

**FILED**  
KING COUNTY, WASHINGTON

FEB 24 2017

DEPARTMENT OF  
JUDICIAL ADMINISTRATION

**EXP07**

**STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

MOUNT BAKER HOUSING  
ASSOCIATION,

Defendant.

NO. 16-2-29584-3 SEA

AMENDMENT NO. 1 TO PROSPECTIVE  
PURCHASER CONSENT DECREE

**INTRODUCTION**

A. A Prospective Purchaser Consent Decree (Decree) was entered by this Court on December 8, 2016. The Decree is a negotiated settlement between the State of Washington, Department of Ecology (Ecology) and Mount Baker Housing Association (MBHA), entered pursuant to RCW 70.105D.040(5), to (1) prospectively resolve the potential liability of MBHA for contamination at the Mount Baker Properties Site (Site) arising from a release(s) or threatened release(s) of hazardous substances, in advance of MBHA purchasing an ownership interest in the Site, and (2) facilitate the cleanup of the Site for redevelopment and reuse as transit-oriented affordable housing.

B. Under the Model Toxics Control Act, funds appropriated from the State Toxics Control Account may be used for, among other things, "Public funding to assist prospective

1 purchasers to pay for the costs of remedial action in compliance with clean-up standards under  
2 RCW 70.105D.030(2)(c),” provided (1) the site at issue is located within a redevelopment  
3 opportunity zone designated under RCW 70.105D.150; (2) the amount and terms of the funding  
4 are established under a settlement entered into under RCW 70.105D.040(5) (i.e., a prospective  
5 purchaser consent decree); and (3) the Ecology director has found the funding meets any  
6 additional criteria established in rule by the department, will achieve a substantially  
7 more expeditious or enhanced cleanup than would otherwise occur, and will provide a public  
8 benefit in addition to cleanup commensurate with the scope of the public funding.  
9 RCW 70.105D.070(3)(q).

10 C. The Decree requires that “MBHA shall use all best efforts to seek and obtain  
11 Additional Funding for additional remedial actions at the Site,” which “may include working in  
12 cooperation and in partnership with Ecology to obtain Public Funds . . .” Decree, Section VI.C.  
13 “Public Funds” are defined under the Decree to be “public funding provided by Ecology as  
14 specified in this Decree and as described in RCW 70.105D.070(q) [sic].” Decree, Section IV.E.  
15 The Decree anticipates that “The Parties intend to amend this Decree . . . for the possible future  
16 provision of Public Funds pursuant to RCW 70.105D.070(q) [sic].” Decree, Section VI.C; *see*  
17 *also* Decree, Section LA (“The parties may . . . amend this Decree in the future to provide for  
18 Public Funds pursuant to RCW 70.105D.070(q) [sic].”).

19 D. This amendment (Amendment) is to provide for the provision of Public Funds in  
20 the amount of \$400,000 to MBHA, together with the utilization of such funds by MBHA, under  
21 the terms of RCW 70.105D.070(3)(q) and as specified below.

#### 22 AMENDMENT TO CONSENT DECREE

23 Based on the foregoing, and pursuant to the provisions of Section XVI (Amendment of  
24 Decree), the Parties stipulate and agree that the Decree should be amended with the following  
25 additional determinations and conditions, as follows:

26 A. All terms of the Decree remain in effect unless expressly amended herein.

1 B. In addition to the determinations in Section II (Jurisdiction), the following  
2 determinations are made with respect to the criteria in RCW 70.105D.070(3)(q):

3 1. With respect to the criterion of RCW 70.105D.070(3)(q)(i), on February 7,  
4 2017, by City of Seattle Resolution (Res) 31731, the Seattle City Council established the  
5 Mount Baker McClellan Street Redevelopment Opportunity Zone pursuant to  
6 RCW 70.105D.150(1). A true and correct copy of City of Seattle Resolution (Res) 31731  
7 is attached as Exhibit 1 to this Amendment. The Site is located within the Mount Baker  
8 McClellan Street Redevelopment Opportunity Zone.

9 2. With respect to the criterion of RCW 70.105D.070(3)(q)(ii), this Decree  
10 constitutes a settlement pursuant to RCW 70.105.040(5) (i.e., a prospective purchaser  
11 consent decree) that establishes the amount and terms of public funding under  
12 RCW 70.105D.070(3)(q).

