

BEFORE SEATTLE CITY COUNCIL

In the Matter of the Appeal of:

Swedish Medical Center

New Major Institution Master Plan
Application

Notice Regarding Clerk File 311936
DPD Project No. 3012953, Type IV

19TH AVENUE BLOCK WATCH/SQUIRE
PARK NEIGHBORS'
REPLY TO RESPONSES TO APPEAL

I. INTRODUCTION

19th Avenue Block Watch ("19th Ave") hereby joins in Appellants' Replies to Responses to the Appeals filed with the City Council on February 8, 2016. For the reasons stated by the Appellants, 19th Ave requests that Applicants' motions to dismiss be rejected and that the City Council approve the Swedish's Master Plan for the Major Institution Master Plan ("MIMP") as conditioned, which also incorporates Appellants' additional mitigations. 19th Ave also writes separately to reply to specific issues raised by Applicants concerning 19th Ave's Appeal and Supplement to Record.

II. BACKGROUND

The hospital began its operations in 1910 on one City block, surrounded by residential and commercial properties that predated that period. The majority of the original homes surrounding the Campus are older than the hospital. The hospital and the residential and commercial properties were erected prior to the City's creation of its zoning laws. The City attempted to bring order and some level of planning with its regulatory zoning actions as part of good governance to incorporate environmental and public protections.

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The hospital began expanding its boundaries by buying resident properties along its east boundary until 1994. By then the hospital had acquired most of the properties along the east side of 18th Ave and the west side of 19th Ave. The 1994 MIMP required the hospital to return all its properties along 19th Ave to affordable residential use in exchange for its expansion along the eastside of 18th Ave.

Pursuant to SMC 23.76.054, 19th Avenue Blockwatch/Squire Park Neighbors provided both written and oral comment to the Hearing Examiner and a timely written appeal of the recommendation and supplement to record issued on to the City Council.

Seattle City Hearing Examiner Sue Tanner issued Findings, Conclusions, and Recommendations in the above matter on September 10, 2015

This Reply to Responses to Appeal identifies specific objections to the Applicants' arguments, conclusions, motions, and recommendations and specifies the relief sought. The primary arguments cover the following:

- A. The Major Institution's failure to establish need to justify expansion and appropriate level of public benefit.
- B. Heights, bulk, scale, density and intensity are not sufficiently mitigated and negatively impact the vitality and livability of this neighborhood.
- C. Inequitable treatment by DON and historic inequitable treatment by DPD as documented and incorporated in the Director's determination.

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- D. Errors concerning neighborhood transit access and viable mitigation of transportation solutions.
- E. The MIMP's inconsistency with the Comp Plan is relevant and must be considered.
- F. Only traffic impacts, not noise, were considered concerning the loading docks.
- G. Drainage, stormwater and flooding concerns.
- H. Miscellaneous Corrections.

III. ARGUMENT

A. Failure to Establish Need and Provide Community Benefits

Tertiary and Quaternary Healthcare refer to specialized care available in referral centers and very rarely accessible to the general public.

Tertiary care is specialized consultative health care, usually for inpatients and on referral from a primary or secondary health professional, in a facility that has personnel and facilities for advanced medical investigation and treatment, such as a tertiary referral hospital. A tertiary care facility may not offer a sub-specialist with experimental medicine and some types of uncommon diagnostic or surgical procedures training.

Examples of tertiary care services are cancer management, neurosurgery, cardiac surgery, plastic surgery, treatment for severe burns, advanced neonatology services, palliative, and other complex medical and surgical interventions.

Quaternary care is sometimes used as an extension of tertiary care in reference to advanced levels of medicine which are highly specialized and not widely accessed.

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Experimental medicine and some types of uncommon diagnostic or surgical procedures are considered quaternary care. These services are usually only offered in a limited number of regional or national health care centers.

