

**Re: Granting easement process (Was: AEB project and e-mail status update) DRAFT**

Eugene Zakhareyev

Wed 6/27/2018, 11:22 PM

To: Erika Vandenbrande <EVandenbrande@REDMOND.GOV>

Erika,

Thank you for your reply.

FYI, attached is the letter from my attorney to the city to which I referred in my communication; there was confirmation of receipt so I believe the staff should have it. Not sure what that means "Per the above response and staff's response in the chain dated 6/11/2018, the letter from your attorney was addressed to WSDOT, not the City of Redmond".

It took me several very pointed email exchanges to get to the city position on valuation, change of approach type, scope of the city responsibility etc. None of this information was presented to the Council as part of the staff memo or at the meeting; that can be easily verified if you'd like to review the videos or documents. Why it was not presented while the council voted on what they believed is simply additional 6' ROW easement - this question was left open by the staff replies and is the one I was hoping you would be able to clarify.

As you might be aware, today I have filed an appeal of the TC decision on AEB project. One hopes we shall be able to get to the bottom of those legal issues in an open hearing. On the other hand that appeal represents a failure of three year communication effort between the city and the residents.

Sincerely,  
Eugene

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**From:** Erika Vandenbrande <EVandenbrande@REDMOND.GOV>

**Sent:** Wednesday, June 27, 2018 5:05:27 PM

**To:** Eugene Zakhareyev

**Subject:** FW: Granting easement process (Was: AEB project and e-mail status update) DRAFT

Eugene –

I hope today finds you well. I was happy to hear that the postal service had fulfilled its mission in delivering the mailed notice.

Below please find responses to your questions highlighted in yellow.

My best regards,

Erika



**Erika Vandenbrande**

Interim Planning Director & Deputy City Administrator | City of Redmond

☎: 425.556.2457 | ✉: [evandenbrande@redmond.gov](mailto:evandenbrande@redmond.gov) | [Redmond.gov](http://Redmond.gov)

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**From:** Eugene Zakhareyev [<mailto:eugenez@outlook.com>]  
**Sent:** Sunday, June 24, 2018 10:12 PM  
**To:** Erika Vandenbrande <[EVandenbrande@REDMOND.GOV](mailto:EVandenbrande@REDMOND.GOV)>  
**Subject:** Re: Granting easement process (Was: AEB project and e-mail status update)

Erika,

Thank you for your response.

1. I did receive the notice eventually, thank you
2. The information provided does not cover my initial questions from June 6th :( Nor have I received a response for the letter my attorney sent.

Responses to your questions were provided in detail by staff on 6/11/2018. I have attached the e-mail for reference. Responses have also been included within this e-mail below.

The letter from your attorney was addressed to WSDOT, not the City of Redmond. Staff provided a response to this question within the attached e-mail from 6/11/2018 and also conveyed that the City does not have an additional position to share at this time beyond the extensive responses regarding the easement provided as part of previous correspondence. WSDOT has provided two responses to your attorney's letter. In neither communication have they shared that they believe or find that the City has operated in error.

I have attached WSDOT's response letters to your attorney's letter for reference. The City of Redmond does not have additional response regarding WSDOT's response to Mr. Aramburu's letter.

Thanks much!

Yours very truly,  
Eugene

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**From:** Erika Vandenbrande <[EVandenbrande@REDMOND.GOV](mailto:EVandenbrande@REDMOND.GOV)>  
**Sent:** Friday, June 22, 2018 12:51:11 PM  
**To:** Eugene Zakhareyev  
**Subject:** RE: Granting easement process (Was: AEB project and e-mail status update)

Eugene –

I hope you are well also.

I had staff provide me with the following information which is noted in blue in response to your questions below.

Please let me know if I can be of further assistance.

My kindest regards-

Erika



**Erika Vandenbrande**

Interim Planning Director & Deputy City Administrator | City of Redmond

☎: 425.556.2457 | ✉: [evandenbrande@redmond.gov](mailto:evandenbrande@redmond.gov) | [Redmond.gov](http://Redmond.gov)

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**From:** Eugene Zakhareyev [<mailto:eugenez@outlook.com>]  
**Sent:** Monday, June 18, 2018 11:00 PM  
**To:** Erika Vandenbrande <[EVandenbrande@REDMOND.GOV](mailto:EVandenbrande@REDMOND.GOV)>  
**Subject:** Re: Granting easement process (Was: AEB project and e-mail status update)

Hi Erika!

