



City of Seattle

Gregory J. Nickels, Mayor

**Department of Planning and Development**

D.M. Sugimura, Director

**CITY OF SEATTLE  
ANALYSIS AND DECISION OF THE DIRECTOR OF  
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

**Application Number:** 3005162 and 3005087

**Applicant Name:** Randall Spaan

**Address of Proposal:** 13034 39<sup>th</sup> Ave NE

**SUMMARY OF PROPOSED ACTION**

3005162 - Land Use Application to allow a clustered housing development of four single family residences in an environmentally critical area. Existing structures to be demolished.

3005087 - Land Use Application to subdivide one parcel into four unit lots in an environmentally critical area. This subdivision of property is only for the purpose of allowing sale or lease of the unit lots. Development standards will be applied to the original parcel and not to each of the new unit lots.

**Environmentally Critical Areas Administrative Conditional Use** – to include environmentally critical areas and buffers in calculating the maximum number of lots and units allowed on the parcel (SMC 25.09.260)

**SEPA** - Environmental Determination (SMC Chapter 25.05)

**Unit Lot Subdivision** - To create four unit lots (SMC 23.24)

**SEPA DETERMINATION:**  Exempt  DNS  EIS

DNS with conditions

DNS involving non-exempt grading or demolition or involving another agency with jurisdiction.

## **BACKGROUND DATA**

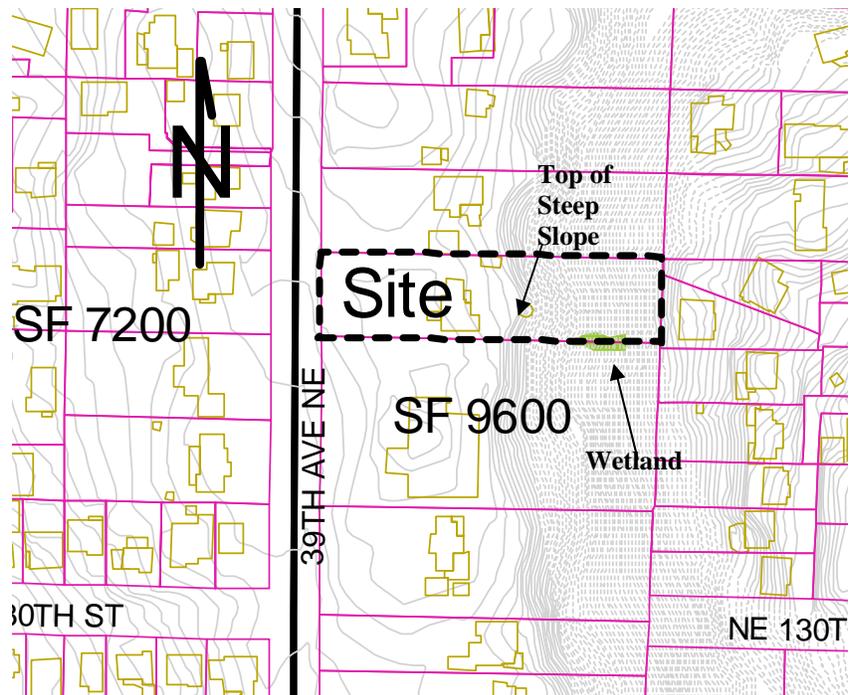
### **Site Description**

The site is located on 39<sup>th</sup> Ave NE between NE 130<sup>th</sup> St and NE 135<sup>th</sup> St in the northeastern area of the Cedar Park neighborhood. The property is described as Lot 9, Block 5 of Cedar Park Division No. 2. The site measures approximately 100' wide by 406' long (total lot area of 40,709 square feet). The site slopes slightly down to the east for the western portion of the lot, then drops sharply to the east in the eastern portion of the lot. The eastern portion of the lot contains steep slope, potential slide, and wetland environmentally critical areas. The wetland straddles the south property line, approximately half way down the slope. The lot to the south is the site of a known slide. The parcel is developed with a single family structure which was constructed in 1927. A detached garage, shed, and gazebo are also located on the site.

There are several mature trees and a large hedge located on the site. Trees are mostly located at the site perimeter and in the steep slope areas in the eastern portion of the lot. A hedge is located on the western property line facing the street.

### **Area Development**

The immediate surrounding area consists of single family residential development. The surrounding zoning consists entirely of Single Family Residential. The subject property is located in a Single Family Residential zone with a minimum lot size of 9,600 square feet. This zone continues to the north, east, and south. A Single Family Residential zone with a minimum lot size of 7,200 square feet is located immediately to the west. The nearest zoning change is Neighborhood Commercial (NC1-30) approximately 1,100 feet to the west.



Residential development in this area consist of detached single family residences one to two stories tall. Structures range from 1920's to recent architecture. Residences on the east side of 39<sup>th</sup> Ave NE are setback approximately 35' to 175' from the front property line at the street in order to take advantage of the view of Lake Washington to the east. Nearby lot sizes in this area are commonly much larger than the minimum required by the Land Use Code (average of 20,389 square feet in the 9,600 zones and average of 10,226 square feet in the 7,200 zone, as measured within 600 feet of the subject property).

