

February 22, 2022

## MEMORANDUM

**To:** Land Use Committee  
**From:** Ketil Freeman, Analyst  
**Subject:** Clerk File 314441 and Council Bill 120275 – Wallace Properties Contract Rezone, 10735 /10713 Roosevelt Way NE

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On February 23, the Land Use Committee (Committee) will have a briefing and may make a recommendation to City Council on [Clerk File \(CF\) 314441](#), which is an application by Wallace Properties for a contract rezone of two sites located in the Northgate Urban Center and addressed as 10735/10713 Roosevelt Way NE, and [Council Bill \(CB\) 120275](#), which would implement the rezone if approved by Council.

This memorandum: (1) provides an overview of the rezone application contained in CF 314441; (2) describes the contents of Council decision documents, which would grant the rezone application, including a summary of CB 120275, which would amend the Official Land Use Map, also known as the zoning map, to effectuate the rezone, and accept a Property Use and Development Agreement (PUDA) limiting future development; and (3) describes next steps.

### Overview of Rezone Application

Wallace Properties (Applicant) has applied for a contract rezone from Lowrise 3 multifamily residential with an M mandatory housing affordability suffix (LR3 (M)) to Midrise with an M1 mandatory housing affordability suffix (MR (M1)) of two sites – a north and south site. Both sites are located in the Northgate Urban Center and are currently developed with multifamily structures and associated surface parking and amenity areas. The sites are separated by a driveway, and the collective site area comprises 228,319 square feet or about 5.24 acres. The sites are located adjacent to and north of the City-owned Beaver Pond Natural Area on Thornton Creek and its associated environmentally critical areas. The Applicant did not apply for concurrent Master Use Permits for development of either site, although the record indicates that future development is planned to occur in three phases.

In September 2021, the Seattle Department of Construction and Inspections (SDCI) issued a State Environmental Policy Act (SEPA) threshold determination of non-significance and recommendation to conditionally approve the application. The SEPA threshold determination was appealed. Ultimately, the Hearing Examiner dismissed the appeal. The Hearing Examiner held an open record hearing on October 6, 2021. On December 3, 2021, the Hearing Examiner recommended conditional approval of the rezone.

Hearing Examiner recommended conditions are:

*Prior to Issuance of the Council Action*

1. Submit a signed and recorded environmentally critical areas covenant restricting future development within the area designated as riparian management area on the South Site.

*Prior to Issuance of a Master Use Permit*

2. As part of the first permit for future development on the South Site, submit a restoration plan for the area of the South Site encumbered by the riparian management area. The restoration plan shall be consistent with the applicable requirements of the Environmental Critical Areas ordinance (Seattle Municipal Code (SMC) 25.09).
3. Future development of the North Site and South Site shall comply with the performance requirements of MHA (SMC 23.58B and/or 23.58C) (as opposed to paying the fee in lieu).
4. Future development of the North Site and South Site shall designate at least 20 percent of all residential units on-site to meet the standards of the Multifamily Tax Exemption Program (SMC 5.73).
5. Future development of the North Site shall provide an east-west pedestrian connection from Roosevelt Way NE to 8th Avenue NE that is publicly accessible.
6. Future development of the North Site shall include study of vehicular access to the site and provide vehicular access via Roosevelt Way NE if consistent with the Land Use Code. Additional conditions may be imposed consistent with city codes and regulations.

### **Type of Action**

A Council decision on the rezone application is quasi-judicial.<sup>1</sup> Quasi-judicial decisions are subject to the Appearance of Fairness Doctrine prohibiting ex-parte communication and are governed by the Council's Quasi-judicial Rules.<sup>2</sup>

Council decisions must be made on the record established by the Hearing Examiner. The Hearing Examiner establishes the record at an open-record hearing. The record contains the substance of the testimony provided at the Hearing Examiner's open record hearing and the exhibits entered into the record at that hearing.