Finding of Fact #44 (pages 9 -10) – The Hearing Examiner noted that the CAC “neither endorsed nor rejected the level of need”. However, the record of the CAC meetings and emails was ignored; the CAC did not comment on need because the CAC was instructed by City staff that the CAC could not discuss or incorporate its evaluation of whether the Major Institution demonstrated need, nor did the Applicant’s provide the data or documents repeatedly requested at CAC meetings. Therefore, the CAC was never given the opportunity to evaluate whether the need was established. And with that, the neighborhood residents were denied the same.

Finding of Fact #7 (page 3) – The Hearing Examiner failed to identify all of the tenants on the Swedish Cherry Hill Campus, including but not limited to Swedish CyberKnife, Accium BioSciences, Seattle University College of Nursing Clinical Performance Laboratory, the Seattle Science Foundation, and The Polyclinic. The Appellants’ understanding was the Major Institution was a general hospital until the expert testimony during the Hearing in 2015. During the Hearing, the Applicants’ were able to show that the Major Institution had evolved from a general hospital to a tertiary and quaternary healthcare facility with focus on cardiovascular and neuroscience services. Therefore, the Appellants were never given the opportunity to conduct any analysis to show how each of the existing services on the Campus are related to either cardiovascular and/or neuroscience services and are part of tertiary and quaternary healthcare services until the Hearing.

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Conclusion #6 (page 19) – The conclusion is flawed because it is based on the assumption that all the services located on the Swedish Cherry Hill Campus are related to cardiovascular or neuroscience services. The conclusion also ignores the vacancy at both the First Hill and Cherry Hill Campuses and whether the significant vacancies can accommodate the needed services solely with remodeling of the existing spaces. And finally, the conclusion ignores that the cardiovascular services are in the process of being relocated to the First Hill Campus (staff have been given notice of the move). Therefore, the Applicants have not made their case for need of services that are not cardiovascular and/or neuroscience services or tertiary and quaternary services.

Conclusion #7 (page 19) – Although property owners are allowed to develop properties within the major institution boundaries under SMC at the designated higher MIO zoning, there are associated risks. The code does not allow property owners to do whatever they want or to use the MIO overlay to circumvent the underlying zoning. The SMC does not allow property owners to fill tenant vacancies with services outside the stated major institution use. In this case, all the property owners are confined to cardiovascular and neuroscience tertiary and quaternary services based on Swedish and Sabey's stated need.

Swedish and Sabey argue that the co-location model for this major institution is necessary to provide cardiovascular and neurosciences tertiary and quaternary healthcare services. Sabey was recognized by both DPD and Hearing Examiner as a party to the MIMP. As the Applicants have argued, the major institution code is about uses, not owners. Therefore, SMC 23.69 applies to both Applicants. It would be unconstitutional for the hospital to exclusively limit its ownership or location within 2,500 feet 2,500 feet of a Major Institution Overlay District.

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SMC 23.69.022, Uses permitted within 2,500 feet of a Major Institution Overlay District, also applies to both Applicants.

A. A Major Institution shall be permitted to lease space, or otherwise locate a use outside a Major Institution Overlay (MIO) District, and within two thousand five hundred (2,500) feet of the MIO District boundary, subject to the following limitations:

3. Except as permitted in an adopted master plan, the use shall not result in the demolition of a structure(s) that contains a residential use nor shall it change a residential use to a nonresidential use.

4. The use(s) shall conform to the use and development standards of the applicable zone.

5. The use shall be included in the Major Institution's approved Transportation Management Program if it contains students or employees of the Major Institution.

6. If a Master Use Permit is required for the use, the Director shall notify the Advisory Committee of the pending permit application and the committee shall be given the opportunity to comment on the impacts of the proposed use.

Therefore, the use of the property referred to as Spencer Technologies or The Institute of Applied Physiology and Medicine, located at 701 16th Avenue, which is owned by 16th & Cherry LLC, a wholly-owned Sabey subsidiary since 2007, is in violation of SMC 23.69.022. The

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current zoning for this property is Lowrise 3 and it is located with 2,500 feet, directly across the street of the major institution boundary, a direct violation. It has never been included Transportation Management Program and DPD never notified the Advisory Committee of any permit application to allow a multifamily residential property to be converted into a medical and research facility. As part of this MIMP, this property must be returned to housing stock.

