Legislative Department
Seattle City Council
Memorandum

Date: September 11, 2012

To: Richard Conlin, Chair
Tim Burgess, Vice Chair
Mike O'Brien, Member
Sally Clark, Alternate
Planning, Land Use, and Sustainability (PLUS) Committee

From: Sara Belz, Council Central Staff

Subject: **Clerk File (CF) 311240:** Application of Northgate Plaza LLC and T&M Jenn LP to rezone 365,040 square feet of land at 11200 1st Avenue Northeast from Midrise (MR) to Neighborhood Commercial 3 with an 85 foot height limit (NC3-85) (DPD Project Number 3006101 / Type IV)

Overview
Northgate Plaza LLC and T&M Jenn LP (the "Applicants") propose a rezone of a site located at 11200 1st Avenue Northeast from MR to NC3-65. The site is located on the north side of Northeast Northgate Way between 1st Avenue Northeast and 3rd Avenue Northeast. A map of the proposed rezone area is attached to this memorandum. The site is comprised of two parcels that total about 365,040 square feet (approximately 8.4 acres) of property. The parcels are owned by the Applicants. No development proposal is associated with the rezone application; however, because the execution of a Property Use and Development Agreement (PUDA) will be necessary to complete the rezone as recommended by the Hearing Examiner, this land use action is considered a contract rezone.

Type of Action
Because this rezone is site-specific, the matter is considered quasi-judicial under the Seattle Municipal Code.[1] Quasi-judicial rezones are subject to the Appearance of Fairness Doctrine, which prohibits ex-parte communication. Council decisions must be based on the record established by the Hearing Examiner.

The Hearing Examiner established the record at an open-record hearing.[2] The record contains the substance of the testimony provided at the Hearing Examiner's open record hearing and the exhibits entered into the record at that hearing. Those exhibits include, but

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[1] Seattle Municipal Code (SMC) Chapter 23.76.004.
[2] Council action shall be based on the record established by the Hearing Examiner. The Council may supplement the record with new evidence or information if the Council determines that the new evidence or information was not available or could not reasonably have been produced at the time of the open record hearing before the Hearing Examiner. SMC § 23.76.054E.

are not limited to, DPD's recommendation report, environmental review documents, the rezone application, copies of public comments, and other materials.

The Record

Selected documents and exhibits from the Hearing Examiner's record are reproduced in Councilmembers' notebooks. The entire record is in my office and available for review at Councilmembers' convenience. Selected documents and exhibits reproduced here include:

- Hearing Examiner's recommendation (Pink);
- Agreed Condition on Affordable Housing for Hearing Examiner Rezone Proceeding (Yellow);
- DPD's recommendation (Green);
- Massing options for the rezone site excerpted from the Addendum to the Final Environmental Impact Statement (FEIS) for the Northgate Urban Center Rezone (Blue).

Facts Related to the Rezone

- The subject properties are approximately 7.9 and 0.5 acres in size. The larger parcel is the site of the Northgate Apartments, a 207-unit low-density multifamily rental complex. The apartments are located in 39 buildings that are generally two stories in height. Two single-family residences and one duplex are located on the smaller parcel.
- The units in the Northgate Apartments all rent at levels that are affordable to households earning 50% to 60% of area median income (AMI) as defined by the U.S. Department of Housing and Urban Development. All of the apartments were constructed in 1951 and are nearing the end of their useful life. The units require frequent repair and the main utility systems for some of the buildings are failing.
- Land uses surrounding the proposed rezone site include Northgate Mall to the south, Hubbard Homestead Park and a multistory commercial complex (Target, Best Buy) to the east, multifamily housing to the north and northeast, and Interstate 5 to the west.
- The area south of the rezone area (Northgate Mall) is zoned NC3-85. Property to the east is zoned NC3-65 (Target, Best Buy) and Lowrise 3 (Hubbard Homestead Park). North and northeast of the rezone site, property is zoned MR, Lowrise 2, and Lowrise 3 (multifamily housing).
- The proposed rezone area is located within the Northgate Urban Center and the Northgate Overlay District.

- Frequent bus service is provided along Northeast Northgate Way and the Northgate Transit Center is located a half mile to the south (10 minute walk).

- No Environmentally Critical Areas or historic landmarks are located on or adjacent to the rezone site.

- A total of 69 trees are located on the rezone site, 14 of which meet the City's criteria for classification as Exceptional trees. When a development proposal is eventually submitted for the subject properties, the trees will be reevaluated for Exceptional tree status and specific tree protection measures will be established.