Audio recordings of the approximately two and half hour hearing can be accessed through the Hearing Examiner's website.<sup>3</sup> Excerpts from the record, including public comment letters, the SDCl recommendation, and an analysis by the Applicant of how the proposed rezone meets the rezone criteria in [SMC Chapter 23.34](#) are contained in the Legistar record for CF 314441. A paper copy of the record is outside of my office.

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<sup>1</sup> [Seattle Municipal Code \(SMC\) Section 23.76.036](#).

<sup>2</sup> Adopted by [Resolution 31602](#) (2015).

<sup>3</sup> [Case Details for CF-314441 \(seattle.gov\)](#).

## **Committee Decision Documents**

To approve a contract rezone the Committee must make recommendations to the City Council on two pieces of legislation: (1) a Council Findings, Conclusions and Decision that grants the rezone application and (2) a bill amending the zoning map and approving a PUDA.

### CF 314441 - Findings, Conclusions and Decision

Council staff has drafted a proposed Council Findings, Conclusions and Decision, which:

- Adopts the Hearing Examiner's findings and conclusions;
- Makes an additional finding related to the submittal of the recommended Environmentally Critical Areas covenant;
- Amends a condition related to future participation in the Multifamily Tax Exemption Program to reflect that the affordability requirements will be whatever is required by the Program when the applicant develops the properties; and
- Adopts the remaining prior-to-Master-Use-Permit-Issuance conditions recommended by the Hearing Examiner.

### CB 120275 – Rezone Bill

CB 120275 would amend the Official Land Use Map to rezone the sites and approve and accept the executed PUDA.

## **Next Steps**

The rezone application will be considered by the Committee for a potential recommendation to City Council on February 23. Depending on Committee action, a City Council vote would occur no earlier than March 1.

## **Attachments:**

1. Proposed Findings, Conclusions and Decision
2. Draft Environmentally Critical Areas Covenant

cc: Aly Pennucci, Deputy Director  
Yolanda Ho, Lead Analyst

**Attachment 1**

**FINDINGS, CONCLUSIONS, AND DECISION  
OF THE CITY COUNCIL OF THE CITY OF SEATTLE**

In the matter of the Petition:	)	Clerk File 314441
Application of Wallace Properties -	)	FINDINGS, CONCLUSIONS,
Park at Northgate, LLC for a contract	)	AND DECISION
rezone of a site located at 10735	)	
Roosevelt Way NE from Lowrise 3	)	
with an M Mandatory Housing	)	
Affordability (MHA) suffix (LR3 (M))	)	
to Midrise with an M1 MHA suffix	)	
(MR (M1)) (Project No. 3033517;	)	
Type IV).	)	

Introduction

This matter involves a petition by Wallace Properties – Park at Northgate, LLC (“Applicant”) for a contract rezone from Lowrise 3 multifamily residential with an M mandatory housing affordability suffix (LR3 (M)) to Midrise with an M1 mandatory housing affordability suffix (MR (M1)) of two sites – a north and south site. Wallace Properties – Park at Northgate, LLC, which also owns the sites, is a Washington limited liability company with a mailing address of 330 112<sup>th</sup> Avenue NE, Bellevue, WA 98004.

The sites are addressed as 10735 and 10713 Roosevelt Way NE and are located in the Northgate Urban Center. Both sites are currently developed with multifamily structures and associated surface parking and amenity areas. The sites are separated by a driveway, and the collective site area comprises 228,319 square feet or about 5.24 acres. The sites are located adjacent to and north of the City-owned Beaver Pond Natural Area on Thornton Creek and its associated environmentally critical areas. Attachment A shows the area to be rezoned.

On September 2021, the Director of the Seattle Department of Construction and Inspections (SDCI) recommended approval of the proposed rezone, with conditions. SDCI also issued a State Environmental Policy Act threshold determination of non-significance.

The Hearing Examiner held an open record hearing on the rezone recommendation on October 6, 2021. On December 3, 2021, the Hearing Examiner issued Findings and Recommendation that recommended approval of the rezone, subject to conditions. On February 9 and February 23, 2022, the Land Use Committee of the Council reviewed the record and the recommendations by SDCI and the Hearing Examiner and recommended approval of the contract rezone to the City Council.