Finding of Fact #45 (page 10) - The Hearing Examiner ignored that the Major Institution used system-wide community benefits to offset specific, local impacts. Both the CAC and the neighborhood asked that the community benefits referenced in the MIMP solely reflect the Swedish Cherry Hill Campus. The Swedish network website and the record show the Swedish Cherry Hill Campus provides the least amount of community benefits to the surrounding neighborhood of the entire network locations throughout the Puget Sound area.

B. Height, Bulk, Scale, Density and Intensity

Finding of Facts #53, #54, #55, #56, and #57 – We concur with the Hearing Examiner, DPD, and the CAC that the height along the eastside of the Campus along 18th Ave remain at 37 feet. We object to the Applicants' continued pressing for any increase of the height along 18th Ave to 40 feet or 45 feet. The steep slope drop from west to east from 18th Ave is approximately 30 feet. This change in topography gives the appearance of a 107 foot structure when the proposed 37 feet contiguous building with an additional 10 feet for mechanical roof top structures is seen from 19th Ave. Although we concur with the 37 feet maximum along 18th Ave, we believe the CAC Minority report proposing zero foot reduced center section provides a better mitigation of bulk, scale, density and intensity that the 15 foot reduced center section.

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We also concur with the CAC specifications for height for the rest of the Campus that most realistically balance the interests of the Major Institution with the needs and vitality of the surrounding neighborhood.

Swedish erroneously claims that the Major Institution Codes no longer requires MIO setbacks. However, SMC 23.69.020, Development standards, does require the following:

- A. Major Institution uses shall be subject to the development standards for institutions of the underlying zone in which they are located, ...

The underlying zone along the east side of 18th Ave, the east boundary of the Campus, is SF-5000 with a 25 feet minimum yard setback.

Swedish argues that most Seattle residents favor its proposed MIMP. Swedish engaged a professional polling company, EMC Research, to poll whether near neighbors and citywide residents favored the Applicants' MIMP, and the declared outcome of the poll showed favorable results towards the Applicants' proposed MIMP. However, the Hearing Examiner did not consider the poll or its results because she stated during the Hearing that she was required to make a determination based on the facts, not bureaucratic or political persuasions. The questions that were used in this poll were slanted and specific questions that should have been asked were not. A few of us were offended by the questions asked during telephone poll. If asked a question whether anyone would want a world class medical center in their neighborhood, who would not say yes, even if it is unclear what is actually meant. Telephone polls are not used alone when trying to reach a diverse population. They are typically supplemented with other methods to reach people of color, immigrants and refugees. The questions asked were written for the mainstream population. Simply put, the poll was biased.

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The neighborhood residents also conducted our own poll during 2014, which was developed by Bob Cooper. Mr. Cooper has prior work experience developing polls as well. His poll results showed: 1) the majority of neighborhood residents were opposed to all of the proposed MIMP alternatives and 2) the neighborhood residents believed the Applicants were hostile and not responsive to the resident concerns. This is a quasi-jurisdictional proceeding, and therefore, bureaucratic and political persuasions cannot be considered.

C. CAC Membership Composition

City Council has the legal authority to amend the size and/or composition of the Advisory Committee in the interest of ensuring representative community participation on the Advisory Committee in accordance with SMC 23.69.032, Master plan process, Section B. Formation of a Citizens Advisory Committee:

1. ... the institution shall initiate the establishment of a Citizens Advisory Committee of at least six (6), but no more than twelve (12) members. ...
3. ... A nonmanagement representative of the institution shall be included.
5. The Director of the Department of Neighborhoods shall ... recommend to the Council those individuals appropriate to achieve a balanced, independent and representative committee. ... The Council may confirm the Advisory Committee composition, make changes in the size and/or composition of the Advisory Committee, or remand the matter to the Director of the Department of Neighborhoods for further action. The Council shall establish the final composition of the committee through a memorandum of agreement with the institution, prepared by the Department of Neighborhoods, and adopted by resolution.

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8. During the master plan review and adoption process, the Council may, in the interest of ensuring representative community participation on the Advisory Committee, amend the size and/or composition of the Advisory Committee.

