

March 3, 2010

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION ON SEPA APPEAL

SUBJECT: Department of Development and Environmental Services File No. **L08TY403**
Proposed Ordinance No. **2009-0458**

MELKI REZONE

SEPA¹ Appeal (Appeal from Determination of Nonsignificance (DNS))

Location: 12811–164th Avenue SE, Renton

SEPA Appellant: Citizen's Alliance to Reach Out & Engage (CARE)
represented by Gwendolyn High, President
PO Box 2936
Renton, Washington 98056
Telephone: (425) 336-4059
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**Respondent
King County:** Department of Development and Environmental Services (DDES)
represented by Mark Mitchell
900 Oakesdale Avenue SW
Renton, Washington 98055
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Applicant: Gebran Melki
represented by Richard Wilson, Attorney
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¹ State Environmental Policy Act.

SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal; sustain DNS

EXAMINER PROCEEDINGS:

Pre-Hearing Conference:	August 27, 2009
Hearing Opened:	November 17, 2009
Hearing Continued to:	December 2, 2009
Hearing Continued Administratively for Additional Submittals to:	January 6, 2010
Hearing Record Closed:	January 6, 2010

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Request:	Zone reclassification from O, Office (Potential RB, Regional Business) to RB (Regional Business).
Location:	12811 164 th Avenue SE, Renton (unincorporated King County)
Proponent:	Gebran Melki
File Number:	L08TY403
Threshold Determination:	Determination of Nonsignificance (DNS)
Date of Issuance:	July 27, 2009
King County Action:	Zone Reclassification
Requested Zone:	Regional Business (RB)
Existing Zone:	Office (O); Potential RB
Community Plan:	Newcastle
Section/Township/Range:	NE 14-23-5 / Parcel No.: 1457500005

2. The subject property is in the East Renton unincorporated area. Essentially rectangular in shape (a slightly off-square parallelogram) and 1.10 acres in area, it lies in the southwest quadrant of the intersection of Southeast 128th Street and 164th Avenue Southeast. Possessing very even terrain sloping gently from west to east and southeast (toward Cemetery Pond; see below), its northeast portion is generally cleared of vegetation and is developed with a 910 square foot business office structure (of a manufactured type) with access drives and parking areas which are partly paved (4,800 square feet of area) and partly graveled (7,300 square feet). Such improvements were emplaced on the property prior to Applicant Melki's purchase of the site in February 2008.
3. The fronting roadway to the north is Southeast 128th Street, a four-lane arterial road (aka "NE 4th Street" within the Renton city limits to the west), while the fronting right-of-way to the east is 164th Avenue Southeast, which along the property frontage (the area south of Southeast 128th Street in the vicinity) is not developed for public travel but is only developed for access to the

