# CITY OF SHORELINE
# HEARING EXAMINER

## FINDINGS, CONCLUSION AND DECISION

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## I. BACKGROUND INFORMATION

### A. PROJECT INFORMATION SUMMARY

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| **1. Project Numbers, Addresses, and Applicant** | 1. Clearing and Grading Project No. 106006<br>1437 NW 186th, Shoreline, WA 98177<br>Michael Rasch on behalf of owner Sylvia Moren<br><br>2. Clearing and Grading Project No. 105821<br>1445 NW 186th, Shoreline, WA 98177<br>Michael Rasch on behalf of owner Norma Mc Gee |
| **2. Proposed Project Description** | 1. Moren property: Remove five significant trees located within a steep slope area.<br><br>2. McGee property: Remove five significant trees located within a steep slope area. Top one significant tree located within a steep slope area. |
| **3. Parcel Numbers** | 1. Moren: 358590-0765<br>2. McGee: 358590-0760 |
| **4. Date SEPA DNS' Issued** | October 21, 2004 |

### B. APPEAL SUMMARY

**1. Decision Appealed:** Issuance of two SEPA Determinations of Non-Significance

The grounds of the appeal as listed in their letter of November 1, 2004 (Exhibit 1, Exhibit L) are:

A. The Director exceeded his or her jurisdiction or authority,
B. The Director failed to follow applicable procedures in reaching the decision,
C. The Director committed an error of law,

D. The findings, conclusions or decision prepared by the Director or review authority are not supported by substantial evidence.

E. The Director failed to have an impartial third party review of the engineering reports to come to an objective conclusion.

F. The Director failed to adequately consider the environmental impact of the proposed work; and, the rating of adjacent property as a high risk of potential soils instability; and, the recent soil movement in the Innis Arden Reserves.

G. The director failed to consider the subject application taken in light of all of the tree removal in Innis Arden over the past 20 years; together with several other pending applications for tree removal in the adjacent Innis Arden Reserve as well as other plans for tree removal in other Innis Arden Reserves; as well as almost 100 trees which were removed under the dubious claim that such trees were "hazardous"; and, failed to consider habitat issues; and, failed to consider this application to be a part of the cumulative effect and adverse environmental impact upon all of the Innis Arden Reserves.

**2. Appellants**

Elaine Phelps
17238 10th NW
Shoreline, WA 98177

Paul Blauert
18303 17th Pl. NW
Shoreline, WA 98177

Gery Nunnelee
1455 NW 185th
Shoreline, WA 98177

Pamela Ness
19210 17th Ave. NW
Shoreline, WA 98177

Carol Odell
1414 NW 186th
Shoreline, WA 98177

Wayne Cottingham
17228 – 10th NW
Shoreline, WA 98177

Nancy S. Rust
Shoreline, WA 98177

**3. Date Appealed:** November 1, 2004

**4. Appeal Hearing Date:** March 2, 2005

## C. Procedural History

Michael Rasch submitted an application for a clearing and grading permit for the McGee property located at 1445 NW 186th Street on April 22, 2004. The application consisted of the clearing and grading permit submittal checklist, clearing and grading permit application form, critical areas worksheet, State Environmental Policy Act ("SEPA") checklist, geotechnical engineering report prepared by GeoEngineers, as well as a site plan and a tree replacement memo from International Forestry Consultants. See McGee application materials attached as Exhibit 8, Exhibit A. Staff determined the McGee application complete on June 21, 2004.

Mr. Rasch submitted an application for a clearing and grading permit for the Moren property located at 1437 NW 186th Street on June 14, 2004. Like the McGee application, the Moren application consisted of the clearing and grading permit application form, critical areas worksheet, SEPA checklist, geotechnical report prepared by GeoEngineers, as well as a site plan and a tree replacement memo from International Forestry Consultants. See Moren application materials attached as Exhibit 8, Exhibit B. Staff determined the Moren application complete on August 20, 2004.

