



City of Seattle

Greg Nickels, Mayor
Department of Planning and Development
Diane Sugimura, Director

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

Application Numbers: 2502316
Applicant Name: Kevin Weare for Brian Hatch
Address of Proposal: 8446 36th Avenue SW

SUMMARY OF PROPOSED ACTIONS

Master Use Permit to subdivide one parcel into three parcels of land within an Environmentally Critical Area. Proposed lot sizes are: A) 5,928.8 sq. ft., B) 5,541.5 sq. ft. and C) 5,058.5 sq.ft. The existing single family residence to remain. Project includes an Administrative Conditional Use to recover development credit due to the presence of environmentally critical areas. Accessory parking will be provided within each residential structure.

The following approvals are required:

Environmentally Critical Areas – Administrative Conditional Use to recover development credit in a designated ECA. SMC Chapter 25.09.

Short Subdivision - to divide one parcel of land into three parcels.
(Seattle Municipal Code (SMC) Chapter 23.24)

SEPA - Environmental Determination - SMC Chapter 25.05.

SEPA DETERMINATION: Exempt DNS MDNS EIS

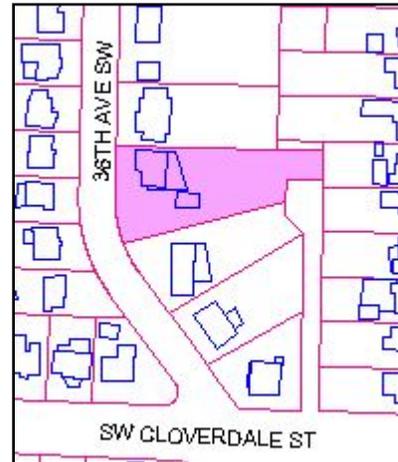
DNS with conditions*

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

* Early Notice DNS published June 16, 2005

BACKGROUND DATA

The subject site is located mid-block on the east side of 36th Ave SW where the roadway bends to the east to meet SW Cloverdale Street. The existing parcel comprises a land area of approximately 16,529 square feet located in a Single Family residential zone with a minimum lot size of 5,000 square feet (SF 5000). The site is an irregular wedge shape, with its lengthwise orientation running along the east/west axis. The development site has street frontage along 36th Ave SW. The site currently features a paved driveway that serves a single family residence and detached garage. The site slopes dramatically from west to east and is identified as an Environmentally Critical Areas (ECA) steep slope. The steepest area is located in the mid-section of the site and runs north to south.



The site is vegetated with mature deciduous trees and other groundcover. The street right-of-way immediately fronting the development site is developed with an asphalt roadway, curbs, sidewalks and gutters. There is an unimproved right-of-way that runs north from SW Cloverdale Street and terminates at the subject site. The area surrounding the site is developed with two-story single family structures and the single-family zone extends in all directions from the subject site.

Proposal

The proposed action is to subdivide one parcel into three parcels of land within an Environmentally Critical Area. Proposed lot sizes are: A) 5,928.8 sq. ft., B) 5,541.5 sq. ft. and C) 5,058.5 sq.ft. The existing single family residence to remain and the existing detached garage structure will be demolished. Project includes an Administrative Conditional Use to recover development credit due to the presence of environmentally critical areas. Accessory parking will be provided within each residential structure.

Public Comment

Date of Notice of Application:	June 02, 2005
Date End of Comment Period:	June 29, 2005
# Letters	1

Issues: The comment letter requested a notice of the decision and noted the diminished air and water supply.

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 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.

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 and buffer areas, comprising a total of 1,828 square feet of the development site, are subtracted from the total area, only 14,701 square feet of lot area remains, and this is insufficient area for three lots in the SF 5000 zone. Under a strict application of the regulations, the development site has sufficient non-critical area for two houses permitted outright, although the total land area is enough for three under the applicable zoning. However, the property still has a total of 14,701 square feet of area outside the steep slope which structures could be constructed, including the proposed driveway.

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 or lot sizes 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 residences and other land disturbing activity must 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. This is achieved by concentrating development to the east and south of the identified steep slope and buffer areas. As a cluster development, the proposal meets yard standards for the front and side, since the yards are measured around the perimeter of the development site.

By clustering, with or without a unit lot subdivision, the proposal limits development in 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 5,000 square feet. The existing site includes a land area of approximately 16,529 square feet (inclusive of the steep slope area). The total number of lots proposed by this application is three. When the critical area is subtracted from the total lot area in calculating development credit, as required by SMC Section 25.09.240.D, only 14,701 square feet of non-critical lot area remains, which is less than the required 15,000 square feet of lot area for three lots (one house per lot). Thus, precluding the existing development site from meeting development standards for a short subdivision contained in SMC Section 25.09.240.

However, the conditional use provisions of Section 25.09.260, which incorporates the critical areas policies, allow recovery of development credit and reduction of yards and lot sizes 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 subdivide the parcel into three parcels of land.

