

The Maple Leaf Community Council Executive Board (MLCC) appeals the Determination of Non-Significance (DNS) issued for Prescott Development's "Maple Leaf Commons" proposal, Project No. 3006480. For the reasons outlined below, the DNS should be withdrawn and a Determination of Significance should be issued.

This appeal incorporates by definition all documents, presentations at public meetings, e-mails, and other communications between the Maple Leaf Community Council and the City of Seattle including, but not limited to, the February 27, 2008 "Official Comment" letter from the Maple Leaf Community Council to Department of Planning and Development (DPD) Director Diane Sugimura. This document is particularly important as it raises many questions for appeal, many of which were ignored or substantially and improperly discounted by the Department when making the SEPA and MUP decisions. (We note the "Official Comment" document has a February 27, 2007 date on top though it was filed on February 27, 2008.)

As of the appeal date, the City of Seattle has not responded or fully responded to three Public Disclosure Requests (PDR) for information related to this appeal. The MLCC reserves the right to bring up additional issues not included in this appeal document based upon information discovered through the currently incomplete PDR process.

A. Factual errors and omissions in the DNS decision

The DNS is riddled with errors and omissions of fact that interfere with its validity under SEPA, Seattle Municipal Code, and/or other pertinent rules/regulations. The intent of this section is to only describe errors and omissions of fact, and not primarily differences of opinion or interpretation. The list of errors and omissions is extensive, and includes (but is not limited to):

1. The Department lists the proposed development as a "...40-unit clustered housing development..." (pg. 2, top). The proposed development is actually 39 units.
2. The duration of construction at the Maple Leaf Reservoir covering project is incorrectly stated as one to two years (pg. 2, fifth para.). The duration of construction will be, according to Seattle Public Utilities (SPU), two and one half years (SPU SEPA document, page 5). Additionally, it should be clarified that the Maple Leaf Playground is immediately adjacent to the reservoir's south edge.
3. In discussing "vicinity" information, the DNS fails to note that the streets surrounding the project site are atypical (pg. 2, sixth para.). NE 86th Street bordering the north edge is a dead end. There is no street on the west side of the site. NE 85th Street bordering the south edge is also not a through street in the traditional sense, as it ends and requires through traffic to connect with 14th Avenue NE to continue moving through the area. This particular omission is part of a pattern from the Department concerning their refusal to see this as a unique parcel.

4. The DNS also fails to mention vehicle sight lines at NE 85th Street and 15th Avenue NE are also bad (pg 2, para six. This fact was established by public testimony, which was agreed to by both Department personnel, and in the Applicant's traffic report).
5. The DNS incorrectly states the size of the parcel at 1.17 (pg. 3, para 1). The actual size is 1.6 acres.
6. The site plan on page 3 of the DNS is incorrect. A different site plan was presented at the final Design Review Board meeting on April 3, 2008. Among other errors, the building locations and types shown in this graphic are inconsistent with minor changes made to the site plan.
7. The site plan on page 3 of the DNS shows four trees appearing immediately to the east of buildings one and two are not actually on the Applicant's property. They are owned via adverse possession by the owner of the small office building in the northeast corner of the block.
8. As with all other documents, site plans, and blueprints submitted by the Applicant, the icons for the trees in the graphic on page 3 of the DNS are not to scale. This misrepresentation makes accurate determination of environmental harm to the trees impossible.
9. The DNS indicates that two common (open) spaces on the site are configured for active use (pg. 3, bottom). This conflicts with statements made by the Applicant in public testimony and in their filed site plans, which indicate the open space at the northwest corner of the site is designed to be part of the storm water retention system. It is unclear whether the Department's description represents a material change in the design of the site or simply an error of fact. Storm water runoff is a critical question for the environmental impact of the proposed project. The site is in the Thornton Creek Drainage Area according to map data and city-sponsored marking of storm water grates in the area. Thornton Creek is a Protected stream, making determination of this point critical to determine before any determination of significance can be appropriately made.
10. The graphics on page four of the DNS misrepresent the number of trees retained after construction, the height of the trees, and the scale of the buildings. Additionally, in the top graphic, the slightly shaded trees above the third unit from the right (counting east to west) will not exist after construction is completed (they are slated for removal). In the second graphic, these same trees are represented as behind the left-most three units.
11. The second graphic on page four of the DNS omits a chlorine injection building that is mere feet away from the first two buildings on the right side of the view.
12. The DNS incorrectly states the comment period closed on February 27, 2008 (pg. 4, bottom). According to e-mail correspondence between DPD Planner Scott Kemp and

MLCC President David Miller, the file would be open to comment until the SEPA threshold decision was published.

13. On page 5, the bullet points representing the community comments are completely insufficient. Rather than providing a detailed refutation, we ask the Hearing Examiner to review the over 300 letters in the file, including the 49-page official response of the MLCC. Also not mentioned are nearly 2,000 signatures on a petition calling for the preservation of the site and the trees. Also not mentioned is the fact at multiple public meetings, 50-150 people turned out to observe the proceedings, provide comment, and/or support the commentary provided by the MLCC.
14. The DNS inaccurately claims the “full record of those comments is contained in the Design Review board guidance documents.” (pg. 7) DPD records of these comments were incomplete, inaccurate, and/or colored by the biases of the Department.
15. The Applicant is not preserving “more than 50%” of the wooded area on the eastern portion of the site (pg. 7).
16. The Applicants never showed an alternative site plan that preserved all the trees on the site (pg. 7, para. 3). They stated, without any support and clearly in contradiction to even a cursory glance at the site plans, that they could fit only 30 units on the western two-thirds of the site. They claimed this would be economically infeasible without providing any analysis.
17. The DNS misleadingly claims other developers passed on the site (pg. 7, para. 3). This omits the fact other developers submitted bids and project proposals that would have saved all the trees on the site. The fact the Applicant outbid them based on a plan with significant environmental issues should not be considered an affirmative defense for the necessity of cutting down trees.
18. The DNS omits the fact that cottage housing guidelines would limit unit counts on this parcel to 12-15 units (pg. 8).
19. The DNS omits the description of the public testimony and the Applicant’s comments for the third Early Design Guidance (EDG) meeting (pg. 9).
20. The DNS incorrectly states the Design Review Board (DRB) considered the Applicant’s minimal tree saving effort to be “adequate” (pg. 9, first bullet). In fact, the DRB continued to request the preservation of all the trees in the grove on the eastern third of the site.
21. The direction of the DRB in the third and fifth bullet points on page nine is understated. The actual charge to the Applicant was to come back with “Exceptional” design, as “Exceptional” design was necessary to support the density requested on this site and to “earn” the requested departures.

22. The DNS characterization of the DRB's request in the first Design Guidance meeting for "trading duplexes on the interior for single family structures on the exterior" was understated (pg. 10). The Applicant was asked to show a design with **only** single-family unit types facing both NE 85th and NE 86th Streets.
23. The DNS characterization of the DRB's request concerning garages on NE 85th and NE 86th Streets is also incorrect. In fact, the DRB told the Applicant to return with a site plan that eliminated all unit garages on NE 85th and NE 86th Streets.
24. The characterization of the DRB discussion on potential pedestrian danger from vehicles backing out the unit garages in inaccurate (pg. 10, fourth bullet). The DRB did not conclude the impact "would not be detrimental enough to limit them for that reason." They did not need to reach that conclusion because they previously told the Applicant to show a site plan with all unit garages removed (see A.23 above).
25. In the DNS, the characterization on page 11 that the DRB stated the Applicant should redesign the units "to eliminate or change the configuration of garages" is incorrect. The direction from the DRB was only to eliminate the garages. The third bullet point of this section contains an identical error.
26. The second bullet point in the same section of the DNS (pg. 11) omits an important condition. During the public comment, a point was made that the slope of the driveway exiting the underground garage could cause a dangerous pedestrian conflict if the cars were not completely level prior to crossing the sidewalk. During the SEPA public comment meeting on February 11, 2008, DPD Senior Planner stated the driveway was constructed so that vehicles would be level before crossing the sidewalk. During the DRB's discussions at this March 3, 2008 meeting, representatives of the Applicant repeated this, stating again the design was such that the vehicles would be level before crossing the sidewalk. The DRB's departure recommendation was based upon that assurance. It turns out the Applicant was not accurate in their statement and vehicles will not be level before crossing the sidewalks.
27. The DNS omits the fact Vince Lyons, the head of the Design Review process for DPD, effectively told the DRB at the beginning of the April 7, 2008 meeting that this was to be the last meeting of the Board on this project (pg. 12). This statement occurred before any presentation by the Applicant, comment from the public, or discussion by the members of the DRB.
28. The DNS incorrectly describes a DRB condition on open space access requirements (pg. 12). The DRB conditioned the requested open space and setback departures on public access to the entire wooded area, not to the construction of a public pathway and public access to that pathway. This same mistake is repeated in the first bullet point on page 13.

