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BEFORE THE CITY OF SHORELINE HEARING EXAMINER

IN RE: APPEAL OF RECOMMENDATION
ON PRELIMINARY PLAT APPROVAL
AND DETERMINATION OF NON-
SIGNIFICANCE RE: PARAMOUNT RIDGE
SUBDIVISION

APPLICANT'S RESPONSE TO
NOTICE OF APPEAL

FILE NO. 1997-01594

COMES NOW, Loucks and Lamb and Samuel M. Jacobs, attorneys for the Applicant, Creative Construction, Inc., and submits this response to the Appeal on the above referenced Application.

I. Introduction.

On or about September 22nd, 1998, the Appellant submitted a Notice of Appeal containing, in general terms, objections to the mitigated determination of non-significance ("MDNS") and the Planning Commission's recommendation to approve the preliminary plat. While this Notice of Appeal raises numerous issues, it does not contain sufficient, detailed information for the Applicant to respond specifically or in-depth to the matters raised. This response, therefore, can only briefly comment upon and refute the issues raised in the Notice of Appeal. The Applicant intends to submit additional briefing and argument if and as appropriate.

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II. Burden of Proof.

Under Section 11 of Chapter II of Resolution No. 130, rules of appeal on closed record hearings, the Applicant has the burden of establishing that the recommendation or decision is not supported by the preponderance of the evidence. In addition, with respect to the MDNS, the decision of the Responsible Official shall be accorded substantial weight (RCW 43.21C.075(3)(d)). The Appellant has not met, and cannot meet, its burden. The issuance of the MDNS and the recommendation to approve the preliminary plat are proper and should be affirmed.

III. SEPA Issues.

The Appellant raises numerous, interrelated issues regarding the adequacy and propriety of the MDNS. The Applicant cannot respond in detail to these allegations because of their summary nature. However, the allegations can, nonetheless, be grouped into the following three general contentions, each of which will be responded to briefly below:

- ☐ That the Project will have a significant environmental impact.
- ☐ That the City failed to adequately analyze the Project and its environmental impact.
- ☐ That the City did not follow applicable laws in issuing the MDNS.

3.1 Environmental Impacts of the Project. The primary issue raised by the Appellant in this regard relates to the environmental impacts of drainage from the Project. Under the applicable codes, drainage from the new roadway and new houses, other than the houses on lots 5 and 6, will be detained and released at pre-development levels. The drainage system to be installed must, obviously, comply with applicable City requirements for construction of such system. Lots 5 and 6 may directly discharge storm water, once again consistent with applicable standards,

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1 only if a downstream analysis shows that capacity exists. The addition of these seven lots (the
2 proposal has nine lots, but there are presently two lots and two houses on the site) will not
3 have a significant adverse environmental impact. With the mitigations imposed, any slight
4 impacts that may result from the proposal could hardly be characterized as significant. There
5 is nothing in SEPA that requires that all impacts be mitigated. See Anderson v. Pierce County,
6 86 Wn App. 280, 936 Pac. 2nd 432, 1997.¹

7
8 3.2 Analysis of Project and Environmental Effects. Once again, the primary issue raised by
9 Appellant is the contention that the City failed to adequately analyze the potential storm water
10 effects from the proposal. This is not accurate. As indicated above, the applicable codes
11 require that surface water from the new roadway and new houses be discharged at pre-
12 development levels, unless downstream capacity exists. The City is not deferring review of
13 environmental consequences of potential direct discharge for lots 5 and 6, but rather imposing
14 a condition that these lots may only be developed if a downstream analysis demonstrates that
15 capacity exists. It is common for a project to be conditioned on requirements such as this.
16 This is not an abdication of environmental review, but simply a condition of approval. WAC
17 197-11-335 reads in part "The lead agency shall make its threshold determination based upon
18 information reasonably sufficient to evaluate the environmental impact of a proposal..."
19 Clearly, that standard is met in this case.

20
21 Further, there is nothing to suggest that the City did not consider the potential impacts of the

22
23 ¹ Appellant also raises concerns about alleged aesthetic impacts and slope stability issues.
24 With respect to aesthetic, the subdivision will allow the construction of single family houses
25 consistent with allowable zoning, in an area of single family houses. There are no aesthetic
26 impacts that have not been adequately mitigated. With respect to slope stability questions, the
27 applicant submitted a soils report and the MDNS incorporates conditions from that report. Any
28 slope stability and related issues have been adequately addressed with appropriate conditions.

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1 proposal consistent with applicable law. Indeed, the approximate 15 conditions imposed as
2 part of the MDNS demonstrate that the potential impacts of the proposal were fully analyzed.
3 The fact that the Appellant may disagree with the conclusions reached by the City and that the
4 Appellant may have presented information that differs from the information presented by the
5 Applicant does not mean that the City erred.²

6
7 3.3 Compliance with Applicable Law. The Appellant contends, again focusing on storm water,
8 that the City did not comply with applicable law. This is not the case. As stated above, storm
9 water will be handled consistent with applicable law. The Appellant argues that the proposal
10 violates the code because the code requires that run-off be limited to pre-development levels
11 and that direct discharge be allowed only if there is downstream capacity. These are, in effect,
12 some of the conditions and/or law that applies to this Project.

13
14 The City has complied with SEPA. The conditions imposed in the MDNS are obviously
15 related to and intended to mitigate various potential impacts of the proposal as disclosed in
16 the record.

17 18 IV. Preliminary Plat Issues.

19
20 The preliminary plat recommended by the Planning Commission for approval by City Council
21 complies with all substantive and procedural requirements. The Planning Commission report reflects

22
23 ² The Appellant also claims that the Project will need to be altered to comply with the
24 required mitigations and therefore there is not a sufficiently described project on which to do an
25 environmental review. This is highly speculative at best. There is nothing to suggest that a
26 significant modification would be necessary, or that, if the plat were modified, it would
27 significantly change the nature or extent of the impacts. Finally, any new proposal by the
28 Applicant may be subject to environmental reviews consistent with applicable law.

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1 a comprehensive analysis of the proposed preliminary plat and complies with substantive and
2 procedural requirements.

3
4 **V. Conclusion.**

5
6 The MDNS and Planning Commission report reflect thorough analysis and review of this project to
7 create seven new lots. The responsible official imposed approximately 15 conditions on the project
8 through the MDNS, and the Planning Commission recommended 9 conditions on the preliminary
9 plat. The proposal has been thoroughly reviewed and mitigated. All applicable requirements have
10 been met.