- subject property. North of Southeast 128th Street, 164th Avenue Southeast is an improved two-lane public roadway.
4. While the greater vicinity of the site is developed with a mix of suburban densities of residential development, the immediate vicinity has a commercial retail shopping center to the northeast in the northeast quadrant of the intersection and undeveloped wetland areas to the east and southeast and also to the north across Southeast 128th Street. Suburban residential development lies to the west.
 5. The zoning of the property is Office with the additional formal assignment of potential zoning to Regional Business (O-potential RB).² The vicinity is zoned Urban Residential-4 (R-4) to the west, south and east on the south side of Southeast 128th Street; Community Business (CB) in the northeast quadrant of the aforementioned intersection; and Rural Area-5 (RA-5) to the northwest, north and further to the northeast.
 6. The property is provided public water service by King County Water District No. 90. It is not provided sanitary sewer service, which is not available to the area currently, but has a Public Health-approved holding tank system.
 7. The stretch of SE 128th Street along the property frontage and in the vicinity is Failing Corridor Segment 15 in the officially mapped Corridors Causing Travel Shed Concurrency Failure. Such status in general means that a concurrency certificate may not be issued for new development or redevelopment generating significant new vehicular traffic.
 8. The extensive Cemetery Pond wetlands complex lies in close proximity to the developed portions of the site, beginning on the Applicant's property in its southern reaches and extending substantially offsite to the east, southeast and south. The Pond wetland complex includes approximately a dozen acres of open water and is classified under the Critical Areas Ordinance as a Class 1 wetland, the highest (most sensitive) classification.³ The subject property is completely encumbered by the wetland system and its regulatory buffers, although the regulatory buffer area is in turn partly encumbered by the previously established⁴ office structure and improved parking areas.
 9. Cemetery Pond also is used systematically as a formal regional drainage detention facility, having been improved as such and administered by the County to perform its detention function. The outlet of Cemetery Pond forms a tributary to May Creek (Tributary WRIA 08 0291A), which runs generally northerly to its confluence with May Creek. The tributary leaves Cemetery Pond at its northern extent southeast of the developed portion of the subject site, and runs due north (toward SE 128th Street) a bit inboard of the east side of 164th Avenue SE, across the road from the subject property.
 10. Flowing generally easterly toward the 164th Avenue SE road frontage, the site's surface drainage then is routed through intercepting grassy drainage swales fronting the sides of the abutting north-south 164th Avenue SE right-of-way on the east side of the property before being conveyed into a drainage detention vault into the tributary exiting Cemetery Pond. (There is disputation as

² The potential zone classification is assigned pursuant to KCC 21A.04.170.

³ There is disputation in the record regarding the proper calculation of the wetland rating and the resulting point total in classification, but there is no disputation of the Class 1 designation. The disputation has no substantial effect for purposes of deciding the instant appeal.

⁴ Prior to enactment of the county sensitive areas ordinance (SAO), the predecessor ordinance to the CAO.

to the complete conveyance via such system and its routing, with project opponents contending that some of the swale drainage runs southerly rather than going through the vault and thence into the tributary, and instead drains more directly (generally southerly) into the Cemetery Pond wetland area.)

11. Certain site development actions previously undertaken on the property, consisting of clearing and grading without required permits, were the subject of recent code enforcement action by the county. Remediation by a grading permit, removal of gravel fill and vegetative restoration of disturbed areas were required, as well as installation of split rail fencing and wetland signage to delineate the effective regulatory perimeter of the adjacent wetland and its associated buffers. The grading permit is currently in “open” status; the required work has been performed, but a monitoring period still pertains.
12. An SAO “variance” to SAO wetland regulation was granted the property in 1999 by DDES, in association with a prior veterinary office use; that “variance” is equivalent to a CAO “alteration exception,” the current terminology, essentially accepting the developed portions of the site being located within what would normally be regulatory wetland buffer.⁵
13. As noted, the property is developed with an office structure. It housed the established veterinary office until recently. Mr. Melki is in the process of converting the use of the property to a pre-owned vehicle sales business. The business would entail exterior display of an inventory of 30-40 vehicles onsite, drawing an estimated customer traffic of 10 customers/day, with 3-5 during the 4-6 pm peak traffic hour.
14. The zoning code use classification encompassing the proposed vehicle sales use is termed “motor vehicles and boat dealers,” which is not permitted in the O zone but is allowed in the RB zone with the proviso “excluding retail sale of trucks exceeding one-ton capacity.” [KCC 21A.08.070.A and B.8] In order to effect the zoning permissibility of the proposed vehicle sales use on the property, the Applicant requests rezoning of the property to RB, and offers voluntary use and activity limitations and requirements which would limit the use of the property to the vehicle sales use (and therefore not permit the full panoply of RB uses).⁶ Additional restrictions/conditions offered consist of disallowance of repair and maintenance onsite; containment of washwater from the natural drainage system; time limits on presence of inoperable vehicles; and, within 30 days of final rezone approval, subjection of the use to the Certificate of Occupancy process, during which review under the Stormwater Design Manual and the Pollution Protection Manual BMP’s would be conducted. (Such limitations and conditions would be formally established as P-Suffix development standards, as set forth in KCC 21A.04.150.)