29. The DNS description of the arbor departure (pg. 13) omits a DRB condition that there be no actual gates within the arbors. These will be 'visual gateways' and not actual gateways.
30. The DNS significantly misstates the departure granted for SMC 23.45.016.A.3.a.1 in the table on page 15. On page 11 of the document, this departure is described as follows: "To allow the minimum amount of private usable open space to be reduced to zero for two units (building 23) and to 185 sq. ft. on one unit (building 22) and to reduce the average amount to 280 sq. ft. The Board recommended this departure be granted as a measure to create large areas of common open space in this proposed development." The table on page 15 refers to completely different square footage numbers and references seven different units. The text on page 11 appears to be the accurate text.
31. The DNS omits two arborist reports (pg. 15). One is the report filed by SDOT Certified Arborist Bill Ames and the other by Certified Arborist Tina Cohen. Both are available in the file. The entire analysis, as discussed elsewhere, suffers considerably for this omission.
32. The DNS fails to mention the comprehensive SEPA-based comments filed by the MLCC (pg 15).
33. The DNS omits summaries of a March 10, 2008 community meeting on traffic and pedestrian concerns (pg. 15). It also omits a summary of an April 15, 2008 meeting between DPD employees Scott Kemp and John Shaw, SDOT employee Luke Korpi, and MLCC representatives David Miller and Barbara Maxwell.
34. The DNS incorrectly states the Department has experience reviewing similar proposals (pg. 16). To our knowledge, the lead agency has never reviewed a proposal covering the removal of a significant number of trees and demolition of a significantly-sized 1924-era building, which contains potential environmental contaminants typical of hospital buildings of this era, less than 50 yards from a drinking water reservoir, directly across the street from single family homes with children, and 150 yards from a park and ball fields.
35. The DNS mistakenly implies the PSCAA permits and mitigations cover lead-based contamination to surrounding areas from demolition (pg. 17).
36. The DNS, on page 18, omits a key recommendation for further testing from the "Argus" report dated April 9, 2008. Argus recommended additional asbestos-containing areas that should have been studied (page 6 of the Argus document): "During our sampling activities, we identified a large number of suspect asbestos-containing materials that were not sampled and analyzed during the previous asbestos inspection. Argus Pacific recommends that Prescott Homes have a more thorough asbestos inspection conducted prior to demolition in accordance with the requirements for a "good faith inspection" per WAC 296-65. Argus Pacific

37. The DNS omits a key recommendation for critical planning documents from the “Argus” report dated April 9, 2008. This report recommends creation of a “Demolition Methods and Contingencies Plan” to be reviewed and approved by DPD prior to demolition. We argue elsewhere not requesting this plan in advance of the DNS decision is a critical error by the Department. From the text on page 6 of the Argus document: “Finally, Argus Pacific recommends that prior to demolition Prescott Homes prepare a Demolition Methods and Contingencies Plan to provide to the demolition contractor to address asbestos abatement, specify demolition air quality parameters, control of metal-containing dusts, waste designation, and contingencies for problems that may arise during demolition. Methods of communication with the community regarding potential hazards and progress would also be included in this plan. This plan should be reviewed and approved by the City of Seattle Department of Planning and Development.”
38. The DNS contains a typographical error allowing interior construction work on Saturdays between “9 AM and 6 AM” instead of the presumably intended “9 AM to 6 PM” (pg 20). This is not significant to the argument we are making here, we just wanted it in the record for sake of clarity. The same mistake is repeated farther down in the summary section of the document.
39. The DNS incorrectly characterizes the scope and number of projects in terms of cumulative impacts (pg 22). There are several proposed projects known to DPD and other city officials along SR-522, the tolling proposal on SR-520, and others that will create cumulative adverse environmental effects.
40. The DNS incorrectly states that there are “several multifamily apartment buildings” to the north (pg. 23). This is not accurate. There is one small apartment building (actually a triplex) to the north immediately across NE 85th Street. There are no multifamily apartment buildings north along 15th Avenue NE, and indeed no parcels zoned for any use other than single family, from the proposed development site until north of NE 115th Street, some miles away.
41. The DNS again omits the fact cottage housing on this site would have a maximum number of units of 12-15 (pg. 23).
42. The DNS incorrectly characterizes the project as “providing a low-density residential appearance” (pg. 23). The density of this development is more than three times the density in any of the surrounding blocks. We address this issue in more detail elsewhere, but the proposed development is markedly different from the rest of the neighborhood in size and scale.
43. The DNS omits all the incompatibility issues stated by the MLCC and mistakenly characterizes another issue (pg. 23, near bottom). MLCC’s statement concerning the

price differential of the units was not intended to point out the incompatibility of the development. The price differential was clearly cited to point out this project does not meet City policies of creating more affordable housing. The Department omitted all of the MLCC's arguments concerning unusual density, size, height, bulk, scale, material, and many other issues.

44. The DNS incorrectly states storm water from the site does not drain to Thornton Creek (pg. 23, last para.). The site is in the Thornton Creek Drainage Area. Below is a picture of a graphic painted by a City-directed team next to a storm drain near the corner of NE 82nd Street and 15th Avenue NE. Similar graphics were painted at the corner of NE 85th Street and 15th Avenue NE, located at the southwest corner of the parcel.



Photo Credit:

Dan Dittman

On or about April 5, 2008

Corner of NE 82nd Street and
15th Avenue NE

45. The DNS omits references to the Ames and Cohen arborist reports (pg. 24). These reports reach different conclusions than the Williams report as to the number and identity of the exceptional trees. This mistake is repeated in the paragraph below and elsewhere in the document.
46. The DNS incorrectly states the total number of potential units on the property as 60 when the actual number is 59 (pg. 24). Additionally, how many units *could* be built on the parcel has nothing to do with the environmental importance of the stand of trees.
47. The DNS incorrectly implies it is the responsibility of DPD to make a project economically viable (pg. 24). While the courts have found rules have varying degrees of ability to affect the economic worth of a parcel, nowhere do they say it is a permit granting authority's responsibility to bail out a developer who paid too much for a property -- in this case by enabling environmental harm.

48. The DNS incorrectly states the number of trees to be planted by Applicant as 40 (pg. 24, last para.) The Applicant's filed plans indicate 27. In a perhaps related error, the Department describes a "Tree Replacement Plan Sheets L1.1 and L1.2 dated 3/13/2008." No such document is available in the file or via Public Disclosure Request. The file contains a document submitted by Applicant labeled "Tree Protection Plan & Table – Sheets L1.1 and L1.2 dated 3/15/2008." This document lists a table where it says 27 new trees will be planted. Comments at public meetings by the Applicant stated the three Douglas firs (*pseudotsuga menziesii*) are actually transplants from elsewhere on the site. In no way do the number of **new** trees add up to 40 by any document in the file.
49. The DNS incorrectly tabulates and describes the canopy size as 1,679 sq ft at maturity compared to the existing canopy of 1,349 sq ft, after counting trees Applicant will plant (pg. 24, last para). There are five errors here, some of which we discuss in more detail elsewhere. **First**, it is unlikely the canopy specified for the replacement trees will reach their specified canopy size due to species selection and placement. **Second**, three of the trees (the Douglas firs) are transplants and should not be credited as "new" trees. **Third**, the calculation for retained canopy does not include the suggested pruning by the Applicant's arborist required largely because of disturbing the grove nor does it account for the survivability analyses by arborists Ames and Cohen. **Fourth**, the calculation is an apples-to-oranges comparison. The Applicant is being credited for canopy at maturity in 30+ years, while the existing trees that are being removed are credited only for their existing canopy. The canopy calculation should be performed either at installation for the new trees compared to current canopy for the removed trees, or in 30 years (or maturity of the new trees, whichever is longer) for both new and removed trees. **Finally**, the canopy is described in the DNS in terms of square feet when canopy breadth is measured in terms of linear feet.
50. The DNS omits statements by both Ames and Cohen calling into doubt the ability of retained trees to survive (pg. 25).
51. The DNS incorrectly interprets or characterizes the vulnerability of trees on the windward edge (pg. 25). Prevailing winds in the area come from the south, and impact the trees along NE 85th Street first. These trees have been "trained" over time to withstand wind. These trees are planned to be removed. See file documents from arborists Cohen and Ames for a discussion of this topic. By removing the trees on the southern edge, the stand is made inherently less stable. This error shows a lack of understanding of tree mechanics by the Department exacerbated by the previously demonstrated dismissal of two other arborist reports in the file.
52. The DNS incorrectly states that stands of urban conifers are commonly found in urban areas of Seattle without specifying examples (pg. 26). In fact, Seattle's tree cover has declined from 40% to 18% since the 1970s.

