



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: 3007040
Applicant Name: Randall Spaan
Address of Proposal: 1708 NE Brockman Place

SUMMARY OF PROPOSED ACTIONS

Land Use Application to allow recovery of development credit on site in a single family zone by cluster development of three single family dwellings on property located in an environmentally critical area and to subdivide the parent parcel into four unit lots. The subdivision of the property is only for the purpose of allowing sale or lease of three of the unit lots, each of which would have an undivided one-third interest in the fourth unit lot, which would be legally unbuildable. Existing structures to be demolished.

The following approvals are required:

- Environmentally Critical Areas Conditional Use** - to allow recovery of development credit in a critical area in a single-family zone. (SMC 25.09.260)
- Unit Lot Subdivision** – to divide one parcel into four unit lots.
(SMC 23.24)
- SEPA - Environmental Determination** (SMC Chapter 25.05)

SEPA DETERMINATION: Exempt DNS MDNS EIS

DNS with conditions

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

BACKGROUND DATA

The subject property is a 28,759-square-foot parcel zoned SF-7200: Single-Family Residential, with a minimum lot size of 7200 square feet. The property is legally described as the northeasterly 75 feet of Tract 6 and all of Tract 7, Block 4, Brockman's Addition (a.k.a. Parcel A of Seattle Lot Boundary Adjustment No.2404915 as recorded under King County Auditor's File No. 20051208900006). For convenience, this decision will hereafter refer to the property as "Parcel A" and the proposed new lots as "Unit Lot A", "Unit Lot B", "Unit Lot C" and "Unit Lot D."

Parcel A is located in the Jackson Park neighborhood. The Jackson Park golf course is located a few blocks northwesterly of the property. Parcel A is "L-shaped," wherein the narrow end of the long leg of the "L" has approximately 100 feet of frontage on NE Brockman Place and a depth of approximately 225 feet. The shorter leg of the "L" is approximately 200 feet long by 75 feet wide and is essentially parallel to NE Brockman Place. This leg is separated from NE Brockman Place by Parcel B of Seattle LBA No.2404915, which averages approximately 120 feet in depth, as measured perpendicular to the street. The westerly one-half of the long leg of the "L," which abuts NE Brockman Place, slopes gently downward from the street to the crest of a steep slope. The steep slope occupies the remainder of the Parcel A (essentially all of the short leg of the "L") and extends continuously downward to Thornton Creek, which is located a short distance off-site to the northeast. The total steep slope area is approximately 17,260 square feet. The moderately sloping bench, the remainder of the property, is approximately 11,500 square feet in area. Although Thornton Creek is located a short distance off-site to the northeast, a 100-foot buffer measured in a horizontal plane from its bank (high water line) is still located downslope of the crest of the steep slope on the site. The development proposal here propose to leave all of the steep slope as a nondisturbance area; an area much broader than the required riparian corridor buffer.

Parcel A is presently developed with a single-family dwelling constructed in 1940. The existing structure is located with the southerly half of the gently sloping bench approximately mid way between the street and the crest of the steep slope. An asphalt driveway extends from NE Brockman Place past the north side of the house to a detached garage adjacent the crest of the steep slope. A large asphalt parking area is located to the north and east of the existing house. The asphalt paving slopes toward the crest of the steep slope. Two mature conifers are located between the existing house and the street. The steep slope area is moderately wooded with mature trees, with Red Alder dominant in the south half, Big Leaf Maple dominant in the north half.

The zoning in the surrounding area is also SF-7200: Single-Family Residential, with a minimum lot size of 7200 square feet and development in the vicinity is almost exclusively single-family residences. Lot size in the surrounding blocks is mixed, with at least half of the original tracts having been subdivided into smaller lots consistent with the SF-7200 zone. Virtually all of the lots in the same block (bounded on the southwest by NE Brockman Pl, on the west by 15th Ave NE, on the northeast by NE 132th Pl, and on the southeast by 19th Ave NE) contain some steep slope critical area. The steep slope critical area within this block is centered on Thornton Creek.

Proposal

The proposal is to redevelop Parcel A with three new single-family dwellings, all located on the gently sloping bench and to subdivide the property into 4 lots: One lot for each of the three single-family dwellings on the non-critical bench and a fourth lot encompassing all of the steep slope critical area upon which no development would be allowed. Each of the three buildable lots would be together with an undivided 1/3 interest in the unbuildable lot. Due to the large percentage of the site that is within a steep slope critical area, which cannot be used to meet minimum lot size requirements, the proposal includes an application for administrative conditional use approval to recover development credit for two new houses on the property and transfer development credit from the steep slope critical area and its buffer to the gently sloping bench adjacent NE Brockman Place. The existing single family dwelling and detached garage would be demolished. Three new single family dwellings, each with a basement garage, would be clustered on the development bench. The clustered site plan maximizes the separation between dwellings by placing two of them adjacent the street at the north and south lot lines and the third centered at the rear of the development bench, adjacent the crest of the steep slope. The two dwellings adjacent the street would be separated by a distance of 26 feet; the house in the rear would be separated from each front house by approximately 30 feet. A single ten-foot driveway would provide access to all on-site parking.

