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BEFORE THE HEARING EXAMINER OF THE CITY OF MERCER ISLAND

In Re The Appeal of:

HERZL-NER TAMID CONSERVATIVE
CONGREGATION,

Appellant,

v.

CITY OF MERCER ISLAND, a Washington
State municipality,

Respondent.

No. APL25-003

CITY OF MERCER ISLAND’S
STAFF REPORT ON SEPA APPEAL

I. INTRODUCTION

The City of Mercer Island (“City”) submits the following Staff Report for the instant SEPA appeal pursuant to Hearing Examiner Rules of Procedure (“RoP”) 224(g). Appellant Herzl-Ner Tamid Conservative Congregation (“Appellant” or “Herzl”) proposes development activities (including the opening of a new day K-8 school) that will impact transportation operations at the intersection of East Mercer Way and Frontage Road. The Appellant’s development will increase overall vehicle trips, change the peak timing of trips, and will introduce new vehicle types (school buses). These conditions will present safety hazards and worsen vehicle operations if Appellant does not mitigate such impacts. Accordingly, the City imposed State Environmental Policy Act (“SEPA”) conditions on the

1 project, as necessary to mitigate probable adverse safety and vehicle operations impacts
2 resulting from the proposed development.

3 The hearing evidence and testimony will show that the City’s SEPA conditions are
4 appropriately designed to mitigate the probable adverse safety and vehicle operation issues
5 caused by Appellant’s project. Appellant’s appeal does not appear to dispute that its project
6 will require mitigation. Nor does Appellant’s appeal truly contest the substance of the required
7 SEPA conditions. Rather, Appellant appears to request wordsmithing of the conditions,
8 alleging that the conditions are both “vague” and “overly prescriptive.” The City understands
9 that drafting conditions is often a matter of delicate balancing. However, Appellant’s proposed
10 revisions, in the pursuit of flexibility, unduly weaken the conditions such that the conditions
11 would become unenforceable. The City’s goal in this proceeding is one of preserving vehicle
12 operations and safety for the traveling public, especially given that young school children will
13 utilize the intersection in question (both as passengers and as pedestrians). The City therefore
14 seeks strong, enforceable conditions to ensure the Appellant follows through on mitigating
15 the safety and vehicle operations impacts from development. The City stands by the
16 challenged SEPA conditions as written and respectfully seeks that the Hearing Examiner
17 affirm the City’s Revised MDNS and deny Appellant’s appeal.
18

19 II. FACTS

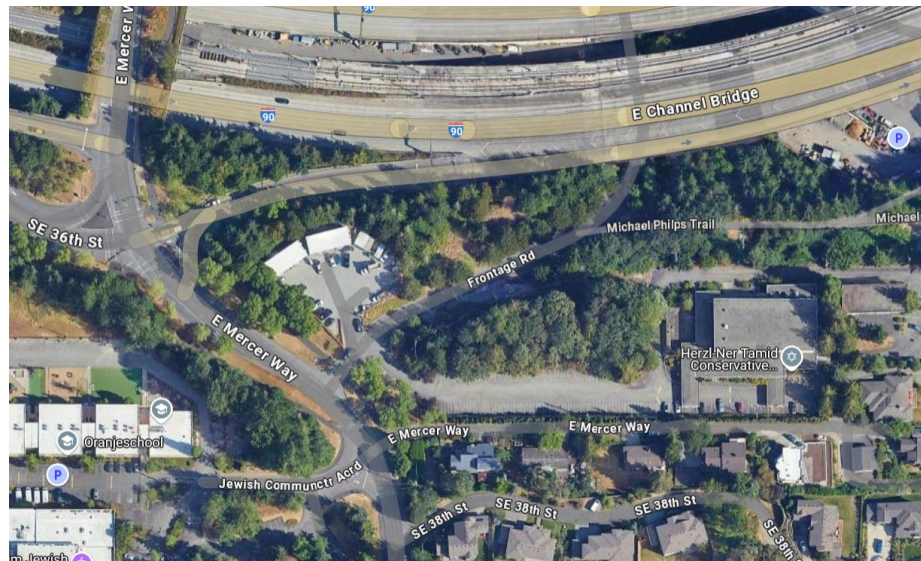
20 The Appellant proposes to construct a new, three-story K-8 school, with rental
21 offices, shared parking, associated site improvements, and a change of use tenant
22 improvement from religious school classrooms to preschool use. Ex. 1 at pp. 1-2. The new
23 school is expected to serve approximately 150 students; the project also anticipates the
24 construction of a new 12,300 square foot office building. Ex. 13 at p. 1. The new development
25
26

