

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF MERCER ISLAND**

Phil Olbrechts, Hearing Examiner

<p>RE: Herzl-Ner Tamid Conservative Congregation (Barnabie Point Project)</p> <p>Design Review</p> <p>DSR25-009</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</p>
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INTRODUCTION

Anjali Grant of Anjali Grant Design representing the Herzl-Ner Tamid Conservative Congregation (HNT) requests design review and tree permit approval for construction of a new three-story Pre-Kindergarten through 8th grade (PreK-8) school and office building with associated site improvements at 3700 E. Mercer Way. The applications are approved subject to conditions.

The project was subject to an extensive amount of requests for development standard modifications. All except one were approved at least in part. The Applicant's request to reduce required tree replacement was denied. The Applicant's proposal to mitigate against the impacts of planting a smaller number of replacement trees was to plant a smaller number of replacement trees. The reduced number of replacement trees did not compensate for all of the public objectives implemented by the City's tree replacement requirements. The Applicant is authorized to pay a fee in lieu of the replacement trees.

The Applicant's request for chain link fencing was also denied in part. No chain link fencing visible from any adjoining street will be allowed. The portions of the proposed fencing visible to the streets will either have to be replaced by fencing of authorized materials or hidden by fencing of authorized materials.

Project opponents presented legal briefing asserting that the proposal could not benefit from a parking stall reduction process applicable to commercially zoned land. The applicability of that provision was approved in the prior conditional use permit review for this project. The decision to apply that provision was not timely appealed and cannot be revisited in this design review process.

ORAL TESTIMONY

A computer-generated transcript of the hearing has been prepared to provide an overview of the hearing testimony. The transcript is available for informational purposes only as Appendix A. No assurances are made as to accuracy of the transcript. Those needing an accurate transcription will have to purchase a copy of the recording from the City.

EXHIBITS

The 33 exhibits listed on pages 1-3 of the staff report were admitted into the record during the October 31, 2025 hearing.

The following additional comments are also admitted into the record:

Ex. 22.4 October 30, 2025 Clungeon letter
Ex. 22.5 November 6, 2025 Applicant Rebuttal

A few comment letters were submitted after the close of the hearing on October 31, 2025 at 10:05 am. The Examiner cannot admit new evidence presented after the close of the hearing except that specifically authorized. The only additional documents authorized were emails from persons who specifically identified they were unable to participate due to technical computer problems. A rebuttal letter from the Applicant was also authorized.

FINDINGS OF FACT

Procedural:

1. Applicants. The Applicant is Anjali Grant of Anjali Grant Design (3427 Beacon Avenue S, Seattle, WA 98144) representing the Herzl-Ner Tamid Conservative Congregation (HNT).
2. Hearing. A virtual hearing was held on the applications at 9:00 am on October 31, 2025. The record was left open through November 6, 2025 for the Applicant to respond to written comment submitted at the hearing.

Substantive-

3. Site/Proposal Description. Anjali Grant of Anjali Grant Design representing HNT requests design review and tree permit approval for construction of a new three-story Pre-Kindergarten through 8th grade (PreK-8) school and office building with associated site improvements at 3700 E. Mercer Way

The project area is composed of four parcels. The proposed preschool, K-8 private school, and offices would be located on parcel number 0824059045. That parcel, referenced as Lot 1, is currently undeveloped and contains vegetation including ground

1 cover, trees, and shrubs. Parcel numbers 2107000010 and 1515600010 contain existing
2 facilities, including parking and several buildings currently used by HNT. Parcel
3 number 151560TRCT is a tract that contains an access road to the east parking lot,
4 located on parcel number 1515600010.

5 The Synagogue building has existed on APN 1515600010 since 1971. In 1979 the HNT
6 was granted permission to develop a non-commercial recreational area, a meditation
7 area, and a custodian's residence. The 1979 CUP decision brought the entire four
8 parcels owned by HNT into conformance with the City's zoning as a CUP approved
9 religious facilities use. The HNT currently operates a small, after-school Pre-
10 Kindergarten through 6th grade program three days a week. The present project
11 involves the construction of a combination school/office building on Lot 1 with shared
12 parking lots; circulation drives and open space facilities for all lots. This change in the
13 CUP approval required the Examiner's CUP-Revision decision (Ex. 8). The issue at
14 hand is the design review of the approved revised CUP project.

15 The Applicant requested ten separate instances of relief from the codes, labelled as
16 modification requests in this decision. Each modification request is separately
17 addressed in the findings and conclusions of this decision.

18 4. Characteristics of the Area. Residentially zoned property is located to the
19 north, south and east. Commercial Office zone property is located to the west. Lake
20 Washington is also located to the East.

21 5. Modification No. 1 - Compact Parking Spaces. The Applicant's requested
22 reduction of required parking spaces from 52% to 50% will not result in any adverse
23 impact. The Applicant needs the modification to accommodate a required fire lane.
24 The site currently does not contain any stalls that meet the dimensional requirements
25 for standard stalls. The current condition would be improved by making 50 of the
existing stalls conform to the parking code. As shown in the parking use matrix of Ex.
26, the only use that would exceed 50 stalls would be High Holiday use for the existing
Synagogue. As a result, the number of standard sized stalls available to the existing
use would increase by 50 and there would be an adequate number of standard-sized
stalls to meet all the parking demand of the proposed uses. In this regard the proposed
reduction does not result in any adverse impact because the net result is an increase in
available standard sized stalls to the existing Synagogue use.

27 6. Modification No. 2 – Loading Space. The Applicant's requested modification of
28 the location of the required loading area will not create adverse impacts.

29 The loading areas of the project area cannot feasibly be located adjacent to public right
30 of way. Adjoining right of way is East Mercer Way and Boat Launch Access Road.
31 Locating loading areas near either right of way is problematic. The proposed building
32 will not be immediately adjacent to East Mercer Way. Additionally, the Traffic Impact
33 Analysis notes there is limited space between E. Mercer Way and the site driveway
34 which impacts both the queueing space along the roadway and could introduce conflicts

1 between vehicle loading and unloading if the loading area were to be located between
2 the building and E. Mercer Way (Exhibit 25, page 22).

3 The loading area is also infeasible along Boat Launch Access Road because a
4 pedestrian path runs between the property and a public street. Placing a
5 loading/unloading area would introduce conflicts between uses and potentially
6 endanger pedestrians using the path. Additionally, the project site is sloped in such a
7 way that creating a flat loading/unloading zone with vehicle maneuverability in this
8 area is physically infeasible.

