

May 22, 2017

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

In the Matter of the Appeal of:

7300 WOODLAWN AVE NE

CONDOMINIUM HOUSE ASSOCIATION et al

from a decision issued by the Director,

Department of Construction and Inspections.

Hearing Examiner File: MUP-17-002

Department Reference: 3019917

APPELLANTS' CLOSING ARGUMENTS

A. Summary: As provided in the Appellants Summary of Appeal Issues submitted April 12, 2017:

1. Public notice provided was not in conformance with SMC 23.76, SMC 25.05, RCW 36.70B and WAC 197-11 (Issues B.2, B.3).
2. The Master Use Plan decision did not meet specific design guidelines and did not meet the criteria for a departure from development standards (Issues C.3.b &c, C.5, C.6).
3. The record of impacts under the State Environmental Policy Act (SEPA) are incomplete and inaccurate and do not provide a record sufficient for a Threshold Determination or exercise of SEPA substantive authority under SMC 25.05. WAC 197-11, and RCW 43.21C (Issues D/B-E, F.1-13).

B. Public Notice: Public notice provided was not in conformance with SMC 23.76, SMC 25.05, RCW 36.70B and WAC 197-11 (Issues B.2, B.3).

1. (Previously identified as B.2 in the Appeal filed 1/5/ 2017.) The notice provided by the Seattle Department of Construction and Inspection (SDCI) did not conform to SMC 23.76, and did not meet legal requirements of sufficiently notifying the public of their opportunities for public comment and how those comments will be considered.
- a. The public notice requirement is found in SMC 23.76.011.A:

The Director shall provide the following notice for the required early design guidance process or streamlined administrative design review (SDR) guidance process for design review projects subject to any of Sections 23.41.014, 23.41.016, and 23.41.018, and for the preparation of priorities for planned community developments:

The notice provided in Hearing Examiner's Exhibit 11 SDCI Notice of Design Review for EDG, 7/23/2015, contains two separate notices, one for written comments, one for comments delivered at the public meeting:

The first is contained in the following:

OPPORTUNITY FOR COMMENT

The Director will accept written comments to assist in the preparation of the early design guidance through August 10, 2015. You are invited to offer comments regarding important site planning and design issues, which you believe, should be addressed in the design for this project. [emphasis added]

Comments and requests to be made party of record should be submitted to PRC@seattle.gov or City of Seattle – DPD – PRC, 700 5th Avenue, Suite 2000, PO Box 34019, Seattle, WA 98124-4019.

The second is contained in the following:

PROCESS

An application for Design Review related to future development of this site has been submitted to the Department of Planning and Development (DPD). The first phase of Design Review includes the Early Design Guidance (EDG) meeting. At the Early Design Guidance meeting, the following occurs:

1. The applicants will present information about the site and vicinity as well as early massing design concepts.
2. The public may offer comments regarding the design of a development on the subject site.*
3. The Design Review Board will provide guidance and identify those Design Guidelines of highest priority for the design as it moves forward towards Master Use Permit (MUP) application.
4. Following the meeting, DPD will issue a written Early Design Guidance report summarizing the meeting. This report will be sent to those who signed in at the meeting or otherwise requested a copy.

*Please note that public comment at the EDG meeting is limited to design considerations. If environmental reviews triggered, comments related to environmental impacts (such as traffic, parking, noise, etc.) may be sent to DPD following notice of that review.

- b. Neither of these notice statements accurately describe the purpose these comments are intended to accomplish, and the first, indicating that written comments will be considered by the Director, rather than the Design Review Board (DRB) is contrary to the stated purpose of the relevant code in SMC23.41.014.C.:

Based on the concerns expressed at the early design guidance public meeting or in writing to the Design Review Board, the Board shall identify any guidelines that may not be applicable to the site and identify those guidelines of highest priority to the

neighborhood. The Board shall incorporate any community consensus regarding design, expressed at the meeting into its guideline priorities, to the extent the consensus is consistent with the design guidelines and reasonable in light of the facts of the proposed development. [emphasis added]

- c. The relevant legal standard is whether due process has been provided to appraise the public of their full opportunity to participate in the process:

"An elementary and fundamental requirement of due process in any proceeding which is to accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. . . . [W]hen notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." [Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 315 (1950)].

- d. It is also clear that this public notice does not meet the objectives of the city code, in ensuring that all comments, including written comments are fully considered by the DRB as indicated is the following case:

"[I]t is well recognized that the underlying purpose inherent in the function of judicial interpretation of statutory enactments is to effectuate the objective—often referred to as the intent—of the legislature. The substantial compliance doctrine is rooted in the judiciary's longstanding effort to give legislative commands a rational interpretation founded upon their design." Williamson, Inc. v. Calibre Homes, Inc., 147 Wn.2d 394, 401, 54 P.3d 1186, 1189 (2002) (internal citations omitted).

Conclusion: The Public Notice that stated that written comments would be considered by the Director, without mention of the DRB, directly contradicts the purpose of public comments in SMC23.41.014.C. that provides that the DRB will review "concerns expressed at the EDG meeting including those in writing." The Applicant's argument in their February 17, 2017 Motion to Dismiss that adequate notice was provided under the "substantial compliance doctrine" is not admissible in this case since the Hearing Examiner's Order on Motion to Dismiss entered March 31, 2017 specifically excluded from the appeal procedural issues relating to the Design Review process. The appellants were barred from entering evidence and there is no record available on which to base a decision of "substantial compliance." We believe that the Hearing Examiner must enter a *de jure* determination that the public notice provided did not meet the intents of the code and therefore must be remanded.

2. Notice of Application: (Issue B.3. in the Appeal filed January 5, 2017.) The January 7, 2016 public notice did not meet specific requirements of RCW 36.70B.110 Notice of application—Required elements. The notice does not contain the following required elements:
 - a. (2) (b) ... a list of any studies requested; No such list is included
 - b. 2(c) The identification of other permits ... No such list is included.
 - c. 2(d) The identification of existing environmental documents; Not provided.
 - d. 2(g) A statement of the preliminary determination, if one has been made at the time of notice, of those development regulations that will be used for project mitigation and of consistency as provided in RCW 36.70B.040. The preliminary determination is included, none of the other requirements are provided.

Conclusion: The Public Notice regarding required notice items pursuant RCW to 36.70B.110 should be remanded because the City had substantive evidence that the original notice was incomplete and chose to issue an additional notice in which they omitted required elements.