The two front houses would have 20-foot front yards, the minimum required by the Land Use Code. The northerly house is not parallel to the street; therefore its front yard would be perceived to be somewhat greater. The front houses would each have a five foot side yard, the minimum required by the Land Use Code. The rear house would be set back from the crest of the slope a minimum of 10 feet. Its south and north side yards would be approximately 10 feet and 30 feet, respectively.

Each of the proposed new houses would consist of a two-story structure on a daylighted basement with a two-car garage located in each basement. The proposed houses are of a size and scale similar to houses in the surrounding neighborhood and would be perceived as two-story structures from the public street. The three houses would have a total building footprint of 3,412 square feet. Total impervious surface area, including the common driveway, guest parking area, patios, walks, and roof overhangs would be approximately 5,900 square feet. Total developmental coverage would be 11,500 square feet. This developmental coverage area represents about 40% of the total area of Parcel A. All land disturbing activity would occur outside the steep slope area. No substantial trees would be removed except for one 20-inch spruce tree adjacent the street margin which would be too close to the house on Lot C.

Public Comment

During the original comment period ending June 29, 2005, comments were submitted by a half dozen neighbors of the property. The principal concerns expressed by these neighbors were for runoff and drainage, impacts to Thornton Creek, traffic and noise, and the skinny proportions of the proposed houses. The latter concern was by far the greatest. The applicant subsequently

redesigned the project with one house in the rear and two adjacent Brockman Place so that all houses were at least 30 feet in width and had proportions compatible with houses in the neighborhood. After public notice of the revised project was made, a number of comments were received from neighbors expressing the same concerns as before, with the exception of the "skinny house" issue.

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, which includes 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 required steep slope buffers on existing lots, including the general requirement that development shall be avoided in steep slope areas whenever possible and, if avoidance of development in the steep slope areas is not practicable, then a standard applies limiting grading, developmental activity, and other land disturbing activity to a maximum of 30% of the area measured as steep slopes of 40% or greater. All decisions subject to these standards are non-appealable Type I decisions made by the Director (or designee) of DPD.

SMC Section 25.09.140 provides specific development standards for Riparian Corridors. The standards are based upon stream Classification. Thornton Creek, which is located just off-site to the northeast is a Class A stream. A 100-foot buffer from the high water line of Thornton Creek would be required. The Section provides for buffer reductions under certain limited circumstances.

Conditions imposed as a means of compliance with the ECA ordinance are non-appealable. 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.

Section 25.09.240 D states that critical areas and their required buffer areas receive no development credit for use in calculating the number of lots permitted. If the steep slope area and the prescriptive 15-foot buffer area, together comprising a total of approximately 18,800 square feet of existing Parcel A, are subtracted from the total area of Parcel A only 9,955 square feet of lot area remains, and this is an insufficient area for more than one lot in the SF-7200 zone. Under a strict application of the regulations, Parcel A cannot be subdivided, and only the existing house would be permitted outright.

SMC Section 25.09.260 provides a process for DPD to authorize the recovery of development credit in a single-family zone through an administrative conditional use review. The Director may approve, condition, or deny an application based upon a determination of whether the proposed recovery of development credit on the site meets the applicable criteria. Section 25.09.260 further allows clustering of structures where reductions in yards will accommodate recovery of development credit, encourage larger buffers, reduce impervious surfaces, and decrease the size of areas affected by development. An ECA Conditional Use decision is a Type

II decision, subject to the provisions of SMC 23.76, and is appealable to the City Hearing Examiner. As proposed, the new dwellings and appurtenant land disturbing activities comply with the standards of SMC Section 25.09.180.A.1, which requires that development on areas over 40% slope be avoided whenever possible. The proposal would achieve this objective by concentrating development on the gently sloping bench situated between the crest of the steep slope and the NE Brockman Place right of way. By clustering the houses in this area the proposal avoids all development in the steep slope area while providing a minimum 10-foot buffer from the steep slope. The Critical Areas Policies for steep slopes specifically indicate that the ECA Conditional Use was intended to allow recovery of development credit in steep slope areas, where the development standard of Section 25.09.180 A 1 is met.

ANALYSIS - ECA CONDITIONAL USE TO RECOVER DEVELOPMENT CREDIT AND PERMIT CLUSTERED DEVELOPMENT

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 recover development credit and permit clustered development in single-family zones. Applicable review criteria and supporting analysis follows:

- A. Up to full development credit on-site (determined by calculating the maximum number of lots allowed based on the underlying single-family zoning and size of the originating property) may be granted by the Director through an administrative conditional use permit, authorized under SMC Section 23.42.042, Conditional uses, in the Land Use Code.

