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A Recommendation from  
The City of Seattle  
Urban Forestry Commission  
(Adopted by unanimous vote of members present, April 7 2010)

April 7, 2010

Dear Director Diane Sugimura:

The City of Seattle's Urban Forestry Commission was created by Ordinance (123052) in part: "to provide recommendations concerning City plans, major or significant policy recommendations, and any City department's recommendations related to urban forestry, arboriculture and horticulture,"(SMC 3.72.050 (2) and, "to review programs for identifying and maintaining trees and related understory vegetation in the City which have significant historical, cultural, environmental, educational, ecological or aesthetic value and make recommendations to the Mayor and City Council (SMC 3.72.050 (6).

This letter provides a recommendation from the Urban Forestry Commission for a specific revision to the language of Director's Rule 5-2007, the code interpretation pertaining to the management of the City's two identified heron rookeries. The text revisions recommended herein may appear relatively minor. But, the Urban Forestry Commission believes that these modifications will result in profound benefits to the Seattle community in regard to both the continued conservation of Seattle's heron rookeries as an important natural resource, and to the preservation of Seattle's urban forest when and where it matters most.

### **Director's Rule 5-2007 (DR 5-2007, attachment 1)**

Director's Rule 5-2007 is a discrete code interpretation intended to outline specific protections to ensure conservation of Seattle's two known great blue heron (*Ardea Herodias*) breeding colonies, including the Kiwanis Ravine and North Beach rookeries (see attachment 2 – "Great Blue Heron Management Areas"). DR 5-2007 was developed to augment Seattle Municipal Code 25.09.200.C by establishing specific land-use and development requirements within a 500-foot setback, called the Great Blue Heron Management Area, defined around each rookery.

Director's Rule 5-2007 was developed to be consistent as practical with heron rookery protections prescribed by the Washington Department of Fish and Wildlife (WDFW) in Revised Code of Washington 77.15.130 and *Washington's Priority Species, Volume IV: Birds*. Although WDFW recommends a nearly 1,000-foot (300 meter) protective buffer around heron rookeries statewide, a 500-foot setback was confirmed as adequate by WDFW personnel, given likely urban habituation of Seattle rookery herons, as long as the three specific conditions of the Great Blue Heron Management Plan were effectively implemented within Great Blue Heron Management Areas in association with proposed development.

The three specific Great Blue Heron Management Plan conditions mandated in DR 5-2007 as currently written (numbered below for clarity) are as follows:

1. Any clearing grading or outside construction shall be done outside the nesting season.
2. All 22 inch diameter breast height (dbh) or larger screening trees shall be retained during the nesting season so as to block visual disturbance to the colony. Screening trees are those trees that are within direct line of sight of the nesting area or block line of sight to the structure.
3. If the parcel abuts the colony nesting area there shall be a minimum 15 foot building setback. The setback shall be vegetated in a manner that screens activities on the parcel from the colony nesting area.

While it is clear that conditions 1 and 3 offer effective rookery protection and have been successfully implemented since DR 5-2007 development in 2007, it is the opinion of the Urban Forestry Commission that condition 2, as written, does not adequately define and preserve critical screening trees consistent with the original intent of the director's rule. Trees with diameters far below the 22 inch dbh threshold established in DR 5-2007 can provide significant visual screening – even red alders (*Ulnas rubra*) with diameters smaller than *six inches* provide substantial visual screening benefits. Further, year-to-year retention of screening trees is most important to the continued use of a rookery by breeding herons, as opposed to the simple "breeding season" retention requirement mandated in DR 5-2007 as currently written.

## **The Challenge**

The inadequacy of DR 5-2007 in specific regard to the protection and retention of important screening trees located within Great Blue Heron Management Areas was first noted by two conservation groups focusing on the continued preservation of the Kiwanis Ravine rookery, Heron Habitat Helpers and the Citizens Coalition for Trees. In particular, these groups noted how DR 5-2007 allowed for removal of an 18 inch DBH deodar cedar (*Cedrus deodara*) that would have effectively screened a new development proposed within the Kiwanis Ravine Great Blue Heron Management Area in the Magnolia neighborhood. The correct application and interpretation of DR 5-2007 was confirmed by a hearing examiner's decision in this case (see attachment 3) which served to highlight the deficiencies in DR 5-2007 in regard to important screening tree retention.

