

June 28, 2022

MEMORANDUM

To: Seattle City Council
From: Lish Whitson, Analyst
Subject: Council Bill 120353 and Clerk File 314448: The Grove Plat

On Tuesday, July 5, 2022, the City Council (Council) will consider [Council Bill \(CB\) 120353](#) and [Clerk File \(CF\) 314448](#). Passage of the CB and filing of the CF would grant final approval of the plat of “The Grove”, which is located at 7508 43rd Ave S in the Othello neighborhood in Council District 2. The plat will facilitate the division of one development site into 14 unit lots to facilitate the sale of individual townhouses, which have been built.

The Seattle Department of Transportation (SDOT), the Seattle Department of Construction and Inspections (SDCI) and Council Central Staff have confirmed that the plat would meet all applicable conditions and recommends that the Council grant final approval.

Final approval of a plat is a legislative act unless the Council has delegated that review to another body. Council’s review of a final plat is limited to certifying that the plat has met conditions that have previously been placed on the plat by the Seattle Hearing Examiner. Under Washington State Law, Council is required to act within 30 days of filing of the final plat. Because Council’s purview is constrained both in time and substance, Council routinely considers final plat ordinances, like the plat of The Grove, at a City Council meeting without consideration at committee. For these reasons, the CB and CF have been placed on the Consent Calendar.

The following is an overview of the platting process and a description of the plat. The Hearing Examiner’s “Findings and Decision” documents for the preliminary plat approval are attached, and a map is provided for informational purposes.

Overview of Process

The Revised Code of Washington (RCW) [58.17.140](#) requires that Council grant final [plat/subdivision] approval for subdivisions within 30 days of filing of the final [plat/subdivision] by the owner. Generally, the Council grants such approval after completion of the following steps:

1. SDCI issuance of a Master Use Permit and other project approvals;
2. Hearing Examiner approval of the preliminary plat approval, usually subject to conditions (the Hearing Examiner holds a public hearing prior to issuing a decision);
3. Developer’s construction of site infrastructure (this includes construction of roadways and installation of utilities);

4. SDOT and SDCI review of the final plat to confirm that all the applicable requirements have been met and transmittal of final plans and legislation to Council; and
5. Council determination that applicable requirements have been met or can be met if a bond is posted.

Final plat approval requires votes on both a Council Bill and a Clerk File. Both are referred directly to Council because of the short deadline for approval under the RCW.

When reviewing final plats, Seattle Municipal Code (SMC) [23.22.074.A](#) requires the Council to determine that:

1. The final plat is in substantial conformance with the approved preliminary plat;
2. The requirements imposed when the preliminary plat was approved have been met;
3. The bond, if required by the City, is sufficient in its terms to assure that the improvements will be completed; and
4. The applicant has satisfied the requirements of Washington State Law and the SMC that were in effect at the time of preliminary plat approval.

Description of The Grove Plat

The Grove plat is located at 7508 43rd Avenue S in the Othello neighborhood. The project is located mid-block near the corner of 43rd Avenue S and S Webster Street, north of Renton Avenue S/S Holden Street. The site is on the block south of the Othello Playground, and approximately a block away from the Othello light rail station.

The approximately 11,400 square foot site is currently composed of one parcel. The site is zoned Lowrise 2 with an (M) Mandatory Housing Affordability designation (LR2 (M)). Properties on both sides of 43rd Avenue S are also zoned LR2 (M). The LR2 (M) district extends east to the middle of the block halfway to 44th Avenue S; properties abutting 44th Avenue S are zoned Residential Small Lot with an (M) Mandatory Housing Affordability designation (RSL (M)). To the northwest, at the northwest corner of S Webster Street and 43rd Avenue S, the zoning is Neighborhood Commercial 3-Pedestrian with a 95-foot height limit and an (M2) Mandatory Housing Affordability designation (NC3P-95 (M2)).

The plat would divide one parcel into 14 unit lots, each containing a townhouse. The unit lots would range in size from 593 to 1,105 square feet. Development of the site was permitted under permit [3025549-LU](#). This plat is only for the purpose of allowing sale or lease of the units.

A sidewalk was required along the site. Pedestrian access to individual units is provided through easements across the site. No car parking was required or provided but 16 bicycle parking spaces have been provided. Other easements include a common amenity easement, pedestrian access and waste/recycling storage area easement, pedestrian access, bicycle parking, waste/recycling storage area easements, utility easements, and address sign and sign maintenance easements.

