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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In re:

APPROVAL OF APPLICATION NO. 3021625
FOR PROJECT LOCATED AT 1706 ALKI AVE
S.W.

No. MUP-16-024

NOTICE OF OBJECTION TO
PORTIONS OF APPELLANT’S
PROPOSED WITNESS TESTIMONY
AND EXHIBITS

Respondents the City of Seattle (“City”) and the Applicant 1706-1708 Alki Ave SW, LLC (“Applicant”) (collectively, “Respondents”), hereby file their notice of objection to certain witness testimony and exhibits identified by Appellant Scott Francis (“Appellant”). Appellant’s witness and exhibit list describes certain testimony and exhibits that either relate to matters outside of the jurisdiction of the Hearing Examiner or are not issues that were raised in this appeal.

The Hearing Examiner “may exclude evidence that is irrelevant, unreliable, immaterial, unduly repetitive, or privileged.” Hearing Examiner Rules of Practice and Procedure, Rule 2.17(b). Respondents accordingly intend to object to witness testimony and evidence identified in this notice because they either relate to matters outside of the jurisdiction of the Hearing

1 Examiner or to issues that were not raised in this appeal, and are accordingly irrelevant to the
2 matters over which the Hearing Examiner has jurisdiction.

3 **A. The Hearing Examiner should exclude witness testimony on matters outside of the**
4 **Hearing Examiner’s jurisdiction and matters not raised in the appeal.**

5 Appellant’s witness list states that Appellant Scott Francis will testify “regarding the
6 ECA variance decision, including impacts of the proposed project on his adjacent property, the
7 City’s process for review and approval of the project, public notice measures for the project, and
8 appropriate mitigation measures.” While it is not possible to identify the purpose for which
9 testimony will be offered based on the limited description in Appellant’s witness list, at this time
10 Respondents intend to move that the Hearing Examiner exclude certain witness testimony.

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12 To the extent Appellant’s testimony does not relate to a review of the criteria for issuance
13 of an Environmentally Critical Areas (“ECA”) Variance decision, Respondents will object to
14 such testimony. On February 22, 2017, the Hearing Examiner granted Respondents’ Joint Partial
15 Motion to Dismiss portions of Appellant’s appeal. Therefore, the only remaining issue in this
16 appeal hearing is the review of the ECA Variance decision in light of the applicable criteria
17 contained in SMC 25.09.180.E and SMC 25.09.280.B. Accordingly, any testimony that relates
18 to issues other than the ECA Variance should be excluded.

19
20 In addition, Respondents will object to testimony related to the City’s process and public
21 notice because they were not issues raised in the appeal. *See* Hearing Examiner Rules of
22 Practice and Procedure, Rule 3.1 (requiring Appellant’s specific objections to the decision to be
23 included in the notice of appeal).

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25 Respondents reserve their right to further object to the admission of testimony at hearing.
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B. The Hearing Examiner should exclude exhibits relating to matters outside of the Hearing Examiner’s jurisdiction and matters not raised in the appeal.

Respondents intend to object to the admission of exhibits that either relate to any matter irrelevant to the criteria for issuance of an ECA Variance or were not raised in the appeal.

While it is not possible to identify the purpose for which all exhibits will be offered, at this time Respondents request that the Hearing Examiner exclude the following exhibits. Respondents reserve their right to further object to the admission of exhibits at hearing.

- **Irrelevant Exhibits.** Respondents intend to object to the following exhibits as irrelevant because they relate to a land use application to subdivide one development site into seven unit lots in an ECA (Project #3024490) and a building permit application to construct the seven residential units (Project # 6486166). Neither application is relevant to the Hearing Examiner’s review of the City’s issuance of an ECA Variance under Project Number 3021625.

3024490	Other Correction Letter: Cycle 1 corrections for ZONING & LAND USE	10/3/2016
6486166	Other Correction Letter: Cycle 3 corrections for LAND USE & ZONING	9/27/2016
6486166	Other: Approved Code Modification Request	9/15/2016
6486166	Other: Code Modification Request V3	9/14/2016
6486166	Other: Code Modification Request v2	8/31/2016
6486166	Other: Liability Insurance Email - Keith Ayling	8/31/2016
6486166	Other: PIT Checklist	8/31/2016
6486166	Other: Drainage Report v2	8/31/2016
6486166	Other: Correction Response Letter - Combined	8/31/2016
6486166	Other Correction Letter: Cycle 2 corrections for DRAIN/SANI	8/18/2016
3024490	Public Comment Letter: Carlo 8/12/16	8/17/2016
3024490	Public Comment Letter: Beth 8/15/16	8/17/2016

