



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

**Application Number:** 3003846  
**Applicant Name:** Steve Williams  
**Address of Proposal:** 12023 36<sup>th</sup> Avenue Northeast  
(12029 – 36<sup>th</sup> Avenue Northeast)

**SUMMARY OF PROPOSED ACTION**

Land Use Application to subdivide two parcels into six parcels of land in an environmentally critical area. Proposed parcel sizes are: A) 8,268.4 square feet, B) 8,308.2 square feet, C) 8,334.6 square feet, D) 8,262.9 square feet, E) 9,124.1 square feet, and F) 9,142.5 square feet. The existing structures are to be demolished.

The following approvals are required:

**Short Subdivision** – to subdivide two (2) existing parcels of land into six (6) parcels of land.  
(Seattle Municipal Code Chapter 23.24)

**SEPA – Environmental Determination** – Review of development proposal in areas mapped as Environmentally Critical Areas. (Seattle Municipal Code Chapter 25.09)

**SEPA DETERMINATION:** [ ] Exempt [X] DNS [ ] MDNS [ ] EIS  
[ ] DNS with conditions  
[ ] DNS involving non-exempt grading or demolition,  
or involving another agency with jurisdiction.

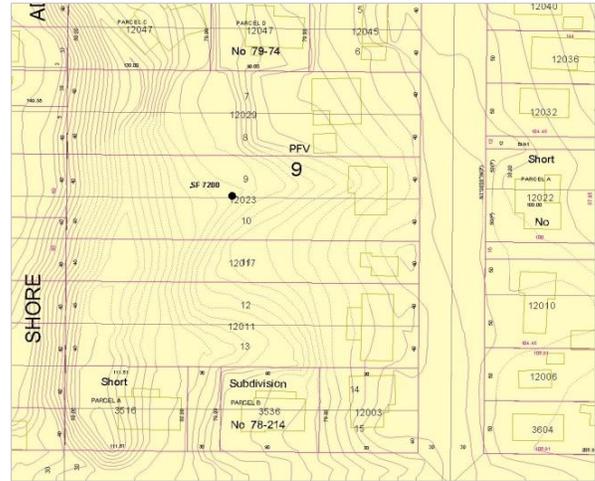
**BACKGROUND DATA**

Zoning: SF 7200.  
Uses on Site: Two single family residences  
and accessory structures.



Substantive Site Characteristics:

According to the survey of the site provided by the applicant, the 51,440.7 square foot parcel comprising four existing platted lots (Lots 7, 8, 9, and 10, Block 9, University Lake Shore Division No. 1, 2, and 3) is located on 36th Avenue Northeast in the Lake City neighborhood of northeast Seattle. The site measures approximately 321.6 feet in depth with 159.92 feet of frontage along the west side of 36<sup>th</sup> Avenue Northeast. The site is located on a west facing slope. The site slopes gradually downhill from 36<sup>th</sup> Avenue NE over about two thirds of its length and then slopes somewhat more sharply down to a tributary stream of Thornton Creek, known as Littlebrook Creek. Elevations on the site range from about 178 feet above sea level near the northeast corner of existing Lot 7 to a low point of about 134-136 feet above sea level within the streambed of the creek. The slope on the west side of the streambed then rises considerably more steeply from the streambed to about 162 feet above sea level near the northwest corner of existing Lot 7. Lots 7 and 8 together and Lots 9 and 10 together are developed with existing single family structures located in the easterly third of the property nearest 36<sup>th</sup> Avenue NE. There is an existing detached garage on Lot 8 accessed by a concrete driveway. The garage is accessory to the house on Lots 7 and 8.



The site is zoned Single Family residential with a minimum lot area requirement of 7,200 square feet (SF-7200). The SF-7200 zone extends north, south, and east of the site, while the zoning to the west is SF-5000: Single Family residential with a minimum lot area requirement of 5,000 square feet. Surrounding development reflects the zoning insofar as most properties in the vicinity are developed with single family structures of varying age and architectural style. Ryther Child Center, an institutional use, is located at the southeast corner of 36<sup>th</sup> Avenue NE and NE 123<sup>rd</sup> Street, to the northeast of the site.

The western half of the site is identified as lying within several environmentally critical areas (ECA's) pursuant to Seattle Municipal Code Chapter 25.09, Regulations for Environmentally Critical Areas: steep slope, wetland, riparian corridor, and flood-prone environmentally critical areas. The critical areas are predominantly on the western quarter of the property, but required critical area buffers extend eastward to about half the length of the site. The critical area features also extend to the north and south of the site, following the channel of the tributary stream. According to the geotechnical report prepared by Geotech Consultants, Inc. and dated February 21, 2007, the steep slopes do not appear to be subject to large-scale instability.