11
12 RESPECTFULLY SUBMITTED this 2nd day of December, 1998.

13
14
15 By: Samuel M. Jacobs
16 Samuel M. Jacobs, Loucks & Lamb, attorneys
17 for the Applicant, Creative Construction, Inc.
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SUBDIVISION)

APPEAL BRIEF

FILE NO. 1997-01594

I. INTRODUCTION

In August of 1998, the City of Shoreline Planning Commission recommended the approval of a preliminary plat of about 1.5 acres of land between approximately NE 153rd and 154th block and 10th NE and 11th NE. The area is characterized by a steep hillside between 10th and 11th NE termed Paramount Ridge, hence the development is termed the Paramount Ridge Subdivision. The steepness of the ridge appears to be moderate enough for limited development between 153rd and 154th block. To the south, the steepness increases dramatically.

The area currently contains two older homes just off of 10th NE. The majority of the site is covered by trees, some fairly old and tall. The proposal includes retention of the two homes already

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2/02/98 WED 16:52 [TX/RX NO 6063]

1 present and building of seven more homes on a little over an acre of land, some on lots of minimal
2 (5000 sq ft) size. Under the current proposal, 44% of the new building area will be covered by
3 impervious surfaces, and another 44% will be covered by lawns and gardens.

4 Appellant Paramount Park Neighborhood Group, Inc., ("Appellant") hereby appeals the
5 recommendation of the Planning Commission to approve the Paramount Ridge Subdivision
6 preliminary plat. Additionally, Appellant appeals the Mitigated Determination of Non Significance
7 ("MDNS") on the project, dated June 29, 1998.

8
9 **II. STATEMENT OF ISSUES**

10 **Whether errors of law require the Hearing Examiner to deny the preliminary**
11 **subdivision?**

12 **Whether the Planning Commission's findings and recommendation are supported by**
13 **the record?**

14 **Whether errors of law require the Hearing Examiner to reverse the SEPA MDNS?**

15 **Whether the SEPA MDNS is supported by the record?**

16 **III. FACTS**

17 Appellant is a not-for-profit corporation representing citizens concerned about environmental
18 issues relating to Paramount Park, its hydrological and biological systems, and its surrounding
19 ecosystem. The proposed subdivision will alter the quantity and quality of water flowing through
20 Littles creek, which flows through Paramount Park, creating negative environmental impacts to the
21 Park and its ecosystem and ultimately impacting Thornton Creek itself.

22 Appellant's members include neighbors living directly adjacent to or downstream of the
23 proposed subdivision, who will experience increased erosion, traffic, and flooding if the number of
24 homes planned is built. Additional facts are presented in the course of the argument, below.
25
26

APPELLANT'S APPEAL BRIEF - 2

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IV. ARGUMENT

A. Preliminary Plat Approval.

In recommending approval of the subdivision proposal, the Planning Commission acted contrary to state law and the local subdivision regulations. "Under RCW 58.17.110, before approving a subdivision a local government is required to make sure that appropriate provisions have been made for the public health, safety and general welfare." Miller v. City of Port Angeles, 38 Wn.App. 904, 909, 691 P.2d 229 (1984). In addition, the statute requires the city to determine whether appropriate provisions are made for "drainage ways, streets or roads, alleys, . . . and (b) whether the public interest will be served by the subdivision and dedication." RCW 58.17.110 (1). In mandatory language, the law further provides that a proposed subdivision "shall not be approved unless the city makes written findings" that adequate provisions are made for these and many other factors. RCW 58.17.110 (2).

As discussed below, the Planning Commission erred as a matter of law by neglecting to include certain provisions and conditions which are required by the Shoreline Municipal Code. Further, the Commission's conclusions are not adequately supported by the record. Accordingly, the recommendation should be denied.

1. The recommended approval does not contain "appropriate provisions" for drainage ways, as required by RCW 58.17.110.

The Planning Commission has abrogated its responsibility by recommending approval of the subdivision before requiring an analysis of downstream drainage capacity. By putting the cart before the horse and recommending approval *before* the feasibility of the drainage system is proved, the Commission also violated the public participation elements of RCW Chapter 58.17. Further, the

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1 proposed drainage system is inconsistent with the King County Surface Water Design Manual,
2 which has been adopted by the City.

3 The record is replete with testimony from many sources, all corroborating that there is a
4 major problem with surface water drainage just downstream from the proposed subdivision.
5 However, there is little record evidence that the proposed mitigation is feasible, and no evidence that
6 it will be adequate to protect the public interest. certainly, it is not in the public interest to make a
7 bad situation worse by developing a heavily wooded area and adding many thousands of square feet
8 of impermeable surface in a drainage basin which is already at or near capacity.
9

10 2. The Recommended Approval Fails to Comply with the City's Zoning Code. Shoreline's
11 Subdivision Code requires conformance with the Zoning Code. *See*, SMC § 17.08.210 ("All final
12 plats shall conform with the use, density, dimensional and other standards of the zoning code in
13 effect at the time of the application.") As discussed below, the proposed subdivision does not
14 conform with the Zoning Code for several reasons.
15

16 **2. The Proposed Preliminary Plat is Invalid Because it Violates the Zoning Code's**
17 **Requirement of a Building Setback in Sensitive Areas**

18 The record confirms that "[a]ll but the northeast corner of the site is designated as an Erosion
19 Hazard Area under the Environmentally Sensitive Areas standards of the Shoreline Zoning Code
20 (SMC 18.24)." *See*, "Planning Commission Recommendation" at 3; "Staff Report" at 2.

21 Among other things, the Zoning Code's "Environmentally Sensitive Areas" provisions are
22 intended to protect members of the public and public resources and facilities from "injury, loss of
23 life, property damage or financial loss due to flooding, erosion, landslides, seismic and volcanic
24 events, or steep slope failures[.]" SMC § 18.24.010. Protected "sensitive areas" include "erosion
25 hazard areas." *See, e.g.*, SMC § 18.24.220. Under the Code's building setback requirement,
26

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Unless otherwise provided, buildings and other structures shall be set back a distance of 15 feet from the edges of all sensitive area buffers or from the edges of all sensitive areas, if no buffers are required.