The SF 9600 zone on this side of 39<sup>th</sup> Ave NE is also characterized by a steep slope ECA ridge running north to south, and bisecting the subject property. Many of the residences on the east side of 39<sup>th</sup> Ave NE are built at or near the top of this slope.

The immediate area includes paved streets with drainage ditches located at the shoulder. There are limited sidewalks and the nearest transit stop is located approximately 1200 feet to the west, at 35<sup>th</sup> Ave NE & NE 130<sup>th</sup> St.

### Description of Proposal

The applicant proposes to demolish the existing structures and build four single family residences with attached garages on the western portion of the lot. The applicant also proposes to unit lot subdivide these four properties. The applicant has received a limited steep slope exemption for grading work near the top of the steep slope ECA.

The proposed four residences would include two residences facing the street, and two located to the east of those. The structures range from 4,042 square feet to 4,662 square feet with attached 3-car garages. The two western residences would be located 20.48' from the front property line at 39<sup>th</sup> Ave NE. All structures would be located 5 feet from the north and south property lines, with a shared vehicular access easement between the western structures. Total proposed lot coverage is 21.6% for all structures.

Several trees are located on site, with most of the canopy located on the north and south property lines. Additional trees and shrubs are located in the steep slope areas. Approximately half of the trees on site would be removed, replaced with new trees and shrubs. None of the trees proposed for removal are located in the steep slope ECA. Additional native plants would be installed at the top of the steep slope.

According to the survey provided by the applicant, the total area of the subject property is 40,709 square feet. Under a traditional short plat (SMC 23.24), this is enough area for four new lots meeting the lot area standards of the SF-9600 zone. The applicant has chosen to apply for an Environmentally Critical Areas Administrative Conditional Use (SMC 25.09.260) and a Unit Lot Subdivision (SMC 23.24.045) to construct four houses on one "parent" lot. The unit lot subdivision establishes two unit lots that are smaller than the minimum lot size in the SF 9600 zone, while the other two proposed unit lots would exceed the minimum lot size. However, as a unit lot subdivision, the proposal meets the required yards and minimum lot size for the "parent lot."

### Public Comment

Notice of the proposal was issued on July 6, 2006. As a result of more than 50 requests from the public, a public meeting was held on September 6, 2006 (public notice for this meeting was issued on August 17, 2006). More than 200 comments were received in the form of petitions, letters, and signatures at the public meeting.

### Environmentally Critical Areas Regulations

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

General Requirements and standards are described in Section 25.09.060 of the ECA ordinance and include the recording of conditions of approval, the recording of the identified ECA areas in a permanent covenant with the property as well as specific construction methods and procedures. The proposal must also comply with the specific requirements for development in areas with landslide potential areas (Section 25.09.080), wetlands (Section 25.09.160), steep slopes (Section 25.09.180), and trees and vegetation (Section 25.09.320). All decisions subject to these standards are non-appealable Type I decisions made by the Director (or designee) of DPD.

SMC Section 25.09.260 makes provision for an Environmentally Critical Areas Conditional Use Permit (ECA ACU). The development must be located outside of the ECA areas, protect and improve existing habitat, and be compatible with the existing neighborhood. Relevant criteria are discussed below. ECA ACU decisions, Unit Lot Subdivision decisions, and SEPA determinations are Type II decisions, which are subject to the provisions of SMC 23.76 and are appealable to the City Hearing Examiner.

### ANALYSIS –

#### ENVIRONMENTALLY CRITICAL AREAS ADMINISTRATIVE CONDITIONAL USE

Section 23.42.042 of the Seattle Land Use Code authorizes review of conditional use permits according to the procedures set forth in Chapter 23.76, Procedures for Master Use Permits and Council Land Use Decisions. Section 25.09.260 of the ECA ordinance sets forth the review criteria for Administrative Conditional Use Permits [ACU] to create development with smaller than required lot sizes and yards, and/or more than one (1) dwelling unit per lot. Applicable review criteria and supporting analysis follows:

***SMC 25.09.260. Environmentally Critical Areas Administrative Conditional Use.***

***B. Standards. The Director may approve an administrative conditional use for smaller than required lot sizes and yards, and/or more than one (1) dwelling unit per lot if the applicant demonstrates that the proposal meets the following standards:***

***1. Environmental Impacts on Critical Areas.***

- a. No development is in a riparian corridor, shoreline habitat, shoreline habitat buffer, wetland, or wetland buffer.***

A Category IV wetland 898 square feet in size was discovered approximately 80' east of the top of the steep slope and was evaluated by the applicant and analyzed by DPD. Under SMC 25.09.160, Category IV wetlands less than 1,000 square feet do not require buffers. The applicant has been notified that while the City of Seattle may consider this to be a non-regulatory wetland, the US Army Corps of Engineers and Washington State Department of Ecology may regulate the wetland under the Federal Clean Water Act. It is the responsibility of the applicant to coordinate with these entities to meet other permitting requirements (DPD Wetland Determination 6/1/2007).

