

**INTERPRETATION OF THE DIRECTOR
PURSUANT TO TITLE 23 OF SEATTLE MUNICIPAL CODE**

In the Matter of)	
the Use of the)	Interpretation
Property at)	No. 08-001
1101 – Westlake Avenue N)	

Background

This interpretation was requested by attorney Peter Buck on behalf of his client RREEF, which owns and manages two existing commercial buildings (1000 and 1100 Dexter Avenue North), located adjacent to and west of the property addressed as 1101 Westlake Avenue North. A new commercial development is proposed for the 1101 Westlake Avenue North property. A portion of the property along the westerly edge is mapped as an Environmentally Critical Area under the Seattle Regulations for Environmentally Critical Areas (Seattle Municipal Code Chapter 25.09), due to the presence of steep slopes of 40% average slope or greater, and a portion near the easterly edge is mapped as a liquefaction-prone Environmentally Critical Area. The Department of Planning and Development (DPD) has granted an exemption from the steep slope development standards of Seattle Municipal Code (SMC) Section 25.09.180 B 2 for the portion of the property within the mapped steep slope area. The sole issue in this interpretation is whether the exemption was properly granted.

Findings of Fact

1. The 1101 Westlake Avenue North property is located near the southwest side of Lake Union, in the Cascade or South Lake Union neighborhood. The property is described in DPD records as Lots 1-5, Block 22, Eden Addition #2, together with Block 85, Lake Union Shorelands and together with that portion of vacated Prospect Street lying between and adjoining Lot 1, Block 22, Eden Addition #2. For the sake of simplicity, this interpretation will hereafter refer to the subject property as the “1101 Westlake Project” site. A copy of a Geographic Information Service (GIS) land use map, showing the configuration of the property and neighboring properties, is attached to this interpretation as Appendix A.
2. The zoning is SM/65': Seattle Mixed, with a structure height limit of 65 feet. The zoning of the RREEF development to the west is also SM/65'. Office buildings such as the proposed 1101 Westlake Project development and the adjacent RREEF development are permitted in the SM/65' zone.

3. The GIS maps show that portions of the 1101 Westlake Project site are within Environmentally Critical Areas as designated in SMC Chapter 25.09, Regulations for Environmentally Critical Areas. The west edge of Lots 1-3, and approximately the westerly third of Lot 5, as well as approximately the westerly 20% of unimproved Highland Drive to the north of the site (proposed to be vacated as part of a related project, 1207 Westlake, to the north) are within a mapped steep slope area (with slopes of 40% average slope or greater). The east edge of Lots 1-4 and the east edge of unimproved Highland Drive to the north are also mapped as a liquefaction-prone area.
4. The 1101 Westlake Project and 1207 Westlake Project, together, comprise the proposed Westlake Steps development. The 1101 Westlake Project, for the southerly site described in Finding of Fact No. 1, has been assigned DPD Project No. 3004381 and the address of 1101 Westlake Avenue North. According to page 5 of the environmental checklist submitted for Project 3004381, the site is approximately 1.1 acres. The proposed development is a six-story building containing approximately 150,000 square feet of office space. Parking for approximately 300 vehicles would be provided below the building and in a mostly below-grade parking structure on the property immediately adjacent to Highland Drive. The proposed 1101 Westlake Building would be located approximately 80 feet south of the Highland Drive right-of-way. A public stair climb is proposed for the Highland Drive right-of-way itself and on top of the parking structure immediately south of Highland Drive. (See environmental checklist page 5 and Seattle Design Commission review documents dated December 7, 2006.) A second development comprising two additional buildings is proposed under a separate project for property north of Highland Drive, to be addressed as 1207 Westlake Avenue North. The 1207 Westlake Avenue North property is not included in the analysis under this interpretation.
5. The topographic survey included in the plans submitted as part of Project No. 3004381, at survey sheets 4 and 5, show the area of steep slope at the west end of Lot 5 and the west end of the Highland Drive right-of-way as about 40 feet wide and rising from a grade of about 30 feet at the toe, or east side of the slope, up to about 62 feet on the top, or west side of the slope adjacent to Dexter Avenue North. There are some trees and other growth within this unimproved steep slope area. The unimproved steep slope area is retained by an existing building on Lot 5 to the east and by a six-foot concrete retaining wall at the west end of the Highland Drive right-of-way. This wall also continues to the north of Highland Drive. To the south of the unimproved steep slope area, the topographic break between the 1101 Westlake Project site and the property to the south and west is defined by a concrete retaining wall about 30 feet high that surrounds the existing RREEF development at 1100 Dexter Avenue North. Permission was granted to construct the 1100 Dexter Avenue North building under Seattle Building Permit No. 676562, issued September 27, 1994.