13 3. With respect to the criteria of RCW 70.105D.070(3)(q)(iii), the Director of  
14 Ecology has found that the provision of \$400,000 in Public Funds to MBHA will:  
15 (1) achieve a substantially more expeditious or enhanced cleanup than would occur  
16 without the Public Funds; and (2) provide public benefits in addition to the cleanup that  
17 are commensurate with the scope of the Public Funds. As of the date of this Amendment,  
18 Ecology has not established additional criteria in rule pertaining to the provision of public  
19 funding under RCW 70.105D.070(3)(q). A true and correct copy of the Director's  
20 findings is attached as Exhibit 2 to this Amendment.

21 C. Based on the above determinations, and as authorized by RCW  
22 70.105D.070(3)(q), Ecology is providing \$400,000 in Public Funds to MBHA to undertake  
23 remedial actions at the Site, subject to the following conditions:

24 1. MBHA shall utilize the Public Funds provided through this Amendment  
25 solely for the tasks and in accordance with the schedule identified in the Public Funding  
26 Scope of Work and Schedule attached as Exhibit 3 to this Amendment. The Public Funds

1 provided through this Amendment may only be applied to costs invoiced to MBHA after  
2 the date of this Amendment. No more than \$28,000 may be applied to invoices relating  
3 to work performed prior to the execution date of this Amendment.

4 2. MBHA shall retain the Public Funds provided through this Amendment  
5 subject to the conditions of Section VI.D of the Decree. MBHA may, at its election,  
6 establish an additional dedicated and segregated account in which to solely hold the  
7 Public Funds provided through this Amendment.

8 3. In providing monthly Progress Reports as required under Section XII  
9 (Progress Reports) of the Decree, including in addressing the items identified in A, B, C,  
10 D, and F of Section XII, MBHA shall include, in a manner that is readily identifiable,  
11 information specific to the tasks and schedule of Exhibit 3 and the Public Funds provided  
12 through this Amendment. With respect to the Public Funds provided through this  
13 Amendment, MBHA shall also include in the monthly Progress Reports monthly and  
14 cumulative estimates of the funds expended by MBHA against the \$400,000 total of  
15 Public Funds provided through this Amendment, together with a projection of the funds  
16 expected to be expended in the forthcoming month. The estimate of funds expended  
17 shall include any invoices and expense proofs submitted for payment by MBHA's outside  
18 technical consultant(s).

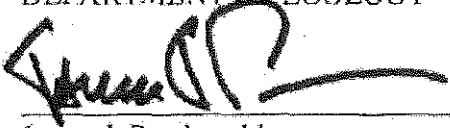
19 4. If any portion of the Public Funds provided through this Amendment are  
20 not expended by MBHA upon the completion of the tasks and/or conclusion of the  
21 schedule identified in Exhibit 3, MBHA shall identify the unspent amount to Ecology no  
22 later than in conjunction with its next-scheduled accounting under Section VI.D of the  
23 Decree. MBHA shall promptly return any unspent amount to Ecology, unless Ecology  
24 provides written approval for the unspent funds to be used to assist with remedial actions  
25 beyond those specified in Exhibit 3, or beyond the schedule in Exhibit 3. In such case:  
26 (1) the remedial actions and timeframe shall be specified in Ecology's written approval,

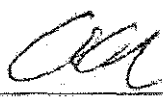
1 with the unspent funds to be applied solely toward completing such specified actions  
2 within such timeframe; and (2) conditions 2 and 3 above shall continue to apply to such  
3 funds until they are exhausted.

4 5. If, in complying with Section VI.C of the Decree, MBHA obtains  
5 Additional Funding that exceeds the cost of implementing a final cleanup action  
6 (including, as applicable, the costs of post-construction operation and maintenance,  
7 maintaining institutional controls, providing financial assurance, and/or providing for  
8 contingency), Ecology reserves the right to seek reimbursement of all or part of the  
9 Public Funds provided through this Amendment from such excess Additional Funding.