### **Findings of Fact**

The Council hereby adopts the Hearing Examiner's Findings of Fact as stated in the Findings and Recommendation of the Hearing Examiner dated December 3, 2021, with the following additional finding of fact

30. On February \_\_, 2022 the Applicant submitted a recorded Environmentally Critical Areas covenant restricting future development in the Thornton Creek riparian management area on the south site.

### **Conclusions**

The Council hereby adopts the Hearing Examiner's Conclusions as stated in the Findings and Recommendation of the Hearing Examiner dated December 3, 2021.

### **Decision**

The Council hereby **GRANTS** a rezone of the Property from LR3 (M) to MR (M1), as shown in Exhibit A. The rezone is subject to the execution of Property Use and Development

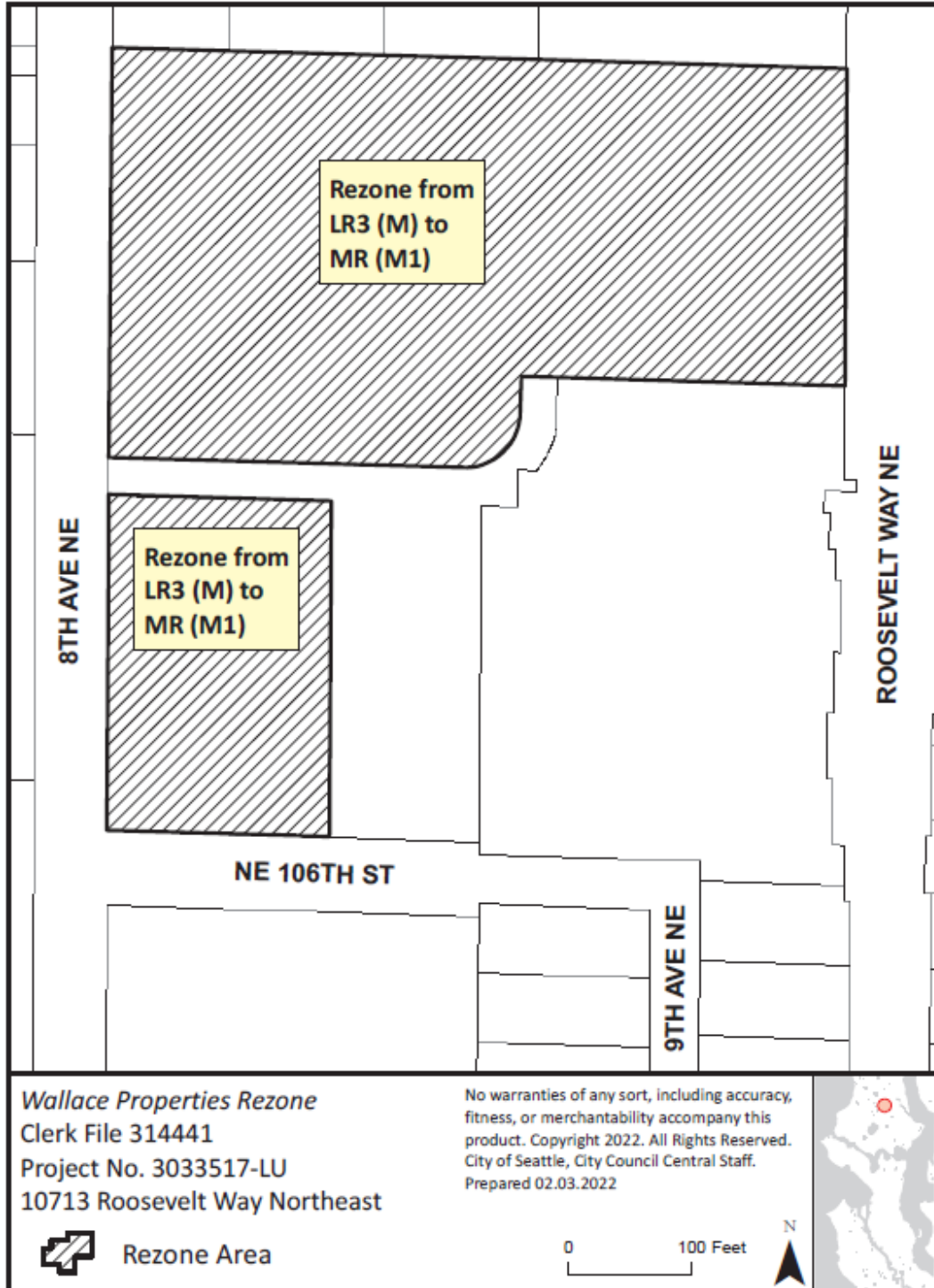
Agreements requiring the owners to comply with the following conditions found in the Hearing Examiner’s recommendation, with the amendments shown below, which are adopted by the Council.