SMC § 18.24.200.

Despite the Code's plain language and the undisputed Erosion Hazard Area, the proposed subdivision conditions do not impose a 15-foot setback requirement. Indeed, the recommended conditions do not even restrict building in the sensitive area outright. There is no restriction, no setback, and no sensitive area buffer.¹ This is unacceptable, and flatly inconsistent with the Zoning Code. Accordingly, the recommendation should be rejected.

3. The Preliminary Plat is Invalid Under the Zoning Code Because It Does Not Sufficiently Protect Soils and Vegetation in the Erosion Hazard Area

The Zoning Code's special requirements for Erosion Hazard Areas are stated in SMC § 18.24.220. In pertinent part, the Code provides:

B. All development proposals on sites containing erosion hazard areas shall include a temporary erosion control plan consistent with this section and other laws and regulations prior to receiving approval. . . .

C. All subdivisions . . . on sites with erosion hazard areas shall comply with the following additional requirements:

1. Except as provided in this section, existing vegetation shall be retained on all lots until building permits are approved for development on individual lots;
2. If any vegetation on the lots is damaged or removed during construction of the subdivision infrastructure, the applicant shall be required to submit a restoration plan to the city of Shoreline for review and approval. Following approval, the applicant shall be required to implement the plan[.]

KCC § 21A.24.220 (emphasis added).

¹ The only buffer zone mentioned in the proposal is the "rear yard setback" contained in SEPA MDNS condition 3C, discussed further below.

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1 Although the proposed conditions nominally contain an erosion control plan, the proposed
2 conditions do not comply with the express requirements of the Zoning Code. In particular, the
3 conditions do not require the retention of existing vegetation "until building permits are approved for
4 development on individual lots" as required by SMC § 18.24.220(C)(1). Instead, they appear to
5 permit removal of vegetation upon the issuance of a "Site Development Permit." Recommendation
6 at 9, Condition 1. The proposed conditions do not require "maintenance and monitoring measures"
7 and, if necessary, corrective action to protect the sensitive areas under SMC § 18.24.130.

9 More important, the proposed conditions do not require the applicant to submit a restoration
10 plan for review and approval -- or to implement such restoration plan -- in the event that any
11 vegetation on the lots is damaged or removed during construction of the subdivision infrastructure,
12 as required by SMC § 18.24.220(C)(2). This is all the more troubling because the proposed
13 conditions do not require a "vegetation management plan." Yet the Zoning Code requires that,
14

15 For all development proposals where preservation of existing vegetation is required
16 by this chapter, a vegetation management plan shall be submitted and approved prior
17 to issuance of the permit or other request for permission to proceed with an alteration.

18 SMC § 18.24.150(A). To be sure, SEPA MDNS Conditions 3A and B address "significant trees;"
19 but this is hardly reassuring: record evidence confirms that, of the 79 designated "significant" trees,
20 fully 19 will be removed for the driveway alone. (See, "Tree Locations" survey.) Countless others
21 will be felled to make way for the proposed houses and driveways. The proposed conditions provide
22 no protection for trees of less than 12 inch diameter at chest height.

23 In short, it does not appear that the Zoning Code's sensitive area requirements have been
24 taken seriously or complied with. The record does not include a sensitive area affidavit, required to
25 be submitted by the applicant under SMC 18.24.090(B). Further, the proposed conditions do not
26

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1 require the "regular monitoring of surface water discharge from the site" under SMC§ 18.24.220(D).
2 Surely, given the overwhelming testimony concerning the existence of a serious drainage problem
3 and the multiple incidence of subsidence and slumping in the immediate vicinity, there is ample
4 evidence to conclude that erosion from the site "poses a significant risk of damage to downstream
5 receiving waters." SMC§ 18.24.220(D).
6

7 Finally, there is no indication in the record that the staff or Commission ever considered
8 imposing a bonding requirement to provide the public an appropriate measure of assurance. *See,*
9 *e.g.*, SMC §§ 18.24.120, 140. ("If the development proposal is subject to mitigation, maintenance or
10 monitoring plans, the applicant shall post a maintenance/monitoring bond or other security in a form
11 and amount deemed acceptable by the city of Shoreline." SMC § 18.24.140(B.))
12

- 13 **4. The City failed to inquire into the public interest of the proposed subdivision or**
14 **make findings thereon as required by RCW 58.17.110, and the developer has not**
15 **demonstrated public interest as required by KCC 19.08.050.**

16 Several variances in fire codes were required in designing the access road in order to fit the
17 number of homes the developer desired. There is insufficient record evidence to permit the
18 conclusion that a full sized fire truck can get into the development as planned. For that reason, of
19 course, water sprinkler systems are required in each home. However, these systems will require
20 private maintenance and could fail in the event of a large fire. Thus, this provision does not
21 adequately protect the public interest as required by RCW 58.17.110.

22 For each of these reasons, the recommended approval is legally inadequate and must be
23 rejected.
24
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APPELLANT'S APPEAL BRIEF - 7

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B. Appeal of SEPA Mitigated Determination of Non Significance (MDNS).

The MDNS issued on the Paramount Ridge Subdivision was inadequate and contrary to SEPA.

1. The City's determination that the proposed subdivision will not have a probable significant adverse impact on the environment is not adequately supported by the record.

The proposed subdivision is likely to have a significant environmental impact on local and downstream erosion and flooding, and other elements of the environment as defined by SEPA, requiring the preparation of an Environmental Impact Statement ("EIS"). During the hearing, Appellant provided un rebutted testimony as to the significant flooding and erosion problems in the vicinity of the project site and downstream. Such flooding negatively impacts Paramount Park and numerous individual members of Appellant. Testimony of Cecilie Hudson (based on conversations with homeowners all over the neighborhood), and of Donna Eggen, and Chris Heim indicate flooding is most severe for owners of low properties near approximately 151st NE between 12th NE where Littles Creek forms from three surface water drains and proceeds east along an easement that goes to 11th NE and then south into Paramount Park. Jackie Sankaran at 14849 12th Ave. NE has had her basement flooded all winter each of the past five years. The problem is so severe that she has had to put the washer and dryer and other appliances in here basement up on concrete blocks. She has written numerous letters to Shoreline City and to King County before the city of Shoreline was incorporated. Chris and Corky Heim at 15020 12th Ave. NE have their yard flood about 5 times each winter. The homeowner at 1120 150th Ct. NE has their yard and crawlspace flooded almost the entire winter each year and has installed a holding tank in his front yard in an unsuccessful attempt to solve the problem. Chris and Donna Eggen at 15104 11th NE had their back yard flooded and water up to their home foundation several times last winter.