Hope you are well.

Was wondering if you had a chance to consider my questions.

Incidentally, today one of my neighbors shown me the SPE approval letter for AEB project, dated June 13th. There are couple of problems I could immediately see with it

1. I am a party of record, and I am yet to receive notice of decision. As you know, the appeal is given 14 calendar days, five of which have already ran.

A copy of the Notice of Decision was sent out to approximately 200 Parties of Record. Two separate copies of the Notice of Decision were sent to two separate Parties of Record at the address that you had previously provided (5126 154th Ave NE). If you still have not yet received it as of today please let me know. Staff checked today and has not received any returned mailings as of yet. We are happy to double check the address used, provide another copy through expedited mail or prepare a hard copy at the counter for pick-up. The document will also be located on the project's webpage.

2. The decision I have seen does not mention 20' approach or anything about access. Yet in the staff presentation to the council the easement was presented as absolutely required for SPE approval.

The 20' access width is required for ingress and egress of the proposed use. Verification that a project can provide minimum required access is part of the review that the Transportation Review Engineer completes on all projects. Similar to most applicable sections of adopted codes and manuals that review staff must verify for compliance, this design standard is not normally included in the Decision Letters. All code regulated items in-place at time of decisions are required for any project that is granted approval. Additionally, page eight of the

Notice of Decision references the Approved Plan Sets which depict the site including the 20' access as required on seven pages.

The easement, including the limitations associated to it, are a stand-alone decision and document apart from the Site Plan Entitlement as previously shared. The verification of a 20' uninterrupted access being is only single component of the review by the engineer and once compliance is confirmed would not trigger further notation within the Notice of Decision.

Thanks much!

Yours very truly,  
Eugene

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**From:** Erika Vandenbrande <[EVandenbrande@REDMOND.GOV](mailto:EVandenbrande@REDMOND.GOV)>  
**Sent:** Wednesday, June 6, 2018 6:28:59 PM  
**To:** Eugene Zakhareyev  
**Subject:** Re: Granting easement process (Was: AEB project and e-mail status update)

Eugene -

The well wishes are mutual. I will look into your questions for follow up. I am out of the office the next two days because my daughter is graduating. I will, however, be back in the office on Monday.

My best regards -

Erika

On Jun 6, 2018, at 11:13 AM, Eugene Zakhareyev <[eugenez@outlook.com](mailto:eugenez@outlook.com)> wrote:

Dear Erika,

Hope my email finds you well.

Unfortunately, the latest information I have received from the planners on the handling of the AEB easement raises more questions, and I believe those questions are only addressable on the executive level.

You will note that the memo presented to the Council as a basis for the easement approval (<https://redmond.legistar.com/LegislationDetail.aspx?ID=3489893&GUID=0ADD980B-89B5-4C72-8B89-0D073F811FB0&Options=ID|Text|&Search=18-081>) dealt with only subject for the approval - granting additional 6' easement for the property.

To the best of my knowledge, the existing approach was recorded on ROW plan as "Type A Approach. ... Not To Exceed 14' In Width. For Sole Purpose Of Serving A Single Family Residence". Based on Ms. Pyle response, the definition of easement in the memo actually expands to the following

1. Widen the approach to from 14' to 20'
2. Change the type of the approach from Type A to Type C.

Response to this was provided in great detail in the attached 6/11/2018 e-mail from staff. The valuation is to be based upon the value of what use/ width of type A would be to use/ width. The appraisal includes access classification/ approach of Type C from WSDOT's access definitions in for the purpose of value determination. The City of Redmond does not have the same classification system. The City applies a minimum width, not an A-B-C classification. There are limitations included within the easement on use, but the access will not be called a WSDOT Type C

Special Use 20' access as they do not own the land area and will not govern the access. The value determination had to align with a Type C classification per WSDOT and also aligns with the City of Redmond's limitations on use and 20' minimum width requirements for the proposed use. All elements of the easement were appraised, valued and processed per land area rights as they were conveyed, discussed at length with WSDOT and in full accordance with state auditing requirements.