The SDCI Director recommended approval of the preliminary plat with conditions on December 17, 2020. On May 19, 2021, the Seattle Hearing Examiner recommended approval of the plat with the following condition:

1. The approved Declaration of Covenants, Conditions, Restrictions, and Easements shall be recorded at King County and the recording number provided on the final plat documents.

The Directors of SDOT and SDCI have confirmed that the plat meets all the requirements of the preliminary plat approval, as well as the requirements of Washington State platting law and the SMC. Consequently, SDOT prepared the CB for Council review and action. Central Staff has reviewed the final plat and legislation and recommends that the Council grant final plat approval.

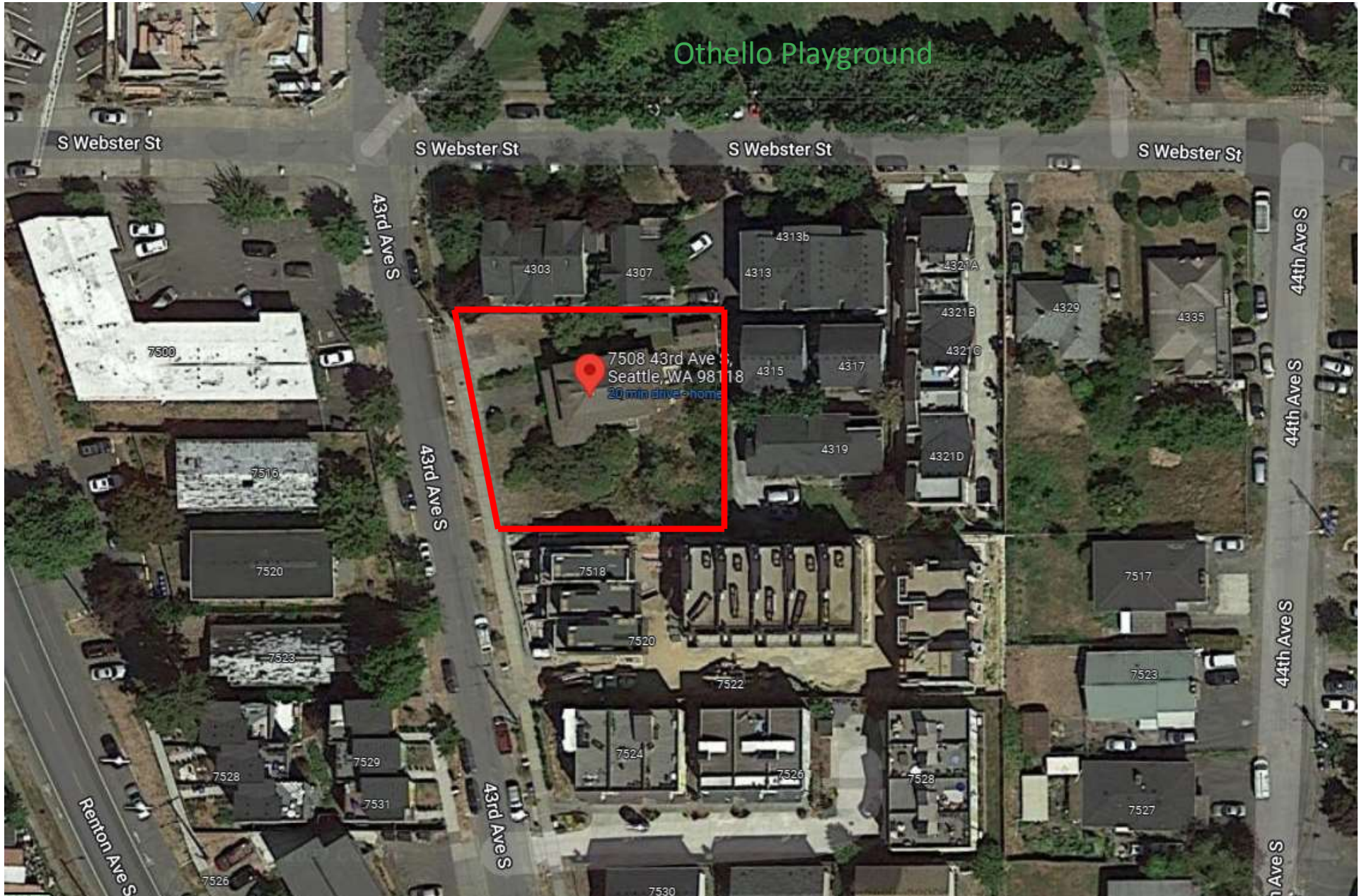
Attachments:

1. Vicinity Map – The Grove
2. Findings and Decision of the Seattle Hearing Examiner

cc: Esther Handy, Director
Yolanda Ho, Lead Analyst

Vicinity Map

7508 43rd Ave S



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

In the Matter of Application of

KATIE MCVICARS

for a Full Unit Lot Subdivision of
property located at 7508 43rd Avenue S.

**Hearing Examiner Files:
MUP-21-019 (SD)**

Department References:
3034221-LU

I. FINDINGS OF FACT

1. Project Overview. The Applicant seeks preliminary approval to divide a single development site into 14 unit lots. Development standards will be applied to the development site as a whole and not to the individual lots. The plat allows for individual unit sale or lease. The site was developed with a single-family residence. The Director of the Department of Construction and Inspections recommended approval with conditions. There were no SMC 23.76.024(D) requests for further Hearing Examiner consideration of the recommendation.

2. Hearing. The hearing was held remotely May 17, 2021, at 1:00 PM, with the Applicant, Department, and members of the public provided a call-in number and internet link for participating. Mr. Vasquez, Sr. Land Use Planner, represented the Department. The Applicant, through Mr. Simonis, Seattle Land Use Co., appeared. He confirmed there were no concerns with the Department's added condition. No person from the public indicated a desire to comment. There were no reported difficulties with calling in or providing comment, but in case anyone did have difficulty, the record was kept open through May 18. No additional comments were submitted.

3. Notice. The Department documented hearing notice met code.²

4. Exhibits. The Department submitted Department Exhibits 1-7, which included the Department Recommendation, SEPA Checklist, Duwamish Tribe comment, plan set, safe walking conditions documentation, sewer utilities comment, and the building plan set.³ The Department also documented hearing notice. Two public comments were submitted to the Examiner from Jon Chan and Willie Cheong. All exhibits were admitted without objection.

5. Project Location and Site Description. 7408 43rd Avenue S. The site is 11,400 square feet and slopes six feet downward west to east, with frontage on 43rd Avenue S to the west.

6. Zoning. The site is zoned Lowrise 2, LR2 (M). The same zone surrounds the site.

¹ The Examiner changed the case number from CF-314448 to MUP-21-019 to accurately reflect the case type.

² See SMC 23.76.024(C); Corrected Hearing Notice (March 29, 2021).

³ See Department Witness and Exhibit List.

7. Other Permitting. The 14 rowhouse and townhouse units were reviewed under Building Permit #67211818-CN and Streamlined Design Review #3034947-EG. The Streamlined Design Review application included three code requirement adjustments (side setback reduction, separation between structures, and façade length). *See also* Building Permit 67211808-CN.

8. Public Comment. The two written comments submitted to the Examiner raised concerns about the cumulative impacts from development in the immediate area and resulting parking deficiencies. At the hearing, the Examiner asked about these concerns. Mr. Vasquez stated that parking impacts were considered with environmental review and the Department determined street parking was adequate to support project overflow. The Duwamish Tribe reviewed the cultural report and agreed with its recommendations.

9. Agency Comment. The proposal was circulated for agency review. If code requirements are met, there were no objections to approval.

- Public Health – Seattle & King Cnty. Sewer available through existing north lateral connection
- Seattle City Light. City light easement shown on plat, p. 2 of 6. No additional easements required.
- Seattle Housing. No comment.
- Seattle Parks and Recreation. No comment.
- Seattle Public Utilities. Water Availability Certificate issued May 20, 2019; valid for 18 months. Valid certificate required with submittal of final plat documents to SDOT. Plat must be approved with addresses assigned before ordering additional water service.
- Seattle Fire Department. No comment.
- Sound Transit. No impact on their projects.
- King County Wastewater Treatment Division. No comment.
- Seattle Department of Transportation. Approved.
- Seattle Department of Construction and Inspections. Structural and drainage approved.