No development is proposed in a riparian corridor, shoreline habitat, shoreline habitat buffer, wetland, or wetland buffer. The proposal meets this criterion.

***b. No riparian management area, shoreline habitat buffer, or wetland buffer is reduced.***

The subject property does not include any riparian management area, shoreline habitat buffer, or wetland buffer. The proposal meets this criterion.

***c. No development is on a steep slope area or its buffer unless the property being divided is predominantly characterized by steep slope areas, or unless approved by the Director under Section 25.09.180.B2a, b or c.***

***1) The preference is to cluster units away from steep slope areas and buffers.***

The applicant received a limited steep slope exemption, which clarified the edge of the regulated steep slope and buffer. None of the proposed development (structures or excavation) would be located in the steep slope or buffer, as shown on the plans. The re-vegetation plan indicates planting of native plants at the top of the steep slope. All planting in the steep slope environmentally critical area shall be dug and installed using non-mechanized hand tools only, as conditioned below. The proposal meets this criterion, subject to the conditions listed below.

***2) The Director shall require clear and convincing evidence that the provisions of this subsection B are met when clustering units on steep slope areas and steep slope area buffers with these characteristics:***

- a) A wetland over fifteen hundred (1,500) square feet in size or a watercourse designated part of a riparian corridor;***  
***or***
- b) An undeveloped area over five (5) acres characterized by steep slopes; or***
- c) Areas designated by the Washington Department of Fish and Wildlife as urban natural open space habitat areas with significant tree cover providing valuable wildlife habitat.***

The proposal does not cluster the units on the steep slope or steep slope buffers. Furthermore, the proposed development does not include a wetland over 1,500 square feet in size, a watercourse, an undeveloped area over 5 acres in size characterized by steep slopes, or an area designated by WDFW as urban natural open space habitat. This criterion does not apply to the proposal.

***d. The proposal protects Washington State Department of Fish and Wildlife priority species and maintains wildlife habitat.***

No priority species have been determined to be at this site. The proposal includes clustering of the proposed structures and development on the western portion of the lot, away from the steep slope area. The western portion of the lot has been developed with structures and ornamentally landscaped areas, and contains limited wildlife habitat. The eastern portion of the lot is characterized by steep slopes and increased native vegetation, which provides opportunity for wildlife habitat. The steep slope areas will remain undisturbed during construction and will not include any tree removal. Additional native vegetation is proposed for the top of the steep slope. The proposal meets this criterion, subject to the conditions listed below.

- e. The open water area of a shoreline habitat, wetland or riparian corridor shall not be counted in determining the permitted number of lots.***

No open water areas are present in the 898 square foot wetland found on the south property line in the middle of the steep slope, per the wetland report provided by the applicant and reviewed by DPD (Del Moral & Associates, Location of Wetland Area: 13034 39<sup>th</sup> Ave NE, report dated April 23, 2007). The site does not contain any shoreline habitat or riparian corridor areas. The proposal meets this criterion.

- f. The proposal does not result in unmitigated negative environmental impacts, including drainage and water quality, erosion, and slope stability on the identified environmentally critical area and its buffer.***

All storm water runoff from impervious surfaces will be directed to the approved discharge point at 39<sup>th</sup> Ave NE through a tight-lined system. A drainage control plan that complies with the City's Storm Water, Grading and Drainage Control Code is required as a condition of approval of the proposal. The proposal meets this criterion, subject to the conditions listed below.

- g. The proposal promotes expansion, restoration or enhancement of the identified environmentally critical area and buffer.***

The applicant has proposed to plant native vegetation at the top of the steep slope area. Most of the vegetation would be planted uphill of the top of the steep slope, with a small amount planted downhill of the top of the steep slope. All vegetation at the top of the steep slope and downhill from the top of the steep slope shall be planted using non-mechanized hand tools. The proposal promotes restoration and enhancement of the identified environmentally critical area and buffer and therefore meets this criterion, subject to the conditions listed below.

## ***2. General Environmental Impacts and Site Characteristics.***

- a. The proposal keeps potential negative effects of the development on the undeveloped portion of the site to a minimum and preserves topographic features.***

The potential negative effects of the development on the undeveloped portion of the site have been kept to a minimum. The proposed grading is minimal and is proposed to occur in the non-steep slope areas of the site and an area that was granted a limited steep slope exemption (5/5/06). Potential negative effects have been minimized and conditioned through this review. The proposal meets this criterion, subject to the conditions listed below.

- b. The proposal retains and protects vegetation on designated nondisturbance areas, protects stands of mature trees, keeps tree removal to a minimum, removes noxious weeds and protects the visual continuity of vegetated areas and tree canopy.***

The proposal does not include any development in the ECA areas. These areas will be designated non-disturbance areas, as conditioned below.