53. On page 30 (last para.) the DNS notes mitigations for bad sight lines on NE 85th Street and 15th Avenue NE. This reinforces our claim above of an error declaring the only dangerous sight line issues were at NE 86th Street and 15th Avenue NE.
54. The DNS incorrectly states the Applicant agreed to provide a space for a car-sharing vehicle (pgs. 31 and 35). The Applicant agreed, during multiple public meetings and in file documents, to provide parking space for a vehicle **and** the vehicle itself.
55. The DNS omits the fact that the “Traffic Mitigation Measures” contains several items that SDOT and DPD staff said would not be allowed at an April 15, 2008 meeting between DPD staffers Scott Kemp and John Shaw, SDOT staffer Luke Korpi, and MLCC representatives David Miller and Barbara Maxwell (pg. 32).
56. The DNS omits the fact the greenhouse gas emissions from the proposed development would be twice that of the existing development (pg. 32).
57. The DNS fails to note the carbon checklist filed by the Applicant and accepted by the Department contains substantial errors in execution and the stated result is based upon assumptions that contradict the SEPA checklist filed by Applicant.
58. On page 34 of the DNS, the paragraph labeled “Prior to Certificate of Occupancy” differs substantially from the DRB departure conditions described previously in the document.
59. The DNS fails to include a requirement for a demolition plan in this summary section despite the fact this was listed as a requirement elsewhere in the DNS (pg. 34).

B. SEPA violations

The DNS fails to comply with SEPA, the Seattle Municipal Code, and/or other applicable rules and regulations for the following reasons:

1. Demolition

The DNS fails to consider the significant adverse impacts of the demolition of the buildings currently on the site because the decisions in this area were based upon faulty or incomplete information. The DNS inadequately mitigates the project, exposing citizens – particularly children and elderly who are most at risk from certain toxins such as lead and/or asbestos – and the environment to significant health hazards. These failures result in significant impacts on the following partial list of items in the natural and built environments:

- Soils
- Air
- Air quality
- Ground water movement/quantity/quality
- Public water supplies
- Plants and animals
- Habitat for and numbers or diversity of species of plants, fish, or other wildlife
- Unique species
- Fish or wildlife migration routes
- Amount required/rate of use/efficiency of energy and natural resources
- Source/availability of energy and natural resources
- Nonrenewable resources
- Conservation and renewable resources
- Environmental health
- Releases or potential releases to the environment affecting public health, such as toxic or hazardous materials

(a) The Department erred by issuing a DNS without first obtaining information sufficient to adequately evaluate environmental risks of demolishing buildings at the site. Fundamentally, it is impossible for the SEPA-responsible official in the Department to make an accurate determination of potential environmental harm without **first** knowing the demolition plan details.

(b) The Department mistakenly assumes that another agency controls the release of lead and/or other toxic dust into the surrounding community during demolition. In fact, we have been unable to find any federal, state, county, or city statutes governing the release of toxic lead dust into the community during demolition activities. The SEPA-responsible official has a minimum duty to craft mitigations to prevent environmental harm from the Applicant's activities. Such mitigations can range from a plan to

prevent lead dust from escaping the demolition site to requiring the building be retained and hazards mitigated in place, for which there are recognized procedures and policies.

- (c) The DNS also fails to consider expert correspondence from Applicant's own consultant (Argus) advising additional testing for asbestos be performed. By doing so, the SEPA-responsible official issued a DNS despite the fact Applicant's own consultant declared the existing asbestos survey was in violation of WAC 296.65 (lack of "good faith inspection").
- (d) Furthermore, the DNS fails to consider research, pointed out by MLCC, suggesting that demolition will cause dangerous lead dust to reach adjacent sidewalks, Metro bus stops, school bus stops, homes, yards, the drinking-water reservoir, and the playfield near the site. This research demonstrates, among other issues, the inadequacy of water "sprinkling" during demolition as mitigation for preventing the spread of lead and other toxic dust.
- (e) The DNS fails to consider or adequately mitigate the potential adverse neurological and cognitive impacts of lead exposure on children.
- (f) The DNS fails to consider, and adequately mitigate for, significant adverse impacts of demolition. For example, contamination of soil and groundwater is not addressed. Since the harm from lead exposure can happen instantly via ingestion of lead paint chips or breathing lead-bearing airborne dust, air monitoring is wholly inadequate for the control of this environmental pollutant.
- (g) The DNS also fails to consider, and adequately mitigate for, significant environmental impacts from transporting lead-bearing material off the site. Each dump truck carting demolition material from the site will leave a trail of toxic particles and dust along a path yet to be identified. Dump trucks are required to cover their load, but the covering as mandated in statute will not prevent lead chips and dust from escaping the vehicle. This failure threatens the environment for perhaps several miles from the site. Any occupant in any vehicle that happens to travel in the route will also be endangered.
- (h) The DNS fails to address safe disposal of the materials.
- (i) The DNS inadequately mitigates the risk of environmental harm arising from vehicles tracking mud and dust off the site via the tires and undercarriage of the equipment. This risk is exacerbated by the existence of toxic material on the site.
- (j) The Department violated SEPA by failing to adequately consult with affected agencies, including but not limited to Seattle Public Utilities (SPU) and the Puget Sound Clean Air Agency (PSCAA), about the potential hazards posed by demolition. Records obtained via Public Disclosure Request demonstrate SPU was concerned

about the environmental impact of demolition on the reservoir, but the DNS decision was made without those concerns adequately being addressed.

- (k) The DNS fails to consider that the best mitigation of environmental contaminants such as those found in the existing structures is by retaining the structure and mitigating them in place.
- (l) The DNS suggested mitigation of a monitoring program is insufficient for mitigating the environmental harm of the release of toxic dust. Air monitoring for lead inherently involves at least a 24-hour delay while collected samples are tested. At best, such air monitoring can shut the barn door after the horses have already left. Since life-altering harm from lead exposure can happen instantly via ingestion of lead paint chips or breathing lead-bearing airborne dust, air monitoring is wholly inadequate for the control of this environmental pollutant.
- (m) The DNS fails to recognize the demolition of the building is contrary to recycle/reuse policies and is a significant waste of all the energy used to create it in the first place.
- (n) The DNS fails to consider, or adequately mitigate for, the verified presence of radon above acceptable levels in the buildings on the site.
- (o) The DNS fails to adequately mitigate for the presence of lead in the soil prior to demolition.
- (p) Our discussion of this issue will include, but will not necessarily be limited to, the above points. Demonstration of the potentially fatal and/or long-term disability resulting from lead poisoning will be made.

2. Trees and/or habitat

As a whole the DNS fails to consider, understates, and/or inadequately mitigates the significant adverse impacts of tree removal and disturbance on elements of the natural and built environments, including but not limited to impacts on:

- Storm water retention, runoff, absorption, flooding, groundwater
- Unique physical features and scenic resources
- Air quality
- Climate
- Plants and animals, including those in Critical Areas and Salmon Habitats
- Environmental health
- Noise
- Light and Glare
- Aesthetics
- Historic and cultural preservation
- Public services and utilities

- (a) The Department fails to consider the cumulative environmental harm of 30 years of development in Seattle. This has reduced the tree canopy from 40% to 18%. The US Forest Service suggests, and Seattle has adopted as a goal, a 30% tree cover. However, this goal will not be reached for decades and there is no funding mechanism in place to reach this goal. While SEPA is silent on timeframes for affirmative plans for this specific type of cumulative environmental harm, the GMA suggests that environmental harm resulting from traffic increases must have a specified, funded concurrency plan that resolves traffic concurrency differentials within **six years** of the project's completion. Currently, there is a 30-year goal to reach the 30% tree cover but no funding mechanism to make this happen. Therefore, the SEPA-responsible official has inadequately mitigated the environmental harm, cumulative or otherwise, of the project by not mandating the retention of the trees.
- (b) The DNS understates the environmental impact of losing mature evergreen trees and overstates the benefit of planting two-inch caliper deciduous trees.
- (c) The DNS fails to adequately investigate Applicant's claim that actual tree canopy will be increased due to plantings. (See also A.49 above). By any fair measure, the tree canopy will decline because of this project.
- (d) The DNS fails to consider the real impact of the development because it relies on Applicant's incorrect claim of saving more than 50% of the wooded area (see also A.15 above). This incorrect number shows both inconsistencies and lack of attention to facts within the DPD decision itself and invalidates the conclusions of biologists and other consultant reports submitted by the Applicant, which were also based on this false data.
- (e) The DNS fails to consider the impact, cumulative or from this specific proposal, of tree removal on the Thornton Creek Watershed and/or Lake Washington. While the site is not located within the Thornton Creek Watershed boundaries, it is located within the Thornton Creek Drainage Area and storm water runoff from the site will enter this watershed and Lake Washington.
- (f) The SEPA responsible official, when reviewing this application, did not adequately consider the cumulative adverse effects of the loss of trees at the site, in the Thornton Creek Drainage area, or throughout their jurisdiction in the City of Seattle when making the SEPA DNS decision.
- (g) The DNS fails to apply SMC 25.05.675(N), resulting in inadequate mitigation that is limited to individual trees instead of the entire grove.
- (h) The DNS inadequately mitigates the project, allowing the loss of two "exceptional" trees, one Western White Pine and another large Douglas Fir. The exceptional trees cited in the DNS as saved by the project are saved only due to their species and are, in fact, small trees less than six inches in diameter.

