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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

ALLIANCE FOR A LIVABLE DENNY
TRIANGLE and UNITE HERE LOCAL 8,

Petitioners/Plaintiffs,

v.

CITY OF SEATTLE, a Washington municipal
corporation including its DEPARTMENT OF
PLANNING AND DEVELOPMENT,
and
R.C. HEDREEN COMPANY Co.,

Respondents/Defendants.

NO.

LAND USE PETITION PURSUANT TO
RCW CH. 36.70C, COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF, PETITIONS FOR STATUTORY
AND CONSTITUTIONAL WRITS OF
REVIEW AND FOR WRIT OF
MANDAMUS

Petitioners/Plaintiffs allege as follows:

I. INTRODUCTION

1.1 This matter concerns proposals by the R.C. Hedreen Co. (“Hedreen Company”) for two alternative versions of a massive convention hotel facility, variously said to be located at 8th and Howell or 9th and Stewart, encompassing the former Greyhound Bus Terminal site and additional property, including an affordable housing apartment building. Either iteration of the facility would be the largest such facility in the entire Pacific Northwest



1 encompassing at least 1250 hotel rooms and 150,000 square feet in event and restaurant/retail
2 space.

3 1.2 The Hedreen Company originally proposed the facility to encompass the entire
4 block defined by 8th and 9th Avenues and Stewart and Howell Streets including a public alley.
5 Hedreen Company therefore applied to the City of Seattle for a legal vacation of the alley so
6 that it could be incorporated into and used as part of the project site. However, when it
7 became apparent that the City Council would, as per its policies, inquire into whether the
8 vacation was in the public interest, Hedreen Company submitted an alternative project
9 application that incorporated use of the alley, but did not ask for its vacation.
10

11 1.3 Hedreen Company's purported "non-vacation" project, involving intensive
12 development beyond the base allowed by the Land Use Code, was approved by Seattle's
13 Director of the Department of Planning and Development ("DPD") despite the fact that it
14 unlawfully avoided contribution of approximately \$3 million in affordable housing mitigation
15 required for such intensive development. Hedreen Company's avoidance, approved by DPD,
16 depended on a mechanism known as "one site development".
17

18 1.4 DPD was warned before issuing the approval that one site development did not
19 apply and that a decision approving the "no vacation project" on that basis would represent an
20 extraordinary, unlawful giveaway to the Hedreen Company of funds badly needed for
21 affordable housing in the City of Seattle. The DPD Director nonetheless proceeded with an
22 approval.
23

24 1.5 Petitioners/Plaintiffs therefore paid the \$2500.00 nonrefundable fee the City
25 requires before a citizen can obtain Department review of whether the Department's
26

1 application of the Land Use Code is incorrect and appealed the Director's Decision approving
2 the project. In response, DPD issued a formal "Interpretation" decision agreeing, for the same
3 reasons that Petitioners/Plaintiffs had repeatedly presented to DPD prior to approval, that the
4 one site approach was not allowed under the Code for the Hedreen Company project.

5 1.6 However, despite the fact that DPD had determined that the basis on which it
6 had approved the project was inconsistent with the Code, DPD did not withdraw its approval
7 decision and issue a new one subject to a new appeal period. Instead, in private meetings with
8 Hedreen Company it hit upon a new "loophole" and announced that the project would
9 proceed on that basis. That loophole, known as "combined lot development" depended on
10 Hedreen Company identifying for the DPD Director's approval supposed "significant public
11 benefits" resulting from combined lot development.
12

13 1.7 Hedreen Company presented its final proposal to the DPD Director for
14 significant public benefit approval on the evening of December 1, 2014. By the next morning
15 DPD had issued an approval. All of this occurred without public notice or comment and in
16 particular without notice at all to Petitioners/Plaintiffs who had filed the appeal and who had
17 been required to pay \$2500.00 for DPD to review the legality of its decision to approve the
18 project under the Land Use Code.
19

20 1.8 The "no vacation" project ultimately approved by the DPD Director still allows
21 Hedreen Company to avoid approximately \$500,000.00 in affordable housing fees. It further
22 effectively converts the public alley into a private drive serving the formal entrance to
23 Hedreen Company's hotel convention facility without complying with statutory vacation
24 requirements. And it allows development purportedly to serve the public that affirmatively
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1 includes barriers to handicapped access. Further, it is based on an inadequate FSEIS and
2 procedures and a decision all in violation of State Environmental Policy Act (“SEPA”)
3 regulations and the Seattle Code.

4 1.9 Therefore, Petitioners/Plaintiffs bring this Complaint, Petitions for Writs, and
5 Land Use Petition asking the Court to review, reverse, and vacate the City’s actions, including
6 both those approved by the Hearing Examiner and those not subject to Examiner review.
7

8 **II. JURISDICTION AND VENUE**

9 2.1 The Superior Court of Washington in and for King County has jurisdiction
10 over this action pursuant to RCW 2.08.210, RCW Ch 36.70C, RCW Ch. 7.16, RCW Ch. 7.24,
11 RCW Ch. 7.40, Washington Constitution Article IV Section 6 and other applicable law.

12 2.2 Venue is proper under RCW 4.12.025 because Respondents/Defendants City
13 of Seattle, Hedreen Company, and the subject property, as well as the Petitioners/Plaintiffs are
14 all located within King County.
15

16 **III. LAND USE PETITION**

17 3.1 Petitioners/Plaintiffs Unite Here Local 8 (“Unite Here”) and the Alliance for a
18 Livable Denny Triangle (the “Alliance”), were the appellants in Seattle Hearing Examiner
19 File No. MUP 14-016, S-14-003, DPD Application No. 3016917 (and related file numbers)
20 concerning DPD’s Master Use Permit approval Decision, Land Use Code Interpretation
21 Decisions, and Final Supplemental Environmental Impact Statement (“FSEIS”) for Hedreen
22 Company proposed convention hotel projects in downtown Seattle. Petitioners/Plaintiffs’
23 mailing address is c/o Eglick Kiker Whited PLLC, 1000 Second Avenue, Suite 3130, Seattle,
24 Washington 98104. The Petitioner’s attorney, Peter Eglick is also at that address.
25
26



1 3.2 The City of Seattle is the local jurisdiction whose decisions are at issue. Its
2 mailing addresses are:

3 Diane Sugimura, Director
4 City of Seattle Department of Planning and Development
5 700 Fifth Avenue, Suite 2000
6 P.O. Box 34019
7 Seattle, WA 98124-4019

8 and

9 Diane Sugimura, Director
10 City of Seattle Department of Planning and Development
11 c/o Jeffrey S. Weber
12 Assistant City Attorney
13 Seattle City Attorney's Office
14 701 Fifth Avenue, Suite 2050
15 P. O. Box 94769
16 Seattle, WA 98124-4769

17 3.3 The decisions challenged here include the DPD "Analysis and Decision of the
18 Director" (MUP-14-016/S-4-003) dated October 13, 2014, which, inter alia, accepts as
19 adequate and lawful and utilizes the FSEIS; the Director's Interpretation decisions 14-009
20 dated December 2, 2014 and 14-010 dated January 5, 2015; the Director's acceptance of
21 Hedreen Company's proposed use of the Land Use Code "combined lot development"
22 mechanism and purported significant public benefits; the Seattle Hearing Examiner's
23 prehearing decisions dismissing portions of Petitioner/Plaintiffs' appeal and declining to
24 remand; the Hearing Examiner's decision quashing Petitioner's witness subpoenas and
25 barring testimony by Design Review Board members; the Findings and Decision of the
26 Hearing Examiner for the City of Seattle (Corrected) dated July 14, 2015, upholding the
Director's decisions and dismissing Petitioners/Plaintiffs' appeal. These are all attached to
this Petition and Complaint and incorporated here by reference.

1 3.4 Applicant R.C. Hedreen Company Co. is included as a party pursuant to LUPA
2 RCW 36.70C.040 (2)(b) (i) and (ii) because it has been identified as the owner of the property
3 in question and the applicant for the approvals granted by the Department and upheld by the
4 Examiner. Either one of the Hedreen Company projects would be the largest convention hotel
5 facilities in the Pacific Northwest. The particular proposal approved by the DPD Director and
6 the Hearing Examiner is for a 45-story hotel structure with approximately 1265 hotel rooms
7 that would also include an 8-story podium of well over 100,000 square feet of meeting rooms,
8 ballrooms and pre-function space, plus over 17,000 square feet of street-level retail and
9 restaurants, and below-grade parking for approximately 500 vehicles.
10

11 3.5 Both Petitioners/Plaintiffs Unite Here and Alliance members include persons
12 who live and work in the downtown neighborhood, including in close proximity to the
13 proposed projects and who will be directly, adversely impacted by the projects' adverse
14 impacts with regard to traffic; affordable housing; height, bulk, and scale; pedestrian
15 circulation and safety; shadowing; and other aspects and elements of the environment.
16 Petitioner/Plaintiff Unite Here's members are particularly impacted by the proposed projects'
17 demolition of the site's existing affordable housing, site re-development, and consequent
18 impacts. They are workers in the hospitality and food service industries who are typically
19 paid low wages, have little or no benefits, struggle to afford housing in downtown Seattle, and
20 depend on reasonable access to their jobs in downtown Seattle. Both Petitioners/Plaintiffs are
21 aggrieved and prejudiced by the inadequacy of the SEIS on which the Director's Decision has
22 been based as well as by the unlawful unfair procedures utilized by the Director and upheld
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1 by the Examiner in approving the Department's Decision. A decision in favor of
2 Petitioners/Plaintiffs would substantially eliminate or redress such prejudice.

3 3.6 The Hearing Examiner in a May 13, 2015 decision (attached and incorporated
4 here) rejected Hedreen Company's challenge to the Petitioners/Plaintiffs' and their members'
5 standing.