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6486166	Other Correction Letter: Cycle 2 corrections for ORD STRUCT v2	8/15/2016
6486166	Other Correction Letter: Cycle 2 corrections for ORD STRUCT	8/15/2016
6486166	Other Correction Letter: Cycle 2 corrections for ZONING	8/15/2016
3024490	Other Correction Letter: Cycle 1 corrections for ADDRESSING	8/12/2016
3024490	Public Comment Letter: Baird 8/10/1016	8/11/2016
3024490	Public Comment Letter: Francis 8/8/16	8/11/2016
6486166	Other Correction Letter: Cycle 2 corrections for SHOR SLIDE & SHOR LIQFC	8/3/2016
3024490	Public Comment Letter: Francis 7/27/16	7/29/2016
3024490	Public Comment Letter: Green 7/20/16	7/20/2016
6486166	Other: Correction Response Letter - Combined	7/14/2016
6486166	Other: Landslide Area Covenant	7/14/2016
6486166	Other: Code Modification Request	7/14/2016
6486166	Other: Heating Equipment Sizing Forms	7/14/2016
6486166	Geotechnical Report: Supplemental Geotechnical Engineering Report	7/14/2016
6486166	Other: Geotechnical Minimal Risk Letter	7/14/2016
6486166	Other: Geotechnical Special Inspections Form	7/14/2016
6486166	Other: Condominium Sales Covenant	7/14/2016
3024490	Notice: Notice of Application	7/14/2016
6486166	Legal: Covenant Potential Landslide	6/17/2016
3024490	Screening & Submittal Checklist	6/1/2016
3024490	Geotechnical Report	6/1/2016
3024490	Other: Request for Water Availability Certificate	6/1/2016
3024490	Other: Construction plans under review	6/1/2016

- **Exhibits Related to Matters Outside of the Hearing Examiner's Jurisdiction.**

Respondents intend to object to the following exhibits as irrelevant and outside of the

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Hearing Examiner’s jurisdiction because they are either not relevant to the Hearing Examiner’s review of the City’s issuance of an ECA Variance under Project Number 3021625 and/or relate to issues not raised in the appeal.¹ In addition, a number of Hearing Examiner filings and orders are listed. While these are included in the Hearing Examiner record, they need not be introduced as exhibits.

3021625	Public Comment Letter: Marsh 2/1/17	2/1/2017
3021625	Notice: Notice of Change in Appeal Hearing Schedule & Parties	1/17/2017
3021625	Other: PreHearing Order & Order Continuing Hearing	1/12/2017
3021625	Notice: Notice of Appeal Hearing & Parties	1/5/2017
3021625	Other: Notice of Appeal Hearing Before the Hearing Examiner	1/4/2017
3021625	Notice: Revised Notice of Decision	1/3/2017
3021625	Other: Appeal Statement Scott Francis	12/15/2016
3021625	Public Comment Letter: Francis 12/9/16	12/9/2016
3021625	Other: Return Receipt DOE	11/29/2016
3021625	Other: Ecology Approval Letter	11/23/2016
3021625	Notice: Notice of Decision & Parties	11/17/2016
3021625	Other: Shoreline ECY Transmittal Form	11/17/2016
3021625	Legal Description: Legal Description from Address Team	10/21/2016
3021625	Addressing: King County quarter section	10/21/2016
3021625	Other: vacant buildings on site	10/4/2016
3021625	Notice: Notice of Application & Parties	12/17/2015

¹ Mr. Francis submitted a number of comment letters. Much of the substance of the comment letters relates to issues not properly before the Hearing Examiner. Respondents reserve the right to object at the hearing to the inclusion of these comment letters as exhibits. Similarly, Respondents further anticipate that certain project documents, such as the SEPA Checklist and documents related to the Streamlined Design Review (“SDR”) decision, are irrelevant to the issues at hearing and are outside of the jurisdiction of the Hearing Examiner. While not listed specifically in this section, Respondents intend to object to these documents relating to SDR or SEPA if introduced.

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3021625	Notice: Notice of Application	12/17/2015
3021625	Other: Design Review Attachment B	12/10/2015
3021625	Other: SDOT Coordination Letter	12/10/2015
3021625	Other: Water Availability Certificate	12/10/2015
3021625	Other: Pre-application Site Inspection Report	12/10/2015
3021625	Owner's Authorization	12/10/2015
3021625	Cover Sheet	12/10/2015
3021625	Pre-Submittal Notes	10/26/2015
3021625	Financial Responsibility Form: Statement of Financial Responsibility	10/21/2015
3021625	Approved Presubmittal Minutes: Presubmittal Conference Notes	10/21/2015
3021625	Other: EDG Application	10/21/2015
3021625	Design Proposal Cover Page	10/21/2015
3021625	Design Proposal: EDG Initial Meeting Proposal	10/21/2015
3021625	Legal: Financial Responsibility	8/14/2015


II. CONCLUSION

For the reasons set forth above, Respondents intend to request at the hearing that the Hearing Examiner exclude the witness testimony and exhibits identified in this notice.

Dated this 2nd day of March, 2017.

Respectfully submitted,

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