1 is expected to add vehicle trips to the East Mercer Way and Frontage Road intersection (the
2 “Intersection”). Ex. 13 at p. 2.

3 The location of Appellant’s Project lies just south of I-90, within the northeastern
4 portion of the City.

5 Vehicular access to the Barnabie Point K-8 School Project site and the
6 overall Herzl Ner Tamid campus is provided along the western edge of the
7 site from Frontage Road via E. Mercer Way. E Mercer Way is considered a
8 collector arterial adjacent to the project site. Access ramps to Interstate-90
are located approximately 400 feet to the northwest of the site.

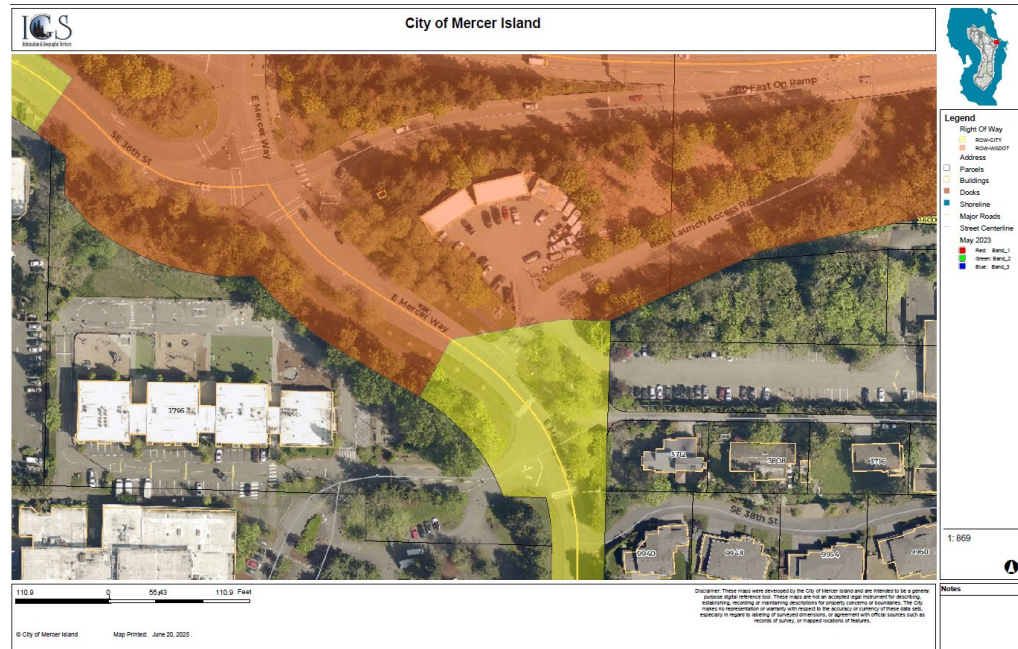
9 Ex. 5 at 29.



19 Vehicles accessing the Appellant’s project site are expected to make left-turning movements
20 from southbound East Mercer Way to east-bound Frontage Road, as well as right-turning
21 movements from westbound Frontage Road to northbound East Mercer Way. Ex. 12 at p. 11;
22 Ex. 13 at p. 2.