Therefore, we must call into question the veracity and perception of fairness of David Letrondo who expressed his pre-disposition to stand against the neighborhood from his very first CAC meeting, his routine references to the architectural design work he performed for Swedish Cherry Hill Campus and his vitriol and inflammatory Minority Report. In the case of Linda Carrol, a Swedish Cherry Hill Medical Center manager, we must protest the Major Institution's misrepresentation of her as a line staff person. We are further dismayed that the Department of Neighborhoods allowed Ms. Carrol to serve as a voting member even after neighbors complained that she represented management and was contrary to the Code requirements for membership on the CAC.

What the referenced CAC Minority Report of David Letrondo and Linda Carrol failed to disclose is the surrounding neighbors informed Sabey Corporation that boundary expansion was possible for discussion provided that the surrounding neighbors receive comparable compensation from the Applicants as Children's Hospital provided to its surrounding neighborhood. This is part of the CAC meetings public comments at several CAC meetings. Sabey rejected the neighborhood proposal and then purported the neighborhood was opposed to major institution boundary expansion, even though Sabey paid \$1.5 million to each of the two remaining property owners along 18th Ave for their properties in 2006. Sabey is opposed to boundary expansion if just compensation or mitigation is required.

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Although Swedish raises this in its Response to Appeal, Swedish was not part of the discussion between the 19th Ave neighbors and Sabey representatives, and therefore, their comments are hearsay and should be disregarded. Sabey did not raise this in its Response to Appeal.

D. Transit Access and Transportation Mitigation Solutions

Finding of Fact #76 (page 15) – The City’s current “walkshed” standard is one-quarter mile, not one-half mile used in the FEIS. The MIMP should reflect the City’s standard for reasonable walking distances for transportation plans. This is not a SEPA issue; it is an error in the FEIS, which makes it an error for the TMP and the MIMP.

Finding of Fact #86 (page 17) – Employee and SEIU union representation are not part of the Integrated Transportation Board (ITB). The ITB has recommended creating or changing processes to modify employee behavior, including punitive measures, which is subject to collective bargaining. Without engaging employees and SEIU union representatives, success will be limited or unlikely.

Conclusion #19 (page 21) – The Director and the CAC purposely incorporated required compliance with the SOV rate prior to the issuance of a building permit even though it does duplicate DPD’s existing authority under the Code to enforce the SOV rate. The CAC purposely incorporated the compliance due to DPD’s historic, complete lack of enforcement for the 1994 Providence MIMP, while enforcing other MIMPs outside the Central Area neighborhood. The CAC wanted to ensure that this neighborhood was no longer treated with indifference and differently than other neighborhoods. The DPD staff person, with concurrence with the Director, also included this requirement to demonstrate to our neighborhood good faith that we can count

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on being treated equitably. In light of the Mayor dissolving DPD and creating a new department with oversight over MIMPs and with the past history of disparate treatment, we must insist that we receive assurances of “never again”.

Conclusion #21 (page 21) – The Hearing Examiner correctly concludes that the FEIS conclusion of unmitigated traffic will occur with the development of the MIMP as proposed. The Hearing Examiner also correctly concludes that with each building permit request, a new transportation must occur. However, the critical point missing with the conclusion of including a new analysis of traffic conditions and impacts is determining whether the proposed building also complies with the stipulated use identified in the MIMP.

Recommendation #3: TMP Goal Prior to First Building Permit (page 22) – All Appellants, Hearing Examiner, CAC, and DPD agreed that no permit be issued until the current SOV goal of 50% be achieved. The SMC requires a minimum 50% SOV attainment and a SOV goal be set to reduce the SOV percentage to below that requirement. The Applicants had a 50% SOV goal for their 1994 MIMP. The Applicants have a current 57% SOV performance and have been in non-compliance with the 50% SOV requirement since 1994. The Applicants did not report their SOV goal progress consistently until 2014. Sabey and its tenants refused to comply with the reporting requirements until 2014. And the City did nothing to bring Applicants into compliance until continuous demands to do so from the neighborhood residents all the way to the Mayor’s Office.