1. As part of the first permit for future development on the South Site, submit a restoration plan for the area of the South Site encumbered by the riparian management area. The restoration plan shall be consistent with the applicable requirements of the Environmental Critical Areas ordinance (SMC 25.09).
2. Future development of the North Site and South Site shall comply with the performance requirements of MHA (SMC 23.58B and/or 23.58C) (as opposed to paying the fee in lieu).
3. Future development of the North Site and South Site shall ~~((designate at least 20% of all residential units on-site to meet))~~ comply with the standards of the Multifamily Tax Exemption (MFTE) Program (SMC 5.73), or its successor program, and shall have the goal of providing at least 20% of all residential units on-site that meet the affordability requirements of the MFTE Program in place at the time of MFTE Program application.
4. Future development of the North Site shall provide an east-west pedestrian connection from Roosevelt Way NE to 8th Avenue NE that is publicly accessible.
5. Future development of the North Site shall include study of vehicular access to the site and provide vehicular access via Roosevelt Way NE if consistent with the Land Use Code. Additional conditions may be imposed consistent with city codes and regulations.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
City Council President

ATTACHMENT A



**Attachment 2**

When Recorded, Return to:

**Seattle Department of Construction and Inspections**  
**Land Use Routing Coordinators**  
700 5th Ave., Suite 2000  
PO Box 34019  
Seattle, WA 98124-4019

**ENVIRONMENTALLY CRITICAL AREA COVENANT RUNNING WITH THE LAND**

**GRANTOR:** WALLACE PROPERTIES – PARK AT NORTHGATE, LLC, A  
WASHINGTON LIMITED LIABILITY COMPANY

**GRANTEE:** THE CITY OF SEATTLE

**LEGAL DESCRIPTION (ABBREVIATED):** Portion of the N 1/2 of the W 1/2 of the SE  
1/4 of the SW 1/4 of the SE 1/4 of Sec. 29,  
T'ship 26 N, R 4 E of W.M., King County,  
WA

Complete legal description on **Exhibit A**.

**ADDRESS:** 800 NE 106<sup>th</sup> Street, Seattle, King County, Washington, 98115

**ASSESSOR'S TAX PARCEL ID NO(S).** 292604-9626

**PERMIT APPLICATION NO(S).** CF-314441



## **ENVIRONMENTALLY CRITICAL AREA COVENANT RUNNING WITH THE LAND**

This covenant (“Covenant”) is executed in favor of the City of Seattle (“Grantee”) by the undersigned Owner(s) (“Grantor”) of the real property described on **Exhibit A** (the “Property”). The undersigned warrant(s) that all owners of the Property have executed this document.

The Grantor acknowledges that a portion of the Property presently occupied by and used as a parking lot, shared access and associated landscaping is located in area designated as riparian management area, which is an environmentally critical area as described in SMC Chapter 25.09 and is subject to the provisions of SMC Chapter 25.09 and the rules and regulations adopted by the Director of Construction and Inspections. The City has conditionally recommended approval of an application for a site-specific rezone of the Property pursuant to the December 3, 2021 Findings and Recommendation of the Hearing Examiner for the City of Seattle, CF-314441 (the “Rezone”), subject to the following condition: “Submit a signed and recorded environmentally critical areas covenant restricting future development within the area designated as riparian management area on the South Site.”

