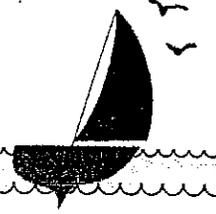




City of Des Moines

ADMINISTRATION
21630 11TH AVENUE SOUTH, SUITE A
DES MOINES, WASHINGTON 98198-6398
(206) 878-4595 T.D.D.; (206) 824-6024 FAX: (206) 870-6540



December 18, 2015

**COPY FOR YOUR
INFORMATION**

Nancy Bainbridge Rogers
Cairncross & Hempelmann
524 2nd Ave., Suite 500
Seattle, WA 98104

Re: Gerrity Group Concerns re the Woodmont Recovery Center
City File No. LUA2014-0038

Dear Ms. Bainbridge Rogers:

Thank you for your letter dated December 9, 2015 regarding the Woodmont Recovery Center. As you know, this project was approved by the Hearing Examiner on April 15, 2015 through a Conditional Use Permit (CUP) and the appeal periods have long since passed. Additionally, Valley Cities has formally requested the City to place this project and all associated reviews on hold and has also publically announced their intent to move three components of this project that are of concern to the public, namely the evaluation and treatment facility, the detox facility and the methadone clinic.

In your letter you discuss two potential procedural "missteps" that occurred during the permitting process, specifically that your client was not notified as required by law and that a "Public Safety Agreement" was not required before permit approval. To address your first concern, attached please find the Affidavit of Adjacent Property Public Notice Information (Attachments 1 and 2) clearly showing that the notice of the SEPA decision and the notice of the Conditional Use Hearing were mailed to your client's address. You will note on the list of parties to whom the notice was sent that the notice was addressed to the previous owner of the property, Joshua Green Corp but sent to your clients address. This is because that is how King County's property records list the owner and the owner's address. When notices of land use actions are required, the City uses King County property records to develop the mailing list. Notice was sent as required by law using standard procedures and the best available property owner information. Additionally the notice was posted on the property and published in the Seattle Times. Your client was given notice as required by law and did not respond.

The second "misstep" refers to the "Public Safety Agreement" that is required pursuant to mitigation requirement #1 in the City's Mitigated Determination of Non-significance dated February 2, 2015. Your letter implies that this agreement should have been written and executed prior to a SEPA determination or the issuance of the CUP. (*See generally*: Legal Analysis Woodmont Recovery Center project, by Michael C. Walter, Attachment 3). The Washington State Supreme Court stated in *Levine v. Jefferson County*:

[w]hen WAC 197-11-350 is read in conjunction with 197-11-340, it is clear that the agency had the authority to attach mitigative restrictions not only *before* issuing

Nancy Bainbridge Rogers
December 18, 2015
Page 2 of 2

a DNS, if doing so would enable it to issue the DNS, but also *after* issuance of the DNS, based on public comment.¹

Clearly, the City has the ability to impose mitigation requirements after the issuance of the DNS.

As for the CUP approval, the Hearing Examiner:

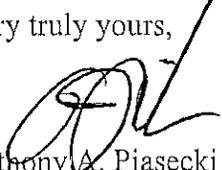
[i]n authorizing a conditional use, may impose such requirements and conditions with respect to location, landscaping, traffic control, dedication, maintenance, and operation in addition to those expressly set forth in this chapter and other ordinances as may be deemed necessary for the protection of adjacent properties and the public interest.²

In accordance with the Code, the Hearing Examiner required Valley Cities to enter into a separate agreement with the City to mitigate the impacts on public services. Rather than require a speculative agreement to be entered prior to issuance of the permit, the Hearing Examiner allowed the parties additional time to assess the impacts as well as to “allow public input” to “further address the concern.” Additionally, the Hearing Examiner agreed to reopen the hearing a year after phase one of the proposal is operational to reassess potential safety concerns and the facility’s impact on the community. Based on the law noted above, we believe these actions and conditions were imposed according to law.

Finally, in regards to notice relating to future action, the City maintains a website page specifically for the purpose of keeping the public informed of developments in this project. That page can be found at <http://desmoineswa.gov/index.aspx?NID=466> or by going to the City home page and entering “Woodmont Recovery Campus.” Also, we will note for our files that any mailed notices regarding this site should be addressed to your clients rather than to the former property owner.

Again, thank you for your letter.

Very truly yours,


Anthony A. Piasecki
Des Moines City Manager

Cc: City Council
Michael Matthias, Asst. City Manager/Economic Development Director
Pat Bosmans, City Attorney
Dan Brewer, PBPW Director

¹ 116 Wn.2d 575 (1991).

² DMMC 18.140.100

ATTACHMENT 1



AFFIDAVIT OF ADJACENT PROPERTY
PUBLIC NOTICE INFORMATION

STATE OF WASHINGTON)
)
County of King)

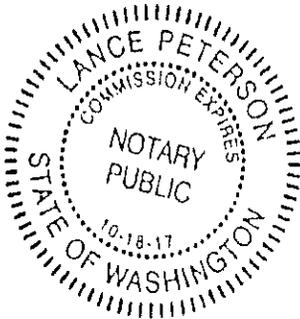
I, DUAN C KLEIMIK, being duly sworn on oath, certify, depose and say:

1. I have carefully compiled and, upon the submittal to the City of Des Moines hereof, provide the names and addresses of all property owners and the addresses of known occupants/tenants in accordance with the requirements of Des Moines Municipal Code 16.04.160 (5) within a three hundred foot (300') radius of property located at 21691 PACIFIC HIGHWAY SOUTH.
2. This information, together with a corresponding radius map, is in the form prescribed by the City of Des Moines and is consistent with the most current records available from the King County Assessor's Office.
3. Attached hereto is a complete list of the names and addresses of all property owners and the addresses of known occupants/tenants who will be sent written notice by myself upon direction from the City of Des Moines Community Development Department or SEPA Official.

[Signature]

AFFIANT

Signed and sworn to before me this 30 day of January, 2007



Lance Peterson
NOTARY PUBLIC in and for the State of Washington,
residing at King County.