- (i) The DNS understates the importance of opinions of Seattle Department of Transportation (SDOT) Certified Arborist Bill Ames who says the grove should be saved intact if it is to be saved and that the trees within the grove are “fine” in their grove-like setting.
- (j) The DNS understates the importance of the opinions of Certified Arborist Tina Cohen who notes, among other items of importance (emphasis added):
- The site has large, healthy trees throughout, however the stand (group) at the east portion is notable for its overall size, aesthetics, and vigor, which is a rarity within an urban area. **The entire stand is appropriate for protection under the DPD Directors Rule 6-2001.**
 - The Prescott plan retains a portion of the east stand and removes nearly all the rest of the trees on the site. They propose to retain 34 live trees out of 82 total = 41% retained.
 - The Prescott plan will greatly impact the east stand of trees because the project will encroach on the roots and canopies of the trees at the west, north and south perimeters. **As proposed, the project could create declining, high-risk trees.**
 - There are large, healthy trees throughout the site, however **the stand along the east side is notable for its overall size, a rarity within an urban area.**
- (k) The DNS fails to consider the environmental impact of the tree loss by relying on incorrect information on tree retention provided by Applicant. The Applicant overstates the number of trees that will be saved. Four trees specified as saved should not be categorized in this fashion. #13 is dead, #14 is severely leaning, #16 has a canker disease, and #48 is a shrub.
- (l) The DNS inadequately mitigates the impacts of construction near the trees by specifying mitigations with too little detail, too inexpensive a penalty for harming, and too short a duration of a proposed bond to reflect the long-term (10-year) effects of the proposal.
- (m) The DNS understates the environmental impact of the proposal by allowing the fact the Applicant will plant some replacement trees to affect their decision. The planting of new trees on the site cannot be considered for the SEPA threshold determination. Under SMC 25.05.330(E), the decision maker is prohibited from balancing “the beneficial aspects of a proposal”.
- (n) The DNS inadequately mitigates the loss of trees in light of our society’s changing view, and scientific knowledge, of the climate impacts of tree loss. Few rational people believe climate change isn’t real and Seattle Mayor Nickels receives worldwide acclaim for leading urban mayors to address issues of climate change. The

concept of how critical an urban tree cover is to the health and welfare of city dwellers was not fully appreciated by DPD – to put it mildly. Worldwide coverage is now provided to major urban tree initiatives and Mayor Nickels has sponsored three of his own. The progression of those initiatives over time is instructive, moving from planting more trees to replacing trees lost to development to reducing the loss of mature trees in the first place.

- (o) The DNS fails to consider the impossibility of meeting tree planting goals without adequately mitigating tree loss on private property. There is simply not room on City property to meet the 30-year urban canopy goal.
- (p) The DNS understates the economic cost of the tree loss, both in this instance and on a cumulative basis, to public services and utilities. Costs come in the form of increased storm water runoff, pollution abatement, increased heating and cooling needs, more frequent resurfacing of streets from excessive heat, and both the current and future costs of attempting to restore natural systems and recover endangered and sensitive species such as salmon. Total storm water retention capacity of Seattle’s urban forest cover was reduced by 27% from 1972 to 1996, which resulted in an estimated 7.5 million cubic feet of additional storm water runoff.
- (q) The DNS understates the health impacts of tree loss. Lost tree canopy would have removed many thousands of pounds of the pollutants sulfur dioxide, nitrogen dioxide, carbon monoxide, ozone, and particulate matter of 10 microns or less from the atmosphere annually. Each has been linked to various human health issues.
- (r) The DNS understates the significant adverse impact on our local weather patterns, including loss of property, additional loss of trees, and other impacts. This is related to the adverse environmental impact of urban “heat sink” issues due to cumulative lack of tree cover.
- (s) The DNS understates the significant adverse impacts on quality of life, which impacts transportation and other SEPA issues. As trees are lost, quality of life decreases. Once nice neighborhoods become unlivable, people are less likely to travel as pedestrians, stress levels rise, and people’s sense of well being is negatively affected. Resulting movement out to the suburbs exacerbates environmental harm.
- (t) The DNS fails to consider the opinions of other agencies concerning loss of mature trees. The US Forest Service notes, “Preserving existing large trees is the most important thing that can be done to realize the benefits provided by trees.” The DNS similarly fails to consider the opinion of the Seattle Office of Sustainability & Environment, which adds, “All the benefits of trees – environmental, health, economic and aesthetic – really only occur once a tree starts to mature, thus underlining the fact that a healthy city tree is an investment worth keeping.”
- (u) The DNS understates the environmental importance of the stand of trees on the eastern portion of the site. This stand roughly provides enough oxygen for nine

people for a year and absorbs as much carbon dioxide as a car produces in 13,000 miles.

- (v) The DNS understates the significant adverse impact of the proposal on aesthetics, recreation, and historic/cultural preservation by not fully accounting for the fact nearly 2,000 residents of our 4,000-home neighborhood signed a petition urging the city to act responsibly concerning the development of *this* particular site by, among other things, saving the trees on the site.
- (w) The DNS fails to adequately mitigate the adverse impact of the loss of carbon-dioxide sequestration and the increase in carbon dioxide release.
- (x) The DNS fails to consider or adequately mitigate for the decrease in sequestration of toxic particles because of tree loss, replacing evergreens with deciduous trees, and/or substituting saplings for mature trees.
- (y) The DNS fails to consider or adequately mitigate for harm because it does not recognize trees and habitat in an urban setting perform substantially different roles than in a suburban or rural setting. To provide some non-limiting examples:
 - Trees in urban areas, because of their adjacency to emissions sources, have higher pollutant uptake rates so they are more valuable pollution control mechanisms.
 - Habitat in an urban setting cannot be judged by rural or suburban standards. It must be judged compared to other habitats (or lack thereof) in similar settings.
 - The human-scale benefits derived from a stand of trees of a given size in an urban area are much higher than those from a similar-sized stand in suburban or rural areas because of the different built environments.
- (z) The DNS fails to consider, understates, and/or inadequately mitigates the proposed development because Applicant's experts relied on inaccurate, incomplete, misleading, and/or out-of-date development plans and/or inaccurate, incomplete, misleading, and/or out-of-date site characteristics. The SEPA-responsible official based decisions upon the Applicant's experts, who may have offered different opinions if they were provided accurate information. The SEPA-responsible official also based decisions on inaccurate, incomplete, misleading, and/or out-of-date information in the file. The Department Planner issued a Correction Notice connected with this issue that was first never responded to by Applicant, and then ignored in order to rush the DNS to meet Applicant's deadline.
- (aa) The DNS fails to consider environmental harm to habitat because it is based upon habitat analyses of insufficient length and detail to arrive at accurate conclusions. The habitat analyses failed to consider cumulative effects and concurrent projects.
- (bb) The DNS fails to consider destruction of native habitat represented by removing and harming a grove of largely native species and "replacing" them with non-native species.

3. Carbon checklist

The DNS fails to consider the significant adverse impacts on greenhouse gas (GHG) emissions because the decision for no mitigations in this area was based upon faulty information provided by Applicant. The DNS inadequately mitigates the project to reach no net increase in carbon impacts from the current use. These failures result in significant impacts on the following partial list of items in the natural and built environments:

- Air
- Air quality
- Odor
- Climate
- Water
- Floods
- Energy and natural resources
- Amount required/rate of use/efficiency
- Source/availability
- Nonrenewable resources
- Conservation and renewable resources
- Environmental health
- Releases or potential releases to the environment affecting public health, such as toxic or hazardous materials
- Relationship to existing land use plans and to estimated population
- Other governmental services or utilities

- (a) The DNS fails to adequately consider the greenhouse gas (GHG) impacts of the project because the SEPA carbon checklist filed by the Applicant and accepted by the Department contains errors in both assumptions and execution. An accompanying memo, dated March 6, describes adjustments made to the worksheet. One adjustment was made for the number of people per unit, from the worksheet's standard 2.8/unit for single family to 2.0/unit assumed for this project. This assumption contradicts the facts provided in the SEPA checklist filed by the Applicant. In the SEPA checklist, Applicant expects 100 people, or 2.5/unit, will live at the site. This contradictory edit understates the total lifespan emissions of the project by over 5,500 MTCO_{2e}.
- (b) The DNS fails to consider the magnitude of the environmental impact of the project by not including a comparison between the current use and planned use. The current greenhouse gas profile of the current use of the site is about 31% of the projected use. In other words, the planned project will have over **three times** the greenhouse gas profile, with all the corresponding harms to the environment. This differential was not considered by the Department when making the SEPA determination. (Calculations for current use assumed the total net square footage of office space at 17,130 sq. ft. per the King County records. We estimated the area of the parking lot at 21,000 sq. ft., or roughly a third of the site. Embodied emissions were zeroed out because the facility is already built.)