- MR zones have a base height of 60 feet and a base floor area ratio (FAR) of 3.2. Additional height up to a total of 75 feet and FAR up to 4.25 may be permitted if a project participates in the City's incentive zoning program for affordable housing. The base FAR in NC3-85 zones is 4.5, with additional FAR up to a total of 6.0 permitted for mixed-use projects. The City's incentive zoning provisions for affordable housing will not apply if the subject properties are rezoned to NC3-85.

- Under current MR zoning, with a FAR of 4.25 and a maximum building height of 75 feet, the subject site could accommodate up to 1.6 million square feet of development. Under NC3-85 zoning with a FAR of 6.0, that figure rises to 2.2 million square feet, an increase of about 40%.

- In November 2009, the City issued the FEIS for the Northgate Urban Center Rezone. The FEIS was intended to inform a future rezone of up to 98 acres in the Northgate area, including the properties that are the subject of this contract rezone. DPD issued an Addendum to the FEIS in November 2011. The purpose of the Addendum was to provide additional information and analysis regarding the two properties affected by the subject rezone proposal. DPD adopted the FEIS and Addendum as part of its March 26, 2012, recommendation report on the rezone proposal.

- The Addendum includes a discussion of the rezone's potential height, bulk, and scale impacts and outlines three massing options for mitigating those impacts. All three focus on the northern property line, which is the only edge of the rezone site that does not abut a street. The three options may be summarized as follows:

  Option 1: All buildings on the rezone site set back 50 feet from the northern property line.

  Option 2: All buildings on the rezone site set back 23 feet from the northern property line.

  Option 3: All buildings on the rezone site set back 23 feet from the northern property line, additional setbacks provided from the western and eastern property lines, and portions of buildings above 55 feet in height modulated with upper level setbacks.

Images that illustrate how each of these options could shape future development on the rezone site are appended to this memorandum on blue paper.

- DPD received written comments from about ten individuals and organizations in response to the notice of the rezone proposal and the notice of availability for the FEIS Addendum. The Hearing Examiner heard testimony from five members of the public and also received written comments from six individuals and organizations. A majority of the written and verbal comments presented objections to the proposed rezone. Issues of concern included the potential loss of affordable housing in light of the fact that the City's incentive zoning provisions will not apply if the subject property is rezoned NC3-85, traffic and parking, the pedestrian environment, the possible encroachment of commercial uses into a residential area, potential shadows on adjacent properties, storm water runoff, possible reductions to the amount of open space within the rezone area, and perceptions that the subject site does not meet the necessary criteria to justify a rezone to NC3-85. As this rezone was originally considered a "general" or "map" rezone, another issue raised was that it should instead be processed as a contract rezone, which it now is. Comments made in support of the rezone cited the property's suitability for additional growth and density, its proximity to transit and the future light rail station, and the proposal's consistency with other City planning initiatives in the Northgate Urban Center.

Conditions recommended by DPD

DPD's March 26, 2012, report on the rezone proposal recommended approval of the rezone subject to the five conditions summarized below:

1. Prior to any building permit issuance, the Applicant shall demonstrate that a minimum of 5% of the proposed floor area in each building permit is designated as housing affordable to households making up to 80% of AMI, or 3% of the proposed floor area is designated as housing affordable to households making up to 50% of AMI.

2. Prior to issuance of a Master Use Permit for development, the Applicant shall provide DPD with a signed Memorandum of Agreement (MOA) between the Applicant and the Office of Housing that defines the details for implementing the affordable housing requirement. At minimum, the MOA shall include a 50 year term of affordability for the affordable housing at the income levels described in Condition 1.

3. No development will be permitted at the subject property prior to Seattle Public Utilities' (SPU) approval of a sewer system engineering analysis and any required infrastructure improvements.

4. Future development shall be consistent with the mitigation described in massing Option 3 in the FEIS Addendum.

5. Future development shall be consistent with the maximum building width and depth limits in MR zones, with the exception of a continuous street wall on Northeast Northgate Way.

Appeals of DPD's recommendations
Three parties unaffiliated with the Applicants filed appeals of DPD's recommendations. The appeals challenged the adequacy of the FEIS, the Addendum, and DPD's recommended Conditions 1 and 2. The Hearing Examiner dismissed the appeals, concluding that the environmental documents provided sufficient disclosures and analysis and that Conditions 1 and 2 were not subject to appeal under the State Environmental Policy Act (SEPA). However, in her final report on the rezone, the Hearing Examiner ultimately replaced Conditions 1 and 2 with a single condition endorsing the Agreed Condition on Affordable Housing described in the next section of this memorandum (see subsection on "Housing impacts.")