In general, it is known that there is a wide range of human disturbance patterns that can be tolerated by breeding herons depending on the history and historical location of a rookery. What is less known – and what is so crucial in assessing the adequacy of DR 5-2007's screening tree protections – is how the cumulative effects of adjacent landscape changes may affect breeding herons and potentially result in the abandonment of a rookery. So, retention of vegetation, and particularly trees that may visually screen development in the vicinity of a rookery is vitally important.

Avian ecologists have developed a substantial body of literature documenting how human disturbance and landscape alteration may result in heron rookery abandonment and colony collapse (English 1978; Gibbs *et al.* 1987; Quinn and Milner 2004; Parker 1980; Watts and Bradshaw 1994). While they may not be able to predict a specific trigger for a colony collapse, they have demonstrated significant correlations between proximity and intensity of disturbance, landscape alteration, and loss of vicinity screening habitat and declines in colony productivity, health and sustainability (Kelsall and Simpson 1979; Leonard 1985; Parker 1980; Werschkul *et al.* 1977). It would be a shame to witness the loss of a substantial screening tree reveal just enough of a vicinity landscape alteration to trigger a decline in the Kiwanis or North Beach heron colonies before the simple fix to DR 5-2007 proposed below could be implemented.

### **The Solution (Urban Forestry Commission Recommendation)**

The Urban Forestry Commission of the City of Seattle encourages the Mayor and City Council to seriously consider making the following revision to the language of the second Great Blue Heron Management Plan condition in DR 5-2007 from:

2. All 22 inch diameter breast height (dbh) or larger screening trees shall be retained during the nesting season so as to block visual disturbance to the colony. Screening trees are those trees that are within direct line of sight of the nesting area or block line of sight to the structure.

To:

2. All 6 inch diameter breast height (dbh) or larger screening trees shall be retained where the removal of those trees would decrease the effectiveness of screening of new and existing development from the colony. Screening trees are those trees that are within direct line of sight of the nesting area or block line of sight to the structure during any part of the year.

And

3. If the parcel abuts the colony nesting area there shall be a minimum 15 foot building setback. The setback shall be vegetated in a manner that screens activities on the parcel from the colony nesting area.

To:

3. If the parcel abuts the colony nesting area there shall be a minimum 15 foot building setback. The setback shall be vegetated in a manner that screens activities on the parcel from the colony nesting area consistent with a landscape planting plan approved by DPD.

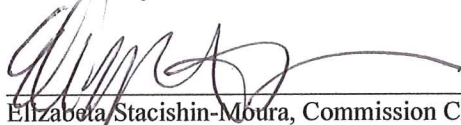
This simple language edit will allow for year-to-year retention of key visual screening trees to protect and preserve the continued viability of the Kiwanis and North Beach great blue heron rookeries.

It should be noted that this recommended change will not place an undue burden on existing residents. Further, the simple language revision still provides a substantial degree of flexibility and discretion to the Department of Planning and Development's (DPD) director and personnel in the subjective identification of screening trees as defined in DR 5-2007. The Commission hopes that this discretion in the identification of screening trees will continue to be used wisely by DPD personnel, in consultation as necessary with WDFW biologists and experienced avian ecologists, to the great benefit of Seattle's heron rookeries, the surrounding neighborhoods and the development community that cherish them as an important community asset.

Thank you for considering this important recommendation from Seattle's Urban Forestry Commission. The Commission is moving forward with a comprehensive work plan addressing the needs of Seattle's urban forest and appreciates the opportunity to make a simple recommendation that will provide profound benefits to the Seattle community.

Please feel free to contact the Urban Forestry Commission's chair, vice-chair or staff liaisons if you have any questions or need clarification on this recommendation.