23 The Washington Department of Transportation (WSDOT) maintains rights-of-way
24 within the northern portion of East Mercer Way, very close to the Intersection. The map below
25
26

1 demonstrates approximate limits of such ROW, with the red evidencing WSDOT ROW, and
2 yellow representing City ROW).



13 Ex. 16.

14
15 Appellant's project underwent multiple rounds of transportation review between
16 February 2024 and February 2025. Exs. 2-4, 6-13. Early in the review process for the
17 proposed project, City Staff and transportation consultants KPG Psomas identified probable
18 adverse safety and vehicle operations impacts as a result of the Appellant's proposed
19 development. In May of 2024, City consultants identified the potential safety and vehicle
20 operation issues at East Mercer Way and Frontage Road:

21
22 In order to avoid impacts to E Mercer Way, consider adding a southbound
23 left turn lane at the E Mercer Way/Frontage Road intersection or other
24 channelization as needed based on the updated analysis.

25 Ex. 7 at p. 2.

1 In December of 2024, City consultants again identified issues at the intersection in
2 question, and again requested Appellant’s project team to address the issue:

3 The analysis should add an evaluation of a southbound left turn lane at the
4 Frontage Road/E Mercer Way intersection. A southbound left turn lane
5 would reduce impacts on southbound traffic flow on E Mercer Way during
6 peak commute times and reduce potential safety issues. There may be
adequate paved width to restripe E Mercer Way to 3 lanes without
significant widening.

7 Ex. 10, at p. 2. The City consultant team also identified trip timing issues—given the timing
8 of school drop-off and pick up. Ex. 4 at 1.

9 On February 7, 2025, City consultants issued a memorandum documenting their
10 review. Ex. 13. That analysis determined that:

11 Due to the high volume of southbound left turn vehicles, southbound
12 through vehicles, and opposing northbound vehicles, the E Mercer
13 Way/Frontage Road intersection will require a southbound left turn lane in
14 order to prevent blocking of traffic on East Mercer Way and promote safety
15 for drivers accessing the school and boat launch. During the AM peak hour,
16 the development expects 121 southbound left turns and high volumes of
17 northbound and southbound traffic (more than 900 AM peak hour vehicles
18 in both directions with an opposing volume of 470 vehicles). These volumes
meet the left turn lane warrants for an urban/suburban 3-legged intersection
per the American Association of State Highway and Transportation
Officials (AASHTO) A Policy on Geometric Design of Highways and
Streets (7th edition) and the National Academies Highway Research Report
Left-Turn Accommodations at Unsignalized Intersections.

19 Ex. 13 at p. 2.

20 Accordingly, the City conditioned the project’s SEPA threshold determination,
21 based upon the probable adverse safety and vehicle operation impacts identified, including
22 four conditions relating to mitigation of transportation related issues resulting from
23 Appellant’s proposed development. The City issued a Revised Mitigated Determination of
24 Nonsignificance (MDNS) on April 7, 2025. Ex. 24. This appeal followed. Ex. 30.
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III. LEGAL STANDARD

Appellant bears the burden of proof in this proceeding, pursuant to Hearing Examiner RoP 316(a). Appellant must conclusively demonstrate that there has been substantial error, that proceedings were materially affected by procedural irregularities, that the City’s decision was not supported by material and substantial evidence (in view of the entire record), or that the decision is in conflict with the City’s applicable decision criteria. MICC 19.15.130(G). Appellant does not allege that the proceedings were materially affected by procedural irregularities. Ex. 30 at p. 5. As demonstrated below and as the City will demonstrate at hearing, Appellant cannot meet its burden of proof and accordingly, it is appropriate for the Examiner to deny Appellant’s appeal under MICC 19.15.130.