10  
11 STATE OF WASHINGTON  
12 DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON  
Attorney General


13   
14 James J. Pendowski  
15 Program Manager  
16 Toxics Cleanup Program  
17 (360) 407-7177

  
18 Andrew A. Fitz, WSBA #22169  
19 Senior Counsel  
20 (360) 586-6752

21 Date: 2/17/17

22 Date: 2/17/17

23 MOUNT BAKER HOUSING ASSOCIATION

24   
25 Mike Rooney  
26 Executive Director  
(206) 725-4152

ENTERED this 2/24/17 day of \_\_\_\_\_, 2017.

  
JUDGE/COMMISSIONER  
King County Superior Court

**EXHIBIT 1**  
**RESOLUTION 31731**



# SEATTLE CITY COUNCIL

## Legislative Summary

Res 31731

Record No.: Res 31731

Type: Resolution (Res)

Status: Adopted

Version: 1

Ord. no:

In Control: City Clerk

File Created: 01/08/2017

Final Action: 02/10/2017

**Title:** A RESOLUTION designating the Mount Baker McClellan Street Redevelopment Opportunity Zone pursuant to RCW 70.105D.150(1) and making findings in support of such designation.

<b>Notes:</b>	<b>Filed with City Clerk:</b>	<u>Date</u> 2/10/2017
	<b>Mayor's Signature:</b>	2/10/2017
<b>Sponsors:</b> Burgess	<b>Vetoed by Mayor:</b>	
	<b>Veto Overridden:</b>	
	<b>Veto Sustained:</b>	

**Attachments:** Att A - Area Map of Mount Baker McClellan Street Redevelopment Opportunity Zone

**Drafter:** adam.schaefer@seattle.gov

**Filing Requirements/Dept Action:**

### History of Legislative File

**Legal Notice Published:**

Yes

No

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Mayor	01/17/2017	Mayor's leg transmitted to Council	City Clerk			
1	City Clerk	01/17/2017	sent for review	Council President's Office			
	<b>Action Text:</b> The Resolution (Res) was sent for review, to the Council President's Office						
	<b>Notes:</b>						
1	Council President's Office	01/19/2017	sent for review	Affordable Housing, Neighborhoods, and Finance Committee			
	<b>Action Text:</b> The Resolution (Res) was sent for review, to the Affordable Housing, Neighborhoods, and Finance Committee						
	<b>Notes:</b>						

Legislative Summary Continued (Res 31731)

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1	Full Council	01/30/2017	referred	Affordable Housing, Neighborhoods, and Finance Committee	
1	Affordable Housing, Neighborhoods, and Finance Committee	02/01/2017	adopt		Pass
	<b>Action Text:</b>	The Committee recommends that Full Council adopt the Resolution (Res).			
	<b>Notes:</b>	In Favor: 3 Chair Burgess, Vice Chair Herbold, Member Johnson			
		Opposed: 0			
1	Full Council	02/07/2017	adopted		Pass
	<b>Action Text:</b>	The Resolution was adopted by the following vote, and the President signed the Resolution:			
	<b>Notes:</b>	In Favor: 8 Councilmember Bagshaw, Councilmember Burgess, Councilmember González, Council President Harrell, Councilmember Johnson, Councilmember Juarez, Councilmember O'Brien, Councilmember Sawant			
		Opposed: 0			
		Absent(NV): 1 Councilmember Herbold			
1	City Clerk	02/08/2017	submitted for Mayor's signature	Mayor	
1	Mayor	02/10/2017	Signed		
1	Mayor	02/10/2017	returned	City Clerk	
1	City Clerk	02/10/2017	attested by City Clerk		
	<b>Action Text:</b>	The Resolution (Res) was attested by City Clerk.			
	<b>Notes:</b>				

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CITY OF SEATTLE

RESOLUTION 31731

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2  
3  
4 A RESOLUTION designating the Mount Baker McClellan Street Redevelopment Opportunity  
5 Zone pursuant to RCW 70.105D.150(1) and making findings in support of such  
6 designation.  
7

8 WHEREAS, The City of Seattle's Housing Affordability and Livability Agenda report found  
9 that Seattle is experiencing "a housing affordability crisis unlike any Seattle has  
10 experienced since the Second World War" and affordable housing is one of the most  
11 significant challenges facing Seattle; and

12 WHEREAS, the Mayor set out an ambitious goal to create 50,000 new units of housing over the  
13 next 10 years, comprised of 30,000 market rate units and 20,000 affordable units; and

