EXHIBIT #30

CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT
9611 SE 36TH STREET | MERCER ISLAND, WA 98040
PHONE: 206.275.7605 | www.mercerisland.gov

CITY USE ONLY		
PROJECT#	APPEAL#	FEE
Date Received:		
Received By:		

APPEAL

SITE ADDRESS OF PROPERTY WHERE THE DECISION IS BEING APPEALED: 3700 E Mercer Way, Mercer Island, WA 98040		
PROPERTY OWNER NAME: Herzl-Ner Tamid Conservative Congregation	ADDRESS: Same as above	PHONE: (206) 232-8555 E-MAIL: info@h-nt.org
APPELLANT NAME (If different from property owner): Same as above	ADDRESS: Same as above	PHONE: Same as above E-MAIL: Same as above
APPELLANT ATTORNEY INFORMATION (if applicable): Josh Friedmann	ADDRESS: 999 Third Ave., #4600, Seattle WA	PHONE: (206) 470-7655 E-MAIL: josh.friedmann@hcmp.com

What is the decision that you are appealing? Include any applicable project file number.

Per MICC 19.21.200(A)(2), (A)(4) and other applicable authority, the above-named Appellant (as applicant for the subject decision and as owner of the subject property) appeals the current text of mitigation measures and conditions that the City has drafted as part of a determination of non-significance issued under application SEP 24-003.

Appellant appreciates the City's work and its MDNS issuance, but unfortunately must assert that its mitigations, as currently drafted, are not legally or factually compliant with applicable SEPA law and regulations.

What are your reasons for appealing this decision? (Attach additional pages if necessary)

(You must indicate specifically that there were substantial errors, the decision is unsupported by the facts presented, the decision is in conflict with the standards for review of the action or there were irregularities in the procedure. Attachments or supporting information may be included.)

Please see attached Appeal for Modification of Condition Text in Revised MDNS, especially at Section V ("Specific Assignments of Error.")

What is the outcome or changes in the decision that you are seeking? (Attach additional pages if necessary)

Please see attached Appeal for Modification of Condition Text in Revised MDNS, especially at Section II ("Modification Requested") and Section VI ("Requested Relief").

Signature: Josh Friedmann **Date:** April 17, 2025

BEFORE THE HEARING EXAMINER FOR MERCER ISLAND

In the matter of the Revised Mitigated Determination of Nonsignificance (MDNS) issued for 3700 E Mercer Way on April 7, 2025	Hearing Examiner File No. _____ SEPA Application No. SEP24-003 **APPEAL FOR MODIFICATION OF CONDITION TEXT IN REVISED MITIGATED DETERMINATION OF NON-SIGNIFICANCE**

I. INTRODUCTION AND DECISION BEING APPEALED

Pursuant to Mercer Island City Code ("MICC" or "Code") 19.21.200(A)(2), (A)(4) and other applicable authority, Herzl-Ner Tamid Conservative Congregation ("Appellant") hereby appeals the current text of mitigation measures and conditions ("Contested Conditions") drafted by the City of Mercer Island ("City") as part of the Revised Mitigated Determination of Non-Significance issued April 7, 2025 ("Revised MDNS") under file no. SEP24-003.[1] The Revised MDNS concerns Appellant's Barnabie Point Project ("Project") which proposes to provide a new preschool and K-8 school with rental offices, shared parking, and associated site improvements on

[1] The City initially issued an MDNS for the Project on March 17, 2025 ("Initial MDNS"), under the same file number. Due to a potential error in execution of public notice procedures for the Initial MDNS, the City on April 7, 2025 simultaneously withdrew the Initial MDNS and published the Revised MDNS. The Revised MDNS did not change the MDNS Condition Text at issue in this appeal.

