

**BEFORE THE HEARING EXAMINER
City of Seattle**

In the Matter of the Appeal of	)	Hearing Examiner File:
)	
Safe and Affordable Seattle	)	MUP-17-037 (CU,W)
)	
of a decision issued by the Director, Seattle	)	Department reference:
Department of Construction and Inspections,	)	Project 3029047
regarding a Temporary Use Permit and SEPA)	
determination for property at 336 W Bertona	)	REPLY TO APPELLANT'S RESPONSE
Street	)	AND COUNTERMOTION TO SDCI
	)	MOTION TO DISMISS

The Seattle Department of Construction and Inspections (SDCI) stands by its request that, pursuant to Hearing Examiner Rules (HER) 2.16 and 3.02 (c), the Hearing Examiner dismiss the appeal by Safe and Affordable Seattle and Elizabeth Campbell in the above-captioned matter. The Hearing Examiner has no jurisdiction to hold a hearing on a Master Use Permit (MUP) application that has been withdrawn and cancelled by SDCI.

To provide further documentation of the cancellation of the subject MUP, a declaration of William Mills with accompanying printouts from SDCI's Hansen permit tracking system is attached to this reply. No further evidence of project cancellation is necessary to support the SDCI motion to dismiss. A proposed Order on Motion to Dismiss Appeal also accompanies this reply.

It is unnecessary to respond to the numerous unsubstantiated assertions made by appellant in her response, as the entire argument is beyond the scope of the Hearing Examiner's jurisdiction. SDCI notes only that Mr. Mills is the designated SDCI representative on this appeal. The business practice of the City is that the planner assigned to a particular MUP review becomes the SDCI representative on appeal without a formal designation by the Director of SDCI or requirement to file a notice of appearance. The Hearing Examiner Rules and Land Use Code are entirely silent on the need for any formal designation of an SDCI representative in the MUP appeal process. Regardless, the cancellation of Project 3029047 is an indisputable fact.

Entered this 7th day of December 2017.



William K. Mills, Land Use Planner Supervisor
SDCI

cc. Elizabeth Campbell, for appellant Safe and Affordable Seattle
Gib Dammann, for applicant Seattle Pacific University

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City of Seattle**

In the Matter of the Appeal of)	Hearing Examiner File:
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Safe and Affordable Seattle)	MUP-17-037 (CU,W)
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of a decision issued by the Director, Seattle)	Department reference:
Department of Construction and Inspections,)	Project 3029047
regarding a Temporary Use Permit and SEPA)	
determination for property at 336 W Bertona	)	ORDER ON MOTION TO DISMISS
Street	)	APPEAL

The subject property is zoned NC2-40 and within the Major Institution Overlay zone for Seattle Pacific University (SPU). The property is within the SPU campus and is developed with surface parking and an institutional building. The project applicant, Seattle Pacific University, applied for Master Use Permit (MUP) including a temporary use permit for up to 6 months for a transitional encampment for homeless persons (“Tent City 3”) and environmental (SEPA) review. The Director of the Seattle Department of Construction and Inspections (SDCI) issued a decision approving the temporary use and issuing a Determination of Nonsignificance (DNS) under SEPA. The SDCI decision was appealed by Safe and Affordable Seattle. SDCI moved to dismiss the appeal on the basis that it had withdrawn the MUP decision and cancelled the MUP application.

SPU, a private organization, elected to enter into a lease agreement with a religious organization, First Free Methodist Church, giving the religious organization control of the property on which the transitional encampment for homeless persons is proposed to be located. Under Seattle Municipal Code (SMC) Section 23.42.054, no permit or other approval from SDCI is required for transitional encampments locating on property owned or controlled by a religious organization. Once informed of the decision by SPU requesting SDCI to withdraw its MUP application, received by email to SDCI from SPU representatives, SDCI proceeded to withdraw and cancel the MUP application.

Because SDCI has withdrawn and cancelled the MUP application, Hearing Examiner Rule (HER) 3.02 (c) requires the Examiner to dismiss the appeal by Safe and Affordable Seattle without a hearing. In that situation, the appeal becomes moot.