9 No adverse impacts are anticipated from the proposed loading area location as the site
10 circulation plan in Exhibit 3, Sheet C6.00 demonstrates that there are adequate
11 opportunities for loading in connection with the business and school uses. The Traffic
12 Impact Analysis also provides a plan for queuing for the school use which notes there
13 will be a bus loading zone along the southern side of the school building (Exhibit 25,
14 page 24). Though not immediately adjacent to a public road, this area is of adequate
15 size to accommodate a loading area adjacent to the building (Exhibit 3, Sheet A-010).

16 7. **Modification No. 3 – Reduced Parking.** Impact of Reduced Parking. The reduced
17 parking proposed by the Applicant is not anticipated to create any adverse impacts.
18 The number of spaces proposed by the Applicant is found to be in excess of what is
19 needed to meet parking demand.

20 City parking standards require 139 parking spaces for the proposal. As identified at
21 page 17 of the staff report, the 139 spaces are the total required for the following
22 proposed and existing uses: Office (1 space/300 sf; 10,000 sf office proposed; 33
23 spaces required); School (2 spaces/classroom; 12 classrooms proposed; 24 spaces
24 required); Synagogue (1 space/five seats; 408 existing seats; 82 spaces required).

25 The Applicant proposes to use a 105-space parking lot on Lot 2 to serve the new school
and office use proposed for Lot 1 of the project site. The 105-space parking lot
currently serves the existing Synagogue. Via a cooperative parking agreement the
parking lot also serves the French American School located across E. Mercer Way from
the Synagogue. SEPA mitigation for a 2005 conditional use permit for the French
American School requires the school to have a lease agreement with the Applicant for
use of 30 spaces at the Synagogue parking lot. The French American School has been
notified that the agreement will not be renewed for the 2025-2026 school year due to
the parking required as part of the proposal.

26 The Applicant has established that the 105-space parking lot is more than sufficient to
27 accommodate both the existing Synagogue use and the proposed school and office use.
28 The Applicant has established that The existing conditions include typical weekday
operations of the Synagogue, which do not generate much traffic and High Holidays
which are held in the Synagogue with a capacity of 408 people. The Applicant
submitted a parking matrix in Exhibit 26, Attachment 1 which shows both existing and
proposed uses. The matrix includes the code-required parking for each use and the
projected amount of parking necessary based on the Transportation Impact Analysis by

1 Transpo Group (Exhibit 25). The Transpo Group analysis is based upon project parking
2 demand statistics from the 6th Edition of the Institute of Traffic Engineer's Parking
3 Generation Manual.

4 The ITE figures used in the Applicant's parking matrix are also consistent with
5 historical use of the 105-space parking lot. The Applicant's Ex. 26 parking memo also
6 presented some data from Google Earth photographs showing that weekday parking
7 for a couple days occupied 2 spaces on a Wednesday and 33 spaces on a Tuesday in
8 April 2024 and April 2025. The photographs showed 57 spaces occupied on a Sunday
9 in 2023 and 11 spaces on a Saturday in 2022. The memo concedes that on High
10 Holidays the parking will "swell to large numbers." No historical parking data is
11 presented in the memo as to High Holidays.

12 There is nothing in the record of this proceeding that undermines the parking evidence
13 presented by the Applicant in any compelling fashion. In her letter Ms. Clungeon
14 identifies that "*[a]s my client explained in previous communications about the
15 proposal, the area around the proposed use and adjacent parking lot is already a high
16 traffic problem area with parking issues.*" There are no communications in the record
17 from Ms. Clungeon's client (Mr. Goldbach) or any other party of record identifying
18 parking problems resulting from the current use of the Applicant. Ms. Clungeon's letter
19 includes pictures, Attachment C, showing long lines of vehicles parked along Easter
20 Mercer Way. However, there's nothing in the record to suggest that any of these
21 parking problems are caused by the Applicant's current use or will be exacerbated by
22 the Applicant's proposed use. Ms. Clungeon refers to the pictures as showing full street
23 parking and illegal parking maneuvers next to school buses. Ex. , p. 4. Her reference
24 to school buses and the captions of the photographs referencing entire weeks suggests
25 that the parking on Mercer Street results from the French American School, not the
weekend religious school and services associated with the Applicant's current use. In
any event, there is no evidence in the record that links the overflow parking to parking
demand generated by the Applicant's current use.

Overall, the Applicant's parking demand analysis is based upon the professional
judgment of the Applicant's traffic engineer, which in turn is based upon the Institute
of Traffic Engineer Parking Demand manual. That professional judgment is
corroborated by Google Earth imagery, albeit a small data sample. There is nothing in
the record of this proceeding that undermines the conclusions of the Applicant's
parking demand analysis. The parking problems pictured in the Clungeon memo
suggests that perhaps the methodology used to estimate parking impacts for the 2005
French American School CUP was not accurate. However, no evidence has been
presented that the same methodology was used for the Applicant's proposal or that
there's any reason to believe that the methodology would similarly result in inaccurate
results for the proposal.

Given that the Applicant's parking analysis is found to be credible and accurate, it is
determined that the proposed 25% reduction in parking will not create any adverse
impact. The termination of the lease for the French American School for the 105 space

1 parking lot coupled with the added use of the proposed use will result in less occupancy
2 of the parking lot. Overflow could conceivably occur during High Holidays, but the
3 Applicant assures that the proposed school will be closed during those events. As such,
4 the proposed new uses will not exacerbate any parking problems currently caused by
5 the proposal.

6 The Applicant's assurance of school closure during High Holidays is construed as part
7 of the Applicant's proposal. If the Applicant fails to follow through on this proposal
8 description, that should be construed as conduct unauthorized by this design review.
9 Further, if overflow occurs through due to the combination of any Synagogue event
10 and parking demand generated by the proposed school, the Applicant would hazard the
11 implementation of Condition of Approval 6e. That condition authorizes the City to
12 require additional parking mitigation if use of the proposal results in overflow parking.

13 8. Modification No. 4 – Tree Reduction. The Applicant requests a reduction in tree
14 replacement requirements from a required 441 trees to 145.