APPELLANT'S APPEAL BRIEF - 8

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1 The severe flooding along this section of Littles Creek impacts drainage in areas upstream in
2 all directions. Cecilie Hudson testified that the homeowner at 15026 12th NE has flooding in his
3 driveway during a storm surge when water backs up in a pipe that goes under 12th to where Littles
4 Creek forms. Steve and Sandra Elliot cite flooding on 12th NE near 150th (one block south of where
5 Littles Creek forms) from heavy snow and rainfall on Dec 31, 1996 and in the Spring of 1997
6 respectively. This was reported to the City of Shoreline when it occurred. Further upstream, Gail
7 Hammer at 15252 12th NE (two block north of where Littles Creek forms) testified that the storm
8 drains near her home are already a problem. And Pat Comstock of 15251 12th NE about 2 block
9 north of where Littles Creek forms has his yard flooded all winter each year. Finally, Cecilie Hudson
10 cites flooding in the basement of the Sunrise North Condominiums on 15th NE at the cross street of
11 153rd.
12

13
14 There have also been flooding problems in the immediate area of the proposed development.
15 Mary Lou Evans, of 15225 11th NE, about 100 ft south of the development, testified to runoff from
16 the newly developed Paramount Park Playfield that entered her crawl space this winter. The water
17 flowed across 10th NE and down the hill behind her. Testimony of Jon and JoAnne Derosier at 1101
18 NE 152nd, 1 block south of the development, confirm this point. Even before this playfield was
19 developed the storm drains on 11th could not handle the runoff during heavy rains, and it ran down
20 the middle of the street and pooled up at the drains. Per testimony of Cecilie Hudson the yard of
21 Kinnards directly across the street from Mary Lou Evans at 15218 11th NE floods from this
22 uncontrolled runoff every year. Attempts at stormwater detention several years ago by King County
23 were not successful. Two concrete catch basins were built on the hillside behind Dave Kalman and
24 Cecilie Hudson but were not sufficiently large to hold all the runoff.
25
26

APPELLANT'S APPEAL BRIEF - 9

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1 Dan Bretske of DSG staff testified that the city is aware of problems in the drainage system
2 and is maintaining it. However, as evidenced in preceding paragraphs, whatever they are doing isn't
3 working. In truth, the changes required to make this unplanned, ad hoc system work would require
4 significant capital expenditure and difficult-to-obtain state wetland construction permits. This is not
5 going to happen soon. Additionally, it appears that the staff of the Development Services Group
6 ("DSG") does not fully understand the problem or the system. For example, in his testimony Dan
7 Bretske indicated he thought Littles Creek went down 11th NE. But in fact, it touches one corner of
8 11th for just a short distance.

10 The increased runoff from the proposed project will degrade the quality of water entering
11 riparian wetlands and anadromous fish streams. For example, water quality will suffer due to
12 discharge of sediments during construction, and discharge of fertilizer, oil and other contaminants
13 and stormwater from the project over the long term. Aside from this just the increased runoff may
14 reduce the ability of the Thornton Creek Watershed to support salmon spawning.

16 Paramount Park, 2 blocks south of the proposed development, is the first (but not the last)
17 public recreation property to receive water from the drainage system. As testified by Janet Way,
18 Paramount Park contains a permanent class 2 stream, Littles Creek, and many wetlands and sensitive
19 areas as yet undelineated of at least 3 - 5 acres in size. The park and the project areas provide habitat
20 and foraging grounds for the Pacific chorus frog and at least 5 Priority Species, including Red Tail
21 Hawk, Coopers Hawk, Sharp Shinned Hawk, Band Tail Pigeon, Pileated Woodpecker, and Great
22 Blue Heron.

24 As noted in Cecilie Hudson's testimony Littles Creek, which flows into Paramount Park, is
25 collected upstream in the storm drain system along 12th NE from 155th NE to 150th NE. Paramount
26

APPELLANT'S APPEAL BRIEF - 10

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1 Park suffers the same flooding problems noted by homeowners. Jon and JoAnne Desrosier testified
2 that Littles Creek actually covers the land bridge at the south end of Paramount Park 4 to 5 times
3 every winter.. Clearly, any increased runoff from the proposed development will compound the
4 problem of excessive surface water flows in Paramount Park. The character of the water flow will
5 also change. At present, any runoff from the heavily wooded property is clean. However, as noted
6 in the testimony of Richard Tinsley, with 7 houses built on very small lots water runoff will
7 necessarily be polluted by sediments during and immediately after construction and by fertilizer, oil,
8 soaps, pesticides, herbicides, and other contaminants when the homes are built and occupied.
9 Additionally, the water will be warmed considerably by contact with roofs and asphalt. These types
10 of problem contribute greatly to the serious "non-point pollution" already overwhelming
11 downstream areas of the Thornton Creek watershed
12

13
14 Currently the site of the proposed development is heavily wooded, with minor runoff and
15 little or no sediment in any runoff that occurs. The loss of trees on the site will both increase the
16 runoff and increase the onsite erosion and offsite erosion, which will have a significant
17 environmental impact due to loss of water retention. Testimony was presented by the Thornton
18 Creek Alliance, a citizens group dedicated to restoring Thornton Creek, a Salmon bearing stream.
19 Littles Creek contributes to Thornton Creek. Shoreline represents approximately 1/3 of the Thornton
20 Creek Headwaters. A forest holds 1 cfs (cubic foot per second) per 100 acres of water for 180 hours.
21 As forest cover is reduced, water runoff and associated flooding and erosion increase , adversely
22 impacting salmon spawning. A watershed that has lost 60% of its cover is to all intents and purposes
23 incapable of supporting spawning. Thornton Creek watershed has lost 50 to 55 % of forest cover.
24 Clearly any additional tree loss should be considered carefully.
25
26