Because the Hearing Examiner lacks jurisdiction over a cancelled application, the appeals must be dismissed. The appeal is therefore **DISMISSED**, and no hearing is required.

Entered this ___ day of December 2017.

Hearing Examiner
Office of Hearing Examiner
P.O. Box 94729
Seattle, Washington 98124-4729
Phone: 206-684-0521
FAX: 206-684-0536

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of	)	Hearing Examiner File:
Safe and Affordable Seattle	)	MUP-17-037 (CU, W)
of a decision issued by the Director, Seattle	)	Department reference:
Department of Construction and Inspections,	)	Project 3029047
regarding a Temporary Use Permit and SEPA	)	Declaration of William K. Mills
determination for property at 336 W Bertona)	
Street)	

WILLIAM K. MILLS declares as follows:

I am a Land Use Planner Supervisor with the City of Seattle Department of Construction and Inspections (SDCI). I have personal knowledge of the facts in this declaration and am competent to testify to those facts.

I am the SDCI staff person assigned to the review of Project 3029047 and drafted the Master Use Permit (MUP) decision in this matter. My employment duties at DPD include, among other things, review of MUP applications, zoning review of both MUP and building permit applications, drafting of formal land use code interpretations, drafting of legislation, and drafting of letters and other correspondence. I have been an employee of SDCI and its predecessor agencies since 1990.

In my assigned capacity as the reviewer for project 3029047, I received an email from Steve Gillespie, a representative of the project applicant, requesting that the project be cancelled. I noted that Gib Dammann, the applicant's contact for the project, was copied on this email. A printout of the email exchange is attached.

In response to the applicant's request, I asked Susan Putnam, Manager of SDCI's Public Resource Center, to cancel the subject MUP application. I further observed Ms. Putnam make the appropriate entries in SDCI's Hansen permit tracking system. Her work is reflected in two printouts from Hansen attached to this declaration. The first printout, a one-page "basic report," shows the cancellation under "comments" near the bottom of the page. The second printout, a seven-page "information report," shows the cancellation on page 4 under "milestone events" in the middle of the page and further shows it at the bottom of page 6.

Executed at Seattle, Washington this 7th day of December 2017.



William K. Mills
Land Use Planner Supervisor, SDCI

cc. Elizabeth Campbell, for appellant Safe and Affordable Seattle
Gib Dammann, for applicant Seattle Pacific University

SDCI
700 5th Ave Ste 2000, PO Box 34019
Seattle, WA 98124-4019
(206) 684 -8600

DISCRETIONARY LAND USE ACTION

Report Date 12/07/2017 11:17 AM

Submitted By

Page 1

A/P # 3029047 Type LAND USE Issued Date 11/02/2017 Issued By GONZALR

Address 336 W BERTONA ST
SEATTLE WA

Location PARKING LOT. ADDR CHANGED ON A/P FM 350 W BERTONA ST. PROJECT EXTENDS TO THE PARKING LOT NORTH OF SITE ON W
NICKERSON. SLM 9/22/2016

Owner DAVE CHURCH

Phone (206)281-2000 x

Address 3307 3RD AVE W

SEATTLE WA 98119

Country Foreign

Applicant's Full Name GIB DAMMANN

Day Phone (206)919-3546

Fax

Address PO BOX 406
VASHON WA
98070

Pager

Fees

PASV - MINIMUM	157.50
LAND USE - ADDITIONAL HOURS	315.00
NOTICE - CITY NEWS DECISION PUBLICATION	204.00
NOTICE - LUIB (DECISION)	210.00
NOTICE - MAILED	210.00
NOTICE - POSTING	118.00
LAND USE - MINIMUM	1788.00
INTAKE APPOINTMENT FOR LAND USE REVIEWS	210.00
NOTICE - LUIB	210.00
Total Paid	3422.50

Declared Value 20000.00

Type of Work FULL C FULL REVIEW (COMPLEX)

Calculated Value 0.00

Square Footage 0.00

Actual Value 0.00

Comments

CANCELLED - Land Use Application to allow a transitional encampment (Tent City 3) for up to 100 people on the Seattle Pacific University Campus parking lots for up to 6 months.