C. Design Review

1. (Issue C.5 in the Appeal filed January 5, 2017.) Any reasonable interpretation of the applicable design guidelines should have led the to the conclusion by the Director under SMC 23.41.014.F that the recommendation of the Design Review Board (DRB) is inconsistent with
 - The criteria that the development that better meets the intent of adopted design guidelines under SMC 23.41.012.A is: -. [emphasis added]
 - Application of the design review guidelines in reference to other elements of the design
- a. The relevant code provision for the Director's Decision is quoted on pages 17 and 18 of the Analysis/Decision (Exhibit 2) as follows:

The design review process prescribed in Section 23.41.014.F of the Seattle Municipal Code describing the content of the SDCI Director's decision reads in part as follows:

The Director's decision shall consider the recommendation of the Design Review Board, provided that, if four (4) members of the Design Review Board are in agreement in their recommendation to the Director, the Director shall issue a decision which incorporates the full substance of the recommendation of the Design Review Board, unless the Director concludes the Design Review Board:

 - a. Reflects inconsistent application of the design review guidelines; or
 - b. Exceeds the authority of the Design Review Board; or
 - c. Conflicts with SEPA conditions or other regulatory requirements applicable to the site; or
 - d. Conflicts with the requirements of state or federal law. [emphasis added]

- b. The meaning of the provision “Reflects inconsistent application of the design review guidelines,” is clear on its face: “is not consistent with the design review guidelines.”
- c. Such an interpretation is consistent with an almost identical use of the term in SMC 23.41.008.A:

Role of the Design Review Board. The Design Review Board shall be convened for the purpose of reviewing all development subject to design review, except development subject to administrative or streamlined design review pursuant to this Chapter 23.41, Design Review. To accomplish this purpose, the Design Review Board shall:

1. Synthesize community input on design concerns and provide early design guidance to the development team and community; and
 2. Recommend to the Director specific conditions of approval which are consistent with the design guidelines applicable to the development; and [emphasis added]
 3. Ensure fair and consistent application of Citywide or neighborhood-specific design guidelines.
- d. The Applicant’s attorney and the Applicant’s Expert Witness Mark Johnson suggested two alternative interpretations:
- The application of the design guidelines is inconsistent within the development,
 - The application of the design guidelines is inconsistent with how they have been applied in the past throughout the city.

Both of these interpretations fail a simple reasonableness test.

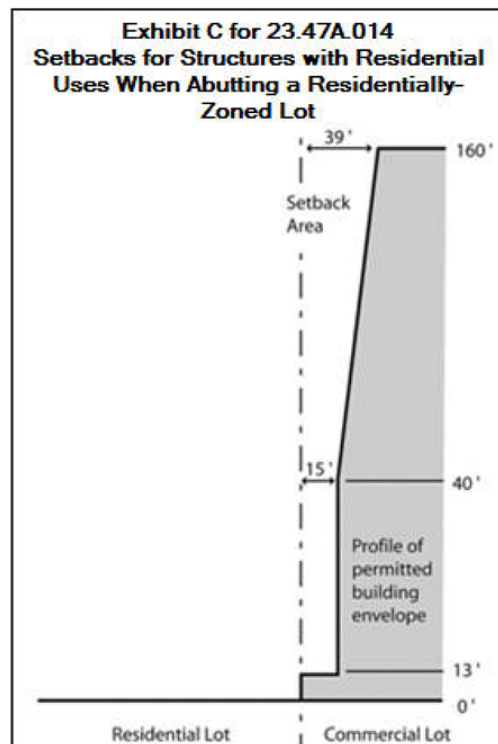
- There is nothing in the code provision that suggests that the standard is internal consistency.
- As admitted by Expert Witness Mark Johnson under cross examination, there is nothing in this code provision that references a city-wide context. [Recording Day 2 (4 of 6) 37:13 to 42:21]
- Bruce Rips, the staff person who signed the approval indicated under cross examination that his review included both review of consistency with the design guidelines and consistency with other application within the city. [Recording Day 2 (2 of 6) 20:05 to 25:45] (The Appellants recognize that a normal administrative function of the department should be to ensure a consistent application of land use code provisions. This, however, is a general administrative function and does not apply to a decision of consistent application of design guidelines to a project.)

- This interpretation would be impossible for either the DRB or the Hearing Examiner to apply to this project, unless all the past projects subject to design review and approved in the city were also reviewed.
2. Departure Criteria and Transition Design Guidelines: There are no DRB findings and therefore no basis for the Director to accept the recommendation of the DRB that the Departure from SMC 23.47A.014.B.3 is either consistent with the criteria for a departure or the specific applicable design review guidelines and therefore the approval should be overturned. In addition, simple review of the substance of requirements shows they are not met.

a. The applicable code provision SMC 23.47A.014.B.3 for which a departure was requested is:

For a structure containing a residential use, a setback is required along any side or rear lot line that abuts a lot in a residential zone or that is across an alley from a lot in a residential zone, or that abuts a lot that is zoned both commercial and residential if the commercial zoned portion of the abutting lot is less than 50 percent of the width or depth of the lot, as follows:

- Fifteen feet for portions of structures above 13 feet in height to a maximum of 40 feet; and
- For each portion of a structure above 40 feet in height, additional setback at the rate of 2 feet of setback for every 10 feet by which the height of such portion exceeds 40 feet (Exhibit C for 23.47A.014).



b. The criteria for a departure under SMC 23.41.012.A is: -

Departure from Land Use Code requirements may be permitted for new multifamily, commercial, and Major Institution development as part of a design review process. Departures may be allowed if an applicant demonstrates that departures from Land Use Code requirements would result in a development that better meets the intent of adopted design guidelines. [emphasis added]

This specific code provision is not referenced anywhere in the Analysis/Decision (Exhibit 2) either in the record of the DRB deliberations or in the Director's analysis. Given the lack of reference, we believe the Hearing Examiner cannot give substantial weight to the recommendation of the DRB or the Director.

c. The *intent* of SMC 23.47A.014.B.3 is never specifically addressed in the Director's Analysis/Decision (Exhibit 2). Page 18 of the decision states:

The Director agrees with the Design Review Board's conclusion that the proposed project and condition imposed result in a design that best meets the intent of the Design Review Guidelines and accepts the recommendations noted by the Board.