6 3.7 The Hearing Examiner Decisions (and underlying subsidiary decisions
7 including those of City Departments) meet each of the LUPA RCW 36.70C.130 standards for
8 relief, are contrary to law, not supported by substantial evidence and clearly erroneous in:
9

10 3.7.1 dismissing appeal grounds that DPD failed to provide all required
11 public notices concerning the project and that DPD notices were substantively
12 insufficient, incorrect, and inaccurate; concluding that the Code requirement that
13 public notices include "a list of other land use decisions sought" was not violated by,
14 inter alia, the failure to list combined lot development and the integral role that would
15 be played by "Lot B"; and upholding the City's failure to provide public notice of the
16 actual development proposal, depriving the public of fundamental rights to notice and
17 opportunity to comment on the full scope of the proposal;
18

19 3.7.2 dismissing the appeal ground that DPD's Design Review process and
20 decision were affected by fundamental procedural and substantive errors including
21 inter alia, the failure to record Design Review Board proceedings, the failure to have
22 purported Design Review Board meeting minutes reviewed and approved by the
23 Design Review Board itself, the failure to disclose whether and how the projects
24 subjected to Design Review met or did not meet all regulatory requirements, and the
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1 failure to recognize that the scope of Design Review Board review includes Land Use
2 Code considerations;

3 3.7.3 ex parte quashing subpoenas issued by Petitioners/Plaintiffs for
4 hearing testimony by Design Review Board members, including one member who had
5 indicated her willingness to do so;

6 3.7.4 dismissing issues concerning DPD's and Hedreen Company's violation
7 of SEPA, RCW Ch. 43.21C and coordinate WAC regulations, as well as the Seattle
8 Municipal Code, and DPD's Director's Rules and contract requirements and
9 applicable rules concerning preparation of the Final Supplemental Environment
10 Impact Statement ("FSEIS"), including but not limited to allowing SEIS preparation to
11 be affected by significant conflicts of interest conflicts, failing to properly carry out
12 supervision of preparation of the SEIS, and withholding information to which the
13 public was entitled under the SEPA regulations and which was necessary for
14 preparation of informed comments on the DSEIS comments.
15

16 3.7.5 failing to recognize as an issue and instead upholding an FSEIS that
17 does not adequately and accurately disclose and analyze housing, particularly
18 affordable housing impacts and mitigation, including its failure to disclose and address
19 Hedreen Company's artifices to avoid substantial Code-required payments for
20 affordable housing in return for a larger development;
21

22 3.7.6 failing, despite early and repeated objections and requests in the record
23 by Petitioners/Plaintiffs (which the Examiner's Decision erroneously ignores) to
24 remand the Director's October 13, 2014 MUP Decision to DPD for preparation of a
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1 new Decision and a new appeal period because the DPD Director formally admitted in
2 her December 2, 2014 Interpretation Decision that the October MUP Decision had
3 approved the project on an improper “one-site development” basis, but announced that
4 she would nonetheless allow the project to proceed on a newly proposed “significant
5 public benefit” basis that had not been before the Department or known to the public
6 until nearly two months after the appeal period had run out on the Director’s October
7 13, 2014 Decision, contrary to Code requirements for issuance of a MUP Decision;

8
9 3.7.7 upholding the Director’s determination to allow the MUP for the
10 Hedreen Company project based on the Code “combined lot development” provision
11 requiring “significant public benefits,” when the project features claimed as such
12 benefits were not the result of the combined lot development as required by SMC
13 23.49.041; were already present in the project as a result of Design Review Board
14 review without regard to “combined lot development”; presented significant public
15 safety risks; are designed, with City approval, to be inaccessible e.g. to disabled
16 persons; the claimed benefits are not actually part of the project plans and application;
17 and in any event do not meet the Code requirement that they be “significant”;

18
19 3.7.8 refusing to remand the application to the Design Review Board for
20 further consideration and review in light of the new disclosure that the project would
21 be allowed to proceed on a combined lot development “significant public benefit”
22 basis implicating Lot B and involving project modifications that were not consistent
23 with the basis and outcome of Design Review Board review;
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1 3.7.9 allowing the project additional FAR (more intense development) by
2 ignoring Code requirements for FAR allowances, including, e.g. that a new structure
3 must be proposed for the “sending” lot;

4 3.7.10 refusing to address the inconsistency of the project’s purported
5 “significant public benefits” with Code Downtown Amenity Standards or to remand
6 for the Design Review Board to do so when the Petitioners/Plaintiffs had specifically
7 called out in their supplemental interpretation request the Code definition for “public
8 benefit feature” which says it is an “amenity” in the Downtown zones; when the City
9 and Hedreen Company cited and the Examiner accepted various authorities in their
10 post-hearing written Closing Statements; and when they had claimed, inaccurately,
11 that there were no definitions or standards to guide application of the “significant
12 public benefit” Code requirement;

13 3.7.11 refusing to consider, on grounds that it should have been raised in
14 Petitioners/Plaintiffs October 24, 2014 appeal the objection that the FSEIS failed to
15 list, disclose, and address approvals and issues related to the combined lot
16 development “significant public benefit approval”, where the FSEIS explicitly stated
17 that Hedreen Company had chosen to use the “one site development” rather than
18 combined lot significant public benefit approach and the DPD/Hedreen Company
19 agreement to switch to adoption of a combined lot development approach did not
20 occur until two months after close of the period for appeal of the MUP and FSEIS;

21 3.7.12 ignoring, misapprehending, and mischaracterizing the record which
22 demonstrates that the SEIS traffic analysis was inadequate and misleading in its
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1 disclosure and analysis of impacts, existing conditions, and potential mitigation and
2 erroneously concluding that full disclosure of impacts pursuant to SEPA is not
3 required where the City Code has limited mitigation options in the zone in question.

4 3.8 Relief should therefore be granted pursuant to LUPA and SEPA reversing and
5 remanding the Examiner's July 14, 2015 Decision and subsidiary Examiner and City orders
6 and decisions and/or requiring that the MUP application be denied and/or that the FSEIS be
7 withdrawn, supplemented and revised and then re-circulated for public comment prior to new
8 decisions on the Hedreen Company MUP application and/or that the matter be subject to new,
9 fully informed, properly recorded, and procedurally correct review by the Design Review
10 Board as a predicate to any DPD Decision, and/or requiring that the Examiner address and
11 resolve issues that arose as a result of her failure to remand when the Department announced
12 that the basis for its MUP approval of the project had changed.
13

14 **IV. PETITION FOR STATUTORY AND CONSTITUTIONAL WRITS OF**
15 **REVIEW**

16 4.1 Paragraphs 1.1 through 3.8 are incorporated as if fully set forth here.

17 4.2 Petitioners/Plaintiffs have no plain, speedy or adequate remedy at law.

18 4.3 This Court should use its statutory and constitutional writ authority to require
19 production of the record in this matter, to review that record, and render a judgment as to the
20 actions of the City in this matter, including with regard to actions and decisions not within the
21 scope of the Land Use Petition Act.
22

23 **V. COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**
24 **AND PETITION FOR WRIT OF MANDAMUS: STREET VACATION**
25 **AND CONSTITUTIONAL CAUSE OF ACTION**

26 5.1 Paragraphs 1.1 through 4.3 are incorporated as if fully set forth here.

1 5.2 Petitioners/Plaintiffs membership include Seattle taxpayers who have standing
2 to challenge the legality of governmental action based on their taxpayer status.

3 5.3 The Hedreen Company project approved by the Director's October 13, 2014
4 Decision, upheld by the Hearing Examiner, depends on reconfiguration and perpetual use of
5 the public alley adjacent to the project site for the hotel/convention facility's main entrance
6 and vehicular access.

7 5.4 However, Hedreen Company has not been required to and has not complied
8 with state statutory requirements including RCW Ch. 35.79 and City processes to vacate and
9 reconfigure the public alley and to compensate the City.

10 5.5 The plan approved by the City effectively allows permanent use of City
11 property for private use and at City expense in violation of the Washington Constitution
12 including Article 8 section 7.

13 5.6 This Court should therefore grant declaratory and injunctive relief and issue a
14 writ of mandamus barring implementation of the plan and/or requiring that Hedreen Company
15 proceed through the public street vacation process as a prerequisite to plan implementation.
16

17
18 **VI. COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**
19 **AND PETITION FOR WRIT OF MANDAMUS: HANDICAPPED**
20 **ACCESSIBILITY**

21 6.1 Paragraphs 1.1 through 5.6 are incorporated as if fully set forth here.

22 6.2 The City has agreed with the Hedreen Company that the so-called pedestrian
23 walkway for the project, created in part by modifying the existing public alley and relied upon
24 as a "significant public benefit" to obtain approval of the project will not be handicapped
25 accessible as required under federal and state law.
26

1 6.3 The City has a nondiscretionary duty to review and reject/deny all plans,
2 including for public and private development that do not affirmatively provide handicapped
3 accessibility.

4 6.4 The project and its proposed use of the public right of way as approved by the
5 City is in violation of Titles II and III of the Americans with Disabilities Act of 1990 (ADA)
6 (42 U.S.C. §§ 12131-12164 and 42 U.S.C. §§ 12181-12189), the Department of Justice’s
7 ADA Title II and Title III Regulations (28 CFR 35 and 28 CFR 36), the 2010 ADA Standards
8 for Accessible Design, and Section 504 of the Rehabilitation Act of 1973 (Section 504) (29
9 U.S.C. §794), RCW 35.68.075, RCW 36.68.076, as well as provisions regarding accessibility
10 in the 2012 Seattle Building Code, including but not limited to Chapter 11 of the 2012 Seattle
11 Building Code titled “Accessibility”, (Section 1101 et seq.), and Executive Order 01-2012
12 issued by the Mayor of Seattle on May 11, 2012.

13
14 6.5 This Court should therefore grant declaratory and injunctive relief and issue a
15 writ of mandamus barring implementation of the Hedreen Company project plan until it
16 complies with accessibility requirements.

17
18 **VII. PRAYER FOR RELIEF**

19 Petitioners/Plaintiffs request relief cumulatively and in the alternative as follows:

20 7.1 All of the relief requested above, including in paragraphs 1.9, 3.8, 4.3, 5.6, and
21 6.5;

22 7.1 Review of the record;

1 7.2 Remand and reversal under the Land Use Petition Act and pursuant to the writs
2 and declaratory judgment requested reversing the City’s decisions, prohibiting the City and
3 Hedreen Company from acting on or implementing them.

4 7.3 An award of Petitioners/Plaintiffs’ attorneys’ fees and costs to the extent
5 allowed by applicable law; and

6 7.4 For such other relief as the Court determines to be just and equitable.
7

8 RESPECTFULLY SUBMITTED this 3rd day of August, 2015.

9 EGLUCK KIKER WHITED PLLC

10 

11 Peter J. Eglick, WSBA No. 8809
12 Attorney for Petitioner
13 1000 Second Avenue, Suite 3130
14 Seattle, WA 98104
15 (206) 441-1069

16 **VERIFICATION**

17 I have read the foregoing complaint and petitions and believe the contents to be true
18 and correct.

19 Dated: August 3, 2015

20 Stefan Moritz,
21 Director of Strategic Affairs
22 Unite Here Local 8



1 7.2 Remand and reversal under the Land Use Petition Act and pursuant to the writs
2 and declaratory judgment requested reversing the City's decisions, prohibiting the City and
3 Hedreen Company from acting on or implementing them.

4 7.3 An award of Petitioners/Plaintiffs' attorneys' fees and costs to the extent
5 allowed by applicable law; and

6 7.4 For such other relief as the Court determines to be just and equitable.

7 RESPECTFULLY SUBMITTED this 3rd day of August, 2015.

8
9 EGLICK KIKER WHITE PLLC

10
11

Peter J. Eglick, WSB No. 8809
12 Attorney for Petitioner
13 1000 Second Avenue Suite 3130
Seattle, WA 98104
14 (206) 441-1069

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18 Dated: August 3, 2015

19 
20

Stefan Moritz,
21 Director of Strategic Affairs
22 Unite Here Local 8
23
24
25
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City of Seattle
Edward B. Murray, Mayor

Department of Planning and Development
D. M. Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 3016917

Applicant Name: Dave Schneider, LMN Architects, for R.C. Hedreen Co.