IV. ARGUMENT

The Appellant alleges four assignments of error. Each is misplaced, as discussed in more detail below. Again, to frame this appeal—“[t]he 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.*” Ex. 30 at p. 3. Appellant concedes that mitigation is necessary, yet Appellant argues for revisions that would effectively render mitigation conditions unenforceable. As Appellant cannot meet its burden on any alleged assignment of error, under MICC 19.15.130, concurrence with the determination of the City is appropriate.

A. The MDNS Conditions Are Adequately Based on Specific, Probable, and Adequately Identified Adverse Environmental Impacts.

The City crafted the MDNS conditions based upon specific probable adverse impacts to safety and vehicle operation, identified through the multiple rounds of review by the City’s

1 transportation consultants. The City is well authorized by the SEPA statute, SEPA regulations,
2 and the MICC, to condition projects probable to have adverse environmental impacts. RCW
3 43.21C.060; WAC 197.660(1)(a); MICC 19.21.190. Appellant does not contest that the
4 Project will generate new vehicle trips, that the Project will generate new types of vehicle
5 trips (school buses), nor that the Project will change peak at the Intersection. Ex. 30 at pp. 4-
6 5 (bates pp. 0005-0006).

7
8 The City's transportation consultants identified specific and probable impacts to
9 transportation as a result of the Applicant's proposed development. "During the AM peak
10 hour, the development expects 121 southbound left turns and high volumes of northbound and
11 southbound traffic (more than 900 AM peak hour vehicles in both directions with an opposing
12 volume of 470 [northbound] vehicles). Ex. 13 at p. 2. Accordingly, because of the "high
13 volume of southbound left turn vehicles, southbound through vehicles, and opposing
14 northbound vehicles, the E Mercer Way/Frontage Road intersection will require a southbound
15 left turn lane in order to prevent blocking of traffic on East Mercer Way and promote safety
16 for drivers accessing the school and boat launch." *Id.* This is the impetus behind MDNS
17 Conditions 1 through 3, which require addition of a southbound turn lane on East Mercer
18 Way, as well as analyzing and addressing resultant impacts to an adjacent northbound turn
19 lane at the SE 36th Street and East Mercer Way intersection, as well as right turning
20 movements for school buses exiting from Frontage Road onto northbound East Mercer Way.
21

22 Testimony is expected to show that without mitigation, Appellant's proposed
23 development will have the following negative safety and vehicle operations impacts at the
24 Intersection. The Applicant's project will undisputedly increase southbound left turning
25 vehicle volumes at the E Mercer Way/Frontage Road intersection. Testimony is expected to
26

1 show that without a southbound left turn lane, southbound vehicles (including school buses)
2 would need to turn left from the through lane. This would result in southbound left turning
3 vehicles stopping in the through lane while waiting for a gap in northbound traffic, thus
4 increasing the potential for southbound rear-end crashes at the intersection.
5

6 Testimony is also expected to show that with the addition of the southbound left turn
7 lane, drivers accessing the school will be able to pull out of the flow of traffic and wait for an
8 adequate gap in northbound traffic. The turn lane would provide a dedicated space where
9 drivers can wait and make safer turning decisions without being concerned about rear-end
10 crashes or feeling pressure that they are delaying southbound through traffic. In addition,
11 testimony is expected to demonstrate that a southbound turn lane would provide drivers with
12 a slightly better sight distance of on-coming northbound traffic.

13 Testimony is also expected to demonstrate probable adverse vehicle operation impacts
14 as a result of Appellant's proposed development. The Appellant proposes adding a new K-8
15 school, and accordingly, testimony is expected to show that the majority of the vehicles
16 accessing the site during the AM peak hour, including southbound left-turning vehicles will
17 occur in a five to ten minute period before the start of the school (creating a peak that is lesser
18 in duration than a peak hour). A left turn lane will reduce delays for southbound through
19 traffic as vehicles waiting to turn left will not block the main traffic stream. A southbound left
20 turn lane will accommodate the higher vehicle volumes associated with the school and prevent
21 increased intersection congestion and queuing.
22

23 The record evidence will also demonstrate that the addition of a southbound turn
24 lane, and the resultant potential narrowing of lanes, may necessitate adjustments to the
25 adjacent northbound left turn lane at the SE 36th Street and East Mercer Way intersection.
26

1 Further, such narrowing of lanes, in conjunction with the addition of school buses
2 approximately 40 feet in length, study, and potential adjustment of the curb radii for right
3 turns from Frontage Road to northbound East Mercer Way may be necessary.