15 The Applicant has submitted an analysis which it claims to establish that 145 maple
16 trees provide the same level of environmental benefit as the 82 trees it proposes to
17 remove. The analysis was prepared by an ISA Board Certified Master Arborist. As
18 noted in Ex. 16, through scientific research and with assistance from the US Forest
19 Service, the i-Tree suite of software tools (<https://www.itreetools.org/>) was developed
20 to give communities access to models that communicate the benefits of trees. The
21 software monetizes the tree benefit of carbon and air pollution removal and
22 hydrological functions including avoided stormwater runoff. The 20-year
23 environmental benefit of the 82 trees was valued at \$26,553. The proposed 2.0" maple
24 tree replacements provide for \$183.00 in 20 year benefit. The proposed 145
25 replacement trees are necessary to equal the \$26,553 in environmental benefits
provided by the 82 trees to be replaced.

26 9. Modification No. 5 – Tree Fee in Lieu. The Applicant's civil plans, Ex. 3, show
27 that there is no room on the project site or adjoining right of way to accommodate the
28 Applicant's proposed building and required retained and replaced trees.

29 As asserted by the Applicant and reflected in the Applicant's civil plans, the site is
30 extremely constrained due to existing underground utilities, proposed security fencing,
31 existing buildings, parking areas, and program areas. Adjacent public right-of-way is
32 also constrained by existing improvements, including pedestrian walkways, roads,
33 driveways, and utilities. The Applicant asserts that there is only room for 34
34 replacement trees. That position is found to be correct as supported by the Applicant's
35 civil drawings.

36 10. Modification No. 6 – Modulation. The proposed design includes horizontal façade
37 modulation at greater than 50 feet of wall length on the south and east facades, with the
38 greatest horizontal measurement without modulation being a portion of the south
39 façade at 87.4 feet (Exhibit 3, Sheet LU-7).

1 The proposal includes alternative design alternative features along the south and east
2 facades that compensate for the added bulk and mass resulting from exceeding 50-foot
3 modulation. The south façade would be broken into three sections and provide
4 horizontal building façade modulation with the inclusion of a canopy across the middle
5 indentation to provide a deep shadow and texture. The Applicant further reduces bulk
6 and scale along the south façade by providing an upper level set back along the entire
length of the south façade. The east façade would include window shrouds and a
stepping roof line to create texture and modulation. The greatest horizontal
measurement at the east façade would be 56 feet to accentuate the large window and
provide a quiet backdrop to a densely landscaped area.

7 11. Modification No. 7 - Roofline Variation. The proposal achieves roofline variation
8 by providing a north façade that steps back at each level, and façade modulation over
9 all four elevations. The design also includes projecting canopies and varying materials
to provide visual interest and depth through shadows.

10 12. Modification No. 8 – Chainlink Fence. The Applicant requests installation of a
11 chain link fence along property owned by Puget Sound Energy (PSE). According to
the staff report, “most” of the fencing would not be visible from right of way.

13 The record does not establish that chain link fence is necessary for adequate security.
14 The Applicant testified that it has been subjected to targeted defacement of their
property and both schools and Jewish organizations in this region and throughout the
country have been subject to violent attacks. That is certainly a serious concern.
15 However, there’s no basis to conclude that other types of authorized fencing wouldn’t
be just as adequate in providing security.

16 13. Modification No. 9 – Impervious Surface. The Applicants proposed excess 1,845
17 square feet of impervious surface area offsets the impacts of the Applicant’s proposed
18 excess 462 square feet over maximum impermeable surface area.

19 The Applicant proposes a 462 square foot increase of the maximum impervious surface
20 area and a 1,845 square foot increase in the minimum required pervious surface area.
540 square feet of the impervious surface area would be for the preschool play area
which is required by the Washington State Department of Children, Youth and Families
(DCYF). 762 square feet of the impervious surface area would be for the accessible
route on the east side of the proposed building, which provides an accessible connection
between the existing Synagogue, parking area, and proposed building. 152 square feet
is identified as “Not Landscape” on the site plan in Exhibit 3, Sheet A-010, however,
this area is impervious and should be included in the calculation. These 152 square feet
are for the trash loading area which is required by Recology. The remaining 688 square
feet are for other walkways and patios located at the entrance to the building and on the
north side of the proposed building in the art/science terrace. The Applicant asserts that
the 1,845 square foot increase in minimum required pervious surface area offsets the
462 square foot increase in the maximum allowed impervious surface area.

14. Modification No. 10 – Parking Planting. As shown in the civil plans and demonstrated by the Applicant's extensive efforts to waive several requirements to accommodate the space necessary for the proposed parking, the required plantings would reduce the amount of required parking.

15. Impact of Concern – Light Trespass. Concern about light trespass was expressed in Ex. 22.1. Off-site light impacts are adequately mitigated by City light standards. MICC 19.12.070B4 requires all exterior light fixtures to be shielded to confine light spread within site boundaries. The exterior light calculation in Exhibit 3, Sheet E-102 demonstrates that the light spread would be confined to the site boundaries and parking area.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Hearing Examiner. The hearing examiner is required to hold a hearing and issue a final decision on the subject design review application.

MICC 3.34.005 requires the Hearing Examiner to assume the role of the Design Review Commission in all quasi-judicial matters assigned to the Commission. MICC 19.15.220.C.1.c.i.a requires design review commission review for all new buildings. MICC 19.15.030 Table D classifies design commission review of design review as a Type IV review in which the Commission holds a public hearing and issues a final decision.

2. Vesting. MICC 19.15.170B authorizes the vesting of complete site development applications. The proposal was deemed complete on June 27, 2025 (Ex. 3). The Council adopted new design standards effective June 30, 2025 (Ord. 25C-11). Because the Applicant's proposal was deemed complete prior to the effective date of the new design standards, the proposal is vested to City development standards in effect on or prior to June 30, 2025.

Substantive:

3. Zoning Designations. The HNT property is split between two zones - business (B) and residential (R-9.6). APN 0824059045 is zoned Business. Portions of APN 2107000010 and 1515600010 are zoned both Business and R-9.6, a single-family residential zone. MICC 19.01.040.G.2 provides that when a parcel is split between two zones, the lower intensity zone prevails. Therefore, other subject parcels are effectively zoned single-family residential.

