



City of Seattle

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: 3003957
Applicant Name: Markus Kolb for Martin Bumstead
Address of Proposal: 2318 – Perkins Lane West

SUMMARY OF PROPOSED ACTION

Land Use Application to allow a three-story single family residence (1,285 sq. ft. building footprint with 3,757 sq. ft. of living area)¹ in an environmentally critical area. One parking space will be provided in a below grade garage.

The following approvals are required:

Environmentally Critical Areas Exception: - to allow land disturbing activity in excess of 30% (1,950 sq. ft., or 69.6% of the steep slope) in a steep slope critical area SMC 25.09.300.

BACKGROUND DATA

Site and Vicinity

The subject property is a vacant lot zoned SF 7200: Single-Family Residential, with a required minimum lot size of 7,200 square feet. The property is described as Lot 6, Block O, Carleton Beach Tracts Addition (hereafter referred to as Lot 6). Lot 6 is located on the northeast side of Perkins Lane West in the Magnolia neighborhood of Seattle. The site is approximately rectangular in shape, with 75.67 feet of frontage along Perkins Lane West on the southwest side. It is about 35 feet deep on the southeast side and 45 feet deep on the northwest side. Lot 6 has a total area of 3,000 square feet.

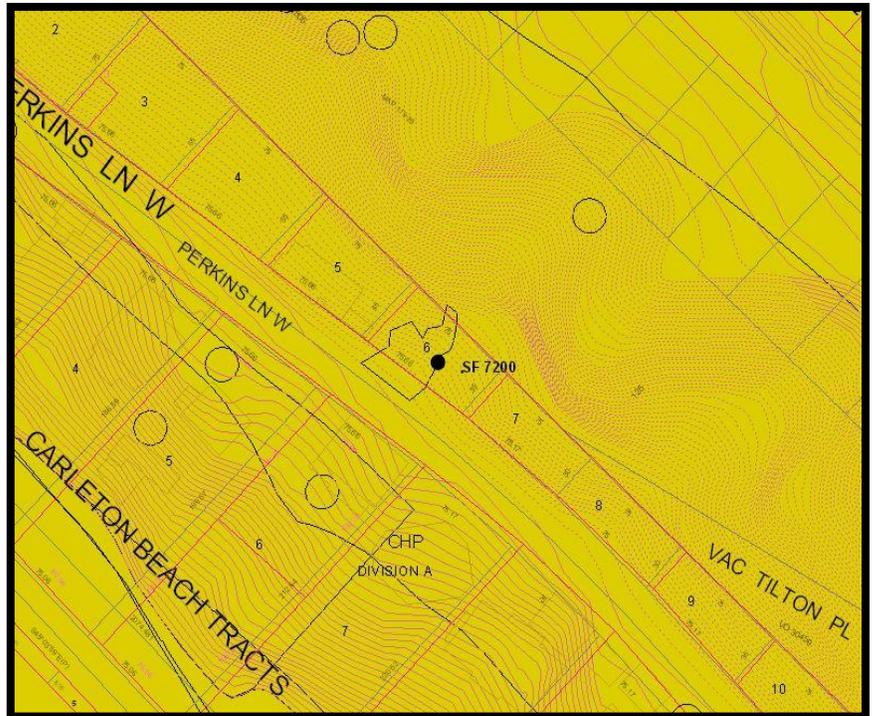
¹ Revised plans received July 8, 2011 show 3,807 square feet of living area.

Most of the site, about 2,802 square feet out of the total area of 3,000 square feet, is characterized by steep slopes of 40% average slope or greater, which are designated as “steep slope critical areas” under the Seattle Regulations for Environmentally Critical Areas, Seattle Municipal Code (SMC) Chapter 25.09. The steep slope area is thus about 93% of the entire lot. Lot 6 ranges in elevation from a low elevation of about 501 at the Perkins Lane right of way to a maximum elevation of about 549 in the southeast corner of the lot, uphill from Perkins Lane.

According to the Geotechnical Engineering Study prepared by Creative Engineering Options, Inc., dated April 7, 2005 (supplemented on December 12, 2005 and April 18,

2008), the site has a vertical topographic change of about 36 feet over a distance of 50 feet, or about a 72% slope. According to the Geographic Information Service (GIS) land use maps maintained by DPD and the Creative Engineering Options report, the site is also entirely within a landslide-prone area. According to a Wetland and Site Evaluation prepared by del Moral and Associates and dated December 6, 2007, there is also a wetland in the approximate center of Lot 6, with an area of about 709 square feet, or about 24% of the site. The only portion of Lot 6 that is relatively level, near Perkins Lane West, is occupied by the wetland.