Sincerely,




Elizabeth Stacishin-Moura, Commission Chair  
Position 6 – Landscape Architect



Matt Mega, Commission Vice Chair  
Director of Conservation, Seattle Audubon Society  
Position 7 – NGO Representative



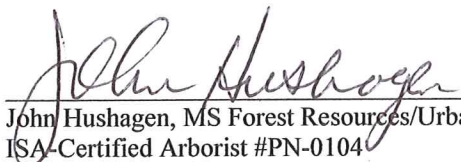
Kirk Prindle  
Ecosystem Committee Chair  
ISA-Certified Arborist #PN-6266A  
Position 1 – Wildlife Biologist



John Small  
Position 2 – Urban Ecologist

Gordon Bradley  
Professor, University of Washington  
College of Forest Resources  
Position 3 – University Representative

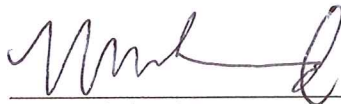
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Owner, Seattle Tree Preservation Inc.  
Position 5 – Arborist



Jeffrey T. Reibman, AIA, LEED AP  
Management Committee Chair  
Position 8 – Development Community Representative



Nancy Bird AICP  
Community Committee Chair  
Position 9 – Economic Development Specialist

CC: Mayor McGinn, Council Members; Conlin, Bagshaw, Burgess, Clark, Godden, Harrell, Licata, O'Brien, and Rassmussen. Marshal Foster, Planning Director, City of Seattle.

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**Attachment 1**  
**Director's Rule 5-2007**



## Director's Rule 5-2007

<b>Applicant:</b>  City of Seattle Department of Planning and Development	<b>Page</b>  1 of 3	<b>Supersedes:</b>  N/A
	<b>Publication:</b>  2/5/07	<b>Effective:</b>  3/29/07
<b>Subject:</b>  Great Blue Heron Management Plan	<b>Code and Section Reference:</b> Seattle Environmentally Critical Areas Ordinance SMC 25.09.200.C	
	<b>Type of Rule:</b> Code Interpretation	
	<b>Ordinance Authority:</b> SMC 3.06.040	
<b>Index:</b>  Environmentally Critical Areas	<b>Approved</b>	<b>Date</b>
	(signature on file) Diane M. Sugimura, Director, DPD	3/27/07

### BACKGROUND & PURPOSE:

Great blue herons can be vulnerable because of their tendency to aggregate during the breeding season. They are colonial breeders that nest in a variety of deciduous and evergreen tree species. Nests are usually constructed in the tallest trees available, presumably to reduce the risk of predation by mammals. The availability of suitable great blue heron breeding habitat is declining as human population increases. Great blue herons and their nests are protected under RCW 77.15.130 (Protected fish or wildlife – Unlawful taking), and great blue heron nesting colonies are listed as a WDFW Priority Species.

Statewide, the Washington Department of Fish and Wildlife (WDFW) recommends a permanent, year-round buffer of 300 meters (984 ft) from the perimeter of the great blue heron colony. These management recommendations can be found in *Washington's Priority Species, Volume IV: Birds* prepared by the Washington Department of Fish and Wildlife. This can be viewed by going to <http://wdfw.wa.gov/hab/phs/vol4/gbheron.htm> or



by contacting Washington Department of Fish and Wildlife. The WDFW recommends that local land use planning should when possible protect existing great blue heron colonies using colony site-specific management plans that consider the colony size, location, relative isolation and the degree of habituation to human disturbance.

**Definitions:**

Great Blue Heron Nesting Season: February 1<sup>st</sup> through July 31<sup>st</sup>

Colony Nesting Areas: Areas that are known to be great blue heron nesting areas as determined by WDFW. For the Kiwanis Ravine and North Beach colonies this includes the entire ravine areas as mapped.

Great Blue Heron Management Area: All areas within 500 feet of a colony nesting area.