This is a meaningless superlative. The body of the report, never states either the DRB's or Director's interpretation of the *intent* of the referenced section being departed from; it also never states how Design Guidelines are met. Under cross-examination, Bruce Rips, the decision maker was unable to provide a description of the intent of the section. [Recording Day 1 (2 of 4) 55:30 to 56:40; Day 1 (3 of 4) 33:20 to 34:19] Given the complete lack of reference to the intent of this code provision in the written decision, we believe the Hearing Examiner cannot give substantial weight to the recommendation of the DRB or the Director.

d. The intent of this code provision may be interpreted partially in terms of other design guidelines which address the same issue, specifically:

CS2.D3. Zone Transitions: For projects located at the edge of different zones, provide an appropriate transition or complement to the adjacent zone(s). Projects should create a step in perceived height, bulk and scale between the anticipated development potential of the adjacent zone and the proposed development.

Reference to creating a step is missing in any DRB or Director's findings in Exhibit 2.

e. As indicated in Exhibit 4, page 19, Option 1 incorporates the requirements of SMC 23.47A.014.B.3 and includes the following elements that create a step in perceived height, bulk and scale:

- An initial setback/stepback of 15 feet to the east for floors 2 and
- An additional setback/stepback of 1 foot for a total of 16 feet for floor 4
- An additional setback/stepback of 2 feet for a total of 18 feet for floor 5

- An additional setback/stepback of 3 feet for a total of 21 feet for floor 6
 - In addition, the design includes windows on three sides (north, east and south) and provides potential for balconies which are a “secondary architectural element” encouraged to reduce the perceived mass of larger projects in Design Guideline DC2.A.2
- f. In contrast, the approved design illustrated in Hearing Examiner Exhibit 7, include:
- A 5 foot setback to the east façade on the northerly two thirds for floors 2 through 6.
 - No setbacks with a blank wall for all floors on the east face on the southerly third
 - Few windows and no “secondary architectural elements” are provided
 - On the northerly portion of the east facing façade, 3 windows on each floor of the with a total height of 6 feet and a total width of 5 feet in a section 30 feet wide. This contrasts with window width of 24 feet on the 44 foot wide the northerly facing side of the building with window height of 8 feet.
 - On the center portion of the east facing side (stairway) 2 tiny windows are provided on each floor in the middle third (stairway) with a total width of 3 feet and height of 2 feet in a building section width of about 30 feet.

Any reasonable interpretation of the differences in design features between full compliance with the code provisions SMC 23.47A.014.B.3 as illustrated in Option 1 (Exhibit 4, page 19) and the approved design must conclude that the approved design does not accomplish a transition between the two zones consisting of steps that reduce the contrast in perceived height, bulk and scale between the anticipated development potential of the adjacent zone and the proposed development. The proposed design also does not provide the potential for “secondary architectural element” encouraged to reduce the perceived mass of larger projects in Design Guideline DC2.A.2

- g. in response to cross examination comparing the transition features on the east facade in Option 1 in Exhibit 4 that incorporated the setback/stepback requirements of SMC 23.47A.014 to the Approved Project, the Applicant’s Expert Witness Mark Johnson stated that the Approved Project did not provide an equal or better transition. [Recording Day 2 (4 Of 6) 44:50 to 46:10]
- h. As established by cross examination of Radim Blazej, project architect, the difference in floor area between Option 1 in Exhibit 4 that fully meets requirements of SMC 23.47A.014 and the Approved Project is an increase of 1,897 square feet. [Recording Day 2 (2 Of 6) 58:20 to 105:45] In addition, the Unit Area increases from 15,144 in Option 1 to 18,193 in the

Approved Project, a total of 3,049 square feet or 20 percent more than Option 1. This additional area, particularly the substantially larger area devoted to the rentable units, is a substantial special privilege not provided to properties that fully comply with the standards of the code. (See the total floor area of 25,447 for Option 1 in the “Briar Box” on page 19 of Exhibit 4 and the floor area of 27,344 in the “Briar Box” on Sheet A0.03 of Exhibit 7, both with roof area removed, and the analogous columns for Unit Area.)

Conclusion: There is no basis to accept the Director’s finding that approval of the Departure from SMC 23.47A.014.B.3 better meets the intent of the code provision because there is no specific mention of the criteria for departure in the DRB review, or the Director’s review; there is no description in the record of the *intent* of the code provision; and there are no specific findings of how the approved design better meets the criteria, therefore providing no basis to give substantial weight to the decision. An examination of the substance of the approved project design, including the testimony of the Applicant’s Expert Witness must lead to the conclusion that the approved project does not include specific elements such as multiple step-backs or terraces in the east facing side of the building, or the provision of “secondary architectural elements” that together are identified in Design Guidelines to reduce the perceived mass of the building and accomplish a transition between the two zones. The preponderance of evidence is that the proposed design does not provide a better transition compared to that provided by the strict application of SMC 23.47A.014.B.3 or Design Guideline CS2.D3. Zone Transitions. The decision should be overturned and either remanded to the Director and/or the DRB, or the Hearing Examiner should impose specific design changes incorporating a design consistent with the code and Design Guidelines.

3. Building height: There is no basis for the Director to accept the findings that approval of the project is consistent with Design Guideline CS2.D.4 and the approval should be reversed:

- a. The applicable Design Guideline reads:

Massing Choices: Strive for a successful transition between zones where a project abuts a less intense zone. In some areas, the best approach may be to lower the building height, break up the mass of the building, and/or match the scale of adjacent properties in building detailing. It may be appropriate in other areas to differ from the scale of adjacent buildings but preserve natural systems or existing features, enable better solar exposure or site orientation, and/or make for interesting urban form. [emphasis added]

- b. The proposed six story building (Exhibit 7) is approximately 4-stories higher than the existing multi-family development to the east, or about 3-times its height. It is approximately 5-

stories higher than the one-story building at the southwest corner of the site, or about 4-times its height. It is about twice the height of the Great Hall to the northwest. By any measure, the mass, bulk and scale of the building is greatly out of proportion to its existing context.

c. In reference to future potential development:

- i. The Great Hall has been preserved by a consortium of local residents as a recognized community asset and is not likely to change as indicated by testimony of Alyson Stage.