My Commission expires 10-18-2017

TaxpayerName	AddrLine	CityState	ZipCode
J P MORGAN CHASE BANK	7301 BAYMEADOWS WAY	JACKSONVILLE FL	32256
VO SON+TRICIA TRANG TRAN	21002 KELLIWOOD PARK LN	KATY TX	77450
INVITATION HOMES	21001 N TATUM BLVD #1620 630	PHOENIX AZ	85050
STARKOVICH FAMILY TRUST	18226 S MANSEL AVE	REDONDO BEACH CA	90278
JOSHUA GREEN CORP	977 LOMAS SANTA FE DT #A	SOLANA BEACH CA	92075
PNW REDONDO SQUARE LLC	977 LOMAS SANTA FE DT #A	SOLANA BEACH CA	92075
SCHIER DONALD E	28521 39TH AVE S	AUBURN WA	98001
FIRE DIST 39	31617 1ST AVE S	FEDERAL WAY WA	98003
KING COUNTY FIRE DIST 39	31617 1ST AVE S	FEDERAL WAY WA	98003
YEARWOOD ROBERT C	15400 SE 30TH PL STE 100	BELLEVUE WA	98007
POTVIN TERRY D+NANETTE L	26825 17TH AVE S	DES MOINES WA	98019
GR & CS KLEIN PROPERTIES LL	125 SW 292ND ST	FEDERAL WAY WA	98023
ARGUETA FILADELFO	33333 40TH AVE SW	FEDERAL WAY WA	98023
KING COUNTY LIBRARY SYSTEM	960 NEWPORT WAY NW	ISSAQUAH WA	98027
BERKSHIRE GLOBAL L L C	26239 104TH AVE SE	KENT WA	98030
GOODNIGHT DENNIS L	26818 17TH PL S	KENT WA	98031
CHEEKS LEON+AE CHONG	1613 S 269TH	KENT WA	98032
KNUTSON WILLIAM J	26627 18TH PL S	DES MOINES WA	98032
SHAULIS ROBIN K+JENNIFER S	26826 16TH AVENUE SOUTHTREET	KENT WA	98032
TAG 8 PROPERTIES LLC	PO BOX 3949	FEDERAL WAY WA	98063
SAYA RANDY R+LICEL BALBOA	21433 SE 33RD PL	SAMMAMISH WA	98075
ABOY FRANCIS S+ABIGAIL R	PO BOX 23575	FEDERAL WAY WA	98093
4R5LGS LLC	5751 38TH AVE NE	SEATTLE WA	98105
KRISHNAMURTHY M&N	173 WARD ST	SEATTLE WA	98109
KINGEN KATELYN MARIE	1323 HARBOR AVE SW	SEATTLE WA	98116
MASTRO MIKE E+HOU VEASNA V	5010 48TH AVE S	SEATTLE WA	98118
REYES JAIME	PO BOX 28212	SEATTLE WA	98118
WEST CHESTER C	1810 15TH AVE STE C	SEATTLE WA	98122
EASTMAN CHARLES JOE	1932 SW 170TH ST	BURIEN WA	98166
BIRCH PERRY L	1505 S 268TH ST	DES MOINES WA	98198
SCHMOLKA RONALD C	1510 S 268TH ST	DES MOINES WA	98198
Current Occupant or Resident	1516 S 272ND ST	Des Moines, WA	98198
KRESHEL TRELLELY	1520 S 268TH ST	DES MOINES WA	98198
HUJTBERG ELIZABETH SUE+DANN	1521 S 268TH	SEATTLE WA	98198
Current Occupant or Resident	1521 S 268TH ST	Des Moines, WA	98198
NUCCI EUGENE+LYNN	1603 S 269TH CT	DES MOINES WA	98198
Current Occupant or Resident	1604 S 268TH ST	Des Moines, WA	98198
PETRUSCHKE DARREN R+PAMELA	1604 S 269TH CT	DES MOINES WA	98198
Current Occupant or Resident	1605 S 268TH ST	Des Moines, WA	98198
WHITE LESLIE R+JULI A	1610 S 268TH ST	DES MOINES WA	98198
Current Occupant or Resident	1613 S 269TH CT	Des Moines, WA	98198
SHIM BERNARD M	1614 S 269TH CT	DES MOINES WA	98198
CAUDLE D H	1615 S 268TH ST	DES MOINES WA	98198
Current Occupant or Resident	1640 S 272ND ST	Des Moines, WA	98198
SINGH PAL+MAHALAXMI	1708 S 268TH ST	DES MOINES WA	98198
ROBINETT CAROLYN M	1717 S 268TH ST	DES MOINES WA	98198
Current Occupant or Resident	1720 S 272ND ST	Des Moines, WA	98198
RAJ MADEN+RANI	1805 S 268TH ST	DES MOINES WA	98198
Current Occupant or Resident	1810 S 272ND ST	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 1	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 10	Des Moines, WA	98198

Current Occupant or Resident	1831 S 268TH ST APT 11	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 12	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 15	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 16	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 17	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 18	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 19	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 2	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 20	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 21	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 22	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 23	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 24	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 25	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 26	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 27	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 28	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 29	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 3	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 30	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 31	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 4	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 5	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 6	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 7	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 8	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 9	Des Moines, WA	98198
DES MOINES CITY OF	21630 11TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	26623 19TH AVE S	Des Moines, WA	98198
Current Occupant or Resident	26624 19TH AVE S	Des Moines, WA	98198
HARPER DOROTHY M	26625 19TH AVE S	DES MOINES WA	98198
DEMMLASH EYERUSALEM+MARKOS	26626 19TH AVE S	DES MOINES WA	98198
JONES WILLIAM G+JUANITA L	26628 19TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	26630 19TH AVE S	DES MOINES WA	98198
AREFE AINE MISKER+WORMESH Y	26630 19TH AVE S	DES MOINES WA	98198
SCOTT GWENDOLYN L TIPLER+IAN	26632 19TH AVE S	DES MOINES WA	98198
BEDI TARLOK N+GURSHARAN KAU	26634 19TH AVE S	DES MOINES WA	98198
FURTADO UMBERTO	26635 18TH PL S	DES MOINES WA	98198
RAJ RANI	26636 19TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	26638 18TH PL S	Des Moines, WA	98198
ALIYEV GUSEYN+ALIYEVA AMALI	2664 19TH AVE S	SEATTLE WA	98198
Current Occupant or Resident	26645 16TH AVE S	Des Moines, WA	98198
HRISKO JOHN D+CYNTHIA M (W)	26645 16TH AVE S	SEATTLE WA	98198
SVRAKA HARIS+RASEMA	26645 18TH PL S	DES MOINES WA	98198
NEWTON KEVIN M	26655 16TH AVE S	DES MOINES WA	98198
PAZ ANTONIO D+STEPHANIE R	26655 18TH PL S	DES MOINES WA	98198
GRAUMAN NORMA	26660 18TH PL S	DES MOINES WA	98198
OLSON SHARON R	26703 16TH PL S	DES MOINES WA	98198
ESCAMILLA OMAR+LUZ MARIA PL	26705 17TH PL S	DES MOINES WA	98198
ONZERE MOSES M+KAGGWA ROSE	26706 17TH PL S	DES MOINES WA	98198
BURNETT BRYAN	26709 16TH PL S	DES MOINES WA	98198
FERGUSON JOANN	26710 16TH PL S	DES MOINES WA	98198