Address of Proposal: 808 Howell Street

SUMMARY OF PROPOSAL

Land Use Application to allow a 45-story hotel building that includes an 8-story podium of meeting rooms, ballrooms and hotel functions, 1,264 hotel rooms, street-level retail and restaurants totaling 17,016 sq. ft. Parking for 505 vehicles will be located below grade. Four existing structures will be demolished. A Final Supplemental EIS (FSEIS) for the *Ninth & Stewart Mixed-Use Development* has been prepared.

The following approvals are required:

Design Review – Chapter 23.41 Seattle Municipal Code.

Development Standard Departures from upper level modulation (required on Stewart Street and 8th Avenue upper facades). (SMC 23.49.058.B.2)

Development Standard Departure from upper level setback on designated Green Street (9th Avenue). (SMC 23.49.058.F.2)

Development Standard Departure to exceed upper level width limit of the structure parallel to the Avenues (8th & 9th). (SMC 23.49.058.C)

Development Standard Departures from façade setback limits between the street lot line and street façade (Stewart Street, 9th & 8th Avenues). (SMC 23.49.056.B)

Development Standard Departure from minimum continuous façade height of a Class 1 pedestrian street (8th Avenue). (SMC 23.49.056.A)

SEPA – Environmental Determination – Chapter 25.05 Seattle Municipal Code.

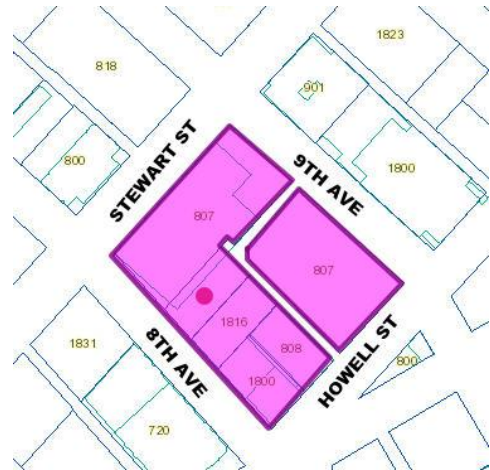
SEPA DETERMINATION: Exempt DNS MDNS EIS**
 DNS with conditions
 DNS involving non-exempt grading or demolition,
or involving another agency with jurisdiction.

*The Director of DPD published notice of availability of the Final Supplemental EIS on September 29, 2014, and has determined that the FSEIS has provided adequate analysis of the proposal.

Site area: 92,031 sq. ft., proposed buildout area is 63,924 sq. ft.

Site Zone: DOC2 500/300-500

Nearby Zones: (North) DOC2 500/300-500
(South) DOC2 500/300-500
(East) DMC340/290-400
(West) DOC2 500/300-500



Current Development

There are currently four structures and two surface parking lots located on the development site. The three story masonry building along the north edge of the site, addressed as 807 Stewart Street, formerly functioned as the Greyhound Bus Terminal. The other structures include: a retail building at 1816 8th Avenue, “The Bonair,” at 1800 8th Avenue, a four-story mixed use building with retail and 48 apartment units, and a seven-story office structure, the “Roffe Building,” at 808 Howell Street.

Vehicular access is currently from the alley and via curb cuts on 8th Avenue, 9th Avenue and Howell Street.

This site is located in Seattle’s Downtown Urban Center and within the Denny Triangle Neighborhood. More specifically, the site occupies one full block that is bounded by Stewart Street on the north, Howell Street on the south, Eighth Avenue on the west and Ninth Avenue on the east. Although Eighth and Ninth Avenues are aligned in a northwest/southeast direction and Stewart and Howell Streets in a generally northeast/southwest direction within the existing street grid, to simplify discussion in the FSEIS and in the architects’ presentations, 8th and 9th Avenues are assumed to lie in a north/south direction and Stewart and Howell Streets are assumed to line in an east/west direction.

The full city block is slightly irregularly-shaped along its western boundary due to the convergence of separate street grids in the area. An “L”-shaped, 16-foot wide public alley bisects the block. Once running generally north/south between Stewart and Howell Streets, the north 120 feet of the alley was vacated in 1927 (Ord.#52344), with a connecting parcel from the alley running to 9th Avenue dedicated in 1928, thus forming the “L”-shaped, aveuc-serif, alley that exists today.

The project site slopes approximately 22 feet from east to west.

The surface parking located at the southeast corner of the block, currently accessory to existing uses across the alley and addressed like the building that formerly housed the Greyhound Bus Terminal as 807 Stewart Street, would be reconfigured but remain accessory to the new uses on the block.

The pattern of existing land uses immediately surrounding the project includes a mix of office, residential, medical, hotel and parking uses. Gethsemene Lutheran Church, together with a connected apartment for low income individuals, lies directly across 9th Avenue to the east. In the immediate area surrounding the proposal site several new projects have been completed or have received land use and/or construction permits.

DESIGN REVIEW ANALYSIS

EARLY DESIGN GUIDANCE MEETING: April 22, 2014

The packet includes materials presented at the meeting, and is available online by entering the project number at this website:

http://www.seattle.gov/dpd/Planning/Design_Review_Program/Project_Reviews/Reports/default.asp.

The packet is also available to view in the 3016917 file, and by contacting the Public Resource Center at DPD:

Mailing Public Resource Center
Address: 700 Fifth Ave., Suite 2000
P.O. Box 34019
Seattle, WA 98124-4019

Email: PRC@seattle.gov

The proposal is related to another project for proposed development at this site (3013951). That project, larger in scope and footprint, would construct a building that would cover the entire block and would require the City's vacating of the existing "L"-shaped alley. This present proposal would construct a building that would occupy the space north and west of the existing alley while modifying but maintaining the surface accessory parking lot which lies to the south and east of the alley.

The proposed development is for a 500-foot tower hotel building, with approximately 1,270 guest rooms located above ground floor retail/restaurant space. The hotel would rest upon a five-story podium occupied by approximately 85,000 square feet of meeting rooms and ballroom space. Five levels of proposed underground parking would accommodate approximately 450 automobiles. Six truck-loading bays would also be accommodated at grade off the alley. As proposed in the preferred scheme, the common parking garage would take access from an interior drive connecting 8th to the alley. Trucks would utilize the same driveway off 8th Avenue. Project work for the proposal would include landscape and pedestrian improvements along each of the four encompassing streets, with "Green Street" improvements required on the portion of 9th Avenue abutting the proposal.

At the Early Design Guidance meeting the design team from LMN architects briefly touched upon the development objectives, identified as: providing a hotel on site that functions efficiently, with ground level related retail and restaurants that will activate the streetscapes primarily along 8th Avenue and along Stewart Street.

“Site functionality” was given a good deal of attention in the presentation, with comparisons made in the printed materials to other Seattle hotels. Three alternative massing models were briefly presented to the Board. Alternative “A” placed the hotel tower on Stewart Street with lobbies and pre-function spaces for meeting rooms aligned beneath the tower. A five-story podium extended along 8th Avenue to the intersection with Howell Street, and included ballroom spaces above the primary truck loading dock. Alternative “B” placed the tower along 8th Avenue, with lobby and pre-function spaces extending along the 8th Avenue and Howell Street edges of the structure, enabling the loading dock to be located at the northeast quadrant of the site. The ballroom spaces were located in the podium above the loading bays and extended along Stewart Street. Alternative “C,” the alternative preferred by the applicants, located the hotel tower at the southernmost edge of the site, generally aligning it with the Howell Street and 8th Avenue edges. Lobbies and pre-function spaces would be located beneath the tower. The hotel lobby would align with a *porte cochere* just off the southern portion of the alley. The truck loading would be relegated to the portion of the podium running between Stewart Street and the northern leg of the alley. It would be pulled to the alley so as to allow retail spaces surrounding it to face onto 9th Avenue, Stewart Street and 8th Avenue.

PUBLIC COMMENT

The following comments, issues and concerns were raised:

- Place the tower structure close to Stewart Street; it would be closer to office structures and allow more breathing space to the residential towers near Olive and 8th
- Prefer Option “A” over applicant’s preferred Option “C”
- A “giant step backwards,” compared to the earlier proposal (#3013951) for a full-block build-out with an alley vacation
- The biggest flaw with this proposal is that in effect it relies on using the public alley for private purposes
- Proposal is incomplete without providing information regarding development potential of the lot on the corner of 9th and Howell, not included as part of this proposal
- Appears “less thoughtful” than earlier proposal (#3013951), and “less sensitive”
- The big question, given all the functional requirements serving the hotel, how will the alley maintain its status as “public space”?

BOARD’S DELIBERATIONS

The Board began its deliberations with the Chairperson noting some basic areas that stood in need of further discussion and resolution:

- the location of the hotel tower
- the functionality of the alley and the relationship of alley to the proposed *porte cochere*
- the proposed podium, does it do enough to meet the street and activate the sidewalks at each of the three street edges?
- the requested departures: how do they enhance the proposal?

LOCATION of the TOWER

Despite public comment preferring the location of the tower along Stewart Street, the Board members were in agreement that locating the tower to anchor the corner of 8th and Howell as in the applicant’s “Preferred Alternative (“C”), made the most sense, functionally and aesthetically.

Extending the tower to the street corner provided a northern edge to the Olive/Howell triangle and was considered a strong urban design move. This also allowed for the shadows cast by the tower to fall across the site and to be partially contained. The location allowed the lobby and lounge areas of the hotel to enliven the sidewalks along Howell and 8th while the retail wrap of the loading bays parallel to Stewart Street allowed for retail on 8th, Stewart and 9th, retail uses oriented in a more pronounced way to the upper Denney Triangle area. The Board acknowledged that the applicants had done a good job in siting the development and of explaining “*why*,” in the preferred scheme, “things were where they were.”

FUNCTIONALITY of the ALLEY

Likewise, the Board was agreed with the appropriateness of uses set along the dog-legged alley. In providing a driveway running from 8th Avenue and joining the portion of the alley running from the middle of the block to 9th Avenue, truck maneuvering and loading/unloading was effectively disengaged from *porte cochere* operations located on the portion of the alley perpendicular to it and intersecting with Stewart Street. There would be sufficient length of the area in the alley for taxi and valet drop off, located away from the truck-loading area and pathway.

While accepting the principles of the separate truck-loading and passenger drop-off/pick-up zones, the Board made it clear that they would like to see much more detail about how the *porte cochere*, in particular, would actually work. Additionally, the Board was clear in their request that questions of functionality should be couched within a wider presentation that addressed the issue of clearly maintaining a sense of public space and even pedestrian public space within the alley. Aspects of sidewalks, staff entries, pedestrian shortcuts, each safe and attractive, needed to be addressed. How can the alley function as needed for hotel purposes and vehicular mobility and still maintain itself as a space that transcends that functionality? The answer to that question might well be the measure of the ability of the alley to maintain itself as a public space.