The minimum lot size in this zone is 7,200 square feet. Existing Parcel A is 28,759 square feet (inclusive of the steep slope area and any required buffer). The number of new lots proposed by this application are three. When the critical area and the prescriptive 15-foot buffer are subtracted from the total lot area in calculating development credit, as required by SMC Section 25.09.240 D, only 9,955 square feet of non-critical, non-buffer lot area remains, which is less than the 21,600 square feet of lot area required for three lots. Thus, existing Parcel A cannot meet the development standards for a short subdivision contained in SMC Section 25.09.240. However, the conditional use provisions of Section 25.09.260, which incorporate the critical areas policies, allow recovery of development credit and reduction of yards through clustering as an alternative to strict application of Section 25.09.240 D. The applicant has therefore applied for an ECA administrative conditional use to both “recover” sufficient development credit to allow a short subdivision of Parcel A into three new lots, and to allow clustering of three new single family dwellings on that portion of Parcel A lying outside the steep slope critical area and by reducing the prescriptive buffer from 15 feet to 10 feet.

SMC Section 25.09.260 A allows recovery of development credit on a parcel of property provided that the criteria in that section are met. Discussion of the criteria in subsection E (1-9)

is followed by analysis of the clustering provisions of subsections F, G and H, and then by analysis of the general conditional use criteria of subsections B and C. Subsection D requires that DPD issue written findings of fact and conclusions to support its decision.

E. The Director may approve the transfer of development credit if it can be shown that the development would meet the following conditions and findings:

1. The transfer of development credit shall not result in any significant increase of negative environmental impacts, including erosion, on the identified ECA and its buffer;

As noted above, Section 25.09.180 A requires that development be avoided on steep slopes “whenever possible.” On a lot that is partly comprised of steep slope areas, as in the case of Parcel A, Section 25.09.180 A requires that development be concentrated in the portion of the lot lying outside the steep slope area and any required buffer. Examples of the transfer of development credit on pages 62 and 63 of the critical areas policies suggest that the “transfer” was generally expected to occur from the critical portion of a site to the noncritical portion. In the case of Parcel A, the application is to transfer development credit from the steep slope area to the non-critical gently sloping bench adjacent NE Brockman Place.

Inasmuch as proposed Lots A, B, and C, would consist entirely of the non-critical portion of Parcel A, all development on these three lots would necessarily be located outside the steep slope critical area. Lot D, however, would consist exclusively of steep slope area and consequently would be dedicated, in its entirety, as a nondisturbance area upon which no development would be allowed (with the exception of storm drain infrastructure). The location of the new construction outside the critical area would minimize erosion during construction. The 10-foot buffer, together with Best Management Practices in conformance with the Stormwater, Grading and Drainage Control Code (SMC Chapter 22.800), would also minimize erosion and sedimentation impacts to downstream environments. The limits of land disturbing activity and conformance with SMC 22.800 for construction permits will be a condition of approval of the proposed development, as will the designation of all of Lot D as a nondisturbance area by ECA covenant.

The presently developed portion of Parcel A is covered with approximately 5200 SF of impervious surface area, which represents approximately 52 percent of the development bench. The remainder of the bench is covered with landscape species and lawn grass. The present development has no stormwater management system. The driveway and parking area are not equipped with catchbasins and they slope downward toward the steep slope ECA. The gutters and downspouts are not lightlined to a stormwater collection system. In sum, it appears that the majority of runoff from impervious surfaces drains to the crest of the steep slope.

The proposed development would have approximately 5900 SF of impervious surface area; 7 percent more than the present development on the site. However, all new impervious surface areas would be equipped with drainage infrastructure tightlined to an on-site detention and controlled release structure with an ultimate discharge point at the base of the steep slope, adjacent to Thornton Creek at an elevation approximately 4 feet above its high water line. The

existing vegetation would be replaced with a combination of low grass and more drought tolerant species requiring less water, in order to minimize erosion after construction. Accordingly, the proposal, as conditioned according to this decision, will meet the first criterion for conditional use approval.