### **LIMITATION ON DEVELOPMENT AND LAND-DISTURBING ACTIVITIES; PERMANENT CONDITIONS**

Grantor understands and acknowledges the following:

The environmentally critical areas and any associated buffers (together referred to as the “Covenant Area”) on the Property are identified in **Exhibit B**.

Land disturbing activities (such as construction, excavation, or grading) in the Covenant Area may require City permits and may not occur except (1) to carry out the restoration, enhancement and/or protection of the Covenant Area as permitted by the City in an approved restoration plan consistent with the applicable requirements of SMC Chapter 25.09 or (2) as otherwise permitted by SMC Chapter 25.09

Development of the Property subsequent to the Rezone, including but not limited to construction of buildings and any impervious surfaces, and all associated land disturbing activity is restricted to the areas outside the Covenant Area.

The Covenant Area shall not be considered for development credit in future subdivision or development proposals for the Property.

Removal and clearing of trees and other vegetation and actions detrimental to trees, such as tree-topping, are not permitted in the Covenant Area, except as otherwise permitted by SMC Chapter 25.09.

Upon issuance of and development in accordance with a Master Use Permit (MUP) for the Property, Grantor shall install and maintain permanent visible markers delineating the Covenant Area boundaries. The locations of the required permanent markers are depicted on **Exhibit B**.

This Covenant shall not be construed as a complete disclosure of all environmentally critical areas, associated limitations, or restrictions that may apply to future use or development of the Property.

DRAFT

**RIGHT TO ENTER**

This Covenant shall not be interpreted to prohibit entry to, or the use and maintenance consistent with SMC Chapter 25.09 of, the Covenant Area.

**VIOLATIONS**

If the City determines that a violation of this Covenant is occurring, has occurred, or is threatened, the City may demand corrective action sufficient to cure the violation, including without limitation, restoration or remediation of the Covenant Area and removal of any improvements not permitted by the City. The City reserves its existing rights at law and equity with respect to any violation of this Covenant by the Owner.

**RECORDING**

This Covenant shall be recorded in the real estate records of the King County Recorder's Office.

**RUNNING COVENANT**

Grantor intends that this Covenant shall run with the land and be binding on the Grantor and on the Grantor's heirs, successors, and assigns.

**SEVERABILITY**

If any provision of this Covenant is held invalid, the remainder of the Covenant is not affected. If the application of this Covenant to any person or circumstance is held invalid, the application of the Covenant to other persons or circumstances is not affected.

**SIGNATURES, ACKNOWLEDGEMENTS AND NOTARY**

**(CORPORATE OWNER, PARTNERSHIP OWNER, LIMITED LIABILITY COMPANY  
OWNER/OTHER LEGAL ENTITY OWNER – attach more pages if needed)**

Dated: \_\_\_\_\_

State of Washington            )  
  ) ss  
County of King                    )

Wallace Properties – Park at  
Northgate, LLC, a  
Washington limited liability  
company  
Owner/Grantor

I certify that I know or have satisfactory evidence that  
Kevin R. Wallace is the person who appeared before me, and said person  
acknowledged that he/she signed this instrument, on oath stated that  
he/she was authorized to execute the instrument and acknowledged it as  
the Manager of Wallace Properties – Park at Northgate, LLC, a  
Washington limited liability company to be the free and voluntary act of  
such party for the uses and purposes mentioned in the instrument.