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Appellant's assemblage of property ("Site") at 3700 East Mercer Way. A copy of the Revised MDNS is attached as ***Exhibit A.***

The Appellant appreciates the City's work and its Revised MDNS issuance, but unfortunately must respectfully assert that the Contested Conditions are legally erroneous under the the State Environmental Policy Act, Ch. 43.21c RCW ("SEPA") and applicable implementing regulations, insofar as the Contested Conditions are (A) not sufficiently based on specific, probable, and adequately identified adverse environmental impacts; (B) not sufficiently necessary; (C) not sufficiently reasonable or capable of accomplishment; and (D) do not contain required citations.

II. MODIFICATION REQUESTED.

For the City's convenience and to aid in resolution of this dispute, the Appellant below provides the requested modifications and clarifications ("Requested Modifications") that would allow the Contested Conditions to be workable for the Project, which would enable the Appellant to withdraw this appeal without delay. The Requested Modifications would correct for two concerns: unnecessary vagueness in some text, and unnecessary prescriptiveness in other text.

1. Provide a left turn lane from southbound East Mercer Way to the Frontage Road serving the site. All lane widths (left and through) shall comply with American Association of State Highway and Transportation Officials ("AASHTO") and Washington State Department of Transportation ("WSDOT") standards**, or to functionally adequate and appropriate specifications as may reasonably approved by the City Engineer if needed to make this condition reasonable and capable of being accomplished**. The turn lane length shall be designed to accommodate left turn demand during the AM and PM peak hour**, and during the site's peak hour if that site peak hour** ~~**and site peak if it**~~ does not coincide with the AM and PM peak hour.

2. The addition of the southbound left turn lane may reduce the length of adjacent northbound left turn lane at the SE 36th Street/East Mercer Way intersection. Verify with a traffic operations analysis that, with the addition of the southbound left turn lane to the Frontage Road, the northbound left turn lane at the SE 36th Street/East Mercer Way intersection will have sufficient storage length to accommodate vehicles during the AM and PM peak hours.

3. Confirm adequacy of curb radii for right turning **P and S-BUS-40** vehicles exiting from the Frontage Road onto northbound East Mercer Way based on lane width designed for East Mercer Way if lane width is narrower than existing condition. Modify curb radii if **reasonably** warranted **and capable of being accomplished**.

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4. The Transportation Impact Analysis states that the school bus unloading/loading will occur at the east end of the school. The site plan and circulation plan do not show the location of the bus loading zone or walkways along the east side of the building for students to access the bus loading zone. Revise the site plan and circulation plan to show the bus loading zone and how students will safely access the bus loading zone. Parent drop-off and pick-up traffic will also use the roadway east of the school. The Transportation Impact Analysis should describe how the school buses will safely interact with parent drop-off and pick-up queuing and traffic that is using the same roadway.

A freestanding copy of the Requested Modifications has also been provided to applicable City staff for their consideration and convenience, and that freestanding copy is also attached as ***Exhibit B*** to this Appeal.

III. APPELLANT'S INTERESTS AND STANDING

The Appellant is a Washington nonprofit corporation. The Appellant's mailing address is at the Site, 3700 East Mercer Way, Mercer Island, WA 98040. The Appellant's attorney is Josh Friedmann, whose mailing address is 999 Third Avenue, Ste. 4600, Seattle, WA 98104.

The Revised MDNS provides that "[a]ny party of record may appeal this determination" by timely filing a complete appeal and paying the applicable fee. *Id.* at 2. The Appellant is a party of record with standing to file this appeal because the Appellant is the applicant for the subject SEPA review, is the applicant and proponent of the underlying Project, and is the owner of the Property. *See generally* RCW 43.21C.075.

The Appellant is aggrieved by the Contested Conditions, because if they are sustained, they jeopardize the Appellant's ability to be confident in this nonprofit Project's viability.

IV. JURISDICTION AND AUTHORITY

The City's Revised MDNS is appealable to the Examiner generally under MICC 19.21.120 and 19.21.200(A), and the Contested Conditions are specifically appealable under MICC 19.21.200(A)(2) and (A)(4). The Appellant does not challenge the City's underlying determination that the Project will not have a probable, significant adverse impact on the environment, if completed with appropriate mitigation measures. However, the Appellant must petition for clarifying revisions of the City's description of those mitigation measures.