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 property that is partly level and partly comprised of steep slope areas, as in the case of this development site, Section 25.09.180.A requires that development be concentrated outside the steep slope with the exception of work associated with a gravity flow sewer system. The designated buildable area is outside the non-exempted steep slope

environment. Thus, the proposal results in a transfer of development credit from the steep slope area to the non-critical easterly and southern portions of the property.

No work is proposed to occur in the designated steep slope area or its buffer.

The development site is currently covered with 9 trees fully on the subject site (European Birch, White Pine, Holly, Laurel, Big Leaf Maples and Red Alders). None are exceptional. The proposal shows that five of the trees will be eliminated. However, driveway access to Parcel C can be reconfigured to accommodate retention of the substantial alder tree/clump toward the south of that Parcel. Project approval is conditioned so that it is. Moreover, project approval is conditioned so that all six trees to be maintained are clearly identified as such on the plat. Because English ivy (*helix hедера*) threatens long-term survivability of trees, all English ivy on site (if any) must be removed prior to issuance of the Master Use Permit, including any within the ECA steep slope. Ivy shall be replaced with native ground cover species. Confirmation of same shall be verified by the undersigned land use planner, extending to preparation of a landscaping/replanting plan if deemed necessary by field inspection.

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 (particularly the 600-foot radius around the development site) range from a minimum of 4,600 square feet to a maximum of approximately 11,000 square feet, according to King County Assessor's records. The proposal is to subdivide the parcel with a total area of 16,529 square feet into three lots, for an average area of one house per 5,509 square feet of land. The average lot area is near the minimum size for the zone. Thus, the development in terms of lot area would be well within the range of similar lots having been created through short subdivisions in the immediate neighborhood.

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

N/A.

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.*

Most of the trees on the parent lot are located in the area proposed to become Parcel C. Many of these trees would be maintained at the north and east areas of Parcel C. However, all trees on the south portion of Parcel C are proposed to be removed, including a large alder tree (or clump) that would be adversely impacted by access, which easily could be moved north to accommodate this tree. Because there is no real need to remove this tree, project approval is conditioned to require relocation of access to enable its preservation. In addition, because English ivy (*helix*

hedera) threatens long-term survivability of trees, all English ivy on site (if any) is to be removed prior to recording. Confirmation of same shall be verified by the undersigned land use planner.

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 to the approved discharge point at the street through a tight-lined system. Thus, 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.*

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 16-00 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.*

Any development on Parcel A (where the ECA and its buffer is entirely contained) will be 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 minimum 15 foot setback from the steep slope. Proposed houses pose no risk of disturbance to the steep slope critical area based on information supplied by the applicants' geotechnical engineer, and will in any case be outside the ECA and its buffer. Subject to the requirements noted above, minor in application even to Parcel A, 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. 36th Avenue South is a City street improved with paved roadway, sidewalk, and a full complement of utilities. Thus, 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.” All development will be located outside the steep slope system and its buffer. There will be no driveways or utilities (other than the temporary drainage trench) passing through the steep slope. The project has been designed to maximize use of the undeveloped area on the property while protecting the critical area and buffer. 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 area. Full development credit on-site shall not be increased beyond that permitted by the underlying single-family zone.

No departure from the development standards have been proposed as part of this application.

- 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. Because the subject cluster place all proposed new developmental coverage outside of the critical area, these criteria are satisfied.

- 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.*

There is no clustering within the existing steep slope area and all clustering will be outside the area of steep slope. 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 the development site.

- B. 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 the subject site 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 SEPA analysis below.

DECISION – ADMINISTRATIVE CONDITIONAL USE TO RECOVER DEVELOPMENT CREDIT AND PERMIT CLUSTERED DEVELOPMENT

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

**CONDITIONS – ADMINISTRATIVE CONDITIONAL USE TO RECOVER
DEVELOPMENT CREDIT AND PERMIT CLUSTERED DEVELOPMENT**

Following SEPA analysis and conditions.

ANALYSIS - SHORT SUBDIVISION

Pursuant to SMC 23.24.040, the Director shall, after conferring with appropriate officials, use the following criteria to determine whether to grant, condition, or deny a short plat. The findings which follow are based upon information provided by the applicant; review of access, drainage and zoning within the Department of Planning and Development (DPD); review from Seattle Public Utilities, Seattle Fire Department and Seattle City Light; and, review by the Land Use Planner.

1. Conformance to the applicable Land Use Code provisions;

The lots created by the proposed short subdivision will conform to all applicable development standards of the SF 5000 zone and for lots containing *Environmentally Critical Areas – Steep Slopes and New Potential Slide Areas* (see analysis of Criteria #5 below, *Conformance to the applicable provisions of SMC Section 25.09.240, Short Subdivision and Subdivisions in Environmentally Critical Areas*). Each lot contains a minimum of 5,000 sf. The lot configurations provide adequate buildable area to meet applicable yard and lot coverage requirements and other land use code development standards. Each lot has vehicular access to that site from a City street. Any future development will be reviewed for and must conform to land use code requirements at the time of application.

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

Access to all three houses is proposed to be via a 16-foot wide easement centered upon the existing curbcut, which must be and will be widened to 10 feet. This proposal has been reviewed and conditionally approved by the Fire Department for emergency vehicle and personnel access with conditions. Project approval is conditioned upon Fire approval of the building permit, to ensure that in the building phase one of the appropriate options identified by Fire is exercised.