6. According to the Environmental Checklist submitted by the applicant as part of the DPD review of Project 3004381 under the State Environmental Policy Act (SEPA), the 1101 Westlake Project site is presently developed with four vacant masonry and/or wood frame buildings ranging in size from 3,920 square feet to 14,400 square feet. Three of the buildings were built prior to 1930 and the fourth was built in 1969. Surface parking areas are located adjacent to some of the buildings. According to DPD aerial photos in the GIS mapping system, the entire site is improved, except for the northwesterly corner adjacent to Dexter Avenue North.
7. On November 2, 2007, an application was submitted to DPD for an exemption from steep slope development standards of the Environmentally Critical Areas regulations. According to the DPD application form for "ECA Exemption and Modification to Submittal Requirements Requests" dated November 1, 2007, the requested exemption was from Seattle Municipal Code (SMC) Section 25.09.180 B 2 b, for a steep slope exemption for a slope resulting from "legal grading activities." The rationale presented on the application form was that "the site has been heavily altered by road building (Dexter Ave N) and historic re-grade activities. The steep slope will not be altered in phase 1: it will be retained by temp. shoring."
8. On November 15, 2007, DPD Geotechnical Engineer Rob McIntosh approved the exemption request on the following basis, as set forth on the application form:

"3004381; 1101 Westlake Avenue North; ECA Review Required. Based on review of GIS and the submitted documents, the steep slope areas appear to have been created by previous legal grading. The ECA Steep Slope Development Standards (i.e., threshold disturbance level of 30 percent of the Steep Slope Critical Areas and requirements for a Steep Slope Area Variance) are waived for development associated with DPD Application No. 3004381. All other ECA Submittal, General, and Landslide-Hazard, and development standards will apply for this development."
9. In the course of his analysis of the exemption request, Mr. McIntosh reviewed a document submitted by the project applicant entitled "Geotechnical Engineering and Dewatering Design Services CarrAmerica Westlake Development Seattle Washington," dated June 8, 2006, and prepared by GeoEngineers Inc. in Redmond, Washington (hereafter referred to as "GeoEngineers Report"). As described on page 2 of the GeoEngineers Report, subsurface conditions at the site were evaluated by reviewing existing geotechnical and environmental subsurface information at and in the vicinity of the site and by drilling 14 soil borings, identified as GEI-1 through GEI-9 and GEI-13 through GEI-17, to depths of approximately 40.5 to 101.5 feet. Other soil borings, prepared by several other engineering companies as described on page 2 of the GeoEngineers Report, were also reviewed. The soil borings by GeoEngineers and the earlier borings by other firms are located on a map of the site and nearby property in Figure 2 of the GeoEngineers Report. These borings are identified in a legend on Figure 2.

10. A subsurface profile of the property drawn from south to north is presented in Figure 3 of the GeoEngineers Report, ranging from boring HC-3 (boring done by Hart Crowser in 1990) on the south end of the site, to boring B-103 (boring by Shannon & Wilson in 1992), on the north. All of the borings referenced on Figure 3 are, according to references in Figure 2, near the west side of the property adjacent to the Dexter Avenue North right-of-way. Figure 3 further shows, particularly for the area north of the 1000 Dexter Avenue North structure, fill between the existing surface grade to a depth of approximately 30 feet over the area between boring HC-1 to boring GEI-17, with fill of at least 10 feet further to the north. According to Mr. McIntosh, the information in Figure 3 indicates that a substantial amount of fill is placed on the west end of the 1101 Westlake Project site and under Dexter Avenue North. According to Mr. McIntosh, the fill represents grading improvements made for Dexter Avenue North, an improved street that has been in place for decades. Mr. McIntosh states that he relied on this evidence of street grading in granting the exemption from steep slope development standards dated November 15, 2007.
11. SMC Section 25.09.020 provides, in part:

“The following are environmentally critical areas designated by this chapter: geologic hazard areas, steep slope areas, flood-prone areas, wetlands, fish and wildlife habitat conservation areas, and abandoned landfills.

A. Geologic Hazard Areas and Steep Slope Areas.

1. Geologic hazard areas are liquefaction-prone areas, landslide-prone areas, seismic hazards areas and volcanic hazard areas described in subsections 2, 3, 5 and 6. Landslide-prone areas include steep slope areas. Steep slope areas that are regulated for additional erosion hazards are described in subsection 4.
2. Liquefaction-prone Areas. Liquefaction-prone areas are areas typically underlain by cohesionless soils of low density, usually in association with a shallow groundwater table, that lose substantial strength during earthquakes.
3. Landslide-prone Areas. The following are landslide-prone areas:
 - a. Known landslide areas identified by documented history, or areas that have shown significant movement during the last ten thousand (10,000) years or are underlain by mass wastage debris deposited during this period; or
 - b. Potential landslide areas:
 - (1) Those areas that are described as potential slide areas in "Seattle Landslide Study" (Shannon & Wilson, 2000 and 2003).

- (2) Areas with indications of past landslide activity, such as landslide headscarps and sidescarps, hummocky terrain, areas with geologic conditions that can promote earth movement, and areas with signs of potential landsliding, such as springs, groundwater seepage, and bowed or backtilted trees.
- (3) Areas with topographic expression of runout zones, such as fans and colluvial deposition at the toes of hillsides.
- (4) Setbacks at the top of very steep slopes or bluffs, depending on soil conditions.
- (5) Slopes with an incline of forty (40) percent or more within a vertical elevation change of at least ten feet (10').

For the purpose of this definition, a slope is measured by establishing its toe and top and averaging the inclination over at least ten feet (10') of elevation difference.

Also for the purpose of this definition:

- (a) The "toe" of a slope means a distinct topographic break in slope that separates slopes inclined at less than forty percent (40%) from slopes inclined at forty percent (40%) or more. Where no distinct break exists, the "toe" of a slope is the lower-most limit of the area where the ground surface drops ten feet (10') or more vertically within a horizontal distance of twenty-five feet (25'); and
 - (b) The "top" of a slope is a distinct topographic break in slope that separates slopes inclined at less than forty percent (40%) from slopes inclined at forty percent (40%) or more. Where no distinct break exists, the "top" of a slope is the upper-most limit of the area where the ground surface drops ten feet (10') or more vertically within a horizontal distance of twenty-five feet (25').
- (6) Areas that would be covered under one of subsections (2) to (5), but where the topography has been previously modified through the

provision of retaining walls or non-engineered cut and fill operations;

(7) Any slope area potentially unstable as a result of rapid stream incision or stream bank erosion.

4. Steep Slope Areas. Steep slope areas are areas with a slope described in subsection A3b(5) above; provided that when such a slope is on a parcel in a Downtown zone or highrise zone, the area is designated only as a landslide prone area.”

12. Section 25.09.080 sets forth development standards for landslide-prone critical areas. This section provides in part as follows:

“A. This section applies to all parcels in or containing a landslide-prone critical area.

B. Site.

1. Complete stabilization of all portions of a site that are disturbed or affected by the proposed development, including all developmental coverage and construction activity areas, is required. Complete stabilization of all portions of a site refers to the process and actions necessary to stabilize proposed site improvements, and all on-site areas and adjacent properties, including adjacent public and private rights-of-way, that are disturbed or affected.
2. The proposed development shall be limited and controlled to avoid adverse impacts and potential harm, and to provide safe, stable and compatible development appropriate to site conditions. Other reasonable and appropriate solutions to provide site stability may be required by the Director. This may include imposing conditions concerning the type and method of construction that reflect the specific constraints of the site.”