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V. SPECIFIC ASSIGNMENTS OF ERROR

Appellant respectfully submits that the Revised MDNS's Contested Conditions are incorrect as currently drafted because they are substantially erroneous, inadequately supported by evidence in the record, and conflict with applicable legal standards. MICC 19.15.130(C), (D)(4), (G)(1).[2]

The Appellant submits that the Requested Revisions would resolve the most critical uncertainties created by the Contested Conditions. However, absent such revisions, the Appellant must submit each of the following reasons why the Contested Conditions are substantially erroneous, insufficiently supported, and conflicting with applicable legal standards.

A. The Current Conditions, as Drafted, are Not Adequately Based on Specific, Probable, and Adequately Identified Adverse Environmental Impacts.

First, the Contested Conditions are substantially erroneous, insufficiently supported, and impermissibly in conflict with standards because they are not sufficiently based on specific, probable, and adequately identified environmental impacts within the meaning of RCW 43.21C.060, MICC 19.21.040 and 19.21.190(B)(1), WAC 197-11-660(1)(b) and other applicable law. These and other legal authorities require that all adopted SEPA mitigation conditions mitigate specific, adverse environmental impacts that have been adequately identified in appropriate environmental documents. *Id.* Notably, the Code augments the baseline statewide requirements of SEPA, by only allowing mitigation conditions where the identified, specific adverse project impacts are also *probable*. MICC 19.21.190(B)(1). The record does not include a finding of such probability.

Perhaps most notably, the Contested Conditions' prescriptive and inflexible right-of-way construction widths (as set forth in Condition 1) would not mitigate adverse environmental impacts that are sufficiently specific, probable, or adequately identified. While the City does

[2] At present, the Appellant does not have specific reason to believe that procedural irregularities occurred, but reserves the right to amend its appeal with such claims if evidence of such irregularities is uncovered during the appeal process.

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reasonably anticipate that the Project will generate new vehicle trips, the City has not adequately identified any specific, probable adverse impacts from such trips, or cited any evidence of anticipated road degradation or safety concerns that can be imputed to the anticipated traffic and therefore can serve as a legal basis for prescriptive and inflexible right-of-way dimensions required by the Contested Conditions.

While the Revised MDNS includes a conclusory statement that the City's consultant "identified aspects of the project which would likely have significant impacts without proper mitigation," and therefore the City "has incorporated the comments . . . into the SPEA threshold determination as required mitigation measures to ensure that these issues are addressed by the applicant," neither these conclusory statements nor any known supporting records identify such impacts specifically, and certainly do not adequately document that any such impacts are also probable.

B. The Contested Conditions, As Drafted, Are Not Necessary.

Next, the current text of the Contested Conditions is substantially erroneous, insufficiently supported, and impermissibly in conflict with standards because the Contested Conditions are both unnecesarily vague in some terms and unnecessarily prescriptive and inflexible in other terms. Neither problematic vagueness, nor problematic prescriptiveness, is necessary. Therefore, the current text impermissibly contravenes MICC 19.21.190.B.1 (augmenting RCW 43.21C.060 and WAC 197-11-660 with a codified requirement for *necessity*).

The Appellant only desires to retain the opportunity to seek reasonable deviations in the event that alternative configurations that provide functional and safe roadways. In this instance, the City cannot show that the Contested Conditions' current prescriptive roadway configurations, nor its currently vague undefined terms, are *necessary*. Simply put, the City cannot legally require one specific mitigation configuration where others are available, perfectly adequate (if not functionally equivalent) for resolving environmental concerns, and more reasonable for this nonprofit to provide.

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C. The Contested Conditions, As Currently Drafted, Are Not Reasonable, and May Not Be Capable of Being Accomplished.