[Recording Day 2 (6 of 6) 00:00 to 12:60]

- ii. The one-story building at the southeast corner is on a very small lot of 1,840 feet and is unlikely to be redeveloped to the maximum height allowed by zoning as indicated by testimony of Radim Blazej [Recording Day 2 (2 of 6) 31:30 to 31:50; 56:12 to 56:20], and as indicated by testimony of Bruce Rips that he could not recall a redevelopment on a lot that small [Recording Day 2 (2 of 6) 41:35 to 42:05]. To the west, southwest and northwest, the proposed building will likely remain twice to five times the scale of adjacent development.

- iii. To the east, the L3 zoning would allow townhomes or row-houses up to 30 feet in height and apartments up to 40 feet in height. The 65-foot height of the proposal will more than half-again as high as adjacent development. In all cases, the height and scale of the building would be greater than future development.

- d. Public comments on-record as part of the Analysis/Approval (Exhibit 2) documents numerous concerns expressed about the height, bulk and scale of the proposed building.

- e. There is no record in the Analysis/Approval of the DRB or the Director that any consideration of this guideline regarding reduction in height as a means to meet the criteria of Design Guideline CS2.D.4 was ever specifically addressed.

Conclusion: There is no basis to accept the Director's finding that the approval of the project is consistent with Design Guideline CS2.D.4 which specifically calls for consideration of reduction of building height as a means for achieving a successful transition between zones because here is no documentation on the record that either the DRB or the Director specifically considered this design guideline. There is a preponderance of evidence that the building contrasts significantly in height, and scale with existing adjacent development and will continue such a

contrast in relation to realistic projections of potential future development. The decision should be overturned and either remanded to the Director and/or the DRB for specific consideration of reduction in building height or the Hearing Examiner should impose specific design changes including reduction of one or more floors of the proposal.

4. Blank walls: There is no basis for the Director to accept the findings that approval of the project is consistent with Design Guideline DC2.B.2 and the approval should be reversed:

- a. The applicable Design Guideline reads:

Blank Walls: Avoid large blank walls along visible façades wherever possible.

Where expanses of blank walls, retaining walls, or garage facades are unavoidable, include uses or design treatments at the street level that have human scale and are designed for pedestrians... [emphasis added]

- b. The design guideline reads “whenever possible.” It does not read “when feasible.” It does not read “when adjacent development may abut the proposal in the future.” It does not read “should be reduced compared to the initial design proposed by the applicant.” It must be interpreted as an intent to set the standard of “possible” rather than a lesser standard.
- c. The building as approved has a five-story blank wall on the west facing southwest façade visible from Woodlawn Avenue and has a four-story blank wall on the east facing southeast façade visible from NE 74th Street. Even if adjacent development occurs, the blank walls will continue to be visible and prominent as documented in C.3.c, above.
- d. The DRB record indicates concern about “blank” walls in at least four citations in Exhibit 2, the Analysis/Decision (Exhibit 2). There is, however, there is no indication they applied the required criteria “wherever possible”.
- e. The cross-examination testimony of Bruce Rips indicated that he was not sure if any of the walls were blank or whether they were visible [Recording Day 1 (2 of 4) 29:31 to 40:28]. Based on this testimony, we believe the Hearing Examiner cannot give substantial weight to the Director’s decision if said person responsible for approval can’t identify a blank wall.
- f. The cross-examination by testimony of Radim Blazej, project architect stated that it was “possible” to eliminate blank walls [Recording Day 2 (2 Of 6) 40:50 to 41:02].

Conclusion: There is no basis to accept the Director’s finding that the approval of the project is consistent with Design Guideline DC2.B.2 that provides “Avoid large blank walls along visible façades wherever possible.” There is no indication on the record that either the DRB or the Director specifically applied this required criteria of “wherever possible.” It is also clear from

the record that avoiding blank walls is indeed “possible.” There is a preponderance of evidence that the building as approved will have substantial blank walls, visible to the public that will substantially contribute to the contrasts in scale with existing adjacent development and will continue to be much taller than realistic projections of future development. The decision should be overturned and either remanded to the Director and/or the DRB for specific consideration of elimination of blank walls or the Hearing Examiner should impose specific design changes.

5. Historic character: There is no basis for the Director to accept the findings that approval of the project is consistent with multiple provisions of Design Guidelines addressing established buildings with distinct architectural character and historic buildings.

- a. Applicable Design Guidelines include:

DC2.C-3. Fit With Neighboring Buildings: Use design elements to achieve a successful fit between a building and its neighbors.

CS3.A.1. Fitting Old and New Together: Create compatibility between new projects, and existing architectural context, including historic and modern designs, through building articulation, scale and proportion, roof forms, detailing, fenestration, and/or the use of complementary materials.

CS3.A.2 Established Neighborhoods: In existing neighborhoods with a well defined architectural character, site and design new structures to complement or be compatible with the architectural style and siting patterns of neighborhood buildings.

- b. In addition, the Greenlake Neighborhood Plan identifies the Great Hall (then the VFW building) as a “Treasured Place” in Appendix B and specifically on page B-14 as TB6. The plan states (page 63) that:

The Treasured Places Map constitutes a significant part of a cultural resources inventory of the Green Lake neighborhood. At a minimum it catalogs those elements that fuse into a unique sense of place and are the wellsprings of fundamental affective connections between generations.

The plan further provides the following goal (page 63):

Goal 4 – The “Treasured Places” are protected and/or enhanced and remain important defining elements of the character of Green Lake.

- c. The testimony of Alyson Stage established the historic and unique design features of the Great Hall based on the Colonial Revival architectural style that architect Harold Sexsmith drew on when he designed the Green Lake building. The building would qualify for both the Seattle Landmark status and for the National Register of Historic Places. However,

firsthand experience of the challenges of with working within Seattle Landmark status has lead the owners not to pursue such designation and to accomplish a credible renovation (including seismic retrofit) with active community use of the building without the intrusion of government oversight. [Recording Day 2 (6 of 6) 00:00 to 12:60]

- d. The proposed development is a discordant element in relation to the and Great Hall in terms of its bulk and scale which would dominate the Great Hall and displace it from its prominent position as a landmark and together with the proposed blank walls would provide a backdrop that contrasts with the character of this landmark and “Treasured Place.” The contrasting scale an character would detract from the elements that fuse into a unique sense of place in the community. Protection and enhancement of the historic character and “Treasured Place” status of the Great hall requires consideration of maintaining a less intrusive scale by providing a transition to the east and a less boxy design, consideration of reduction of building height as a means for achieving a successful transition between the scale of the Great Hall and the proposed development and elimination of blank walls which are a contrasting element at variance with the unity of design of the existing building elements that define the neighborhood.