Additionally, the Applicants filed an appeal of DPD's Condition 5, which would have required future development on the rezone site to comply with the building width and depth maximums established for MR zones, with the exception of allowing a continuous street wall along Northeast Northgate Way. (No such maximums apply in NC3-85 zones.) The appeal was dismissed by the Hearing Examiner due to lack of jurisdiction. Later, at the hearing on the rezone proposal, DPD asked the Hearing Examiner to consider whether such a condition was truly necessary to mitigate the rezone's potential height, bulk, and scale impacts. After reviewing the record pursuant to SEPA, the Hearing Examiner determined that the condition was not needed. The Hearing Examiner also found that limiting building widths and depths on the rezone site could eliminate some of the possible future uses for the western portion of the property, including a hotel, and would be at odds with the predominate scale of development within the immediately surrounding area. Further, the Hearing Examiner determined that the setbacks provided by massing Option 3 in the Addendum to the FEIS for the Northgate Urban Center Rezone (Condition 4), together with design review, would provide sufficient mitigation for any height, bulk, and scale impacts associated with future development projects that would be proposed if the rezone is approved.

Conclusions of the Hearing Examiner
Like DPD, the Hearing Examiner recommended conditional approval of the proposed rezone. Specifically, the Hearing Examiner's Findings and Recommendation dated July 27, 2012, drew the following conclusions based on testimony provided at the open record hearing, submitted exhibits, and DPD's analysis:

- Match between zone criteria and area characteristics: The rezone would constitute a logical extension of the existing commercial area located along Northeast Northgate Way. Although the rezone area meets many of the functional and locational criteria for MR zones, it is also a good match for NC3 zoning. The site's location in the Northgate Urban Center offers adjacency to a large regional commercial district, nearby development increasingly includes multistory buildings with continuous storefronts built to the front lot line, pedestrian amenities in the area are improving, and frequent bus service is available on nearby arterials and at

the Northgate Transit Center. Properties zoned NC3-65 and NC3-85 are located immediately south and east of the rezone area, and existing MR and Lowrise zoning would continue to provide a buffer between the rezone site and single-family areas farther to the north.

- Neighborhood plans: The proposed rezone is consistent with the adopted Northgate Neighborhood Plan, which supports higher intensity zoning designations within the defined North Core Subarea that includes the rezone site. Also consistent with the Neighborhood Plan, the rezone would maintain existing transition areas between zones that allow significantly different densities of development, maintain the character of single-family zones, and create opportunities for increased residential density and employment growth within a 10-minute walk of the Northgate Transit Center.

- Overlay district: The proposed rezone is consistent with the purposes of the Northgate Overlay District, which include maintaining the character of residential neighborhoods, supporting Northgate's role as a regional high-capacity transit center, and creating an environment that is more amendable to pedestrians and supportive of commercial development.

- Height limit and views: The surrounding area does not have a clearly established height pattern, with structure heights ranging from one to seven stories. MR zoning immediately north of the rezone site would remain in place and help provide a buffer between the rezone area and nearby Lowrise-zoned properties. As the topography of the rezone site is fairly flat, it is possible that new buildings built to 85-foot heights could block private, territorial views from the multifamily structures to the north; however, it is likely those views would also be blocked by development that could be permitted under the site's existing MR zoning.

- Housing impacts: The original rezone proposal submitted by the Applicants would create additional capacity for new residential units within the Northgate Urban Center. However, its impacts specific to low-income housing would likely be negative. This is due to the fact that the 207 units of affordable housing currently located in the rezone area could be razed as part of a future redevelopment effort and the provision of affordable housing is not necessary to gain additional FAR in the NC3-85 zone.

  Conditions 1 and 2 included in DPD's recommendation on the rezone proposal would have required the Applicants to provide a certain amount of affordable housing as part of any future development on the rezone site. Following the prehearing conference with the Hearing Examiner, the Applicants, two of the parties that filed appeals of DPD's rezone recommendations (Seattle Displacement Coalition and the Maple Leaf Community Council), and DPD entered into mediation on the issue of addressing the proposed rezone's potential impacts on affordable housing. The mediation resulted in a settlement agreement referred to here as the Agreed Condition on Affordable Housing. At the hearing, the parties to the mediation presented the Agreed Condition to the Hearing Examiner and

requested, in the event that the Hearing Examiner recommended approval of the proposed rezone, that the Agreed Condition be imposed in place of DPD's original recommended Conditions 1 and 2.