There are 17 existing mature trees on site, 8 of which will be retained. Of the existing trees, a total of 126" of the tree caliper is from western Washington native trees. The applicant proposes to retain 86% of the existing native tree caliper, and plant additional native and non-native trees. None of the trees proposed for removal are located in the ECA steep slope areas. The total proposed native tree caliper including retention and replacement is 98%, or 123.5 native caliper inches. In order to meet this criterion, the proposed number of native trees and/or caliper of native trees must be increased to meet the original native tree caliper on site, as conditioned below.

Tree canopy is located predominantly along the north and south property lines and southwest corner of the site. A "stand" of trees is commonly defined as a cluster of trees of the same species. The subject property includes a variety of trees lining the perimeter of the site and trees interspersed in the steep slope areas, but no obvious stands of trees.

In addition to tree retention described above, the proposal includes planting native plants at the top of the steep slope and planting additional trees and shrubs on the upper portions of the site. Most of the existing tree canopy at the southwest corner and the north and south property lines will be retained, with additional trees and shrubs planted in those areas. ECA areas will be designated as nondisturbance areas on the final plans. The proposal meets this criterion, subject to the conditions listed below.

### ***3. Neighborhood Compatibility.***

- a. The total number of lots permitted on-site shall not be increased beyond that permitted by the underlying single-family zone.***

The subject property is 40,709 square feet in size and the zoning of SF 9600 requires minimum lot sizes of 9,600 square feet. The underlying single family zone permits four lots, which is the number of lots proposed for development and unit lot subdivision under this review. The proposal meets this criterion.

- b. Where dwelling units are proposed to be attached, they do not exceed the height, bulk and other applicable development standards of the Lowrise 1 (L-1) zone.***

There are no proposed attached dwelling units with this application. The criterion does not apply.

- c. *The development is reasonably compatible with and keeps the negative impact on the surrounding neighborhood to a minimum. This includes, but is not limited to, concerns such as neighborhood character, land use, design, height, bulk, scale, yards, pedestrian environment, and preservation of the tree canopy and other vegetation.*

*“Neighborhood” for the purpose of this analysis was defined as those R9600 zoned properties within 600’ of the subject property, as shown inside the dashed line on map Figure 1:*

Neighborhood Character:

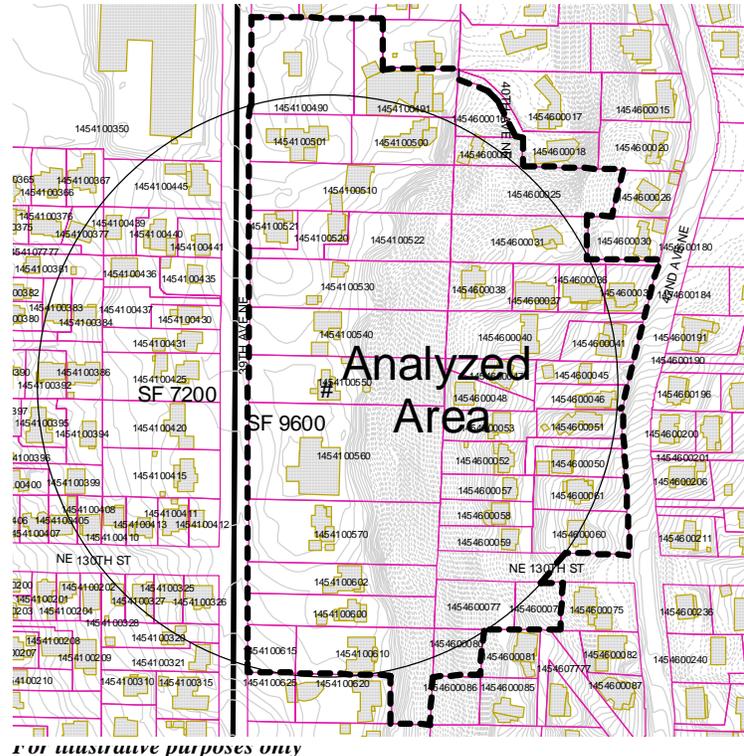
**Existing:** The neighborhood character of the surrounding area includes a range of sizes and styles of single family development with garages and mature trees and shrubs. Many lots in the higher elevations of the SF 9600 zone are developed to take advantage of views to the east. Residences have been built over time and include a large variety of sizes, heights, and architectural styles. Roads are paved with ditches on the shoulder and include neither curb gutter, nor sidewalk.

**Proposed:** The proposed development includes four single family houses 4,042 to 4,462 square feet in size with attached three car garages. Two proposed residences would face 39<sup>th</sup> Ave NE, with two additional residences located to the east. Several existing mature trees and shrubs will be retained, with additional trees and shrubs to be planted. Street frontage development would retain existing paving and ditches.

Land Use:

**Existing:** Existing land use in the immediate area is almost entirely single family detached residences with attached and detached garages.

**Proposed:** The proposed development consists of four single family detached residences with attached garages.



Design:

**Existing:** Existing development consists of a range of architectural single family styles, representing popular vernacular architecture from the early 20<sup>th</sup> century to recent styles. Examples of architectural styles in the immediate vicinity include modernism, split-level, craftsman bungalow, colonial revival, American foursquare, and Tudor.