**RULE:**

As heron colonies within the City of Seattle are in part habituated to urban conditions, a 152 meter (500 ft) Great Blue Heron Management Area is considered appropriate by WDFW. Typically in Seattle it is not physically possible to greatly restrict development within these areas due to existing development and buildable lots in closer proximity to colonies. If development is proposed within a Great Blue Heron Management Area as mapped by WDFW and/ or the City of Seattle, the development conditions found in the appendix to this rule apply. Prior to development the applicant must have a Great Blue Heron Management Plan approved by DPD.

## GREAT BLUE HERON MANAGEMENT PLAN

### 1. Conditions:

Within the Great Blue Heron Management Area and Colony Nesting Area:

- ☐ Any clearing, grading or outside construction shall be done outside of the nesting season.
- ☐ All 22 inch diameter breast height (dbh) or larger screening trees shall be retained during the nesting season so as to block visual disturbance to the colony. Screening trees are those trees that are within direct line of sight of the nesting area or block line of sight to the structure.
- ☐ If the parcel abuts the colony nesting area there shall be a minimum 15 foot building setback. The setback shall be vegetated in a manner that screens activities on the parcel from the colony nesting area.

### 2. Alternative:

The Washington Department of Fish and Wildlife may be willing to approve an alternative site-specific plan. To request a site-specific plan contact the Washington Department of Fish and Wildlife Urban Biologist at (425) 775-1311.

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If the standard conditions set forth above in the Conditions section are acceptable, please sign below and this will serve as your Great Blue Heron Management Plan. Activities will be periodically monitored and failure to comply with the Plan constitutes a violation as set forth in the Environmentally Critical Areas Regulations (SMC Chapter 25.09).

I have read and understand the above conditions placed on parcel # \_\_\_\_\_  
(APN number)

located at \_\_\_\_\_  
(Property address)

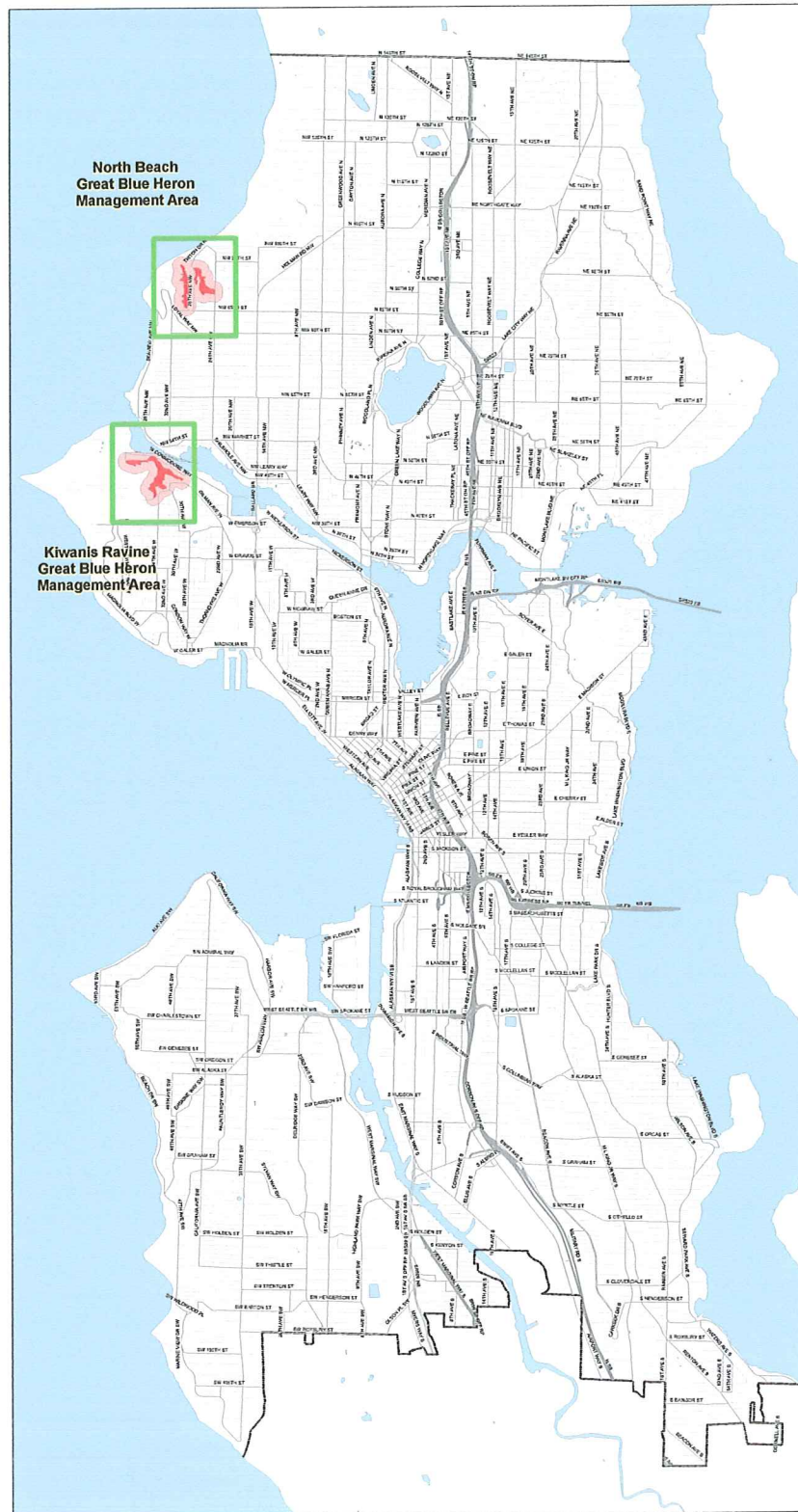
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(Signature)