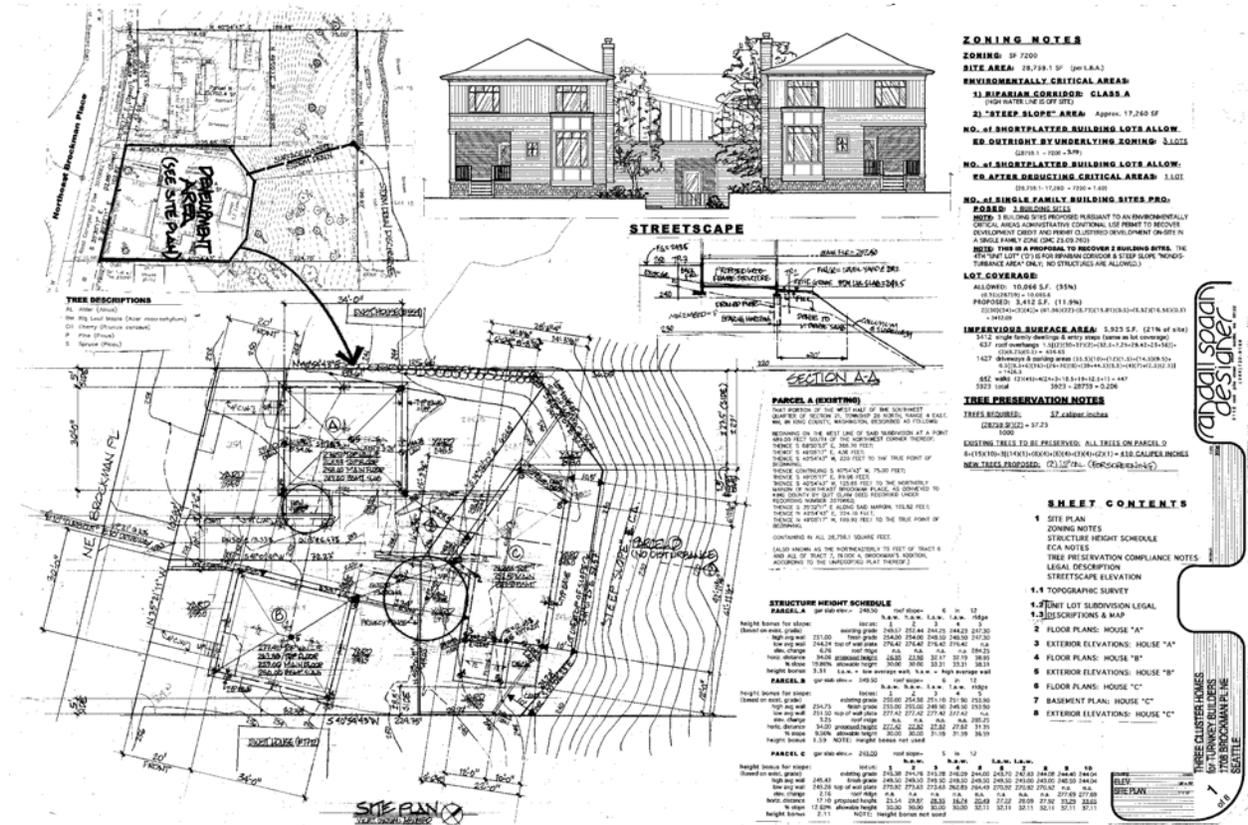
2. *The development shall be reasonably compatible with neighborhood characteristics. This shall include but not be limited to concerns such as height, bulk, scale, yards, pedestrian environment, and amount of vegetation remaining;*

Lot sizes in the immediate neighborhood range from 6,600 square feet to one lot of nearly 25,000 square feet. Several lots across the street are less than 7200 square feet. Lot sizes for the subject development are proposed to be: 4,610.4 square feet (Lot A), 3,487.7 square feet (Lot B), 2,435.2 square feet (Lot C), 17,225.8 square feet (Lot D). Lot D would be dedicated as a non-disturbance area. If Lot D were not created as a separate non-buildable lot for the purpose of preserving the steep slope habitat environment adjacent Thornton Creek, then the average lot size of three buildable lots would be 9,538.6 square feet. Thus, the development in terms of lot area would be similar to other lots in the immediate neighborhood. There will be no loss of tree canopy in the ECA, which is limited to Lot D. One tree in the front yard areas along the street would be lost to development. The quality of vegetation within the recently developed area would be improved in terms of its erosion control and habitat characteristics.

The proposed new houses will be two stories on daylight basements. A two-car garage would be located in each basement and hidden from view from the street. Each house would be perceived to be a two-story structure in the Brockman Place streetscape. All houses are at least 30 feet wide. Thus, the houses would be similar in size, proportion, and height to surrounding residences. All proposed yards adjacent abutting properties conform to the Land Use Code. Several internal yards would be nonconforming. The rear yard of Lot C would be substandard, as would the front and rear yards of Lot B. These internal nonconformities are the result of clustering and of the creation of Lot D as a non-disturbance area. However, the actual internal setbacks of three houses from each other, 30 to 36 feet, offsets the nonconforming yards created by the internal lot lines.

The development will have no adverse effect on the pedestrian environment in the neighborhood. There will be no change to the existing streetscape and, as all three new houses will share one driveway, no new curbcut would be required. No vegetation along the street would be removed except for a 20-inch spruce tree, which would be too close to the house on Lot C. The second criterion is met.