**Proposed:** The four proposed houses represent two primary architectural design styles. The two proposed residences closest to the street are reminiscent of American foursquare architecture, with hipped roofs, front porches and bay windows at the street facing first story, and visual symmetry. Garages are located at the rear of these residences. The two residences closest to the steep slope are split level residences with a modern vernacular. Garages are located in front of these residences.

Height: Height limits (SMC 23.44.012) are maximum 30' plus 5' for a 3:12 minimum sloped roof (35' total height), per Land Use Code requirements.

**Existing:** Houses in the analyzed area range from one to three stories tall (approximately 15' to 35' tall) and include single story garages for one or more cars.

**Proposed:** The height of the western residences would be 25.07' with a 7.5' tall hipped roof (32.4' total height). The western residences would be two stories tall. The height of the eastern residences would be approximately 24' at the west façade and 30' tall at the east façade, due to a sloped grade near the top of the steep slope ECA. The roof would be 3' to 7' tall with front and side gables and hipped structures (35' total maximum building height). These structures would be two stories tall with a daylight basement at the east façade.

Bulk and Scale: Bulk and scale is measured using a variety of methods, including lot size, size of structures, footprint, comparisons of structure to lot size, and modulation.

“*Gross Floor Area*” is a comparison of total structure size to lot size (note: not a code requirement)

“*Lot Coverage*” is a comparison of structure footprint to lot size (note: this is a code requirement)

“*Modulation*” is the amount of visual and/or physical breaks in a building façade. It is difficult to calculate average/median modulation of existing development in the area, but modulation can help to visually reduce the bulk and scale of proposed new development. Proposed modulation will be discussed below under the “proposed” heading.

	Lot size (square feet)	Structure size (square feet)	Gross Floor Area (%)	Structure footprint (square feet)	Lot Coverage (%)
Average existing	20,911	2,209	14	2,318	15
Median existing	12,467	2,255	14	2,105	13
Proposed	40,709	17,398	43	8,807 total (2,104 to 2,450 s.f. per house)	22
Requirement per Land Use Code	9,600	No maximum outside yards, coverage, etc.	N/A	14,248 for subject property	35

**Existing:** Generally speaking, existing development in the area is commonly developed less intensely than allowed by the zoning standards. The pattern of lots developed far below zoning requirements is likely due to the views to the east, the large sizes of the lots, and the age of most of the single family structures.

**Proposed:** The proposed development would be developed more intensely than most existing neighborhood development, but would be less developed than permitted under zoning standards, notwithstanding ECA development standards for steep slopes.

Proposed modulation: the western facades of the street-facing residences would be 30' wide as viewed from 39<sup>th</sup> Ave NE. The north and south walls would be 46' long, with a 16' deep deck and breezeway, and a 32' deep garage located to the east.

The proposed eastern residences would be located behind the western residences and would be less visible from the street. The north and south neighbors would have the most direct view of the eastern residences. The western facades of these residences would be 40' wide. The north and south walls would be approximately 48.5' long, with a 16' deep deck and a 19.75' deep garage located to the west. The eastern facades include an additional extension to the east, angled in to meet at a point on the east façade.

Yards: The Land Use Code includes the following yard requirements in SF 9600 zones (SMC 23.44.014):

- Front: 20' minimum
- Rear: 25' minimum
- Sides: 5' minimum

**Existing:** Many residences on the east side of 39<sup>th</sup> Ave NE include large front yards, with houses pushed to the edge of the steep slope area to maximize the view to the east. Yards on at the upper elevations of the analyzed area may commonly measure 100' or more. Side yards are often at or below minimum 5' requirement. For instance, there is a structure located approximately 3' north of the subject property's north property line. The subject

property currently includes a single family residence also located 5' from the south property line. Rear yards at the upper elevation are also larger than required, due to the presence of the steep slope to the east. Properties analyzed near the bottom of the slope appear to more closely reflect required minimum yards.

**Proposed:** The proposal is being analyzed as a Unit Lot Subdivision, which means that individual units may have smaller than required yards, but the parent lot as a whole must meet yard requirements. The proposed development parent lot includes a 20.48 foot front yard adjacent to 39<sup>th</sup> Ave NE, 5' side yards at the north and the south property lines, and a much larger than required rear yard at the east due to the presence of the steep slope. Although not required to meet Yard standards for Unit Lot Subdivisions, 33' would be provided between the eastern wall of the western garages and the western wall of the eastern residences.

*Pedestrian Environment:*

Existing: The existing pedestrian environment is limited, since there are few sidewalks in the area and none adjacent to the subject property. Paved or graveled shoulders are also rare, since drainage is collected in ditches on the sides of the street. Traffic volumes are relatively low and pedestrians share the paved street with vehicles.

Proposed: The proposed development will retain the existing pedestrian environment pattern of drainage ditches and limited sidewalks. No additional sidewalks are proposed.

*Preservation of Tree Canopy and Vegetation:*

Existing: Existing tree canopy is described in the response to SMC 25.09.260.B.2.b.

