



BRICKLIN & NEWMAN LLP  
lawyers working for the environment

Reply to: Seattle Office

October 25, 2024

VIA EMAIL TO:  
David Greetham  
Temporary Senior Planner  
[dgreetham@cityoflfp.gov](mailto:dgreetham@cityoflfp.gov)

Lake Forest Park Community Development Department  
City Hall  
17425 Ballinger Way NE  
Lake Forest Park, WA 98155

**Re: Public Comments on Lakeview Place Commercial Site Development Permit Application (File No. 2023-CSD-0002)**

To Whom It May Concern:

Our firm represents 155<sup>th</sup> Street Neighbors, a group of residents who live on NE 155<sup>th</sup> Street, Beach Drive NE, and Lakeshore Boulevard NE. This group is concerned about the townhome development proposed to be located at 3803 NE 155th Street, Lake Forest Park (Parcel No. 6744701588).

Our client has numerous concerns regarding this proposed project, described below.

**I. THE APPLICATION SHOULD BE REVIEWED AS A TYPE I DECISION.**

Generally, commercial site development permits are Type I permits, but there are exceptions. LFPMP 16.26.030(A)(9). *See also* LFPMP 18.48.040. For example, if (among other criteria) the project “involves only one building,” then the CSDP is a Type III administrative decision. LFPMP 18.46.150(A), but if the project “involves more than one building,” then it is a Type I decision. LFPMP 18.46.150(B). This project involves more than one building.

The current application is very similar to an 11-unit townhome development that was proposed in 2021. According to the September 2021 site plan for that prior application, the project consisted of eleven three-bedroom units in two buildings (Building I and Building II). Buildings I and II were connected on the west side, forming the two buildings into a “U” shape, *see* 2021-09-28 LAKEVIEW MASSING STUDY - Sheet - A7 – ELEVATIONS. This is an admission that the prior project (which is very similar to the currently proposed project) consisted of two buildings, rather than a single building. Similarly, the current applicant’s October, 22, 2021 “Traffic Demand

and Site Access Analysis” shows two buildings, separated by two roofed parking stalls. A roof over two parking stalls does not convert two multifamily buildings into a single building; the roof is a mere fig leaf that fails to conceal the separation between the two buildings. Both the prior project and the currently-proposed project consist of two buildings.

Moreover, the document in the city’s planning application materials file titled “Geotechnical Report Lakeview Updated 10 29 2021” clearly describes two proposed buildings, rather than a single building:

We understand that the site is proposed to be developed **with two townhome buildings**. The **buildings** will have a bottom parking level below three floors of residential space. The **buildings** are proposed to be located on the northern part of the site, as illustrated in Plate 2B – Proposed Development Plan. The bottom levels of the **buildings** are planned to have a floor elevation of approximately 143 feet.

Geotechnical Report Lakeview Updated 10 29 2021, at 2 (emphasis supplied). This is yet another admission by the applicant’s agents that not one, but two buildings are proposed.

The city’s August 13, 2021 Regulatory Review Profile Letter<sup>1</sup> included ten numbered comments from Senior Planner Nick Holland and Assistant Planner Cameron Tuck regarding the provisions of the zoning code that apply to a project in this location. Among other comments, city staff stated: “**Since the proposal involves more than one building**, LFPMC 18.46.150 requires that it be processed as a Type I Application and will be required to follow the procedure for a public hearing and hearing examiner decision.” 2021-REGP-0009\_LakeviewTownhomes\_Final at 1 (emphasis supplied).

Like the prior application, this currently-pending application should be reviewed as a Type I decision. The city appeared to recognize this only a few weeks ago. In an email dated October 3, 2024 from Temporary Senior Planner David Greetham to the applicant that we received in response to a Public Records Act request, Mr. Greetham tells the applicant’s architect:

A brief question following up on our meeting yesterday: Would the applicant prefer that the City combine the process for the Type I primary land use application with the associated Type III Critical Area Permit application?