- (c) The DNS inadequately mitigates the increase in GHGs from the proposed project, despite recognition by the US Supreme Court that GHGs are a form of air pollutant, despite State rules/codes governing reductions in GHG, and despite City rules/codes and Comprehensive Plan directives specifying aggressive reductions in greenhouse gas emissions.
- (d) DPD understates the environmental impact and inadequately mitigates this impact by interpreting City ordinances incorrectly. The applicable City ordinance does not *require* changes to development plans because of the GHG review and checklist, but the legislation clearly does not **prevent** the SEPA responsible official from requiring mitigations or, perhaps more appropriately, does not prevent the SEPA responsible official from determining the significant climate impacts of this proposal require a determination of significance.
- (e) The State Legislature, King County, and Seattle City Council have indicated the importance of reducing greenhouse gases by passing legislation mandating reductions in greenhouse gases, promulgating wide-ranging programs seen as necessary to reach these goals. Increasing greenhouse gas emissions create substantial infrastructure and other costs not considered by the SEPA-responsible official in determining the impacts of the proposal.
- (f) The DNS fails to consider, understates, and/or inadequately mitigates the proposed development because Applicant's experts relied on inaccurate, incomplete, misleading, and/or out-of-date development plans and/or inaccurate, incomplete, misleading, and/or out-of-date site characteristics. The SEPA-responsible official based decisions upon the Applicant's experts, who may have offered different opinions if they were provided accurate information. The SEPA-responsible official based decision on inaccurate, incomplete, misleading, and/or out-of-date information in the file.

4. Vehicle exhaust

The DNS fails to consider the significant adverse impacts from increased vehicle exhaust due to construction activities and subsequent use. The DNS inadequately mitigates the impacts because the SEPA-responsible official did not adequately investigate the research provided to it by the MLCC prior to issuing the DNS. These failures result in significant impacts on the following partial list of items in the natural and built environments:

- Air
- Air quality
- Odor
- Climate
- Surface water movement/quantity/quality
- Ground water movement/quantity/quality
- Public water supplies
- Plants and animals

- Habitat for and numbers or diversity of species of plants, fish, or other wildlife
 - Unique species
 - Fish or wildlife migration routes
 - Energy and natural resources
 - Amount required/rate of use/efficiency
 - Nonrenewable resources
 - Environmental health
 - Noise
 - Releases or potential releases to the environment affecting public health, such as toxic or hazardous materials
- (a) The DNS does not adequately mitigate the risk to humans from diesel exhaust from construction and demolition activities. The significant adverse impact on human and natural environment health arises from the toxicity of diesel exhaust particles, which are “carbon core that adsorbs a mixture of metals and organic chemicals, including carcinogens. The small size and large surface area of DEP allow these particles to penetrate deep into the lung and deposit toxic chemical throughout the respiratory tract.”
- (b) The DNS does not adequately mitigate the known risk of cardiovascular disease related to vehicle exhaust exposure.
- (c) The DNS fails to consider the environmental impact of the marked increase in vehicle traffic at a minimum of 290 new vehicles trips per day (see B.9 below for how this number is inaccurate). The significant adverse effect arises from the fact gasoline particles are similarly toxic to diesel particles.
- (d) The DNS understates the fact the uniqueness of the site and the proposed development magnifies the significant adverse environmental effects. The loss of mature evergreens noted elsewhere reduces the ability of the environment to ‘scrub’ the air of these particles.
- (e) The DNS understates the fact the uniqueness of the site and the proposed development magnifies the significant adverse environmental effects of people exercising in the area.
- (f) The adjacent reservoir will be lidded and converted into a park that will include areas for exercise. There are existing ball fields and park areas. The surrounding sidewalks and the grove itself are frequent spots for exercise. The DNS understates or fails to consider the fact exercise *increases* the adverse effects on DNA and disease when individuals are exposed to the ultrafine particles of the type found in vehicle exhaust that will be increased due to this project. Furthermore, exercise drives these particles deeper into the lungs, exacerbating the significant adverse impacts.

- (g) The DNS fails to consider or adequately mitigates the fact the environmental harm from fine particulates falls disproportionately on children, who are the primary users of the nearby Little League ball fields.
- (h) The DNS fails to consider the environmental harm from vehicle exhaust collecting in the underground garage to people in the garage or people near any ventilation pipes because no such plans to deal with this harm were provided by Applicant prior to the threshold decision being made.
- (i) The DNS fails to consider, understates, and/or inadequately mitigates the proposed development because Applicant's experts relied on inaccurate, incomplete, misleading, and/or out-of-date development plans and/or inaccurate, incomplete, misleading, and/or out-of-date site characteristics. The SEPA-responsible official based decisions upon the Applicant's experts, who may have offered different opinions if they were provided accurate information. The SEPA-responsible official based decision on inaccurate, incomplete, misleading, and/or out-of-date information in the file.

5. Improper "balancing" in threshold determination

- (a) The SEPA-responsible agency failed to follow SEPA rules, improperly balancing perceived benefits of the proposed development against the significant environmental impacts of the development.
- (b) There are over 300 letters in the file from community members concerning this development. Many of the responses sent by City personnel indicate DPD will "balance" the need for protecting the environment from adverse impacts with a policy goal of increased density when making the threshold determination.

This is in direct violation of SMC 25.05.330(E) (emphasis added):

A threshold determination shall not balance whether the beneficial aspects of a proposal outweigh its adverse impacts, but rather, shall consider whether a proposal has any probable significant adverse environmental impacts under the rules stated in this section. For example, proposals designed to improve the environment, such as sewage treatment plants or pollution control requirements, may also have significant adverse environmental impacts.

- (c) Even if such balancing is allowed, the DNS overstates the public benefit of the project or the public need for the project as designed.

6. Storm water

The DNS fails to consider the significant adverse impacts from increased storm water runoff and/or decreased quality of storm water runoff due to the proposed project. The DNS inadequately mitigates the impacts because the SEPA-responsible official did not

adequately verify information provided by Applicant and/or understated the impact of the research provided to it by the MLCC prior to issuing the DNS. These failures result in significant impacts on the following partial list of items in the natural and built environments:

- Soils
- Climate
- Surface water movement/quantity/quality
- Runoff/absorption
- Floods
- Ground water movement/quantity/quality
- Habitat for and numbers or diversity of species of plants, fish, or other wildlife
- Unique species
- Fish or wildlife migration routes
- Releases or potential releases to the environment affecting public health, such as toxic or hazardous materials
- Land and shoreline use
- Recreation
- Water/storm water
- Sewer/solid waste
- Other governmental services or utilities

(a) The DNS fails to consider the adverse environmental impacts of the proposal because the Applicant's calculations of impervious surface are incorrect in the SEPA checklist and/or the DNS understates the impacts because of incomplete information provided by the Applicant. Insofar as we have been able to ascertain from the incomplete documents in the file, the actual impermeable surface cover for the project will be 58% instead of the 36% suggested in the SEPA Checklist.

(b) The DNS could not have properly considered the full impact of the project because of lack of sufficient information to do so. The file documents do not state the size of detention pipes running to 15th Avenue NE. The file documents do not state the capacity of the northwest retention pond or, as noted at A.9 in regards to an alternate description of this area by the Department in the decision document, whether the northwest retention pond is still a feature of the development.

(c) The DNS understates and inadequately mitigates the significant adverse impacts of the development because it does not recognize the majority of storm water run off will end up in pipes shunted directly to 15th Avenue NE. According to a conversation with the Applicant in mid-January, only runoff from the portion of the site west of the lid over the covered garage will be detained in the northwest "pond" (assuming it still exists). Rainwater hitting the impermeable surfaces on the eastern 2/3 of the site will be shunted to pipes. While some unknown quantity of detention would occur in this section, there would be no filtering. We are skeptical of the idea the eastbound pipes installed will be of sufficient size to significantly detain storm water runoff from the considerable impermeable surfaces on this portion of the site.