4 The Appellant does not appear to contest or seek revisions to MDNS Condition 4 and
5 therefore, such is not addressed in this Staff report. Ex. 30 at pp. 3-4.

6 The written record and testimony will demonstrate that the Appellant's Project will
7 result in specific, probable, and adequately identified safety and vehicle operations issues at
8 the Intersection. Therefore, the City's MDNS Conditions are adequately based on specific,
9 probable, and adequately identified adverse environmental impacts and the Appellant's first
10 point of error fails.

11
12 B. The Contested Conditions Are Necessary To Mitigate the Impact of Appellant's
13 Proposed School and Commercial Uses.

14 The Appellant's second point of error argues that the conditions are both unnecessarily
15 vague, yet somehow, also unnecessarily prescriptive and inflexible. Ex. 30 at p. 5 (bates p.
16 0006). The Appellant's Brief on this point essentially attempts to flip the burden of proof to
17 the City, by alleging that the City cannot show the conditions are necessary. However, per the
18 RoP, the burden of proof is on the Appellant to demonstrate that the conditions are not
19 necessary.

20 As discussed within Issue No. 1 above, Appellant's proposed school and commercial
21 offices will add vehicle trips, new types of trips (school buses), and change the peak vehicle
22 operations at the Intersection. As discussed above, the City determined that the addition of a
23 left turn lane for southbound East Mercer Way is *necessary* to mitigate the safety and vehicle
24 operations impacts from Appellant's development.
25
26

1 Appellant alleges that other (unnamed or described) configurations may be available
2 and “more reasonable” for Appellant to provide. Ex. 30 at p. 5 (bates p. 0006). Appellant here
3 appears to conflate the requirements for SEPA conditions to be necessary with that of
4 reasonableness, which is addressed within Issue 3 below. Further, to the extent Appellant’s
5 appeal is based on Appellant’s status as a nonprofit, the identity of an applicant is not a valid
6 consideration for what mitigation is *necessary*. Ex. 30 at 3 (bates p. 0004). Instead, the
7 activities giving rise to probable adverse environmental impacts drive what is necessary to
8 mitigate such impacts.
9

10 Appellant states that it “only desires to retain the opportunity to seek reasonable
11 deviations in the event that alternative configurations... provide functional and safe
12 roadways.” Ex. 30 at p. 5 (bates p. 0006). Appellant does not list what alternative
13 configurations are appropriate and instead, apparently seeks to defer adjudication of necessity
14 to some later date (presumably, at the time of design and/or construction). However, it is the
15 Appellant’s burden to show that the conditions are not necessary *within this proceeding*.
16 Appellant cannot delay the adjudication of the issue of necessity to a later date.
17

18 Finally, to the extent Appellant is concerned about the concept of minor deviations,
19 testimony is expected to show that minor deviation procedures are well contained within the
20 WSDOT standards. Revisions to the conditions are not necessary.

21 Appellant fails to meet its burden of proof on this issue and accordingly, the alleged
22 assignment of error fails pursuant to MICC 19.15.130.

23 ///

24 ///

25
26 C. The Contested Conditions Are Reasonable and Capable of Being Accomplished.

1 Appellant argues that the MDNS conditions are not reasonable, and “may” not be
2 capable of being accomplished. Ex. 30 at p. 6 (bates p. 0007). This is insufficient to meet
3 Appellant’s burden of proof on this issue and as explained below, Appellant’s point fails.