10. Transportation/Access. Street dedication is not required. A sidewalk will be provided along 43rd Avenue S. within the existing public street right of way. The sidewalk was approved through Street Improvement Plan #412375. Three onsite pedestrian access easements provide unit lot access to public right-of-way. Street trees, sidewalk, curb, gutter, pavement, and public storm drain extension are included in the Street Improvement Plan.

11. Concurrency. New plats allowing future development must meet level-of-service standards, Ch. 23.52 SMC. The unit lot subdivision only allows sale or lease of individual unit lots which were previously permitted and are under construction. The 14 dwelling units are below the 31-unit threshold for LR2 zoned development (SMC 23.52.008, Table A).

12. Parking. The code does not require parking and the project provides none. See Finding 8 addressing public comment on parking.

13. School Walking Conditions. The Applicant documented safe walking conditions along anticipated paths to public grade schools (K-12) within the vicinity and considered the Seattle School District's safe route standards. These schools are proximate;

- Dunlap Elementary School (.8-mile)
- Aki Kurose Middle School (1-mile)
- Rainier Beach High School (1.5-miles)

The Staff Report provides detail on walking time and sidewalk conditions, which are adequate to support the project.

14. Easements/Covenants. Right-of-way improvements associated with the development were reviewed and approved under Street Improvement Plan #412375. The street right of way abutting the site is adequate for public infrastructure serving the site. City Light requested an easement to the City, and easements for common usage and maintenance include:

- Joint Use/Maintenance Agreement;
- Common Amenity Easement;
- Pedestrian Access Easement;
- Pedestrian Access and Waste/Recycle Storage Area Easement;
- Pedestrian Access, Bicycle Parking, Waste/Recycle Storage Area Easement;
- Utility Easements; and,
- Address Sign and Sign Maintenance Easements.

Easements/covenants will be executed with final plat recordation.

15. Open Space. Directly accessible, private usable open space is provided for each unit on the same lot that it serves.

16. Critical Areas. There are no critical areas on site.

17. State Environmental Policy Act, Ch. 43.21C RCW. The Department Director issued a SEPA Determination of Non-Significance. It was not appealed.

18. Staff Report and Conditions. The Department determined the plat will meet all development standards for the zone and recommended approval with a condition on covenant/easement recordation. The condition should be imposed to ensure necessary restrictions

are retained following property transfer. Except as revised, the Department Staff Report is incorporated by reference.

SECTION II. CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over preliminary plat decisions.⁴ Criteria used for determining whether an application should be approved includes an assessment of the public use and interest. That assessment is largely based on infrastructure adequacy, including the road system, utilities, and basic services to support the plat.

The Hearing Examiner shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. The Hearing Examiner shall consider all relevant facts to determine whether the public interest will be served by the subdivision and dedication, and if it finds that the proposed plat makes appropriate provision for the public health, safety and general welfare and for open spaces, drainage ways, streets, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, fire protection facilities, parks, playgrounds, sites for school and schoolgrounds, sidewalks and other planning features that assure safe walking conditions for students who walk to and from school, is designed to maximize the retention of existing trees, and that the public use and interest will be served by the platting of subdivision, then it shall be approved. ...⁵

2. Similar considerations are at SMC 23.22.052, which provides for “dedication of drainage ways, streets, alleys, pedestrian access and circulation, easements, slope rights, parks and other public open spaces ... as may be required to protect the public health, safety and welfare.”⁶ The plat addresses these considerations. There is adequate provision for drainage, streets, pedestrian access and circulation, and easements for common usage and maintenance are provided. Sidewalk improvements are provided. There is adequate provision for pedestrian access and safety, and light, air, and usable open space between the structures is provided. Private easements for access and utilities adequately support the plat.

3. Unit lot subdivisions must also meet specific requirements.

The provisions of this Section 23.22.062 apply exclusively to the unit subdivision of land for residential development....

... The development as a whole shall meet development standards applicable at the time the permit application is vested. As a result of the subdivision, development on individual unit lots may be nonconforming as to some or all of the development standards based on analysis of the individual unit lot, except that

⁴ Chapters 23.76 and 23.22 SMC

⁵ SMC 23.22.054(A).