According to the arborist report prepared by arborist Scott D. Baker of Tree Solutions Inc., the site contains 44 trees of significant size and numerous smaller native and nonnative species of trees and vegetation. The larger trees range in size from a 6 inch diameter (DSH) Hawthorn (*Crataegus laevigata*) to a 43.8 inch diameter (DSH) Douglas Fir (*Pseudotsuga menziesii*). Among the trees on the east portion of the site proposed as the area for future development are the 43.8 inch Douglas Fir, a 25.9 inch Pacific Madrona (*Arbutus menziesii*) and a 7.7 inch Japanese Maple (*Acer palmatum*), which are

identified as exceptional trees under the criteria of former DPD Director's Rule 6-2001.<sup>1</sup> Thirty-sixth Avenue Northeast is a 60 foot wide right-of-way with a 20 foot roadway width. The residential access street is an asphalt paved street with no curbing or sidewalks.

Public Comment:

The initial public comment period for this land use application ended December 5, 2007. During the initial public comment period DPD received six comment letters related to the land use application either in writing or by e-mail. The project was re-noticed on June 5, 2008, and that comment period ended June 18, 2008. The purpose of the re-notice was to clarify that the subject property comprised two adjacent parcels comprising four existing platted lots.<sup>2</sup> The re-notice also more specifically identified the various ECA's on the subject property. Residents' concerns pertained to the following:

- Protection of the ECAs
- The "high density" of development proposed for the property, including effect on neighborhood character
- Impact to existing vegetation, particularly tree removal
- Effect of drainage on the nearby riparian corridor
- Increased traffic and parking

Comment letters, application documents, and associated materials may be found in the Land Use Application file, which is available for review at DPD's Public Resource Center (PRC), 700 Fifth Ave, Suite 2000 (<http://www.seattle.gov/dpd/PRC/LocationHours/default.asp>).

**ANALYSIS - SHORT SUBDIVISION**

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 subject property is zoned for single-family residential uses with a minimum lot size of 7,200 square feet. The proposal has been reviewed for conformance with the applicable Land Use Code provisions; the lots created by this proposed division of land would conform to all applicable development standards of the SF 7200 zone designation. The proposed parcels would provide adequate buildable area to meet applicable yards, lot coverage requirements, and other applicable Land Use Code development standards.

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

Two 10-foot-wide access and utility easements will be provided from 36<sup>th</sup> Avenue Northeast. One will benefit proposed Parcels A, B, and F. The second will benefit proposed Parcels C, D, and E. The

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<sup>1</sup> As a platting proposal, the project is vested to the time of application submittal pursuant to Section 23.76.026.B

<sup>2</sup> The original 2007 notice identified two parcels of land as subject to the platting proposal but the attached map only showed one parcel.

easements are situated between Parcels A and B and Parcels C and D, and extend approximately 95 feet into the property to reach Parcels E and F, which do not have street frontage. The Seattle Fire Department has reviewed and approved the proposed short plat for emergency vehicle access, subject to future development meeting Seattle Fire Code requirements. All private utilities are available in this area. Seattle City Light provides electrical service to the surrounding area and has required an easement for overhead and underground infrastructure. The City Light easement is included in the short plat documents. This short plat provides for adequate access for vehicles, utilities, and fire protection.

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

This area is served with domestic water, sanitary sewer, and storm drain facilities by the City of Seattle. Availability of service is assured subject to standard conditions of utility extension. Seattle Public Utilities reviewed the short plat application, and Water Availability Certificate #20120051 was issued on January 31, 2012.

Seattle DPD has examined the proposal for compliance with drainage and sanitary sewer provisions. The existing houses currently discharge their sanitary waste to the public sanitary-only sewer (PSS) in 36<sup>th</sup> Avenue Northeast. New construction may use the existing sidesewers for sanitary discharge.

There are currently no records of existing stormwater control. The site slopes to the Thornton Creek riparian corridor and stream. There are no storm drains, ditches, culverts or other formal drainage infrastructure available to the property. Given the ECA designation of the riparian corridor, the lack of formal drainage infrastructure, and the possibility of 12,000 square feet or more of new or replace impervious surfacing, an all-site construction stormwater control plan and permanent drainage plan (CSC/DCP) should be submitted, reviewed and approved with the first building permit. Prior to building permit issuance, the CSC/DCP plan, designed and approved by a professional engineer, shall be submitted with the first building permit plan set. The discharge point shall be some form of infiltration or flow dispersal. Detention to the 100-year storm event is required. This requirement will be made a condition of approval of this short plat decision prior to issuance of building permits.