Proposed: Proposed planting of additional trees and vegetation is described in the response to SMC 25.09.260.B.2.b.

*Summary for SMC 25.09.260.B.3.c:*

The proposed residences either meet or are well under the required development standards. The proposed parent lot meets lot coverage and yard development standards. While the proposed residences have more floor area than the average house in the area, they have similar sized footprints and building heights as existing nearby residences.

If the subject property were developed with two single family lots Land Use Code requirements allowed by right, two new single family structures could easily exceed the height, bulk, and scale of the four proposed structures. The creation of four lots and four separate structures with open space in the center of the lot results in less height, bulk and scale than could be otherwise developed under Land Use Code requirements.

The proposed tree removal has been kept to a minimum, and the applicant has proposed planting additional trees and shrubs. Additional native tree caliper will be required, as conditioned below. The pedestrian environment would be consistent with existing neighborhood character.

The proposal is found to be reasonably compatible with and keeps the negative impact to a minimum regarding neighborhood character, land use, design, height, bulk, scale, yards, pedestrian environment, and preservation of tree canopy and vegetation, subject to the conditions listed below.

**C. Conditions.**

**1. In authorizing an administrative conditional use, the Director may mitigate adverse negative impacts by imposing requirements and conditions necessary to protect riparian corridors, wetlands and their buffers, shoreline habitats and their buffers, and steep slope areas and their buffers, and to protect other properties in the zone or vicinity in which the property is located.**

Conditions addressing the protection of steep slope areas and their buffers and other properties in the zone and vicinity are listed below. Conditions are associated with requirements in other sections of the Environmentally Critical Areas code (SMC 25.09) and are not exclusively applicable to the ECA ACU review.

**2. In addition to any conditions imposed under subsection 1, the following conditions apply to all administrative conditional uses approved under this subsection:**

**a. Replacement and establishment of native vegetation shall be required where it is not possible to save trees or vegetation.**

The proposal includes a planting plan with native vegetation in the proposed areas of tree and vegetation removal. Additional native vegetation will be placed at the top of the steep slope area where grading is proposed. Any vegetation that is planted in the steep slope areas or buffers shall be planted using non-mechanized hand tools.

There are 17 existing mature trees on site, 8 of which will be retained. Of the existing trees, a total of 126" of the tree caliper is from western Washington native trees. The applicant proposes to retain 86% of the existing native tree caliper, and plant additional native and non-native trees. The total proposed native tree caliper including retention and replacement is 98%, or 123.5 native caliper inches. In order to meet this criterion, the proposed number of native trees and/or caliper of native trees must be increased to meet the original native tree caliper on site.

The proposal meets this criterion, subject to the conditions listed below.

**b. Where new lots are created, the provisions of Section 23.22.062, Unit lot subdivisions, or Section 23.24.045, Unit lot subdivisions, apply, regardless of whether the proposal is a unit lot subdivision, so that subsequent development on a single lot does not result in the development standards of this chapter being exceeded for the short subdivision or subdivision as a whole.**

The applicant has submitted an application for a unit lot subdivision, which has been reviewed by DPD. The review of those criteria is included below. The proposal meets this criterion, subject to the unit lot subdivision conditions listed below.

## **DECISION – Administrative Conditional Use**

The proposal is **CONDITIONALLY GRANTED.**

### **ANALYSIS - SEPA**

The initial disclosure of the potential impacts from this project was made in the environmental checklist dated June 20, 2006. This information, along with the experience of the lead agency in similar situations, forms the basis for this analysis and decision. Short- and long-term adverse impacts are anticipated from the proposal.

The SEPA Overview Policy (SMC 25.05.665.D) states “where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation,” subject to limitations (see below under Long-term Impacts). Several adopted City codes and/or ordinances provide mitigation for some of the identified impacts. Specifically these are: the Stormwater, Grading and Drainage Control Code (soil erosion); and Building Code (construction standards). Compliance with these codes and ordinances will be adequate to achieve sufficient mitigation of identified adverse impacts.

Under SMC Section 25.05.908 B, the scope of environmental review within critical areas is limited to documenting that the proposal is consistent with ECA regulations, SMC Chapter 25.09, and to evaluating potentially significant impacts on the environmentally critical areas resources not adequately addressed in the ECA Policies or the requirements of Chapter 25.09. The proposal, as conditioned by this decision, is determined to be consistent with ECA regulations. Potentially adverse impacts on the ECAs are further discussed below.

#### **Short-term Impacts**

The following temporary or construction-related impacts are expected: soil erosion and sedimentation during general site work; and increased runoff. A discussion of potential impacts and mitigation follows.

#### **Earth (slope stability) and erosion**

There is a potential for erosion during excavation of the proposed building footprints. The applicant will follow recommendations from the soils engineer and provide landscape barriers at the top of the steep slope area. Pursuant to these proposals, and if the requirements of Director’s Rule 33-2006 and 16-00 (the latter for implementation of Best Management Practices) and Environmentally Critical Areas requirements are complied with, no additional mitigation is necessary.