Further, the current text of the Contested Conditions is substantially erroneous, insufficiently supported, and impermissibly in conflict with standards because the Contested Conditions as currently drafted are not reasonable, and may not be capable of being accomplished, within the meaning of RCW 43.21C.060, MICC 19.21.040 and 19.21.190(B)(3), and WAC 197-11-660(1)(c).

The current text of the Contested Conditions is not *reasonable* within the meaning of applicable SEPA rules for two reasons. First, it is not reasonable for the Appellant to adhere to strict codified standard roadway designs, without any allowance for sound engineering judgment or reasonable deviations that may become necessary, given engineering conditions on the ground. Second, the Contested Conditions are not reasonable insofar as their currently vague terms leave the Appellant unsure how they will be interpreted and applied to actual civil engineering proposals. The Requested Modifications would cause them to be more reasonable both by being clearer and by being more flexible in their implementation.

Further, the current text of the Contested Conditions might not even be *capable of being accomplished* for two reasons. First, the application of <u>two</u> standard sets of drawings (AASHTO *and* WSDOT), without any specific allowance for deviation or engineering judgment, may create irreconcilable conflicts between these two sets of standards, other applicable law or standards, or engineering constraints such as topography, geography, or property rights. For example, the shoulder width for WSDOT is wider than the shoulder width for AASHTO, leaving the applicant with a lack of clarity about which shoulder dimension the City will ultimately require. At this stage in design, so far in advance of right-of-way design, it is impossible to know whether this level of prescriptiveness is capable of being accomplished or not. Secondly, vague terms in the Contested Conditions allow for a wide range of later interpretative or implementing judgments that could render the site incapable of providing the requested mitigations, for many different

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reasons. For example, roadway widening subject to uncertain constraints or standards could be problematic in the event of a conflict with preexisting stormwater facilities or underground utilities.

The Requested Modifications would, from the Appellant's perspective, render the Revised MDNS's conditions sufficiently reasonable and capable of being accomplished.

D. The Contested Conditions, As Currently Drafted, Are Not Adequately Supported by the Required Policy Citations.

Finally, the current text of the Contested Conditions is substantially erroneous, insufficiently supported, and impermissibly in conflict with standards because the Contested Conditions are not sufficiently supported by policy citations to the extent required by RCW 43.21C.060, MICC 19.21.040 and 19.21.190(B)(5), and WAC 197-11-660(1)(b). Importantly, the Code adds an additional, common-sense requirement to underlying SEPA guidelines, by specifying that the applicable license or other decision document *must include a citation* to the one or more policies upon which any conditioning is based. *See* MICC 19.21.190.

Here, the City has erred by failing to satisfy the state SEPA statute's baseline requirement as well as its own elevated standard. The Revised MDNS includes no citation to MICC 19.21.190 generally, and certainly no citation to the SEPA policy documents listed in MICC 19.21.190.D.3 specifically. Unless the City can proffer documentation where the required citations are written in connection with the Revised MDNS, the current text of the Contested Conditions fail on their face to comply with the Code, and substantively fails to comply with SEPA.

VI. REQUESTED RELIEF

The Appellant has respectfully requested that the City clarify or modify the current text of the Revised MDNS's Contested Conditions at the staff level. To preserve its rights, the Appellant hereby also requests that the Examiner exercise the Examiner's authority to grant the Requested Modifications under MICC 3.40.020(B)(2); or under MICC 19.15.130(G)(1) and (G)(2)

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(authorizing the Examiner's modification of the Contested Conditions with *or without* a finding of error).

DATED this 18th day of April, 2025.

HILLIS CLARK MARTIN & PETERSON P.S.

By
s/Josh Friedmann
Josh E. Friedmann, WSBA #52946
Attorney for Congregation Herzl Ner Tamid

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WITHDRAWAL OF MARCH 17, 2025 SEPA THRESHOLD MITIGATED DETERMINATION OF NON-SIGNIFICANCE (MDNS) – & ISSUANCE OF REVISED SEPA THRESHOLD MITIGATED DETERMINATION OF NON-SIGNIFICANCE (MDNS)

NOTICE IS HEREBY GIVEN for the application described below:
It has come to the City's attention that some parties of record were not provided notice of the March 17, 2025 MDNS as required by law. In order to provide required notice to all parties entitled to notice, the MDNS issued on March 17, 2025 is hereby withdrawn.

