

Exhibit B
To April 23, 2018 Letter

From: [Timothy B. Fitzgerald](#)
To: [Nicole Gaudette](#)
Cc: [Jessica Leonard](#)
Subject: RE: New information from neighbors
Date: Wednesday, April 18, 2018 2:55:58 PM
Attachments: [18-0418 Suppl. Declaraton of Gerry Kaelin.pdf](#)
[18-0417 Declaration Peter Hundrieser.pdf](#)
[18-0417 Declaration of Karen Beck.pdf](#)
[18-0417 Declaration of Jill Landauer.pdf](#)
[18-0417 Declaration Letter of Karen Beck.pdf](#)
[image001.png](#)

Nicole:

As per our discussion, attached please find the following documents, which we ask you to include in the file:

- (1) April 17, 2018 Declaration of Jill Landauer with exhibits;
- (2) April 17, 2018 Declaration of Peter Hundrieser with exhibits;
- (3) April 18, 2018 Declaration of Gerry Kaelin with exhibits
- (4) April 17, 2018 Declaration of Karen Beck with exhibits; and
- (5) April 17, 2018 Handwritten note from Karen Beck.

As you will see, the exhibits appended to these declarations are the same documents I sent to you yesterday. I am now providing these declarations so that you, the City, and anyone else who may review the file is clear as to the source of the photographs / video and the context in which the images were captured. Note that Exhibit F to Mr. Kaelin's declaration is the one video file we sent to you yesterday. Due to file size and the complications you had downloading that file yesterday, we are not sending it again here. Please note, however, that Jessica will be sending you an additional copy of all these materials, including the video, on a CD. You should have that CD in the next few days.

As you will see, one member of our neighborhood – Karen Beck (4813 E. Mercer Way) – has raised concern in her declaration that many of us share. In particular, it was surprising to us that the developer operated a drone in a known eagle habitat over a prolonged period of time. We have not yet researched the legal implications of that conduct, but at a minimum, flying a drone at or around an eagle obviously will scare the eagle away. In light of that fact, we believe the drone footage commissioned by the developer has little to no value when it comes to assessing the presence of eagles in the tree. We also strongly object to any further intrusion upon this known eagle habitat, by drone or otherwise, and believe the City should express that same objection to the developer.

Thank you again for your continuing attention to this matter, and for continuing to keep me updated as to any developments. Certainly feel free to contact me with any questions.

Regards,

-Tim

Timothy B. Fitzgerald | Attorney



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From: Nicole Gaudette [<mailto:nicole.gaudette@mercergov.org>]
Sent: Tuesday, April 17, 2018 5:14 PM
To: Jessica Leonard
Cc: Timothy B. Fitzgerald
Subject: RE: New information from neighbors

I have received all of the photos. Thank you so much! I have been waiting a couple of minutes for the video to open. If it doesn't open soon I will contact you again.

From: Jessica Leonard <JLeonard@mcnaul.com>
Sent: Tuesday, April 17, 2018 5:03 PM
To: Nicole Gaudette <nicole.gaudette@mercergov.org>
Cc: Timothy B. Fitzgerald <TFitzgerald@mcnaul.com>
Subject: RE: New information from neighbors

Hi Nicole!

By now, you should have received 17 emails from me forwarding the contents of the original sharefile to you (16 photos and 1 video clip—one photo/clip per email).

After Mr. Fitzgerald sent you the below link, we received three additional photos. Please find them attached.

Jessica Leonard | Legal Assistant



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600 University St., Suite 2700 | Seattle, WA 98101
T 206.389-9361 | F 206.624.5128
JLeonard@mcnaul.com

From: Nicole Gaudette [<mailto:nicole.gaudette@mercergov.org>]
Sent: Tuesday, April 17, 2018 4:19 PM

To: Timothy B. Fitzgerald; Jessica Leonard
Subject: RE: New information from neighbors

Sending them one at a time may be better.

From: Timothy B. Fitzgerald <TFitzgerald@mcnaul.com>
Sent: Tuesday, April 17, 2018 4:18 PM
To: Nicole Gaudette <nicole.gaudette@mercergov.org>; Jessica Leonard <JLeonard@mcnaul.com>
Subject: RE: New information from neighbors

Jess: See Nicole's email below. Can you please work with Nicole to make sure she is able to access the files? It appears as though some of the files may be really large, which is not unusual with high resolution photographs. If Nicole doesn't mind, perhaps it would be better for us to send the files to her one at a time?

Timothy B. Fitzgerald | Attorney



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From: Nicole Gaudette [<mailto:nicole.gaudette@mercergov.org>]
Sent: Tuesday, April 17, 2018 4:14 PM
To: Timothy B. Fitzgerald
Subject: RE: New information from neighbors

Tim,

I have clicked on the link a few times and it won't open for me. The little circle just spins and spins.