3. Allow religious use (to the best of my knowledge, there are no safeguards as to number of trips or other limits on religious use).

Valuation determination does not require a trip count analysis. It is based upon a proposed use (vs. highest and best) and required associated access width.

Trip count analysis is only required to verify concurrency and transportation requirements as related to a proposed land use action such as Site Plan Entitlements and building permit department applications on occasion. Trip counts are not one of the required elements for evaluating the value of access rights. If you have a document that explicitly states trips counts are to be analyzed and weighed as a component of valuation for this conveyed property staff is happy to review it.

4. The easement payment includes value determination due to change of use as well as the payment for the easement.

As provided within the attached 6/11/2018 e-mail chain from an e-mail dated 6/5/2018, the *value determination for the change of use* that is required to be paid and the *easement sale price* are the same item.

The value determination for the change of use is the amount the City is required to charge the applicant for the easement. This is a standard process that aligns with Washington state auditing requirements.

The bullets #2, #3 and #4 are not evident anywhere in the documentation presented to the council. I have watched the video, and the council was clearly unaware that they are voting for additional changes related to the change of limited access approach or new use designation.

- The valuation determination of Type A (one SFR at 14' width) to Type C (Special/limited use at 20' width) is included within the appraisal that was provided to Council.
- Trip count for proposed use per the above response is not relevant for the purpose of value determination and aspects of a land use application would not be an element of decision criteria required for granting an easement.
- The information provided to council that the amount payable for the easement was \$67,000.00 was accurate.

And there are additional rules that should be guiding the city actions

- To change the type of approach and the allowed use the city should follow the procedure in WSDOT design manual (see attached WSDOT letter from 2012 that lays out that requirement)

A response to this has been provided within previous e-mails by staff, under item 2. above and by WSDOT in their most recent response to your attorney on May 24<sup>th</sup>.

- To quote same 2012 WSDOT letter, "... a value determination for a commercial use as well as for a wider driveway, ..., must be prepared". Per my conversation with WSDOT staff at NW region, the said value determination was never presented to WSDOT for review, and it is not clear whether what the payment for the easement includes

- My attorney's letter to the City Attorney (attached) raised the question of the legality of proceedings. Regardless of WSDOT opinion, the state law and the terms of the deed legally prevail and must be guiding the city actions.

To quote AG opinion on this: "*This means (1) the city has no authority to modify the limited access as conveyed. Sometimes, you might see a deed's language transfer access and include a clause that if the city wants to modify the access, it must first obtain WSDOT's permission. (2) That is not the case with this deed. ...*" and "*... WSDOT's design manual must be read in light of all statutes and WACs. WSDOT does not have the authority to modify either a statute or WAC by a manual or policy.*" I am yet to receive any response from Mr. Haney.

Per the above response and staff's response in the chain dated 6/11/2018, the letter from your attorney was addressed to WSDOT, not the City of Redmond. Staff provided a response to this question as well within the attached e-mail from 6/11/2018 and also conveyed that there is not an additional position to share at this time beyond the detailed responses that have been provided all previous correspondence. WSDOT has provided two responses to your attorney's letter. In neither communication have they shared that they believe or find that the City has operated in error. The City of Redmond does not have additional response to WSDOT for Mr. Aramburu's letter.

Staff has worked for several months with Real Property and legal consultant experts to ensure compliance in all areas including, but not limited to WSDOT determination, requirements for sales of land conveyed, state requirements and City procedures. You may contact the Attorney General regarding the easement sale if you believe it does not meet state requirements. No further action regarding the sale or valuation of the easement is required of the City at this time.

Together, the above raises the following questions

1. The information as presented to the council for their decision and the real-estate transaction resulting from the decision are materially different. That raises the questions to the validity of the decision and the transaction, and what part of the transaction was actually approved by the council.

The above comment does not include what information is believed to be materially different or would have informed an alternative outcome to a decision.