- e. The DRB responded to a specific request for incorporating a notch or hyphen between the proposed building and the Great Hall with the following:

The Board recognized the written comments received including a potential notch at the northwest corner, but did not agree that it was an appropriate given the desire for a more continuous commercial edge next to the Great Hall. The zero lot-line condition at the first three stories helped to blend the facades of the proposal and the Great hall together, reinforcing the edge and keeping the commercial use closer to the commercial zone and away from the residential. (CS2-C-2)

- f. The DRB desire for a “continuous commercial edge” next to the Great Hall is contrary to the design features of the north façade of the Great Hall which does not have a commercial frontage. As established by the testimony of Alyson Stage, the north facade of the Great Hall has a below grade floor with pierced windows and several doors to a utility room and a stairway. It has no commercial function or character. The proposal to have the facade of new building abut the northwest corner of the Great Hall will not blend the facade of the new building with the Great Hall.
- g. In addition, extending the structure to the north facade of the Great Hall will require removal of a portion of the existing cornice where it currently wraps around the building.

This will eliminate a design feature that is an integral part of the architectural character of the Great Hall.

- h. A more appropriate solution, widely used when buildings of different styles are placed adjacent to one another is to incorporate a stepped back area between the two buildings. Such a notch or "hyphen" is widely supported in design guidelines for placement of newer buildings adjacent to existing buildings with distinctive design features related to the period of construction. See: National Park Service, Historic Preservation, Technical Briefs <https://www.nps.gov/tps/how-to-preserve/briefs/14-exterior-additions.htm#compatible> and Dedic, Peder D, Historic Preservation for Designers <https://docs.google.com/file/d/0B5-73ycP3gYEUUd2RWIJTkZLQXc/view>

Conclusion: There is no basis to accept the DRB and Director's finding that the approval of the project is consistent with Design Guidelines DC2-C-3, CS3.A.1, and CS3.A.2 addressing compatibility between historic and modern designs. There is a preponderance of evidence that the rationale of providing "a more continuous commercial edge next to the Great Hall" and "to blend the facades of the proposal and the Great hall together" is not consistent with either the current features of the north façade of the Great Hall or specific features such as the cornice. The decision should be overturned and either remanded to the Director and/or the DRB for specific consideration or the Hearing Examiner should impose specific design changes including the notch or hyphen between the two buildings.

D. SEPA Environmental Impacts and Mitigation

1. The record of impacts under the State Environmental Policy Act (SEPA) are incomplete and inaccurate and do not provide a record sufficient for a Threshold Determination or exercise of SEPA substantive authority per SMC 25.05, WAC 197-11, and RCW 43.21C (Issues D/B-E, F.1-13).
2. The relevant criteria for considering the adequacy of the SEPA review is whether the Director has demonstrated actual consideration of relevant environmental factors:

On appeal, the Director must demonstrate actual consideration of relevant environmental factors before a decision was reached to issue a DNS and must demonstrate that environmental factors were adequately considered "in a manner sufficient to be prima facie compliance with the procedural dictates of SEPA ... Further the decision to issue a [DNS] must be based on information sufficient to evaluate the proposals environmental impact." (Boem v. City of Vancouver, 111 Wn. App. 711, 718, 47 P.3d 137 (2002))

The record does not consider actual consideration of these factors in the cases below.

3. The Appeal submittal of 1/5/2017 indicated that there was no annotated SEPA checklist in the Permit Record for the project. The City provided an annotated copy as the result of discovery on April 17, 2017. This did not, however, address the following issues
 - a. Checklist Item B.9.a Housing units and income range asserts that moderate and low income units would be provided, this, however, is not supported by a commitment to the rental rates to be required. Given the amenities of the site due to its proximity to Green Lake, the assumption that low income housing would be provided cannot be sustained without a commitment regarding rental rates. Testimony by applicant Chris Gurdjian indicated that rental rates will vary from \$900 to \$1,400. [Recording Day 2 (6 of 6) 16:40 to 18:05] and were characterized as comparable to the affordable index for HUD voucher qualifications at 50% to 80% of AMI. This, however, is misleading because the definition of affordable cited by Mr. Gurdjian was for a four-person family. The comparable income for a low-income single-person household is \$22, 865 with a 35% of monthly income devoted to rent is \$666 per month. A rent of \$900 per month at a 35% of monthly income imputes an annual income of \$37,800, which is near the median income for single-person households in the Seattle-Tacoma Metro Area, therefore none of these units qualifies as low income units. This is relevant to potential vehicle ownership.
 - b. B.13.b Historic resources: The response incorrectly responds to the question. The Great Hall adjacent to the site is more than 50 years old and is eligible for the City, State and National Historic Registers, although currently not listed. This was substantiated in Alyson Stage's testimony cited above.
4. The Appellants contend that the record of impacts on Aesthetics/Height, Bulk and Scale in the Analysis Decision provides an analysis on page 21 are incomplete and inaccurate and do not provide a record sufficient for a Threshold Determination or exercise of SEPA substantive authority under SMC 25.05. WAC 197-11, and RCW 43.21C

The Analysis Decision provides an analysis on page 21 that states, in part:

The proposal has gone through the design review process described in SMC 23.41. Design review considers mitigation for height, bulk and scale through modulation, articulation, landscaping, and façade treatment.

Section 25.05.675.G.2.c of the Seattle SEPA Ordinance provides the following: "The Citywide Design Guidelines (and any Council-approved, neighborhood design guidelines) are intended to mitigate the same adverse height, bulk, and scale impacts addressed in these policies. A project that is approved pursuant to the Design Review Process shall be presumed to comply with these Height, Bulk, and Scale policies. This presumption may

be rebutted only by clear and convincing evidence that height, bulk and scale impacts documented through environmental review have not been adequately mitigated. Any additional mitigation imposed by the decision maker pursuant to these height, bulk, and scale policies on projects that have undergone Design Review shall comply with design guidelines applicable to the project.”

The height, bulk and scale of the proposed development and relationship to nearby context have been addressed during the Design Review process for any new project proposed on the site. Per the Overview policies in SMC 25.05.665.D, the existing City Codes and regulations to mitigate impacts to historic resources are presumed to be sufficient, and additional mitigation is not warranted under SMC 25.05.675.G.