Key components of the Agreed Condition may be summarized as follows.

- Requires the Applicants to make part of the rezone site (land) available for lease for a minimum of 75 years, with no lease payments due for a minimum of 20 years, to allow a low-income housing developer to construct 66 rental units that would be restricted for 50 years to households with incomes that do not exceed 50% of AMI.

- Establishes development criteria for the affordable housing (e.g, mix of unit types, parking maximums).

- Limits the Applicants to charging the affordable housing developer prescribed, discounted rents in lease years 21 through 40.

- Prohibits rents charged to the affordable housing developer from reaching market rates until year 41 of the lease.

- Requires construction of the affordable housing to commence no later than eight years after the issuance of a permit for the demolition of the first 50 or more existing housing units on the rezone site.

- Includes a payment in lieu provision that would apply in the event that the Applicants are unable to reach an acceptable lease agreement with an affordable housing developer.

- Obliges the Applicants to allow an additional 10% of the residential units developed on the rezone site, in excess of 660 units, to be affordable to households with incomes that do not exceed 80% of AMI.

The Agreed Condition is superior to DPD's original recommended conditions because it provides certainty as to the number of affordable units that will be constructed and the time period in which they will be developed. It also ensures that units affordable to households earning up to 50% of AMI will built on the site.

- Transportation impacts: Development-level impacts cannot be analyzed at this time as no development proposal is currently associated with the rezone proposal. However, the Northgate Coordinated Transportation Investment Plan (CTIP) prepared by the City in 2007 identifies a "comprehensive, prioritized program of transportation improvements that would be needed to accommodate Northgate's projected 2030 growth in employment and households." Based on the analysis included in the CTIP and 2009 FEIS completed for the Northgate Urban Center Rezone, DPD expects completion of the improvements listed in the CTIP to

provide adequate mitigation for traffic from future development in the entire Northgate Urban Center Rezone area, including the subject properties.

- Utility impacts: According to SPU, water system capacity in the vicinity of the rezone area is sufficient to serve any development that may occur under either MR or NC3-85 zoning. However, a full sewer capacity analysis is not currently required as no specific development plan is associated with the rezone proposal. If the rezone is approved, no development will be permitted to occur on the site until SPU approves such an analysis and any required infrastructure improvements.

- Shading impacts: Potential development on the rezone site under NC3-85 zoning could result in additional shadows on multifamily development to the north and Hubbard Homestead Park to the east. However, DPD determined, pursuant to SEPA, that massing Option 3 described in the 2011 FEIS Addendum would provide sufficient mitigation for those impacts.

- Evaluation of other impacts: Redevelopment of the rezone site under either MR or NC3-85 zoning will require the provision of additional public services. However, impacts related to storm water collection and management, flora and fauna, glare, odor, private views, energy use, and the creation of additional impervious surface would likely be similar regardless of whether the site is redeveloped under MR or NC3-85 zoning. Any additional noise resulting from new development would be unlikely to approach existing levels generated by Interstate 5. Federal, State, and City emission control requirements would also apply.

- Precedential effects: The element of the Northgate Neighborhood Plan that encourages higher intensity zoning designations within the North Core Subarea could have as much or more influence on nearby property owners' decisions to pursue future upzones than the approval of the subject rezone.

- Changed circumstances: In 1982, the subject properties were rezoned to MR (prior to 1982 the site was zoned RM-Multifamily Residence). Since then, Northgate has received an Urban Center designation, gained a Transit Center, and begun planning for the arrival of light rail service in 2021. Northgate was also assigned a 2004-2024 residential growth target of 2,500 units. These changes, together with concerted efforts by the City to help improve the physical and pedestrian environment within the Urban Center, have helped shape the current residential and commercial character of Northgate and should be considered supportive of the requested rezone.