4 a) Reasonableness

5 Appellant alleges the conditions are not reasonable because they do not provide “any
6 allowance for sound engineering judgment or reasonable deviations that may become
7 necessary, given engineering conditions on the ground.” Ex. 30 at p. 6 (bates p. 0007). First,
8 Appellant points to no evidence that engineering conditions on the ground actually create the
9 need for such deviations. *Id.* Again, testimony is expected to explain how WSDOT standards
10 provide for minor deviations.
11

12 The Appellant also alleges the conditions are not reasonable because the Appellant is
13 unsure of how they will be interpreted. Ex. 30 at p. 6 (bates p. 0007). Uncertainty by the
14 Appellant is not evidence of unreasonableness. Curiously and paradoxically, the Appellant
15 urges the need for both additional clarity, yet additional flexibility, in the conditions. *Id.* Yet,
16 the Appellant’s proposed edits would render the conditions potentially unenforceable and
17 indeed, much less clear than currently worded. For example, the Appellant suggests editing
18 Condition No. 1 to provide that as an alternative to AASHTO and WSDOT standards, the
19 Appellant may instead be subject to “functionally adequate and appropriate specifications.”
20 Ex. 30 at p. 2 (bates p. 0003). This addition removes the clarity already present in the condition
21 and sets up the Parties for a dispute as to what is “functionally adequate” and/or what are
22 “appropriate specifications” at the time of condition implementation. The City seeks
23 enforceable conditions. Indeed, the Appellant’s proposed revisions are not reasonable and
24 should be rejected.
25
26

1 b) Capable of Being Accomplished

2 Similarly, the Appellant’s brief alleges the conditions “might not” be capable of being
3 accomplished. Ex. 30 at p. 6 (bates p. 0007). Again, the burden of proof is squarely upon the
4 Appellant, and the Appellant’s speculation that some unknown issue may arise in the future
5 is insufficient to meet its burden of proof in this proceeding.
6

7 The City strenuously objects to all requests by Appellant to add “capable of being
8 accomplished” to the conditions (proposed by the Appellant with respect to conditions 1 and
9 3). Ex. 30 at p. 2 (bates p. 0003). Such language is absolutely inappropriate for conditions.
10 The City does not contest that SEPA and the MICC require that SEPA conditions be capable
11 of being accomplished. But that determination must be made within *this* proceeding, not left
12 up to the subjective determination of Appellant at some later date. The addition of such
13 language presents the danger that the Appellant could allege incapability of being
14 accomplished at a much later date, such as during implementation, thus rendering the
15 conditions unenforceable, leaving unmitigated safety and vehicle operation impacts as a result
16 of Appellant’s development.
17

18 If the condition is not capable of being accomplished, the burden is on Appellant to
19 so demonstrate at this appeal proceeding—not at a later date. The Appellant points to no
20 constraint that would render the conditions incapable of being accomplished. Ex. 30 at p. 7
21 (bates p. 0008). Appellant instead speculates that such a condition “*could be* problematic in
22 the event of a conflict with preexisting stormwater facilities or underground facilities.” *Id.*
23 But crucially, the Appellant identifies no actual constraints that would definitively render the
24 condition incapable of being accomplished. The Appellant fails to meet its burden of proof
25 and accordingly, the point of error fails.
26

1 The Appellant argues that it *might* not be capable of complying with both WSDOT
2 and AASHTO standards. Ex. 30 at p. 6 (bates p. 0006). Again, it is the Appellant’s burden to
3 prove, in this proceeding, that it is not capable of being accomplished. The Appellant’s
4 argument ignores the fact that such transitions between WSDOT and other standards (such as
5 local standards) occur all over Washington. Testimony is expected to show that engineers
6 regularly apply transitions between WSDOT ROW and local ROW.
7