- a. This set of statements presents a “Catch 22.” The reference to policy is not analysis. The referenced policy specifically presumes that there will be analysis. This presumption may be rebutted only by clear and convincing evidence that height, bulk and scale impacts documented through environmental review have not been adequately mitigated. [emphasis added] There has, however, been no analysis in the environmental review of height bulk and scale and whether the Design Review has indeed adequately mitigated impacts.
- b. The record as a whole, including Exhibit 2, the record of the Analysis/Decision (Exhibit 2), documents numerous community comments about the height and bulk of the building which are also reflected in the testimony of Michael Jones [Recording Day 1 (3 of 4) 0:09 to 20:41] and Sydney Dobson [Recording Day 2 (2 of 6) 37:18 to 55:01]. Reduction in the height, as well as design features were identified as potential mitigation in public comments. As indicated in the testimony of Sydney Dobson, the only valid measure of an aesthetic impact is the perception of the local community. As indicated in the excerpt Ms. Dobson read into the record: [Recording Day 2 (1 of 6) 50:50 to 51:50]

The FHWA VIA process is based on the concept of transactional perception—the idea that visual quality is the product of a relationship between the environment and people. Experts trained in landscape aesthetics—even those that approach the field understanding that visual quality is a result of transactional perception—cannot be assured that their aesthetic training will match the visual concerns and preferences of the public. Consequently, since people are a key component of the transactional perception model, it is critical to know what the public actually values about their visual environment.

FHWA Guidelines for the Visual Impact Assessment of Highway Projects
September, 2013

https://www.environment.fhwa.dot.gov/guidebook/documents/VIA_Guidelines_for_Highway_Projects.asp

The concept that the ultimate authority for aesthetic issues is the affected community is not limited to the impacts of highway projects but is an essential recognition that aesthetic appreciation is a matter of individual and community perception.

Conclusion: There is no basis to accept Director's finding regarding environmental impacts on Aesthetics/Height, Bulk, and Scale on page 21 of the Analysis Decision because there is no information on the record that demonstrates actual consideration of relevant environmental factors. The Hearing Examiner should remand to the City for full analysis of impacts and potential mitigating measures relating to aesthetics and issue both a new SEPA determination and a new analysis of mitigation and additional conditions as appropriate.

5. **Parking** The Appellants contend that the record of impacts on Parking in the Analysis Decision on page 22 are incomplete and inaccurate and do not provide a record sufficient for a Threshold Determination or exercise of SEPA substantive authority under SMC 25.05, WAC 197-11, and RCW 43.21C

The Analysis/Decision (Exhibit 2) contains the following on page 22:

The proposed development includes 45 residential units, 1,600 sq. ft. of commercial space with 12 off-street vehicular parking spaces. The traffic and parking analysis noted that the existing on-street parking utilization rate is approximately 75.5 percent within 800' of the site. The proposed development peak in demand during the evening would not be accommodated by the proposed 12 off-street parking spaces in the development, resulting in a spillover demand for on-street parking spaces. However, approximately 93 on-street parking spaces would be available to the residential tenants.

As indicated below, this analysis is deficient in several respects.

- a. **Parking Demand:** Exhibit 25 - Heath 3/28/2016 establishes the Applicant's projected parking demand for the proposal, of 0.35 parking spaces per unit based on a 2014 Study by Popp and Associates (Exhibit 28). This study is not a reliable basis for estimating the parking demand of the project for several reasons as documented in Exhibit 11 Public Comment E-mail, 7/11/2016:
 - i. The methodology and results of the Popp study cannot be validated. As indicated by Exhibit 12, E-mail Exchange with William Popp, 3/7/2017, the author of the study is unknown, the methodology used is unknown, and the results have not been verified by any other reputable data. This was generally confirmed by testimony by John Shaw. [Recording Day 2 (3 of 6) 1;07:33 to 1:18:]
 - ii. If the results were found valid for the sites surveyed, they are not comparable to the proposal. The study from which they are extracted (Exhibit 28) notes that the

buildings reported in the table were not true apartments but generally were smaller units with shared kitchen areas. These units are smaller than the studio units with kitchens in the proposed building, they are likely to attract a substantially different type of tenant with different vehicle ownership patterns. This is particularly the case in an area like the University District, where the surveyed buildings were located, which has a much greater share of student tenants which would tend to have lower vehicle ownership levels. This was generally confirmed by testimony by John Shaw. [Recording Day 2 (3 of 4) 1;36:20 to 1:37:25]

iii. The report states that the sites were surveyed in the early 2000's. Market conditions have changed considerably since that time.

iv. As stated in the January 5, 2017 appeal submittal: the sites reported in the table are all in the University District are likely to attract tenants with much different vehicle ownership characteristics based on the unique characteristics of the University District:

1. The University District provides a potential pool of student tenants from the 30,000 students at the Seattle Campus (UW 2015a). These students are more likely to walk to classes and activities (UW 2015b) and to have much lower auto ownership patterns. The proposed site it likely to attract few if any tenant who can walk to school. Although transit route 45 provides service to the University of Washington, any student tenants at this location are much more likely to need a car for normal activities.
2. For non-students, the University of Washington provides employment for about 25,000, providing a substantial pool of potential tenants who could walk to work. Employment opportunities available within walking distance in the area of the proposal in contrast are extremely limited.

This was generally confirmed by testimony by John Shaw. [Recording Day 2 (3 of 4) 1:35:00 to 1:38:55]

v. The parking demand rate for the projects included in the Exhibit 25 Heath 3/28/2016 referencing William Popp Assoc. data reflects the unique character of the University District as provided in Exhibit 11.

Censu2 Tract 43.01

No Vehicle Available - 1 person households = 41%

Average vehicles per 1 person households = 0.68

1100 NE 47th St - WPA imputed vehicle ownership 39%

Census Tract 43.02

No Vehicle Available - 1 person households = 65%

Average vehicles per 1 person households = 0.36

4629 21st Ave NE - WPA imputed vehicle ownership 39%

Census Tract 44

No Vehicle Available - 1 person households = 50%

Average vehicles per 1 person households = 0.87

5608 15th Ave NE- WPA imputed vehicle ownership 22%

Census Tract 52

No Vehicle Available - 1 person households = 31%

Average vehicles per 1 person households = 0.69

800 NE 42nd St - WPA imputed vehicle ownership 38%%

Census Tract 53.01

No Vehicle Available - 1 person households = 72%

Average vehicles per 1 person households = 0.43

4750 16th Ave NE - WPA imputed vehicle ownership 35%

John Shaw, in his testimony, generally confirmed that 4 of the 5 Census Tracts in the University District have substantially higher levels of “no vehicle available – 1 person households” than the census district where the project is located. [Recording Day 1 (3 of 4) 1:40:13 to 1:42:59]

- vi. Data from **Census Tract 36** which includes the site of the proposal provides a more representative basis for projected residential parking demand for this project based on the following:

No Vehicle Available - 1 person households = 30%*

Average vehicles owned (including no vehicle households) was 1.64 per household.