The zoning of the surrounding properties adjacent to Perkins Lane West is SF 7200. There is a ridge of steep slope that includes Lot 6 and runs northeast of Perkins Lane in a northwest to southeast direction. This ridge separates the SF 7200 zone area along Perkins Lane from another area at the top of the ridge that is zoned SF 5000: Single Family Residential, with a required minimum lot size of 5,000 square feet. Development in the vicinity of Lot 6 consists primarily of single-family residences. Platting patterns along Perkins Lane are irregular, and lot sizes and shapes vary. In general, the lots on the downhill side of Perkins Lane, to the southwest, are larger than the zone minimum of 7,200 square feet and developed with relatively large single family residences. According to King County Assessor’s records, the size of the residences on these downhill lots ranges from less than 1,500 square feet up to nearly 6,000 square feet in the immediate vicinity of Lot 6. The lots on the uphill side of Perkins Lane are generally smaller than the zone minimum. Most are undeveloped, but a few are developed with residences generally smaller than those on the downhill side of Perkins Lane, ranging in size from a little more than 1,500 square feet up to 2,850 square feet.



GIS map of immediate vicinity of Lot 6 showing lots, zoning and topography

Proposal Description

The applicant proposes to construct a new four-story single family residence (including the basement level of garage and storage space that daylight on the southwest side facing Perkins Lane) with a rooftop deck. According to the plans cover sheet and plan sheets A2.01 through A2.05 received by DPD on May 9, 2011, the total living area of the proposed structure was initially 3,757 square feet. Revised plan sheets received July 8, 2011 show 3,806.6 square feet of living area. According to the cover sheet and plan sheet A2.01, a one-car garage about 460 square feet in area is also proposed. According to revised plan sheet A2.04, also received July 8, 2011, a roof decks would comprise an additional 422 square feet.

According to the site plan (plan sheet A1.01), the proposed structure footprint will occupy 1,285 square feet (42.8 percent) of the site. The proposed lot coverage is well under the maximum lot coverage limit of 1,000 square feet plus 15 percent of the total lot area (3,000 square feet times .15 equals 450), or 1,450 square feet. Thus, the proposal would comply with the regulations for lot coverage for lots with less than 5,000 square feet of area, as set forth in SMC Section 23.44.010.C. The proposed development would disturb approximately 69.6% (1,950 square feet) of the steep slope area on the site.² Under SMC Sections 25.09.080, 25.09.160 and 25.09.180, the proposal is required to comply with requirements of the Regulations for Environmentally Critical Areas (ECA) due to the presence on the site of wetlands, wetland buffers, steep slope and steep slope buffer areas, and landslide-prone areas.

Public Comments

Twenty-four written comments were received during the public comment period that ended on February 24, 2011. Sixteen comments were in opposition to the development and eight were in favor, including a comment letter from property owner Martin Bumstead, who also owns other nearby property. The comments in opposition expressed concern about the size of the proposed development, the possible precedent for other decisions if the proposal is approved, effects of new construction on stability of the slope uphill from Perkins Lane, potential drainage issues for downhill properties, increased traffic and parking, whether the size of the lot meets Code requirements,³ and concerns about damage to Perkins Lane from construction equipment moving on and off the site. The comments in support of the proposal noted that development of a house on the property could stabilize the hill behind it, prevent erosion that could occur on a vacant parcel, provide better drainage, and reduce the potential of future slides.

Application of Environmentally Critical Areas Regulations

Seattle Municipal Code (SMC) Sections 25.09.040 and 25.09.060 establish standards that apply to all development within designated Environmentally Critical Areas, including submittal requirements for verifying the location of all such areas. 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 is prohibited in steep slope areas and steep slope buffers. A steep slope area variance may be applied for pursuant to Section 25.09.180.E to allow intrusion into not more than 30 percent of the steep slope area.

² The proposed disturbance includes not only building footprint but also impervious surface for driveways, proposed walls, disturbance for construction, and a small section of the upper stories that cantilevers over the ground floor on the street side.

³ Lot 6 was platted prior to 1957 and was previously developed with a single family residence. Therefore, it was determined to qualify for the exception to minimum lot area requirements set forth in SMC Section 23.44.010.B.4.a.

Conditions imposed as a means of compliance with the ECA ordinance are reviewable through a request for interpretation under Section 23.88.020 pursuant to Section 25.09.017.F. General requirements and standards described in Section 25.09.060 include the recording of conditions of approval and of the identified ECA areas in a permanent covenant with the property, as well as specific construction methods and procedures.