⁶ SMC 23.22.052(A).

any private usable open space or private amenity area for each dwelling unit shall be provided on the same unit lot as the dwelling unit it serves.

Subsequent platting actions, additions or modifications to the structure(s) may not create or increase any nonconformity of the parent lot.

Access easements and joint use and maintenance agreements shall be executed for use of common garage or parking areas, common open space (such as common courtyard open spaces for cottage housing), and other similar features, as recorded with the King County Recorder. For common parking areas and garages, access easements and joint use and maintenance agreements shall include the right to use any required electric vehicle charging infrastructure and the terms of use.

Within the parent lot, required parking for a dwelling unit may be provided on a different unit lot than the lot with the dwelling unit, as long as the right to use that parking is formalized by an easement on the plat, as recorded with the King County Recorder.

The fact that the unit lot is not a separate buildable lot and that additional development of the individual unit lots may be limited as a result of the application of development standards to the parent lot shall be noted on the plat, as recorded with the King County Recorder.⁷

These requirements are met. The development will meet the development standards applicable to the parent lot. Parking is not required and is not provided, so it will reduce street parking. But code does not impose a parking requirement. Easements and private, usable open space are provided, and the required disclosures and joint use and maintenance agreement are provided on the plat face.

4. The plat makes appropriate provision for open spaces, drainage ways, streets, transit stops, potable water, sanitary wastes, fire protection facilities, parks and playgrounds, and sidewalks that assure safe walking conditions for students who walk to and from school. The subdivision makes appropriate provisions for the public health, safety, and general welfare.

5. The proposal will promote individual ownership of the units, which will be constructed in a configuration that is compatible with the surrounding neighborhood. As conditioned, the subdivision will serve the public use and interest.

SECTION III. DECISION

The request for the preliminary subdivision is **APPROVED** subject to this condition:

⁷ SMC 23.22.062(A-F).

Prior to Final Plat Approval:

1. The approved Declaration of Covenants, Conditions, Restrictions, and Easements shall be recorded at King County and the recording number provided on the final plat documents.

Entered May 19, 2021.

/s/ Susan Drummond
Susan Drummond
Deputy Hearing Examiner

Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

The decision of the Hearing Examiner in this case is the final decision for the City of Seattle. In accordance with RCW 36.70C.040, a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the decision is issued unless a motion for reconsideration is filed, in which case a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the order on the motion for reconsideration is issued.

The person seeking review must arrange for and initially bear the cost of preparing a verbatim transcript of the hearing. Instructions for preparation of the transcript are available from the Office of Hearing Examiner. Please direct all mail to: PO Box 94729, Seattle, Washington 98124-4729. Office address: 700 Fifth Avenue, Suite 4000. Telephone: (206) 684-0521

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Findings and Decision** to each person listed below, or on the attached mailing list, in the matter of **Katie McVicars**. Case Number: **MUP-21-019 (SD) f/k/a CF-314448** in the manner indicated.

Party	Method of Service
<p>Applicant Katie McVicars buildSOUND, LLC 425-864-1488 kmcvicars@gmail.com</p> <p>Jason Simonis Seattle Land Use Co. 206-818-2595 jason@seattlelanduseco.com</p>	<p><input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger</p>
<p>Department Colin Vasquez SDCI 206-684-5639 colin.vasquez@seattle.gov</p> <p>SCI Routing Coordinator SCI_Routing_Coordinator@seattle.gov</p> <p>Janet Oslund janet.oslund@seattle.gov</p> <p>SCI_LUIB SCI_LUIB@seattle.gov</p> <p>Nathan Torgelson nathan.torgelson@seattle.gov</p> <p>Roger Wynne</p>	<p><input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger</p>

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<p>Public Commentors</p> <p>Jon Chan jonathan.chan416@gmail.com</p> <p>Willie Cheong cheongwillie@gmail.com</p>	<p><input type="checkbox"/> U.S. First Class Mail, postage prepaid</p> <p><input type="checkbox"/> Inter-office Mail</p> <p><input checked="" type="checkbox"/> E-mail</p> <p><input type="checkbox"/> Fax</p> <p><input type="checkbox"/> Hand Delivery</p> <p><input type="checkbox"/> Legal Messenger</p>

Dated: May 26, 2021

/s/ Galen Edlund-Cho
Galen Edlund-Cho
Legal Assistant