The Type I requires a public hearing and decision by the City’s Hearing Examiner, while the Type III is an administrative decision by the Director (both require public notice).

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<sup>1</sup> “2021-REGP-0009\_LakeviewTownhomes\_Final.”

Given the above, the statement in the Notice of Application that “the proposal is being reviewed as a Type III land use application” is erroneous. This proposal for two buildings must be reviewed as a Type I decision and must follow the procedure in the code for a public hearing and hearing examiner decision.

## **II. THE PROPOSED DEVELOPMENT DOES NOT CONTAIN COMMERCIAL OR NON-RESIDENTIAL USES.**

LFPMC 18.46.40 (“Limitations on use”) sets out “further conditions and limitations” that apply to every use located in the SG-C zone. As noted by the city, LFPMC 18.46.040(A) states: “Residential uses are not permitted as separate projects; they must be developed in combination with commercial or nonresidential uses as part of a single site development plan.” The applicant seeks to meet this requirement by including live/work areas in the six units facing NE 155<sup>th</sup> Street.

But it is not at all clear that designing some units to be live-work units would satisfy the limitation in LFPMC 18.46.040(A). The next provision in the code states: “Business and residential portions of a building must be separated by soundproof walls, floors, equipment, utilities or other suitable architectural features or appurtenances.” LFPMC 18.46.040(B). The applicant has not specified how the residential and nonresidential portions of a live-work unit would be separated as required by LFPMC 18.46.040(B).

A live-work unit is more like a “home occupation” use than a commercial use. The term “home occupation” is defined at LFPMC 18.08.350: “‘Home occupation’ means any occupation or activity undertaken for gain or profit and carried on in a dwelling or building which is clearly secondary to the main use of the premises as a dwelling place, does not represent any exterior evidence of such secondary use, does not change the residential character of the dwelling or neighborhood, and in no way infringes upon the rights of the neighboring residences to enjoy a peaceful occupancy of their homes.”

Moreover, as LFPMC 18.46.040(A) specifically states “in combination with commercial or nonresidential uses[,]” this section must be read in conjunction with LFPMC 18.46.020 (“Permitted uses – Commercial and nonresidential[,]” which states in full:

The following commercial and nonresidential uses are permitted in the SG-C zone, subject to other general provisions as set forth in this title, except where modified by this chapter:

A. Retail Sales of Food and Commodities, Which Involve Only Incidental and Limited Fabrication and Assembly. Uses excluded from this zone would include auto service stations, sale of gasoline or other fuels, car washes, and repair or sale of heavy equipment, boats, tires and motor vehicles.

B. Business offices and uses rendering professional, personal, and instructional services, such as real estate or insurance brokerages, consultants, medical or dental clinics, technical training, health clubs, and repair of jewelry, eyeglasses, clothing, household appliances and tools, or other such similar uses; excluding vehicle or tool rentals, outdoor pet sales and housing (kennels).

C. Marijuana retailers licensed by the state of Washington Liquor Control Board and as defined in Chapter 18.08 LFPMC.

D. Government and institutional buildings and uses, including but not limited to police stations, schools, educational facilities, libraries, administrative offices, and other public service uses that are compatible with the intent of the SG-C zone.

E. Day care facilities.

F. Public utilities.

G. Adult use establishments; provided, however, that the operation of an adult use establishment shall be prohibited within 660 feet of any residential zone; and provided further, that adult use establishments shall not be operated concurrently within 660 feet of, nor within the same structure as, the operation of any other adult use establishment; and provided further, that no adult use establishment shall be located within 660 feet of schools, licensed day care centers, public parks, community centers or public libraries or churches which conduct religious or educational classes for minors.

The commercial or nonresidential uses with which residential uses must be combined in the SG-C zone must fit within one of the permitted types listed above. The developer's proposed "live-work" units could only fit within "B. Business offices and uses rendering professional, personal, and instructional services" or, possibly, "E. Day care facilities."<sup>2</sup> But each of the examples listed in section "B. Business offices and uses rendering professional, personal, and instructional services" involves customer interaction (and requires customer parking).