2. The transaction performed seems to be at odds with specific WSDOT instructions from 2012 letter; WSDOT staff did not review the required documents despite specific requests to the COR.

WSDOT does not require any further action from the City. You are welcome to work with WSDOT directly if you have additional concerns related to WSDOT's policies and review on the execution of the easement. The easement has been thoroughly vetted by City staff, the City Attorney, Real Property consultants and communicated to WSDOT. At this time the City does not have any additional actions or communications required to take excluding processing the easement document.

I understand that after extensive communication and responses by both WSDOT and staff that you do not agree that required actions have been taken. The City however has met and communicated with WSDOT throughout the process, as well as with Real-Property and legal consultant experts. All necessary actions have been completed with WSDOT and in accordance with the state auditing requirements. You may contact Mr. Cotten who responded on May 24<sup>th</sup>, 2018 to Mr. Aramburu's letter if you have concerns with WSDOT's review or their satisfaction with the conclusion of the process.

The City is required to take no additional action for approval or to provide any additional documentation regarding valuation at time.

3. The legality of transaction does not hinge on WSDOT determination, but on legal requirements of WAC and the quitclaim deed that granted the ROW parcel to the city. Yet the city appears to base its decisions on WSDOT determination.

Per the above response and previous responses provided, The City of Redmond all necessary actions have been completed with both WSDOT and also accordance with the Washington state auditing requirements. Staff has worked for several months with Real Property and legal consultant experts to ensure compliance in all areas including but not limited to WSDOT determination, requirements for sales of land conveyed, state requirements and City procedures.

I would appreciate if you in your capacity as the planning department Administrator could look into that matter.

If the city stands behind the decision as made, I would like to know then how the parties of record to the application may appeal the decisions made, since Ms. Pyle response implies that the decision would not be part of SPE and was made by the council during the easement vote (even though the council voted on the easement alone and not access related changes).

The decision of granting of an easement by City Council is final and cannot be appealed.

Should you need any clarifications, please do not hesitate to reach out to me either by email or by phone at 408-421-2126.

Thanks much!

Yours very truly,  
Eugene

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**From:** Eugene Zakhareyev <[eugenez@outlook.com](mailto:eugenez@outlook.com)>  
**Sent:** Wednesday, June 6, 2018 10:38 AM  
**To:** Sarah Pyle  
**Cc:** Steve Fischer; Erika Vandenbrande; Lisa Rigg; Min Luo  
**Subject:** Re: AEB project and e-mail status update.

Sarah,

Thanks a lot for your clarifications, that helps.

There are reasons for my questions, specifically

- 1) The draft easement and staff memo does not mention changing the approach (see <https://redmond.legistar.com/LegislationDetail.aspx?ID=3489893&GUID=0ADD980B-89B5-4C72-8B89-0D073F811FB0&Options=IDITextI&Search=18-081>)

WSDOT design manual (which the COR supposed to follow) has a procedure for break in access/change of access and I have not seen any evidence yet that procedure has been followed.

Therefore was my question on whether the easement includes only the driveway change.

- 2) Value change determination and resulting amount of monies owed to the COR road fund was supposed to be performed acc. to WSDOT standards, and WSDOT was supposed to review it.

The staff memo does not mention it anywhere, the cost is presented as cost of easement only. Last I checked, WSDOT staff at NW region did not have value determination documents and has not reviewed it.  
Therefore was my question on value determination.

It would be helpful if Mr. Haney would have replied to the letter from my attorney from May 15, 2018. That would have clarified the city legal position in regards to the easement and associated changes granted.

Thanks much!

Yours very truly,  
Eugene

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**From:** Sarah Pyle <[spyle@redmond.gov](mailto:spyle@redmond.gov)>  
**Sent:** Tuesday, June 5, 2018 3:49:15 PM  
**To:** Eugene Zakhareyev  
**Cc:** Steve Fischer; Erika Vandenbrande; Lisa Rigg; Min Luo; Sarah Pyle  
**Subject:** RE: AEB project and e-mail status update.

Good Afternoon,

I have made a few corrections to your list below.