ENGAGING FACADES

Providing for an engaging experience as well as for functionality along the lower levels of the podium was an obvious challenge for the project. Since the upper podium levels along the alleyways would be needed for back-of house functions, and since these upper facades would be clearly viewed from 9th Avenue and from Stewart Street, their treatment was a vital challenge for achieving an attractive, integrated design. The alley facades should be treated as if they were street-facing facades, the Board commented. Design should address a building with six (or seven) distinct facades. Related to this, the Board would expect at the next meeting to see a clear presentation of what could be built on the lot cornering on the 9th and Howell intersection.

The Board was not impressed with what they was referred to as the “saddle bag” sitting at the lower portion of the north-west facing (Stewart Street) façade of the hotel tower. There was a strong call from the Board that this protuberance, fitted to accommodate rooms and elevators terminating at a lower level of the tower, needed to be more finely integrated with the tower. This might well mean some integration into a tower conceived more sculpturally, one less fiercely rectilinear.

OTHER ISSUES

The street-level façade on 8th Avenue should be made inviting; the area described as “lounge” should become a “nice moment” at the corner and northward along the block of 8th Avenue, especially since it will need to contrast with the large, low-ceilinged opening proposed for abetting large truck turns into the interior of the site. There too, attention must be paid to offering an adequate invitation for pedestrians as well as vehicles to venture in. With the grand gestures made toward porosity and transparency around the whole-block podium of the earlier proposal now gone, even greater attention must be given to the finer grain, to making the retail spaces and areas along the sidewalks “zing”.

Generally, the Board members were convinced that this proposal was going in the right direction, that the development team was asking the right questions and that it should proceed to further design development, with the assistance of the Board’s guidance, and to Master Use Permit application. There was, nonetheless, a sense of disappointment shared by the Board, especially the three Board members who had recommended approval of DPD Proposal #3013951 for the same site. That feeling was conveyed in the thought that what had earlier been recommended for approval by the Board was a proposal for a *Grand Convention Hotel*, while the current proposal was for a conventional hotel, albeit aggrandized. The Board would be delighted to see, when the proposal was returned, a touch of something special, a certain bestowal of elegance or grace, that would embolden the proposed building to be more than just another Seattle hotel.

DESIGN GUIDELINES

After visiting the site, considering the analysis of the site and context provided by the proponents, hearing public comment, and addressing their major concerns regarding the proposal, the Design Review Board members, at the time of the first early design guidance meeting, provided the siting and design guidance described above and identified by letter and number those siting and design guidelines found in the City of Seattle’s *Design Review Guidelines for Downtown Development* they believed to be of highest priority for this project.

A. Site Planning

A-1 Respond to the Physical Environment

Develop an architectural concept and compose the building’s massing in response to geographic conditions and patterns of urban form found beyond the immediate context of the building site.

A-2 Enhance the Skyline

Design the upper portion of the building to promote visual interest and variety in the downtown skyline.

B. Architectural Expression: Relating to the Neighborhood Context

B-1 Respond to the Neighborhood Context

Develop an architectural concept and compose the major building elements to reinforce desirable urban features existing in the surrounding neighborhood.

B-2 Create a Transition in Bulk and Scale

Compose the massing of the building to create a transition to the height, bulk, and scale of development in neighboring or nearby less-intensive zones.

B-3 Reinforce the Positive Urban Form and Architectural Attributes of the Immediate Area
Consider the predominant attributes of the immediate neighborhood and reinforce desirable siting patterns, massing arrangements, and streetscape characteristics of nearby development.

B-4 Design a Well-Proportioned and Unified Building
Compose the massing and organize the publicly accessible interior and exterior spaces to create a well-proportioned building that exhibits a coherent architectural concept. Design the architectural elements and finish details to create a unified building, so that all components appear integral to the whole.

C. The Streetscape: Creating the Pedestrian Environment

C-1 Promote Pedestrian Interaction
Spaces for street level uses should be designed to engage pedestrians with the activities occurring within them. Sidewalk-related spaces should be open to the general public and appear safe and welcoming.

C-2 Design Facades of Many Scales
Design architectural features, fenestration patterns, and material compositions that refer to the scale of human activities occurring within them. Building facades should be composed of elements scaled to promote pedestrian comfort, safety, and orientation.

C-3 Provide Active, Not Blank, Facades
Buildings should not have large blank walls facing the street, especially near sidewalks.

C-4 Reinforce Building Entries
To promote pedestrian comfort, safety, and orientation, reinforce the building's entry.

C-5 Encourage Overhead Weather Protection
Encourage project applicants to provide continuous, well-lit overhead weather protection to improve pedestrian comfort and safety along major pedestrian routes.

C-6 Develop the Alley Façade
To increase pedestrian safety, comfort, and interest, develop portions of the alley façade in response to the unique conditions of the site or project.

D. Public Amenities: Enhancing the Streetscape and Open Space

D-2 Enhance the Building with Landscaping
Enhance the building and site with substantial landscaping, which includes special pavements, trellises, screen walls, planters, and site furniture, as well as living plant material.

D-5 Provide Adequate Lighting
To promote a sense of security for people downtown during nighttime hours, provide appropriate levels of lighting on the building façade, on the underside of overhead weather protection, on and around street furniture, in merchandizing display windows, and on signage

D-6 Design for Personal Safety and Security
Design the building and site to enhance the real and perceived feeling of personal safety and security in the immediate area.

E. Vehicular Access and Parking

E-1 Minimize Curbcut Impacts

Minimize adverse impacts of curbcuts on the safety and comfort of pedestrians.

E-2 Integrate Parking Facilities

Minimize the visual impact of parking by integrating parking facilities with surrounding development. Incorporate architectural treatments or suitable landscaping to provide for the safety and comfort of people using the facility as well as those walking by.

E-3 Minimize the Presence of Service Areas

Locate service areas for trash dumpsters, loading docks, mechanical equipment and the like way from the street where possible. Screen from view those elements which for programmatic reasons cannot be located away from the street front.

DEPARTURES

At the Early Design Guidance meeting two departures were requested from modulation requirements. They were both from SMC 23.49.058.B.1, requiring vertical modulation above the 85-foot level, one applicable to the north elevation along Stewart Street (see p.56 of the presentation packet) and the other along 8th Avenue. A third requested departure was from the tower-width requirement of SMC 23.49.058.C, which would not permit any portion of the building above 240 feet to exceed 145 feet in width. Since two of the three requested departures were involved in the proposed “saddle-bag” feature of the tower, the Board noted that they would be reluctant to grant the departures as stated, unless their concerns about the tower were addressed. But, in fact, they would be willing to entertain a departure for a greater width to the tower if they were favorably persuaded by the sculptural integrity of a redesigned tower element. The Board noted that they would expect a clear statement of all departure requests and an explanation of how such requests would better meet the intentions of the design guidelines at the time of the forthcoming Recommendation Meeting. (See below, after the discussion regarding the Final Recommendation Meeting, for a matrix with all the departure requests and their dispositions.)

INITIAL RECOMMENDATION MEETING: July 15, 2014

The packet includes materials presented at the meeting, and is available online by entering the project number at this website:

http://www.seattle.gov/dpd/Planning/Design_Review_Program/Project_Reviews/Reports/default.asp.

The packet is also available to view in the 3016917 file, by contacting the Public Resource Center at DPD:

Mailing Public Resource Center
Address: 700 Fifth Ave., Suite 2000
P.O. Box 34019
Seattle, WA 98124-4019

Email: PRC@seattle.gov

DESIGN PRESENTATION

The presentation on behalf of the design team reiterated development objectives and the urban design analysis from the earlier meeting, then proceeded with a detailed formal analysis of the proposed structure. The design proposal was an expression of internal, more-public spaces as transparent voids between the more solid forms of ballrooms, meeting spaces and functional elements of a large hotel. The street-level retail and lobby spaces were to be expressed as a nearly continuous ribbon of transparent frontages, topped by two distinct podium expressions, one containing ballroom, the other meeting rooms, with a large, glazed recess incised into the ballroom podium level, revealing pre-function spaces while emphasizing the horizontality of the podium form.

The hotel tower, separated by a recessed gasket with a distinct glass and metal exterior wall system above the meeting-rooms podium, would be further differentiated from the podium by windows of similar shape but of much smaller size. The tower itself had undergone significant refinement, with the north and south facades shrunk in size by approximately 6 feet and a recessed notch running the entire vertical height of the tower and engaging materially the rooftop penthouse, thereby emphasizing the slenderness of that side of the tower. (Refer to the Recommendation Meeting packet for a fuller presentation of the overall massing of podiums and tower and the materials intended for the various components of the structure, especially pp.31-41).

PUBLIC COMMENT

There were no comments from members of the public at the first Recommendation meeting.

BOARD'S DELIBERATIONS

At the Early Design Guidance meeting the Board members unanimously agreed that locating the tower to anchor the corner of 8th and Howell as in the applicant's "Preferred Alternative ("C"), was correct, functionally and aesthetically. Deliberations at the Recommendation Meeting confirmed the applicants' formal composition and refinements, including the revised massing scheme which further articulated the programmatic elements into two distinct podiums and a more unified, streamlined hotel tower.

The Board had concerns at the Early Design Guidance meeting regarding a sketchy presentation of the alley functions and appearance. They expressed gratitude at being given a much fuller graphic presentation of the look, feel and operation of the *porte cochere* in the alley. The models demonstrated for the Board that the alley could operate as planned even with a future, as yet unspecified, building located on the lot currently occupied by parking. Truck maneuvering and loading/unloading were shown to be effectively disengaged from *porte cochere* operations located in the alley. The drawings effectively showed how a sense of public space could be maintained within the alley.

Providing for an engaging experience as well as for functionality along the lower levels of the podium was an obvious challenge for the project, as noted by the Board at the Early Design Guidance meeting. Since both the upper and lower podium levels along the alleyways would be needed for back-of house functions, and since these upper facades would be clearly viewed from 9th Avenue and from Stewart Street, their treatment was a vital challenge for achieving an attractive, integrated design. The alley drop-off entry was clearly seen as an attractive "street-front like" area and the façade of the podium above with its regular pattern of fenestration was adequately engaging. The polished white precast concrete façade of the ballroom podium along

the alley, attractively jointed and detailed, would help to enhance the windowless alley façade, although the alley-level lower portion of the façade would still demand careful attention to make it engaging as well.