4. Review Criteria and Application. The criteria for design review are set by MICC 19.06.120.B.

1 **MICC 19.06.120.B.1:** *Criteria for design review decisions. ... Design objectives and*
2 *standards for regulated improvements in all zones outside the Town Center are set*
3 *forth in chapter 19.12 MICC. Following the applicable review process in [chapter](#)*
4 *[19.15](#) MICC, the design commission or code official shall deny an application if it finds*
5 *that all the following criteria have not been met, or approve an application, or approve*
6 *it with conditions, based on finding that all the following criteria have been met:*

7 1. *The proposal conforms with the applicable design objectives and standards of the*
8 *design requirements for the zone in which the improvement is located,*

9 5. **Criterion Met.** Conformance to Chapter 19.12 MICC is met for the reasons
10 identified in the staff report, the findings and conclusions of which are adopted by this
11 reference. Modification requests are individually addressed below.

9 **Modification Request No. 1**

10 **MICC 19.04.040(B)(7):** *Compact vehicles. Up to 50 percent of the required off-street*
11 *parking spaces may be designed for accommodating compact vehicles. Such parking*
12 *spaces must be clearly designated as compact stalls. The Design Commission may*
13 *increase the percentage of compact stalls permitted if the Applicant can demonstrate*
14 *that no adverse impacts will occur.*

15 6. **Modification Granted.** The modification request for compact vehicles as
16 identified in Finding of Fact No. 5 is granted because the reduction in compact vehicles
17 spaces will have no adverse impacts as determined in Finding of Fact No. 5.

16 **Modification Request No. 2**

17 **MICC 19.04.040(B)(8):** *Loading space. An off-street loading space, having access to*
18 *a public street, shall be required adjacent to each building, hereafter erected or*
19 *enlarged. Such loading space shall be of adequate size to accommodate the maximum*
20 *number and size of vehicles simultaneously loaded or unloaded, in connection with the*
21 *business or businesses conducted in such building. No part of the truck or van using*
22 *the loading space may project into the public right-of-way.*

23 7. **Modification Approved.** MICC 19.04.040(B)(9) allows the code official
24 to grant variances from the minimum parking requirements with the approval of the
25 City Engineer and the Hearing Examiner. As determined in Finding of Fact No. 6,
26 requiring the loading area to be located adjacent to right of way is not feasible and the
27 loading area as proposed will not create any adverse impacts.

28 It should be noted that the record is entirely unclear as to why a modification is even
29 necessary in the first place. As best as can be ascertained, City staff interpret MICC
30 19.04.040(B)(8) as requiring loading areas to be located adjacent to right of way given
31 the staff report's focus on the limitations in placing such loading areas in those

1 locations. The standard quoted above only requires that such loading areas have access
2 to a public street. To the extent that staff finds noncompliance because the loading
3 areas are apparently temporary, i.e. marked off by cones for student loading and
4 unloading, the Applicant has demonstrated compliance by showing that site constraints
5 don't provide sufficient space for permanent loading spaces.

6 **Modification Request No. 3**

7 **MICC 19.04.040(E) Cooperative parking.** *Cooperative parking between two or more
8 adjoining property owners is allowed; provided, the code official, with approval from
9 the Design Commission and City Engineer, may reduce the total required spaces by 25
10 percent of the total combined required spaces with the Applicant has demonstrated that
11 no adverse impact will occur due to the reduced number of stalls.*

12 8. **Modification Granted.** The requested reduction in parking from 139
13 required parking spaces to 105 is granted. The proposed reduction will result in no
14 adverse impacts as determined in Finding of Fact No. 7.

15 9. **French American School Impacts.** Attorney Audrey Clungeon, on behalf
16 of Mathew Goldback, argues that adverse impacts will occur because the Applicant's
17 termination of its parking lease with the French American School will result in adverse
18 parking impacts. However, any impacts caused by the French American School are
19 not the responsibility of or caused by the Applicant. Applicants can only be required
20 to mitigate impacts they create. Any mitigation required of an Applicant, such as
21 parking, requires that the need for mitigation be caused by the development and that
22 the required mitigation be proportionate to the mitigated impact. *Nollan v. California
23 Coastal Comm'n*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987); *Dolan v. City
24 of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994).

25 10. Any impacts created by parking demand attributable to use of the French American
11 School is full the responsibility of the French American School. The proposal isn't the
12 cause of any impacts created by the parking demand generated by the French American
13 School. For that reason the Applicant can't be made to mitigate the impacts of that
14 demand. The Applicant's contractual obligation to provide parking the French
15 American School is limited to the terms of its contract, which in turn are subject to
16 termination or expiration. The French American School will be required to fully
17 mitigate its parking impacts. The French American School will be required under the
18 terms of its 2005 CUP to find alternative parking, whether by the CUP conditions or as
19 an amendment to the approved parking authorized by the CUP. In the alternative the
20 School will have to cease operations. Either way, the impacts of the French American
21 School parking will be mitigated.

22 9. **Applicability of MICC 19.04.040E 25% Parking Reduction.** MICC
23 19.04.040.E applies to the proposal. MICC 19.04.040.E authorizes a 25% reduction in
24 parking if no resulting adverse impacts can be demonstrated.

1 Ms. Clungeon provided a detailed written legal argument in Ex. 22.4 challenging the
2 applicability of MICC 19.04.040.E. As identified in Finding of Fact No. 3, the proposed
3 parking area is in a lot that is split zoned between B and R9.6 zones. As correctly
4 identified by Ms. Clungeon, the entire lot is therefore considered to be zoned R-9.6 by
5 operation of MICC 19.01.040.G.2. Ms. Clungeon also correctly identifies that the
6 MICC 19.04.040.E 25% reduction doesn't apply to the R-9.6 zone. Ms. Clungeon
7 therefore asserts that MICC 19.01.040.G.2 can't be used to reduce the required parking
8 for the proposed school and office use. The Applicant counters in Ex. 26 that the
9 school/office building itself is located on a lot completely zoned B. The Applicant also
10 identifies that MICC 19.04.040.E applies because parking stall quantity requirements
11 are based upon the proposed use and not the location of the parking area.

12 The tricky issue of whether MICC 19.04.040.E applies to the proposal is rendered moot
13 by principles of land use finality. The methodology for assessing the adequacy of
14 parking has already been set by John Galt's Examiner approval of a conditional use
15 permit for the proposal on July 18, 2025, File No. CUP24-001. That decision was not
16 appealed. The parking methodology was primarily based upon application of MICC
17 19.04.040.E. Absent an appeal of the CUP, it is too late during this design review stage
18 to revisit the parking methodology formulated by Examiner Galt.