13. Section 25.09.180 sets forth development standards for steep slopes and steep slope buffers. This section provides in part as follows:

“A. This section and Section 25.09.080 apply to parcels containing a steep slope area or buffer.

B. Impacts on Steep Slope Areas.

1. Development is prohibited on steep slope areas, unless the applicant demonstrates that the provisions of subsections B2 or E apply.
2. Provided that all the provisions of this chapter and all applicable provisions of Title 23 and Title 22, Subtitle VIII, are met, the development standards in subsection B 1 do not apply when the applicant demonstrates the development meets one of the following criteria. In determining whether these criteria are met, the Director may require a geotechnical report to verify

site conditions and to evaluate the impacts of the development in the steep slope area and shall require such a report for criteria (c) and (d). The geotechnical report is subject to the provisions for third party review in Section 25.09.080 C.

- a. Development is located where existing development is located, if the impact on the steep slope area is not altered or increased; or
- b. Development is located on steep slope areas that have been created through previous legal grading activities, including rockeries or retaining walls resulting from rights of way improvements, if no adverse impact on the steep slope area will result; or
- c. Development is located on steep slope areas that are less than feet (20') in vertical rise and that are thirty feet (30') or more from other steep slope areas, if no adverse impact on the steep slope area will result; or
- d. Development is located on steep slope areas where the Director determines that application of the development standards in subsection B1 would prevent necessary stabilization of a landslide-prone area.

C. Buffers.

1. Steep slopes have fifteen-foot (15') buffers from the top and toe of a slope unless the Director determines that a greater or lesser buffer is required based on the following considerations:
 - a. Proposed construction method and its effect on the stability of the slope and erosion potential;
 - b. Techniques used to keep the disruption of existing topography and vegetation to a minimum; and
 - c. Preparation of technical reports and plans to address and propose remedies regarding soils and hydrology site constraints.
2. Development is prohibited on steep slope area buffers, except as authorized in subsection B2 or to provide access to such an area, which shall be kept to a minimum, and except as provided in subsection E.

D. Vegetation Removal and Replanting. If removal of trees or vegetation in a steep slope area and its buffer is authorized as part of approved development, it shall be kept to a minimum, and shall be carried out pursuant to a tree and revegetation plan described in section 25.09.320. Other removal of, clearing, or any action detrimental to trees or vegetation in a steep slope area or buffer is prohibited, except as provided in Section 25.09.320. In addition to complying with Section 25.09.320, any replanting that occurs shall consist of native vegetation.

Conclusions

1. The 1101 Westlake Project is permitted in the SM/65' zone, subject to review under the State Environmental Policy Act (SEPA), the City's Design Review process, and to compliance with applicable City codes. The project site is located partly within mapped environmentally critical areas as described in Finding of Fact No. 3, including mapped steep slope areas and liquefaction-prone areas, and therefore the project is subject to compliance with specific standards of SMC Chapter 25.09, Regulations for Environmentally Critical Areas.
2. The request for interpretation presents a single issue, which is whether the 1101 Westlake Project is eligible for an "exemption" or "waiver" from compliance with the steep slope development standards in SMC Section 25.09.180. The interpretation is limited in scope to the issue presented.
3. SMC Section 25.09.180 B 1 prohibits development on steep slope areas, identified as areas with a slope of 40 percent or more within a vertical elevation change of 10 feet, as set forth in SMC Section 25.09.020 A 3 b (5), unless the applicant demonstrates that the provisions of subsections B 2 or E apply. Subsection 25.09.180 B 2 lists a series of criteria for determining when the development standard in subsection B 1, prohibiting development on steep slopes, does not apply. (See Finding of Fact No. 13.) Analysis of the criteria in B 2 are generally supplemented by a geotechnical report, which DPD has authority to require and in fact must require to make determinations of whether some of the criteria apply. A geotechnical report was submitted for the 1101 Westlake Project. (Finding of Fact No. 9.) Subsection 25.09.180 E authorizes an application for a "steep slope area variance" to allow DPD to reduce a steep slope buffer or allow some disturbance of the steep slope. It is clear from the plain language of Section 25.09.180 B 1 that the variance is not required if it is determined that one of the criteria in subsection B 2 applies to a steep slope area. A determination that one of the listed criteria of subsection B 2 applies to a steep slope area is known as a steep slope exemption or waiver.
4. As described in Findings of Fact Nos. 7, 8, and 9, the applicants for the 1101 Westlake Project submitted an application for an Environmentally Critical Areas steep slope exemption on November 2, 2007, according to the requirements of subsection B 2, which was granted by DPD Geotechnical Engineer Rob McIntosh on November 15, 2007. As described in the exemption determination, an exemption was granted from the steep slope development standards for "previous legal grading" of the steep slope areas on the 1101 Westlake Project site. As the exemption determination states, the development standards prohibiting disturbance of the steep slope do not apply, and a variance analysis under subsection 25.09.180 E also is unnecessary, as the variance analysis only applies when the criteria of subsection B 2 are inapplicable to a steep slope area.