(Date)

**Attachment 2**  
**Great Blue Heron Management Areas**

# Great Blue Heron Management Areas



Great Blue Heron  
Colony Nesting Area

Great Blue Heron  
Management Area - 500 feet



0 0.5 1 2 Miles

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**Attachment 3**  
**Hearing Examiner's Decision**

## FINDINGS AND DECISION OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of CITIZENS COALITION FOR TREES from a decision issued by the Director, Department of Planning and Development

Hearing Examiner File: MUP-08-015 Department Reference No. 3006964

Date: August 12, 2008

Type: SEPA, Short Plat

Examiner: Sue A. Tanner

### Introduction

The Director, Department of Planning and Development, issued a Determination of Nonsignificance (DNS), pursuant to SEPA, and approved a two-lot short subdivision of property located within a mapped environmentally critical area. The Appellant exercised the right to appeal the DNS and short subdivision pursuant to Chapter 23.76 Seattle Municipal Code.

The appeal hearing was held on July 23 and 25, 2008, before the Hearing Examiner (Examiner). The Appellant, Citizens Coalition for Trees, was represented by Duff Badgley; the Applicant, Mike Brand, was represented by Tess Wegier; and the Director, Department of Planning and Development, was represented by Holly E. Anderson, Land Use Planner. The record was held open for the Examiner's site visit, which occurred on August 9, 2008.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code (SMC or Code) unless otherwise indicated.

After considering the evidence in the record and inspecting the site, the Examiner enters the following findings of fact, conclusions and decision on the appeal:

### Findings of Fact

1. The subject site is addressed as 3411 West Lawton Street, zoned Single-family-5000, and located in the Magnolia neighborhood. This level site is approximately 8,000 square feet in area, and is developed with a single-family residence on the north half of the property, with access via West Lawton Street.
2. Properties immediately surrounding the subject site are also zoned Single-family 5000. Discovery Park and adjacent federally-owned property, formerly part of For Lawton, are located one block to the west on 36th Avenue West. The Kiwanas Ravine, a heron nesting area, is located approximately 250 feet to the east, east of the houses located along 34th Avenue West.