Because a particular proposal for specific sizes of single family structures with specific setbacks, vehicle access schemes and site placement has been developed to insure compatibility with surrounding uses it is necessary to condition this application to require that the particular building envelopes, site development scheme and site plan proposed during the review process be the only development scheme allowed for the site. These are shown in the image below.



3. *In no case shall development credit be allowed for the area covered by an open water area of a wetland or riparian corridor.*

Thorton creek is located off-site. No development is proposed for an area covered by open water of a wetland or riparian corridor, so this criterion is met.

4. *The development shall retain and protect vegetation on designated undisturbed areas on and off site. Significant species or stands of trees shall be protected, and tree removal shall be minimized. Replacement and establishment of trees and vegetation shall be required where it is not possible to save trees.*

The vertical organization of the proposed new houses (2 stories on a basement containing a 2-car garage) is compact and minimizes the area of the building footprint. This allows the new development to be located entirely within the existing non-ECA development bench with maximum open space. No significant trees will be removed or damaged as a result of the development. Dedication of Lot D as a non-disturbance area will protect the wooded hillside. Lot D will be protected by a temporary construction barrier. The compact footprints of the houses, the creation of Lot D as an nondisturbance area and conditions attached to this decision protecting it during construction, would satisfy the fourth criterion.

5. *The ability of natural drainage systems to control the quality and quantity of stormwater runoff shall not be significantly impaired.*

All stormwater runoff from impervious surfaces will be directed, after detention, to Thornton Creek, which is an element of the City' stormwater drainage system. A drainage control plan that complies with the City's Stormwater, Grading and Drainage Control Code is required as a condition of approval of the proposal. The method of discharge to the creek will be by way of an infiltration trench, sheetflow simulator, or other device that mimics the natural stormwater flow regime recharging the creek. As conditioned, the fifth criterion is met.

6. *The development shall not adversely affect water quality and quantity, erosion potential, drainage, and slope stability of other ECAs located in the same drainage basin.*

The proposed development will not disturb the steep slope area. Moreover, the completed development should prevent runoff from the site from reaching the steep slope. This is in contrast to the present development which has no stormwater control system that prevents runoff from reaching the steep slope. Thus, the proposed development should increase the long term prognosis for stability and decrease the potential for erosion of the steep slope. These results would protect the water quality of Thornton Creek.

Limiting all new development to the level portion of the property will limit erosion and sediment detritus reaching the stormwater detention system. The control structure will further reduce suspended particulates in the stormwater flow that ultimately discharges to Thornton Creek. The development, conditioned by this decision and in compliance with City Codes, will not adversely affect other ECAs in the same drainage basin.

While the proposed development presents some risk of erosion during construction, the development must conform to the requirements of the Stormwater, Grading and Drainage Control regulations. An erosion and sediment control plan for the property employing Best Management Practices as outlined in DPD Director's Rule 16-2000 will be required for the project. If constructed in conformity to City regulations and Best Management Practices, the development will not adversely affect water quality, erosion, drainage, or slope stability. The sixth criterion is therefore satisfied.

7. *The development's site plan shall include measures to minimize potential negative effects of the development on the undeveloped portion of the site, including provision of natural barriers.*

The proposed development, at the building permit stage, is subject to the following ECA requirements: dry season grading; the preparation of a detailed construction schedule; approved temporary and permanent erosion control plans; a comprehensive drainage control plan or alternative as determined by DPD plan review at the time of a building permit application; ECA covenants; bonds; insurance; a non-disturbance fence; adherence to geotechnical recommendations for development, and a pre-construction meeting.

The proposed development maintains a permanent vegetated buffer at the top of the steep slope that is a minimum of 10 feet in depth. The project geotechnical engineer has recommended that

this area be graded to slope away from the slope and that it would be adequate to prevent erosion of the steep slope. Drainage will be intercepted before it reaches the steep slope and directed to a point of discharge below the steep slope. Construction of a permanent durable barrier, such as a chain link fence, at the top of the steep slope would prevent disturbance of the steep slope that could lead to erosion. Conditioned to require the elements noted above, the seventh criterion will be met.

8. *Adequate infrastructure (streets and utilities) shall be available or will be provided; and*

Adequate infrastructure of streets and utilities are presently available. Northeast Brockman Place is a City street improved with paved roadway and a full complement of utilities, except for storm drainage. The eighth criterion is met.

9. *The Site Design Guidelines of Section 25.09.180C shall be followed for designated steep slope areas.*

Section 25.09.180 C 1 states that “Structures should be designed and placed on the hillside to minimize negative impacts, such as grading and land disturbing activity.” By locating all new development on the level portion of the subject property, the steep slope will be protected from grading, land disturbing activity. There will be no driveways passing through the steep slope area. However, the storm drain will be constructed down the steep slope in order to avoid a point of discharge above the steep slope. The project design places all development outside the steep slope critical area further protects it by dedicating it as a non-disturbance area. Thus, the ninth criterion is met.