The two clearing and grading permits are not exempt from SEPA review since the projects are located in a critical area. SMC 20.30.040 and 20.30.050. Due to the two projects' direct proximity to each other and their potential impact on steep slopes, the City consolidated the two projects with respect to SEPA review. City staff reviewed both applications and their materials (specifically the geotechnical reports and the tree replacement materials) for compliance with Shoreline Municipal Code ("SMC") Chapter 20.80, Subchapter 2, Geologic Hazard Areas and Chapter 20.50, Subchapter 5, Tree Conservation, Land Clearing and Site Grading Standards. Staff also verified that the materials complied with SEPA, adopted by the City under SMC 20.30.490 through 20.30.710. Both GeoEngineers reports concluded that the trees located on slopes less than 40% could be removed without negatively impacting slope stability. The Moren report indicated that the tree located on the upslope edge of the slope greater than 40% could be removed without negatively impacting the slope stability. Both reports also concluded that the soil had low erosion potential.

Typically, development in slopes greater than 40% (Class IV landslide hazard areas) is prohibited except as granted by a critical areas reasonable use permit. SMC 20.80.240. However, activities in areas which are considered small steep slopes may be exempt from the prohibition or permit requirement if a geotechnical report demonstrates that no adverse impact will result from the exemption. SMC 20.80.030. Here, the GeoEngineers consolidated report identifies the slope as a small steep slope ("...the slope has an inclination greater than 40 percent, but only for a height of 3 to 4 feet." See supplemental GeoEngineers geotechnical engineering report, Exhibit 8, Exhibit C, page 3). The GeoEngineers report concluded (and the RMI report confirmed) that removal of the tree located on the upslope edge of the small steep slope will not result in adverse environmental impact. See Exhibit 8, Exhibit C, page 3.

During the review process, the City determined that a consolidated geotechnical report that evaluating the impact of the two projects together was necessary since the proposed tree removal would take place on neighboring properties and adjacent steep slopes. See staff comment letter, Exhibit D. In response, Mr. Rasch submitted a supplemental GeoEngineers geotechnical report examining the slope stability of both properties as well as the slope stability of the surrounding Blue Heron Reserve located adjacent to the subject properties. See supplemental GeoEngineers geotechnical engineering report, Exhibit 8, Exhibit C. The consolidated report also concluded that trees located on slopes less than 40% could be removed without having a negative impact on soil stability on the properties and on Blue Heron Reserve. The report also determined that the groundwater condition would not be appreciably altered by the tree removal. Further, the report rated the soil erosion potential as low.

As part of the SEPA process, public notice of the McGee project was given on June 24, 2004. See public notice attached as Exhibit 8, Exhibit E. The public comment period was held from June 24 to July 9, 2004. Public notice of the Moren project was given on August 25, 2004. See public notice attached as Exhibit 8, Exhibit F. The public comment period was held from August 25 to September 8, 2004. Staff received, through public comment, a geotechnical engineering report challenging the findings of the GeoEngineers engineering reports. See Dennis M. Bruce's, P.E., geotechnical report, Exhibit 8, Exhibit G. In light of the public comment report, staff sent a letter to Mr. Rasch requesting third party review of the geotechnical report under SMC 20.50.330(B). See staff letter, attached as Exhibit 8, Exhibit H. In response, Mr. Rasch submitted a geotechnical report from RMI Associates, Ltd. ("RMI") which confirmed the findings and conclusions in the GeoEngineers reports. See RMI geotechnical report, Exhibit 8, Exhibit I.

After reviewing the SMC requirements, geotechnical engineering reports, tree replacement memos, and public comment, staff determined that the project would not result in adverse significant environmental impacts. More specifically, staff concluded that the removal of eleven trees and topping of one tree on two parcels with tree re-planting did not meet the threshold of a "Significant Environmental Impact," as shown in both GeoEngineers consolidated report and the supplemental RMI report. Therefore, it would have been inappropriate to issue either a Determination of Significance ("DS") or a Mitigated Determination of Non-Significance ("MDNS"). The project was proposed with conditions, so a DNS is the appropriate threshold determination, not an MDNS. WAC 197-11-350(1) and (3).1 Thus, SEPA Determinations of Non-Significance ("DNS") for both the Moren application and the McGee application were issued on October 21, 2004. See McGee DNS and Moren DNS attached as Exhibit 8, Exhibits J and K, respectively. The appellants filed an appeal of the DNS' at the City Clerk's Office on November 1, 2004. See statement of appeal, Exhibit 8, Exhibit L. Clearing and grading permits, with attached conditions, were issued January 10, 2005. See Moren permit and McGee permit, Exhibit 8, Exhibits M and N, respectively.