3. Director's Rule 5-2007 contains the City's Great Blue Heron Management Plan, adopted in consultation with the Washington Department of Fish and Wildlife (WDFW). Exhibit 6. The Rule explains that designated Colony Nesting Areas are known great blue heron nesting areas, as determined by WDFW, and that the Great Blue Heron Management Area (Heron Management Area) consists of all areas within 500 feet of the colony nesting area. Exhibit 6.

4. Director's Rule 5-2007 provides that within the Heron Management Area, all clearing, grading and outside construction is limited to times outside the nesting season of February 1 through July 31 of each year; and that all screening trees (trees within direct line of site or block line of sight of the nesting area) 22 inches diameter at breast height (dbh) or larger, must be retained during the nesting season in order to block visual disturbance to the heron colony.

5. The site is located within the Heron Management Area but outside the Colony Nesting Area. See Exhibits 7 and 8. It contains three existing mature conifers: Two ponderosa pines on the corner of West Lawton Street and 35th Avenue South; and one deodar cedar tree located in the southeast corner of the site. The deodar cedar is estimated to be approximately 25 feet tall and 18 inches dbh, with a canopy that extends approximately 13.5 feet from the base and approximately six feet into what will be the principal building area on the site. Exhibit 22.

6. The Applicant proposes to divide the subject property into two lots, retaining the existing residence and pine trees located on the north lot.

7. The Applicant has agreed to the conditions imposed on the subject property by the Heron Management Plan under Director's Rule 5-2007. Exhibit 20. The Applicant proposes to retain the 18-inch dbh deodar cedar tree until the end of this year's heron nesting season and then to remove and replace it with two native Douglas fir trees.

8. The Director reviewed the short subdivision for compliance with the criteria for short subdivisions in SMC 23.24.040, including the criterion, "whether the proposed division of land is designed to maximize the retention of existing trees". SMC 23.24.040 A.6. The Director determined that although the short plat configuration would not prevent retention of all three trees on the site, the deodar cedar tree did not qualify for protection under the City's tree protection ordinance, Chapter 25.11 SMC. See Exhibit 22.

9. The Director also reviewed the proposal's compliance with short subdivision criterion 5, "conformance to the applicable provisions of Section 25.09.240" on short subdivisions in environmentally critical areas. That section states that it "applies to all applications for short

subdivisions ... on parcels containing any part of a riparian corridor, shoreline habitat, shoreline habitat buffers, wetlands, wetland buffers, or steep slope areas in addition to the standards in Title 23." The Director determined that this criterion did not apply to the proposal because heron habitat is not included within the list of ECAs in SMC 25.09.240.

10. The Director next considered whether Director's Rule 5-2007 required retention of the deodar cedar tree. Because the tree is smaller than 22 inches dbh, the Director determined that the Rule did not require that it be retained as a screening tree regardless of whether it is located within line of site of the heron nesting area.

11. Finally, the Director considered whether the State Environmental Policy Act, Chapter 43.21C RCW, as adopted by the City in Chapter 25.05 SMC, provided authority to require retention of the deodar cedar tree.

12. As an "area that provides habitat for species of local importance," the Heron Management Area qualifies as a Fish and Wildlife Habitat Conservation Area under the City's Environmentally Critical Areas (ECA) regulations. SMC 25.09.020 D.4.

13. Short subdivisions, which would otherwise be categorically exempt from SEPA review, require additional environmental review when located within ECAs. SMC 25.05.908 A; SMC 25.05.908 C.3. However, the scope of environmental review is limited to documenting whether the proposal is consistent with the City's ECA regulations, and evaluating potentially significant impacts on ECA resources not adequately addressed by ECA regulations, including any additional mitigation needed to protect ECAs. SMC 25.05.908 B.

14. To determine whether removal of the deodar cedar in conjunction with the proposed short subdivision would have potentially significant impacts within the Heron Management Area, the Director reviewed the WDFW Species Recommendations for Great Blue Herons, Exhibit 24. The Director also contacted a wildlife biologist with WDFW who consults with local governments on consideration of priority species through critical areas regulations, and conducts reviews, development of, and assistance with management considerations concerning urban great blue heron colonies within the City and King County. See Exhibits 26 and 27.