The average was 0.78 vehicles per household.

* The Census indicated that there were 397 of 1,906 renter occupied units in the tract with no vehicles available. The Seattle Housing Authority Greenlake Plaza provides 150 low-income and retirement units with no parking and demographic conditions favoring

lack of vehicle ownership. Excluding these unit leads to 247 remaining no vehicle households, or 12% of the census tract. See Exhibit 27, Attachment C.

- vii. Data provided by the Applicant Chris Gurdjian and read into the record provides similar results:
 - a. Buildings on Capital Hill (Mad Flats – 1523 E Madison and Jupiter – 155 17th Ave) and Lower Queen Anne (Minnie Flats – 101 Denny Way) are in areas with dense urban development, high levels of transit service and easy walking access to work and cultural activities in the neighborhood and downtown and have vehicle ownership rates of between 0.16 and 0.35
 - b. The Pladhus building in the Roosevelt District (838 NE 69th) had a vehicle ownership rate of 0.43 [Recording Day 2 (6 of 6) 28:40 to 29:20] – and is likely to be more representative of 417 NE 73rd Street given the similarity in location.
 - c. All of this data was gathered from rental applications and is likely to substantially under-report vehicle ownership because a substantial proportion of residents are not likely to report ownership in a situation where they are not registering vehicles for on-site parking.
- viii. The Traffic Report for 419 NE 71st Street [Exhibit 27] which is a few blocks from the proposal projects a parking demand from the residential units of 0.83 vehicles per unit (with a 20 percent reduction for proximity to light rail). This study based the projections upon the ITE “Parking Generation, 4th Edition” a nationally validated survey of parking demand. This study (unlike the unvalidated developer generated studies relied upon by Heath (and Popp)) indicates a reasonable rate of vehicle ownership for the immediate area that can reasonably be applied to the proposal.
- ix. The Traffic Report for 414 Ravenna Blvd [Exhibit 31] which is a few blocks from the proposal projects a parking demand from the residential units of 0.68 vehicles per unit. This study provides a reasonable rate of vehicle ownership for the immediate area that can reasonably be applied to the proposal.

Conclusion: The information above demonstrates with a preponderance of evidence that the 0.35 parking demand ratio predicted for the proposal is not supported by validated survey methodology, is not applicable to the specific conditions at its location, is not consistent with similar results for other projects in the immediate vicinity generated with validated methodology, is not consistent with census data. The parking minimum demand utilized for this project should be similar to the Census Tract average of 0.78 vehicles per household (for one-person households) and results in a projected demand of

about 35 spaces. (This compares with ITE estimated parking demand for residential apartments in an urban setting of 1.2 stalls per unit (average) for Low and Mid Rise Apartments.) The Hearing Examiner should remand the project to SDCI for revision of the SEPA Analysis for a projection of parking demand based on validated information.

- b. The Analysis/Decision (Exhibit 2, page 22) contains misleading and inaccurate information regarding Cumulative Impacts of the on-street parking utilization rate:

The traffic and parking analysis noted that the existing on-street parking utilization rate is approximately 75.5 percent within 800' of the site. The proposed development peak in demand during the evening would not be accommodated by the proposed 12 off-street parking spaces in the development, resulting in a spillover demand for on-street parking spaces. However, approximately 93 on-street parking spaces would be available to the residential tenants.

This conclusion is based on "cherry picking" information in the record not indicative of the true nature and extent of impacts.

- i. This conclusion is based on Exhibit 31 Heath 10/10/17 which includes a 10 pm parking availability survey, but does not address cumulative demand. This ignores the conclusions in the record for parking surveys of 7pm and 8pm (Exhibit 25 - Heath 3/28/2016) which provides the following conclusion for the time period of 7/8 pm:

Upon completing the "Block Front Plan Data Sheet" for all applicable blocks and the "Parking Utilization Summary Sheet", what was found was a parking utilization rate of 99.4 percent. Based on findings, all studied areas are at max utilization. It is anticipated that weekend utilization would also be at max capacity. [emphasis added]

This conclusion was for just immediate parking availability, not parking with additional cumulative demand from other projects. It is inaccurate and misleading to base the analysis only on the 10pm time period when the 7/8 pm time period provides a reasonable worst case analysis of impacts on the larger affected community, including retail/restaurant uses in the vicinity As Richard Settle describes in "Washington State Environmental Policy Act: A Legal and Policy Analysis"

While the SEPA Rules do not require or recommend it, the courts have endorsed a "worst case" analysis for such proposals.

https://books.google.com/books/about/Washington_State_Environmental_Policy_Act.html?id=2leGWkvM2HEC

Basing the conclusion of no-impacts on a time period of reduced impact while excluding a time period of greater impact renders the analysis and conclusions invalid.

- ii. The cumulative utilization rate of on-street parking during the 7pm time period is substantially worse than analyzed and is closer to 140%.
 1. The Rosita's Restaurant parking on the proposed site will be displaced adding 19 spaces to demand. (Ex. 25) Although there are permit conditions on Rosita's that require parking, which may be met by a cooperative agreement with the nearby PCC/Green Lake Village site, it is likely that patrons will first utilize any available on-street parking prior to paying for garage parking.
 2. Heath (Exhibit 31) provided analysis of 414 Ravenna with a parking demand of 43, based on 0.68 spaces per unit, and supply of 15 with spillover of 28, however this was not added to the Cumulative Impact total.
 3. The analysis does not include the demand of the Great Hall which was not utilized during the time period of the survey. This facility has a Fire Code Capacity of 386. At reasonable auto occupancy of 3 persons per car, the maximum parking demand would be 128. According to the building manager, events average 150 attendees resulting in a parking demand of 50 plus a catering truck and 3 spaces for catering staff, for a total equivalent of 55. (1/5/17 Appeal Stmt)
 4. The demand for on-street parking relating to Green Lake Park has not been included which can be considerable during the summer when daylight hours extend beyond 7pm. (1/5/17 Appeal Stmt.)
 5. The reasonable potential cumulative parking impact (excluding the park) is