Although the appeal date was initially scheduled for January 19, 2005, the appeal had to be rescheduled to March 2, 2005 since staff had not yet issued the clearing and grading permits. State law and the SMC require that all permit and SEPA appeals be consolidated into one open record hearing.2 Therefore, the City could not hold the SEPA appeal until the clearing and grading permits were issued, and the 14 day appeal period for the clearing and grading permits had run. Although the SMC requires that all appeals be heard within 90 days of filing of the appeal3, here the 90 day timeline could not start running until after the clearing and grading permits were issued.

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[1] WAC 971-11-350 states that in making a threshold determination, an agency may consider mitigation measures that an applicant will implement and that if the lead agency specifies mitigation measures on an applicant's proposal that would allow it to issue a DNS and the proposal is conditioned to include those measures, a DNS shall be issued.

[2] RCW 36.70B.060; RCW 36.70B.120; SMC 20.30.040

[3] SMC 20.30.230

### D. SUMMARY OF APPLICABLE CODES AND REGULATIONS

#### 1. SMC REQUIREMENTS

SMC CHAPTER 20.20.010 – 060, CHAPTER 20.30, SPECIFICALLY SMC 20.30.040, 20.30.110, 20.30.230, 20.30.490 THROUGH .710.
SMC 20.50, SUBCHAPTER 5, SPECIFICALLY, 20.50.300, 20.50.330, 20.50.360; 20.50.290 – 370.
SMC CHAPTER 20.80, SUBCHAPTER 2, SPECIFICALLY 20.80.010 – .500, 20.80.030, 20.80.220(A), 20.80.240(A),(B),(C) AND (F), AND 20.80.250.

#### 2. RCW

RCW 36.70A.030 (5), 040, .170 (D), 43.21C.030, 36.70B.060, 36.70B.120.

#### 3. STATE ENVIRONMENTAL POLICY (SEPA) REQUIREMENTS

WAC 197-11-050, 197-11-060 (5)(B), 197-11-158, 197-11-300, 197-11-310, AND 197-11-335, 197-11-960.

## II. PUBLIC HEARING

### A. The Public Hearing

The Public Hearing on the Appeal of the SEPA Determination of Non-Significance for clearing and grading permits for Project No. 106006 at 1437 NW 186th and Project No. 105821 at 1445 NW 186th, Shoreline, WA. was called to order on March 2, 2005, at 3:00 pm in the Board Room of the Shoreline Conference Center, 18560 1st Avenue NE, Shoreline, WA 98155. The Hearing Examiner noted that he had visited the sites. He also indicated that those testifying would be asked to affirm that the information they provide is true. The hearing was closed at 8:20 pm with the provision to accept copies of photographs submitted by Mr. Dennis Bruce and to obtain the resume of Lorne A. Balanko for the record.

Prior to the Public Hearing a number of procedural issues were submitted. The applicant asked that the Hearing Examiner dismiss three of the appeal items (E, F & G); however, the Hearing Examiner indicated he would rule on that after the Public Hearing. The appellant asked for a continuance due to the difficulty of Mr. Blauert being able to attend and time need to respond to the Applicant's Motion to Dismiss. The Hearing Examiner denied the continuance; however, did change the time of starting the Public Hearing to 3:00 pm. The applicant objected to the fact that the Hearing Examiner had returned a phone call from Ms. Phelps, Appellant, regarding the request for a continuance. The objection was noted. At the request of the Appellant the Hearing Examiner issued 3 subpoenas as listed below.

Those who were represented and testified were as follows:

City of Shoreline:
Flannery P, Collins, Assistant City Attorney
Matthew A. Torpey, Planner II, Planning and Development Services