Seattle Municipal Code (SMC) Section 25.09.300 authorizes exceptions to ECA development standards. An application for an exception may be considered only if the Director has determined that no other applicable administrative remedies will provide sufficient relief. A standard may be reduced, waived or modified only if strict application of the standard would not permit any reasonable use of the property, and a standard may be modified only to the extent necessary to allow reasonable use of the property in light of the facts and circumstances of a particular case. The following discussion summarizes the determination by DPD that administrative remedies other than the exception will not provide sufficient relief. Application of the relevant exception criteria will then be discussed.

The proposal would disturb the wetland and wetland buffer on the property, as well as the steep slope area. An additional exception from the ECA wetland standards is not required, however. On October 16, 2009, DPD issued a determination that the wetland on the property was a 709-square-foot Category IV wetland, noting that the wetland was accurately documented by the del Moral and Associates wetland and site evaluation report. In accordance with SMC Section 25.09.160.C.3, Category IV wetlands less than 1,000 square feet in size do not require a protective buffer, and approval to develop in such wetlands may be granted if mitigation is provided.

The “steep slope area variance” of Section 25.09.180.E is an alternative remedy to the exception process that could allow construction of a single family residence. The information provided by the applicant regarding a “variance alternative,” particularly plan sheet A0.02, shows a proposed residence that includes three bedrooms, 1.5 bathrooms, and a space for an elevator, as well as a living room and full kitchen. This “variance alternative” design is somewhat smaller than the applicant’s preferred alternative.

A residence constructed according to the requirements of the steep slope area variance limits total land disturbing activity to approximately 1,038 square feet of the total site (or about 34.6% of the site), while the applicant’s preferred alternative would necessitate disturbance of up to 2,148 square feet (or 71.6% of the site). The variance alternative would limit total steep slope disturbance to no more than 30%, while the preferred alternative would require disturbance of 69.6% of the steep slope. The preferred alternative thus includes approximately 1,110 square feet more developmental coverage than the variance alternative.

To be approved any proposal must prevent or mitigate the same harm as the waived regulation is intended to prevent or mitigate. (See Section 25.09.180.E.3 (variance) and Section 25.09.300.D (exception)). The harm is increased erosion potential.

With respect to significant injury to the environment, the purpose of the regulations in Section 25.09.180 is to protect the environmental function and value of reducing erosion by not disturbing land. The applicant’s preferred alternative would necessitate disturbance of up to 2,148 square feet (or 71.6% of the site and 69.6% of the steep slope area), while the variance alternative would limit total steep slope disturbance to no more than 30%.

Despite the lesser site disturbance of the variance alternative, the variance alternative is not compliant with Section 25.09.180, which incorporates by reference the criteria for approval of a yard or setback reduction variance set forth in Section 25.09.280. Given the high risk of future landslide activity in the project area and the area upslope of the proposed development, consideration must be given to stabilization measures that will either prevent adverse impacts associated with landslides, particularly erosion on the site, or allow for remediation of landslide damage, including cleanup and debris removal. The variance alternative proposal does not include a landslide catchment system sufficient to prevent erosion on the site or reduce the potential that landslide debris will adversely affect the Perkins Lane West right-of-way. The design of the variance alternative is limited to too small a portion of the site to effectively address both erosion potential and potential landslide activity. Subsection 25.09.180.E.1.b requires compliance with the variance standards in subsection 25.09.280.B; subsection 25.09.280.B.4 requires that granting a variance will not be injurious to safety or to property or improvements in the zone or vicinity in which the property is located. Thus, the variance alternative fails to provide relief from the strict application of the critical areas regulations, despite lesser disturbance of the site than the applicants' preferred project.

In a review of a previous application for an environmentally critical areas exception for development of the property, under the same project number 3003957, DPD issued a land use decision dated September 23, 2010, denying a proposal for a critical areas exception to disturb up to 74.6% of the steep slope area of the property and build a structure with more than 5,000 square feet of living area. This prior design was determined to exceed the minimum necessary to afford relief from the strict application of the critical areas regulations. After the decision was published, the property owner chose to submit the current revised exception application, subject to a new public notice and comment period, and the following analysis supports a grant of this revised exception application.