⁵ It may be that the exception also constitutes what would now be a “reasonable use exception” under the CAO.

⁶ The DNS characterizes the “project description” as “Zone reclassification of 1.10 acres from O (Office) Potential RB (Regional Business) to RB to establish a pre owned vehicle sales business.” Such description comports with the application narrative, which states the desire “to establish a pre-owned neighborhood automobile dealership.” As noted, the zoning code use classification encompassing vehicle sales is termed “motor vehicles and boat dealers,” which also as noted is allowed in the RB zone, with the proviso “excluding retail sale of trucks exceeding one-ton capacity.” [KCC 21A.08.070.A and B.8] But the boat sales component was not disclosed in the application, the SEPA environmental checklist or the DNS. CARE objects to allowance of boat sales in addition to vehicle sales, arguing that boat sales were not subjected to the SEPA environmental review. (CARE is concerned that bringing used boats onto the site will have the possibility of also bringing noxious aquatic weeds into close proximity to the Cemetery Pond wetland.) The objection is valid; the environmental review conducted to date is procedurally insufficient to allow boat sales onsite at present (without further formal environmental review under SEPA). Boat sales would accordingly be disallowed in any recommendation of rezone approval.

15. On July 27, 2009, DDES as the SEPA responsible official issued a Determination of Nonsignificance (DNS) for the proposed action (as noted, termed a “zone reclassification of 1.10 acres from O (Office) Potential RB (Regional Business) to RB to establish a pre owned vehicle sales business”). An appeal of the DNS was timely filed by CARE on August 13, 2009.
16. By Prehearing Order issued September 17, 2009, the appeal was accepted for consideration. The following is the accepted topical issue of appeal:
 - Is the DNS erroneous in that the rezone and development action will have a probable significant adverse drainage impact on wetland critical areas? A secondary issue is: will such impact remain probable and significant with the application of regulatory requirements?
17. Water, including surface water movement/quantity/quality, runoff/absorption, floods, and groundwater movement/quantity/quality, is an element of the natural environment. [WAC 197-11-444(1)(c)]
18. Development drainage is regulated by Chapter 9.04 KCC, the county surface water runoff policy. Chapter 9.04 KCC, which has been adopted as county environmental policy by KCC 20.44.080(B)(7), governs the King County Surface Water Design Manual (SWDM), adopted as administrative rule by the King County Department of Natural Resources and Parks (DNRP) and administered by DDES in the review of development applications.
19. Implementing Chapter 90.48 RCW (Water Pollution Control) and the state Department of Ecology (DOE) Stormwater Management Manual for Western Washington, Chapter 9.12 KCC establishes the county’s water quality regulations, including adoption of the county Pollution Prevention Manual (PPM), administered by DNRP Water and Land Resources Division, Stormwater Services Section. As of January 1, 2009, the PPM has the full force of regulation rather than guidance. The PPM establishes formal requirements of both source control and treatment Best Management Practices (BMPs), the former being the first option of implementation, and other standards of land use operation for water quality management. DNRP has adopted a public rule administering the program. Specific compliance obligations are assigned to business operations (as well as residential), and the County has site inspection and administration authority without property owner initiation. The PPM applies to the proposed used vehicle business and its operational aspects onsite, including management of pollutants generated by the operation, storage/display and washing of vehicles onsite (such as through fluid leaks (oil, antifreeze, etc.), rubber and brake pad dust, and general dirt and grime from vehicle travel and washing, etc.).
20. In CARE’s expressions of concern about the proposed use and its assertion of adverse impacts (usually termed “potential” impacts by CARE) on the adjacent Cemetery Pond wetland system, its presentation and the evidence in the record do not demonstrate the probability of a significant adverse environmental impact in the topical area accepted on appeal.
 - A. First, it should be noted that the asserted drainage impact of the proposed action with respect to wetlands could consist of hydrological impacts (increased runoff peak flow and volume) and water quality impacts (pollutants, whether physical sediments or biochemical). CARE has focused on the latter. There have been no substantial offerings regarding hydrological impacts, such as increased runoff and resultant flooding and/or erosion.