BOARD'S CONDITIONS OF APPROVAL

Discussion related to the requested departures led to some further discussion and to the Board's request for conditions to accompany their endorsements of the departures:

1. The Board was agreed that in approving the first departure of façade modulation on the north elevation, the horizontal slot should exhibit a single recessed glass plane, and the glass bump-out for the meeting room at the corner of 9th Avenue and Stewart Street should be eliminated.
2. In approving the departure from the upper level Green Street setback, the Board requested that the Green Street landscaping plan for 9th Avenue be changed into an integrated strategy that would include special paving and plantings *and* street furniture, a comprehensive design that would foster and elicit a strong and distinctive desire for people to want to be there.

The Board was split regarding illuminating the two corners of the north-facing slot in the hotel tower with LED lighting. Two of the Board members were opposed to the lights, the other two somewhat indifferent to the idea. Without conditioning their approval of a departure to allow for extra width to the tower, the Board urged the design team to continue to explore (and perhaps model) whether the proposed change in the color and texture of materials (white to gray) at the slot would be sufficient to accent the slot in a pleasant, if subtle, way. Also, regarding the intention to array the mechanical systems atop the ballroom podium, ganged but without common screening--and not without a certain attractiveness in its graphic depictions-- the Board voiced a cautionary approval: "as long as it stays neat and tidy."

BOARD'S RECOMMENDATION OF APPROVAL

Although the four Board members attending the Recommendation Meeting on July 15, 2014 recommended approval of the project as presented at the meeting, and of the departures requested, with the two conditions of approval noted, subsequent zoning review indicated the need for additional departures from development standards needing approval in order to proceed with the building design presented to the Board. At the applicants' request, the proposal would then be returned to a regularly scheduled meeting of the Board at which time the departure requests and appropriate rationale, together with supporting graphic materials, would be presented.

FINAL RECOMMENDATION MEETING: September 16, 2014

The packet includes materials presented at the meeting, and is available online by entering the project number at this website:

http://www.seattle.gov/dpd/Planning/Design_Review_Program/Project_Reviews/Reports/default.asp.

The packet is also available to view in the 3016917 file, by contacting the Public Resource Center at DPD:

Mailing Public Resource Center
Address: 700 Fifth Ave., Suite 2000
P.O. Box 34019
Seattle, WA 98124-4019

Email: PRC@seattle.gov

DESIGN PRESENTATION

Envelope Design Refinements

In addressing the Board’s first condition of approval dating from the Recommendation Meeting held on July 15, 2014, at which time the Board asked that the horizontal slot on the north façade should maintain a single recessed glass plane, and that the glass bump-out for the meeting room at the corner of 9th Avenue and Stewart Street be eliminated, the design team hit upon a solution they believed addressed the Board’s concerns in a manner more interesting and pleasing than simply recessing the glass plane that formed the edge of the meeting room behind. The edge of the meeting room area, formerly glazed, would terminate in a plane that is a continuation of the pre-cast façade of the ballroom and pre-function wing. The glazed slot that formerly wrapped around the east façade would now terminate at the meeting room and wrap the opposite corner at Stewart Street and 8th Avenue (see pages 2-5 in the packet prepared for the September 16, 2014 meeting, available on-line).

Additional Departures

Two departures from development standards, in addition to the four noted above as recommended for approval at the July 15, 2014 meeting, had subsequently been identified and a request was made for their approval.

PUBLIC COMMENT

Public comment conjectured that approval of the design and departures would be precipitate since unspecified future actions could mandate changes in the proposed plans.

BOARD DELIBERATIONS

The Board unanimously agreed that the design changes provided a more elegant solution than seen before and expressed their approval of the refinements and of the overall design (5-0).

DESIGN DEPARTURES

SUMMARY OF REQUESTED DEPARTURES, July 15, 2014

Standard Requirement	Request	Architects Rationale for Departure	Board Direction
<p>Façade Modulation 23.49.058.B.2</p> <p>Façade modulation is required at a height of 85 feet above the sidewalk for any portion of a structure located within 15 feet of the property line.</p>	<p>The proposal would substitute a horizontally-oriented modulation in lieu of the required vertical 60’ wide modulation on the north facade.</p>	<p>This modulated slit on the Stewart Street façade replicates the transparent horizontal strip at the street level, revealing the pre-function activities above and further animating the façade.</p>	<ul style="list-style-type: none"> • The four members of the Board attending recommended approving the requested departure. • The requested departure helps the design meet the following guidelines, B-4 designing a well-proportioned and unified building, C-2, designing facades of many scales, and C-3, providing active facades, among others.

Standard Requirement	Request	Architects Rationale for Departure	Board Direction
<p>Façade Modulation 23.49.058.B.2</p> <p>Façade modulation is required at a height of 85 feet above the sidewalk for any portion of a structure located within 15 feet of the property line.</p>	<p>The proposal would propose a vertical band of glazing recessed 3' along the west façade above 8th Avenue, instead of a 60' vertical strip recessed 15' into the façade.</p>	<p>This modulated slit on the 8th Avenue façade announces a clear distinction between the two podium masses, suggesting a separation in functionality and reinforcing the aesthetic and formal composition of the overall structure.</p>	<ul style="list-style-type: none"> • The four members of the Board attending recommended approving the requested departure. • The requested departure helps the design meet the following guidelines, B-4 designing a well-proportioned and unified building, C-2, designing facades of many scales, and C-3, providing active facades, among others.

Standard Requirement	Request	Architects Rationale for Departure	Board Direction
<p>Upper level setback at Green Street. 23.49.058.F.2</p> <p>An upper level setback is required at a Green Street above a height of forty-five feet for any portion of the structure located within 15 feet of the property line.</p>	<p>The proposed design provides a 15' set-back at the ground floor to provide a widened sidewalk and an animated area some 35 feet in height. The building would return to the property line above 35' up to the roof level of the podium at 150 feet. The podium would thereby be aligned with neighboring buildings along the Green Street, responding to the urban context.</p>	<p>The proposed design provides a 15' set-back at the ground floor to provide a widened sidewalk and enhanced daylighting, thereby enlivening the Green Street experience on 9th Avenue and providing a better response to the prevailing urban form.</p>	<ul style="list-style-type: none"> • The four members of the Board attending recommended approving the requested departure. • The requested departure helps the design meet the following guidelines, B-3, reinforcing the positive urban form, B-4 designing a well-proportioned and unified building, C-2, designing facades of many scales, among others.

Standard Requirement	Request	Architects Rationale for Departure	Board Direction
<p>Upper level width limit 23.49.058.C</p> <p>On lots where the width and depth of the lot each exceed two hundred feet, the maximum façade width of any portion of a building above 240 feet shall be 145 feet along the general north/south axis of a site parallel to the Avenues, and this portion shall be separated horizontally from any other portion of a structure on the lot above 240 feet by at least 80 feet.</p>	<p>The proposed design seeks to minimize the impact of the tower massing on the street while creating a tower that is functional while retaining aesthetic proportionality.</p>	<p>The proposed design seeks to minimize the impact of the tower massing on the street while creating a functional tower of pleasing proportions and grace. The tall, vertical form of the tower is emphasized rather than, alternatively, extending the podium massing to an allowable height limit of 240 feet.</p>	<ul style="list-style-type: none"> • The four members of the Board attending recommended approving the requested departure. • The requested departure helps the design meet the following guidelines, A-2, enhancing the skyline, B-4 designing a well-proportioned and unified building, and C-2, designing facades of many scales, among others.

SUMMARY OF REQUESTED DEPARTURES, September 16, 2014

Standard Requirement	Request	Architects Rationale for Departure	Board Direction
<p>Street Façade Height 23.49.056.A</p> <p>8th Avenue, a designated Class I pedestrian street, requires a minimum façade height of 35 feet.</p>	<p>The driveway opening on 8th Avenue disrupts the continuous façade minimum height of 25 feet.</p>	<p>The service driveway connecting to 8th Avenue is an essential part of making the loading requirements work and taking loading from the street and restricting it internally to the alley.</p>	<ul style="list-style-type: none"> • The five members of the Board attending recommended approving the requested departure. • The requested departure helps the design meet the following guidelines, A-1, respond to the physical environment, B-1, respond to the neighborhood context, and E-2, integrate parking facilities, among others.

Standard Requirement	Request	Architects Rationale for Departure	Board Direction
<p>Facade Setback Limits 23.49.056.B</p> <p>Facade setbacks are limited by formulae on Class I, Class II pedestrian streets and Green Streets.</p>	<p>The proposed design seeks to maintain a consistent expression at the street levels with facades stepped back from the building edge above. The departure would apply to entirety of Stewart Street and portions of the facades along 8th Avenue and Howell Street.</p>	<p>Voluntarily providing for a wider sidewalk along Stewart Street, equal to those on the other streets, and creating a consistency of the pedestrian experience around the block is important, as is avoiding conflicts in the continuity of overhead weather protection.</p>	<ul style="list-style-type: none"> • The five members of the Board attending recommended approving the requested departure. • The requested departure helps the design meet the following guidelines, B-4 designing a well-proportioned and unified building, C-1, promoting pedestrian interactions.

BOARD RECOMMENDATION

The Board’s recommendations on the requested departures were based upon the departures’ potential to help the project better meet the design guideline priorities and achieve a better overall design than could be achieved without the departures.

The Board unanimously recommended that DPD grant the departures, subject to the conditions listed at the end of this report.

The recommendation summarized above was based on the design review packets dated July 15, 2014, and September 16, 2014, as well as on the materials shown and verbally described by the applicant at the two recommendation meetings. After considering the site and context, hearing public comment, reconsidering the previously identified design priorities and reviewing the materials, the five Design Review Board members recommended APPROVAL of the subject design and departures, with the following condition:

In approving the departure from the upper level Green Street setback, the Board requested that the Green Street landscaping plan for 9th Avenue be changed into an integrated strategy that would include special paving and plantings *and* street furniture, a comprehensive design that would foster and elicit a strong and distinctive desire for people to want to be there.

This conditions will be required to be resolved prior to MUP issuance, as conditioned at the end of this document.

DECISION – DESIGN REVIEW

The proposed design is **CONDITIONALLY APPROVED** subject to the conditions listed below.

ANALYSIS - SEPA

Environmental review is required pursuant to the Washington Administrative Code 197-11, and the Seattle SEPA Ordinance (Seattle Municipal Code Chapter 25.05). The SEPA Overview Policy (SMC 25.05.665) clarifies the relationship between codes, policies and environmental review. Specific policies for each element of the environment, certain neighborhood plans, and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority. The Overview Policy states, in part, “Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation” subject to some limitations. Under such limitations/circumstances (SMC 25.05.665) mitigation can be considered.

A Draft Environmental Impact Statement was published for the *Downtown Height and Density Changes* in 2003 and the Final EIS published in 2005. The FEIS was a non-project-specific document that identified and evaluated probable, significant environmental impacts that might result from several zoning alternatives.