We agree with Ms. Szelag, the Applicants’ expert witness, that the Director’s proposed 38% SOV goal over twenty-five years is realistic, which the Applicants have finally agreed to the

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proposed condition. However, the sudden level of commitment is due to the neighborhood's outrage of the Applicants non-compliance and the City's lack of enforcement. Ms. Szelag does not know the history since her involvement is recent. Ms. Szelag has never seen the condition of no City permit being authorized for development until the Applicants comply with a 50% SOV rate because no other Major Institution has done so poorly for more than twenty years with the level of public transportation available to it. Despite the Applicants' stated commitments, the 57% SOV attainment has remained steady.

E. Proposed MIMP's Inconsistency with the Comp Plan and SMC

Conclusion #10 (page 19) – Significant portions of the MIMP are inconsistent with the Comprehensive Plan. The Major Institution Code requires more.

When an FEIS concludes, repeatedly – over and over again – that a proposal is inconsistent with goals and policies set forth in Seattle's Comprehensive Plan and that those impacts cannot be mitigated, the only reasonable conclusion is that the proposal will cause significant adverse land use impacts. The enormity of this proposal – its impact to transportation, its height, bulk, and scale (adding jobs and bulk and more) in a predominantly single-family neighborhood that is not meant to accept this level of growth – flies directly in the face of the City of Seattle land use policies.

The Applicants zero in on the urban village element of the Comp Plan and claim that inconsistencies with these goals and policies are "irrelevant" to major institution planning, either as part of the MIMP or as a matter of substantive SEPA policy. They quote from a City Council

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decision indicating as such for the Children's Hospital proposal. There are two problems with this argument.

The City Council erred when it claimed that the urban village strategy in the Comp Plan is irrelevant to the substantive MIMP decision. Inconsistency with the urban village strategy is directly relevant to major institution planning. On a big picture scale, Chapter 23.69 SMC limits growth within a Major Institution Overlay district. Over and over again, the regulations assert and support a policy of minimizing adverse impacts to the surrounding area associated with development and expansion and protecting the livability and vitality of adjacent neighborhoods. Thus, in considering whether to approve or deny a request for expansion of a major institution, the City Council must consider the extent to which the growth and change will or will not significantly harm the livability and vitality of the surrounding neighborhood. A major institution does not have unfettered ability to grow as large as it wants to be – it must be limited so that it does not adversely affect the neighborhood.

The goals and policies of the City's Comp Plan are directly relevant to the question of impacts on the neighborhood. When you have a fundamental goal of steering the majority of estimated growth and housing units and jobs toward urban centers and urban villages for the purpose of "preserving the character of Seattle's predominantly single-family neighborhoods," you cannot and should not ignore that goal when considering how large this major institution in a single-family neighborhood should be. That this proposal is repeatedly inconsistent with the goal of preserving the character of the predominantly single-family and lowrise neighborhoods are directly relevant to the MIMP decision. You can bet that if this site was within an urban village,

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Swedish and Sabey would be repeatedly emphasizing that growth was appropriate because it is within an urban village.

The FEIS concluded that the MIMP proposal is inconsistent with portions of the Comp Plan, evidence that the Council can rely on to make its MIMP decision. The FEIS thus informs the MIMP decision that the MIMP should be mitigated or conditioned.

Yet the MIMP and FEIS fail to do so, even though SMC 23.69.012, Conditional uses, Section A. and B., require the Director to ensure all conditional uses shall be subject to the following, which were not conditioned or mitigated appropriately:

Section A.

1. The use shall not be materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located.
3. In authorizing a conditional use, adverse impacts may be mitigated by imposing conditions such as landscaping and screening, vehicular access controls and any other measures needed to mitigate adverse impacts on other properties in the zone or vicinity and to protect the public interest. The Director shall deny or recommend denial of a conditional use if it is determined that adverse impacts cannot be mitigated satisfactorily.

Section B.