There is no indication that any of the kinds of public-facing business offices listed at LFPMC 18.46.020 are contemplated in the proposed live-work areas. This is an application for residential buildings, with some of the units including space for home offices or home occupations. But providing space for home offices or home occupations does not convert a residential use into a

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<sup>2</sup> "G. Adult use establishments" must be more than 660 feet from any residential zone and the proposed development is less than 100 feet from the residential zone to the east.

commercial or non-residential use. This project should be denied in the SG-C zone, pursuant to LPPMC 18.46.040(A).

### **III. THE DEVELOPER PROPOSES TO REMOVE TREES IN AN ECA, INCLUDING AN EXCEPTIONAL TREE.**

As the city's contracted consulting arborist, Miles Becker, explained:

Removal of a tree in an ECA can be justified if it meets criteria for a higher risk tree (LPPMC 16.14.080(A)(1)). None of the 12 trees in the arborist report meet these criteria, including tree #4, the exceptional western red cedar. Page 8 of the arborist report states that its likelihood of failure is possible and the likelihood of impact is medium. Using the ISA risk rating matrix, this produces a low risk rating. It is the developer's responsibility to maintain the exceptional tree in its current condition and at its current risk rating.

Miles Becker letter to John Khaira of REV Properties, Inc., Nov. 3, 2023 ("2023 Becker Letter"), at 2. Mr. Becker goes on to say in that letter:

Removal of a tree in an ECA can also be justified if it is part of an approved action under LPPMC 16.16 (LPPMC 16.14.080(A)(4)). Please have your arborist or the project applicant describe how the removal of eight trees on the property meets this criteria.

*Id.* It does not appear that the proposed tree removal meets the criteria under LPPMC 16.16. Most especially, it does not the criteria for "Authorized work in critical areas" under LPPMC 16.16.230 or "Select Vegetation Removal Activities" under LPPMC 16.16.230(G).

Mr. Becker further states, with regard to the exceptional western red cedar proposed for removal ("Tree #4"):

Tree #4 is proposed for removal in the arborist report and on the site plan. Removal of viable exceptional trees is prohibited.(LPPMC 16.14.060(B)). As described in the arborist report, the tree currently has a low risk rating and it is expected to remain viable even though it has some structural defects. It meets the definition of an exceptional tree as given in LPPMC 16.14.030. This tree cannot be removed without a reasonable use exemption.

*Id.* The applicant's arborist agrees that the exceptional red cedar has a low-risk rating: "Under current conditions, the tree receives a low-risk rating due to lack of target and presence of sufficient sound wood." 3803.NE.155th.Arborist.Report.10.11.23 at 6.

A reasonable use exemption is required to remove this exceptional tree. But the proposed project does not qualify for a “Reasonable use exception to allow for reasonable economic use” under LFPMC 16.16.250, because strict application of the city’s critical areas code does not prevent all reasonable economic use of the property. LFPMC 16.16.250(a). For example, the property owner could build a small structure that protects the on-site trees while allowing reasonable economic use of the property. Moreover, if the applicant did seek a reasonable use exemption (which it has not), that request would go to the hearing examiner as a Type I decision. LFPMC 16.26.030(A)(8).

The exceptional western red cedar has an extensive interior critical root zone (ICRZ) that must be protected. LFPMC 16.14.070(D)(8). As Mr. Becker stated:

The proposed building layout on the current site plan has grading less than 5 feet from tree #4. No soil disturbance may be within the ICRZ of a retained tree (LFPMC 16.14.070(D)(8)). The ICRZ for this tree is 22.5 feet. Please update the site plan with a different building layout or a description of alternative low-impact development techniques that will not disturb the soil and root system within the ICRZ of tree #4.