Signature of Owner (If Owner Builder)

Date

Signature of Contractor or Authorized Agent

Date

Report Date 12/07/2017 11:27 AM

Submitted By

Page 1

A/P # 3029047 DISCRETIONARY LAND USE ACTION

Review Activities Review # Comments	Review Type	#	Status	Waived	Issued	Started	Completed	Comp By
554827 Approved WAC 20170962 Jeb	WATER	1	Approved	<input type="checkbox"/>	08/04/2017 08:42	08/04/2017 09:39	09/01/2017 00:00	BARRETMW
569850	SUPERVISOR	1	Approved	<input type="checkbox"/>	10/27/2017 13:50	10/27/2017 13:50	10/27/2017 13:52	MILLS
573446	ADDR FINAL	1	Approved	<input type="checkbox"/>	11/17/2017 08:15	11/17/2017 08:18	11/17/2017 11:46	MONTGOME
570625	FINAL	1	Incomplete	<input type="checkbox"/>	11/02/2017 07:36	11/17/2017 08:18		
564080	LAND USE	1	Approved	<input type="checkbox"/>	09/26/2017 17:03	10/02/2017 13:57	10/27/2017 13:50	MILLS
564081	ZONING	1	Approved	<input type="checkbox"/>	09/26/2017 17:03	09/29/2017 00:00	10/27/2017 13:05	SWALLOW
564082 Encampment site. Waived address review. Shown correctly on plans. slm	ADDRESSING	1	Incomplete	<input checked="" type="checkbox"/>	09/26/2017 17:03	09/26/2017 17:04		

Activity Review Details

Detail HEARINGS	Modified By MINNERD	Modified Date/Time 11/27/2017 07:35
Comments No Comments		
Hearings		
Hearings		

Hearings Appeal Received Hearing Decision	Appealed By Comments	Hearing Type	Hearing Body	Hearing Date	Decision Date
11/16/2017	NON APPLICANT MUP-17-037 (SAFE & AFFORDABLE SEATTLE)	APPEAL	EXAMINER		

Detail LAND USE CONDITIONS	Modified By MILLS	Modified Date/Time 11/01/2017 10:09
Comments No Comments		

Report Date 12/07/2017 11:27 AM

Submitted By

Page 2

Land Use Conditions

Land Use Conditions

Land Use Conditions ID#	Condition Category	Verification Date	Text Verification By Modified By	Except/Modification Modify Date	A/P Type Except/Modification Date
1	FOR LIFE				
	COMPLAINT				
			MILLS	11/01/2017	
2	FOR LIFE				
	COMPLAINT				
			MILLS	11/01/2017	
3	FOR LIFE				
	COMPLAINT				
			MILLS	11/01/2017	
4	FOR LIFE				
	COMPLAINT				
			MILLS	11/01/2017	
5	FOR LIFE				
	COMPLAINT				
			MILLS	11/01/2017	
Detail LAND USE NOTICE Comments No Comments Modified By GONZALR Modified Date/Time 11/17/2017 11:19					

Report Date 12/07/2017 11:27 AM

Submitted By

Page 3

Land Use Notice

Land Use Public Notice Actions

Design Review Board District⁰

Land Use Public Notice Actions Public Notice Type Additional Action By Meeting Place Other Types of Notice	Start Date/Notice Date Sign Type	End Date Other LU Action Type Mailed Notice Comments	Additional Action Date of Meeting City News Publication	Additional Action Date Neighborhood Newspaper Add Date
APPL temp lu(To allow a temporary encampment for up to six months.), sepa(checklist); crv-plnr	10/12/2017 ES	10/25/2017 Y 2 signs.	 N	 N
DECSN temp lu(To allow a temporary encampment for up to six months.)cg, sepa(10/25/17)/g; wkm; fees no	11/02/2017	11/16/2017 N	 Y	09/22/2017 17:19 N
HEARING				10/27/2017 14:24
Detail MILESTONE EVENTS Comments No Comments		Modified By PUTNAM	11/17/2017 11:55	Modified Date/Time 11/22/2017 11:55