19 The Washington State Supreme Court has ruled multiple times that final land use
20 decisions cannot be collaterally challenged in subsequent permit review. *Habitat Watch*
21 v. *Skagit Cnty.*, 155 Wn.2d 397, 120 P.3d 56 (2005) (challenge to grading permit
22 amounted to untimely collateral attack of earlier special use permit, where
23 authorization for grading permit came from special use permit, whose appeal period
24 had passed, and where sole basis for challenging grading permit was that extensions of
25 special use permit were improper); *Chelan Cnty. v. Nykreim*, 146 Wn.2d 904, 52 P.3d
1(2002); *Wenatchee Sportsmen Ass'n. v. Chelan Cnty.*, 141 Wn.2d 169, 4 P.3d 123
2(2000) (challenge to county's approval of plat application based on challenge to density
3 of plat was untimely collateral attack where petitioner had not challenged rezone
4 decision establishing allowed density for project two years earlier); see also *BD*
5 *Lawson Partners, LP v. City of Black Diamond*, 165 Wn. App. 677, 690, 269 P.3d 300
6 (2011).

7 Examiner Galt formulated a detailed methodology for assessing adequacy of parking.
8 Under the finality decisions identified above, it is too late to attempt to undue that
9 methodology in this proceeding. Examiner Galt's parking assessment methodology
10 was succinctly laid out in Condition No. 6 of his decision. That condition first required
11 the application of the 25% reduction criteria of MICC 19.04.040.E as part of this design
12 review process. That condition identifies alternative parking requirements if the 25%
13 reduction criteria cannot be met. In short, Examiner Galt deferred parking assessment
14 to design review, identified MICC 19.04.040.E as the applicable standard and provided
15 alternatives if the standard couldn't be met. If Mr. Goldbach or any party disagreed
16 with that process, they were required under the finality case law to challenge it as an
17 appeal to Examiner Galt's CUP. The appeal period for the CUP has long expired and
18 we are well nearing the end of Examiner Galt's parking review process to question its
19

1 validity. Mr. Goldbach's challenge to Examiner Galt's parking review process is barred
2 as an untimely challenge to Examiner Galt's CUP decision.

3 **Modification No. 4**

4 **MICC 19.10.070(B)(4) Reduction.** *The city arborist may reduce the number of
5 replacement trees as follows, where other measures designed to mitigate the tree loss
6 by restoring the tree canopy coverage and its associated benefits are considered to be
7 effective and consistent with the purposes of this chapter. The city arborist may
8 consider, but it not limited to, the following measures:*

- 9 *a. Replacement of hazardous, undesired, or short-lived trees with healthy new trees
10 that have a greater chance of long-term survival;*
- 11 *b. Restoration of critical tree areas with native vegetation; and*
- 12 *c. Protection of small trees to provide for successional stages of tree canopy.*

13 10. **Modification Denied.** The Applicant's request to reduce the 441 replacement
14 trees required by Chapter 19.10 MICC is denied.

15 MICC 19.10.020(B) allows permit approval to remove one or more nonhazardous
16 trees to take the form of a tree removal permit or other construction permit approval.
17 The Applicant has submitted a construction permit under City File No. 2506-131. This
18 permit serves as the construction permit required for the nonhazardous tree removals.
19 To avoid a second open-record public hearing, the tree removal application has been
20 consolidated¹ with the Design Standard Review application for Hearing Examiner
21 review. MICC 19.16.010 defines "City arborist" as "[t]he person designated by the
22 code official to administer the provisions of chapter 19.10 MICC"; therefore, the
23 Hearing Examiner must act as the "City arborist" for the purposes of allowing a
24 reduction in required replacement trees under MICC 19.10.070(B)(4).

25 The purposes of the City's tree retention standards are listed in MICC 19.10.005.
26 Those objectives include contributing to residential character, providing for public
27 health, providing wind protection, improving surface water quality and control and
28 reducing noise and air pollution. As outlined in Finding of Fact No. 8, several of those
29 objectives are met by the replacement trees. Specifically, the proposed tree
30 replacement provides for equivalent function in controlling surface water runoff and

1 The Notice of Application and Notice of Public Hearing don't provide notice of the consolidation. The
2 staff report in its first page project description also doesn't mention the consolidation. To remove any
3 doubts about sufficient notice it is recommended that staff provide more direct notice as to precisely
4 what permits are subject to public hearing comment. However, the notices and staff report description
5 all make clear that tree removal and replacement is part of the review. This should prove sufficient as
6 notice that tree retention standards are subject to public hearing comment.

7 The staff report findings and conclusions regarding conformance to the City's tree retention standards,
8 Chapter 19.10 MICC is also adopted by reference to the extent consistent with the findings and
9 conclusions of this decision. The Applicant's "tree permit" application should be deemed approved as
10 a result of this decision.

1 reducing air and water pollution. The replacement trees also provide for an equivalent
2 amount of carbon retention.

3 Although the replacement trees do adequately substitute for many of the objectives
4 listed in MICC 19.10.005, many objectives are not met. It is not possible to come to
5 any firm conclusions as to whether the wind or noise impacts of the tree reduction
6 would be materially adverse. One impact to which people would likely not reasonably
7 disagree is that the proposal undermines the residential character objective of the
8 City's tree retention standards. Reducing the required number of trees from 441 to
9 145 would undeniably reduce the Sylvan character of the project site. The replacement
of this large number of trees with concrete and building materials creates a
commercialized setting that is directly at odds with the residential character of the City
as a whole. The area where most trees will be removed is zoned commercial, but it
abuts residential use. The more that the B zone tree retention is reduced from required
standards, the greater the adverse impacts to adjoining residential character

10 It is also dubious that the Applicant's use of replacement trees qualifies as "*other*
11 *measures*" under MICC 19.10.070(B)(4) to warrant a reduction in tree replacement
12 requirements. The "*other measures*" referenced in MICC 19.10.070(B)(4) refers to
13 mitigation measures other than those required by Chapter 19.10. The mitigation
14 measure required by Chapter 19.10 is primarily tree replacement. The Applicant isn't
15 providing an "*other measure*" to the replacement requirement. The Applicant is
arguably just disputing the required replacement ratio adopted by the City Council.
Absent a showing that the proposed 2-inch maple trees are above and beyond what is
already required by the City's tree replacement standards, the proposed tree
replacement doesn't qualify as "*other measures*" to justify a reduction in required tree
replacement.