WATSON DOUGLAS J SR+FERNAND	26711 17TH PL S	DES MOINES WA	98198
SINGH PAL	26712 17TH PL S	DES MOINES WA	98198
Current Occupant or Resident	26714 19TH AVE S	Des Moines, WA	98198
WILLIAMS GEORGE	26715 16TH PL S	DES MOINES WA	98198
NGUYEN TRANG TAM	26715 19TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	26716 19TH AVE S	Des Moines, WA	98198
SMITH VELMA L	26717 17TH PL S	DES MOINES WA	98198
WHITE MELROSE IMOGENE	26717 19TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	26718 16TH PL S	Des Moines, WA	98198
Current Occupant or Resident	26718 19TH AVE S	Des Moines, WA	98198
CAMPBELL ERICK+BAO NGOC	26719 19TH AVE S	DES MOINES WA	98198
RIGGS GLORIA R	26720 17TH PL S	DES MOINES WA	98198
LUONG KIET+MEI	26720 19TH AVE S	DES MOINES WA	98198
TRUONG CHI K	26721 19TH AVE S	DES MOINES WA	98198
NANAYAKKARA LORITA SHANTHI	26722 19TH AVE S	DES MOINES WA	98198
DUONG DUC V+ANH N HONG	26723 19TH AVE S	DES MOINES WA	98198
MONARCA MARTIN RAMOS	26726 16TH PL S	DES MOINES WA	98198
BAILEY JAMES W L+JUDITH R	26727 17TH PL S	DES MOINES WA	98198
Current Occupant or Resident	26728 17TH PL S	Des Moines, WA	98198
GOLBY RICHARD J	26804 17TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	26804 17TH PL S	Des Moines, WA	98198
VAN AUKEN JIMMY W	26806 16TH AVE S	DES MOINES WA	98198
BRADFORD MICHELLE R	26808 15TH AVE S	DES MOINES WA	98198
JONES ANTHONY B	26809 16TH AVE S	DES MOINES WA	98198
BARRIENTOS GLORIA L+TEODORI	26809 17TH PL S	DES MOINES WA	98198
Current Occupant or Resident	26809 PACIFIC HWY S	Des Moines, WA	98198
ARTHUR CHARLES S	26810 17TH PL S	DES MOINES WA	98198
POORE DAVID E	26811 17TH AVE S	DES MOINES WA	98198
GIBONEY BRIAN R	26812 15TH AVE S	DES MOINES WA	98198
CRAWFORD TERRY B	26812 17TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	26816 17TH AVE S	Des Moines, WA	98198
CHRISTOPHERSEN AMY	26817 15TH AVE S	DES MOINES WA	98198
FARNSWORTH MICHAEL L+JESSIE	26817 16TH AVE S	DES MOINES WA	98198
WOODWARD ANGELA V	26817 17TH PL S	DES MOINES WA	98198
Current Occupant or Resident	26818 17TH PL S	Des Moines, WA	98198
TIULI JUNIOR+TAGITUPE	26819 17TH AVE S	DES MOINES WA	98198
CULVER JAMIE +TAMMIE	26820 15TH AVE S	DES MOINES WA	98198
ERVIN ALBERT	26820 16TH AVE S	DES MOINES WA	98198
MACHALE KELLY SR	26820 17TH AVE S	DES MOINES WA	98198
HEIT DOUGLAS J	26825 15TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	26825 16TH AVE S	Des Moines, WA	98198
RENWICK DONALD A JR	26825 17TH PL S	DES MOINES WA	98198
Current Occupant or Resident	26826 15TH AVE S	Des Moines, WA	98198
Current Occupant or Resident	26826 16TH AVE S	Des Moines, WA	98198
Current Occupant or Resident	26826 17TH PL S	Des Moines, WA	98198
ROLPH K E	26831 15TH AVE S	DES MOINES WA	98198
OLIGO ROBERT S	26833 16TH AVE S	DES MOINES WA	98198
WITTROCK STEVEN +IRENE	26834 15TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	26839 15TH AVE S	Des Moines, WA	98198
HAGOOD REYNALDO J	26839 16TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	26844 15TH AVE S	Des Moines, WA	98198
WHITING RAYMOND D REVOCABLE	26845 15TH AVE S	DES MOINES WA	98198

Current Occupant or Resident	26845 16TH AVE S	Des Moines, WA	98198
Current Occupant or Resident	26851 15TH AVE S	Des Moines, WA	98198
LARCHER DAVID B	26851 16TH AVE S	DES MOINES WA	98198
DEJESUS JOSE	26852 15TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	26852 16TH AVE S	Des Moines, WA	98198
SELLS OLIVER D	26856 15TH AVE S	DES MOINES WA	98198
EWING DARRELL T+ALFRICA P	26857 15TH AVE S	DES MOINES WA	98198
FEDERAL NATIONAL MORTGAGE A	26857 16TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	26915 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27001 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27003 16TH AVE S	Des Moines, WA	98198
EDMISTON J ALLEN	27005 15TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	27005 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27007 PACIFIC HWY S	Des Moines, WA	98198
ARNOLD MILTON JR	27009 16TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	27009 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27010 15TH AVE S	Des Moines, WA	98198
CASTILLO FLORENCIO	27011 15TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	27011 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27013 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27015 16TH AVE S	Des Moines, WA	98198
Current Occupant or Resident	27019 16TH AVE S	Des Moines, WA	98198
YADAO CATHERINE	27019 16TH AVE S	DESMOINES WA	98198
Current Occupant or Resident	27019 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27021 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27024 15TH AVE S	Des Moines, WA	98198
Current Occupant or Resident	27025 16TH AVE S	Des Moines, WA	98198
Current Occupant or Resident	27027 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27030 15TH AVE S	Des Moines, WA	98198
Current Occupant or Resident	27031 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27035 PACIFIC HWY S	Des Moines, WA	98198
ST JOHN RICHARD V	27036 15TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	27037 16TH AVE S	Des Moines, WA	98198
Current Occupant or Resident	27041 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27043 16TH AVE S	Des Moines, WA	98198
Current Occupant or Resident	27043 PACIFIC HWY S	Des Moines, WA	98198
COSTELLO JOSEPH A+RUTH M	27044 15TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	27045 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27047 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27051 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27055 16TH AVE S	Des Moines, WA	98198
Current Occupant or Resident	27055 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27061 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27067 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27073 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27077 PACIFIC HWY S	Des Moines, WA	98198
LOU MICHAEL T	PO BOX 895	MANCHESTER WA	98353
FRANZEN ALVIN+KATHLEEN	1412 BEACH DR NE #A	TACOMA WA	98422
PHAM VALOREY	3622 SPYGLASS DR NE	TACOMA WA	98422
SEACOMA LLC	505 UNION AVE SE #120	OLYMPIA WA	98501
CASWELL ERNIE	2421 E MASON LAKE DR E	GRAPEVIEW WA	98546
AMIDON CYNTHIA S	13700 VAIL CUT OFF RD SE	RAINIER WA	98576

ENTLER TRACEY
GARRETT BRUNA E

26704 16TH PL S
26650 18TH PL S

DES MOINES WA
DES MOINES WA

98798
98198-9207

Current Occupant or Resident	26830 PACIFIC HWY S	Kent	WA	98032
Current Occupant or Resident	27000 20TH PL S	Kent	WA	98032
Current Occupant or Resident	27000 PACIFIC HWY S	Kent	WA	98032
Current Occupant or Resident	27020 PACIFIC HWY S	Kent	WA	98032

ATTACHMENT 2

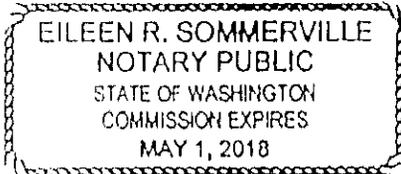


AFFIDAVIT OF ADJACENT PROPERTY
PUBLIC NOTICE INFORMATION

STATE OF WASHINGTON)
County of King)

I, SARAH LANE, being duly sworn on oath, certify, depose and say.