Report Date 12/07/2017 11:27 AM

Submitted By

Page 4

Milestone Events

Milestone Events

Application Complete 10/06/2017 Decision Published 11/02/2017 Permit Issued

Milestone Events Milestone Type	Date	Milestone By	Comments
LU SCR COM	09/07/2017	MONTGOME	Sent correction. See correspondence in HWT.
LU SCR COM	09/22/2017	MONTGOME	Send notice, sign info when fees paid
SIGN SENT	09/26/2017	MONTGOME	
NOTICE APR	09/26/2017	MONTGOME	
LU SCR APR	09/26/2017	MONTGOME	
SIGN CONFR	10/06/2017	GALAROSA	
PUBLISH	11/02/2017	GONZALR	
CANCELLED	11/22/2017	PUTNAM	Permit not needed as property is under control of First Free Methodist Church

Detail PLAN/DOCUMENT TRACKING Modified By MONTGOME Modified Date/Time 09/07/2017 10:33

Comments
 No Comments

Plan/Doc Tracking

Plan and Document Tracking

Plan and Document Tracking C TO: Date and Time Applicant Comments Added By	Document Type	ID#	Vol	Location	Employee ID
Added Date	Modified By	Modified Date			
09/07/2017 10:33	*PLAN SET*	1		EPR	
MONTGOME					09/07/2017 10:33

Report Date 12/07/2017 11:27 AM

Submitted By

Page 5

Plan and Document Tracking

C TO: Date and Time	Document Type	ID#	Vol	Location	Employee ID
Applicant Comments Added By	Added Date	Modified By	Modified Date		

Detail REPORT TRACKING	Modified By MILLS	Modified Date/Time 10/27/2017 13:52
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Comments

No Comments

Report Tracking**Report Tracking**

Report Tracking

Report Type Assigned To	Due Date Reassigned To	Completed Date Comments	Revised Due Date	Revised By Report Closed	Revision Date Closed By	Closed Date
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LU DECISION MILLS	11/17/2017	10/27/2017				
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Detail REVIEW SELECTION	Modified By MONTGOME	Modified Date/Time 09/26/2017 17:03
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Comments

No Comments

Review Selection**Review selection**

Review Selection Review Type Comments Determined By	Timing Review #	Pre Assignment Added By	IP Estimate Add Date
---	-----------------	-------------------------	----------------------

ADDRESSING	ADD AT RVW	MONTGOME	0.0
------------	------------	----------	-----

	564082	AUTO_RVWS	09/22/2017 17:20
--	--------	-----------	------------------

ECA SLIDE	NOT REQD		0.0
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No ECA on project site

	0	MONTGOME	09/26/2017 17:02
--	---	----------	------------------

LAND USE	ADD AT RVW	VASQUEZ	4.0
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Added for Colin - SPU Planner.

	564080	MONTGOME	08/31/2017 13:42
--	--------	----------	------------------

WATER	ADD NOW	SPUWATER	0.0
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	554827	BIGELOJ	08/04/2017 08:42
--	--------	---------	------------------

ZONING	ADD AT RVW		3.0
--------	------------	--	-----

	564081	AUTO_RVWS	09/22/2017 17:20
--	--------	-----------	------------------

Detail USE AND HOUSING UNITS	Modified By SWALLOW	Modified Date/Time 10/27/2017 13:16
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Comments

No Comments

Report Date 12/07/2017 11:27 AM

Submitted By

Page 6

Use and Housing

Existing Uses This Permit

Approved Uses This Permit

Housing Units This Permit

Total Housing Units-Site 0
 # of Curb Cuts This Permit 0
 Green Factor Required N
 ADU Parking Waiver Granted

Existing Uses This Permit Location	Existing Uses	Sq. Ft.	Comments
	INSTITUTION	0	Seattle Pacific University

Approved Uses This Permit Location	Approved Uses	Sq. Ft.	Comments
	INSTITUTION	0	

Housing Units This Permit Type	Location	Units Removed	Units Added	Number of Sleeping Rms	Comments
NONE		0	0	0	