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

The proposed subdivision is consistent with relevant SF 7200 zone land use policies and meets the minimum provisions of the Seattle Land Use Code. The proposal will meet all applicable criteria for approval of a short plat as discussed in this analysis and decision upon completion of the conditions of this decision. The public use and interests are served by permitting the proposed division of land.

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

As shown in a submitted topographical survey, on the City's GIS mapping application, and as defined in SMC Chapter 25.09, the site contains the following ECAs: steep slope, wetland, riparian corridor, and flood-prone.

A geotechnical conditions report was submitted with this short plat application.<sup>3</sup> The steep slope areas located in the western quarter of the site were likely created through a combination of filling and stream incision, and historically the slopes do not appear to be subject to large-scale instability. These steep slope areas meet the City's criteria for steep-slope environmentally critical areas, and for potential landslide areas. In summary, the geotechnical report found the eastern portion of the site suitable for proposed development, with the recommendation that houses and decks be set back at least 15 feet from crest of the western steep slope along the eastern bank of Littlebrook Creek. The report further recommends erosion control measures and drainage/waterproofing. The proposed short plat establishes steep slope buffers well in excess of the minimum recommendations in the report, with a 15-foot buffer shown not only from the western steep slope but from the eastern steep slope area on platted Lots 7 and 8, as well. In addition, all development is proposed east of the 100-foot buffer lines of the wetland and riparian corridor areas, and thus well away from all identified steep slope areas.

The ECA regulations restrict development in the above listed environmentally critical areas (SMC 25.09). As a condition of this land use application the applicant shall clearly call out on the plans all "Non-disturbance areas" west of the steep slope, wetland, and riparian corridor buffer lines, per SMC 25.09.060, 25.09.240, and 25.09.335. The steep slope, wetland, and riparian corridor areas shall be clearly delineated and labeled on the final site plan. Further, permanent visible markers shall be placed at the easternmost edges of the wetland and riparian corridor buffer areas, as appropriate, and an ECA Covenant shall be recorded with the King County Office of Records and Elections stating (to the effect) that "No land disturbing activities, such as construction, excavation or grading shall occur (except by permit in accordance with applicable provisions of the Seattle Municipal Code) in the steep slope area, steep slope buffer, wetland and wetland buffer, and fish and wildlife habitat conservation area (riparian corridor and buffer) as defined in Chapter 25.09 of the Seattle Municipal Code".

A wetland report was submitted for the property.<sup>4</sup> The report notes that no impacts to the wetlands, stream, or buffers are proposed. "Demolition of existing structures and construction of the house located on Lot 5 may require temporary impacts to a degraded portion of wetland buffer. All temporary impacts to wetland buffers will be restored to original conditions."<sup>5</sup> The report concludes that the project will not cause any permanent impacts to any jurisdictional wetlands, streams, or buffers.

Review of the proposal indicated that all of the requirements and restrictions of the ECA regulations for short subdivisions have been met (SMC 25.09.240), subject to the conditions at the end of this report.

The ECA Regulations (SMC 25.09), the Grading Code (SMC 22.800), and the Seattle Building Code provide adequate regulatory authority for protecting the critical area and allowing development on the non-ECA portion of the site.

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<sup>3</sup> Geotech Consultants, Inc., by Zack J. Munstermann and James H. Strange, geotechnical engineers, dated February 21, 2007.

<sup>4</sup> Montlake Development Wetland and Stream Analysis Report, Sewall Wetland Consulting, Inc., by Tonya Smith, Wetland Scientist and Edgar K. Sewall III, Senior Wetland Ecologist, dated October 4, 2007.

<sup>5</sup> The project was revised after the report was prepared to show all building footprint outside, or east, of the identified buffers.

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

The applicant submitted an arborist report and a complete listing of trees located on the subject site, along with dimensions of diameter, drip line, condition, and recommended actions.<sup>6</sup> A total of 44 trees were identified. A separate tree removal and replacement plan is also provided. Pursuant to Director's Rule 6-2001, *Clarifications of State Environmental Policy Act (SEPA) Plants and Animals Policy Concerning Outstanding Trees, and Designation of Exceptional Trees, under the Tree Protection Chapter, (25.11) of the Seattle Municipal Code*, and SMC Chapter 25.11, two native trees and one non-native tree may be exceptional trees. The trees are numbered on the table of trees provided in the report. The trees are:

- Pacific Madrona (*Arbutus menziesii*): 25.9" DSH (Tree #220)
- Douglas Fir (*Psuedotsuga menziesii*): 43.8" DSH (Tree #217)
- Japanese Maple (*Acer palmatum*): 7.7" DSH (Tree #258)