F. *The Director may approve more than one (1) dwelling unit per lot and may approve smaller than required lot sizes and yards to accommodate recovery of development credit, and to encourage larger buffers, reduce impermeable surfaces, and decrease size of affected areas. . . Full development credit on-site shall not be increased beyond that permitted by the underlying single-family zone.*

SMC Section 25.09.260.F authorizes the Director to approve smaller yards than ordinarily required in order to accommodate recovery of development credit and to encourage larger buffers, reduce impermeable surfaces, and decrease size of affected areas. In order to develop three houses on Parcel A without impacting the steep slope, the applicant proposes create a very large lot, Lot D, which will include all of the steep slope area on the site. The remainder of Parcel A, where the three houses would be clustered, would be subdivided into three substandard size lots. As a consequence of the small lot sizes the rear yard of Lot C and the front and rear yards of Lot B would be substandard in dimension. All other yards would be conforming. The reduced yards are reasonable in order to avoid disturbance to the critical area. The three houses would all have conforming yards with respect to the abutting properties. They would also be separated from each other by distances of 30 to 36 feet. This exceeds the separation between many neighboring houses in the vicinity. They would each have adequate useable yards and open space. And collectively, they would contribute over 17,000 square feet of wooded open space to the neighborhood in perpetuity in the form of the nondisturbance area represented by

Lot D. Full development credit on existing Parcel A, which has a total of 28,759 square feet of area, would be three houses, so the proposal to demolish the existing house and construct three new houses does not increase development credit on the site beyond what is permitted by the underlying zoning.

G. The Director may require that structures be located on the site in order to preserve or enhance topographical conditions, adjacent uses and the layout of the project and to maintain a compatible scale and design with the surrounding community. In order to approve clustered dwelling units in all environmentally critical areas, the following criteria shall be met:

1. *Clustering of units shall help to protect the following critical areas: riparian corridors, wetlands and steep slopes;*
2. *Clustering of units shall require siting of structures to minimize disturbance of the environment;*
3. *Clustering of units shall help to protect priority species or stands of mature trees;*
4. *Clustering of units shall ensure maximum retention of topographic features;*
5. *Clustering of units shall limit location of access and circulation to maximize the protection of an area's natural character and environmental resource;*
6. *Clustering of units shall help protect the visual continuity of natural greenery, tree canopy, and wildlife habitat;*
7. *Clustering of units shall not have an adverse impact on the character, design and scale of the surrounding neighborhood; and*
8. *Clustering of units shall promote expansion, restoration or enhancement of a riparian corridor and its buffer, a wetland and its buffer or a steep-slope area and its buffer*

Most of the clustering criteria have been discussed in the analysis of the recovery of development credit. The subject cluster will protect the steep slope area on the site by concentrating all proposed new developmental coverage outside of the critical area. By concentrating the new development on the level portion of the site, with no removal of significant trees, the project minimizes disturbance of the natural environment and will not impact the steep slope. Although the proposal involves removal of one 20-inch spruce in the non-critical area of the property, as well as some lesser plants, the proposal does not otherwise involve any loss of existing trees or other vegetation the property. The proposal would retain the existing topographic features, since development would occur on the non-critical level area already developed with impervious surfaces and domestic landscaping. Access and circulation to all new structures would be from a presently dedicated street right-of-way and a new driveway and curbcut that would be shared by all houses. Although impervious surface area would be

added in the non-critical portion of the property, the increased area would be just seven percent and it would be equipped with drainage infrastructure that the present impervious surfaces do not have. In sum, the proposed development would improve stormwater management on the site. Thus, the development as proposed will not affect the area's natural character and environmental resources.

By limiting development to the existing gently sloping development area between the crest of the steep slope and the NE Brockman Place right-of-way and dedicating all of Lot D as a non-disturbance area, the proposal suitably protects the visual continuity of natural greenery, water quality, soil stability, tree canopy, and wildlife habitat. As previously described, the three houses are of comparable height, proportion, and footprint to many other houses in the immediate neighborhood, and will therefore not have an adverse impact on neighborhood character, design or scale. The location of the proposed development within the non-critical westerly part of existing Parcel A represents the best area for construction with no disturbance of the steep slope critical areas, while minimizing grading or other land disturbing activity.

