeal are found in the original record, at 145 through 160. [3] Both applications are signed by the Foleys, and nowhere do they bear Currie's signature. Original Record 150, 153. Further, the Foleys signed as the "Applicant" in a section of the applications that waives the 150-day rule. Original Record 160. We note also that both application forms state that an "agent of the property owner may sign this application [if] written permission from the property **[**8]** owner is attached." Original Record 150, 153, 160. No such written permission is attached to either application. [4] It is true that the first page of both applications includes a typewritten notation that identifies

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[3] As explained below, the present appeal is on remand of an earlier decision, and the record on remand includes the original record.

[4] Presumably, that language reflects Douglas County Land Development Ordinance 2.040(1), which limits who may initiate an application for development approval:

> "Applications for development approval may be initiated by one or more of the following:
>
> "a. One or more owners of the property which is the subject of the application; or
>
> "b. One or more purchasers of such property who submits a duly executed written land sales contract or copy thereof which has been recorded with the Douglas County Clerk; or
>
> "c. One or more lessees in possession of such property who submits written consent of one or more owner's to make such application; or
>
> "d. Person or entity authorized by resolution of the Board or Commission; or
>
> "e. A Department of Douglas County when dealing with land involving public works or economic development projects; or

Currie as the "applicant." However, it seems reasonably clear that it was the Foleys who initiated, signed, and filed the applications. The only apparent effect of designating Currie as the "applicant" was to notify the county that Currie would represent the Foleys during the **[*788]** proceedings below. Notwithstanding the label of "applicant" placed on Currie, it seems apparent that the Foleys "initiated the action before the local government" and thus were the applicants for purposes of ORS 197.830(7)(b)(A), while Currie was simply their representative during the proceedings below. Accordingly, we conclude that Currie is not the "applicant" under ORS 197.830(7)(b)(A), and has no standing to intervene under that statute, or any other provision cited to us.

[9]**

The Foleys' motion to intervene is granted; Currie's motion to intervene is denied.

RECORD OBJECTION

The challenged decision is on remand from LUBA. *Wetherell v. Douglas County, 52 Or LUBA 677 (2006).* The county filed the record on the remand decision on May 1, 2007. On May 4, 2007, the county filed a "supplemental record" that is essentially a revised table of contents including a statement that the original record in LUBA No. 2006-122 is included in the record of the present appeal, pursuant to OAR 661-010-0025(4)(b). [5]

On May 7, 2007, petitioner filed an objection to the record, requesting that (1) the record be supplemented with the original **[**10]** record in LUBA No. 2006-122, and (2) petitioner be served a copy of the original record.

The county's May 4, 2007 supplemental record moots petitioner's first request. The record in this appeal includes the original record in LUBA No. 2006-122, in conformance with OAR 661-010-0025(4)(b). In addition, petitioner requests that the county serve on her a copy of the original record in LUBA No. 2006-122. Petitioner was also the petitioner in LUBA No. 2006- **[*789]** 122, and presumably retains the copy of the original record in that appeal that the county mailed to her in that appeal. Absent circumstances not present here, a local government is not required to re-serve a petitioner with another copy of a record from a previous appeal. *Foland v. Jackson County,* Or LUBA (LUBA No. 2006-206/211, Order, February 15, 2007), slip op 3. Petitioner's request for an additional copy of the original record is denied.

The record is settled as of the date of this order. The petition for review is due 21 days, and the response briefs are due 42 days, from the date of this order. The Board's final opinion and order is due 77 days from the date of this order.

Dated this 23rd day of May, 2007. **[**11]**

Tod A. Bassham

Board Member

End of Document

"f. A public utility or transportation agency, when dealing with land involving the location of facilities necessary for public service. *Any of the above may be represented by an agent who submits written authorization by his principal to make such application."* (Emphasis added).

[5] OAR 661-010-0025(4)(b) is part of the specifications for the record, and states that:

"Where the record includes the record of a prior appeal to this Board, the table of contents shall specify the LUBA number of the prior appeal, and indicate that the record of the prior appeal is incorporated into the record of the current appeal."