The Madrona tree is located on proposed Parcel F to the northwest of the proposed building footprint area, within the non-disturbance area and is thus recommended for preservation. The Douglas Fir is located just north of the north lot line of platted Lot 7, and the recommendation for preservation is that the tree protection zone should follow the proposed building foundation line (tree is 13 feet from existing house foundation. The Japanese Maple is located within the street right of way immediately east of the southeast corner of platted Lot 7 and is recommended for transplanting. In addition, the report identified twelve other trees for preservation and indicates that 29 trees will need to be removed. The report makes recommendations for replanting. In most cases, the trees recommended for removal are too close to proposed house foundations to retain but, in addition, have been previously topped, are oddly formed, are in decline, or are otherwise weakened. In addition, all vegetation in the westerly half of the site is subject to the non-disturbance requirements of the ECA regulations. The report notes that this area is infested with non-native invasive plants and recommends removal of ivy from the existing trees. The ECA area shall be clearly designated a "Non-disturbance" area, and an ECA Covenant shall be recorded with the King County Office of Records and Elections stating (to the effect) that "No land disturbing activities, such as construction, excavation or grading shall occur (except by permit in accordance with applicable provisions of the Seattle Municipal Code) in the steep slope area and steep slope buffer, wetland and wetland buffer, and fish and wildlife habitat conservation area (riparian corridor and buffer), as defined in Chapter 25.09 of the Seattle Municipal Code".

The tree removal and preservation plan sets forth a reasonable scheme to maximize retention of existing trees while also allowing reasonable development of the number of houses allowed by the zoning for this site. The development plans are conceptual only. Future construction will be subject to the provisions of SMC 23.44.008, 25.11.050 and 25.11.060 which set forth tree planting requirements on single family lots.

**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.**

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<sup>6</sup> 12023 36<sup>th</sup> Avenue NE Arborist Report. Tree Solutions, Inc. Scott D. Baker, Registered Consulting Arborist. April 19, 2012.

This criterion is not applicable to this short subdivision.

Summary - Short Subdivision

Based on information provided by the applicant, referral comments from DPD, Water (SWD), Fire Department (SFD), Seattle City Light (SCL), and review by the Land Use Planner, the above cited criteria have been met subject to the conditions imposed at the end of this decision.

The lots to be 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. 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 governing utility extensions.

Review of the proposal indicated that the requirements and restrictions of the ECA regulations for short subdivisions have been met (SMC 25.09.240), subject to the conditions at the end of this report. 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.

**DECISION - SHORT SUBDIVISION**

The proposed Short Subdivision is **CONDITIONALLY GRANTED**.

**ANALYSIS – SEPA**

The proposal site contains the following types of Environmentally Critical Areas: *steep slope, wetland, riparian corridor, and flood-prone*, thus environmental review resulting in a Threshold Determination is required pursuant to the Seattle State Environmental Policy Act (SEPA), WAC 197-11, and the Seattle SEPA Ordinance (Seattle Municipal Code Chapter 25.05).

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated October 23, 2007. The information in the checklist, a Geotechnical Report, Wetland Report, Arborists Report, public comment, and the experience of the lead agency with review of similar projects form the basis for this analysis and decision. Note that pursuant to SMC 25.05.908.B, the scope of the environmental review of the subject short subdivision is limited to:

1. Documenting whether the proposal is consistent with The City of Seattle Regulations for Environmentally Critical Areas, SMC Chapter 25.09; and
2. Evaluating potentially significant impacts on the environmentally critical area resources not adequately addressed in The City of Seattle Environmentally Critical Areas Policies or the requirements of SMC Chapter 25.09, Regulations for Environmentally Critical Areas, including in additional mitigation measures needed to protect the environmentally critical areas in order to achieve consistency with SEPA and other applicable environmental review laws.

The SEPA Overview Policy clarifies the relationship between codes, polices, and environmental review (SCM 25.05.665). Specific policies for each element of the environment and certain neighborhood plans, and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority. The Overview Policy states, in part, “*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 some limitations. Thus, a more detailed discussion of some of the impacts is appropriate. Short and long-term adverse impacts are anticipated from the proposal.

### Short-term Impacts

The following temporary or construction-related impacts are expected with future construction: temporary soil erosion, decreased air quality due to increased dust and other suspended air particulates during excavation and construction, and consumption of renewable and non-renewable resources. These impacts are not considered significant because they are temporary and/or minor in scope (SMC 25.05.794). Although not significant, the impacts are adverse and certain mitigation measures are appropriate as specified below.