8 The Appellant’s Appeal also leaves open the question of *how* the Appellant
9 proposes to address safety and vehicle operation issues arising from its Proposed
10 Development, given the flexibility requested in the conditions. For example, the Appellant
11 requests that condition three (potential requirement of modified curb radii) be edited to
12 include the phrase “capable of being accomplished.” Ex. 30 at 2 (bates p. 0003). Again, this
13 is not appropriate language for a SEPA condition. While SEPA conditions must be capable of
14 being accomplished, the Appellant’s edit would defer determination of “capable of being
15 accomplished” from the time of condition crafting to the time of implementation. If at time of
16 implementation, modification of the turning radius is necessary, but the Appellant alleges that
17 modifying it was not reasonable or capable of being accomplished—how does Appellant
18 propose to address the safety and vehicle operation impacts? The City cannot permit safety
19 issues to remain unmitigated. The Appellant’s proposed revisions create the very real risk that
20 the Appellant will abandon mitigation of safety issues that Appellant’s development created
21 should Appellant deem that they are not “capable of being accomplished” at some later date.
22

23 Appellant’s arguments with respect to this issue are mere speculation, which does
24 not meet the requisite burden of proof required of the Appellant by the RoP. Pursuant to MICC
25 19.15.130, the Examiner is empowered to uphold the City’s Revised MDNS with conditions
26

1 as written.

2 D. The Contested Conditions are Adequately Supported By Policy Citations.

3 The Appellant’s final appeal point is misplaced. The City’s Revised MDNS is
4 adequately supported by adopted City policy, as required by MICC 19.21.190(B)(5).
5

6 The conditions are well and firmly based upon the appropriate policy adopted by the
7 City. For example, MICC 19.21.190(D)(1) specifically provides:

8 1. The city shall use all practicable means, consistent with other
9 essential considerations of state policy, to improve and coordinate plans,
10 functions, programs, and resources to the end that the state and its citizens
11 may:

- 12 ...
- 13 b. Assure for all people of Washington *safe*, healthful, productive,
and aesthetically and culturally pleasing surroundings;
 - 14 c. Attain the widest range of beneficial uses of the environment
without degradation, *risk to health or safety, or other undesirable and*
15 *unintended consequences;*

16 Emphasis added. These policy goals mandate that the City account for and protect the safety
17 of its residents and the travelling public—exactly what the City’s SEPA conditions are crafted
18 to address. Similarly, negative impacts to vehicle operations certainly qualify as undesirable
19 and unintended consequences of the traffic added by Appellant’s project.

20 Similarly, other policies adopted under MICC 19.21.190(D) also require the City to
21 protect the safety of residents and the travelling public. Subsection (D)(3)(b) incorporates by
22 reference the development code of the City. The following provisions of the City’s
23 development code (Title 19 MICC) also support the MDNS conditions:

24 MICC 19.20.100(B):

25 This chapter establishes the minimum transportation concurrency
26 requirements applicable to all development and *is not intended to limit the
city's authority under SEPA or to evaluate all transportation impacts
resulting from new development, particularly safety and operational*

1 *impacts....*

2 Emphasis added.

3 Additionally, Subsection (D)(3)(a) incorporates by reference the comprehensive plan
4 of the City. The Transportation Element of the Comprehensive Plan, goal 6, specifically
5 requires the City to ensure compatibility between development and transportation facilities
6 serving such development:

7 **GOAL 6: -**

8 Ensure coordination between transportation and land use decisions and
9 development.

10 6.1 Ensure compatibility between transportation facilities and services and
11 adjacent land uses, evaluating aspects such as:

- 12 • potential impacts of transportation on adjacent land use;
- 13 • potential impacts of land development and activities on
14 transportation facilities and services; and
- 15 • need for buffering and/or landscaping alongside transportation
16 facilities.

17 6.2 Develop strategies to manage property access along arterial streets in
18 order to preserve their function.

19 6.3 In the project development review process, evaluate transportation
20 implications including:

- 21 • congestion and level of service;
- 22 • connectivity of transportation facilities and services from a system
23 perspective;
- 24 • transit needs for travelers and for transit operators; and
- 25 • non-motorized facilities and needs.

