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BEFORE THE HEARING EXAMINER OF THE CITY OF MERCER ISLAND

RE: HERZL-NER TAMID
CONSERVATIVE CONGREGATION
(Barnabie Point Project),

Design Review

No. DSR25-009

CITY OF MERCER ISLAND'S
RESPONSE TO APPLICANT'S
REQUEST FOR
RECONSIDERATION OF TREE
REPLACEMENT CALCULATION

I. RESPONSE

Applicant's Request for Reconsideration of Tree Replacement Calculation was untimely, thus depriving the Hearing Examiner of jurisdiction to consider it. MICC 3.40.110(A) provides "[a]ny final decision by the hearing examiner may be reconsidered by the hearing examiner, provided a request for reconsideration by a party of record is received within ten days of the date of the decision by the hearing examiner..."

Here, the date of the decision by the hearing examiner in DSR25-009 is November 21, 2025. DSR 25-009, Findings of Fact, Conclusions of Law, and Final Decision at page 22. While the City acknowledges that the decision was not made available to the parties until November 22, 2025, the plain language of MICC begins the period for filing a motion for

1 reconsideration from the date of the *decision* by the hearing examiner, not the date said
2 decision was made available to the parties.

3 The Hearing Examiner’s authority is only as broad as the grant of authority made to
4 the Hearing Examiner via ordinance. *Chaussee v. Snohomish County Council*, 38 Wn. App.
5 630, 636 P.2d 1084 (1984), citing *State v. Munson*, 23 Wn. App. 522, 524, 597 P.2d 440
6 (1979). *See, also, Woodinville Water Dist. v. King County*, 105 Wn. App. 897, 906, 21 P.3d
7 309 (2001) (“hearing examiners have only the authority delegated to them by the Council.”).
8 Therefore, the Hearing Examiner is bound by the plain language of the MICC.
9

10 Under MICC 3.40.110(A), December 1, 2025 was the deadline to file a motion for
11 reconsideration of the hearing examiner's decision dated November 21, 2025. Applicant’s
12 request for reconsideration, filed December 2, 2025, is not timely. Accordingly, as the Motion
13 for Reconsideration was untimely filed, the MICC does not grant the hearing examiner
14 authority to reconsider his decision, either through a preliminary decision as issued on
15 December 3, 2025, or otherwise. Accordingly, the City does not take a substantive position
16 on Applicant’s Request for Reconsideration of Tree Replacement Calculation.
17

18 DATED this 10th day of December, 2025.

19 MADRONA LAW GROUP, PLLC

20
21 By: /s/ Eileen M. Keiffer
22 Eileen M. Keiffer, WSBA No. 51598
23 Laurie Halvorson, WSBA No. 17313
24 14205 SE 36th Street
25 Suite 100, PMB 440
26 Bellevue, WA 98006
Telephone: (425) 201-5111
Email: eileen@madronalaw.com

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CITY OF MERCER ISLAND
OFFICE OF THE CITY ATTORNEY

By: /s/ Bio Park
Bio Park, WSBA No. 36994
9611 SE 36th Street
Mercer Island, WA 98040
Telephone: (206) 275-7652
Email: bio.park@mercerisland.gov



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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 this 10th day of December 2025, I served a true copy of the foregoing **CITY OF MERCER ISLAND'S RESPONSE TO APPLICANT'S REQUEST FOR RECONSIDERATION OF TREE REPLACEMENT CALCULATION** on the following parties using the method of service indicated below:

Josh Friedmann HILLIS CLARK MARTIN & PETERSON, P.S. 999 Third Avenue, Suite 4600 Seattle, WA 98104 <i>Attorney for Appellant</i>	<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
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 10th day of December, 2025, at Auburn, Washington.

/s/Reina McCauley
Reina McCauley