APPELLANT'S APPEAL BRIEF - 11

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1 Even under the best of circumstances, the current plan will result in the considerable loss of
2 tree cover. Remaining trees will be much more vulnerable to wind damage. Also, as pointed out by
3 Dave Kalman in his testimony, a buffer zone of 20 ft does not imply that 20 ft of trees will be saved,
4 since construction requires heavy equipment which would necessarily result in damage to trees at
5 least 5 ft from the buildings and damage to root systems of trees within 10 ft of the buildings.
6 Finally, the homeowners can reasonably be expected to consider to do what they want with the
7 property and its vegetation. Presumably, some will choose to clear the trees to provide space for
8 other purposes, such as play areas for children. Even minor landscaping amidst the trees in the
9 buffer zones will probably result in loss of 50% of the trees. (See Washington State Department of
10 Ecology Publication 93-31, page 28.)
11

12 It is unlikely that City of Shoreline will effectively enforce protection of the buffer zones.
13 Per testimony of Shannon Harris and Donna Eggen, the City of Shoreline's record enforcing
14 Protected Areas regulations is spotty at best. Trees have been removed contrary to regulation from
15 three developments in the area, including the current development, with such minor penalties to the
16 developer that it would be considered a minor cost of doing business. And even the limited
17 enforcement which took place would not have happened without neighborhood action.
18

19 In addition to on-site effects, construction could result in loss of trees on adjoining properties.
20 Mikhail and Tanya Golant and Igor and Inna Ioffre of 15464 and 15462 10th NE directly north of the
21 proposed development testify that they have eight large trees adjoining the proposed road whose
22 roots would be damaged by road construction. (Although their address is 10th NE, which is a north-
23 south street west of the development, Golants and Ioffres actually live on a small east-west lane
24
25
26

APPELLANT'S APPEAL BRIEF - 12

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1 connecting to 10th NE.) E Clive and Carolyn Stewart on 1039 NE 154th St. directly east of the
2 proposed development have trees immediately adjoining their property which would be damaged.

3
4 The loss of trees on the site will also have a significant environmental impact due to
5 increased slope instability. The stability of the soil in the immediate vicinity of the proposed
6 development is already questionable. Cecilie Hudson testified that years ago Paramount Park
7 Playfield (across from the proposed development) used to be a canyon with a stream. Per testimony
8 of Richard Tinsley, some of the water now flows into the local drainage but some now appears to
9 flow underground in the sandy soil, causing numerous sink holes in the neighborhood. Anne Sakai
10 testified that the land in her back yard immediately to the east of the proposed project had sunk a
11 good ten feet in the last 13 years. She also cites the presence of wetland plants in that sinkhole year
12 around. The presence of wetland plants on a hillside year around is an indication of horizontal
13 groundwater flow. See, Washington State Department of Ecology Publication 93-107, page 18.
14 Golant and Ioffe of 15464 and 15462 10th NE testified to subsidence of the road in front of their
15 homes, a narrow private lane about 100 ft north of the proposed development connecting to 10th NE.
16 Cathy and Roberta Swain of 1115 NE 153rd Place approximately 1/2 block East of the proposed
17 project testified that part of the road in front of their home has sunk between 1/2 and 1 foot and
18 cracked in the last few years. And Pat Comstock of 15251 12th NE about 1 block east of the
19 proposed development has had numerous sink holes some over a foot deep develop in his yard.

20
21 According to the contractor's own report, the soil is unconsolidated sand overlaying glacial
22 till. This type of soil will conduct flow and move horizontally. This had led to previous landslides
23 in Cecilie Hudson's back yard just south of the proposed development when homes were built on
24 Paramount Park ridge to the west of her home. 10th NE shows subsidence and cracking just adjacent
25
26

APPELLANT'S APPEAL BRIEF - 13

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1 to Paramount Ridge about 2 blocks south of the proposed development. Cecilie Hudson testified that
2 trees on the site of the proposed development just north of her property are leaning. James Holland
3 of the City of Shoreline Development Services Group (DSG) Staff has admitted that this area is too
4 unstable to develop. (It is singled out as a buffer zone in the current plan.) Cecilie Hudson, Anne
5 Sakai and even James Holland of City of Shoreline Development Services Group Staff have noted
6 that this area has been designated as an erosion hazard zone by King County and acknowledged by
7 DSG Staff. Testimony of Richard Tinsley from examining the permit application was that the
8 surveys of land done by the contractor have only gone down 4 ft, and indicate a sandy loam below a
9 foot of topsoil. If the layer of impervious glacial till is just below the 4-foot survey but above the
10 level of the surrounding properties, then a slip zone will be created making the landslides likely if
11 the amount of ground water is increased and the trees that currently stabilize the land are damaged or
12 removed (Washington State Department of Ecology Publication 93-107, page 14). Thornton Creek
13 Alliance has testified that housing construction in the area has already resulted in liquefaction of
14 steep slopes on Paramount Ridge south of the proposed development, nearly damaging nearby
15 homes.

16
17
18 The abundant testimony confirms that there are unstable soils just to the north, east, and
19 south of the proposed development. This evidence alone indicates a full EIS should be prepared to
20 analyze the impacts of the proposed development.
21

22
23 **2. In issuing the MDNS, the City failed to sufficiently analyze impacts to the**
24 **environment, including but not limited to increased flooding and erosion.**

25 Notwithstanding the requirements of WAC 197-11-330 and -335, the City has deferred
26 analysis of these environmental impacts by allowing the analysis of these impacts to be conducted

APPELLANT'S APPEAL BRIEF - 14

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1 sometime in the future. This is contrary to SEPA's requirement that a DNS be based upon *actual*
2 analysis of environmental impacts. Norway Hill Preservation and Protection Ass'n v. King County
3 Council, 87 Wn.2d 267 (1976); *and see*, WAC 197-11-335. Delaying any substantive analysis of
4 likely impacts from drainage also circumvents the public participation and accountability provisions
5 of SEPA. Instead of requiring the applicant to conduct the necessary analysis, the City has *assumed*
6 without record support that there is sufficient capacity in the downstream drainage system to handle
7 the increased surface water from the subdivision.² As noted above, that assumption is contrary to the
8 un rebutted evidence presented at the hearing.