26 6.4 Ensure that transportation improvements, strategies and actions needed
to serve new developments shall be in place at the time new development
occurs or be financially committed and scheduled for completion within six
years.

6.5 As part of a project's SEPA review, review the project's impact on
transportation and require mitigation of on-site and off-site transportation
impacts. The City shall mitigate cumulative impacts of SEPA-exempt
projects through implementation of the Transportation Improvement
Program.

1 6.6 Develop standards and procedures for measuring the transportation
2 impact of a proposed development and for mitigating impacts.

3 6.7 Participate in the review of development and transportation plans
4 outside the City boundaries that may have an impact on the Island and its
5 transportation system, and consider the effect of the City's transportation
6 plans on other jurisdictions.

7 6.8 Encourage transit, bicycle and pedestrian principles in the design of
8 projects including:

- 9 • locating structures on the site in order to facilitate transit and non-
10 motorized travel modes;
- 11 • placing and managing on-site parking to encourage travel by
12 modes other than single occupant vehicles;
- 13 • provision of convenient and attractive facilities for pedestrians and
14 bicyclists; and
- 15 • provision of public easements for access and linkages to
16 pedestrian, bicycle and transit facilities.

17 6.9 Require adequate parking and other automobile facilities to meet
18 anticipated demand generated by new development.

19 Goal 6.5 speaks to this situation exactly—requiring the City to analyze project impacts on
20 transportation through the SEPA review process and to require mitigation of associated
21 transportation impact.

22 The Appellant cannot sincerely argue that the City's policies do not support the
23 conditions crafted to address the adverse safety conditions reasonably likely to occur as a
24 result of the Appellant's development. The Appellant's argument instead seems to focus on
25 the Appellant's contention that the SEPA MDNS should have specifically cited to the policies
26 listed above. Ex. 30 at p. 7 (bates p. 0008). To the extent that the Examiner finds it appropriate
to add citations to the policies listed above, the City is amenable to the Examiner remanding
the MDNS so that the City may add the listed citations. But the Appellant does not allege any
error requiring removal of conditions—to the extent that the City's conditions lack

1 appropriate citations, the appropriate remedy is simply revision of the conditions to add the
2 requisite citations. Appellant's fourth point of error fails.

3 **V. CONCLUSION**

4 The Appellant cannot meet its burden of proof in this appeal. The Appellant's
5 proposed development, including the addition of a new day school, will result in additional
6 trips, additional vehicular types (school buses) at particular peak times. The resulting traffic
7 poses probable adverse safety and vehicle operations impacts. The City's SEPA conditions
8 were appropriate to mitigate the probable and specifically identified adverse safety and
9 vehicle operations concerns. Pursuant to MICC 19.15.130, the Hearing Examiner has the
10 authority to deny Appellant's appeal.
11

12 DATED this 27th day of June, 2025.

13 MADRONA LAW GROUP, PLLC

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Attorneys for the City of Mercer Island

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DECLARATION OF SERVICE

I, Reina McCauley, declare and state:

1. I am a citizen of the State of Washington, over the age of eighteen years, not a party to this action, and competent to be a witness herein.

2. On the 27th day of June, 2025, I served a true copy of the foregoing **CITY OF MERCER ISLAND'S STAFF REPORT** on the following counsel of record using the method of service indicated below:

<p>Josh Friedmann HILLIS CLARK MARTIN & PETERSON, P.S. 999 Third Avenue, Suite 4600 Seattle, WA 98104</p> <p><i>Attorney for Appellant</i></p>	<p><input type="checkbox"/> First Class, U.S. Mail, Postage Prepaid <input type="checkbox"/> Legal Messenger <input type="checkbox"/> Overnight Delivery <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail: josh.friedmann@hcmp.com</p>
--	--

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 27th day of June, 2025, at Auburn, Washington.

/s/Reina McCauley
Reina McCauley