Conditions recommended by the Hearing Examiner

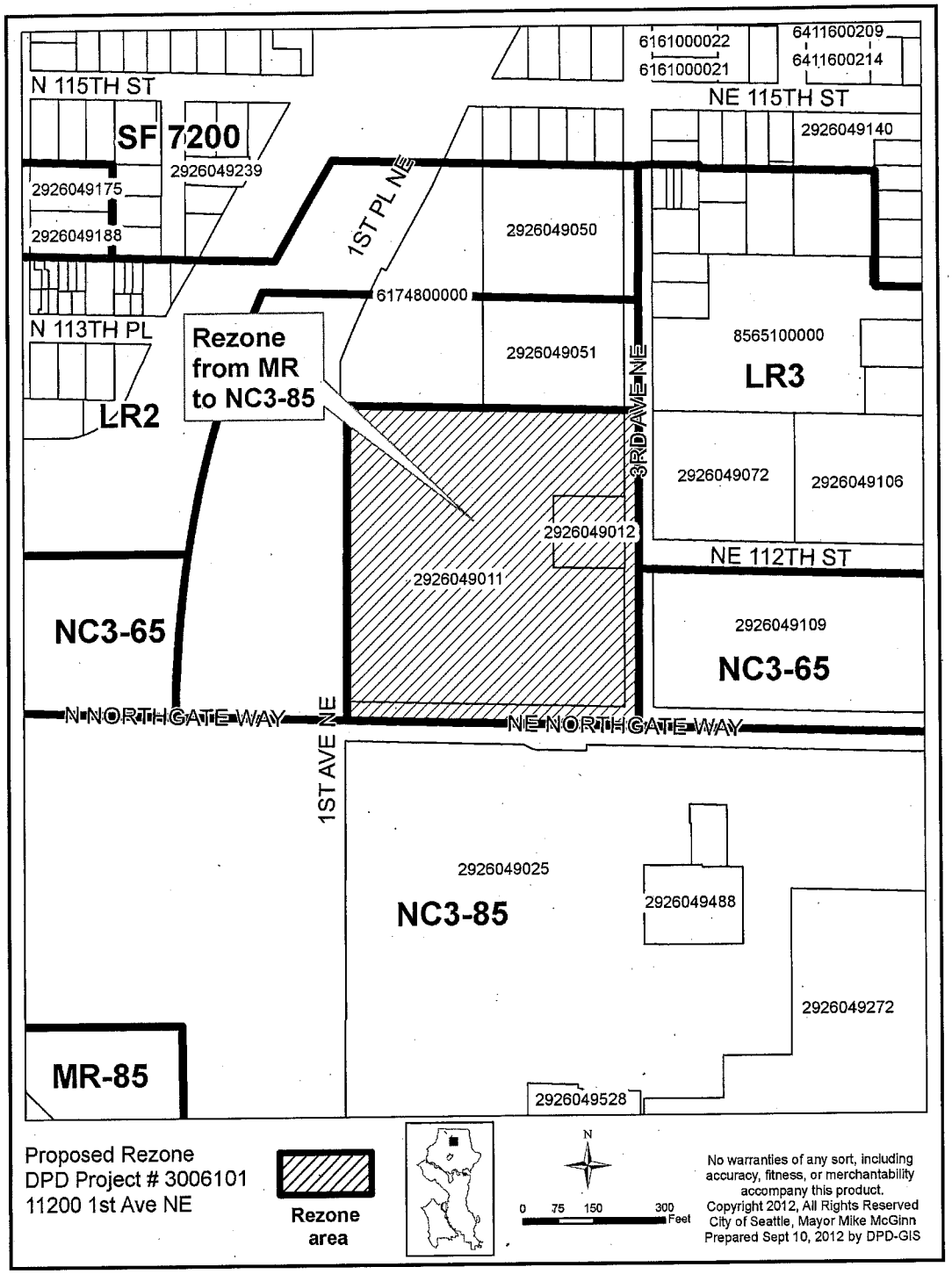
The Hearing Examiner recommended that approval of the rezone be subject to the following conditions:

1. Affordable housing impacts on the rezone site shall be mitigated as provided in the Agreed Condition on Affordable Housing.

2. No development shall be permitted on the subject property prior to SPU's approval of a sewer system engineering analysis and any required infrastructure improvements.

3. Future development shall be consistent with the mitigation described in massing Option 3 in the Addendum to the Northgate Urban Center Rezone FEIS.

Appeals of the Hearing Examiner's recommendation
No appeals of the Hearing Examiner's recommendation were filed.

Next Steps
Council staff, in consultation with the Law Department, will draft the necessary documents to complete the rezone decision. These include a Council Findings, Conclusions and Decision for the Clerk's File; a Council Bill; and a PUDA. Further discussion and a possible Committee vote on this matter are likely to occur at the October 26, 2012, PLUS Committee meeting.

Rezone Map for 11200 1st Avenue Northeast