10 As the Washington Supreme Court explained,

11 The need for an early inquiry into environmental matters at the platting
12 stage is emphasized by RCW 58.17.110 which sets forth the
13 responsibility of the county legislative body on these matters. It
14 requires that body to determine, among other things, if 'the public use
15 and interest will be served by the platting of such subdivision . . .' For
16 either the planning commission or county commissioners to determine
17 this question, they must have before them, in major actions, an
18 environmental review of the project. As previously indicated, it may
19 well be that at the preliminary stage of plat submission, all
20 environmental impacts and ramifications cannot be known or
21 answered. Yet, the environmental concerns raised by the plat must be
22 reviewed. . . .

23 We recognized in Eastlake that SEPA is designed to avoid crisis
24 decision making by requiring meaningful early evaluations of
25 environmental matters. This state policy recognizes that the threat
26 today to the environment is not its sudden destruction but its
progressive degradation. Environmental deliberation, not default, is
mandated by SEPA and such deliberation is required here.

² Even the word "system" is misleading in this context. As Dave Kalman testified, the current
drainage "system" was not planned in any sense, but rather is a collection of ditches and underground pipes
of various sizes, some installed by King County and some installed by individual homeowners.

1 Loveless v. Yantis, 82 Wn.2d 754, 765-66, 513 P.2d 1023 (1973) (en banc) (emphasis added).

2 By determining that an MDNS is required here, the City determined that mitigation is
3 necessary to avoid adverse environmental impacts of the proposed development. In light of this
4 determination, it is not appropriate to proceed without *first* completing the analysis of whether the
5 mitigation be effective.

6
7 The potential impact on the overloaded system may be illustrated by computing the impact of
8 storm runoff from the property, post-development. Storm surges can occur under two conditions,
9 one in which there is drenching rain over a few hours and one in which there is severe rain over a
10 few days after the ground has been saturated by prior rain. As an example of the first case, in late
11 September, 1997, 2.8 inches of rain fell in a few hours causing severe flooding of Littles Creek
12 starting at 12th NE and NE 151st. Assuming the area of the development property is 47000 sq. ft,
13 the total volume that fell on it is 406 cubic yards. Since there had been no rain in the previous few
14 weeks, a great deal of this was held in the trees and eventually evaporated or fell on the permeable
15 woodland floor to be absorbed. Water that came off the slope did so fairly slowly over a period of
16 time much greater than the actual period of rain. In the current development plan, all the water
17 except that on lots 5 and 6 (total area about 16000 sq. ft) would be put into a detention tank under the
18 roadway. Scaling by area, this is 31000/47000 of the total volume or 268 cubic yards. Review of
19 the proposed detention pipes indicate a volume of 274 cubic yards, so – assuming they were empty –
20 they would just hold the water for this storm (not a 25 year storm). Most of the remaining 138 cubic
21 yards of water would be dumped as it fell into the current inadequate drainage system. This would
22 add enough water to completely fill Littles Creek between 12th and 11th NE at approximately 151st
23 NE, and it was already filled beyond capacity by this storm.
24
25
26

APPELLANT'S APPEAL BRIEF - 16

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1 The second type of storm surge is caused by a severe rain on top of already saturated ground.
2 In the presently heavily-wooded area, some of the rain will be retained in the trees (the percentage
3 depending on the time period of rain.) Some will still soak into the ground, since the absorption
4 capacity of the woodland floor is much higher than that of developed property. And some will run
5 off of the property into the surface drainage system in the neighborhood. This runoff will, however,
6 be delayed as it drips off of trees and flows between depressions on the ground. However, if the
7 development proceeds as proposed all the rain will flow off of the property quickly and into the
8 surface water drainage system, since the detention pits will be full from previous rain. Assuming for
9 the sake of argument a total rainfall of 2.8 in as in the previous case, there will be 400 cubic yards of
10 water flowing off the site during the period of rain. This will add to the already significant flooding
11 which would be occurring during this type of storm surge.
12

13
14 The City also failed to analyze other issues such as subsurface water flows, which also
15 involve significant environmental impacts.

16 **3. The City failed to consider likely direct, indirect, and cumulative impacts of this**
17 **proposal, including the impact of other permitted and planned developments on**
18 **erosion and surface water management.**

19 Consideration of such impacts is required by SEPA. *See, e.g., 197-11-060(4).*

20 Record testimony confirms that there have been a number of recent developments near the
21 proposed subdivision, including the Paramount Park Playfield directly across 10th from the proposed
22 development; the construction of four homes on 147th Place NE West off of 12th Ave. NE,
23 bordering directly on the Paramount Park wetland area; and a new two-home development on 14th
24 Ave. NE South off of 146th Ave. NE, just 1 block from Paramount Park. Finally, there is a proposal
25 to widen 15th Ave. NE, a heavily traveled main street two blocks east of Paramount Park.
26

APPELLANT'S APPEAL BRIEF - 17

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1 Issuing an MDNS without considering the cumulative impacts of all such developments is an
2 error of law.

3 **4. In issuing the MDNS, the City acted contrary to its own codes related to**
4 **environmental protection, which are incorporated into SEPA.**

5 These include codes related to drainage, roads, flood hazards, subdivisions, and critical areas.
6 The City's code limits discharges of stormwater to pre-development volume and velocity, and allows
7 direct off-site discharge only where sufficient capacity in the downstream system is known to exist.
8 These provisions are violated by the proposal as discussed above.

9
10 In addition, the City failed to properly consider all substantive environmental policies and
11 failed to require sufficient mitigation to bring the level of impacts of the project below a level of
12 environmental significance. For example, the project fails to mitigate for the full impacts to surface
13 water and flooding, and wetlands and wildlife habitat. In addition, no testing for wetlands was done
14 on adjacent properties even though they were pointed out in comment letters from neighbors in the
15 community. Moreover, mitigation that was required in the MDNS will be impossible to implement.
16 For example, the Developer has been unable to obtain an easement through which to discharge
17 stormwater to the existing but wholly inadequate stormwater system. Without such an easement, the
18 subdivision cannot be built. The approval of the plat depended upon misrepresentations by the
19 developers per testimony of Anne Sakai and therefore provides justification for reopening the record
20 to correct such misrepresentations.