2023 Becker Letter at 2. The currently proposed project does not protect the ICRZ of Tree #4.

Tree #4 and its root system serves an important function. This exceptional tree, with its spreading roots, anchors and stabilizes the soils at the top of a very steep slope, in an area prone to landslides, including a prior landslide in 1997. Removal of this exceptional tree would endanger the stability of the steep slope and the safety of adjacent residences, including and especially the residence located at 15348 Bothell Way NE, Apt. G, immediately to the west of the proposed development. The root system of the exceptional western red cedar extends onto that neighbor’s land and under Apartment G at 15348 Bothell Way NE (as well as considerably into the footprint of the southerly proposed building) and helps stabilize the slope and protect the home on that adjacent lot.

The exceptional western red cedar must be preserved and protected. The other trees within the ECA must be protected, too, because they serve similar functions in stabilizing the slope and because none of them meet the criteria set out at LFPMC 16.14.080(A)(1) for removal of trees in an ECA.

#### **IV. THE PROPOSED DEVELOPMENT MAY INCREASE SLOPE INSTABILITY AND POSES A LANDSLIDE RISK.**

The property immediately adjacent to and east of the proposed development suffered a catastrophic landslide in January 1997, which caused a building collapse and set a large amount of building debris, soil, and other material into the stream below.

The parcel proposed for development contains steep slopes, erosion hazard areas, and a landslide hazard area. As noted in the 2023 Becker Letter: “Most of the property is encumbered with a steep

slope or landslide hazard environmentally critical area, as shown on both the King County iMap and the interactive City of Lake Forest Park map.” 2023 Becker Letter at 2.

Currently, trees (including an exceptional tree) on the site proposed for development help stabilize and anchor the soils at the top of the steep slopes, mitigating landslide risk. But the developer proposed to remove these trees—impermissibly, as described in the section above. Removing the trees that currently anchor the soils in the ECA will very likely increase the risk of another catastrophic landslide into Bsche’tla Creek.

The increased risk from removing trees in the ECA is compounded by the applicant’s refusal to abide by the “minimum” 50-foot setback from landslide hazard areas and steep slope ECAs required by the code. The 50-foot ECA buffer extends well into the footprint of the proposed southerly building. The applicant seeks approval to reduce those steep slope and landslide hazard ECA setbacks by half, to the smallest possible setback under the code—25 feet. The city should not allow this, because reducing the required buffers in this landslide-prone area will not “protect the public health and safety and . . . protect the natural environment.” LFPMC 16.16.010.

The applicant even seeks a further reduction of its proposed reduced 25-foot steep slope buffer. In the applicant’s April 8, 2024 geotechnical response letter, responding to the city’s geotechnical review comments, the applicant’s agent states:

A portion of the proposed development will extend into the proposed 25 feet steep slope area buffer in the northeast part of the site, as illustrated in Plate 2 – Proposed Site Plan.

The proposed project includes no buildings in the proposed steep slope area buffer. However, retaining walls, a set of stairs, two parking stalls, and paver-surfaced public open space area are proposed south of the driveway and east of the building. These features extend up to 10 feet into the proposed buffer and are located at least 25 and 15 feet away from the top of the steep slope area.

The applicant seeks to reduce the “minimum” 50-foot ECA buffer from landslide hazard areas and steep slope ECAs required by the code to 25 feet, and then seeks to violate that proposed 25-foot reduced buffer by having portions of the development constructed within 15 feet of the top of the steep slope ECA—impermissibly reducing the minimum 50-foot buffer to 15 feet.

A reduction in the 50-foot buffer from landslide hazard areas and steep slope ECAs is only allowed when a qualified professional demonstrates to the planning director’s satisfaction that the reduction will adequately protect the proposed development, adjacent developments, and uses and the landslide hazard area or steep slope hazard area. LFPMC 16.16.290.A (landslide hazard area); LFPMC 16.16.310.A (steep slope hazard area). The Director should not be satisfied by the applicant’s demonstration here.