- (d) The DNS fails to consider the drainage system in the area has already been judged by the Washington State Department of Ecology as being not yet in compliance with the Phase I Municipal Storm Water Permit issued February 2007.
- (e) The DNS fails to consider there are identified storm water capacity and handling problems within the Thornton Creek Drainage Area. The DNS offer no mitigations for handling the different storm water requirements of the site.
- (f) The DNS fails to consider the impact of impermeable surfaces connected with the proposal because the calculated roof area represented in the original plans filed December 2007 were modified in the Design Review process and never subsequently corrected.
- (g) The DNS fails to consider necessary mitigations connected with running the storm water pipes through the grove of trees to 15th Avenue NE. This would further damage the retained trees according to the independent arborist report.
- (h) The DNS fails to consider the cumulative impact of tree loss and loss of impermeable surface throughout the Thornton Creek Drainage Area (TCDA). As noted above, the Department incorrectly states the site is not in the TCDA.
- (i) The DNS understates the impact of an increase in storm water runoff from the site due to the loss of mature evergreen trees. Even if the canopy calculations are deemed correct, deciduous trees provide no significant canopy retention effect during the rainy season.
- (j) The DNS understates the impact of additional vehicle-generate waste that will enter the storm water system by accepting flawed estimates of the number of vehicles associated with the project. Local data shows around 20 vehicles associated with the project will be parked on the street. Vehicles are acknowledged to be the largest current contributor to pollutants reaching our lakes and streams. Overflow parking will likely remain in the Thornton Creek Drainage Area and may even extend into the Thornton Creek Watershed. Therefore, the project is improperly mitigated for this harm.
- (k) The DNS understates the impact of household wastes from a project that represents three times higher density per acre than surrounding properties.

7. Rush to decision

- (a) The DNS is flawed in several areas due to failure to consider, understating, or inadequate mitigation of significant adverse impacts to the environment. This is due to the Department's rush to issue the DNS. This results in significant impacts on substantially all the items in WAC 197-11-444.

- (b) By code, the Department must respond to an application within 120 days from the date of application. Despite this code requirement, the Department's own guidance indicates their goal is to meet this requirement in 80% of applications.
- (c) The code states the "clock" stops running when there is an outstanding Correction Notice. According to the file, and ignoring for a moment the question of whether the stated application effective date is valid, the clock on this application ran from December 26, 2007 until February 1, 2008 (37 days) when the first Correction Notice (Kemp) was issued. It is unclear whether all these items have been responded to, but the earliest this Correction Notice could have been cleared is March 26 when the Applicant filed a traffic response document.
- (d) A Zoning Correction Notice was issued on February 11, 2008 by DPD Planner Darlene Edwards. The items on this Correction Notice have not been answered. None of the cited site "sheets" in the Correction Notice have been updated since their original filing in December
- (e) Documents obtained in a Public Disclosure Request to the Department indicate the Edwards Correction Notice was still outstanding and that Ms. Edwards stated the DNS decision should not be made until the Correction Notice was satisfied. Upon direct pressure from Applicant's law firm, the Department published the DNS on Applicant's schedule anyway. **It is difficult to imagine how the DNS could accurately judge the environmental impact of the project when the necessary file documents are not complete.** Applicant promised to have the documents filed "within a couple of days of publishing," but these documents were not in the file as of two weeks after the DNS publish date.
- (f) Another Correction Notice, which does not appear in the file, was issued by DPD's John Shaw. Because this traffic-related Correction Notice is not in the file, we cannot know whether it has been satisfied or when.
- (g) A fourth Correction Notice should have been issued on or around the official SEPA Public Comment hearing on February 11, 2008 requiring additional toxicity studies at Waldo Hospital. There appears to be no Correction Notice and the document requesting additional data from the Applicant concerning site toxins was never transmitted to the file or Appellant despite requests for the document. The response to this request came on April 9.
- (h) Using the dates most complimentary to the Applicant, the application was considered complete on December 26. The first Correction Notice was made on February 1, taking 37 days off the clock. Working with the March 26 date as the latest date for an affirmative response, the SEPA determination was issued on May 1, covering 36 days. The total review time by DPD was 73 days of the 120 allowed.

- (i) DPD made their decision nearly 7 weeks early. That increases to 8 weeks if you use the April 9 date of the response to the additional environmental assessment required by DPD.

These facts demonstrate at least three points:

1. DPD had plenty of time to request, obtain, and review critical documents like the tree preservation plan and the demolition plan. They were under no time pressure based upon the code.
2. DPD acquiescence to the Applicant's timeline pressures further indicates bias unbecoming of the SEPA-responsible department. Applicant repeatedly communicated timeline difficulties due to Applicant's contractual relationship with the property owner. DPD, instead of taking the time necessary to complete a thorough review, rushed the review to help the Applicant meet the deadline.
3. Any delays in the application process were largely caused by Applicant's sloppy work and lack of attention to detail. Implications in the record that Appellant worked to delay the project are unsupported by the facts.

8. Reliability of Applicant to perform duties

- (a) The DNS inadequately mitigates the significant adverse impacts to the environment, even when mitigations are specified, insofar as those mitigations rely on the Applicant for performance and/or monitoring. This results in significant impacts on substantially all the items in WAC 197-11-444.
- (b) The DNS fails to consider, and therefore fails to adequately mitigate, environmental impacts since the Department regularly delegates to the Applicant the performance or monitoring of stated mitigations with little or no required oversight. This is an improper delegation of authority, particularly since the Applicant has demonstrated by its actions that the firm is not deserving of such trust. The record clearly shows the Applicant's application and other documents are riddled with errors. Given the demonstrated lack of attention to detail by the Applicant, Department mitigations should have regularly required independent, third-party monitoring of most activities.
- (c) Documents obtained in a Public Disclosure Request to the Department indicate the Applicant promised to have the documents covered in the Edwards Correction Notice filed "within a couple of days of publishing." Documents were not in the file as of two weeks after the publish date.

9. Traffic, parking, and pedestrian issues

The DNS fails to consider, understates, and/or inadequately mitigates the significant adverse impacts from increased traffic and insufficient parking due to the proposed project. The DNS inadequately mitigates the impacts because the SEPA-responsible official did not adequately verify information provided by Applicant and/or understated

the impact of the research provided to it by the MLCC prior to issuing the DNS. These failures result in significant impacts on the following partial list of items in the natural and built environments:

- Air quality
- Climate
- Surface water movement/quantity/quality
- Runoff/absorption
- Ground water movement/quantity/quality
- Plants and animals
- Habitat for and numbers or diversity of species of plants, fish, or other wildlife
- Unique species
- Fish or wildlife migration routes
- Amount required/rate of use/efficiency of energy or natural resources
- Source/availability of energy or natural resources
- Nonrenewable resources
- Environmental health
- Noise
- Risk of explosion
- Releases or potential releases to the environment affecting public health, such as toxic or hazardous materials
- Transportation systems
- Vehicular traffic
- Parking
- Parks or other recreational facilities
- Movement/circulation of people or goods
- Traffic hazards
- Other governmental services or utilities

- (a) The DNS understates the impacts of the proposed plan by relying on faulty information provided by the Applicant concerning parking and traffic conditions and impacts.
- (b) The DNS fails to consider concurrency requirements of the Growth Management Act (GMA) when evaluating the significant adverse impacts of the proposal and the significant adverse impacts of cumulative development in the area and city.
- (c) The DNS fails to consider existing violations of GMA concurrency rules, which would require the SEPA-responsible official to prohibit this development.
- (d) The DNS inadequately mitigates the proposed development to bring it in line with Seattle's Comprehensive Plan transportation policies.
- (e) The DNS fails to take into consideration the transportation policies in the Northgate Comprehensive Plan.

- (f) The DNS understates and inadequately mitigates for significant adverse impacts on the development on the signalized intersections of NE 80th Street and Lake City Way NE as well as 15th Avenue NE and Lake City Way NE. These intersections operate at LOS F and E respectively, but no mitigation measures are proposed.
- (g) The DNS understates and inadequately mitigates the unsignalized intersection of NE 85th Street and 15th Avenue NE, which will deteriorate from LOS D to E with the proposed project.
- (h) The DNS inadequately mitigates speeds on 15th Avenue NE in the immediate area of the proposed development. 85th percentile northbound flows are 36 mph and 35.7 mph, and southbound flows are 39.0 mph and 38.5 mph. The legal speed on 15th Avenue NE is 30 mph.
- (i) The DNS fails to consider the fact that the Lake City Multi-Modal Project has clearly identified the failure of the existing traffic infrastructure to accommodate the travel demand on the system, especially for left turns at the intersections of Lake City Way and both NE 80th Street and 15th Avenue NE. No Phase II plan has been developed for the funding necessary to correct these problems in the next six years as is required by State law prior to allowing additional development affecting these intersections.
- (j) The DNS understates the safety risk to pedestrians arising from added traffic, the unique location of this project in the neighborhood, the unique configuration of surface streets surrounding the project, and the design of the driveways and garages of the project.
- (k) The DNS inadequately mitigates the safety risk to pedestrians because of an inaccurate recording of conditions on requested departures mandated by the Design Review Board.
- (l) The DNS understates the impact of the unique street configuration surrounding the site. NE 86th Street bordering the north edge is a dead end. There is no street on the west side of the site. NE 85th Street bordering the south edge is also not a through street in the traditional sense, as it ends and requires through traffic to connect with 14th Avenue NE to continue moving through the area.
- (m) The DNS fails to consider the true impact of added traffic because it relies on ITE data that assumes traffic patterns that do not, in fact, exist at or near this unique project site.
- (n) The DNS fails to consider the cumulative impacts at the intersection of SR-522 and 15th Avenue NE. According to the Department, no mitigations are required because the intersection is already at LOS 'F'. A designation of LOS F only proves the city has not obeyed GMA-mandated concurrency and does not provide the SEPA-responsible official from requiring appropriate mitigation.