#### **Long-term Impacts**

Long-term or use-related impacts on the ECAs are also anticipated from the proposal: increased surface water runoff from greater site coverage by increased impervious surfaces; and increased demand on public services and utilities. These long-term impacts are not expected to be significant.

The expected long-term impacts are typical of single family residential development and are expected to be mitigated by the City's adopted codes and/or ordinances. Specifically these applicable codes and ordinances are: Building Code requirements and ECA regulations (to ensure that proposed development will be constructed in a safe manner); and the Stormwater, Grading and Drainage Control Code (storm water runoff from additional site coverage by impervious surface). DPD geotechnical engineers have reviewed the proposal and the geotechnical studies provided with this application, and have placed conditions on the project regarding drainage and foundation types, as detailed below.

### **DECISION - SEPA**

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

- [X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030(2)(C).
- [ ] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(C).

### **ANALYSIS - SHORT SUBDIVISION FOR UNIT LOT**

Pursuant to SMC 23.24.040, the Director shall, after conferring with appropriate officials, use the following criteria to determine whether to grant, condition, or deny a short plat:

***1. Conformance to the applicable Land Use Code provisions;***

The proposal has been reviewed for conformance with the applicable Land Use Code provisions. The parent lot and unit lots created by this short subdivision will meet all minimum standards or applicable exceptions set forth in the Land Use Code, and are consistent with applicable development standards. The proposal meets this criterion, subject to conditions listed below.

***2. Adequacy of access for vehicles, utilities and fire protection, as provided in Section 23.53.005;***

The proposal has been reviewed by DPD, Seattle Public Utilities and the Seattle Fire Department. As conditioned, this short subdivision can be provided with vehicular access, public and private utilities and access (including emergency vehicles). Adequate provisions for drainage control, water supply and sanitary sewage disposal have been provided for each lot and service is assured, subject to standard conditions and code requirements governing utility extensions. The proposal meets this criterion.

***3. Adequacy of drainage, water supply, and sanitary sewage disposal;***

The applicant has submitted an application for a unit lot subdivision, which has been reviewed by DPD. This review is detailed below. The proposal meets this criterion, subject to the unit lot subdivision conditions listed below.

**4. *Whether the public use and interests are served by permitting the proposed division of land;***

The public use and interest are served by the proposal since all applicable criteria are met and the proposal creates the potential for additional housing opportunities in the City.

**5. *Conformance to the applicable provisions of SMC Section 25.09.240, short subdivision and subdivisions in environmentally critical areas;***

The proposal site is located in a mapped environmentally critical area. The unit lot subdivision complies with the applicable requirements of SMC 25.09.

**6. *Is designed to maximize the retention of existing trees;***

Tree and other landscaping requirements have been considered through the ECA review. The proposal meets this criterion, subject to the conditions listed below.

**7. *Conformance to the provisions of Section 23.24.045, Unit Lot Subdivisions, when the short subdivision is for the purpose of creating separate lots of record for the construction and/or transfer of title of townhouses, cottage housing, clustered housing, or single-family housing;***

***SMC 23.24.045. Unit Lot Subdivisions.***

***A. The unit subdivision provisions of SMC Section 23.24.045 apply exclusively to the unit subdivision of land for townhouses, cottage housing developments, residential cluster developments, and single-family residences in zones where such uses are permitted.***

The proposal is to locate four single family residences in four unit lots on one 'parent lot,' through unit lot subdivision. The SF 9600 zone in which the subject property is located permits single family residential development. The proposal meets this criterion.

***B. Sites developed or proposed to be developed with dwelling units listed in subsection A above, may be subdivided into individual unit lots. The development as a whole shall meet development standards applicable at the time the permit application is vested. As a result of the subdivision, development on individual unit lots may be nonconforming as to some or all of the development standards based on analysis of the individual unit lot, except that any private, usable open space for each dwelling unit shall be provided on the same lot as the dwelling unit it serves.***

Review of this application shows that the proposed development as a whole meets the applicable development standards. Proposed open space conforms to the requirements of the Land Use Code. The proposal meets this criterion.

**C. *Subsequent platting actions, additions or modifications to the structure(s) may not create or increase any nonconformity of the parent lot.***

To assure that future owners have constructive notice that additional development may be limited; the applicant is required to add a note to the face of the plat that reads as follows: Include the following on the face of the plat: *“The lots created by unit subdivision are not separate building lots. Additional development on any individual lot in this unit subdivision may be limited as a result of the application of development standards to the parent lot pursuant to applicable provisions of the Seattle Land Use Code.”* The proposal meets this criterion, subject to the conditions listed below.

**D. *Access easements and joint use and maintenance agreements shall be executed for use of common garage or parking areas, common open space (such as common courtyard space for cottage housing), and other similar features, as recorded with the Director of the King County Department of Records and Elections.***

A joint use and maintenance agreement is required. An address signage easement for the benefit of the two eastern proposed residences is also required. The proposal meets this criterion, subject to the conditions listed below.