Proposed project 45 units, demand 0.7, 14 spaces, spillover	= 21
Displaced 19 parking spaces used by Rositas of site	= 19
420 NE 73rd Street 6 units, demand 1, 3 spaces, spillover (Ex 25)	= 3
515 NE 73 rd , 2 units, 0 parking spaces, spillover (EX 25)	= 2
414 Ravenna, 63 units, demand 1, 15 spaces, spillover (Ex 31)	= 28
Great Hall, average occupancy 150, 0 spaces, spillover	= 55
Total Parking Spillover	= 128
Existing Spaces	= 332
Existing Demand 7/8pm	= 330
Cumulative Project Demand	= 128
Cumulative Demand	= 458
Available Spaces – Shortage of spaces	= minus 126
Parking Utilization (without park demand)	= 138%

The Analysis/Decision (Exhibit 2) conclusion that approximately 93 on-street parking spaces would be available at 10pm does not address the full range of cumulative impacts at the 7/8pm peak hours on the full range of retail, restaurant, institutional, and recreational uses and renders the analysis and conclusions invalid.

- iii. This analysis also contained errors that inflated local legal street parking capacity and reduced the impact of spillover parking for the project. The southwest corner of NE 73rd St at 5th Ave NE was identified in the study as being legal parking for two cars where the actual amount of legal parking: zero (Exhibit 15). The segment of 73rd at Woodlawn was identified as parking for four cars whereas a portion is reserved for two ZIP cars – (Exhibit 16).
- iv. The city specified survey of on-street spaces within 800' of the project site. This is contrary to the normal 400 foot walking distance specified in TIP 117. This inflates the parking supply available both to residents of the proposal and reduces impacts.
- v. Likely adverse impacts of exceeding on-street parking supply not considered include:
 - 1. The practical capacity for on-street parking is typically defined at 85% utilization, which is greatly exceeded. At this level of utilization, the next arriving customer or visitor is not able to quickly find a reasonably convenient parking space. Drivers will experience delays and frustration while searching for a parking space, as well as contribute to area traffic congestion while circling the block looking for parking. Drivers are more likely to park illegally at hydrants and loading zones, block driveways and poach private parking spaces.
 - 2. The current and projected future lack of parking deprives existing residents of normal expected activities such as the enjoyment of visitors which will be made worse. The testimony of Sydney Dobson documented the hardship of attracting visitors at 10am on Monday mornings for normal social activities due to the lack of availability of visitor parking. [Recording Day 2 (1 of 6) 39:55 to 40:30]
 - 3. The overutilization of on-street parking will have a disastrous effect on local businesses in the area. On-street parking is the only supply for many of the small businesses in the area. The proposal will produce parking spillover such that it will deprive businesses of their existing on-street parking supply. Without adequate parking these businesses would not be successful. The Greenlake Neighborhood Plan specifically recognized the importance of parking to businesses on page 17

<https://www.seattle.gov/Documents/Departments/Neighborhoods/Planning/Plan/Greenlake-plan.pdf>

It is tough to find a parking space, particularly around commercial centers and the park. Many households live in older residences with parking for only one car, or none at all. So they must park their extra cars on the street. However, residents must compete for parking with other drivers patronizing the park or local businesses. While the lack of parking is an annoyance to many residents, it can threaten the economic survival of many businesses. [emphasis added]

vi. Due to adverse impact, many of the goals of the Comprehensive Plan and the zoning for the area would be compromised:

1. The purpose of the NC2 zoning would not be achieved, pursuant to SMC

23.34.076:

Neighborhood Commercial 2 (NC2) zones, function and locational criteria. Function. To support or encourage a pedestrian-oriented shopping area that provides a full range of household and personal goods and services, including convenience and specialty goods, to the surrounding neighborhoods, and that accommodates other uses that are compatible with the retail character of the area such as housing or offices... [emphasis added]

To the extent that it displaces parking needed for the shopping area, the proposed residential use is not compatible with the zoning purpose.

2. The goals of Greenlake as a Residential urban villages would not be enabled:

(<https://www.seattle.gov/Documents/Departments/Neighborhoods/Planning/Plan/Greenlake-plan.pdf>):

- a. Provide a focus of goods and services for residents and surrounding communities but may not provide a concentration of employment"
- b. Maintain and enhance the neighbor-friendly character and vitality of neighborhood commercial areas.

To the extent that it displaces parking needed for the commercial area, the proposed residential use is not compatible with the plan.

Conclusion: The information above demonstrates with a preponderance of evidence that the analysis of cumulative impacts and the conclusion that approximately 93 on-street parking spaces would be available to the residential tenants is inaccurate because it covers only the 10 pm time period and at the 7/8 pm time period the parking utilization (or overutilization) is between 97% and 138%, depending on assumptions and adversely affects the range of uses in the vicinity (not

including Green Lake Park recreational demand.) This overutilization threatens the economic survival of many businesses, it is contrary to the purpose of the zoning and the neighborhood plan. It also will contribute to traffic congestion and illegal parking and deprive residents of normal enjoyment of visitors.

Requested Relief includes:

- a. At the least, remand the to SDCI for revision of the SEPA Analysis using validated parking demand projections, accurate inclusion of recreational parking demand from Green Lake during the summer peak, and analysis of adverse impacts on businesses and other uses.
- b. Preferably, the Hearing Examiner should enter a finding that cumulative impacts on parking are significant when analyzed in the required context of the entire affected community and the adverse cumulative impacts on the long term viability of the residential, business, recreation and other uses in the community and require SDCI to prepare an Environmental Impact Statement focused on analysis of parking impacts within the Green Lake Urban Village assessing the probable impacts of long term development trends to include all likely redevelopment over a 5 to 10 year period, based on validated parking demand surveys of representative populations in the area, and assessing. Since the Hearing Examiner has determined in the Order on Motion to Dismiss that reasonable mitigation is precluded by SMC 25.05.675.M.2. preparation of an EIS would provide the additional authority to deny this and other projects pursuant to 25.05.660.A.6 if cumulative impacts are found to be significant and if the legislative preclusion of mitigation results in barring reasonable mitigation measures.

RESPECTFULLY SUBMITTED: May 22, 2017

SIGNATURE



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Two exhibits submitted by additional email

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May 22, 2017