Template Type	A/P #	A/P Type	Status	Stage
No children exist for this project				

Employee ID	Last	First	MI	Comments
No Employee Entries				

Log Action	Description	Entered By	Start	Stop	Hours
STOP	A/P STATUS STOP WORK From ACTIVE To STOP WORK - CANCELLED	PUTNAM	11/22/2017 11:58		0.00
REINST	A/P STATUS REINSTATE From STOP WORK To ACTIVE -	PUTNAM	11/22/2017 11:57		0.00
STOP	A/P STATUS STOP WORK From ACTIVE To STOP WORK - CANCELLED	PUTNAM	11/22/2017 11:57		0.00

700 5th Ave Ste 2000, PO Box 34019
Seattle, WA 98124-4019
(206) 684 -8600

Report Date 12/07/2017 11:27 AM

Submitted By

Page 7

Log Action Comments	Description	Entered By	Start	Stop	Hours
---------------------	-------------	------------	-------	------	-------

E-MAIL no fees owing for publication	ELECTRONIC MAIL	HERBAUM	10/31/2017 13:46		0.00
---	-----------------	---------	------------------	--	------

Mills, William

From: Mills, William
Sent: Wednesday, November 22, 2017 11:25 AM
To: 'Steve Gillespie'
Cc: Vasquez, Colin; Downs, Patrick; Church, Dave (dchurch@spu.edu); Gib Dammann (gibd@comcast.net); Torgelson, Nathan; Putnam, Sue
Subject: RE: Tent City 3

Hello Steve –

SDCI reviewed your request that the specific terms of the lease agreement remain private. SDCI agrees that your clients, based on their representation that Seattle Pacific University has entered into a lease of property to First Free Methodist Church, have demonstrated that the Tent City 3 encampment will be located on a site controlled by a religious organization. Together with the plans that you have provided to SDCI in your November 21 email, SDCI agrees that SMC 23.42.054 applies to the Tent City 3 encampment.

Because the encampment is authorized by SMC 23.42.054, SDCI will cancel application 3029047 and file a motion with the Hearing Examiner to dismiss the appeal filed by Elizabeth Campbell on the basis that the appeal is moot when there is no longer a project to appeal.



Please let me know if you have any questions about this matter.

Sincerely,

Bill Mills

Land Use Planner Supervisor

Seattle Department of Construction and Inspections

P.O. Box 34019, Seattle, WA 98124-4019

P: 206.684.8738 | F: 206.233.7902 | william.mills@seattle.gov

As stewards and regulators of land and buildings, we preserve and enhance the equity, livability, safety and health in our communities.

From: Steve Gillespie [mailto:steve.gillespie@foster.com]

Sent: Tuesday, November 21, 2017 4:44 PM

To: Mills, William <William.Mills@seattle.gov>

Cc: Vasquez, Colin <Colin.Vasquez@seattle.gov>; Downs, Patrick <Patrick.Downs@seattle.gov>; Church, Dave (dchurch@spu.edu) <dchurch@spu.edu>; Gib Dammann (gibd@comcast.net) <gibd@comcast.net>

Subject: RE: Tent City 3

Bill-

Thanks for the note. As I mentioned, Seattle Pacific University and the First Free Methodist Church entered a lease agreement on Saturday, November 18, 2017. Although you requested a copy of the lease agreement itself, the lease is a private real estate transaction and the signatories would prefer to keep the specific terms of their agreement private. As the

University's lawyer, I can represent that in the lease, the University ceded to the Church control of the site of the temporary encampment for the duration of the encampment.

The site plans you requested are attached. The property is "controlled by a religious organization," in the language of SMC 23.42.054, and between that fact and the attached site plans, we believe the requirements of that provision are satisfied. The parties to the lease, as well as SHARE/WHEEL, which operates Tent City 3, intend for Tent City 3 to operate in accordance with Code.

Thanks again, and please let me know if the City needs anything else.