By \_\_\_\_\_  
Kevin R. Wallace  
Its Manager

Date: \_\_\_\_\_  
\_\_\_\_\_  
NOTARY PUBLIC in and for the State  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_



Use this space for Notary Seal

DRAFT

**EXHIBIT A TO ENVIRONMENTALLY CRITICAL AREA COVENANT**

**COMPLETE LEGAL DESCRIPTION OF PROPERTY:**

The East 180 feet of the West 210 feet of the North Half of the West Half of the Southeast Quarter of the Southwest Quarter of the Southeast Quarter of Section 29, Township 26 North, Range 4 East of the Willamette Meridian, in King County, Washington.

Except the North 30 feet thereof.

And except the South 30 feet thereof for Road.

DRAFT

**EXHIBIT B TO ENVIRONMENTALLY CRITICAL AREA COVENANT**  
**SITE PLAN SHOWING THE COVENANT AREA, THE LOCATION OF PERMANENT**  
**MARKERS, IF REQUIRED**

DRAFT

**EXHIBIT B**  
**ECA PROTECTION AREA LEGAL DESCRIPTION**

THE FOLLOWING DESCRIBED PORTION OF THE EAST 180 FEET OF THE WEST 210 FEET OF THE NORTH HALF OF THE WEST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 26 NORTH, RANGE 4 EAST OF THE WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON;

EXCEPT THE NORTH 30 FEET THEREOF;

AND EXCEPT THE SOUTH 30 FEET THEREOF FOR ROAD;

SAID PORTION IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE ABOVE-DESCRIBED PARCEL;

THENCE NORTH 88°19'30' WEST, ALONG THE SOUTH LINE OF SAID ABOVE-DESCRIBED PARCEL, 82.07 FEET;

THENCE NORTH 70°59'53" EAST 62.57 FEET;

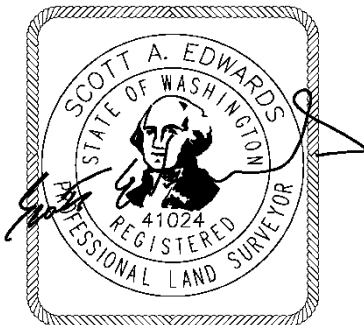
THENCE NORTH 23°20'28" EAST 10.22 FEET;

THENCE NORTHEASTERLY, ALONG A CURVE TO THE RIGHT, WITH A RADIUS OF 100.00 FEET, THROUGH A CENTRAL ANGLE OF 20°01'18", AN ARC LENGTH OF 34.94 FEET, TO THE EAST LINE OF SAID ABOVE-DESCRIBED PARCEL;

THENCE SOUTH 00°16'13" WEST, ALONG SAID EAST LINE, 61.20 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 1,676 SQUARE FEET, MORE OR LESS.

SITUATE IN THE CITY OF SEATTLE, KING COUNTY, WASHINGTON.

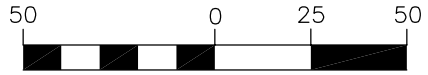
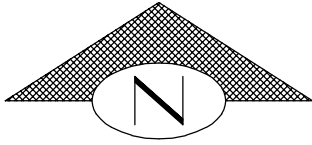