ANALYSIS – ENVIRONMENTALLY CRITICAL AREAS (ECA) EXCEPTION

Seattle Municipal Code Section 25.09.300.A only allows an applicant to apply for an ECA exception for modification of ECA development standards if the Director concludes that no other applicable administrative remedies in SMC Chapter 25.09 (ECA regulations) or in SMC Title 23 (Seattle Land Use Code) will provide sufficient relief. Pursuant to SMC Sections 25.09.300.C and 25.09.300.D, the Director may modify or waive front and rear yard requirements and/or an ECA development standard when an applicant demonstrates by clear and convincing evidence that: (1) strict application of the development standards would not permit any reasonable use of the property and that development undertaken pursuant to the modified or waived standards would not cause significant injury to occupiers of the land, to other properties, and to public resources or to the environment; and (2) the relief granted by reduction, waiver, or modification of an environmental critical areas development standard or the front or rear yard standards shall be the minimum to allow reasonable use of the property. Preference shall be given to modifying or waiving the yard standards. In modifying a regulation, the Director may impose reasonable conditions that prevent or mitigate the same harm that the modified or waived regulation was intended to prevent or mitigate.

The proposed development of a single family residence on Lot 6 is limited by the existing steep slope and steep slope buffer covering 93% of the site. The standards of SMC Sections 25.09.180.B and C.2 prohibit development in a steep slope and steep slope buffer. The ECA provisions of SMC Section 25.09.180.B and C are applicable to the subject site.

The applicant must show that no other administrative remedy will provide sufficient relief before applying for an ECA exception. As analyzed above, the applicant has demonstrated that reasonable use of the property requires the proposed exception instead of the variance process in order to mitigate the impacts on steep slope functions, impacts to safety, and injury to the property and other improvements, and thus has met the requirement of demonstrating that no other applicable administrative remedy will afford relief. As analyzed below, the scale of the proposed exception, including the construction needed to mitigate the impacts of constructing a residential structure, is the minimum for reasonable use, and would not cause significant injury to occupiers of the land, to other properties, to public resources or to the environment. Accordingly, the exception to construct the preferred proposal disturbing 2,148 square feet of the property (1,950 square feet of steep slope plus the entire non-steep slope portion of the lot) is granted.

The analysis of the exception criteria follows:

- 1. The Director may modify an environmentally critical areas development standard and/or the yard and setback standards for front or rear setbacks when an applicant demonstrates by clear and convincing evidence that strict application of the development standards would not permit any reasonable use of the property and that development undertaken pursuant to the modified or waived standards would not cause significant injury to occupiers of the land, to other properties, and to public resources, or to the environment.***

Lot 6 was platted in 1921. As a full platted lot predating July 24, 1957, and having no history of common ownership with a contiguous lot, it qualifies as a legal building site under the minimum lot area exception of SMC Section 23.44.010.B.4.a. Lot 6 was previously developed with a single family residence constructed in 1938, according to King County tax records, and moved to another lot under Seattle Building Permit No. 441882, issued January 11, 1956. Since the lot meets Code standards for a building site and was previously developed with a single family residence, a new single family residence may be developed on the property under the Land Use Code. Lot 6 is located on an ECA steep slope area that occupies approximately 93% of the site or 2,802 square feet.⁴ The approximately 198 square feet of the site that is outside the steep slope is confined to an area adjacent to the Perkins Lane right of way. The 198-square-foot area near the street is the only area outside the steep slope that can be developed without intruding into the steep slope. The applicant has provided a plan (sheet A0.01) that shows a 126-square-foot building footprint in this area, which is not sufficient area for reasonable use as a residence as analyzed further below and, in any case, would still not comply with steep slope buffer standards. Therefore, the applicant has demonstrated that development potential outside of the steep slope and steep slope buffer would not permit reasonable use of the property.

⁴ The first exception decision published in September 2010 indicated 2,790 square feet of steep slope area. The slight revision in the calculation is based on more specific information provided by the applicant on plan sheet A0.01.

The developmental coverage of the preferred alternative is justified to stabilize the site and is the design that achieves the policy of controlling erosion on the site. While there is increased site disturbance associated with construction of the preferred alternative over designs that disturb less of the site, such as the variance alternative, the additional disturbance is expected to be offset by the stabilization measures added to the completed project, which will reduce potential adverse impacts to the site from erosion and landslide activity and also reduce those impacts to property beyond the boundaries of the site once the project is constructed. The stabilization measures include drainage provisions, landslide catchment area, and stabilization of the building area with deep foundation systems.