In 2006, the Washington Department of Transportation issued geotechnical recommendations regarding Sound Transit's corridor improvement project. We have provided those recommendations with this comment letter. In those recommendations, there is a discussion of "Retaining Wall 4," which is near the proposed development and would affect the same steep slopes as the proposed development. WSDOT stated, regarding these slopes:

The slope is heavily vegetated with trees, shrubs and berry bushes. Some trees are up to about 18 inches in diameter. Most of the trees are "button hooked" exhibiting signs of slope creep. Some minor slumps may be present along portions of the slope as evidenced by crooked trees and uneven topography. . . . The slope is apparently composed of loose fill.

2006 02 01 WSDOT Geotechnical Recommendations re Sound Transit Corridor Improvement, at 3. Those "button hooked" trees on a slope composed of loose fill show that the risk of slope creep and landslides is a significant concern.

We have attached a February 2023 email exchange between staffers at WSDOT and Sound Transit regarding the characteristics of the slope and soils in the vicinity of the proposed development. In that email exchange, JoLyn Gillie, P.E., a principal geotechnical engineer for GeoSciences, tells Sound Transit that soil borings in this slope "terminated in wet, loose fill soils at 40 feet. As these borings didn't encounter the bottom of loose fill, an additional exploration was performed in 2006, H-05-06, that showed loose soils extending to about 65 feet." February 2023 email thread btw WSDOT and Sound Transit re soil liquefaction, at 1. Based on that data, Ms. Gillie opined:

In our professional opinion, assuming that a static groundwater table within the very loose fill soils to the elevation of the depth noted in the H-5-06, would be a conservative assumption; however, this could result in liquefaction and/or loss of strength within the loose fill that would have implications for settlement and slope stability both during and after ground shaking.

*Id.* It does not appear that the applicant addressed the data collected by WSDOT and Sound Transit at all. The applicant's failure to consider this data makes its conclusion that liquefaction is not a significant risk extremely suspect. *See* the applicant's "Geotechnical Report Lakeview Updated 10 29 2021," at 9 (PDF page 14):

[W]e conclude that the site has a low susceptibility to liquefaction from seismic shaking of the intensity, duration, and location which have characterized past events in the region. If future events of greater severity at the site occur, however, the susceptibility of these soils to liquefaction may be higher.



It is abundantly clear that the site proposed for development poses significant risks of slope instability and landslides. The 50-foot ECA buffers that the applicant seeks relief from are the minimum unrequired buffers. LFPMC 16.16.310.A (“Buffer Width Requirements. A minimum buffer shall be established at a horizontal distance of 50 feet from the top, toe and along all sides of any slope 40 percent or greater.”); LFPMC 16.16.290.A (“A minimum buffer of 50 feet shall be established from all edges of the landslide hazard area. Buffer widths shall be extended or adjusted as needed to mitigate a steep slope or erosion hazard or to promote the health and safety of the public.”). Those 50-foot minimum buffers should be increased in light of the established landslide risk on these steep slopes, not cut in half to 25 feet (with portions of the construction within 15 feet of the top of the slope) as requested by the applicant.

The home of the adjacent neighbor to the west of the proposed project is located approximately five feet from the proposed site boundary. The adjacent home to the west is also located approximately five feet from the proposed site boundary. The neighbors to the proposed development already live with the risk of another landslide, a risk exacerbated by the numerous earthquake fault lines in the Seattle area. Reducing the 50-foot minimum buffers to 25 feet (and then violating even that reduced buffer with portions of the construction within 15 feet of the top of the slope) and clearing the trees in the ECAs at the top of the steep slopes would put the proposed development and its neighbors at significant increased risk. The city should not take that chance.