- B. It should also be noted that the impacts under consideration here are only the *new, i.e., additional*, runoff and water quality impacts, in other words, the incremental impact. The existing impacts (those associated with the prior established veterinary use on the property) are not a part of the proposed action and are instead part of the baseline of impact consideration; they shall not be considered in deciding the appeal, particularly as there was no assertion that they form part of any contended cumulative impact.
- C. CARE's evidence proffers on the appeal have concentrated almost exclusively on the purported inability of the proposed use to conform to the PPM and its operational BMP's and on the sensitivity of the allegedly pollution-receiving wetland.
- D. An absolute paucity of substantial evidence has been entered showing the nature and levels of the asserted new pollutants (such as by, *e.g.*, projected increases in sediment loads, levels of concentration of heavy metals, duly adopted maximum acceptable levels, etc., whether from empirical examination or pertinent scientific research studies) arising from the proposed vehicle sales operation. None has been offered that relates with direct particularity to the actual rezone use proposal. There simply has been little showing of the specific impact of the proposed use. Only generalities and abstractions have been offered, culled mainly from very generalized articulations of pollutant generation from the PPM. And the most specific of those articulations, PPM Table 2.1, tabulates "*Potential* Pollutants and Impacts Associated with Activities" and lists "Activities That *May* Affect Stormwater Runoff." (Emphasis added) "Potential" and "may" are not demonstrative of probability; see Conclusion 5.
- E. The approach of focusing on the infeasibility of mitigation by the PPM BMP's has the cart before the horse, as it were. It in effect seeks to compel a reverse inference that due to the absence of ability to perform mitigation, there will result a probable significant impact. This reasoning contains a logical flaw; an absence of mitigation, similar to failure to comply with a regulation, does not *a priori* (automatically) result in a *probable*, much less *significant* impact.⁷ The flawed approach depends on a *presumption* of probable and significant pollution; in this case, such presumption has hardly been supported by any persuasive facts.
- F. Nevertheless, even operating under a presumption of pollution generation, it has also not been shown, to any persuasive degree, that the asserted new pollution has the *probability* of travel to and impact on Cemetery Pond, the contended receiving sensitive wetland. There is no doubting from the record the relative sensitivity of the Pond and its wetland functions and values, but there is a gap in actually showing, rather than presuming, that the asserted new impact to the wetland has a *probability* of occurring, even without the available mitigation.⁸ And certainly *with* the mitigation of at least the washwater

⁷ It sometimes occurs that through mitigation a probable significant impact is reduced to a degree below probability and/or significance. It is also fully within the realm of possibility that even with mitigation efforts, an impact would remain probable and significant, equally plausible that an identified adverse impact is not significant to begin with and absent mitigation remains nonsignificant, and also equally plausible that mitigation of one impact causes a different impact, significant or not. Presence or absence of mitigation *per se* is not the sole factor in the probability and significance of impact.

⁸ Consisting of a) the mitigation proposed by the Applicant, b) the regulatory operation of the PPM, and c) the existing detention vault and grassy swales that form at least part of the site's surface drainage system, including conveyances and facilities offsite (to whatever degree the grassy swales provide mitigation; their effectiveness is disputed, but resolution of the dispute is not necessary to decide the appeal).

containment onsite and compliance with the PPM,⁹ the level of the new water quality/wetland pollution has not by any means been shown by the evidence to have any more than a moderate effect. The test of significance of impact under SEPA is a “more than moderate” effect. That test has not been met in this appeal.