Seattle City Light, which provides electrical service to the subject property, has approved this proposal subject to recording a required easement. Project approval is also conditioned upon provision of this easement among the short plat recording documents.

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

Review for drainage and sanitary sewage disposal indicates these services are adequately provided for in this proposal. If any future project creates greater than 5,000 square feet of new or replaced impervious surface, a comprehensive drainage control plan prepared in accordance with SMC 22.802.015 D and 22.802.020 may be required.

Seattle Public Utilities has reviewed this proposal and assures water availability access for all parcels. (Water Availability Certificate # 20051001).

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

The proposed subdivision is consistent with the relevant land use policies for residential single-family zones and meets the minimum provisions of the Seattle Land Use Code for SF 5000 zones. These policies and provisions are intended to provide opportunities for the creation of additional housing units within the City while protecting existing neighborhood character, the natural environment, and the public health and safety. Thus, the public use and interests are served by permitting the proposed division of land.

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

Satisfaction of this criterion has been demonstrated in the Conditional Use evaluation above.

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

Most of the trees on the parent lot are located in the area proposed to become Parcel C. Many of these trees would be maintained at the north and east areas of Parcel C. However, all trees on the south portion of Parcel C are proposed to be removed, including a large alder tree (or clump) that would be adversely impacted by access, which easily could be moved north to accommodate this tree. Because there is no real need to remove this tree, project approval is conditioned to require relocation of access to enable its preservation. In addition, because English ivy (helix hedera) threatens long-term survivability of trees, all English ivy on site (if any) is to be removed prior to recording. Confirmation of same shall be verified by the undersigned land use planner.

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.*

This criterion is not applicable to this short subdivision.

DECISION - SHORT SUBDIVISION

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

CONDITIONS - SHORT SUBDIVISION

Following SEPA analysis and conditions.

ANALYSIS – SEPA

The proposal site contains the following types of *Environmentally Critical Area*: *steep slope*, thus environmental review resulting in a Threshold Determination is required pursuant to the

Seattle State Environmental Policy Act (SEPA), WAC 197-11, and the Seattle SEPA Ordinance (Seattle Municipal Code Chapter 25.05).

SMC 25.05.908 requires that the scope of environmental review of projects within critical areas shall be limited to: 1) documenting whether the proposal is consistent with the City's *Environmentally Critical Areas (ECA)* regulations in SMC 25.09; and 2) evaluating potentially significant impacts on the critical area resources not adequately addressed in the *ECA* regulations. This review includes identifying additional mitigation measures needed to protect the *ECA* in order to achieve consistency with SEPA and other applicable environmental laws.

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant. The information in the checklist, public comment, and the experience of the lead agency with review of similar projects form the basis for this analysis and decision. As indicated in the checklist, this action will not result in adverse impacts to the environment.

The proposed short plat will divide an existing large lot with minimal *Environmentally Critical Area* into three lots. There are substantial buildable areas on both proposed lots outside of all *ECA*'s and their required minimum 15-foot buffer area. The submitted geotechnical report and evaluation indicate that these non-*ECA* areas are suitable for the construction of single-family residences.

Based on the location of all *ECA* areas outside of the buildable area and the aforementioned geotechnical information, the proposed configuration will divide the lot in such a way that is unlikely to have any adverse impact on the *Environmentally Critical Areas*, therefore no mitigation of this proposal under SEPA is warranted.

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).

CONDITIONS - SEPA

None.

CONDITIONS - ECA CONDITIONAL USE TO RECOVER DEVELOPMENT CREDIT AND PERMIT CLUSTERED DEVELOPMENT AND ECA EXCEPTIONS:

Prior to issuance of the Master Use Permit

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

1. Reconfigure access to Parcel C to accommodate preservation of the 18-inch alder tree shown on the survey. All six trees to be maintained are to be clearly identified as such on the plat
2. Remove all English Ivy (helix hedera) from the development site, including the ECA steep slope. Ground cover within the steep slope environment shall be replanted with native ground cover species. A landscaping/replanting plan shall be prepared if deemed necessary by DPD field inspection.
3. Record the required ECA covenant regarding the steep slope and its buffer, all on Parcel A.

For the life of the project:

4. Maintain elimination of English Ivy (helix hedera) from the site.

CONDITIONS – SHORT SUBDIVISION

Conditions of Approval Prior to Recording

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

1. Submit the final recording forms for approval and any necessary fees.
2. Install permanent visible markers along the top of the steep-slope buffer to delineate the buffer no-build area. Show and describe these on the face of the plat. Markers must be in place before issuance of this short subdivision permit.
3. Submit an ECA Covenant per SMC 25.09.240.A to the land use planner for review and approval prior to recording of covenant.
4. Reconfigure access to Parcel C to accommodate preservation of the 18-inch alder tree shown on the survey.

Prior to sale and/or separation of ownership

5. Remove portions of the deck more than 18 inches above grade and within 5 feet of the proposed south lot line of Parcel A.