The City hereby issues this Revised MDNS in order to provide adequate notice to all parties entitled to such notice. This Revised MDNS does not substantively differ from the withdrawn March 17, 2025 MDNS. Rather, the Revised MDNS merely provides a new date of issuance and associated appeal filing deadline. Notice will be provided to all parties entitled to notice of this Revised MDNS.

Application No.: SEP24-003
Permit Type: Type III

Description of Request: Review under the State Environmental Policy Act (SEPA) for the construction of a new, three-story preschool and K-8 school with rental offices, shared parking, and associated site improvements. The preschool, K-8 school, and rental offices are proposed on parcel 0824059045, which are permitted uses in the B zoning designation. The shared parking and associated site improvements would be located in the R-9.6 zoning designation and are subject to a conditional use permit per MICC 19.02.010(C)(2).

Applicant: Anjali Grant / Herzl-Ner Tamid Conservative Congregation

Location of Proposal: 3700 E Mercer Way, Mercer Island, WA 98040
King County Assessor tax parcel numbers: 0824059045, 1515600010, 151560TRCT, and 2107000010

Lead Agency: City of Mercer Island, Department of Community Planning & Development

Project Documents: https://mieplan.mercergov.org/public/CUP24-001 and SEP24-003

Application Process Information:		
	Date of Application:	April 3, 2024
	Determined to be Complete:	April 24, 2024
	Bulletin Notice:	April 29, 2024
	Date of Mailing:	April 29, 2024
	Date of Sign Posting:	April 29, 2024
	Comment Period Ended:	5:00PM on May 30, 2024

The lead agency determined that the proposed development will not have a probably significant adverse impact on the environment. An environmental impact statement (EIS) is not required pursuant to RCW 43.21C.031(2). This decision was made after review of a

completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

☒	This MDNS is issued after using the optional DNS process in WAC 197-11-355. There is no further comment period on the MDNS.

Responsible Official: Ryan Harriman, Planning Manager
ryan.harriman@mercerisland.gov | (206) 275-7717

Issued Date: April 7, 2025 **Signature:** /s/ Ryan Harriman, Planning Manager

Findings:

1. The City's transportation consultant, KPG Psomas (KPG), reviewed the Traffic Impact Analysis with the associated Transportation Concurrency Certificate application (TCC24-004) and identified aspects of the project which would likely have significant impacts without proper mitigation. The City has incorporated the comments from KPG's review letters into the SEPA threshold determination as required mitigation measures to ensure that these issues are addressed by the applicant.

Mitigation Measures:

Pursuant to the provisions of RCW 43.21C.060, WAC 197-11-350, and the above Findings, the SEPA Lead Agency requires the following mitigation measures:

1. Provide a left turn lane from southbound East Mercer Way to the Frontage Road serving the site. All lane widths (left and through) shall comply with American Association of State Highway and Transportation Officials ("AASHTO") and Washington State Department of Transportation ("WSDOT") standards. The turn lane length shall be designed to accommodate left turn demand during the AM and PM peak hour and site peak if it does not coincide with the AM and PM peak hour.
2. The addition of the southbound left turn lane may reduce the length of adjacent northbound left turn lane at the SE 36th Street/East Mercer Way intersection. Verify with a traffic operations analysis that, with the addition of the southbound left turn lane to the Frontage Road, the northbound left turn lane at the SE 36th Street/East Mercer Way intersection will have sufficient storage length to accommodate vehicles during the AM and PM peak hours.
3. Confirm adequacy of curb radii for right turning vehicles exiting from the Frontage Road onto northbound East Mercer Way based on lane width designed for East Mercer Way if lane width is narrower than existing condition. Modify curb radii if warranted.
4. The Transportation Impact Analysis states that the school bus unloading/loading will occur at the east end of the school. The site plan and circulation plan do not show the location of the bus loading zone or walkways along the east side of the building for students to access the bus loading zone. Revise the site plan and circulation plan to show the bus loading zone and how students will safely access the bus loading zone. Parent drop-off and pick-up traffic will also use the roadway east of the school. The Transportation Impact Analysis should describe how the school buses will safely interact with parent drop-off and pick-up queuing and traffic that is using the same roadway.