The subject site is within the geographic area that was analyzed in the *Downtown Height & Density* FEIS and although the proposed development is within the general range of actions and impacts that were evaluated in the various alternatives, the Department of Planning and Development determined that a supplemental EIS be prepared for the proposed *Ninth & Stewart Mixed-Use Development*, one that would build upon the analyses contained in the *Downtown* EIS, as encouraged in WAC 197-11-600(2), and identify and evaluate probable, significant adverse environmental impacts that could result from development associated with the *Preferred Alternatives (1 or 6)* for the *Ninth & Stewart Mixed-Use Development*, the other development alternatives, and the no-action alternative, as well as to identify measures to mitigate impacts that are so identified.

A scoping meeting was held on November 14, 2013. Through the EIS Scoping Process, DPD determined the alternatives and the environmental issues to be analyzed in the DSEIS. These included ten broad areas of environmental review to be evaluated: wind, environmental health (site assessment), land use and plan/policies, aesthetics (views), light/glare/shadows, housing, historic resources, transportation/circulation, and construction-related impacts

A Final Supplemental Environmental Impact Statement for the *Ninth & Stewart Mixed-Use Development* for the purpose of analyzing these areas of environmental impact was prepared and the Notice of Availability of the Supplemental EIS (“Addendum to the South Lake Union Final EIS for the Height and Density Alternatives”) was published in the City’s Land Use Information Bulletin on September 29, 2014. A notice of the availability of the FSEIS was sent to parties of record that commented on the EIS. In addition, a notice of the availability of the FSEIS was sent to parties of record for this project. DPD adopts the SFEIS.

ENVIRONMENTAL IMPACTS

The following is a discussion of the impacts identified in each element of the environment, along with indication of any required mitigation for the impacts disclosed. The impacts detailed below were identified and analyzed in the FSEIS.

A. Short Term Impacts Identified in the FSEIS

Construction Impacts

SMC 25.05.675.B provides policies to minimize or prevent temporary adverse impacts associated with construction activities. To that end, the Director may require an assessment of noise, drainage, erosion, water quality degradation, habitat disruption, pedestrian circulation and parking, transportation, and mud and dust impacts likely to result from the construction phase.

The FSEIS generally identified potential impacts from new construction on the subject site. Prior to any building demolition, any hazardous building materials encountered would be removed and disposed of by a qualified contractor in accord with existing State and Federal guidelines.

Construction: Noise

The project is expected to generate loud noise during demolition, grading and construction. These impacts would be especially adverse in the early morning, in the evening, and on weekends. The Seattle Noise Ordinance permits increases in permissible sound levels associated with construction and equipment between the hours of 7:00 AM and 10:00 PM on weekdays and 9:00 AM and 10:00 PM on weekends.

Some of the nearby properties are developed with housing and will be impacted by construction noise. The limitations stipulated in the Noise Ordinance are not sufficient to mitigate noise impacts; therefore, pursuant to SEPA authority, the applicant shall be required to limit periods of construction activities (including but not limited to grading, deliveries, framing, roofing, and painting) to non-holiday weekdays from 7:00 AM to 6:00 PM, unless modified through a Construction Noise Management Plan, to be determined by DPD prior to issuance of any site-work or building permit. Several mitigation strategies were listed in the FSEIS. These should be included in any Construction Noise Management Plan, as they are deemed by DPD to be applicable to the site and the proposed activity.

Construction Parking and Traffic

During construction, parking demand is expected to increase due to additional demand created by construction personnel and equipment. It is the City's policy to minimize temporary adverse impacts associated with construction activities.

Increased trip generation is expected during the proposed demolition, grading, and construction activity, with haul routes restricted to nearby arterials. The immediate area is subject to traffic congestion during the PM peak hours, and large trucks turning onto arterial streets would be expected to further exacerbate the flow of traffic.

Pursuant to SMC 25.05.675.B (Construction Impacts Policy), additional mitigation is warranted.

To mitigate construction parking impacts and other haul truck trip impacts, the applicant shall submit a Construction Haul Route to SDOT for approval, and Construction Parking Plan to DPD for approval. The Construction Haul Route plan should incorporate mitigation listed in the FSEIS, and may include a restriction in the hours of truck trips to mitigate traffic impacts on nearby arterials and intersections. The Construction Parking Plan shall include an analysis of nearby off-street parking lots, including the number of parking spaces per lot, and the peak demand for construction parking for the proposed development.

Evidence of these approved plans shall be provided to DPD prior to the issuance of any demolition and building permits.

B. Long Term Impacts Identified in the FSEIS

The following is a discussion of the impacts identified in each element of the environment, along with indication of any required mitigation for the impacts disclosed. The impacts detailed below were identified and analyzed in the FEIS.

Land Use

The proposed development has been designed to be consistent with the DOC2 500/300-500 zoning in effect. In addition to pipeline projects mentioned in the FSEIS, there may be projects occurring in the vicinity under the *Downtown Height & Density Plan*. One potential project is a potential future expansion of the Washington State Convention Center (WSCC), which has conducted a feasibility study and which has acquired property. The feasibility study includes an option for a near-site expansion and states that the goal of the expansion is accommodate an area up to 460,00 square feet. WSCC has not indicated to the City whether they intend to finalize the draft feasibility plan, whether they intend to proceed with an expansion, nor the timeline for any such expansion. If WSCC decides to proceed with any such expansion, it is expected WSCC would conduct its own SEPA analysis, with the *808 Howell Street* project one of the pipeline projects. The subject project, together with the future expansion of the WSCC and other nearby projects in the immediate area would be consistent with the goals and policies in the Denny Triangle Neighborhood, as well as the Urban Center Strategy associated with the City of Seattle Comprehensive Plan.

No significant land use impacts are anticipated from development of the *808 Howell Street* development and, therefore no mitigation is necessary.

Height, Bulk, and Scale

The FSEIS recommended specific strategies to mitigate the impacts of additional height, bulk, and scale for new development that conforms to the new zoning designations. Most of these strategies are implemented through the Design Review process, as required by SMC 23.41.

Section 25.05.675.G.2.c of the Seattle SEPA Ordinance provides the following: “The Citywide Design Guidelines (and any Council-approved, neighborhood design guidelines) are intended to mitigate the same adverse height, bulk, and scale impacts addressed in these policies. A project that is approved pursuant to the Design Review Process shall be presumed to comply with these Height, Bulk, and Scale policies. This presumption may be rebutted only by clear and convincing evidence that height, bulk and scale impacts documented through environmental

review have not been adequately mitigated. Any additional mitigation imposed by the decision maker pursuant to these height, bulk, and scale policies on projects that have undergone Design Review shall comply with design guidelines applicable to the project.”

The proposal has gone through the Design Review process as described earlier in the Design Review Analysis portion of this document. This decision concurs with the unanimous recommendation of the Downtown Design Review Board to approve the final project design and the departures from development standards that have been requested. Therefore, the department concludes that no adverse height bulk and scale impacts will occur as a result of the proposal, and further conditioning is not warranted.

Wind

Results from a pedestrian wind analysis state that at most locations around the perimeter of the development block would be comfortable for sitting in summer and for standing in winter. Suitable conditions are anticipated on and around the site throughout the year and no conditioning through SEPA is warranted.

Greenhouse Gas Emissions

The estimated lifetime greenhouse gas emissions (MTCO₂e) for the project is 1,241,352. (Disclosure and the GGE worksheet for this proposal in volume 2, Appendix C of the FSEIS.)

Construction activities including construction worker commutes, truck trips, the operation of construction equipment and machinery, and the manufacture of the construction materials themselves result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, they are not expected to be significant.

Aesthetics—Light and Glare and Shadows

Light and Glare

While northbound traffic on Howell Street and westbound traffic on Stewart Street could occasionally experience reflected solar glare off the façades of the proposed building, the duration of the impact on motorists is anticipated to be brief (one to two seconds). No significant environmental impact is anticipated and mitigation measures are unnecessary.

Shadows on Public Open Spaces

The FSEIS concludes that shadows cast by this project will contribute to the shading that occurs of Denny Park during the winter solstice at 9:00 AM. No mitigation is proposed because the extent of shadow impacts would occur at a time of the day when there is minimal public use of the park and at a time of the year (December) when on average there are only three clear days. The department concludes that adverse shadow impacts will be minimal as a result of the proposal, and conditioning is not warranted.

Public View Protection

SMC 25.05.675.P provides policies to minimize impacts to designated public views as listed in this section. No significant adverse impacts are anticipated from the proposed 808 Howell Street mixed-use development on any designated scenic views, landmarks, or scenic routes. Views of the downtown skyline, the Space Needle, the Olympic Mountains, and adjacent water areas would remain available from designated public viewpoints. No mitigation regarding public view protection is warranted.

Historic Resources

SMC 25.05.675.H provides policies to minimize impacts to designated historic landmarks, as well as historic districts and sites of archaeological significance.

This site includes four buildings more than 50 years old. Three of the buildings were determined ineligible for historic landmark designation. The other building, the former Greyhound Bus Terminal was turned down for designation as a historic landmark by the Landmarks Preservation Board.

Pursuant to the SEPA Overview Policy in SMC 25.05.665.D, it is assumed that the existing regulations and authority through the Landmarks Preservation Board and Department of Neighborhoods are adequate to achieve sufficient mitigation for dealing with the existing buildings on site and additional mitigation is not warranted.

Housing

All existing buildings on site would be removed, including the Bonair Apartments which currently includes 48 market-rate units. No new housing would be included on site as part of the subject proposal, so there would be a net loss of the 48 units, and as a result, the existing housing stock in the Denny Triangle area would likely decrease. As noted in the FSEIS, the Bonair Apartments were at one time rent-controlled, but rent-control restrictions expired in 2005, and the rents have been “market rate” since that time. Since purchasing the property, however, the applicants of the current proposal have not raised the rents. In the current market, characterized by volatile increases in rental rates throughout the city, the units remain de facto “affordable.” In compliance with the Tenant Relocation Assistance Ordinance, residents of the building have received notice of the proposed demolition of the building. Approximately 74 percent of the building’s current residents have incomes above 50 percent of the King County median income and so do not qualify for relocation assistance under the Tenant Relocation Assistance Ordinance. Twelve residential tenants were awarded tenant relocation assistance. A Tenant Relocation License was issued on August 4, 2014.

In DOC-2 500/300-500 zones, extra non-residential floor area may be gained according to SMC 23.49.11 and referenced Chapter 23.49 sections. Inter alia, a developer is allowed to earn additional floor area through contributions to affordable housing, which contributions. As stated in SMC 23.49.012.A.1, the payment for “bonus development” is intended to address certain adverse impacts from the development, including “an increased need for low-income housing to house the families of downtown workers having lower-paid jobs and an increased need for child care for downtown workers.” The applicant intends to make use of the incentive bonus system in order to achieve increased development potential on the site and would, in return for increased development capacity, make a monetary contribution to the City’s Low Income Housing Fund that would be used to develop additional subsidized housing units within the City or in an adjacent urban center.