## **V. THE PROPOSED DEVELOPMENT IS ADJECT TO A FISH-BEARING STREAM.**

Bsche’tla Creek is characterized by the applicant as a Type N (non-fish bearing) stream. The applicant is wrong. Bsche’tla Creek is a Type F (fish bearing) stream downstream of the culvert located at Latitude 47.7398987, Longitude -122.2886124. That culvert (which blocks fish passage, according to WDFW) is located upstream of the proposed development, so the section of Bsche’tla Creek adjacent to the proposed development is fish-bearing—Type F. We attach WDFW’s December 12, 2021 report on Bsche’tla Creek, which describes the culvert upstream of the proposed development causing a barrier to fish passage and describes the benefits to steelhead, resident trout, and sea run cutthroat trout if that fish passage barrier were removed.

We also attach an April 22, 2022 technical memorandum from Sound Transit to the city’s Director of Community Development. That technical memorandum is titled “Geotechnical Investigation and Exploration - SR 522/145th Bus-Rapid Transit.” It discusses Bsche’tla Creek on pages 4–5 and states, *inter alia*: “The stream [Bsche’tla Creek] is classified as Type F (fish-bearing) (DEA 2021). F-type streams have a 115-foot standard buffer in Lake Forest Park (LFPMC 16.16.355).”

The applicant’s “Updated Stream and Wetland Reconnaissance for 3803 NE 155th St., Parcel 674470-1588 City of Lake Forest Park, WA,” which is a document named “5016 stream reconnaissance 031722” in the city’s project application files, erroneously claims that Bsche’tla Creek does not provide fish habitat.

The applicant's stream reconnaissance document makes no mention of the WDFW and Sound Transit determinations that Bsche'tla Creek does provide fish habitat. In addition, the applicant's stream reconnaissance document asserts in error "The downstream gradient further off-site to the southeast becomes steep and appears to preclude any potential upstream fish migration." 5016 stream reconnaissance 031722 at 2. That assertion is incorrect, as WDFW makes clear in its December 12, 2021 report on Bsche'tla Creek, which shows that fish passage is blocked upstream of the proposed development by a culvert, and that fixing that culvert would open up an additional reach of the stream to fish passage and make more spawning habitat available.

Because the applicant assumed in error that Bsche'tla Creek is non-fish bearing, the applicant incorrectly assumes that the "required standard buffer" is 50 feet (plus an additional 15-foot building setback). 5016 stream reconnaissance 031722 at 2 (and note while the applicant calls 50 feet the "standard" buffer for Type Np streams, 50 feet is the minimum required buffer for Type Np streams).

Because Bsche'tla Creek is a Type F (fish-bearing) stream downstream of the culvert located at Lat. 47.7398987, Long. -122.2886124, the required minimum stream buffer for the proposed project is 115 feet per LFPMP 16.16.355.A.2 (plus an additional 15-foot building setback per LFPMP 16.16.355.F), not 50 feet as the applicant asserts.

The applicant's error in describing Bsche'tla Creek as non-fish bearing carries over to its SEPA Checklist, which lists no fish in response to Question B.5, even though WDFW states that the section of Bsche'tla Creek downstream of the culvert (*i.e.*, the section adjacent to the proposed development) provides "good spawning gravels" and habitat for steelhead, resident trout, and sea run cutthroat trout.

## **VI. THE APPLICANT'S TRAFFIC STUDY IS INSUFFICIENT AND DOES NOT ACCOUNT FOR THE PENDING SOUND TRANSIT DEVELOPMENT AT THIS LOCATION.**

The applicant's October, 22, 2021 "Traffic Demand and Site Access Analysis" (herein, "traffic study") is outdated and does not provide sufficient information to assess traffic impacts.

The traffic study makes no mention of Sound Transit's planned two-year corridor improvement construction period on Bothell Way in the vicinity of the proposed development. Sound Transit's construction is currently planned to begin in Q4 2025, with a planned completion date in late Q1 2028. Sound Transit's planned construction will likely interfere with traffic flow and levels of service on Bothell Way in the vicinity of the proposed development for years; this should have been addressed in the applicant's traffic study.