1. I have carefully compiled and, upon the submittal to the City of Des Moines hereof, provide the names and addresses of all property owners and the addresses of known occupants/tenants in accordance with the requirements of Des Moines Municipal Code 16.04.160 (5) within a three hundred foot (300') radius of property located at 70015 PAULINA ST, DES MOINES, IOWA
2. This information, together with a corresponding radius map, is in the form prescribed by the City of Des Moines and is consistent with the most current records available from the King County Assessor's Office.
3. Attached hereto is a complete list of the names and addresses of all property owners and the addresses of known occupants/tenants who will be sent written notice by myself upon direction from the City of Des Moines Community Development Department or SEPA Official



[Signature]
AFFIANT

Signed and sworn to before me this 17th day of MARCH, 2015.

Eileen R. Sommerville
NOTARY PUBLIC in and for the State of Washington,
residing at Thurston County

My Commission expires: May 1 - 2018

TaxpayerName	AddrLine	CityState	ZipCode
J P MORGAN CHASE BANK	7131 BAYMEADOWS WAY	JACKSONVILLE FL	32256
WU-SOFT COPY FRANCHISE INC	2100 KENNEDY BLVD WY 111	KATY TX	77459
REUMATISM CENTER	1100 N STATE ST STE 1000	PHOENIX AZ	85004
STARBUCKS COFFEE STORE	1420 S MARKET AVE	REDONDI BEACH CA	92078
POMONA GREEN CORP	977 LOMAS SANFATE DR RA	SOLANA BEACH CA	92075
PNW REDONDO SQUARE LLC	977 LOMAS SANFATE DR RA	SOLANA BEACH CA	92075
SCHIER DONALD E	28521 39TH AVE S	AUBURN WA	98001
FIRE DIST 39	31617 1ST AVE S	FEDERAL WAY WA	98001
KING COUNTY FIRE DIST 39	31617 1ST AVE S	FEDERAL WAY WA	98001
YEARWOOD ROBERT C	15400 SE 30TH PL STE 100	BELLEVUE WA	98007
POTVIN TERRY D + HANITTE L	26825 17TH AVE S	DES MOINES WA	98019
GR & CS KLEIN PROPERTIES LI	125 SW 292ND ST	FEDERAL WAY WA	98023
ARGUETA FILADELFO	33333 40TH AVE SW	FEDERAL WAY WA	98023
KING COUNTY LIBRARY SYSTEM	960 NEWPORT WAY NW	ISSAQUAH WA	98027
BERKSHIRE GLOBAL L L C	26239 104TH AVE SE	KENT WA	98030
GOODNIGHT DENNIS L	26818 17TH PL S	KENT WA	98031
CHEEKS LEON + AF CHONG	1613 S 269TH	KENT WA	98032
KRUTSON WILLIAM J	26627 18TH PL S	DES MOINES WA	98032
SHAULIS ROBIN K + JENNIFER S	26826 16TH AVENUE SOUTH TREE	KENT WA	98032
TAG B PROPERTIES LLC	PO BOX 3949	FEDERAL WAY WA	98063
SAYA RANDY R + LICEL BALBOA	21433 SE 33RD PL	SAMMAMISH WA	98075
ABOY FRANCIS S + ABIGAIL R	PO BOX 23575	FEDERAL WAY WA	98093
ARSLGS LLC	5751 38TH AVE NE	SEATTLE WA	98105
KRISHNAMURTHY M & N	173 WARD ST	SEATTLE WA	98109
KINGEN KATELYN MARIE	1323 HARBOR AVE SW	SEATTLE WA	98116
MASTRO MIKE E + HOU VLASNA V	5010 48TH AVE S	SEATTLE WA	98118
REYES JAIMI	PO BOX 28212	SEATTLE WA	98118
WEST CHESTER C	1810 15TH AVE STE C	SEATTLE WA	98122
EASTMAN CHARLES JOE	1932 SW 170TH ST	BURIEN WA	98146
BIRCH PERRY L	1505 S 268TH ST	DES MOINES WA	98198
SCHMOLKA RONALD C	1510 S 268TH ST	DES MOINES WA	98198
Current Occupant or Resident	1516 S 272ND ST	Des Moines, WA	98198
KRESHEL TRELICE Y	1520 S 268TH ST	DES MOINES WA	98198
HULTBERG ELIZABETH SUE + DANN	1521 S 268TH	SEATTLE WA	98198
Current Occupant or Resident	1521 S 268TH ST	Des Moines, WA	98198
HUCCI EUGENE + LYNN	1603 S 269TH CT	DES MOINES WA	98198
Current Occupant or Resident	1604 S 268TH ST	Des Moines, WA	98198
PETRUSCHKE DARREN R + PAMELA	1604 S 269TH CT	DES MOINES WA	98198
Current Occupant or Resident	1605 S 268TH ST	Des Moines, WA	98198
WHITE LESLIE R + JULIA	1610 S 268TH ST	DES MOINES WA	98198
Current Occupant or Resident	1613 S 269TH CT	Des Moines, WA	98198
SHIM BERNARD M	1614 S 269TH CT	DES MOINES WA	98198
CAUDLE D H	1615 S 268TH ST	DES MOINES WA	98198
Current Occupant or Resident	1640 S 272ND ST	Des Moines, WA	98198
SINGH PAL + MAHALAXMI	1708 S 268TH ST	DES MOINES WA	98198
ROBINETT CAROLYN M	1717 S 268TH ST	DES MOINES WA	98198
Current Occupant or Resident	1720 S 272ND ST	Des Moines, WA	98198
RAJ MADEN + RAMI	1805 S 268TH ST	DES MOINES WA	98198
Current Occupant or Resident	1810 S 272ND ST	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 1	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 10	Des Moines, WA	98198