14 WHEREAS, Mount Baker Housing Association (MBHA) is a 501(c)(3) non-profit housing  
15 provider and developer with plans to build affordable and market rate housing consistent  
16 with the City's goals for more housing choices and transit-oriented development in the  
17 Mount Baker urban village; and

18 WHEREAS, the Washington State Legislature has provided new tools to encourage and fund the  
19 development of brownfield properties under the state's cleanup law, the Model Toxics  
20 Control Act, chapter 70.105D RCW; and

21 WHEREAS, one of the new tools provided by the Legislature under RCW 70.105D.150(1)  
22 authorizes local governments to designate geographic areas within their jurisdiction as  
23 Redevelopment Opportunity Zones (ROZ) if the zone meets applicable criteria; and

24 WHEREAS, a designated ROZ authorizes property owners within the ROZ to apply for and  
25 receive grant monies from the Washington State Department of Ecology's ("Ecology")

1 State Toxics Fund for investigation and cleanup of brownfield properties (contaminated,  
2 underutilized properties); and

3 WHEREAS, Ecology has set aside and requested funding to provide to MBHA to implement  
4 environmental cleanup and redevelopment of brownfield properties within the ROZ; and

5 WHEREAS, MBHA requests that The City of Seattle designate a Mount Baker McClellan Street  
6 ROZ consisting of certain parcels (collectively "the Parcels"), located northeast and  
7 southeast of the Martin Luther King Junior Way South and South McClellan Street  
8 intersection in the Mount Baker neighborhood; such parcels are fully described in the  
9 map of the area that is attached as Attachment A to this resolution; and

10 WHEREAS, more than 50 percent of the properties to be included in the ROZ are previously  
11 developed and now vacant underutilized properties where reuse objectives are hindered  
12 by the release or threatened release of hazardous substances apparently originating from  
13 nearby dry cleaner operations and historic gasoline service stations that will require  
14 remedial action under the Model Toxics Control Act, chapter 70.105D RCW; and

15 WHEREAS, the soil and groundwater contamination occurred on the Parcels many years ago,  
16 and without MBHA stepping forward to cleanup and redevelop the Parcels, the  
17 contamination will likely remain for years to come; and

18 WHEREAS, MBHA, the sole owner of the Parcels, has consented in writing to have the Parcels  
19 included in the ROZ; and

20 WHEREAS, MBHA is proposing to build approximately 150 units of affordable housing once  
21 the hazardous substances located within the proposed ROZ are remediated per the Model  
22 Toxics Control Act, chapter 70.105D RCW; and

1 WHEREAS, the Parcels are designated for commercial/mixed use on the Future Land Use Map  
2 and such use is supported by the City's planning documents, including but not limited to,  
3 the North Rainier Neighborhood Plan, the Seattle 2035 Comprehensive Plan, the  
4 McClellan Town Center Development Strategy, the Mount Baker Station Area Analysis,  
5 Mount Baker Urban Design Framework, and the Accessible Mount Baker plan, all of  
6 which contain numerous provisions supporting the type of redevelopment proposed by  
7 MBHA; and

8 WHEREAS, the Mount Baker McClellan Street ROZ will be located within three blocks of the  
9 Mount Baker light rail station and provide transit-oriented development; and

10 WHEREAS, establishment of the Mount Baker McClellan Street ROZ will encourage, foster,  
11 and allow the cleanup and redevelopment of brownfield properties for affordable housing  
12 in the heart of Mount Baker, one of Seattle's most racially and economically diverse  
13 neighborhoods, furthering the City's goals for equitable development; and

14 WHEREAS, the proposed Mount Baker McClellan Street ROZ meets the criteria in RCW  
15 70.105D.150(1); NOW, THEREFORE,

16 **BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE, THE**  
17 **MAYOR CONCURRING, THAT:**

18 Section 1. The Council finds that:

19 (a) At least 50 percent of the upland properties in the Redevelopment Opportunity  
20 Zone designated in Section 2 of this resolution are brownfield properties;

21 (b) The upland portions of the Redevelopment Opportunity Zone designated in  
22 Section 2 are comprised entirely of parcels of property whose owner has provided consent in  
23 writing to have their property included within the zone;