Given that the site is a legal building site and some development is allowed, alternatives involving less site disturbance are ineffective in controlling erosion and ensuring site stability, while an even larger development on the site than the preferred alternative would not be the minimum relief needed for reasonable use. The applicant's information thus demonstrates, by clear and convincing evidence, that the applicant's preferred alternative is a reasonable use of the property that will reduce the adverse impacts associated with erosion and sedimentation once the project is constructed.

The conclusion that the applicant's preferred alternative is a reasonable use of the property is supported by analysis of the character of other residences in the neighborhood, by a review of the property owner's reasonable development expectations, by the economics of the proposed development, and by precedent in similar ECA exception decisions involving proposals to develop single family residences. These points are discussed in greater detail under the second criterion below.

There is no evidence that development of the subject site as recommended by the applicant's geotechnical engineer, and subject to appropriate conditioning by DPD, would cause significant injury to occupiers of land, other properties, or to public resources. The proposal will comply with Section 25.08.080 regulations for landslide prone areas as shown in the geotechnical reports dated April 7, 2005 and as supplemented on December 12, 2005 and April 18, 2008. The project is not expected to have an impact on public resources.

However, given the high risk of future landslide activity in the project area and the area upslope of the proposed development, consideration should be given to stabilization measures that will either prevent adverse impacts associated with landslides or allow for more efficient remediation of landslide damage, including cleanup and debris removal. The project includes a landslide catchment system that will reduce the potential that landslide debris will adversely affect the Perkins Lane West right-of-way. The preferred alternative best meets the criterion requiring that development on the site not cause significant injury to the environment.

- 2. The relief granted by the reduction, waiver, or other modification of the environmentally critical area development standard and of the yard and setback standards for front or rear yards shall be the minimum to allow reasonable use of the property. Preference shall be given to modifying or waiving the yard or setback standards for front or rear yard or setbacks. In modifying a reduction, the Director may impose reasonable conditions that prevent or mitigate the same harm that the modified regulation was intended to prevent or mitigate.***

The applicant has demonstrated that the proposed 1,950-square-foot site disturbance and 1,285-square-foot building footprint, comprising both the residence and necessary erosion control, is the minimum development for this property necessary to provide reasonable use, as the proposed design and coverage achieved the policy of controlling erosion on the site, as discussed above.

In addition, a comparison to other lots in the vicinity of similar size and site conditions that are developed with single family residences shows that they include residences similar in bulk and scale to the proposed residence. There are 18 parcels on the uphill side of Perkins Lane, running from undeveloped tax parcel 136430-0585 at the southerly end to undeveloped tax parcel 136430-0460 at the northerly end, a distance of approximately 1,700 feet, which have conditions similar to the subject property. Four of these parcels are developed with single family residences built at various times ranging from 1932 to 2003. The existing houses have living areas of about 1,535 square feet (2324 Perkins Lane W), 1,670 square feet (2364 Perkins Lane W), 1,632 square feet (2400 Perkins Lane W) and 2,850 square feet (2434 Perkins Lane W). The house at 2434 Perkins Lane West, built in 2003, was constructed after the ECA regulations became effective in 1990.⁵ Although constructed on a 3,750-square-foot lot with less steep slope critical area than the subject property, this house is comparable in size to the applicant's preferred project, particularly in terms of its building footprint, which is 1401 square feet, and its overall site disturbance, which is 1,586 square feet.⁶ All of these houses have been sold at various times between 1999 and the present, according to records of the King County Assessor. The 2324 structure sold in April 2004 for \$524,950, the 2364 structure sold in September 1999 for \$365,000, the 2400 structure sold in October 2005 for \$650,000, and the 2434 structure sold in December 2007 for \$1,200,000.

Given the characteristics of the houses in the immediate vicinity built on lots that are most similar to the subject property, as well as the recent sales history for the existing houses, it is reasonable that development expectations for the property would include building a house of similar size to the existing ones. Property owner Marty Bumstead submitted a letter to DPD noting that, at the time he purchased the property, he felt that the house at 2434 Perkins Lane West ". . . was a good guide for what we could do with our lot." Mr. Bumstead further notes in his letter that he purchased the property in early 2005. He also notes as follows:

"It was not until after we closed the land purchase and began the design and permitting process that we came to understand the extent to which our lot presented particular geotechnical challenges. . . . We soon discovered from the geotechnical engineers that we hired that this distinguishing feature of our steep slope [a very significant groundwater seep] would require more extensive site drainage work and a deeper foundation than on 'ordinary' steep slopes. So the biggest challenge then became the development of a residential structure commensurate with a foundation and site costs."

