CITY OF MERCER ISLAND

COMMUNITY PLANNING & DEVELOPMENT
9611 SE 36TH STREET | MERCER ISLAND, WA 98040
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CITY USE ONLY		
PROJECT#	**APPEAL#**	**FEE**
DSR25-009	**APL25-007**	**$1760**
Date Received: December 8, 2025		
Received By: City Clerk's Office		

APPEAL

SITE ADDRESS OF PROPERTY WHERE THE DECISION IS BEING APPEALED: 3700 E. Mercer Way, Mercer Island, WA		
PROPERTY OWNER NAME: Herzl-Ner Tamid Conservative Congregation	ADDRESS: Same as above	PHONE: c/o 206-512-4209 E-MAIL: anjali@agrantdesign.com
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, C/o Hillis Clark Martin & Pet	ADDRESS: 999 Third Ave. Ste 4600, Seattle	PHONE: E-MAIL:

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

Property Owner ("HNT") files this placeholder appeal to the Examiner's Decision on file no. DSR25-009, since HNT has been unable to confirm whether the City intends to argue that a reconsideration request on that Decision should have been filed ten days from the Examiner's *signature* on that Decision, or ten days from the City's *transmission* of that Decision. If the City will confirm that the City has accepted the applicant's reconsideration request as timely, the Applicant is able to amiably withdraw this appeal application without delay.

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.)

If the City intends to take the position that HNT's reconsideration request was untimely, then HNT will regretfully need to appeal the Examiner's Decision on file no. DSR25-009, but only with respect to the issue of the Examiner's Decision on "Modification Request #4," which denied HNT's request for an alternative, tailored tree replacement ratio to be applied based on site-specific analysis of the trees being removed. HNT respectfully submits that the Examiner's Decision on Modification Request #4 was substantial error, was unsupported by evidence in the record, and was in conflict with the standard of review for the particular action. HNT's interest in the matter is that HNT is the Applicant and the owner of the subject property. Please see brief overview of legal issues in the attached.

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

HNT seeks for the reviewer to reverse or modify the denial of HNT's proposed alternative, tailored tree replacement ratio. Or, alternatively, if the City is able to confirm its concurrence that HNT's reconsideration request on this issue was timely, HNT can dismiss this appeal.

Signature: Joshua E. Friedmann **Date:** December 8, 2025

BEFORE THE HEARING EXAMINER
FOR THE CITY OF MERCER ISLAND

In the matter of Design Standard Review for 3700 E Mercer Way	City of Mercer Island Design Standard Review file no. DSR25-009 **APPLICANT'S STATEMENT OF APPEAL ON THE ISSUE OF TREE REPLACEMENT CALCULATION**

Herzl-Ner Tamid Conservative Congregation ("***Applicant***") regretfully files this placeholder appeal because Applicant has been unable to confirm whether the City of Mercer Island ("***City***") intends to argue that a reconsideration request on the initial decision ("***Decision***") of the Hearing Examiner ("***Examiner***") should have been filed within ten days of the Examiner's *signature* on that initial decision, or ten days from the City' *transmission* of that decision document, because those dates differed in this instance. If the City can confirm that the City has accepted Applicant's reconsideration request as timely, the Applicant is able to withdraw this Appeal without delay.

If a full appeal does prove to be required, the Applicant will argue that the Mercer Island City Code's use of the words "other measures" at MICC 19.10.070.B.4 has granted authority for the reviewer to approve other replacement calculations besides the prescriptive calculations set forth as a default in the Code at MICC 19.10.070.

The Applicant will further argue that the Mercer Island City Code has given the Examiner express or implied codified authority to consider the likely effects of RLUIPA, state

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and federal constitutional doctrines, and RCW 82.02.020.[1] Specifically, the Code does so by providing at RCW 3.40.020.B that "the hearing examiner's decision may be to . . . *[g]rant the application or appeal with such conditions, modifications, and restrictions as the hearing examiner finds necessary to . . . carry out applicable state laws and regulations . . . and other official laws, policies and objectives of the City of Mercer Island.*"[2]

If this appeal proves needed, HNT is prepared to brief how and why the decision with respect to Modification Request #4 was substantially erroneous, was unsupported by facts presented, and conflicts with applicable standards, because the adopted Prescriptive Replacement Ratio is noncompliant with RCW 82.02.020 under *Isla Verde*, is noncompliant with constitutional doctrines under *Sheetz*, and is noncompliant with RLUIPA under the laws and facts that apply to the instant matter. For these reasons, the Applicant must file this appeal seeking reversal or modification of the Decision with respect to the tree replacement ratio.

DATED this eighth day of December, 2025.

HILLIS CLARK MARTIN & PETERSON P.S.

By s/ *Joshua E. Friedmann*
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Attorney for Herzl Ner Tamid Conservative Congregation

[1] This is consistent with *Exendine v. City of Sammamish*, 127 Wn. App. 574, 586, 113 P.3d 494 (2005) (finding that a city examiner lacked authority adjudicate constitutional validity of search warrants, because the City Council had no authority to issue such rulings and therefore couldn't delegate such authority). Here, neither the Applicant nor the Code has asked the Examiner to make constitutional rulings, only to consider the effects and overlays of constitutional and other superior sources of law that should inform his decisions under the Code.

[2] *See also* MICC 3.40.090 (prescribing that the Examiner's "findings and conclusions shall set forth and demonstrate the manner in which the decision or recommendation *is consistent with, carries out, and helps implement applicable state laws . . . and other official laws, policies, and objectives of the city of Mercer Island as applicable.*") and 3.40.110 (authorizing reconsideration if the "decision when taken *failed to comply with existing laws or regulations applicable thereto.*") (emphasis provided in both instances.).

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CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a true and correct copy of the foregoing document by method indicated below and addressed to the following:

Office of the City Clerk 9611 SE 36th Street Mercer Island, WA 98040 cityclerk@mercerisland.gov	*Delivery Via:* [☐] U.S. Mail [☐] Overnight Mail [☐] Facsimile [☒] Legal Messenger [☐] E-Service [☒] E-Mail
Phil Olbrechts, Hearing Examiner olbrechtslaw@gmail.com Bio Park, Attorney for the City of Mercer Island cityattorney@mercerisland.gov Eileen Keiffer, Attorney for the City of Mercer Island Eileen@MadronaLaw.com Deb Estrada, Deputy City Clerk for the City of Mercer Island Deborah.Estrada@mercerisland.gov Jeff Thomas, City of Mercer Island jeff.thomas@mercerisland.gov	*Delivery Via:* [☐] U.S. Mail [☐] Overnight Mail [☐] Facsimile [☐] Legal Messenger [☐] E-Service [☒] E-Mail

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

DATED this 8th day of December, 2025.

s/ Debbie Chewning
Debbie Chewning, Legal Assistant

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