1           (c)     The cleanup of the brownfield properties in the Redevelopment Opportunity Zone  
2 designated in Section 2 will be integrated with planning for future uses of the properties and is  
3 consistent with the City's "Seattle 2035 Comprehensive Plan"; and

4           (d)     The properties within the Redevelopment Opportunity Zone designated in Section  
5 2 lie within the incorporated area of The City of Seattle,

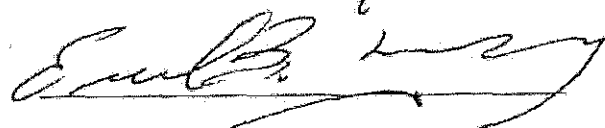
6           Section 2. The area depicted in Attachment A to this resolution is designated as the  
7 Mount Baker McClellan Street Redevelopment Opportunity Zone pursuant to RCW  
8 70.105D.150(1),

9           Section 3. The Office of Planning and Community Development is directed to consider  
10 the cleanup of the brownfield properties in the Redevelopment Opportunity Zone designated in  
11 Section 2 of this resolution in planning efforts for the area in which the properties are located.

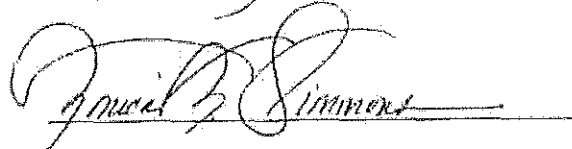
1 Adopted by the City Council the 7<sup>th</sup> day of February, 2017,  
2 and signed by me in open session in authentication of its adoption this 7<sup>th</sup> day of  
3 February, 2017.