- (o) The DNS fails to consider concurrent projects that contribute or will contribute to the significant adverse impacts of development. There is no indication the SEPA-responsible official or the Applicant's traffic consultant considered concurrent projects. These projects include, but are not limited to, the following:
- Proposed upzones in the Northgate Overlay Zone
 - Proposed 145-unit/4,000 sq ft retail mixed use building at 20th Avenue NE and SR-522
 - Proposed tolling on SR-520 and/or I-90
 - Planned multi-use building 12051 Lake City Way NE
 - ~500 additional housing units, 52,000 sq. ft of retail, movie theatre at Thornton Place
 - Reservoir burying project
- (p) The DNS fails to consider and/or inadequately mitigates the true impact of parking of overflow vehicles from the proposed development. The parking impact for the site was understated due to an incorrect assumption of the likely number of vehicles owned by site residents. In addition, photos showing the extent of parking during recreational activities at Maple Leaf Playground contradict Applicant's claims of the number of available spaces.
- (q) The DNS fails to consider and/or inadequately mitigates the true impact of overflow vehicle parking, caused by too few parking spaces for the likely number of cars for the proposed development, in terms of the cumulative increase in on-street parking demand from the future reservoir park.
- (r) The DNS inadequately mitigates the significant adverse effects because the SEPA-responsible official did not adequately consult other departments and agencies. One example of this can be seen in A.55 above (The "Traffic Mitigation Measures" contains several items that SDOT and DPD staff said would not be allowed at an April 15, 2008 meeting between DPD staffers Scott Kemp and John Shaw, SDOT staffer Luke Korpi, and MLCC representatives David Miller and Barbara Maxwell.) Public Disclosure Requests indicate that despite an agreement among parties at the meeting mentioned above to respond to issues raised in the meeting prior to a threshold determination, the Department sought no additional feedback from SDOT prior to issuing the DNS.
- (s) The DNS fails to consider, understates, and/or inadequately mitigates the proposed development because Applicant's experts relied on inaccurate, incomplete, misleading, and/or out-of-date development plans and/or inaccurate, incomplete, misleading, and/or out-of-date site characteristics. The SEPA-responsible official based decisions upon the Applicant's experts, who may have offered different opinions if they were provided accurate information. The SEPA-responsible official based decision on inaccurate, incomplete, misleading, and/or out-of-date information in the file.

- (t) The DNS fails to consider the interruption to recreation the site plan represents. Generations of neighbors have used the site for recreation either by participating in sponsored programs or using it without permission as a site for picnics, walks, fireworks watching, and/or dog walking. The site plan substantially interferes with some, and prevents most, of these activities.
- (u) The DNS fails to consider cumulative increases in vehicle and pedestrian traffic that will visit the park atop the reservoir when it is completed.
- (v) The DNS fails to consider the loss of commercial space at this location is detrimental to the goal of walkable communities as stated in Seattle's Comprehensive Plan, the Northgate Plan, and other rules, goals, and laws intended to benefit the environment.
- (w) The DNS inadequately mitigates the traffic and pedestrian impacts of no vehicle traffic on the grounds of the site. No mitigation for a loading zone is provided. Proposed surface pathways are incompatible with wheeled vehicles of the type likely used to transport heavy items from street or garage to interior units.
- (x) The DNS fails to consider the significant impact of missing and/or inadequate ADA-compliant facilities and features. There is no elevator from the garage. The driveway is dangerously narrow, due to the granted code departure, placing disabled persons on foot or in wheelchairs at risk of serious injury if a vehicle tries to use the ramp when the disabled person is entering or exiting from the garage. Proposed surface pathways are incompatible with movement aides typically used by disabled or differently-abled persons (walkers, in particular).
- (y) The DNS fails to consider the impact of multiple garbage and recycling service vehicles on traffic, mass transit, and pedestrian activity in the area. According to garbage experts within SPU, there will be approximately five refuse pickups, five recycling pickups, and an unknown number of food waste pickups each week. All pickups on NE 86th Street involve the utility vehicle backing on to NE 86th Street from 15th Avenue NE, which creates significant safety and delay issues at an intersection already defined as needing sight-line mitigation.

10. Design

The DNS understates or inadequately mitigates the significant adverse impacts from the proposed unit locations and architectural design of the proposed project. The DNS inadequately mitigates the impacts because the SEPA-responsible official did not adequately verify information provided by Applicant, relied on inaccurate information provided by Applicant, and/or understated the impact of the research provided to it by the MLCC prior to issuing the DNS. These failures result in significant impacts on the following partial list of items in the natural and built environments:

- Conservation and renewable resources
- Scenic resources

- Environmental health
 - Noise
 - Housing
 - Aesthetics
- (a) The DNS inadequately mitigated the proposed development because the site plans, architectural renderings, and elevation illustrations were deceptive, inaccurate, omitted key details, and/or not updated in a timely fashion.
 - (b) The DNS fails to consider important issues because the DNS was issued despite an outstanding Correction Notice related to uncorrected inaccuracies in the site plans.
 - (c) The DNS inadequately mitigated the proposed development because decisions were made by the Design Review Board (DRB) and/or SEPA-responsible official based upon faulty records of key meetings and decisions.
 - (d) The DNS inadequately mitigates the proposed development because zoning departure conditions required by the DRB were not recorded correctly in the document.
 - (e) The DNS inadequately mitigated the proposed development because the Applicant never provided DRB-requested alternatives, information, and/or corrected information and the SEPA-responsible official and/or the DRB proceeded to make decisions based upon incomplete or faulty information. The DRB failed to pursue changes it requested, but that Applicant never responded to.
 - (f) The DNS inadequately mitigated the proposed development because Applicant's experts relied on inaccurate descriptions of the proposed development plans and/or inaccurate information about site characteristics. The SEPA-responsible officials based decisions based upon the Applicant's experts, who may have offered different opinions if they were provided accurate information.
 - (g) The DNS inadequately mitigated the proposed development because the Applicant chose to not respond, or respond insufficiently to DRB requests during Early Design Guidance (EDG) and/or Design Guidance (DG) meetings.
 - (h) The DNS inadequately mitigated the proposed development because Department staff improperly interfered with the independent Design Review process by telling the DRB to pass the project out of Design Review at the second DG meeting.
 - (i) The DNS inadequately mitigated the proposed development because the Applicant and/or the DRB failed to follow and/or inadequately interpreted Design Review guidelines despite repeated requests from MLCC and other to do so.
 - (j) The DNS inadequately mitigates the height, bulk, and scale of the proposed units. As proposed, the units are out of character with the surrounding community.

- (k) The DNS inadequately mitigates the narrow spaces between many buildings as indicated on the site plan. As proposed, the narrow spaces between units in the development are out of character with the surrounding community.
- (l) The DNS inadequately mitigates the proposed development because the design, site plan, and other aspects contradict the Seattle Comprehensive Plan and Seattle Zoning rules.
- (m) The DNS inadequately mitigates the proposed development because the design, site plan, and other aspects contradict the Seattle Comprehensive Plan and Seattle Zoning rules for development adjacent to single family zoning.
- (n) The DNS inadequately mitigates the unfortunate and unwelcome resemblance of the site design to an isolated, gated community in the middle of a one of the most vibrant and active communities in the city of Seattle.