2. In considering an application for a conditional use, the Director's decision shall be based on the following criteria:
 - a. Parking areas and facilities, trash and refuse storage areas, ..., fixtures or facilities shall be located so as to minimize noise and odor impacts on the surrounding area.The Director may require measures such as ..., adjustments to parking location or

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setback development standards, design modification, limits on hours of operation or other similar measures to mitigate impacts; and

b. Required landscaping shall be compatible with neighboring properties.

Landscaping in addition to that required by the Code may be required to reduce the potential for erosion or excessive stormwater runoff, to minimize coverage of the site by impervious surfaces, to screen parking, or to reduce noise or the appearance of bulk and scale; and

c. Traffic and parking impacts shall be minimized; ...

F. Loading Docks Traffic Impacts, Not Noise, Were Considered

Recommendation #19: Garage and Loading Dock Access (page 26) – Noise from garage and loading dock access was not included as a condition to assess despite the Director, the CAC and Appellants' concerns. In particular, current loading dock configurations require the less safe truck back-ups into the docks with the accompanying noise rather than encourage circular dock ingress and egress.

G. Drainage, Stormwater and Flooding

Recommendations #78 and #79: During Construction for Future Development – Public Services

(pages 35 - 36) – The Hearing Examiner agreed with 19th Ave Blockwatch/Squire Park Neighbors concerning the FEIS that the concerns about ongoing flooding, drainage and stormwater damage were adequately documented and known to the City since 1992 when first recorded in public testimony for the prior 1994 MIMP and CAC meetings. While

Recommendation #64: During Construction for Future Development – Groundwater, mitigates the soil conditions throughout the Swedish Cherry Hill Campus (with over 200 borings) that are

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not ideal or suitable for low-impact development measures such as bio-retention cells or bio-retention planters, the same or similar language was not incorporated into Recommendation #78, #79, and #80.

H. Miscellaneous Corrections

Finding of Fact #8 (page 3) – Correction to proposed MIMP: Cherry and Jefferson Streets both connect to Interstate 5. 23rd and 12th Avenues both connect to Interstate 90. With the installation of the First Hill Street car, 14th Avenue, the most direct connector to Interstate 90 is no longer accessible. 23rd Avenue and Madison Street (through the Arboretum) are the Interstate 520 connectors.

IV. CONCLUSION

The summary of the additional conditions are as follows:

1. Reduction of the allowed height on the Central block from 160 feet to 140 feet to be allowed only for the hospital wing (CAC recommendation). Reduction from 150 feet to 105 feet for all portions of the block bounded by E. Jefferson Street, E. Cherry Street, 15th Avenue and 16th Avenue (CAC recommendation).
2. The conditioning of the 15 feet to 0 feet in the central section along 18th Avenue (CAC Minority Report by Dean Paton, et al recommendation) and retainage of 37 feet height along the remainder of 18th Ave (Hearing Examiner, Director, and CAC recommendations).

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3. Approve the demonstration of need on the Campus to those services that are directly relevant to tertiary and quaternary cardiovascular and neuroscience services and charity care.
4. Incorporate the Director's required compliance with the SOV rate prior to the issuance of a building permit even though it does duplicate DPD's existing authority under the Code to enforce the SOV rate (Hearing Examiner, Director, CAC, and CAC Minority Report by Dean Paton, et al recommendation).
5. Use the one-quarter walkshed for standard measurement.
6. Ensure union and labor representation is part of the decision-making process for mitigating transportation impacts and solutions.
7. Condition the MIMP in accordance with the City's Comp Plan and SMC.
8. Ensure consistent language throughout the MIMP addressing low-impact development measures, including bio-retention cells or planters for stormwater/drainage management as adopted by all the parties during the FEIS Hearing.
9. Address noise in addition to the traffic impacts concerning loading docks. Incorporate consideration for loading dock design that maximizes safety with noise reduction.

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10. Disregard any reference or comments from the CAC Minority Report by David Letrondo and Linda Carrol and remove them from serving on the SAC.

19th Ave requests that the Council adopt and incorporate the Appellants' additional recommendations into the Hearing Examiner's recommended approval of the MIMP as conditioned.

Respectfully submitted this 16th day of February, 2016.



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