⁵ Prior to May 2006, the development standards for steep slope areas in SMC Section 25.09.180 allowed disturbance of up to 30% of the steep slope area on a site without a variance analysis.

⁶ While the applicant's proposal is slightly larger than the 2434 Perkins Lane West house in terms of living space, this is irrelevant as the additional living space is simply added within the permitted building envelope allowed by the Land Use Code development standards for the building footprint proposed. It is the disturbance area of the site, including the building footprint, which is most relevant to comparing the relative size of the structures for reasonable use analysis.

SMC Section 25.09.300.B.1.e requires an applicant to submit an explanation, with supporting evidence, of how and why compliance with all ECA development standards would not permit any reasonable use of the property. The evidence can include the date the applicant purchased the property, the price paid for it, and restrictions or conditions on use or development in existence when the applicant acquired his rights. It is clear from the property owner's statements that he purchased Lot 6 after the ECA regulations became effective in 1990,⁷ and he either knew or should have known what the development limitations were. He also would know what the characteristics of the other houses on similar lots were. Given the history of the subject site as previously developed property, the property owner could expect to build a single family residence of similar size as houses on the uphill lots adjacent to Perkins Lane that had similar site conditions.

The City's Hearing Examiner has approved critical areas exceptions allowing similar levels of disturbance, or even more disturbance, than is proposed for the 2318 property. (See, for example, In the Matter of the Appeal of Wesley Wong, MUP-99-040 (1999); In the Matter of the Appeal of Jim and Francie Moses, CA-94-001 (1994).)

Therefore, the proposed "preferred alternative" is the minimum necessary to allow reasonable use of the subject property.

DECISION – ENVIRONMENTALLY CRITICAL AREAS EXCEPTION

Subject to limiting the proposed development to the single family residence as shown on all plans stamped as received by DPD on July 11, 2011, the ECA Exception to allow land disturbing activity in excess of 30% of the area measured over 40% steep slope (69.6%) on the site is **CONDITIONALLY GRANTED.**

CONDITIONS – ECA EXCEPTION

ECA Code Requirements (ECA conditions subject to administrative review through interpretation, apply to all the lot. These conditions include, but are not limited to, the following items):

Prior to Issuance of a Master Use Permit

1. All plans shall be revised as needed to limit disturbance of steep slope to 1,950 square feet as proposed on the plans sheet A0.01 stamped as received by DPD on July 11, 2011.
2. Show on MUP 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. (SMC Section 25.09.060) The fence shall be configured so that 852 square feet of steep slope critical area remains separated from the construction activity area.

⁷ The process for allowing intrusion into the steep slope ECA and buffer was changed in May 2006. Prior to that time, development of up to 30% disturbance of the steep slope ECA could be considered as a development standard in a nonappealable decision. The current process is the steep slope area variance in Section 25.09.180.E. The standard for maximum disturbance of the steep slope area is the same as under prior Code.

3. Provide a wetland mitigation plan that complies with the requirements of SMC Section 25.09.160.C.3.
4. All water produced from the proposed groundwater extraction wells (see plan sheet A1.01 stamped received by DPD on July 11, 2011) shall be conveyed to the beach at the base of the slope by a properly engineered tightline system through the property at 2315 Perkins Lane West, now under common ownership with the subject property. Indicate this system on the plans.
5. ECA Covenant. Provide names of owner(s) of property and their relationship (single man or woman, marital community, partnership, corporation, etc.) so that this information may be incorporated into the ECA Covenant document. Include the number of permanent markers. Note that the ECA Covenant is not the same as the Geologic Hazard Covenant.

Prior to Issuance of Any Building Permits

The owner and/or responsible party shall:

6. Show on building plans the location and boundaries of ECA's on the site. Use the contours on the topographic survey to delineate the steep slope critical area on the building plans. The steep slope areas are at least 10 feet in height and average at least 40%. Provide area calculations for the steep slope delineation.
7. Provide a note on the building plans indicating that landslides occurred on the subject site. (25.09.060A.2.a)
8. Provide on building plans calculations for developmental coverage and impervious surface, and show the construction activity area for the proposal on building plans. (25.09.060)
9. 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. (25.09.060)
10. Show on building plans the existing and proposed final grade contours.
11. Show on building plans the location of the stormwater control system and the connection to the public system.
12. Provide on building plans a Best Management Practices plan to include temporary and permanent drainage and erosion control.
13. Provide note on building plans indicating that grading must be stabilized by October 31st, and no excavation to be performed between October 31st and April 1st. (25.09.060C.9)