16 **Modification Request No. 5**

17 **5. MICC 19.10.070(C) Fee-in-lieu.** *If the city arborist determines there is insufficient
18 area to replant on the site or within the adjacent public right-of-way, the city arborist
19 may authorize payment of a fee-in-lieu provided:*

- 20 *a. There is insufficient area on the lot or adjacent right-of-way for proposed
on-site tree replacement to meet the tree replacement requirements of this
chapter; or*
- 21 *b. Tree replacement or management provided within public right-of-way or a
city park in the vicinity will be of greater benefit to the community.*
- 22 *c. Fees provided in lieu of on-site tree replacement shall be determined based
upon:*
 - 23 *i. The expected tree replacement cost including labor, materials, and
maintenance for each replacement tree; and*
 - 24 *ii. The most current council of tree and landscaper appraisers guide
for plant appraisal.*
- 25 *d. Any fee-in-lieu is also optional for the Applicant and requires an explicit
written agreement.*

1
2 11. Modification granted. The Applicant's request to pay a fee in lieu of required
3 replacement trees is granted because as determined in Finding of Fact No. 9, there is
4 insufficient area on the lot or adjacent right-of-way for required on-site tree
replacement. Since Modification Request No. 4 has been denied, the Applicant will
have to pay a fee in lieu for 407 trees.

5 **Modification Request No. 6**

6 **MICC 19.12.030(B)(2)(b) Modulation guidelines.**

7 *(i) Horizontal building facade modulation should occur at no less than every 50 feet of
8 wall length. Forms of both vertical and horizontal building modulation may include,
9 but are not limited to: facade indentations and extrusions; actual building separation;
connecting atriums, courtyards and plazas; variable roof forms and overhangs; and
decks and balconies....*

10 12. Modification Granted. The requested modifications to design modulation identified
11 in Finding of Fact No. 10 is granted. Where "should" is used in a design standard, MICC
12 19.12.010(E) allows the Applicant to demonstrate to the satisfaction of the Hearing
13 Examiner that the proposed design is "*an equal or better means of satisfying the standard
and objective.*" As determined in Finding of Fact No. 10, the design features used to
14 compensate for the lacking modulation fully mitigate for the reduced modulation.

15 **Modification Request No. 7**

16 **MICC 19.12.030(B)(6)(b) Roofline variation, numeric standard.** *Roof line variation shall
17 occur on all multifamily structures with roof lines which exceed 50 feet in length, and on
18 all commercial, office or public structures which exceed 70 feet in length. Roof line
variation shall be achieved using one or more of the following methods:*

19 a. *Vertical off-set ridge or cornice line;*
20 b. *Horizontal off-set ridge or cornice line;*
21 c. *Variations of roof pitch between 5:12 and 12:12; or*
22 d. *Any other approved technique which achieves the intent of this section.*

23 13. Standard met. The proposal successfully provides for roofline variation due to the
24 design features identified in Finding of Fact No. 11. As such, the proposal conforms to
25 MICC 19.12.030(B)(6)(b) by providing "*any approved technique which achieves the intent
of this section*" as required in subsection d quoted above.

Modification Request No. 8

1 **MICC 19.12.040(B)(3)(b)** *Fences should be made of ornamental metal or wood, masonry, or*
2 *some combination of the three. The use of razor wire, barbed wire, chain link, plastic or wire*
3 *fencing is prohibited if it will be visible from a public way or adjacent properties, unless there are*
4 *security requirements which cannot feasibly be addressed by other means.*

5 14. Modification Granted in Part. Chain link fencing may be installed in those areas along
6 PSE property that is not visible to public ways. As previously noted, where “should” is
7 used in a design standard, MICC 19.12.010(E) allows the Applicant to demonstrate to the
8 satisfaction of the Hearing Examiner that the proposed design is “*an equal or better means*
9 *of satisfying the standard and objective.*” The prohibition of chain link fencing appears to
10 be purely based upon aesthetic grounds for the benefit of adjoining properties and those
11 using public ways. As such, there is no reason to prohibit chain link fencing for the benefit
12 of the adjoining PSE property. However, as noted in Finding of Fact No. 12, some portions
13 of the fence will be visible from public ways. Chain link fencing is not an acceptable visual
14 impact in the high-quality built environment of the City of Mercer Island. Those portions
15 of the fence visible to any public way will have to be composed of ornamental metal or
16 wood, masonry, or some combination of the three. Of course, the portions of the chain link
17 fence visible to public ways could simply be hidden by some decorative fencing that meets
18 the design standard.

19 MICC 19.12.040(B)(3)(b) does allow chain link fencing if necessary for security purposes.
20 As noted in Finding of Fact No. 12 there are serious security concerns associated with the
21 proposed use. However, there is no basis to conclude that the required types of fencing
22 would provide less security than chain link fencing. Further, as previously noted, chain link
23 fencing can still be used if the portions visible to public ways is hidden by decorative
24 fencing that meets the material requirements of MICC 19.12.040(B)(3)(b).

15 **Modification Request No. 9**

16 **MICC 19.12.040(B)(4)(b)** *Impervious surfaces. For all zones, area landscaped by*
17 *impervious surfaces should constitute no more than 25 percent of the total required*
18 *landscape area....*

19 15. Modification Granted. The Applicant’s request to exceed the 25 percent maximum
20 impervious surface standard above is granted since it is offset by a 1,845 square foot
21 increase in the minimum pervious surface area required for the proposal as outlined in
22 Finding of Fact No. 13. The off-set is in part justified by the fact that the site is highly
23 constrained for the development objectives sought by the Applicant and reducing
24 impervious surface area is not a feasible option.

23 **Modification Request No. 10**

24 **MICC 19.12.040(B)(9)** *Surface parking lot planting. Surface parking lot planting is*
25 *required in addition to required perimeter landscape screens. The requirements for surface*
26 *parking lot planting for new parking lots with fewer than 20 spaces and for additions or*
27 *remodels may be waived or modified if the Applicant can demonstrate that these standards*
28 *would reduce the amount of parking below the minimum required for the site.*

16. Modification Granted. As determined in Finding of Fact No. 13, the required plantings would reduce the amount of required parking. At the least, the space necessary for the plantings would require an increase in the number of compact parking spaces, which would further reduce the number of standard sized parking stalls required by the proposal.