H. Additional Conditional Use Provisions for Steep Slopes and Steep-slope Buffers.

1. *In steep-slope areas and their buffers, the Director may allow clustering on the steep-slope portions of the site when the site is predominantly characterized by steep slopes. However, the preference shall be to cluster away from steep-slope and buffer areas.*
2. *The Director shall require clear and convincing evidence that the clustering criteria and findings of this subchapter are met when a transfer in development credit within a steep-slope area is also characterized by or adjacent to:*
 - a. *A wetland over fifteen hundred (1,500) square feet in size, or a stream or creek designated as a riparian corridor; or*
 - b. *A large (over five (5) acres) undeveloped steep-slope system; or*
 - c. *Areas designated by the Washington Department of Wildlife as urban natural open space habitat areas or areas with significant tree cover providing valuable wildlife habitat.*

All existing and proposed development will occur on the non-critical westerly portion of Parcel A. There is no clustering within the existing steep slope area and all clustering will be outside the area of steep slope and any required steep slope buffer as recommended by the geotechnical engineer. Criterion H.1 is satisfied. Criterion H.2 (a-c) is not applicable, since none of the features described are present on or adjacent to Lot 6.

- A. The Director may approve, condition or deny an application for an administrative conditional use. The Director's decision shall be based on a determination of whether the proposed transfer of development credit within the site meets the criteria for allowing the specific conditional use and whether the use will be materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located.

As discussed above, the proposed transfer of development credit and clustering within the site meets the conditional use criteria for approval. As proposed, and subject to the conditions of approval of this decision, the development would not be materially detrimental to the public welfare or injurious to property in the zone or vicinity in which Parcel A is located.

- C. In authorizing an administrative conditional use, the Director may mitigate adverse negative impacts by imposing requirements and conditions deemed necessary for the protection of other properties in the zone or vicinity in which the property is located.

Conditions have been included to mitigate potential adverse negative impacts. These conditions are set forth following the short subdivision and SEPA analysis below.

DECISION – Administrative Conditional Use

The proposal to recover development credit is **CONDITIONALLY GRANTED.**

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 Policies and 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 as modified by the ECA ACU, a part of this decision. 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, Seattle City Light and the Seattle Fire Department. Seattle City Light has provided a proposed easement for the provision of electricity to the site which will be required as a condition of the proposal. 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 the criterion.

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

Adequacy of water supply was reviewed by Seattle Public Utilities and certified in Water Availability Certificate No.20050866 on June 15, 2005. All conditions on the certificate must be met prior to receiving water service.

Adequacy of drainage and sanitary sewer disposal were reviewed and approved by DPD Site Development staff. According to sewer card #LC-1690, the invert elevation of the sanitary sewer main is about 15 feet below the roadway surface in NE Brockman Place. It appears that even the basement of the proposed house on the rear lot (Lot B) would be able to tie into the main without pumping. The Sanitary sewer is not classified as a "combined" sewer; neither is there a storm sewer in NE Brockman Place. Therefore, all stormwater will be tightlined to a point of discharge adjacent to Thorton Creek after on-site detention designed for the 100-year storm. The discharge device shall simulate the natural stormwater flow regime that recharges the creek.

Plan review requirements for the stormwater control system will be made part of the building permit application. Because the project's new impervious surface area will exceed 5000 square feet, a comprehensive drainage control plan, prepared by a licensed civil engineer in accordance with SMC Sections 22.802.015 D and 22.802.020, will be required.

The proposal meets the criterion, subject to the standard conditions and code requirements governing utility service lines.

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 contains a mapped Steep Slope Environmentally Critical Area and a mapped Riparian Corridor as defined in Seattle Municipal Code Chapter 25.09. The Unit Lot Subdivision complies with the applicable requirements of SMC 25.09.

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

Trees 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 three single family residences in four unit lots on one "parent lot" through unit lot subdivision, where one lot would be covenanted as a nondisturbance area. The SF-7200 zone in which the subject property is located permits single family residential development. The proposal meets the 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 is serves.*

Review of this application shows that the proposed development as a whole, with the modifications made pursuant the ECA ACU above, 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: *"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 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 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 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 is moot respect 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 Code.*" The proposal meets this criterion, subject to the conditions listed below.

DECISION - UNIT LOT SUBDIVISION

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

ANALYSIS - SEPA

The initial disclosure of the potential impacts from this project was made in the environmental checklist. This information, along with the experience of the lead agency in similar situations, form 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 (grading, site excavation and soil erosion); Street Use Ordinance (watering streets to suppress dust, obstruction of the pedestrian right-of-way during construction, construction along the street right-of-way); Building Code (construction standards); and Noise Ordinance (construction noise). 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 are further discussed below.

Short-term Impacts

The following temporary or construction-related impacts are expected: increased soil erosion and sedimentation during general site work; increased runoff; and tracking of mud onto adjacent streets by construction vehicles. Due to the temporary nature and limited scope of these impacts and due to the efficacy of Best Management practices for erosion and sediment control, they are not considered significant (SMC Section 25.05.794).

Earth (slope stability) and Erosion

Compliance with the requirements of Director's Rule 3-93 and 16-2000 (the latter for implementation of Best Management Practices), and with the provisions of the Environmentally Critical Areas Ordinance (SMC Chapter 25.09) makes no additional mitigation is necessary.