Steve

Steve Gillespie | FOSTER PEPPER PLLC | D: 206-447-5942 | C: 206-446-6784

From: Mills, William [<mailto:William.Mills@seattle.gov>]
Sent: Tuesday, November 21, 2017 10:14 AM
To: Steve Gillespie
Cc: Vasquez, Colin; Downs, Patrick; Church, Dave (dchurch@spu.edu); 'Gib Damman'
Subject: RE: Tent City 3

Hello Steve –

Thank you for your e-mail of yesterday afternoon concerning the Tent City 3 encampment at Seattle Pacific University. Under Seattle Municipal Code Section 23.42.054.B.7, the operator of an encampment that is accessory to a use on property owned or controlled by a religious organization is required to file a plan with SDCI showing the arrangement of the encampment. Please file that site plan by responding to this e-mail request. SDCI also requests that you provide us with a copy of the lease between the First Free Methodist Church and the University.

Once the above information is provided to SDCI, then SDCI concurs that the requirements of Section 23.42.054 will be satisfied, and no permit for the Tent City 3 encampment is required. SDCI will withdraw its MUP decision in Project 3029047 and file a motion to dismiss the appeal of that project filed on Friday, as the appeal will be moot.



Please let me know if you have any questions.

Sincerely,

Bill Mills
Land Use Planner Supervisor
Seattle Department of Construction and Inspections
P.O. Box 34019, Seattle, WA 98124-4019
P: 206.684.8738 | F: 206.233.7902 | william.mills@seattle.gov

As stewards and regulators of land and buildings, we preserve and enhance the equity, livability, safety and health in our communities.

From: Steve Gillespie [<mailto:steve.gillespie@foster.com>]
Sent: Monday, November 20, 2017 1:47 PM

To: Mills, William <William.Mills@seattle.gov>

Cc: Vasquez, Colin <Colin.Vasquez@seattle.gov>; Downs, Patrick <Patrick.Downs@seattle.gov>; Church, Dave (dchurch@spu.edu) <dchurch@spu.edu>; 'Gib Damman' <gibd@comcast.net>

Subject: Tent City 3

Bill-

Tent City 3 moved onto Seattle Pacific University's campus over the weekend. The University leased the encampment site to the First Free Methodist Church, giving the Church control over the property during Tent City 3's tenancy. The encampment is set up substantially in accord with the site plan the University had previously provided to the City in support of its permit application. As such, the University believes that the encampment is allowed of right under SMC 23.42.054, and no further process is required.

Please confirm that the City concurs with this conclusion. Thank you for your attention to this matter, and please don't hesitate to call if you have any questions.

Steve

Steve Gillespie | FOSTER PEPPER PLLC | D: 206-447-5942 | C: 206-446-6784

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

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)	
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of a decision issued by the Director, Seattle)	Department reference:
Department of Construction and Inspections,)	Project 3029047
regarding a Temporary Use Permit and SEPA)	
determination for property at 336 W Bertona)	Certificate of Service
Street)	

The undersigned certifies the following:

1. I am a Land Use Planner Supervisor at Seattle Department of Construction and Inspections (SDCI), representing SDCI in the above-entitled appeal proceeding; I am over the age of majority and am able to testify as to the matters stated herein;
2. On Thursday, December 7, 2017, I delivered a Reply to appellant's response in this matter, with attached declaration of William Mills, and a proposed Order of Dismissal, by e-mail only, to the following named parties:

Via E-Mail Only

Elizabeth Campbell,
for appellant Safe and Affordable Seattle
4027 21st Avenue West
Seattle, WA 98199
Ph: (206) 769-8459
E-mail: neighborhoodwarrior@gmail.com

Via E-Mail Only

Gib Dammann, for applicant Seattle Pacific
University
PO Box 406
Vashon, WA 98070
Ph: (206) 919-3546
E-mail: gibd@comcast.net

Both e-mail copy and hand delivered hard copy are provided to the Office of Hearing Examiner.

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

DATED this 7th day of December 2017.



William K. Mills, Land Use Planner Supervisor
SDCI

cc. Elizabeth Campbell, for appellant
Gib Dammann, for applicant