From: Timothy B. Fitzgerald <TFitzgerald@mcnaul.com>
Sent: Tuesday, April 17, 2018 1:20 PM
To: Nicole Gaudette <nicole.gaudette@mercergov.org>
Cc: Jessica Leonard <JLeonard@mcnaul.com>; kbeck3inwa@comcast.net; Peter Hundrieser (fulaniman@comcast.net) <fulaniman@comcast.net>; Gerry Kaelin (gerry_kaelin@hotmail.com) <gerry_kaelin@hotmail.com>
Subject: RE: New information from neighbors

Nicole:

As per our exchange of emails below, the following link will take you to a folder containing numerous recent photographs and a video of eagles in the tree located at 4825 E. Mercer Way:

<https://mcnaul.sharefile.com/d-s5c352dbb39c461ea>. There is also one photograph of a partially eaten fish resting near the base of the tree, which we suspect was dropped in that location by an eagle. As noted, some of these photos were taken as recently as this morning. The people who took these photographs / video – Gerry Kaelin, Karen Beck, and Peter Hundrieser – will be submitting supplemental declarations, in which each of them will identify the specific photographs / video they took and the date(s) on which those images were captured. Assuming we can make our schedules align, I am hoping to get you the supplemental declarations later today or tomorrow.

Please confirm receipt of this email, and let me know if you have any problem accessing the files.

Regards,

-Tim

Timothy B. Fitzgerald | Attorney



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From: Timothy B. Fitzgerald
Sent: Tuesday, April 17, 2018 10:22 AM
To: 'Nicole Gaudette'
Cc: Jessica Leonard
Subject: RE: New information from neighbors

Nicole:

Thank you. I have already made the request of my neighbors, and have already received at least some of the information. I am in the process of assembling the documents and information and my assistant will be sending it to you shortly. As we discussed yesterday, however, I am planning to ask my neighbors to submit sworn declarations (supplemental declarations, actually) attesting to the authenticity of their observations and documents, consistent in form with the numerous other declarations we previously submitted. It might take another day to get the declarations pulled together, but there's no reason I cannot get you the underlying documents and information in the meantime.

Separately, when you make reference below to "information in the file" the City intends to review, I assume the file includes the numerous sworn declarations we previously submitted regarding the presence of eagles in the tree, along with the other materials we previously submitted. I also assume the City will be considering all of those materials, together with the supplemental

information I will be providing shortly, in considering whether eagles continue to use the tree. If that is not the case, please let me know. Also, if you or anyone considering the pending application has questions for me or any of the people who submitted sworn declarations, we would be happy to make ourselves available.

As the various previously-submitted declarations make clear, the report recently submitted by Jennifer Marriott on behalf of the developer is predicated upon the incorrect premise that “[t]he last verified [eagle] activity in this tree was in 2005.” As you will see in the supplemental materials I will be providing shortly, the last verified eagle activity in the tree (and by that I mean observed and photographed by someone who will testify under oath about his observations) was 8:17 this morning. Before issuing her report on March 9, 2018, Ms. Marriott did not contact me or anyone in the neighborhood who previously submitted sworn declarations to the City regarding the continuing presence of eagles in the tree, and instead based her conclusions upon two cite visits conducted eleven years apart. I encourage the City to take these facts into consideration during its deliberations.

Kind regards,

-Tim

Timothy B. Fitzgerald | Attorney



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From: Nicole Gaudette [<mailto:nicole.gaudette@mercergov.org>]

Sent: Tuesday, April 17, 2018 9:51 AM

To: Timothy B. Fitzgerald

Subject: New information from neighbors

Tim,

Good morning. Yesterday you mentioned that some neighbors have collected some new information about eagle use of the large fir tree at 4825 E Mercer Way. The city is going to be determining soon if the tree is a wildlife habitat conservation area based on information in the file. This determination will have an effect on how the fir tree is managed. Will you please ask whoever has the new information to submit it ASAP so it can be considered?

Thank you,

Nicole

Nicole Gaudette, Senior Planner
Development Services Group
City of Mercer Island
9611 SE 36th Street
Mercer Island, WA 98040
(206) 275-7719
nicole.gaudette@mercergov.org

DECLARATION OF JILL LANDAUER

I, JILL LANDAUER, declare under penalty of perjury of the laws of the State of Washington that the following statements are true and correct and based upon my personal knowledge:

1. I am over the age of eighteen and competent to testify to the matters set forth herein. My address is 4925 E. Mercer Way, Mercer Island, WA 98040, King County Washington.

2. I have lived at the foregoing address since June 2010. My property is located very close to 4825 E. Mercer Way, and I have unobstructed views of the Eagle Tree from my property.

3. Attached are photos I took on April 17, 2018 at 2:40 p.m. of eagles in the Eagle Tree.

4. Over the years, I have regularly observed eagles in the Eagle Tree. I do not hesitate in declaring, based upon my direct and ongoing personal observations over the course of many years, that the Eagle Tree Property is an active habitat for bald eagles.

DATED this 17 day of April, 2018 at Mercer Island, Washington.