- G. In the event of rezone approval, CARE requests mitigation for its asserted wetland impacts in the form of a “significant financial contribution” to ongoing wetland mitigation and restoration efforts. There is no basis of authority for requiring such monetary payments.

CONCLUSIONS:

1. The issue before the Examiner to adjudicate in this administrative appeal of the DNS is whether the DNS’s “determination” of “non-significance” is erroneous. The test, then, is whether the evidence will demonstrate that the determination is fundamentally erroneous, *i.e.*, that an adverse drainage impact on wetlands is both probable and significant, and therefore required under SEPA to be a) disclosed in an EIS or b) sufficiently mitigated by voluntary mitigation and/or by mitigation lawfully imposed through the Mitigated DNS (MDNS) process (see WAC 197-11-350).
2. The appropriate standard of proof to apply in an appeal of a SEPA threshold determination is the clearly erroneous standard: the action of the responsible official is not disturbed unless, after reviewing all the evidence in the record, the appellate decisionmaker is left with the definite conviction that a mistake has been made. [*Ass'n of Rural Residents v. Kitsap County*, 141 Wn.2d 185 at 195-96, 4 P.3d 115 (2000); also see *Leavitt v. Jefferson Cy.*, 74 Wn. App. 668, 680 (1994) (citations omitted)]
3. The Appellant has the burden of proof to establish by a preponderance of the evidence that the DDES threshold determination is clearly erroneous based on the record as a whole. Regarding those impacts of the proposal that were considered by the responsible official, state and local law require that the DDES procedural determination be given substantial weight on review. [RCW 43.21C.075(3)(d) and .090; WAC 197-11-680(3)(viii); and KCC 20.44.120]

⁹ With respect to the mitigation available and/or offered, the Examiner must make certain reasonable reliances. Despite CARE’s stated lack of confidence in the regulatory process, reliance must be made on the Applicant’s offer to contain washwater onsite (through imposition by an enforceable condition, and in such regard also relying on the operation of code enforcement); on the operation and due maintenance of the existing drainage system and its detention vault and grassy swales; and on the regulatory administration and operation of the PPM. And if compliance with the PPM, even under alternative strategies, is indeed infeasible as contended, then the use would appear not to be able to be conducted lawfully on the site after all, from a *regulatory* standpoint. The compliance feasibility issue is not ripe for determination, and CARE’s assertions of infeasibility of PPM compliance are not borne out by examination of the PPM excerpts offered. CARE contends that many required BMP’s are not feasible to accomplish on the site, but the PPM contains an explicit note, repeated in several categories of BMP’s, that reads “The above requirements are the minimum required BMPs. If these BMPs fail to prevent discharges to the storm drainage system, you will be asked to take additional measures to correct the continued pollution discharges.” The note shows the PPM regulatory process not to be static, but dynamic and operationally dependent on site and use inspection, evaluation and implementation, and the use of supplemental or alternative measures if necessary, to achieve compliance with qualitative water quality standards. The proposed use’s feasibility of PPM compliance is yet to be determined. Nevertheless, with respect to water quality impact assessment, reliance on the PPM as presumptively sufficient mitigation is not only permitted by state law, it is mandated in the urban growth area by KCC 20.44.080.C (see Conclusion 7). (As noted, the Applicant has also offered to subject the use to SWDM drainage review; whether that leads to drainage facility enhancement and any resultant mitigation remains to be seen.)