Thank you for your e-mail,

Sarah Pyle

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**From:** Eugene Zakhareyev [<mailto:eugenez@outlook.com>]  
**Sent:** Monday, June 4, 2018 6:10 PM  
**To:** Sarah Pyle <[spyle@redmond.gov](mailto:spyle@redmond.gov)>  
**Cc:** Steve Fischer <[SFISCHER@REDMOND.GOV](mailto:SFISCHER@REDMOND.GOV)>; Erika Vandenbrande <[EVandenbrande@REDMOND.GOV](mailto:EVandenbrande@REDMOND.GOV)>; Lisa Rigg <[LRIGG@REDMOND.GOV](mailto:LRIGG@REDMOND.GOV)>; Min Luo <[mluo@redmond.gov](mailto:mluo@redmond.gov)>  
**Subject:** Re: AEB project and e-mail status update.

Sarah,

Thank you very much for your response, I think finally I have received enough information to piece a whole picture.

1. The easement of additional 6' over the city's ROW is approved by the council vote
2. As the easement is put on title, the city also changes the type of approach from Type A to Type C, so that today it reads "Type C, 20 feet wide single family home"

This is essentially correct. The easement will permit a type C special use access for a Religious Facility Use only. It will include language that say the only other use approved for the access of (14' or 20') is one single family home. As an additional note, should any other use or application be submitted for the site the applicant/ owners would have to reapply for a new easement and complete a new valuation process based upon the impact of that new use to land value.

3. For the purposes of SPE review, the project parcel now has 20' access to 51st Street, and the project is ready for SPE approval.



This is essentially correct. With an easement paid for and approved the project would have the required access width to meet compliance for the SPE, thus allowing the project to proceed forward to have a final decision determination made on the project.

4. Once SPE is approved, the provision on the title will be changed to "Type C, 20 feet wide religious institution". The value determination for change of use and any proceeds due therefrom (if any) will be determined and paid at that time

The SPE does not and will not trigger provisions on the title. The easement (a property and real-estate transaction and document) is the only item that will activate an update of information to the title. I do not know the exact language that will be placed on the title, this is a question best answered by the City's Real Property team. What I do understand and can share is that the recorded easement will be reflected on the title in some capacity and it is the language of the easement itself that will govern the access rights granted and that those rights will be limited to 20' access for the additional use only of a religious facility.

The value determination for the change of use that is required to be paid and the easement sale price are the same item and must be paid in-full before the City can issue a decision on the SPE. The value determination for the change of use is the amount the City is required to charge the applicant for the easement. This is a standard process that aligns with state auditing requirements. Is my understanding of the process correct?

Thanks much!

Yours very truly,  
Eugene

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**From:** Sarah Pyle <[spyle@redmond.gov](mailto:spyle@redmond.gov)>  
**Sent:** Monday, June 4, 2018 4:44:25 PM  
**To:** Eugene Zakhareyev  
**Cc:** Steve Fischer; Erika Vandenbrande; Lisa Rigg; Sarah Pyle; Min Luo  
**Subject:** RE: AEB project and e-mail status update.

Good Afternoon Eugene,

The requirement for the SPE is that the applicant be able to show they will be able to provide the required access for the use proposed. In this case, that means they need to be able to show they can provide a 20' width.

The easement expanding access in alignment with a type C access for the limited use of a religious facility shall be completed and recorded on the property as part of a real-estate transaction.

It is not part of an SPE, but is part of rights of access conveyed/ recorded for the property. The SPE looks at is their access rights and what type, it does not assign them.

Thank you for the question,

Sarah Pyle

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**From:** Eugene Zakhareyev [<mailto:eugenez@outlook.com>]  
**Sent:** Wednesday, May 30, 2018 8:04 PM  
**To:** Sarah Pyle <[spyle@redmond.gov](mailto:spyle@redmond.gov)>  
**Cc:** Steve Fischer <[SFISCHER@REDMOND.GOV](mailto:SFISCHER@REDMOND.GOV)>; Erika Vandenbrande

<[EVandenbrande@REDMOND.GOV](mailto:EVandenbrande@REDMOND.GOV)>

**Subject:** Re: AEB project and e-mail status update.

Dear Ms. Pyle,

Thank you for the detailed response. That answers majority of the questions, including the ones I left to Mr. Fischer.