15. The WDFW biologist replied that the deodar cedar is a non-native tree and provides no limiting biological factors for the local herons, in that it does not provide contiguous nesting habitat or contiguous screening buffer for the colony. However, the biologist recommended that removal of the tree occur outside the heron nesting season, in accordance with Director's Rule 5-2007. Exhibit 23. WDFW's reply concludes, "WDFW does not feel there is any



scientific or management reason to retain the deodar cedar and supports the voluntary offer to plant the area with two native Douglas fir trees." Exhibit 23.

16. The Director determined that the distance of the short subdivision from the nesting area, combined with existing regulations and the Heron Management Plan requirements that clearing, grading and outside construction occur outside the nesting season, provided sufficient mitigation, and that no further conditioning or mitigation under SEPA was warranted.

17. The Director approved the short subdivision with conditions, and issued a Determination of Nonsignificance for the proposal without conditions. Exhibit 14.

18. The Appellant challenges the Director's decision and DNS as being contrary to Director's Rule 5-2007 in several respects. The Appellant also asserts that the deodar cedar tree is not in the way of the Applicant's intended construction, and that the Applicant has offered no reason to destroy the tree. May 29, 2008 Appeal. (A challenge to the substance of the Director's Rule was dismissed prior to the hearing.)

#### Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to Chapter 23.76 SMC.

2. The Examiner must give substantial weight to the Director's decision. SMC 23.76.022 C.7. The Appellant bears the burden of proving that the Director's decision and DNS were "clearly erroneous." *Brown v. Tacoma*, 30 Wn. App. 762, 637 P.2d 1005 (1981). Under this standard the decision may be reversed only if the Examiner is left with the definite and firm conviction that a mistake has been made. *Cougar Mt. Assoc. v. King Cy*, 111 Wn. 2d 742, 765 P.2d 264 (1988).

3. The Appellant asserts that the deodar cedar tree is within direct line of site of the heron colony nesting area and within block line of site of the proposed structure on the new lot in the short plat, and must therefore be retained as a screening tree under Director's Rule 5-2007. However, the deodar cedar is less than 22 inches dbh. Under the express terms of the Director's Rule, only screening trees that are 22 inches dbh or larger must be retained. The Director's determination that the deodar cedar did not qualify for retention under the Director's Rule was not in error.

4. The Appellant challenges the Director's interpretation of SMC 25.09.240 as being limited to the ECAs listed in that section. The Appellant reads the language "in addition to the standards in Title 23" at the end of this

section as adding the overlay district regulations found in Chapter 23.59 SMC, into the ECAs expressly listed in SMC 25.09.240. Under this interpretation, the ECA regulations in SMC 25.09.240 would apply to short subdivisions on parcels located within in the listed ECAs or within any of the Overlay Districts addressed in Chapter 23.59 SMC. However, the Appellant points to no applicable Overlay District in Chapter 23.59 SMC. Moreover, SMC 25.09.240 addresses short subdivisions . It merely states that in addition to the standards in Title 23 applicable to short subdivisions, short subdivisions located within the listed ECAs must also meet the requirements of SMC 25.09.240. The Director correctly determined that because heron habitat management areas are not included among the ECAs listed in SMC 25.09.240, that section does not apply to the proposed short subdivision. There is no error here.

5. Finally, the Appellant argues that the deodar cedar tree could be preserved, and presented testimony from a certified arborist that by using a vertical cut for the tree roots, and shoring for basement construction for the new residence to be built on site, the Applicant could likely save the tree. The Applicant does not disagree, but is not willing to absorb the cost of shoring. Regardless of whether the deodar cedar tree could be preserved, the Appellant has provided no basis in the Code's short subdivision criteria for the Director to require that it be preserved, and has not demonstrated that removal of the tree will have a potentially significant negative impact on the Heron Management Area. Therefore, the Director's decision and DNS have not been shown to be clearly erroneous and should be affirmed.

#### Decision

The Director's Determination of Nonsignificance and decision approving the short subdivision are AFFIRMED