11. Utility capacity

The DNS fails to consider the significant adverse impacts of the development due to inadequate utility capacity and/or substandard utility infrastructure. The DNS inadequately mitigates the impacts because the SEPA-responsible official did not adequately verify information provided by Applicant, consult adequately with other agencies/departments, and/or understated the impact of the research provided to it by the MLCC prior to issuing the DNS. These failures result in significant impacts on the following partial list of items in the natural and built environments:

- Odor
- Public water supplies
- Plants and animals
- Habitat for and numbers or diversity of species of plants, fish, or other wildlife
- Unique species
- Fish or wildlife migration routes
- Amount required/rate of use/efficiency of energy and natural resources
- Source/availability of energy and natural resources
- Nonrenewable resources
- Conservation and renewable resources
- Environmental health
- Noise
- Releases or potential releases to the environment affecting public health, such as toxic or hazardous materials
- Transportation systems
- Vehicular traffic
- Parking
- Movement/circulation of people or goods
- Traffic hazards

- Public services and utilities
 - Water/storm water
 - Sewer/solid waste
 - Other governmental services or utilities
- (a) The DNS inadequately mitigates the impacts of inadequate design and insufficient capacity of garbage and recycling facilities at the site. The current design does not have space for adequate-sized food waste recycling containers that are currently required for single-family homes and will be required for multi-family installations coincident with the issuance of the occupancy permit.
- (b) The DNS inadequately mitigates the impact of garbage and recycling truck traffic to service the single unit and multi-family garbage and recycling facilities. At the current design and based upon MLCC conversations with garbage experts within SPU, there will be approximately five refuse pickups, five recycling pickups, and an unknown number of food waste pickups each week. This will generate significant additional noise that does not exist with the current use. Additionally, the increase in traffic and street parking from the proposed development will delay utility vehicles, creating a significant adverse impact on utilities.
- (c) The DNS fails to consider the significant adverse impact on water pressure of the development because any analysis done was based upon faulty information provided by the Applicant. Water pressure at homes near the development is notoriously low. Area residents have been told by City personnel that sewer and water infrastructure in the area are at capacity. The Applicant's filed documents suggest plans to tie in the water mains on 15th Avenue NE and 14th Avenue NE will be sufficient to fix this problem. Records obtained from the Seattle Public Utilities (SPU) offices indicated these water mains are already connected so the proposed utility design will not be sufficient to mitigate this impact.
- (d) The DNS fails to consider or inadequately mitigates the impact on all utility aspects because the SEPA-responsible official did not have adequate communications with other agencies and departments prior to issuing the DNS.
- (e) The DNS fails to consider existing inadequacies in the sanitary sewer system caused by a lack of separation of sanitary and storm sewer service lines.
- (f) The DNS fails to consider, understates, and/or inadequately mitigates the proposed development because Applicant's experts relied on inaccurate, incomplete, misleading, and/or out-of-date development plans and/or inaccurate, incomplete, misleading, and/or out-of-date site characteristics. The SEPA-responsible official based decisions upon the Applicant's experts, who may have offered different opinions if they were provided accurate information. The SEPA-responsible official based decision on inaccurate, incomplete, misleading, and/or out-of-date information in the file.

12. Cultural and Historic significance

The DNS fails to consider the significant adverse impacts from the demolition of the historical and/or culturally important Waldo Hospital and irreversible alteration of the historical and/or culturally important landscaping of the grounds. The DNS inadequately mitigates the impacts because the SEPA-responsible official did not consider the historic and/or cultural impacts because the Seattle Landmark Preservation Board voted not to designate the site as a Seattle Landmark. These failures result in significant impacts on the following partial list of items in the natural and built environments:

- Unique physical features
 - Nonrenewable resources
 - Conservation and renewable resources
 - Scenic resources
 - Aesthetics
 - Historic preservation
 - Cultural preservation
- (a) The DNS failed to consider the fact the majority of members of the Landmark Preservation Board at the designation hearing declared Dr. Waldo was a significant figure on the regional and national level. Procedural errors during the Landmark Designation Hearing prevented this finding, and others, from properly translating into a vote to designate Waldo Hospital and the grounds as a Seattle Landmark.
- (b) The DNS fails to consider the cultural significance of Dr. Waldo and Waldo Hospital to the surrounding neighborhood, the practice of osteopathy, and the development of alternative medicine locally, regionally, and nationally.
- (c) The DNS fails to consider the aesthetic significance of Waldo Hospital and the surrounding landscaping to the neighborhood. It also does not consider the importance of the site, culturally or historically, to the neighborhood and city.
- (d) The DNS fails to consider the significant harm of the cumulative effects of loss of community cultural reference points.
- (e) The DNS fails to consider the nonrenewable nature of a culturally and/or historically significant building like Waldo Hospital. Once it is gone, it is gone forever and cannot be recreated.

13. Public safety

The DNS fails to consider the significant adverse impacts to public safety from the planned site design and architecture. The DNS inadequately mitigates the impacts of the closeness of housing units and/or the extended roof eaves because the SEPA-responsible official did not adequately verify information provided by Applicant and/or understated the impact of the research provided to it by the MLCC prior to issuing the DNS. These

failures result in significant impacts on the following partial list of items in the natural and built environments:

- Risk of explosion
 - Releases or potential releases to the environment affecting public health, such as toxic or hazardous materials
 - Light and glare
 - Fire
 - Police
 - Other governmental services or utilities
- (a) The DNS failed to consider barriers to providing adequate fire protection. Two examples of these barriers are:
- It is unlikely a firefighter wearing respirators and other protective gear could pitch and/or climb a ladder to reach a 35' roof when the distance between houses is just six feet and the eaves extend 18" towards the open space between the houses.
 - There is no emergency vehicle access to the grounds of the site. All equipment must be carted in on a bumpy wooden boardwalk and any injured residents or visitors must be carted out the same way.
- (b) The DNS failed to consider danger to law enforcement officers represented by site design of marshy areas, several dark and narrow corridors between houses, and allowance of many small fences interior to the property. Sufficient lighting required to mitigate this hazard would create glare issues.
- (c) The DNS fails to consider the single entrance and exit to the parking garage, combined with the practice of "stacking" cars in spaces, contributes to the likelihood of loss of life and explosion in case of fire or earthquake. It also provides a barrier to effective firefighting.
- (d) The DNS fails to consider the existing low water pressure in the area as an impediment to fighting fires in a development that has three times more density per acre than surrounding areas.
- (e) The DNS fails to consider impacts to the eventual occupants of the proposed development due to the potential for accidents or spills at the chlorination facility immediately across the southwest property line from three units. These units will be mere feet from the building.

C. Other items for consideration

1. Effective date of application

- (a) The effective date for the application is in December 2007. The application provided by the Applicant was not complete until, at the earliest, late January 2008. The

Department acknowledged that the initial application was not complete by renoticing the project, but then refused to assign a new effective date. Two examples of the incomplete nature of the initial application was the lack of a transportation analysis (arrived January 23, 2008) and no tree protection plan (dated March 24, but not available in the public file until some time in April).

- (b) The insufficiency of responses to certain Correction Notices issued by the Department, the insufficiency of other documents filed by the Applicant, and the absence of required documents indicate the application should still not be considered complete.

2. Biased process

- (a) In its earliest communications to the applicant, DPD indicated a full EIS was not likely to be required. (DPD File Letter dated January 29, 2007 to DPD employee Lucas Deherrera from applicant).
- (b) Behavior during public meetings and elsewhere of Department staffers key to the threshold determination and/or Design Review process indicated bias against community interests and for the Applicant's interests.
- (c) Particularly damaging was the statement by Vince Lyons, head of the Design Review program for the Department, declaring to the DRB that the second Design Guidance meeting was to be the last meeting of the Board on this project. This statement occurred before any presentation by the Applicant or comment from the public, thus suggesting public input was irrelevant. It also suggested a decision had been reached prior to a full airing of impacts, review of responsiveness to DRB guidance, and community concerns.
- (d) The SEPA-responsible official (Kemp) lobbied another planner (Edwards) on behalf of Applicant to allow the DNS decision to be published on Applicant's deadline despite an outstanding Correction Notice. There is no record of Kemp following up with Applicant when Applicant failed to make good on their promise to submit the corrected documents "a couple of days" after the DNS was filed.
- (e) The Department communicated the exact expected date of the DNS to Applicant while refusing to do so to Appellant.
- (f) The Department communicated to Applicant that the second Design Guidance meeting would be the final one several days prior to the meeting.
- (g) In early communications, the Department expressed pleasure with the proposed design prior to any ability by the community to review or comment on the proposals.

3. Interference with public participation

The incomplete and error-filled materials submitted by the Applicant interfered with the public's ability to adequately comment on the project and/or adequately prepare for provided comment periods. The following list provides some, but not all, examples:

- (a) A review of the early public comment letters in the file reveal many letters cite incorrect data provided by applicant about the number of trees saved. The overstatement of tree retention influenced public opinions on the project.
- (b) The original environmental review of the Waldo Hospital building incorrectly stated no lead was present. Corrected material was made available on April 9, almost two months after the SEPA-mandated public meeting and less than three weeks before the DNS.
- (c) Site plans were incorrect, never updated, and did not show critical elements to scale. The scale on many of the site plans was incorrect or conflicted with statements made by Applicant and DPD officials.
- (d) The tree protection plan was not added to the file in a timely fashion and was not made available for review, despite requests from the MLCC, prior to the time it was presented at the April 3, 2008 DRB meeting.
- (e) The information presented to the DRB at the April 3, 2008 meeting differed importantly from the materials included in the file copy and the materials provided to the MLCC. One example of this is the Applicant's presentation included information on the garbage areas that was not included in the file materials. This was something the DRB requested at two prior meetings, so Applicant had no excuse to not include it in the file material.