17. Transportation Impacts. Some written comments expressed concern over off-site generation produced by the proposal. Off-site transportation impacts are outside the scope of design review criteria. Design review is limited exclusively to application of design review criteria. Traffic impacts were addressed in the conditional use permit approval for the project and the environmental review of the project.

DECISION

The proposal meets all design review criteria and tree retention standards for the reasons identified in the Findings of Fact and Conclusions of Law above and the design review application and tree permit is approved subject to the conditions below. All requested code modifications identified in this decision are at least approved in part except for the requested reduction in tree retention. Hearing Examiner approval in this decision for the modifications identified herein shall not substitute for any added City Engineer or "Code Official" approval also required for the modifications.

1 1. The project shall be in substantial conformance with (Exhibit 3) and
2 all applicable development standards contained within Mercer Island City Code
3 (MICC) Title 19. 2. The Applicant shall obtain any permits from state and
4 federal agencies that are applicable to this project. The Applicant is also responsible
5 for documenting any required changes in the project proposal due to conditions
6 imposed by any applicable local, state, and federal government agencies.

7 3. The Applicant shall apply for and obtain all required City of Mercer
8 Island permits, including but not limited to a Building Permit for construction of
9 this project proposal.

10 4. Construction of this project proposal shall only occur during
11 approved construction hours by the City of Mercer Island and/or as otherwise
12 restricted by the Building Official.

13 5. The Mitigated Determination of Non-Significance (MDNS) for
14 SEP24-003, modified by the Hearing Examiner ruling in Exhibit 8, includes the
15 following conditions, which are hereby incorporated into the conditions of approval
16 for the DSR:

17 a. [1] Provide a left turn lane from southbound East Mercer Way to the
18 Frontage Road serving the site. The turn lane length shall be designed to
19 accommodate left turn demand during the AM and PM peak hour, and during site
20 peak if it does not coincide with the AM and/or PM peak hour. Where the
21 Washington State Department of Transportation (WSDOT) has permitting
22 authority over the right-of-way, the widths of all lanes of East Mercer Way shall
23 comply with Washington State Department of Transportation (“WSDOT”)
24 standards and procedures (including, without limitation, standards and procedures
for deviations). The Applicant shall apply for and obtain all necessary approvals
that WSDOT may require. To the extent any improvements are within solely City
right-of-way (not subject to WSDOT authority, design or otherwise), the widths of
all lanes of East Mercer Way shall comply with applicable American Association
of State Highway and Transportation Officials (“AASHTO”) standards. Requests
for deviations from AASHTO design guidelines shall be supported with written
justification that has been stamped and signed by a licensed civil engineer; the City
shall have the sole discretion to approve or deny such requests.

25 The addition of the southbound left turn lane may reduce the length of the
adjacent northbound left turn lane at the SE 36th Street/East Mercer Way
intersection. If such a reduction in the length of said northbound left turn lane is
necessary, the analysis called for by Mitigation Measure 2 shall be undertaken.

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

c. [3] The left turn lane from southbound East Mercer Way to the Frontage Road serving the site may consequently require narrowing of the northbound lane on East Mercer Way, especially as approaching the Frontage Road serving the site. 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 said East Mercer Way lane width is narrower than existing condition. The design vehicle shall be a S-BUS-40 (school bus). Modify curb radii if reasonably warranted.

d. [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.

6. The Applicant shall provide a Transportation Demand Management Plan (TDMP) prior to issuance of construction authorization which includes, at a minimum, measures to address the following:

a. The parking capacity for each use and the time periods for which each parking space or section is authorized for the school, place of worship, and office uses. Each use shall have access to at least the following number of parking spaces during the time periods established for operation:

- i. Office: 33 parking spaces
- ii. School/classrooms: 24 parking spaces
- iii. Place of worship: 82 parking spaces

b. The school and offices on parcel number 0824059045 shall not schedule overlapping events with the existing uses on parcel numbers 1515600010 and 2107000010 that exceed the number of on-site parking spaces at this facility.

c. If parking areas are not available during construction, a temporary parking plan must be submitted to the City for each phase of construction prior to issuance of construction authorization.

d. If an event is expected to draw visitors in excess of the number of on-site parking spaces, Herzl-Ner Tamid Conservative Congregation or office space occupant/lessee shall make arrangements to procure off-site parking and provide a shuttle or other means to transport visitors to and from the site of the event.

e. If the City receives complaints regarding parking associated with the Herzl-Ner Tamid Conservative Congregation school, place of worship, or office uses and determines the parking results in adverse impacts to the surrounding neighborhood, including impacts to public safety, the City shall require that all vehicle parking be accommodated on-site and/or otherwise mitigated to the City's satisfaction. If this condition is implemented, overflow parking will not be allowed on public streets (weekdays, weeknights, and weekends).

f. If student drop-off and pick-up activities create congestion on any City streets, the City reserves the right to install "No Parking During School Days" signage and prevent vehicle parking on the roadway and its shoulders.

g. The programming for each use.

i. Days and hours of each use.

ii. Description of activities and associated parking demand.

iii. Description of events that will likely exceed available parking.

iv. Description of planned methods for reducing parking demand such as pools, shuttles, staggering high intensity uses, etc.

h. A Transportation Coordinator shall be identified to implement the
including:

- i. Communications with each facility manager, neighbors, and the related to traffic and parking management on the site.

ii. Responding to concerns related to traffic and parking impacts on the neighborhood.

iii. On-site traffic management

iv. Management of student drop-off and pick-up

v. Management of the overall site parking supply, including bike parking

i. Within one month from the

by letter or postcard, all neighbors living within 300 feet of the school, with me and contact information of the individual they have identified as the Transportation Coordinator who will respond to future neighborhood concerns related to traffic and parking impacts on the neighborhood.

j. Identification of strategies and implementation of programs and
s to encourage ridesharing (carpooling/vanpooling), off-site parking and
program, school bus activity, and safe pedestrian walk areas for all uses on
s 0824059045, 1515600010 and 2107000010.

k. Measures to mitigate unexpected traffic and parking impacts associated with activities and special events on parcels 0824059045, 1515600010 07000010.

1. Plans to educate school students, parents, staff, visitors, and office occupants to abide by posted speed limits on the Island and practice safe driving practices as travel to and from the Herzl-Ner Tamid Conservative Congregation properties. All traffic and parking policies and programs must be communicated to parents, faculty, staff, visitors, and office space occupants.