Long-term Impacts

Long-term or use-related impacts 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); Stormwater, Grading and Drainage Control Code (storm water runoff from additional site coverage by impervious surface); and the Seattle Energy Code (long-term energy consumption). DPD geotechnical engineers have reviewed the proposal and the geotechnical studies provided with this application and have given preliminary approval of the proposal. Review of construction permits will involve a more detailed review of proposed soil stability, foundation and drainage measures.

Other impacts not noted here are not sufficiently adverse to warrant further mitigation by conditioning.

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).

NON-APPEALABLE CONDITIONS-ENVIRONMENTALLY CRITICAL AREAS:

Prior to Issuance of a Master Use Permit

1. Mark the area contained within Lot D as a "non-disturbance area," per SMC 25.09.060 and 25.09.335.
2. Submit a recorded copy of the ECA Covenant restricting development and disturbance on Lot D to the Land Use Planner, per SMC 25.09.060 and 25.09.335.
3. Permanent visible markers along the northeasterly line of Lot B to delineate the edge of the non-disturbance 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 margin of the "non-disturbance" area where it changes direction from a straight line. Markers must be in place before issuance of this Master Use Permit per SMC 23.09.335.D.

Conditions of Approval Prior to Issuance of Any Construction Permits

4. Show on the site plan the location of permanent ECA markers, SMC 25.09.060
5. Show on the building plans the location of a temporary, durable, highly visible construction barrier at the boundary of the "non- disturbance area" per SMC 25.09.060

CONDITIONS – ECA ACU

Conditions For the Life of the Project Conditions For the Life of the Project

6. The particular building envelopes, site development scheme and site plan approved in this permit (shown above in body of decision) is the only development scheme allowed to make use of the authority created by this MUP.

CONDITIONS-SEPA:

Conditions of Approval Prior to Issuance of Any Construction Permits

7. 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 plan shall include detention and controlled release of collected stormwater to a discharge structure that mimics the natural stormwater flow regime recharging the creek. The detention structure shall be designed to accommodate the 100-year Seattle Design Storm.
8. Submit for DPD approval an erosion and sediment control plan, employing Best Management Practices, to minimize erosion on and off site.
9. Show on the site plan calculations for development coverage, impervious surface area, and construction activity areas, noting areas and percentages of site;
10. Show on the site plan location of grading activities, including final grade contours, and drainage control facilities;
11. Show on the site plan location of existing utilities and proposed methods/locations of connection(s) to these services as they relate to the ECAs;
12. Submit for DPD approval building plans demonstrating deep foundations for the house on Lot B, in conformance with the recommendations of the geotechnical report (Dennis Bruce, P.E., Response to DPD Correction Notice, dated July 12, 2006)
13. Submit a recorded copy of the No-Protest Agreement for future street improvements to the Land Use Planner, per SMC 23.53.015.

During Construction

14. Prior to final inspection and as soon as practicable, construct a permanent fence or other physical barrier along the westerly margin of the "non-disturbance" area covenanted to the City of Seattle in lieu of a buffer to prevent erosion of the steep slope. The fence or barrier may have an opening or openings (such as a gate) inasmuch as its purpose is not to bar entry but to prevent day-to-day intrusions that may create erosion of the slope.

CONDITIONS - UNIT LOT SUBDIVISION

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

Prior to Recording:

15. Provide final recording forms and fees. Have the final recording documents prepared by or under the supervision of a Washington State licensed land surveyor whose stamp and signature shall be placed upon the documents. Each lot, parcel or tract created by the short subdivision shall be surveyed in the field and all property corners set in conformance with appropriate state statute. The property corners set shall be identified

on the plat and encroachments such as side yard easements, fences or structures shall be shown, as well as all structures and distances from them to the proposed property lines. Lot areas shall be shown on the plat.

16. Insert the following notice 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."
17. Permanent visible markers shall be placed at the westerly margin of the "non-disturbance area" (the common line of Lots C and D). 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 edge of the "non-disturbance area" where it changes direction from a straight line. Markers must be in place and shown on the plat before issuance of this short subdivision permit.
18. Insert a notation that development on Lot D is restricted and reference the recorded ECA Covenant restricting development and disturbance on Lot D.
19. The legal descriptions for Lots A, B and C shall indicated they each are "together with" an undivided 1/3 interest in Lot D.
20. Provide on the plat the required City Light easement.
21. Provide on the plat a joint use and maintenance agreement for the common driveway.
22. 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 Sue Code development standards."

Prior to Issuance of any Building Permit:

23. An all-site permanent Drainage Control Plan, submitted by the applicant for DPD review, shall be approved by DPD.

Signature: _____ (signature on file) Date: October 1, 2007
Scott Kemp, Senior Land Use Planner
Department of Planning and Development
Land Use Division

SK:bg

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