Current Occupant or Resident	1831 S 268TH ST APT 11	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 12	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 13	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 14	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 15	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 16	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 17	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 18	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 19	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 2	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 20	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 21	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 22	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 23	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 24	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 25	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 26	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 27	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 28	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 29	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 3	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 30	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 31	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 4	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 5	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 6	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 7	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 8	Des Moines, WA	98198
Current Occupant or Resident	1831 S 268TH ST APT 9	Des Moines, WA	98198
DES MOINES CITY OF	21630 11TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	26623 19TH AVE S	Des Moines, WA	98198
Current Occupant or Resident	26624 19TH AVE S	Des Moines, WA	98198
HARPER DOROTHY M	26625 19TH AVE S	DES MOINES WA	98198
DEMMLASH EYERUSALL M+MARKOS	26626 19TH AVE S	DES MOINES WA	98198
JONES WILLIAM G+JUANITA L	26628 19TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	26630 18TH PL S	Des Moines, WA	98198
AREFEAYNE MISKER+WORKNLSHY	26630 19TH AVE S	DES MOINES WA	98198
SCOTT GWENDOLYN L THILLER+AN	26632 19TH AVE S	DES MOINES WA	98198
BEDI TARLOK N+GURSHARAN KA-J	26634 19TH AVE S	DES MOINES WA	98198
FURTADO UMBERTO	26635 18TH PL S	DES MOINES WA	98198
RAJ RANI	26636 19TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	26638 18TH PL S	Des Moines, WA	98198
ALIYEV GUSEYNE+ALIYVA AMALI	2664 19TH AVE S	SEATTLE WA	98198
Current Occupant or Resident	26645 16TH AVE S	Des Moines, WA	98198
HRSKO JOHN D+CYNTHIA M (W)	26645 16TH AVE S	SEATTLE WA	98198
SVRAGA HARI+PASEMA	26645 18TH PL S	DES MOINES WA	98198
NEWTON KELVIN M	26655 16TH AVE S	DES MOINES WA	98198
PAZ ANTONIO D+STEPHANIE R	26655 18TH PL S	DES MOINES WA	98198
GRAUMAN NORMA	26660 18TH PL S	DES MOINES WA	98198
OLSON SHARON R	26703 16TH PL S	DES MOINES WA	98198
ESCAMILLA OMAR+LUZ MARIA P	26705 17TH PL S	DES MOINES WA	98198
ONZERE MOSES M+YAGGWA ROSE	26706 17TH PL S	DES MOINES WA	98198
BURNETT BRYAN	26709 16TH PL S	DES MOINES WA	98198
FERGUSON JOANNI	26710 16TH PL S	DES MOINES WA	98198

WATSON DOUGLAS J SR +FERNAND	26711 17TH PL S	DES MOINES WA	98198
SINGH PAL	26712 17TH PL S	DES MOINES WA	98198
Current Occupant or Resident	26714 19TH AVE S	Des Moines, WA	98198
WILLIAMS GEORGE	26715 16TH PL S	DES MOINES WA	98198
NGUYEN TRANG TAM	26715 19TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	26716 19TH AVE S	Des Moines, WA	98198
SMITH VELMA L	26717 17TH PL S	DES MOINES WA	98198
WHITE MELROSE IMOGENE	26717 19TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	26718 16TH PL S	Des Moines, WA	98198
Current Occupant or Resident	26718 19TH AVE S	Des Moines, WA	98198
CAMPBELL ERICK+BAO NGOC	26719 19TH AVE S	DES MOINES WA	98198
RIGGS GLORIA R	26720 17TH PL S	DES MOINES WA	98198
LUONG KIET+MEI	26720 19TH AVE S	DES MOINES WA	98198
TRUONG CHI K	26721 19TH AVE S	DES MOINES WA	98198
NANAYAKKARA LORITA SHANTHI	26722 19TH AVE S	DES MOINES WA	98198
DUONG DUC V+ANH N HONG	26723 19TH AVE S	DES MOINES WA	98198
MONARCA MARTIN RAMOS	26726 16TH PL S	DES MOINES WA	98198
BAILEY JAMES W L+JUDITH R	26727 17TH PL S	DES MOINES WA	98198
Current Occupant or Resident	26728 17TH PL S	Des Moines, WA	98198
GOLBY RICHARD J	26804 17TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	26804 17TH PL S	Des Moines, WA	98198
VAN AUKEN JIMMY W	26806 16TH AVE S	DES MOINES WA	98198
BRADFORD MICHELLE R	26808 15TH AVE S	DES MOINES WA	98198
JONES ANTHONY B	26809 16TH AVE S	DES MOINES WA	98198
BARRIENTOS GLORIA L+TEODORI	26809 17TH PL S	DES MOINES WA	98198
Current Occupant or Resident	26809 PACIFIC HWY S	Des Moines, WA	98198
ARTHUR CHARLES S	26810 17TH PL S	DES MOINES WA	98198
POORE DAVID E	26811 17TH AVE S	DES MOINES WA	98198
GIBONEY BRIAN R	26812 15TH AVE S	DES MOINES WA	98198
CRAWFORD TERRY B	26812 17TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	26816 17TH AVE S	Des Moines, WA	98198
CHRISTOPHERSEN AMY	26817 15TH AVE S	DES MOINES WA	98198
FARNSWORTH MICHAEL L+JESSIE	26817 16TH AVE S	DES MOINES WA	98198
WOODWARD ANGELA V	26817 17TH PL S	DES MOINES WA	98198
Current Occupant or Resident	26818 17TH PL S	Des Moines, WA	98198
TIULI JUNIOR+TAGITUPE	26819 17TH AVE S	DES MOINES WA	98198
CULVER JAMIE+TAMMIE	26820 15TH AVE S	DES MOINES WA	98198
ERVIN ALBERT	26820 16TH AVE S	DES MOINES WA	98198
MACHALE KELLY SR	26820 17TH AVE S	DES MOINES WA	98198
HEIT DOUGLAS J	26825 15TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	26825 16TH AVE S	Des Moines, WA	98198
RENWICK DONALD A JR	26825 17TH PL S	DES MOINES WA	98198
Current Occupant or Resident	26826 15TH AVE S	Des Moines, WA	98198
Current Occupant or Resident	26826 16TH AVE S	Des Moines, WA	98198
Current Occupant or Resident	26826 17TH PL S	Des Moines, WA	98198
ROLPH K E	26831 15TH AVE S	DES MOINES WA	98198
OLIGO ROBERT S	26833 16TH AVE S	DES MOINES WA	98198
WITTROCK STEVEN+RENE	26834 15TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	26839 15TH AVE S	Des Moines, WA	98198
HAGOOD REYNALDO J	26839 16TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	26844 15TH AVE S	Des Moines, WA	98198
WHITING RAYMOND D REVOCABLE	26845 15TH AVE S	DES MOINES WA	98198