APPEAL INFORMATION

EXHIBIT A TO APPEAL FOR MODIFICATION OF MDNS CONDITION TEXT

This decision to issue a Mitigated Determination of Non-significance (MDNS) rather than to require an EIS may be appealed pursuant to Chapter 19.21 of the Mercer Island Unified Land Development Code, Environmental procedures.

☒	Any party of record may appeal this determination to the City Clerk at 9611 SE 36th Street, Mercer Island, WA 98040 no later than **5 pm on April 21, 2025** by filing a timely and complete appeal application and paying the appeal fee. You should be prepared to make specific factual objections. Contact the City Clerk to read or ask about the procedures for SEPA appeals. To reverse, modify, or remand this decision, the appeal hearing body must find that there has been substantial error, the proceedings were materially affected by irregularities in procedure, the decision was unsupported by material and substantial evidence in view of the entire record, or the decision is in conflict with the city's applicable decision criteria.

EXHIBIT B TO APPEAL FOR MODIFICATION OF MDNS CONDITION TEXT:

MODIFICATION REQUESTED

For the City's convenience and to aid in resolution of this dispute, the Appellant below provides the requested modifications and clarifications ("Requested Modifications") that would allow the Contested Conditions to be workable for the Project, which would enable the Appellant to withdraw this appeal without delay. The Requested Modifications would correct for two concerns: unnecessary vagueness in some text, and unnecessary prescriptiveness in other text.

1. Provide a left turn lane from southbound East Mercer Way to the Frontage Road serving the site. All lane widths (left and through) shall comply with American Association of State Highway and Transportation Officials ("AASHTO") and Washington State Department of Transportation ("WSDOT") standards, or to functionally adequate and appropriate specifications as may reasonably approved by the City Engineer if needed to make this condition reasonable and capable of being accomplished. The turn lane length shall be designed to accommodate left turn demand during the AM and PM peak hour, and during the site's peak hour if that site peak hour ~~and site peak if it~~ does not coincide with the AM and PM peak hour.

2. The addition of the southbound left turn lane may reduce the length of adjacent northbound left turn lane at the SE 36th Street/East Mercer Way intersection. Verify with a traffic operations analysis that, with the addition of the southbound left turn lane to the Frontage Road, the northbound left turn lane at the SE 36th Street/East Mercer Way intersection will have sufficient storage length to accommodate vehicles during the AM and PM peak hours.

3. Confirm adequacy of curb radii for right turning P and S-BUS-40 vehicles exiting from the Frontage Road onto northbound East Mercer Way based on lane width designed for East Mercer Way if lane width is narrower than existing condition. Modify curb radii if reasonably warranted and capable of being accomplished.

4. The Transportation Impact Analysis states that the school bus unloading/loading will occur at the east end of the school. The site plan and circulation plan do not show the location of the bus loading zone or walkways along the east side of the building for students to access the bus loading zone. Revise the site plan and circulation plan to show the bus loading zone and how students will safely access the bus loading zone. Parent drop-off and pick-up traffic will also use the roadway east of the school. The Transportation Impact Analysis should describe how the school buses will safely interact with parent drop-off and pick-up queuing and traffic that is using the same roadway.

* * *

Once again, the applicant appreciates the City's hard work on this application and its issuance of the MDNS, and looks forward to working with the City to ensure that the final text of the MDNS conditions is reasonable, capable of being accomplished, and otherwise fully compliant with SEPA, the Code, and applicable regulations.