4. In order for a DNS to be found clearly in error, one or more unmitigated probable significant adverse environmental impacts must be demonstrated by a preponderance of the evidence. As noted, the burden of that proof falls on the Appellant. It is not enough to raise questions or doubt, or to claim that further analysis should be undertaken, etc., in an attempt to shift the burden to the responsible official. That runs counter to the burden of proof placed on the Appellants and the statutory assignment of substantial weight to the threshold determination.
5. The test of the likelihood of occurrence of a significant impact under SEPA is probability, not mere possibility or potential. Merely possible and potential impacts need not be disclosed. And the probability must be proven, not merely speculated upon. An impact which is remote or speculative is not a probable impact. [WAC 197-11-782]
6. The level of impact which must be proven to be probable is significance. It is not required under SEPA to disclose adverse impacts which are not significant. “ ‘Significant’ as used in SEPA means a reasonable likelihood of more than a moderate adverse impact on environmental quality.” [WAC 197-11-794]
7. As noted in the above findings, the water quality regulations of the state of Washington and King County provide a comprehensive regulatory approach to water quality maintenance which, based on direct testimony in hearing, is *required* to be observed and implemented in land use in the unincorporated county. By operation of state law, RCW 36.70B.030.2 and 43.21C.240, and county code, KCC 20.44.080.C, compliance with directly applicable and specific county regulations (such as Chapter 9.12 KCC and the PPM in this case) provides presumptively sufficient mitigation of any adverse water quality impact to a level below significance.
8. In the final analysis, particularly with the mitigation available (even without the assertedly defective grassy swale system), the level of the new water quality/wetland pollution has not by any means been shown to have any more than a moderate effect. As noted, the test of significance of impact under SEPA is a “more than moderate” effect. That test has not been met in this appeal. Accordingly, the Examiner is not left with the “firm conviction” that, with respect to the accepted appeal topic of drainage impacts on wetlands, a mistake has been made in the fundamental conclusion of the DNS: that there is not a probable significant adverse impact arising from the proposed action. Absent such conviction, under Washington case law the determination may not be disturbed, *i.e.*, reversed.
9. In summary, no probable significant adverse impact is shown by a preponderance of the evidence to be caused by the development drainage to the Cemetery Pond wetland. The DNS is therefore correct in its determination.

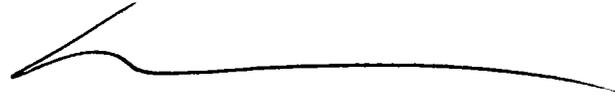
Summary Conclusion

10. In the topical area of the accepted appeal issue, the DNS is correct in its determination of the absence of probable significant adverse environmental impacts, and is sustained. The appeal must therefore be denied.

DECISION:

The appeal from the Determination of Nonsignificance (DNS) issued by DDES on July 27, 2009 under SEPA for the proposed action (the proposed *Melki* rezone) is denied. The issuance of the DNS is sustained.

ORDERED March 3, 2010.



Peter T. Donahue
King County Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.44.120 KCC, the Examiner's decision on the subject type of SEPA appeal is final on behalf of the County. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act (LUPA) defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE NOVEMBER 17, 2009, PUBLIC HEARING ON THE SEPA APPEAL REZONE APPLICATION OF GEBRAN MELKI, DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L08TY403

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Mark Mitchell representing the Department, Richard Wilson representing the Applicant, Gebran Melki the Applicant, Gwendolyn High representing the Appellant, Bill Kerschke, Ed Sewall and Peter Eberle.

The following Exhibits were offered and entered into the record:

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|----------------|---|
| Exhibit No. 1 | Department of Development and Environmental Services (DDES) staff report to the Hearing Examiner for L08TY403 |
| Exhibit No. 2 | Land Use Permit Application of Gebran Melki, submitted October 16, 2008 |
| Exhibit No. 3 | State Environmental Policy Act (SEPA) Checklist, submitted October 16, 2008 |
| Exhibit No. 4 | Rezone Application of Gebran Melki, submitted October 16, 2008 |
| Exhibit No. 5 | King County Assessor Map NE 14-23-05, dated April 3, 2008 |
| Exhibit No. 6 | Site plan |
| Exhibit No. 7 | SEPA Determination of Non-Significance (DNS) for L08TY403, issued July 27, 2009 |
| Exhibit No. 8 | Notice of SEPA DNS and Pre-hearing Conference, issued July 27, 2009 |
| Exhibit No. 9 | <i>not admitted</i> |
| Exhibit No. 10 | Affidavit of Publication in The Seattle Times on May 27, 2009, notarized May 27, 2009 |
| Exhibit No. 11 | Affidavit of Publication in the Renton Reporter on May 29, 2009, notarized May 29, 2009 |
| Exhibit No. 12 | Affidavit of Posting on May 23, 2009 |
| Exhibit No. 13 | Notice of Application of Gebran Melki, file no. L08TY403, issued May 28, 2009 |
| Exhibit No. 14 | Melki site restoration plan, approved February 23, 2009 |
| Exhibit No. 15 | <i>not admitted</i> |
| Exhibit No. 16 | <i>not admitted</i> |
| Exhibit No. 17 | Community Alliance to Reach Out & Engage (CARE) hearing statement for L08TY403 |
| Exhibit No. 18 | Excerpts from the May Creek Basin Action Plan |
| Exhibit No. 19 | CARE SEPA comments for L08TY403 |
| Exhibit No. 20 | Maps in the May Creek Basin: (a) East Renton Plateau Conditions, figure E-3 and |

- Exhibit No. 21 (b) Secondary Recommendation Projects Location map, figure 3-5
Email strings: (1) between David Christensen and CARE, dated June 19, 2009 and (2) between Erika Conkling, Mark Mitchell and David Christensen, dated July 13, 2009, October 28, 2009 and October 29, 2009
- Exhibit No. 22 King County Stormwater Pollution Prevention Manual, II: Stormwater Problems: Your Role, January 2005
- Exhibit No. 23 Corridors Causing Travel Shed Concurrency Failure map, King County Comprehensive Plan
- Exhibit No. 24 Resume of Edgar K. Sewall III
- Exhibit No. 25 Report on the wetland buffer restoration plan, prepared by Sewall Wetland Consulting dated January 13, 2009
- Exhibit No. 26 Aerial photograph of subject property (date unknown), annotated by Ed Sewall to illustrate behavior of runoff water
- Exhibit No. 27 Excerpt from the 2009 King County Surface Water Design Manual
- Exhibit No. 28 Photograph depicting bioswale on subject property
- Exhibit No. 29 Photograph depicting bioswale on subject property

MINUTES OF THE DECEMBER 2, 2009, PUBLIC HEARING ON THE SEPA APPEAL REZONE APPLICATION OF GEBRAN MELKI, DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L08TY403

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Mark Mitchell representing the Department, , Richard Wilson representing the Applicant, Gwendolyn High representing the Appellant, Dale Nelson, Peter Eberle and Ed Sewall.

The following Exhibits were offered and entered into the record:

- Exhibit No. 30 Directions for accessing potential zoning designations, includes printscreens (of county website pages) of subject property zoning information
- Exhibit No. 31 CARE's SEPA rebuttal
- Exhibit No. 32 *not admitted*
- Exhibit No. 33 Schedule and route information for King County Metro bus route no. 215, in the form of printscreens from King County Metro's website (date accessed, url unknown)
- Exhibit No. 34 Index of King County Public Rules: Stormwater Pollution Prevention Manual, effective January 1, 2009
- Exhibit No. 35 Cemetery Regional Wetland 047016, plot date September 12, 1988, King County Department of Public Works-Survey Branch
- Exhibit No. 36 magnified version of exhibit 35
- Exhibit No. 37 Channelization and Signalization drawing sheet of SE 128th Street at 164th Avenue SE, pg 7 of 21, 1994, King County Public Works
- Exhibit No. 38 magnified version of exhibit 37
- Exhibit No. 39 Photographs of subject property taken by Peter Eberle on December 1, 2009
- Exhibit No. 40 Cemetery Pond – Beaver Deceiver plans, King County Department of Natural Resources and Parks, Water and Land Resources Division, Stormwater Services Section, 2009
- Exhibit No. 41 *duplicate of exhibit 20(a)*
- Exhibit No. 42 Excerpt from May Creek Basin Action Plan