Housing Impacts

As stated in SMC 23.49.012.A.1, the payment for “bonus development” is intended to address certain adverse impacts from the development, including “an increased need for low-income housing to house the families of downtown workers having lower-paid jobs and an increased need for child care for downtown workers.” The applicant intends to make use of the incentive bonus system in order to achieve increased development potential on the site and would, in return for increased development capacity, and in addition to providing a fully licensed child care facility in a downtown zone, will make a monetary contribution to the City’s Low Income Housing Fund that would be used to develop additional subsidized housing units within the City of Seattle’s Downtown Urban Center or within an adjacent urban center.

While the Code provision speaks of addressing adverse impacts, any low income housing that gets built in accordance with the provisions of SMC 23,49.012,A.1 is not intended to serve as replacement housing for demolition of the market-rate units in The Bonair. Mitigation in that regard is built into the Tenant Relocation Ordinance and the applicant has complied with the provisions of the City’s Tenant Relocation Assistance Ordinance. A Tenant Relocation License was issued on August 4, 2014.

At present, Downtown Seattle contains only 5 percent of King County’s total housing units, but 25 percent of its subsidized housing units. The same downtown area contains approximately 13 percent of the City of Seattle’s housing units, but 40 percent of the City’s total subsidized housing units. There are no City of Seattle provisions that require developers to provide affordable housing to offset potential housing demand that may result from new development. Although an increased demand for off-site affordable housing is acknowledged as a potential outcome of the subject proposal, as noted in the FSEIS, securing or ensuring affordable housing for new employees is not within the development purview.

Cumulative Impacts

Recently, the Washington State Convention Center (WSCC) has submitted concept proposals to the Seattle Department of Transportation (SDOT) in order to start discussions with SDOT and the Washington State Department of Transportation regarding an extension of Terry Avenue and a new crossing over I-5. Additionally, the WSCC has begun a preliminary feasibility analysis for a potential expansion. Given the close proximity of the WSCC to the proposed project site and the possible magnitude of the potential expansion, housing impacts from the proposed project could have significance not identified in prior environmental documents. Thus, an analysis of the cumulative impacts of these two projects is appropriate.

As any future projects are undertaken in the general vicinity of the *Ninth & Stewart Mixed-Use Development*, there is potential that such redevelopment in the area could affect housing. The extent of impact will depend on the nature of the proposed land use and whether existing housing is located on or proximate to the site. There is no existing housing on what is considered to be the Washington State Convention Center expansion site and it is anticipated that no housing would be provided as a part of that expansion. No cumulative housing-stock impacts would, therefore, result with the expansion.

Regarding the demand for housing generated by the WSCC expansion, the actual demand is at best conjectural. Extrapolating from the current size of the space dedicated to meetings, exhibits and ballroom and correlated work force of approximately 223 employees, the 110 percent

expansion could result in approximately 245 additional employees. The staffing levels associated with the subject proposal combined with the future staffing levels of the expanded WSCC could increase the number of people desiring off-site housing near their place of employment.

The *Downtown Height and Density Changes EIS* (2005) noted that:

Under all alternatives, including existing conditions, some existing housing might be demolished, some households with employees in Downtown Seattle office buildings and hotels would have difficulty finding affordable housing to meet their needs in King County. They would need to live in overcrowded conditions, pay more than 30 percent of their income for rent, or commute from lower-priced housing outside of King County.

As stated in the FSEIS, it is presumed that increased off-site housing demand could result from any non-residential development proposed on the subject site. Such demand could potentially be dependent on whether employees of the proposed new development are new to Seattle or are existing residents of the area, and whether they decide to relocate closer to their place of employment or already live within an acceptable commuting distance. It is also acknowledged in the DEIS and FSEIS that rental vacancy rates are generally declining while rental rates are increasing in the immediate area of the development site and in Seattle as a whole. Recently, Seattle has seen its lack of affordable housing rating rising among American cities. The affordability of housing is not only a local and national issue but an international one. While generally acknowledged as a major issue and concern, there is little agreement regarding how it should be addressed, or what its causes are, other than the local dearth of readily available, affordable land.

Mitigation

Relevant housing policies under SMC 25.05.675 include:

- a. *It is the City's policy to encourage preservation of housing opportunities, especially for low income persons, and to ensure that persons displaced by redevelopment are relocated.*
- b. *Proponents of projects shall disclose the on site and off-site impacts of the proposed projects upon housing, with particular attention to low-income housing.*
- c. *Compliance with legally valid City ordinance provisions relating to housing relocation, demolition and conversion shall constitute compliance with this housing policy.*

The FSEIS discloses probable on-site and off-site environmental impacts of the proposal alternatives on housing. These include the demolition of the Bonair apartment building which contains market-rate units considered affordable. As required under SMC 25.05.675 1.c, the applicant is fully complying with all provisions relating to housing demolition, specifically with the City's Tenant Relocation Assistance Ordinance, as codified on SMC 22.210. No other mitigation under SEPA authority is warranted.

Traffic and Transportation

SMC 25.05.675M and 25.05.675R require that the Director assess the extent of adverse impacts of traffic, transportation, parking and the need for mitigation.

Heffron Transportation prepared a Transportation Technical Report that analyzed impacts from various development alternatives presented in the FSEIS; this Report is included as Appendix G to the FSEIS. It identifies existing conditions, future conditions without the project, and future conditions with the project for the local street system, transit, and non-motorized transportation. It also identifies likely project impacts on traffic safety and freight traffic. The year 2020 was identified as the future horizon year.

The proposed project is located in downtown Seattle, adjacent to 8th Avenue, 9th Avenue, Stewart Street, Howell Street, and an L-shaped alley that bisects the project site. The project would take access from both the existing alley and from a new driveway on 8th Avenue. The project proposes a turnaround at the south end of the north-south alley (that connects to Howell Street), which would be provided through a private easement on the quarter-block parcel adjacent to the intersection of 8th Avenue and Howell Street. This turnaround is proposed to reduce on-street circulation by allowing vehicles to easily move from the drop-off area on the east side of the hotel to the parking garage, which would take access along the proposed new driveway to connecting 8th Avenue. It also would allow vehicles destined for the downtown core area (such as taxis) to turn and exit the site via 8th Avenue to Stewart Street rather than reach Stewart by exiting on Howell Street and either turning on 9th Avenue or looping around the blocks to the east to return to the downtown core.

The design would provide adequate sight lines between motorists using the turnaround and eastbound motorists on Howell Street turning into the alley.

Truck loading docks would be located along the east-west alley portion of the alley. Large trucks would be directed to access the site via the 8th Avenue driveway and head east onto the site where they would back into the loading area. Smaller trucks could access the loading area from either 8th or 9th Avenues. Trucks would be discouraged from using the alley segment running north from Howell Street. As access to the parking garage is located along the alley, trucks would share the alley space with passenger vehicles. Trucks longer than 45 feet may protrude into the alley when maneuvering into some of the loading bays, which could briefly block other vehicular movements along the alley. Such temporary blockages are not unusual on downtown alleys.

Future Street System

No specific modifications to the roadway network adjacent to or near the project site are assumed for the year 2020 forecasts. Future-year geometry and traffic control for all of the study-area intersections were assumed to remain the same as existing. The Seattle Department of Transportation (SDOT) has proposed to implement an Active Traffic Management project for the Denny Way corridor, which would include several intersections within the project's study area. The improvements include upgraded signals, vehicle detection, traffic cameras, and dynamic message signs that will provide real-time traffic flow data to allow both automatic adjustment of signal timing and traffic management of the corridor by SDOT's Traffic Operations Center.

Future Traffic Volumes

For the purpose of this analysis and to provide a baseline against which to evaluate transportation impacts associated with the proposed project, a future "Do Nothing" alternative was developed. In this alternative, existing uses on the site remain unchanged, while traffic from other proposed

and permitted projects was added to the roadway network to estimate year 2020 operational conditions. The *Downtown Height & Density EIS* used the City of Seattle’s travel demand forecasting model to estimate growth through the year 2020 at key locations throughout downtown. The forecasts in the that EIS reflected 20 years of growth from the year 2000 baseline data. However, economic growth was slow in the first ten years of that modeled condition, resulting in the *Downtown EIS* likely overestimating traffic volume forecasts for the year 2020. In addition, these forecasts did not contemplate new zoning in the South Lake Union neighborhood. To account for both of these changes, future volume forecasts prepared for the *South Lake Union Height and Density EIS* were used to derive traffic growth rates. In addition, traffic forecast to be generated by the three nearby Amazon office towers that recently have been permitted was added to the network to derive the 2020 Do Nothing alternative traffic volumes used for this analysis.

Traffic Operation

The study area for the transportation analysis was determined based on key intersections from the *Downtown Height and Density EIS* that were projected to operate at LOS E or F during the AM or PM peak hours in the year 2020, as well as intersections in the immediate site vicinity. Overall, 26 intersections were evaluated. The following intersections were forecast to operate at LOS E or F in one or both peak hours in the year 2020:

	<u>AM</u>	<u>PM</u>
• Stewart Street/Denny Way	F	E
• Stewart Street/Boren Avenue	E	D
• Howell Street/Yale Avenue/I-5 SB on-ramp	E	F
• Olive Way/Boren Avenue	C	F
• Pike Street/9 th Avenue/I-5 reverse ramp	D	E

Additionally, arterial operations were evaluated on key corridors near the project site: Olive Way, Howell Street and Stewart Street. The following levels of service and speeds were forecast for the year 2020 on these corridors:

2020 Do Nothing Alternative	<u>AM</u>		<u>PM</u>	
	<u>LOS</u>	<u>Speed</u>	<u>LOS</u>	<u>Speed</u>
Howell Street: 9 th Avenue to Yale Avenue	F	5.8 MPH	F	4.8 MPH
Olive Way: 6 th Avenue to I-5 ramp	F	6.1	F	3.3
Stewart Street: Denny Way to 6 th Avenue	F	4.6	F	4.6

Project Traffic Volumes

The primary use of the project site would be a 1,264 room hotel with 114,600 square feet of meeting space. The hotel’s business model would be targeted towards national conventions or conferences. Rooms not booked for convention activity would be available for business and leisure travelers. The large ballrooms could be booked for social events during off-convention seasons. Given the fluctuating uses of the hotel space, five scenarios were developed to evaluate the traffic and parking needs of the hotel and meeting space. Three scenarios assumed that the hotel was not being used for convention or conference activity, and estimated activity based on small weekday events and medium-to-large size social events. Two scenarios assumed large business-type meetings, conferences, or conventions. The operating scenarios represent conditions between average and near-capacity conditions for meeting or social event attendance.

The typical methodology used to estimate trips for a specific land use – the application of rates and equations in the Institute of Transportation Engineers (ITE) *Trip Generation Manual* – was not used for this project. ITE notes that the hotels surveyed as the basis of the trip generation rates were primarily located outside central business districts in suburban areas. Additionally, most of the hotels surveyed had fewer than 500 rooms. Therefore, the ITE database developed for hotels is not appropriate nor an accurate enough tool for analysis of the proposed project.