February 15, 2022

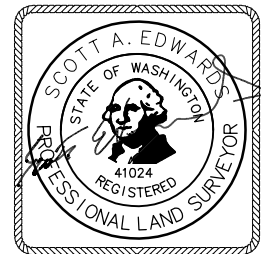
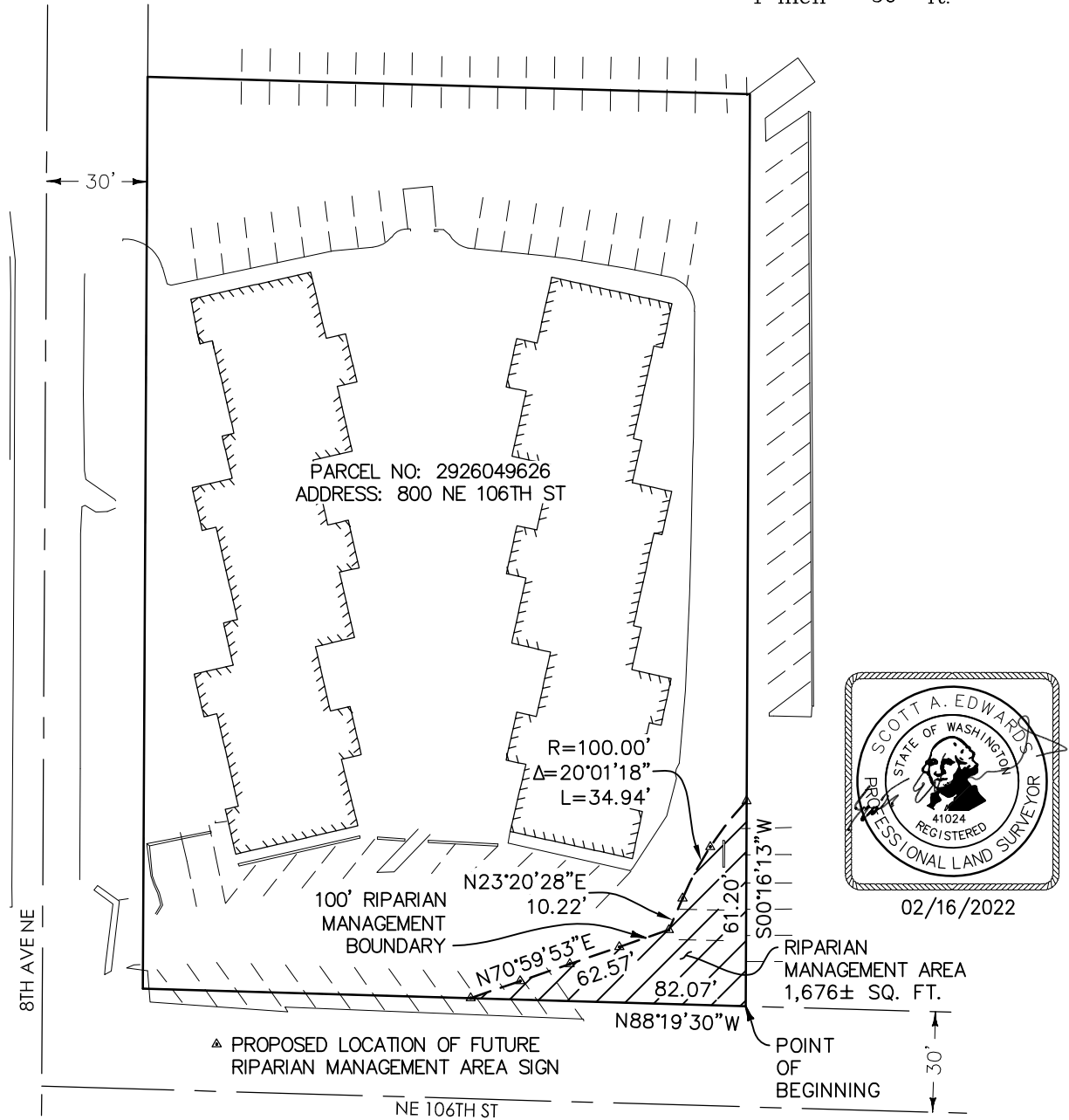
WALLACE PROPERTIES  
PARK AT NORTHGATE  
SCOTT EDWARDS, P.L.S.  
BRH JOB NO. 2016085.04  
FEBRUARY 15, 2022

BUSH, ROED & HITCHINGS, INC.  
2009 MINOR AVENUE EAST  
SEATTLE, WA 98102  
(206) 323-4144

SE 1/4 SEC.29, T26N, R4E, WM



( IN FEET )  
1 inch = 50 ft.



ECA COVENANT  
WALLACE PROPERTIES  
PARK AT NORTHGATE  
SEATTLE WASHINGTON

**BUSH, ROED & HITCHINGS, INC.**  
LAND SURVEYORS & CIVIL ENGINEERS  
2009 MINOR AVE. EAST (206) 323-4144  
SEATTLE, Washington 02/16/2022  
98102-3513 2016085.04