4   
5 President \_\_\_\_\_ of the City Council

6 The Mayor concurred the 10<sup>th</sup> day of February, 2017.

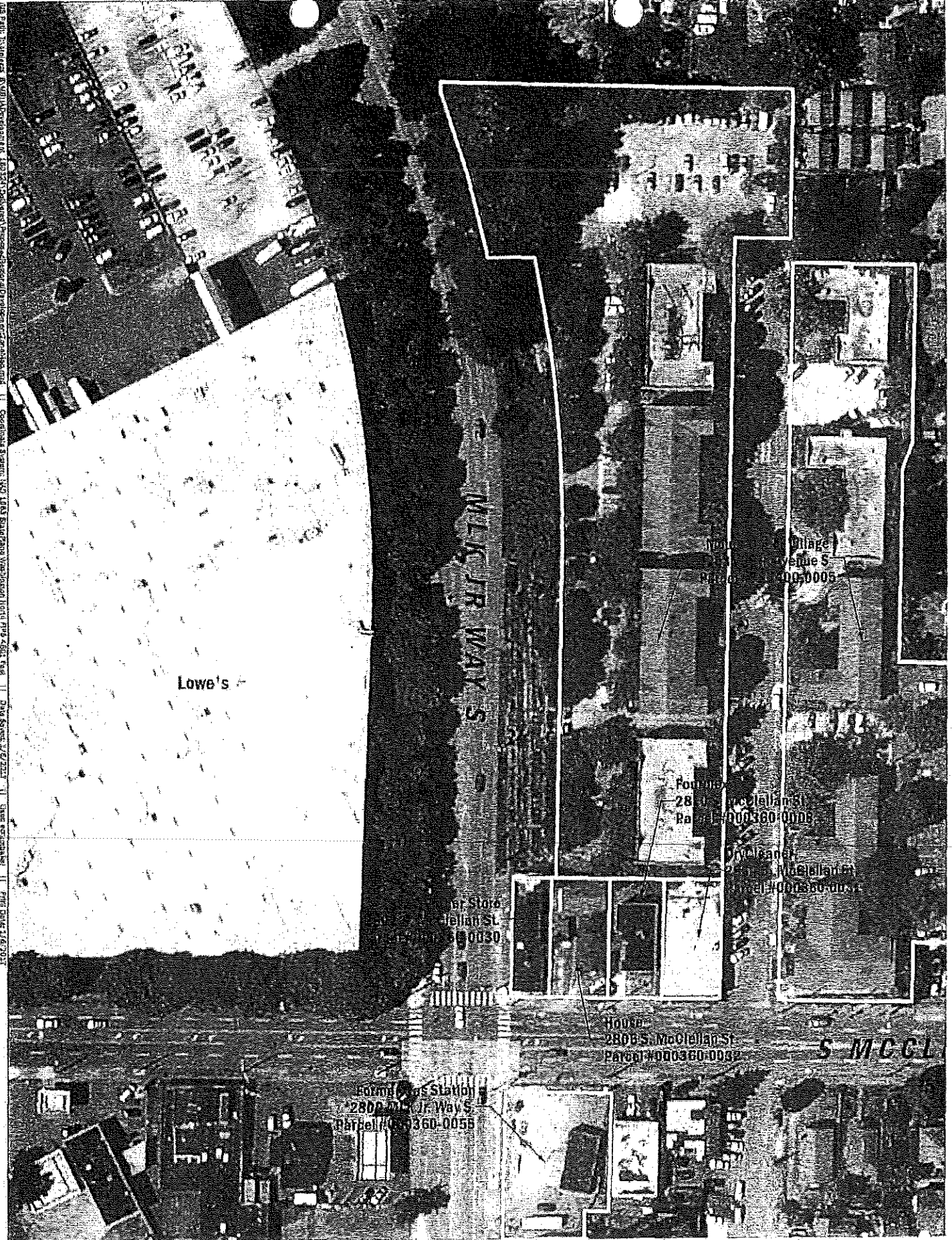
7   
8 Edward B. Murray, Mayor

9 Filed by me this 10<sup>th</sup> day of February, 2017.

10   
11 Monica Martinez Simmons, City Clerk

12 (Seal)  
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24 Attachments:  
25 Attachment A: Area Map of Mount Baker McClellan Street Redevelopment Opportunity Zone



Map A - Area map of downtown Baker showing street redevelopment opportunity zone  
Via

Lowe's

WILSON WAY S

Star  
2800 S McClellan St  
Parcel #000360-0030

Former Gas Station  
2800 Wilson Way S  
Parcel #000360-0055

Home  
2800 S McClellan St  
Parcel #000360-0038

Orlage  
2800 S McClellan St  
Parcel #000360-0006

Foundry  
2800 S McClellan St  
Parcel #000360-0005

Orlage  
2800 S McClellan St  
Parcel #000360-0004

S McCLELLAN ST

**EXHIBIT 2**  
**DIRECTOR'S FINDINGS**

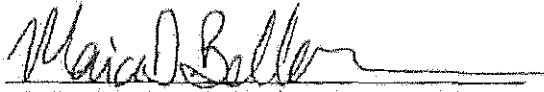
Under RCW 70.105D.070(3)(q), monies appropriated from the State Toxics Control Account may be provided as public funding to assist prospective purchasers with the costs of remedial action associated with brownfields properties if, among other criteria, the Director of the Department of Ecology finds that the funding: (1) meets any additional criteria established in rule by the department; (2) will achieve a substantially more expeditious or enhanced cleanup than would otherwise occur; and (3) will provide a public benefit in addition to cleanup commensurate with the scope of the public funding.

I hereby make the following findings with respect to providing \$400,000 in public funding to the Mount Baker Housing Association (MBHA) through an amendment to the Prospective Purchaser Consent Decree (PPCD) entered in *Department of Ecology v. Mount Baker Housing Association*, No. 16-2-29584-3 SEA (King Cty. Super. Ct. Dec. 8, 2016):