21
22 **5. Neighborhood character also will be significant adversely affected by the project.**

23
24 Currently, the neighborhood consists of detached single family houses on significantly larger
25 lots than those proposed in the subdivision. Testimony of Lauren Basson, Clive and Carolynn
26 Stewart, Julie Mistead, and Kathy and Robert Swain attest to this. The density of development

APPELLANT'S APPEAL BRIEF - 18

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1 would have an exceptionally large impact on owners of homes on 10th NE immediately adjacent to
2 the proposed entry to the development two of which belonging to Golant and Ioffe who gave
3 testimony at the Hearing. These homes would have roads on two or three sides with a significant
4 reduction in privacy and increase in road noise and pollution. Additionally, there will be greatly
5 increased traffic at the intersection at 10th and 155th NE. The latter has always been a dangerous
6 intersection and even more so since the development of Paramount Park Playfield. For these
7 reasons, the new development will significantly affect the aesthetics of the neighborhood and will
8 lower property values. This compatibility issue should have been considered under SEPA and the
9 subdivision ordinance, as was done on other recent long-platt hearing decisions by the Planning
10 Commission.
11

12 Moreover, when requiring mitigation as a condition of approval, the City is required to set
13 forth the policies on which the mitigation measures are based and the environmental impacts sought
14 to be mitigated. See Levine v. Jefferson County, 116 Wn.2d 575 (1991). The MDNS does not
15 specifically identify the significant environmental impacts that will occur as a result of the proposal.
16 Further, the MDNS does not analyze how such environmental impacts will be mitigated by the
17 proposed measures such that an EIS is unnecessary. Therefore, the MDNS does not demonstrate that
18 environmental impacts were considered and mitigated in a manner sufficient to comply with SEPA.
19
20

21 **6. The City has rightfully rejected the proposal for utilizing infiltration pits, as**
22 **these were demonstrated to have a significant environmental impact by requiring removal of**
23 **trees, violating buffer requirements, and increasing danger of flood, landslides and erosion.**

24 The proposal for infiltration pits also violated the King County Surface Water Design
25 Manual.
26

APPELLANT'S APPEAL BRIEF - 19

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V. CONCLUSION

For the reasons stated above, the city should issue a Determination of Significance ("DS") requiring that an environmental impact statement ("EIS") be prepared. In addition, the Planning Commission's recommendation to approve the subdivision should be denied.

Respectfully Submitted on this 2nd day of December, 1998.

SMITH & LOWNEY, P.L.L.C.

By:



Knoll D. Lowney, WSBA # 23457
Richard A. Poulin, WSBA # 27782
Attorneys for Paramount Park Neighborhood
Group, Inc.














APPELLANT'S APPEAL BRIEF - 20

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ANNEXATION AREA A-2 Zoning, 1998



Legend

- | | |
|---|----------------------------------|
|  | R-4; Residential, 4 units/acre |
|  | R-6; Residential, 6 units/acre |
|  | R-12; Residential, 12 units/acre |
|  | R-18; Residential, 18 units/acre |
|  | R-24; Residential, 24 units/acre |
|  | R-48; Residential, 48 units/acre |
|  | RB; Regional Business |
|  | CB; Community Business |
|  | NB; Neighborhood Business |
|  | O; Office |
|  | I; Industrial |
|  | Public Park |
|  | Waterbody |



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ANNEXATION AREA A-2
Zoning, 1998

Legend

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|---|----------------------------------|
|  | R-4; Residential, 4 units/acre |
|  | R-6; Residential, 6 units/acre |
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|  | Waterbody |
















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ANNEXATION AREA A-2
Zoning, 1998

Legend

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To: ALEK: Aleksandr@Aleksandr.com
Subject: Aleksandr@Aleksandr.com 08/08



ANNEXATION AREA A-2
Zoning, 1998

Legend

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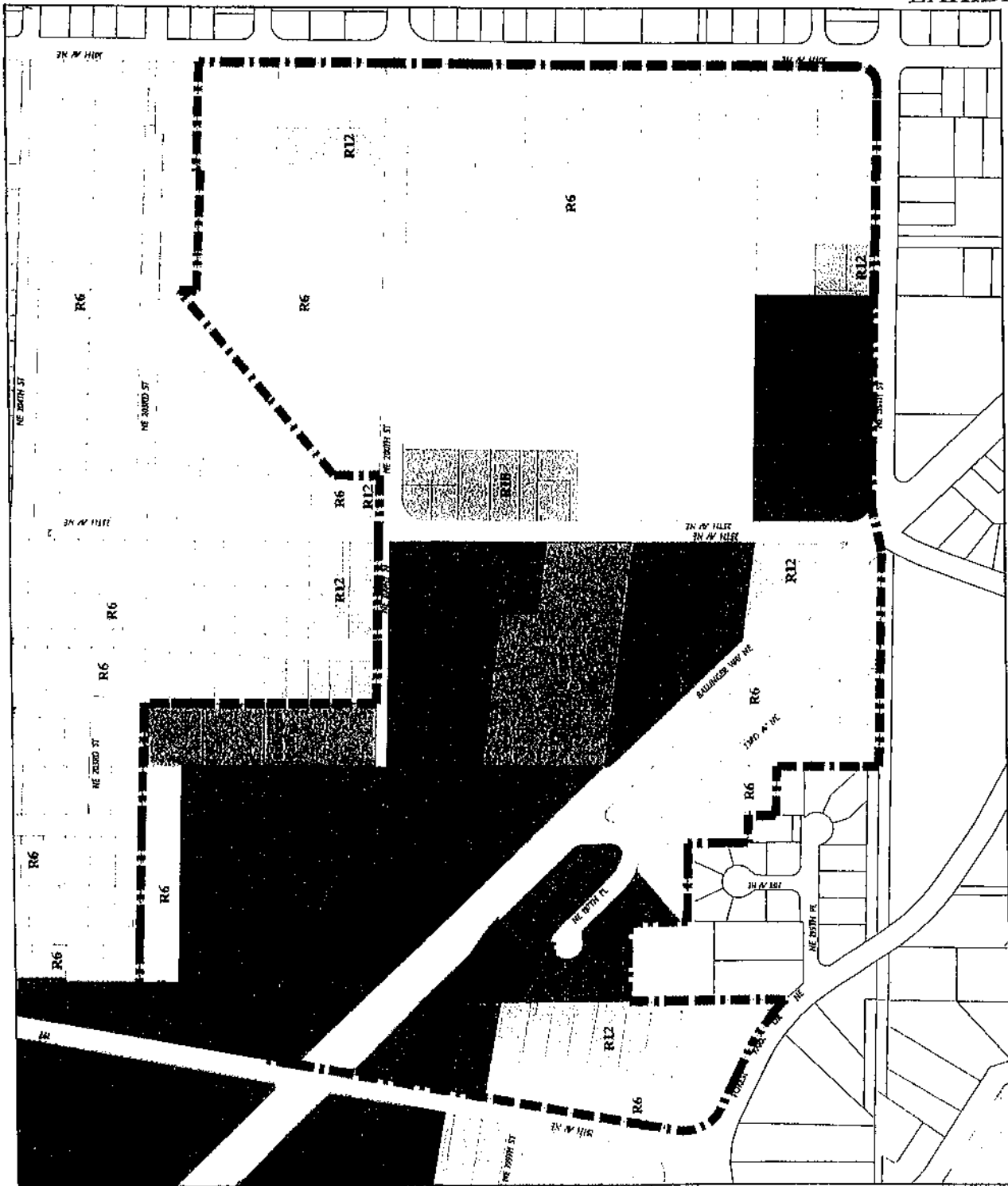