By: Jill Landauer

Print Name: Jill Landauer







DECLARATION OF PETER HUNDRIESER

I, PETER HUNDRIESER, declare under penalty of perjury of the laws of the State of Washington that the following statements are true and correct and based upon my personal knowledge:

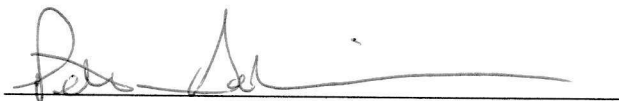
1. I am over the age of eighteen and competent to testify to the matters set forth herein. My address is 4925 E. Mercer Way, Mercer Island, WA 98040, King County Washington.

2. I have lived at the foregoing address since ²⁰¹⁰ [YEAR]. My property is located very close to 4825 E. Mercer Way, and I have unobstructed views of the Eagle Tree from my property.

3. On March 24, 2018, I saw two eagles sitting in Eagle Tree with another one flying nearby. The flying eagle took about 6 passes around the Eagle Tree and then flew off. The other two eagles remained in the tree for at least 20 minutes, at which time I returned into my house. Attached hereto are true and correct photographs I took of the eagles in and around the Eagle Tree on March 24, 2018, which I took from my property.

4. Over the years, I have regularly observed eagles in the Eagle Tree. I do not hesitate in declaring, based upon my direct and ongoing personal observations over the course of many years, that the Eagle Tree Property is an active habitat for bald eagles.

DATED this 17th day of April, 2018 at Mercer Island, Washington.

By: 

Print Name: Peter Hundrieser



















SUPPLEMENTAL DECLARATION OF GERARD A. KAELIN

I, GERARD A. KAELIN, declare under penalty of perjury of the laws of the State of Washington that the following statements are true and correct and based upon my personal knowledge:

1. I am over the age of eighteen and competent to testify to the matters set forth herein. My address is 4819 E. Mercer Way, Mercer Island, WA 98040, King County Washington.

2. I have lived at the foregoing address since 2006. Our property is on a hillside adjacent to the "eagle tree property" with direct views of the "eagle tree" throughout our property.

3. Attached as Exhibit A is a true and correct copy of a photo I took on April 16, 2018 showing a half-eaten fish at the base of the Eagle Tree. It is highly likely that an eagle dropped the fish while sitting in the Eagle Tree. This observation demonstrates, among other things, that eagles are continuing to use the Eagle Tree for a variety of purposes, including for the purpose of eating fish they have captured in nearby Lake Washington.

4. Attached as Exhibits B and C and are true and correct copies of photos I took on December 31, 2017, all of which depict an eagle in the Eagle Tree.

5. Attached as Exhibits D and E are true and correct copies of photos I took on April 17, 2018 at approximately 8:17 am, which depicts an eagle in the Eagle Tree.

6. Attached as Exhibit F is a true and correct copy of a video I took on December 31, 2017 of an eagle in the Eagle Tree.

DATED this 18th day of April, 2018 at Mercer Island, Washington.

By: _____

Gerard A. Kaelin

Print Name: Gerard A. Kaelin

Exhibit A



Exhibit B



Exhibit C



Exhibit D



Exhibit E



Exhibit F

PRODUCED IN
NATIVE
FORMAT

DECLARATION OF KAREN BECK

I, KAREN BECK, declare under penalty of perjury of the laws of the State of Washington that the following statements are true and correct and based upon my personal knowledge:

1. I am over the age of eighteen and competent to testify to the matters set forth herein. My address is 4813 E. Mercer Way, Mercer Island, WA 98040, King County Washington.

2. I have lived at the foregoing address since ²⁰⁰³ [YEAR]. My property is located near 4825 E. Mercer Way, and I have an unobstructed view of the Eagle Tree from my property.

3. Attached are true and correct copies of photographs I took on March 24, 2018 at approximately 1:15 p.m. of eagles perched atop the Eagle Tree located at 4825 E. Mercer Way. I took these photographs from my property.

4. Over the years, I have regularly observed eagles in the Eagle Tree. I do not hesitate in declaring, based upon my direct and ongoing personal observations over the course of many years, that the Eagle Tree Property is an active habitat for bald eagles.

5. I am advised that the owner of 4825 E. Mercer Way recently commissioned a third party to fly a drone near the Eagle Tree over an extended period of time. If flying a drone next to a known eagle habitat is not a violation of local, state, and/or federal law, then it is at least conduct one would expect to drive away any eagles that might be located in the tree. I was surprised to learn that the consultant retained by the property developer elected to use such a technique, especially after several of my neighbors submitted sworn declarations to the City regarding the continuing presence of eagles in the Eagle Tree.

DATED this 17 day of April, 2018 at Mercer Island, Washington.

By: 

Print Name: Karen Beck







Karen Beck

I, Karen Beck, have observed Eagle Activity in the tall tree on lot above our home, 4813 E. Mercer

The Eagles were so loud, I stopped to look up and saw them in & around the large fir tree - I took a pictures, with my phone camera on March 27, 2018 1:15pm

I have noted they use this tree, in Spring, most of the 15 years of my residency.

* Beck 4813 E Mercer Way