1. As of the date of these findings, Ecology has not established additional criteria in rule pertaining to the provision of public funding under RCW 70.105D.070(3)(q). There is thus no finding to be made in this regard.
2. I find that providing the funding will achieve a substantially more expeditious or enhanced cleanup than would otherwise occur. MBHA is a private, non-profit corporation that develops affordable housing in southeast Seattle. MBHA entered the PPCD with knowledge it would have to generate new, additional funding in order to complete the near-term remedial actions required by the PPCD and a final cleanup action that, under the terms of the PPCD, must be completed at the Mount Baker Properties Site (Site) before MBHA can redevelop properties within the Site. The terms of the PPCD provide that such additional remedial actions are contingent upon MBHA "obtaining or having sufficient Additional Funding" and require MBHA to "use all best efforts to seek and obtain Additional Funding." See PPCD at 11-12 (Sections VI.B, C). The currently identified potential sources of these additional funds include obtaining insurance policy coverage payments and settlement funds from other potentially liable persons. *Id.* at 8 (Section IV.G). Providing \$400,000 in public funding to MBHA will substantially advance MBHA's work in completing the remedial investigation/feasibility study currently required by the PPCD and allow it to leverage its existing and future resources toward obtaining additional funds and completing a final cleanup of the Site.
3. I find that providing the funding will provide a public benefit in addition to cleanup commensurate with the scope of the public funding. The Mount Baker neighborhood is one of Seattle's most economically and culturally diverse neighborhoods. The properties within the Site are currently underutilized, being occupied by, among other things, a vacant dry cleaning operation and a vacant gas/service station. MBHA's proposed redevelopment involves providing approximately 150 new affordable housing units on these properties. The

proposed new affordable housing units will address a well-documented critical need for such housing in Seattle. See, e.g., Seattle Housing Affordability and Livability Agenda Advisory Committee, *Final Advisory Committee Recommendations to Mayor Edward B. Murray and the Seattle City Council* (July 13, 2015). Further, the proposed redevelopment is expected to encourage additional sustainable, transit-oriented development near the Mount Baker Light Rail Station, which is located in the vicinity of the proposed redevelopment site.

DATED this 9<sup>th</sup> day of February, 2017.

  
MAIA D. BELLON, Director  
Washington State Department of Ecology



**EXHIBIT 3  
PUBLIC FUNDING SCOPE OF WORK AND SCHEDULE**

<b>Phase 1. Remedial Investigation Planning</b>			
<b>Schedule</b>	<b>Activity</b>	<b>Deliverables</b>	<b>Estimated Expenditures by MBHA</b>
June–December 2016	<b>Data Review.</b> MBHA will review previous environmental reports including results from fall 2016 McClellan Parcels site characterization funded by U.S. Environmental Protection Agency (EPA) Brownfields Program to design the proposed RI/FS.	Diagrams and maps for development of conceptual site model and RI work plan.	No Eligible Cost
January–March 2017	<b>Draft RI Work Plan.</b> MBHA will prepare a Draft RI/FS Work Plan that outlines the goals, scope, exploration locations, sampling, chemical testing rationale, analytical methods, field screening procedures, and quality assurance and quality control measures that will be utilized for completing the RI/FS. Provide to Ecology for review.	Draft RI work plan report	\$50,000 Costs Eligible as described in First Amendment to Prospective Purchaser Consent Decree, Section C.1.
April–May 2017	<b>Respond to Ecology</b> review of draft remedial investigation.	Correspondence, maps, diagrams, memos.	\$20,000
June 2017	<b>Final Remedial Investigation Work Plan.</b>	Final RI work plan report	\$5,000
<b>Subtotal of Phase 1</b>			<b>\$75,000</b>
<b>Phase 2. Remedial Investigation Implementation and Reporting Phase</b>			
July 2017	<b>Obtain permits</b> from City of Seattle for drilling and sampling in rights-of-way.	Permits obtained.	\$25,000

August 2017	<b>Implement Remedial Investigation.</b> Conduct explorations and sampling for soil, groundwater, and soil gas, and chemical analyses of samples.	On-site drilling and sampling.	\$225,000
September 2017	<b>Additional Explorations.</b> Ecology consultations and development of work plan for additional explorations, if needed.	Additional exploration work plan and on-site drilling and sampling.	\$200,000
October 2017	<b>Vapor Intrusion.</b> Assess risk of contaminant vapor intrusion into buildings. Prepare report.	Vapor intrusion sampling, and report of results.	\$50,000
<b>Subtotal of Phase 2</b>			<b>\$500,000</b>
<b>Phase 3: Prepare draft Remedial Investigation Report</b>			
November–December 2017	<b>Draft Remedial Investigation Report.</b> Results of all environmental investigations including VI assessment will be summarized in a Draft Remedial Investigation report, which will be completed in accordance with all substantive requirements of MTCA.	Draft RI report.	\$100,000
<b>Subtotal of Phase 3</b>			<b>\$100,000</b>
<b>Total for three phases of RI/FS for MBHA project</b>			<b>\$675,000</b>