Current Occupant or Resident	26845 16TH AVE S	Des Moines, WA	98198
Current Occupant or Resident	26851 15TH AVE S	Des Moines, WA	98198
LARCHER DAVID B	26851 16TH AVE S	DES MOINES WA	98198
DEJESUS JOSE	26852 15TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	26852 16TH AVE S	Des Moines, WA	98198
SELLS OLIVER D	26856 15TH AVE S	DES MOINES WA	98198
EWING DARRELL T+ALFRICA P	26857 15TH AVE S	DES MOINES WA	98198
FEDERAL NATIONAL MORTGAGE A	26857 16TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	26915 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27001 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27003 16TH AVE S	Des Moines, WA	98198
EDMISTON J ALLEN	27005 15TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	27005 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27007 PACIFIC HWY S	Des Moines, WA	98198
ARNOLD MILTON JR	27009 16TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	27009 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27010 15TH AVE S	Des Moines, WA	98198
CASTILLO FLORENCIO	27011 15TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	27011 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27013 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27015 16TH AVE S	Des Moines, WA	98198
Current Occupant or Resident	27019 16TH AVE S	Des Moines, WA	98198
YADAO CATHERINE	27019 16TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	27019 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27021 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27024 15TH AVE S	Des Moines, WA	98198
Current Occupant or Resident	27025 16TH AVE S	Des Moines, WA	98198
Current Occupant or Resident	27027 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27030 15TH AVE S	Des Moines, WA	98198
Current Occupant or Resident	27031 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27035 PACIFIC HWY S	Des Moines, WA	98198
ST JOHN RICHARD V	27036 15TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	27037 16TH AVE S	Des Moines, WA	98198
Current Occupant or Resident	27041 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27043 16TH AVE S	Des Moines, WA	98198
Current Occupant or Resident	27043 PACIFIC HWY S	Des Moines, WA	98198
COSTELLO JOSEPH A+RUTH M	27044 15TH AVE S	DES MOINES WA	98198
Current Occupant or Resident	27045 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27047 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27051 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27055 16TH AVE S	Des Moines, WA	98198
Current Occupant or Resident	27055 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27061 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27067 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27073 PACIFIC HWY S	Des Moines, WA	98198
Current Occupant or Resident	27077 PACIFIC HWY S	Des Moines, WA	98198
LOU MICHAEL T	PO BOX 895	MANCHESTER WA	98353
FRANZEN ALVIN+KATHLEEN	1412 BEACH DR NE #A	TACOMA WA	98422
PHAM VALOREY	3622 SPYGLASS DR NE	TACOMA WA	98422
SEACOMA LLC	505 UNION AVE SE #120	OLYMPIA WA	98501
CASWELL ERNIE	2421 E MASON LAKE DR E	GRAPEVIEW WA	98546
AMIDON CYNTHIA S	13700 VAIL CUT OFF RD SE	RAINIER WA	98576

INTERMEDIATE
CALCULATIONS

2001-2002
CALCULATIONS

2001-2002
CALCULATIONS

2001-2002
CALCULATIONS

Current Occupant or Resident	26830 PACIFIC HWY S	Kent	WA	98032
Current Occupant or Resident	27000 20TH PL S	Kent	WA	98032
Current Occupant or Resident	27000 PACIFIC HWY S	Kent	WA	98032
Current Occupant or Resident	27020 PACIFIC HWY S	Kent	WA	98032

ATTACHMENT 3

Memo

TO: Honorable Mayor Dave Kaplan
Honorable City Councilmembers
Tony Piasecki, City Manager
Pat Bosmans, City Attorney
Tim George, Assistant City Attorney

FROM: Michael C. Walter *M CW*

DATE: October 5, 2015

RE: Valley Cities – *Woodmont Recovery Center project* (LUA2014-0038)
Legal opinions: SEPA issues, initial opinions and options

I. SUMMARY OF PROJECT AND CHRONOLOGY

On December 2, 2014, Valley Cities Counseling & Consultation submitted an application for a Conditional Use Permit (“CUP”) and an environmental checklist pursuant to the State Environmental Policy Act (“SEPA”) for construction of the Woodmont Recovery Center (“Project”). The application was assigned application number LUA2014-0038. The Project is for construction of a medical and mental health recovery campus at 26915 Pacific Hwy. South in Des Moines. The campus will be comprised of five buildings constructed in phases: (1) An evaluation and treatment facility for mental health patients with 24 beds; (2) a drug and alcohol detoxification facility with 40 beds; (3) a main office building; (4) a dispensary clinic; and (5) a common meeting facility for AA meetings and other support services. The evaluation and treatment facility is the first phase; the detox facility will be the second phase.

The application was deemed fully complete on December 12, 2014 and notice of a complete application was issued that date. *See* DMMC 18.20.120. On February 2, 2015, the City issued a “Mitigated “determination of Nonsignificance” (“MDNS”) under SEPA. The MDNS included eight conditions to mitigate impacts from the Project. The 15-day comment period on the SEPA determination expired February 17 and, based on several comment letters, the City voluntarily extended the deadline to appeal the decision from February 27 to March 16. No one appealed the Threshold Determination or the conditions which were a part of the MDNS.

The City timely noticed the CUP hearing before the Hearing Examiner, which took place on April 3. A number of citizens appeared at the CUP hearing and many testified. On April 15, the Examiner issued his findings of fact, conclusions of law and decision on the CUP. He approved

the CUP with 11 conditions to mitigate potential impacts from the Project. No one asked the Examiner to reconsider his CUP decision, as allowed by DMMC 18.2 40.240(1), and the deadline for reconsideration expired on April 26. The time to appeal both the SEPA decisions and the CUP decision expired no later than May 6, 2015, with no appeals of either.

Recently, neighbors and community members began complaining about the Project. The City held public information meetings on August 18 and September 16, with hundreds attending. Some citizens are suggesting the City re-open the SEPA process and reverse the finding of a DNS or impose new or additional mitigation on the project. Some apparently want the Project stopped. Others have asked for a moratorium on the project or its permitting. A review of the record of the Project reveals that notices of the SEPA and CUP processes were proper and timely, that the Project was accurately described, and that there have been no changes to the Project or significant new information since the final deadline for appeals passed.

II. EXECUTIVE SUMMARY

A. The Woodmont Recovery Center project cannot be denied, excluded or unreasonably burdened to preclude approval because it is an "Essential Public Facility" under the State Growth Management Act ("GMA"). As such, it has an enhanced status in the permitting and approval process that basically prevents the City from precluding it or denying it. Appropriate mitigation can be imposed. Staff and the Hearing Examiner properly took this important fact into account when evaluating, recommending and approving the Project.

B. The City should consider this project vested to the City's ordinances, regulations and policies in effect as of December 12, 2014. *See*, DMMC 18.20.110.

C. The time to appeal the SEPA MDNS expired at the latest on May 6, with no appeals by any person or party. The SEPA MDNS threshold decision, as well as all mitigation which is a part of it, is final and binding on all phases of the Project. This bar to any appeal applies to anyone attempting to challenge the SEPA decision, including Valley Cities, the City of Des Moines, parties of record and members of the public.

D. There is no legal basis to review, reconsider or alter the SEPA MDNS or the mitigation unless one of the three exceptions in WAC 197-11-340(3)(a) are established by "substantial evidence." There is no evidence in the record before the Hearing Examiner or in the (on-line) project files relating to the Project that would support re-opening or revising either the SEPA threshold decision (changing the MDNS to a DS) or adding or changing mitigation imposed through the MDNS under any of the three limited exceptions in WAC 197-11-340(3)(a). *However, see Opinion E, below.*

E. The time to appeal the Hearing Examiner's CUP decision expired on May 6, with

requirements and required mitigation of the essential public facilities' adverse impacts." Additionally, Washington courts and the Growth Boards have held that the legislative purposes underlying the importance of siting and allowing the development of essential public facilities would be defeated "if local governments could prevent the construction or operation of [an essential public facility]." *City of Des Moines v. Puget Sound regional Council*, 108 Wash App. 836, 846 (1999).

As an essential public facility, the Woodmont Recovery Center cannot be denied or precluded, and the City's development regulations and permitting requirements (such as mitigation) cannot be so overly onerous as to preclude the facility. The City can, of course, "require mitigation of the [Project's] adverse impact." WCA 365-196-550(3)(b).