There is one bullet point however that I did not follow:

- The easement was paid for in-full by the property owner today for a type C special use access limited to the project proposal use. A change-in-use to anything other than one single family home in the future would require a new approval processing for an easement and possible additional payment. This is outlined within easement documents to be recorded.

My understanding was that the change of access/change of use will be done as part of SPE approval. Is that incorrect? Did the approval of the easement also approved the change of type for the approach?

Thanks much!

Yours very truly,  
Eugene

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**From:** Sarah Pyle <[spyle@redmond.gov](mailto:spyle@redmond.gov)>  
**Sent:** Wednesday, May 30, 2018 5:20:46 PM  
**To:** Eugene Zakhareyev  
**Cc:** Steve Fischer; Erika Vandenbrande; Sarah Pyle  
**Subject:** AEB project and e-mail status update.

Good Afternoon,

This e-mail is in response to your recent e-mails and calls for a project status updated and concerns regarding SDOT designs.

**SDOT:**

- The plan you provided for SDOT does not appear to have any impacts on the project that can be discerned at this time. Additionally, should the project be approved there is no reason to believe it would create any delays with project plans as we know them for SDOT. Should SDOT need to work with the property owner to obtain rights for additional land it would not impact the current proposal. If there is a chance it could create a future legal non-conformance it would not impact the current proposal or construction of it. Additionally, the decision criteria for Site Plan Entitlement is the parameter the City has authority to issue a decision for on the project and allow the City to limit an approval based upon possible future setback needs of another entity if not currently recorded and in-place. Echoing the above however, there does not appear from the drawing provided or plans the City has viewed that there would be any impacts or constraints to SDOT's project needs or the applicant's proposal.
- The Property viewer can also help show the additional property ownerships and dimensions in the area or adjacent parcels and frontages.

### WSDOT and Expanded Access Easement:

- I have attached a copy of WSDOT's most recent response letter.
- The City has operated in accordance to all requirements by both WSDOT and those required by the State Auditor. No additional action is required of the City to be in compliance with a sell of an easement for expanded access. WSDOT requires no documentation from the City of Redmond or additional information.
- The easement was paid for in-full by the property owner today for a type C special use access limited to the project proposal use. A change-in-use to anything other than one single family home in the future would require a new approval processing for an easement and possible additional payment. This is outlined within easement documents to be recorded.

### Site Plan Entitlement:

- Is anticipated to go before the Technical Committee within the next 7 to 14 days.
- A 14 day appeal period will follow any decision.
- All parties of record will be sent a copy of the Notice of Decision and we will post a copy online.
- Any appeals filed will be consolidated for processing with the current appeal filed.
- A decisions can only be issued based upon the decision criteria as it is outlined within the RZC.
- The application has been thoroughly vetted over the past years for compliance and all review on the project is complete.

### Public Records Requests:

The Public Records Coordinators shared that after we last e-mailed about you public records requests that notification had gone out that many were ready for viewing or to be printed. The rest were actively being worked on and anticipated to be completed shortly , including newly submitted ones. I know have shared some of this recently, but wanted to provide you the additional update.

Steven shared that he had also returned you call today and echoed some of the above information in the message he left for you.

At this time, this is all the information available on the project. I can provide an addition status updates and responses to any follow-up questions once the project has gone before the Technical Committee in the next week or two.

Thank you and have a great week,

<image001.png> **Sarah Pyle**  
Senior Planner | City of Redmond  
☎: 425.556.2426 | ✉: [spyle@redmond.gov](mailto:spyle@redmond.gov) | [Redmond.gov](http://Redmond.gov)  
MS: 2SPL | 15670 NE 85<sup>th</sup> St | Redmond, WA 98052

[<image002.png>](#) [<image003.png>](#) [<image004.png>](#) [<image005.png>](#)

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<2018-5-15 to Pyle-Redmond.pdf>

<WSDOT 8-24-12 Letter (Exhibit B).pdf>