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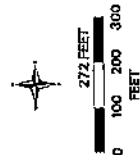
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ANNEXATION AREA A-2 Zoning, 1998

Legend

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- ☐ R-6; Residential, 6 units/acre
- ☐ R-12; Residential, 12 units/acre
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- ☐ O; Office
- ☐ I; Industrial
- ☐ Public Park
- ☐ Waterbody
















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ANNEXATION AREA A-2 Zoning, 1998

Legend

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|  | NB; Neighborhood Business |
|  | O; Office |
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|  | Public Park |
|  | Waterbody |
















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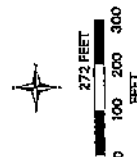
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ANNEXATION AREA A-2
Zoning, 1998

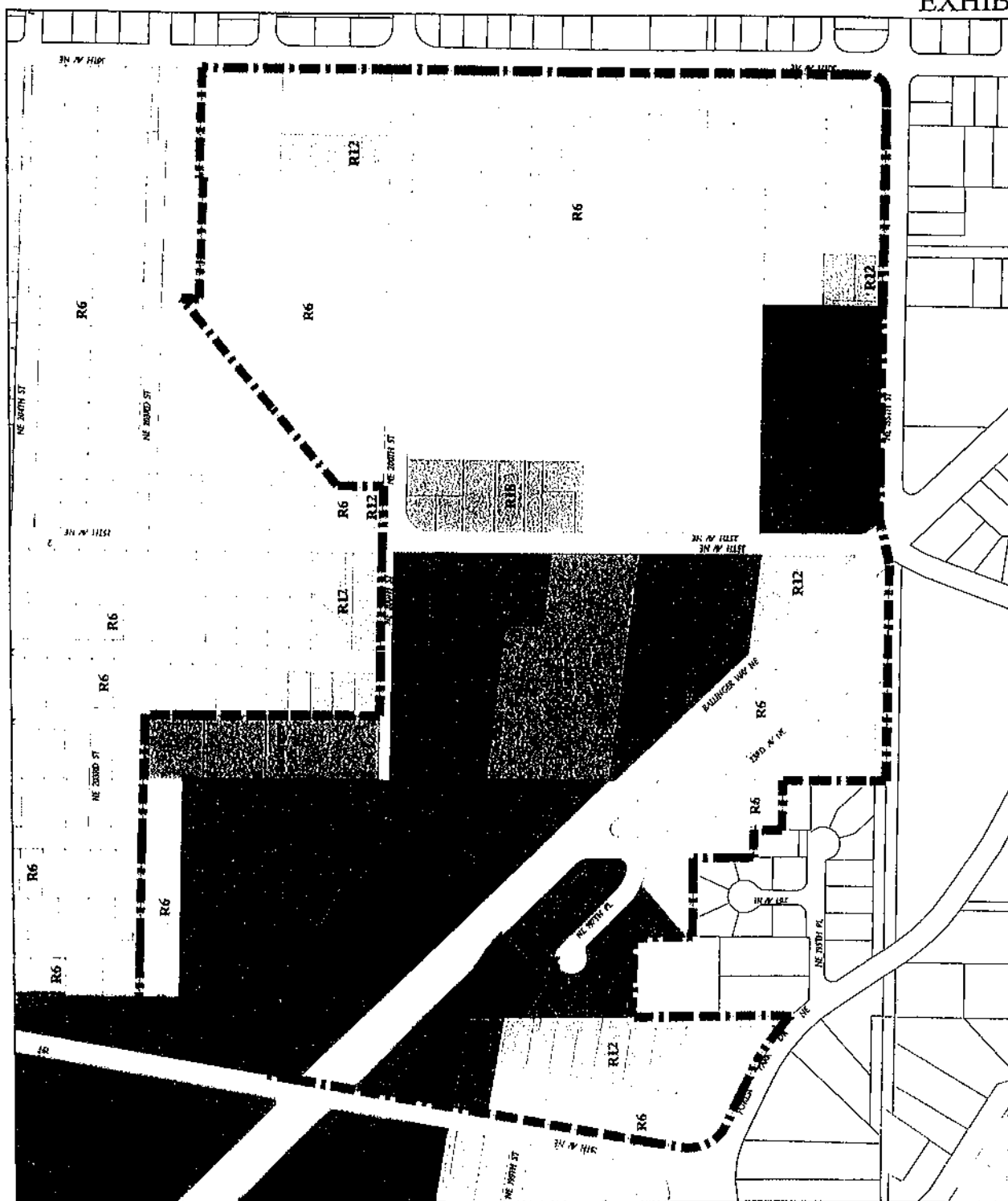
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-  R-4: Residential, 4 units/acre
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ANNEXATION AREA A-2 Zoning, 1998

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- ☐ R-48; Residential, 48 units/acre
- ☐ RB; Regional Business
- ☐ CB; Community Business
- ☐ NB; Neighborhood Business
- ☐ O; Office
- ☐ I; Industrial
- ☐ P; Public Park
- ☐ W; Waterbody
















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ANNEXATION AREA A-2 Zoning, 1998

Legend

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|---|----------------------------------|
|  | R-4; Residential, 4 units/acre |
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|  | R-12; Residential, 12 units/acre |
|  | R-18; Residential, 18 units/acre |
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|  | Public Park |
|  | Waterbody |



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