B. The City should consider this Project vested as of December 12, 2014

The City should consider this project vested to the City's ordinances, regulations and policies in effect as of December 12, 2014. DMMC 18.20.110, acceptance for vesting, provides in pertinent part:

(1) An application for proposed land-use action shall not serve to vest any development rights until the planning, building and public works director determines the application is complete as specified by this code.

The City issued a "notice of complete application" pursuant to DMMC 18.20.120 on December 12, 2014. Accordingly, that determination effectively deems the project to be vested as of that date, pursuant to DMMC 18.20.110.

C. The deadline to appeal the SEPA decision (the Threshold Determination and mitigation) and the Hearing Examiner's CUP decision expired on May 6; any appeals are now time barred

The time to appeal the SEPA Threshold Determination and the Hearing Examiner's CUP decision expired on May 6, and any attempted appeals at this time are clearly time-barred. The time to appeal the SEPA decision expired when the time to appeal the CUP expired. Under WAC 197-11-680(4)(c), "If there is a time limit established by statute or ordinance for appealing the underlying governmental action, then appeals (or portions thereof) raising SEPA issues must be filed within such time period." (The RCW uses the same language: "If there is a time period for appealing the underlying governmental action, appeals under [RCW 43.21C - State Environmental Policy] shall be commenced within such time period." RCW 43.21C.075(5)(a). Pursuant to WAC 197-11-799, "underlying governmental action" means the governmental action, such as zoning or permit approval that is the subject of SEPA compliance. In this case, the underlying action is the Examiner's CUP decision.

The State Land Use Petition Act codified at RCW chapter 36.70C ("LUPA") governs appeals of land use decisions, such as the Examiner's CUP decision. *See*, RCW 36.70C.020. With

few enumerated exceptions (none applicable here), LUPA is the exclusive means of judicial review of land use decisions made through either a quasi-judicial process, by administrative procedure, or ministerial permit issuance, including a CUP. RCW 36.70C.020(1) and .030(1). *See also, Nykreim v. Chelan County*, 146 Wn.2d 904, 52 P.3d 1 (2002); *Samuels Furniture v. Ecology*, 147 Wn. 2d 440, 449, 54 P.3d 1194 (2002).

WAC 197-11-680(4)(c) applies to LUPA and “links” any appeals of SEPA decisions to the underlying permit decision (the CUP), and both are subject to LUPA’s appeal deadline. Under LUPA, a land use petition is timely “if it is filed and served on all parties listed in subsection (2) of this section within twenty-one days of the issues of the land use decision.” RCW 36.70C.040(3). Therefore, since the final Hearing Examiner’s CUP decision was issued on April 15, the final day that an appeal of either the SEPA decision or the CUP decision could have been made was May 6, 2015. *See also* analysis in Section E below.

D. There is no basis in the record to withdraw the MDNS or to re-open the SEPA process

Under WAC 197-11-340(3)(a), the lead agency can withdraw a DNS or MDNS if:

(i) There are substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts;

(ii) There is significant new information indicating, or on, a proposal's probable significant adverse environmental impacts; or

(iii) The DNS was procured by misrepresentation or lack of material disclosure; if such DNS resulted from the actions of an applicant, any subsequent environmental checklist on the proposal shall be prepared directly by the lead agency or its consultant at the expense of the applicant.”

The definition of what constitutes a “significant adverse environmental impact” is presumably subject to the same analyses that a court would undertake in the original threshold decision phase, including using the information received from the checklist. *Citizens for Natural Habitat v. City of Lynnwood*, 107 Wash.App. 1054, at *11 (2001). WAC 197-11-794 defines “significant” as:

(1) ‘Significant’ as used in SEPA means a reasonable likelihood of more than a moderate adverse impact on environmental quality.

(2) Significance involves context and intensity (WAC 197-11-330) and does not lend itself to a formula or quantifiable test. The context may vary with the physical setting. Intensity depends on the magnitude and duration of an impact. The severity of an impact should be weighed along with the likelihood of its occurrence. An impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe

if it occurred.

Courts review substantive SEPA decisions under the clearly erroneous standard of review. *Victoria Tower Partnership v. City of Seattle*, 59 Wn.App. 592, 596, 800 P.2d 380 (1979), review denied, 116 Wn.2d 1012 (1991). Similarly, “the appropriate standard by which to review [a governmental determination of ‘no environmental significance’] is the ‘clearly erroneous’ test.”³ *Sisley v. San Juan County*, 89 Wash.2d 78, 84, 569 P.2d 712 (1977) (citing *Norway Hill v. King County Council*, 87 Wash.2d 267, 274-276, 522 P.2d 674 (1976)). “A negative threshold determination is clearly erroneous if, despite supporting evidence, the reviewing court on the record can firmly conclude a mistake has been committed.” *Sisley*, 89 Wash.2d at 84 (internal quotations omitted). See, also: *Victoria Tower*, 59 Wn.App. at 596; “Under this standard, the court does not substitute its judgment for that of the administrative body and may find the decision ‘clearly erroneous’ only when it is left with the definite and firm conviction that a mistake has been committed.” In making this determination, the Court reviews the entire record and “is required to consider the public policy and environmental values of SEPA as well.” *Id.* In other words, a reviewing court is not just looking to see if sufficient evidence exists to support the administrative or governmental decision. *Id.* The courts have held that the record of a DNS threshold determination must “demonstrate that environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA.” *Id.* at 85. In my opinion, that standard was met here.

There is no evidence in the City permit files or the record before the Hearing Examiner, to support any of the three exemptions in WAC 197-11-340(3)(a). The permit and SEPA record I reviewed (the on-line City permitting documents under LUA2014-0038) does not reveal any evidence of substantial changes (or any changes) to the Woodmont Project, of any new information, or of any misrepresentation or lack of disclosure regarding the Project or uses proposed. There is nothing in the record that would warrant the City re-opening, withdrawing or modifying either the threshold determination (the MDNS) or the mitigation conditions imposed through the MDNS and the CUP decision.

F. Based on the record, there is no basis to set aside the Hearing Examiner’s CUP decision

There is nothing in the record that would support re-opening or setting-aside the Hearing Examiner’s CUP decision. No one sought reconsideration of or appealed the Examiner’s April 15 CUP decision. As discussed above, the deadline to challenge that decision was no later than May 6 (same as SEPA appeals), through an appeal under LUPA. The CUP decision is now final, binding and valid, and it is not subject to review or collateral attack by anyone.⁴ This includes Valley

³ This standard would also apply if someone challenged the DNS under one of the reasons in WAC 197-11-340(3)(a), lost, and then appealed that decision to a superior court.

⁴ LUPA establishes a mandatory and clearly delineated 21-day deadline for appealing final decisions of local land use authorities. *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 406, 120 P.3d 56 (2005); *Samuel’s Furniture v. Ecology*, 147 Wn.2d 440, 450, 54 P.3d 1194 (2002); *Wenatchee Sportsman v. Chelan Co.*, 141 Wn.2d 169, 181, 4 P.3d 123 (2000) (Court is precluded from reviewing a land use decision that challenged through LUPA within the 21-

Cities, the City of Des Moines, and parties of record as well as members of the general public.