**E. *A joint use and maintenance agreement has been included on the short plat documents and should also be included on the final documents for recording.***

A joint use and maintenance agreement is required prior to recording. The proposal meets this criterion, subject to the conditions listed below.

**F. *Within the parent lot, required parking for a dwelling unit may be provided on a different unit lot than the lot with the dwelling unit, as long as the right to use that parking is formalized by an easement on the plat, as recorded with the Director of King County Department of Records and Elections.***

All proposed parking would be located within the structures on the same unit lot as the residence. This criterion does not apply to the proposal.

**G. *The facts that the unit lot is not a separate buildable lot, and that additional development of the individual unit lots may be limited as a result of the application of development standards to the parent lot shall be noted on the plat, as recorded with the Director of the King County Department of Records and Elections.***

To assure that future owners have constructive notice that additional development may be limited; the applicant is required to add a note to the face of the plat that reads as follows: *“The lots created by unit subdivision are not separate building lots. Additional development on any individual lot in this unit subdivision may be limited as a result of the application of development standards to the parent lot pursuant to applicable provisions of the Seattle Land Use Code.”* The proposal meets this criterion, subject to the conditions listed below.

## **DECISION – UNIT LOT SUBDIVISION**

The proposed Unit Lot Subdivision is **CONDITIONALLY GRANTED.**

### **NON-APPEALABLE CONDITIONS - ENVIRONMENTALLY CRITICAL AREAS**

#### *Prior to Issuance of a Master Use Permit*

1. Mark all areas on the plans east of the limited steep slope exemption area as “non-disturbance areas,” per SMC 25.09.060 and 25.09.335.
2. Submit a recorded copy of the ECA Covenant restricting development and disturbance in the non-disturbance areas to the Land Use Planner, per SMC 25.09.060 and 25.09.335.
3. Permanent visible markers along the top of the steep-slope buffer to delineate the buffer no build area must be shown and described on the plat prior to recording. The markers shall be either reinforcing steel or metal pipe driven securely into the ground with a brass cap affixed to the top similar to survey monuments. The brass cap shall be visible at the ground surface and indicate the purpose of the marker. Markers shall be placed at all points along the buffer delineation where the buffer changes direction from a straight line, exclusive of the exempted access area. Markers must be in place before issuance of this Master Use permit, per SMC 25.09.335.D.
4. Submit a recorded copy of the No-Protest Agreement for future street improvements to the Land Use Planner, per SMC 23.53.015.
5. All zoning corrections listed in the zoning correction letter issued April 17, 2007 shall be addressed to the satisfaction of the zoning reviewer (corrections for 3005162 and 3005087).

#### *Prior to Issuance of Any Construction Permits*

6. Show on the site plan the location of permanent ECA markers, per SMC 25.09.060.
7. Show on building plans the location of a temporary, durable, highly visible construction fence at the boundary between the construction activity area and areas of steep slope and steep slope buffer which are to be left undisturbed, per SMC 25.09.060.

#### *During Construction*

8. All planting in the steep slope environmentally critical area shown on the MUP landscape plan date stamped May 17<sup>th</sup>, 2007 shall be dug and installed using only non-mechanized hand tools. All other activity in the non-disturbance area is prohibited, per SMC 25.09.060.

**CONDITIONS – ENVIRONMENTALLY CRITICAL AREA ADMINISTRATIVE  
CONDITIONAL USE**

*Prior to Issuance of a Master Use Permit*

9. Provide a landscape plan demonstrating a total proposed native tree caliper of at least 126 inches, through tree preservation and/or planting.

**CONDITIONS - SEPA**

*Prior to Building Permit Approval*

10. Submit for approval by DPD a drainage control plan prepared by a licensed civil engineer meeting the requirements of the City's Stormwater, Grading and Drainage Control Code. The drainage plans should demonstrate diversion of all storm water west to the drainage collection lines in 39<sup>th</sup> Ave NE public right of way, in concurrence with the recommendations of the geotechnical report (Tubbs and Associates, Response to Comments, Residential Property 13034 – 39th Ave NE dated January 25, 2007).
11. Provide building plans demonstrating deep foundations for the eastern structures, in conformance with the recommendations of the geotechnical report (Tubbs and Associates, Response to Comments, Residential Property 13034 – 39th Ave NE, dated January 25, 2007).
12. Provide an erosion and sediment control plan, employing Best Management Practices, to minimize erosion on and off site. The plan shall be reviewed and approved by DPD.

**CONDITIONS – UNIT LOT SUBDIVISION**

*Prior to Recording*

The owner(s) and/or responsible party(s) shall:

13. Add the conditions of approval after recording on the face of the plat or on a separate page. If the conditions are on a separate page, insert on the plat "For conditions of approval after recording see page \_\_\_ of \_\_\_."
14. Provide on the plat the required Seattle City Light easement.
15. Add the following condition to the face of the plat: "Existing structures shall be legally demolished prior to sale and/or transfer of ownership of any parcels. The structures may be preserved if they meet applicable Land Use Code development standards."
16. Provide on the plat a joint use and maintenance agreement.