Several adopted codes and/or ordinances provide mitigation for some of the identified impacts. The Stormwater Code regulates site excavation for foundation purposes and requires that soil erosion control techniques be initiated for the duration of construction. The ECA ordinance, former DR 33-2006, and current DR 18-2011, regulate development and construction techniques in designated ECA areas with identified geologic hazards. The Building code provides for construction measures and life safety issues. Compliance with these applicable codes and ordinances will reduce or eliminate short-term impacts to the environmentally critical area and no further conditioning pursuant to SEPA policies is warranted.

### Earth/Soils

The ECA Ordinance, former Directors Rule (DR) 33-2006 and current DR 18-2011 require submission of a soils report to evaluate the site conditions and provide recommendations for safe construction in areas with landslide potential and/or a history of unstable soil conditions. The applicant has submitted “Geotechnical Engineering Study, Proposed Residential Plat, 12023 & 12029 – 36<sup>th</sup> Avenue Northeast, Seattle, Washington,” prepared by Geotech Consultants, Inc., and dated February 21, 2007. The report evaluates the soil and site conditions and provides geotechnical information related to earthwork and foundation support, as well as slope stability analysis, drainage, and hazard mitigation recommendations. In general, the report recommends that construction be set back at least 15 feet from steep slope areas. The ECA is to be preserved and protected, no development is to occur in the ECAs; therefore, the proposal will not have a probable significant adverse impact on the environmentally critical areas (ECAs).

Any additional information showing conformance with applicable ordinances and codes (ECA Ordinance, the Stormwater Code, DR 33-2006 and DR 18-2011) will be required prior to issuance of building permits. Applicable codes and ordinances provide extensive conditioning authority and prescriptive construction methodology to assure safe construction techniques are utilized; therefore, no additional conditioning is warranted pursuant to SEPA policies.

Long-term Impacts

Long-term or use-related impacts are also anticipated as a result of this proposal, including: increased surface water runoff due to greater site coverage by impervious surfaces (related to future improvements on the site), increased demand on public services and utilities, and loss of plant and animal habitat.

Several adopted City codes and/or ordinances provide mitigation for some of the identified impacts. Specifically these are: the ECA Ordinance and the Stormwater Code, which requires provisions for controlled tightline release to an approved outlet and may require additional design elements to prevent isolated flooding. Compliance with these applicable codes and ordinances is adequate to achieve sufficient mitigation of most long-term impacts and no further conditioning is warranted by SEPA policies.

**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 requirements of the State Environmental Policy Act (RCW 43.21C), including the requirement to inform the public agency decisions pursuant to SEPA.

- 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 2C.
- 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 2C.

**CONDITIONS - SEPA**

None required.

**CONDITIONS - SHORT SUBDIVISION**

**NON-APPEALABLE CONDITIONS**

Prior to Issuance of a Master Use Permit

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

1. Submit for approval by DPD a copy of the approved drainage control plan prepared by a licensed civil engineer and meeting the requirements of the City's Stormwater Code that was approved by DPD Senior Civil Engineering Specialist Kevin Donnelly in November 2008.
2. Submit a copy of the ECA Covenant restricting development and disturbance in the "Non-disturbance" areas to the Land use Planner, per SMC 25.09.060, 25.09.240 and 25.09.335.

3. The final short plat must designate “Non-Disturbance” areas (steep slope and steep slope buffer, wetland and wetland buffer, and riparian corridor and buffer). A note, including the definition of a “Non-disturbance” area must be placed on the final plat.
4. On the final short plat, provide a delineation of the Steep Slope Critical Area. Designate these areas as “Steep Slope Critical Areas”.
5. In accordance with Director’s Rule 3-2007, permanent visible markers along the easterly edge of the wetland or riparian corridor buffers, as appropriate, to delineate the buffer no-build area must be installed and shown 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. Markers must be in place prior to issuance of this short subdivision permit.
6. Provide the following note on the final plat: “Tree removal or tree topping of trees in the ECA on this property is prohibited pursuant to SMC 25.09.320, unless explicitly approved by the Department of Planning and Development.

Prior to Building Permit Approval

7. Show on the site plans the location of permanent ECA markers, per SMC 25.09.060.
8. Submit for approval by DPD a construction stormwater control plan and permanent drainage plan (CSC/DCP) designed and approved by a professional engineer. The discharge point shall be some form of infiltration or flow dispersal. Detention to the 100-year storm event is required.

Signature: \_\_\_\_\_ (signature on file) Date: June 18, 2012  
William K. Mills, Senior Land Use Planner  
Department of Planning and Development

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