And, any challenge to the CUP done via SEPA is also time-barred. *See*, analysis above. Additionally, pursuant to RCW 43.21C.080(2)(b):

“Any subsequent governmental action on the proposal for which notice has been given as provided in subsection (1) of this section shall not be set aside, enjoined, reviewed, or otherwise challenged on grounds of noncompliance with the provisions of RCW 43.21C.030(2)(a) through (h) unless there has been a substantial change in the proposal between the time of the first governmental action and the subsequent governmental action that is likely to have adverse environmental impacts beyond the range of impacts previously analyzed, or unless the action now being considered was identified in an earlier detailed statement or declaration of non-significance as being one which would require further environmental evaluation.”

(Emphasis added.) “All later actions necessary to implement [an agency’s decision], e.g., permit approvals, are “subsequent” actions subject to RCW 43.21C.080(2)(b). *Wells v. Whatcom County Water Dist. No. 10*, 105 Wash.App. 143, 153, n.17, 19 P.3d 453 (2001). “Under [RCW 43.21C.080(2)(b)], the CUP process is a ‘subsequent governmental action[.]’” *Id.* at 153. Here, based on the SEPA record and the record before the Hearing Examiner there is no evidence of any change in the original proposal that would create additional adverse environmental impacts not considered by the Hearing Examiner.

G. The record establishes disclosure of a methadone clinic and drug detoxification facility

The record before the Hearing Examiner, including the submittals by the Applicant, the SEPA checklist, the comment letters from the public, the staff report and exhibits, and

day appeal period; once 21-day appeal period expires, the decision becomes “valid” and the opportunity to challenge it is no longer available). As the Court noted in *Asche v. Bloomquist*, 132 Wn.App. 784, 133 P.3d 475 (2006):

To serve the purpose of timely review, LUPA provides *stringent deadlines*, requiring that a petitioner file a petition for review within 21-days of the date of the Land Use Decision. RCW 36.70C.040(3).

Id., 132 Wn.App. 795 (emphasis added). A party’s failure to timely seek relief under LUPA results in a final, binding and valid decision that cannot be collaterally attacked in subsequent litigation, or under other theories claims or causes of action. *See, e.g.: Chelan Co. v. Nykreim, supra.; Wenatchee Sportsmen, supra.; Asche v. Bloomquist*, 132 Wn.App. 784, 133 P.3d 475 (2006); *Harrington v. Spokane Co.*, 128 Wn.App. 202, 114 P.3d 1233 (2005). Thus, once the LUPA 21-day appeal period has expired, the land use decision becomes “valid” and “final,” and no other claim for relief or cause of action can be made arising out of it. *Wenatchee Sportsmen, supra*, 141 Wn.2d at 182 (emphasis added)

photographs, drawings and other materials adequately disclose, in my opinion, the planned construction and operation of a drug and alcohol detoxification facility which would include a methadone clinic. For example, the SEPA Checklist identifies in at least seven places that the Project will include a drug treatment and drug detoxification facility. The Checklist on at pp 2-3 actually references Methadone treatment in the facility. Submittals by the applicant disclose in various places that the second building, second phase, will include a detoxification and drug treatment facility. The staff report in several places also references the drug detoxification and treatment facility as part of the Project. And, the Examiner's April 3, 2015 CUP decision references and describes the drug treatment and detoxification facility in the summary of the decision, in at least seven findings of fact, and in the final decision.

In my opinion, based on the SEPA and CUP record, this aspect of the Project was appropriately disclosed throughout the process.

IV. OPTIONS TO REVISE OR SUPPLEMENT MITIGATION

A. Use Condition no. 1 of the hearing examiner's April 15 CUP decision

Condition no. 1 of the hearing examiner's April 15 CUP decision provides as follows:

"Valley Cities shall enter into a separate agreement with the City of Des Moines to mitigate the impacts of public services. This agreement shall be approved by Valley Cities and the City a minimum of five months prior to the City issuance of the certificate of occupancy. Included in this agreement shall be "return to the city of origin" language. Valley Cities shall not receive a certificate of occupancy or final inspections from the City until the agreement has been approved by both parties."

CUP Decision, pp. 12 – 13, Condition no. 1.

This condition requires Valley Cities and the City to further "mitigate the impacts on public services" through an agreement. Such an agreement must be in place at least five months before the City can issue a certificate of occupancy for the first structure.

If the parties cannot agree on the terms or mitigation of this separate public services agreement, while not explicitly stated, presumably the Hearing Examiner would have authority to resolve the dispute and determine through a supplement to his CUP decision the specific mitigation imposed through this agreement. Once this agreement is resolved by the hearing examiner, it will result in a modification to the April 15 CUP decision which would then trigger a new opportunity for appeal to Superior Court by any party. Such an appeal would be a LUPA appeal under RCW

chapter 36.70C.⁵

Additionally, if a party of record to the CUP decision were to appeal the mitigation agreement made between the City and Valley Cities, that individual would likely be able to file an appeal with the hearing examiner as well. The hearing examiner decision would then be subject to LUPA as stated above.

B. Use Condition no. 11 of the hearing examiner's April 15 CUP decision

Condition no. 11 of the Hearing Examiner's CUP decision provides as follows:

“Within two months following one year after the mental health treatment facility has been operational, the City shall reopen this hearing to determine whether the conditions above mitigate the impacts of the proposal such that the use is not unreasonably incompatible with permitted land uses and surrounding areas. Traffic concerns and the potential need for signal is Asian on Pacific Highway should also be addressed at that time.”

CUP Decision, p. 15, Condition no. 11.

This is a mandatory requirement to “reopen” the Examiner's CUP hearing to determine whether the conditions already imposed fully mitigate the impacts of the proposal “such that the use is not unreasonably incompatible with permitted land uses in surrounding areas.” This renewed hearing will occur 14 months or more after phase 1 of the facility is operational. The parties to the CUP – the City and Valley Cities – as well as the parties of record will have an opportunity to present evidence regarding the operation of the facility and to examine and evaluate whether the conditions already imposed are sufficient to mitigate impacts of the Recovery Center, or if new or supplemental mitigation is required. Presumably this condition provides for fairly broad discretion to impose additional or revised mitigation based on actual evidence of impacts to the community.

C. Use Condition no. 5 of the hearing examiner's April 15 CUP decision

Condition no. 5 of the Examiner's CUP decision provides as follows:

“Parties of record shall be notified of the design review process and be provided an appropriate opportunity to comment on design review. Discussion of appropriate fence height along residential boundary should specifically be addressed during the design review process.”

CUP Decision, pp. 14, Condition no. 5.

Pursuant to this condition of the CUP decision, those parties who participated in the SEPA comment period or the CUP decision process must be notified of this design review process and provided an opportunity to “comment on design review” and associated/related mitigation. This is yet another opportunity to evaluate impacts and impose, if warranted, additional or revised mitigation to address those design-related impacts. Comments should be strictly limited to the criteria for design styles and design review.