7. The Transportation Demand Management Plan shall be submitted to the City's Community Planning and Development Department annually on or before May 31.

8. The six-foot-tall fence proposed within the access easement on
TRACT is not allowed pursuant to MICC 19.02.020(H)(1), unless the
ant provides documentation that improvements are authorized within the
ent.

1 9. The proposed development shall not result in an increase in
2 impervious surfaces on the residentially zoned parcels. New impervious surfaces
3 shall be offset by removed impervious surfaces to maintain existing nonconforming
4 impervious surface areas.

5 10. Pursuant to MICC 19.04.040(B)(1), all off-street parking areas shall
6 be graded and surfaced to a standard comparable to the street which serves the
7 parking area. The parking area shall be developed and completed to the required
8 standards before an occupancy permit for the building to be served is issued.

9 11. Pursuant to MICC 19.04.040(B)(2), all traffic control devices such
10 as parking strips designating car stalls, directional arrows or signs, bull rails, curbs
11 and other structures shall be installed and completed as shown on the approved
12 plans. Hard surfaced parking area shall use paint or similar devices to delineate
13 parking stalls and directional arrows.

14 12. Pursuant to MICC 19.04.040(B)(6), off-street parking shall meet the
15 relevant state design standards for the physically disabled.

16 13. Pursuant to MICC 19.04.050(B)(26), the preschool facility shall
17 meet all applicable safety and licensing laws and requirements prior to issuance of
18 construction authorization.

19 14. Pursuant to MICC 19.10.070(B)(2), replacement trees shall
20 primarily be those species native to the Pacific Northwest. In making a
21 determination regarding the species of replacement trees, the city arborist shall
22 defer to the species selected by the property owner unless the city arborist
23 determines that the species selected is unlikely to survive for a period of at least ten
24 years, represents a danger or nuisance, would threaten overhead or underground
25 utilities or would fail to provide adequate protection to any critical tree area.

26 15. Pursuant to MICC 19.10.070(B)(3), coniferous trees shall be at least
27 six feet tall; and deciduous trees shall be at least one and one-half inches in caliper.
28 The city arborist may authorize the planting of smaller-sized replacement trees if
29 the Applicant can demonstrate that smaller trees are more suited to the species, the
30 site conditions, neighborhood character, and the purposes of this section, and that
31 such replacement trees will be planted in sufficient quantities to meet the intent of
32 this section. The city arborist shall not authorize the planting of shrubs or bushes in
33 lieu of required replacement trees.

34 16. Pursuant to MICC 19.10.070(B)(5), replacement trees shall be
35 planted in the wet season (October 1 through April 1), following the applicable tree
36 removal or, in the case of a development proposal, completion of the development
37 work, provided the city arborist may authorize an extension to ensure optimal
38 planting conditions for tree survival.

39 17. Pursuant to MICC 19.10.070(D), the Applicant shall maintain all
40 replacement trees in a healthy condition for a period of five years after planting.
41 The Applicant shall be obligated to replant any replacement tree that dies, becomes
42 diseased, or is removed during this five-year time period.

1 18. Pursuant to MICC 19.10.080(A), to ensure long-term viability of
2 trees identified for protection, permit plans and construction activities shall comply
3 with the then-existing best management practices (BMP) — managing trees during
4 construction, published by the International Society of Arboriculture, adopted by
5 reference.

6 19. Pursuant to MICC 19.12.010(G), it is the property owners' and
7 tenants' responsibility to ensure compliance with applicable development
8 regulations when a change of use and/or a tenant improvement occurs.

9 20. Pursuant to MICC 19.12.040(B)(6), native or northwest-adapted
10 plants should be used for all open space and buffer locations and drought tolerant
11 plantings should be used in a majority of plantings. New plantings should
12 complement existing species native to the Pacific Northwest. Ground cover should
13 be planted and spaced to achieve total coverage within three years after installation.

14 21. Pursuant to MICC 19.12.040(B)(8)(a) and (b), a full screen should
15 block views from adjacent properties as seen at the pedestrian eye level in all
16 seasons within three years of installation. A partial screen shall provide the desired
17 screening function as seen at the pedestrian eye level in all seasons within three
18 years of installation. Documentation that the approved screening meets these
19 requirements is required to be submitted to Community Planning & Development
20 three years after installation.

21 22. Pursuant to MICC 19.12.040(B)(10), graded slopes in planting areas
22 should not exceed a 3(Horizontal): 1(Vertical) slope, in order to decrease erosion
23 potential and to facilitate maintenance. Graded slopes planted with grass should not
24 exceed a 4(H): 1(V) slope. On ungraded slopes equal to or greater than 2(H): 1(V),
25 erosion control netting or alternative procedures shall be used to prevent erosion.
26 The obligation to install plants, shrubs and ground cover includes the obligation to
27 utilize soil, planting practices and irrigation equipment that maximize the
28 likelihood of their long-term survival.

29 23. Pursuant to MICC 19.12.040(B)(11)(h), planting areas shall be
30 provided with adequate drainage.

31 24. All required landscaping shall be maintained in good condition.
32 Plant material should be cared for in a way that allows their natural form to be
33 maintained, even when the plant reaches maturity. A performance guarantee shall
34 be required for the installation maintenance of landscaping and replacement trees.
35 The performance guarantee shall be executed consistent with MICC 19.01.060(C).

36 25. Pursuant to MICC 19.10.070(C), the Hearing Examiner, acting as
37 the city arborist, may authorize a fee-in-lieu if there is insufficient area to replant
38 on-site or within adjacent public right-of-way. The Hearing Examiner finds that
39 there is sufficient area to replant 34 trees on-site or within adjacent public right-of-
40 way. A fee-in-lieu may be authorized for the remaining 407 required replacement
41 trees.

42 26. Chain link fencing is authorized along adjoining PSE property.
43 However, any portions of the fence visible to public right of way shall be substituted
44 or hidden by fencing that composed of materials required by MICC
45 19.12.040(B)(3)(b).

1
2
3 Dated this 21st day of November, 2025.

4 
5

6 Phil Olbrechts
7 Mercer Island Hearing Examiner

8 **Appeal Right and Valuation Notices**

9 This land use decision is final and subject to appeal to superior court as governed by the
10 Land Use Petition Act, Chapter 36.70C RCW.

11 Affected property owners may request a change in valuation for property tax purposes
12 notwithstanding any program of revaluation.

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