The applicant's traffic study projects 65 weekday daily trips, but with only eight of those trips occurring during peak hours. That seems very unlikely. Moreover, the applicant's traffic study actually shows 74 new daily trips generated by the project, but subtracts 9 trips attributed to the existing single-family structures on the lot proposed for development. But those existing single-

family structures are abandoned and in disrepair. This is demonstrated by the King County Assessor's assessment of the value of improvements on that parcel at \$1,000.<sup>3</sup> For the purposes of the traffic study, the property proposed for development should have been modeled as vacant land with no existing trips. The applicant's traffic study should be redone without the subtraction for existing trips from the currently vacant parcel.

The applicant's traffic study contains four pages of data on the intersection of 45th Ave NE and Bothell Way NE. It is unclear why this data is included, as that intersection is approximately one mile away from the intersection of NE 155<sup>th</sup> Street with Bothell Way (and the intersection of 45th Ave NE and Bothell Way NE is not discussed in the body of the traffic study). Moreover, traffic counts presented on these four pages for the intersection of 45th Ave NE and Bothell Way NE are from 2013, and are thus stale and out of date.

## **VII. THE DEVELOPER PROPOSES INSUFFICIENT PARKING.**

The applicant's October, 22, 2021 "Traffic Demand and Site Access Analysis" states: "A total of 14 parking stalls would be available on-site." *Id.* at 1.<sup>4</sup>

Fourteen parking spaces is insufficient for up to 35 people living in 11 units. The proposed parking is even less sufficient considering the parking that should be made available to the public for the so-called "live/work units" in six of the proposed units (note: we do not agree that these proposed "live/work" spaces within residential units constitute "commercial or nonresidential uses").

It is hard to imagine that 35 people would own only 14 cars, especially in a suburban area with limited access to mass transit (even after Sound Transit's corridor improvement project is completed, Sound Transit and Metro together plan to operate only two buses, the 522 and the 372 on Bothell Way). How many cars would the 35 residents actually have and where would they park extra cars, or visitors' cars? The applicant does not say. This question is very important to the existing residents of NE 155<sup>th</sup> Street, because parking on that street is already very challenging. Moreover, a mere handful of cars can block emergency vehicles coming down 155<sup>th</sup> Street, effectively reducing 155<sup>th</sup> Street to a narrow, one lane road.

## **VIII. THE PROPOSED PROJECT MAY HAVE PROBABLE, SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACTS; A DETERMINATION OF SIGNIFICANCE UNDER SEPA IS REQUIRED.**

We understand that the city has not yet issued its threshold determination under SEPA and that a separate comment period will be provided for that threshold determination. But it is clear that this proposed development may have probable, significant adverse impacts on the natural and built

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<sup>3</sup> <https://blue.kingcounty.com/Assessor/eRealProperty/Dashboard.aspx?ParcelNbr=6744701588>

<sup>4</sup> There are four more on-street parallel parking spaces that are proposed to be located where Sound Transit will require a multi-year easement for Sound Transit's planned improvements to Bothell Way.

environment. A threshold determination of significance is required. That SEPA DS will lead to an environmental impact statement, paid for by the applicant, which will provide the city with a comprehensive analysis of the probable impacts of the proposed development on the elements of the environment. The city should require an EIS so that the probable, significant adverse impacts of the proposed development are adequately analyzed and addressed.

As an initial matter, the SEPA checklist provided by the applicant is woefully inadequate. As discussed above in Section V, the applicant does not acknowledge that Bsche'tla Creek is a Type F fish-bearing stream—and does not include steelhead, resident trout, and sea run cutthroat trout (or any fish at all) in response to checklist Question B.5, even though WDFW states that the section of Bsche'tla Creek downstream of the culvert (*i.e.*, the section adjacent to the proposed development) provides “good spawning gravels” and habitat for steelhead, resident trout, and sea run cutthroat trout.

Nor does the applicant list Little Brown Bats in its SEPA checklist, even though they have mapped habitat in Bsche'tla Creek according to WDFW's “priority habitats and species” (PHS) online map. And it is likely that Little Brown Bats are roosting in the abandoned buildings and trees on the project site, which are proposed to be demolished and cleared.