5. It is very clear from the soils analysis submitted by GeoEngineers, Inc. that the 1101 Westlake Project property meets the criteria for an exemption or waiver from the steep slope development standards. As set forth in Findings of Fact Nos. 9 and 10, the soils borings done not only by GeoEngineers, but by several other engineering firms, prove that the steep slope on the northwest side of the property, and further to the north in the Highland Drive right-of-way, is the result of placement of a large amount of fill beneath the Dexter Avenue North right-of-way and directly adjacent to it. The placement of fill for a street improvement is one of several types of “previous legal grading” activities specifically exempted from the steep slope development standards by SMC Section 25.09.180 B 2 b. Accordingly, the decision by Mr. McIntosh to grant the exemption on November 15, 2007 was correct.
6. The exemption granted by Mr. McIntosh does not give the 1101 Westlake Project complete exemption from compliance with the Environmentally Critical Areas regulations. The exemption is limited only to relief from compliance with the non-disturbance standard for steep slopes set forth in Section 25.09.180 B 1. The request for interpretation states that the retaining wall at the west end of Highland Drive shows “. . . evidence of deflection and active ground-water seepage.” The exemption determination specifically notes that the standards for landslide-hazard standards of the Environmentally Critical Areas regulations continue to apply to the property. Those standards, found at SMC Section 25.09.080 B (Finding of Fact No. 12), require complete stabilization of the site. Further, the proposed development is to be limited and controlled to avoid adverse impacts and potential harm. The regulations under Section 25.09.080 therefore address the site concerns raised by the request for interpretation (Finding of Fact No. 14). The steep slope exemption merely allows disturbance of the artificial steep slope, in compliance with other applicable regulations, without a variance analysis under Section 25.09.180 E.
7. The bulk of the 1101 Westlake Project site, on the west and north sides, is surrounded by a retaining structure built as part of the RREEF project to the west. The “steep slope” created by this wall, which is around 30 feet in height, is also clearly previous legal grading approved by the permit for the RREEF building (see Finding of Fact No. 5). Thus, the subject site qualifies for the steep slope exemption granted on November 15, 2007.

DECISION

The steep slope Environmentally Critical Areas on the property addressed as 1101 Westlake Avenue North were created by previous legal grading to improve the street right-of-way for Dexter Avenue North. These steep slope areas are thus exempt from the standard in SMC Section 25.09.180 B 1 prohibiting development on steep slope areas, as the provision in Section 25.09.180 B 2 b applies to the steep slopes on the 1101 Westlake Avenue North site. A steep slope area variance under Section 25.09.180 E is not required as part of a Master Use Permit application to approve disturbance of the steep slopes on the subject site.

Entered this 29th day of January, 2009.

(signature on file)

William K. Mills, Senior Land Use Planner
Department of Planning and Development

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