Nor does the applicant list bobcats in the checklist, even though Paula Good's husband, who with Paula owns a historic building and a residential rental property five feet from the project boundary on the west side, observed and photographed a bobcat on their property in October of 2024.

The project buildings would overshadow Paula Goode's rental property, blocking the sun.

The applicant failed to disclose a state-listed historic site, the old Sheridan Market property, which is mere feet from the proposed development, to the west. In response to SEPA checklist question B.14, which asks: “Are there any buildings, structures, or sites, located on or near the site that are over 45 years old listed in or eligible for listing in national, state, or local preservation registers located on or near the site[,]” the applicant answered, wrongly, “No.”

The proposed project would likely have adverse impacts on the earth element, by increasing slope instability and landslide risk. This impact is made more likely by the applicant's proposal to slash the required minimum ECA buffers by half, from 50 to 25 feet (and violate even its proposed reduced 25-foot buffer by constructing improvements within 15 feet of the top of the steep slope). This impact is also made more likely by the applicant's proposal to clear the trees in the steep slope ECA and remove the exceptional western red cedar. Those trees serve an important function in anchoring the steep slopes and reducing landslide risks for the neighbors.

The increased landslide risk also increases the likely environmental impacts to the water element, because the loose fill of the steep slope would end up in the stream if it is mobilized downhill.

All of these risks are compounded and increased through cumulative effects. The probable environmental impacts of the proposed development cannot be viewed in isolation, but must be

combined with an assessment of: “The demand upon facilities, services and natural systems of present, simultaneous and known future development in the area of the project or action.” LFPMC 16.06.050.B.1.d. Sound Transit’s corridor improvement project is a known future development, though the applicant does not appear to acknowledge this in its application materials.

The applicant’s SEPA documentation contains no disclosure, acknowledgement, or analysis of the cumulative effects of the proposed project. For example, Sound Transit’s pending corridor improvement project will include an entirely new bus lane on the east side of Bothell Way, right above 155<sup>th</sup> Street. This increase in impervious surface will send additional stormwater flow down 155<sup>th</sup> Street. The applicant’s proposed development will also collect stormwater runoff and convey that collected stormwater down 155<sup>th</sup> Street. The cumulative impacts of those two projects on stormwater infrastructure and other elements of the environment must be considered together under SEPA. *See* LFPMC 16.06.050.A.1–2:

1. A project or action which by itself does not create undue impacts on the environment may create undue impacts when combined with the cumulative effects of prior or simultaneous developments; further, it may directly induce other developments, due to a causal relationship, which will adversely affect the environment.
2. An individual project may have an adverse impact on the environment or public facilities and services which, though acceptable in isolation, could not be sustained given the probable development of subsequent projects with similar impacts.

As another example of undisclosed cumulative effects, Sound Transit will require a temporary easement over a portion of the property proposed for development (in the area where the applicant proposes four parallel parking spaces), and the term of that easement overlaps with the applicant’s projected build-out of the development. If the proposed development is approved, there would be two major development projects going forward in the same area, at the same time. What impact would that simultaneous development have on parking, traffic, and emergency vehicle response times at the intersection of NE 155<sup>th</sup> Street and Bothel Way? The applicant does not address this at all.

## **IX. CONCLUSION**

For all the forgoing reasons, the city should deny the CSDP application for the townhome development proposed to be located at 3803 NE 155th St., Lake Forest Park (Parcel No. 6744701588), apply the criteria and process for reviewing Type I permit applications, demand more information regarding the proposed development’s probable, significant, adverse environmental impacts, and (once that information is provided) issue a determination of significance under SEPA so that a full environmental review is prepared for the project.

Very truly yours,

BRICKLIN & NEWMAN, LLP

A handwritten signature in blue ink, appearing to read 'Zachary K. Griefen', with a stylized, cursive script.

Zachary K. Griefen  
Claudia Newman  
*Counsel for 155<sup>th</sup> Street Neighbors*