Parameters used to estimate hotel trip generation were based on discussions with and information provided by two premier West Coast convention hotels. Local data about the travel characteristics of peak season tourists and weekday arrival and departure schedules were provided by two Seattle hotels. Key parameters included room occupancy, guests per room, arrivals and departures by day of week, mode of travel, hotel employee shift times, staffing for events, percentage of event attendees who stay at the hotel, excursion trips, taxi and shuttle trips, peak times for event trips, and travel times of hotel guests and employees.

The assumptions used in these forecasts were compared to an independent traffic impact analysis prepared for the San Diego Marriott Marquis in 2011. The two hotels are of similar size, and would each provide hotel rooms and meeting space for both “group” and “local” (or “social”) events. A comparison of these assumptions is provided in Chapter 10 of the FSEIS and in the Transportation Technical Report. In general, the assumptions made to estimate trips for the proposed project hotel are similar to findings of the Marriot project analysis.

Project trip generation: The proposed project consists of a 1,264 room hotel with 114,600 square feet of conference space/meeting rooms. The project also would develop approximately 17, 016 square feet of restaurant and retail space. Based on this development program, trip estimates were prepared for the five operating scenarios noted above. Scenario D (average weekday hotel use with large breakfast event) would have the highest AM peak hour volumes (320 trips), and Scenario B (peak weekday with medium evening social event) would have the highest PM peak hour volumes (257 trips). These volumes were used in operational analyses to ensure worst-case transportation impacts were identified. Trip distribution patterns were developed for the various types of trips that would be generated by the proposed uses, including hotel employees, social event/business meeting attendees, hotel guests (distinguishing those using their own cars from those using taxis), and retail/restaurant customers and employees. These new trips were assigned to the roadway network in the vicinity of the project site.

Operational Analyses

Traffic operations analyses were performed at the study area intersections with project trips added to the forecasts developed for the Do-Nothing alternative. Although most intersections show an increase in forecast delay, the most noticeable impact is projected to occur at Stewart Street/Boren Avenue, which will degrade from LOS D to LOS E in the PM peak hour. Olive Way/8th Avenue/Howell Street also is expected to degrade in the PM peak hour, from LOS B to LOS C. Other intersections levels of service are anticipated to remain unchanged from Do-Nothing conditions.

Arterial operations are projected to incrementally worsen with project traffic. During the morning, additional traffic generated by a breakfast event at the project site could reduce average speeds by 0.1 to 0.2 MPH. During the afternoon peak, traffic generated by an evening event could reduce average speeds on Stewart Street by up to 0.4 MPH, but are not expected to decrease travel speeds along either Howell Street or Olive Way.

2020 Alternative 6

	AM		PM	
	<u>LOS</u>	<u>Speed</u>	<u>LOS</u>	<u>Speed</u>
Howell Street: 9 th Avenue to Yale Avenue	F	5.7 MPH	F	4.8 MPH
Olive Way: 6 th Avenue to I-5 ramp	F	5.9	F	3.4
Stewart Street: Denny Way to 6 th Avenue	F	4.5	F	4.2

Parking

The proposed parking garage under the hotel would have about 500 spaces, and the quarter-block adjacent to Howell Street and 9th Avenue would have about 65 surface parking spaces. It is anticipated that the scenario with two overlapping medium-to-large social events would have the highest parking demand; this demand is anticipated to occur in the evening and would coincide with increasing demand associated with hotel guests. The cumulative peak demand for two medium social events on a peak Saturday is estimated to be 984 vehicles and occur between 8:00 and 9:00 PM. Two large events scheduled in the two large ballrooms on the same night would have staggered start times. The cumulative parking demand under this condition would be about 1,033 vehicles.

Cumulative parking demand for a large breakfast meeting also was estimated, as that demand would overlap the peak demand associated with hotel guests. The cumulative demand associated with a 1,500-person breakfast event is estimated to be about 600 vehicles. Parking impacts are discussed in greater detail in Chapter 10 of the EIS (see figures 3.10-10 through 3.10-12).

Valet parking would increase the hotel’s effective parking supply to approximately 800 vehicles, which would accommodate demand from hotel guests plus one large event. However, nearly 240 vehicles would need to be parked off-site during dual large events. A recent Puget Sound Regional Council parking inventory survey has identified approximately 2,500 parking spaces within two blocks of the project site; hotel management could arrange to have one or more of these garage kept open for the duration of the events.

Transit

Transit service in the study area is provided by King County Metro, Sound Transit, and Community Transit (Snohomish County). There are four transit stops within one block of the site, and light rail service can be accessed at the Convention Place Station two blocks away. An extension of Sound Transit’s North Link light rail system is under construction, and will connect downtown to the University of Washington by 2016 and to Northgate by 2021. An eastward extension to Bellevue and Overlake is proposed to be completed by 2022. The Convention Place Station will close when light rail service is provided to the University District; at that time, the nearest light rail access will be the Westlake Station, about 1,500 feet southwest of the project site. King County Metro is in the process of eliminating, reducing and revising existing bus routes due to funding cutbacks. A new funding measure has been developed that would maintain service within the City of Seattle; at this time, it is not known whether this measure will be approved.

Many hotel guests are expected to use Link light rail between SeaTac Airport and downtown, and use it or other transit options to reach meetings or attractions. A significant number of Hotel employees could be expected to utilize transit to and from work. The project is projected to generate up to 90 peak hour trips on nearby transit or light rail lines. This increased level of transit use is expected to be adequately accommodated by the nearby transit systems.

Non-motorized transportation

All roadways in the immediate site vicinity have sidewalks on both sides of the street, and signalized intersections have marked crosswalks and pedestrian signals. Stewart Street is marked with sharrows (indicating that motorists should share the lane with bicyclists) and is a signed bicycle route; near the site, Howell Street and Virginia Street also are marked with sharrows. The current Bicycle Master Plan mentions several potential improvements within the study area, including cycle tracks and in-street bicycle facilities, but no programmed improvements are currently identified near the project site.

The proposed project would widen sidewalks adjacent to the site to minimum standards required by the City, ranging between 14 and 16 feet. Curb bulbs would be constructed on 8th Avenue at Stewart Street and Howell Street and on 9th Avenue at Stewart Street. The hotel is estimated to generate between 3,600 and 5,500 pedestrian trips per day, depending on the operating scenario, with up to 825 of these during the peak hour. The highest pedestrian volumes would occur during large conventions/conferences held at the on-site meeting space, since a capacity event could attract attendees staying at off-site hotels. The pedestrians would be distributed to the site's various access points and adjoining sidewalks. As noted in the Transportation Technical Report, a 12-foot sidewalk has a capacity of almost 13,000 pedestrians per hour, so the sidewalks adjacent to the project are expected to have ample capacity to accommodate the highest likely pedestrian volumes associated with the project.

Cumulative Impacts

As noted above, traffic volumes for the 2020 Do-Nothing alternative were estimated from growth rates derived from the *South Lake Union Height and Density EIS*, and also include anticipated traffic volumes from the three office towers of the Rufus 2.0 development. Recently, the Washington State Convention Center (WSCC) has submitted concept proposals to the Seattle Department of Transportation (SDOT) in order to start discussions with SDOT and the Washington State Department of Transportation regarding an extension of Terry Avenue and a new crossing over I-5. Additionally, the WSCC has begun a preliminary feasibility analysis for a potential expansion. Given the close proximity of the WSCC to the proposed project site and the possible magnitude of the potential expansion, traffic from such an expansion combined with traffic from the proposed project could have significant transportation impacts that were not identified in prior environmental documents. Thus, an analysis of the cumulative impacts of these two projects is appropriate.

As no official application or plans have been prepared for the convention center expansion itself, little technical data are available to estimate trip generation, parking needs, frontage improvements or potential driveway locations for the WSCC expansion. Estimates of potential trips were based on trip generation rates developed for the prior WSCC expansion, as documented in the *Draft Environmental Impact Statement for the Proposed Expansion Washington State Convention & Trade Center (WSCC EIS)*. Projected attendance for the potential expansion was based on historic attendance levels and the potential increase in the amount of exhibit space. Trip generation estimates associated with an average day, as well as a maximum capacity public trade show, were developed using the trip rates from the WSCC EIS. The trip distribution patterns derived for the WSCC EIS were used to assess the roadways that vehicle trips likely would use to access the site. Detailed trip generation calculations and trip distributions and assignments are provided in the Transportation Technical Report.

Levels of service were calculated for the study area intersections that could be impacted by the WSCC expansion project trips, taking into account WSCC expansion traffic as well as traffic from the proposed hotel project. The results indicate that the WSCC expansion could degrade traffic operations along the key access routes of Stewart Street, Howell Street, and Olive Way compared to conditions with only the hotel project. A WSCC public trade show (which is likely to generate more vehicle trips than a convention/trade show) could degrade the level of service at the Howell Street/9th Avenue intersection from LOS C to LOS E, and the Stewart Street/Denny Way intersection could degrade from LOS E to LOS F. Increased traffic associated with a WSCC convention/trade show could substantially increase the delay at the intersection of Howell Street/Yale Avenue/I-5 SB on-ramp. All of the intersections projected to operate at poor levels of service by the cumulative analysis were projected to operate at LOS F in the Downtown EIS; no new operational issues were identified. These calculations are based in part on assumptions regarding the location of new parking facilities associated with the expansion, and could change if different or additional parking locations are developed.

The cumulative traffic operations analysis assumes that both facilities generate substantial vehicle traffic, which would occur infrequently. One of the goals of the WSCC expansion is to attract more national and international conventions, increasing the likelihood that attendees to WSCC events would be out-of-town guests who would stay, in part, at downtown hotels. This would lessen the potential impacts of vehicle trips associated with the WSCC expansion.

A national convention at the WSCC is expected to generate about 380 transit trips per day, while a capacity public trade show could generate 1,880 transit trips on a weekend day. When a convention is in town, it is estimated that the transit riders to the proposed hotel site would also be WSCC attendees. Peak transit ridership is expected to occur outside of the traditional peak commuting times or in the reverse direction to the peak flows of commuters to downtown Seattle. Most of the trips to and from the SeaTac Airport are expected to use Link Light Rail, a transit option that has substantial off-peak directional capacity. Therefore, cumulative transit trips are expected to be minimal and manageable by the transit system.

There are no plans yet for the WSCC that would detail primary pedestrian access locations or frontage improvements. Conversations with WSCC staff indicate that it is likely that the primary pedestrian access would be located along 9th Avenue, which would be the primary corridor connecting the expansion area to the existing WSCC buildings as well as to the proposed hotel site. Pedestrian traffic is expected to be highest during conventions, particularly national conventions with many attendees staying at local hotels and walking to and from the WSCC. A maximum capacity event in the expansion area exhibition space could generate almost 34,000 pedestrian trips per day. The pedestrian peak is likely to occur midday with between 2,000 and 4,000 pedestrian trips per hour. A portion of the pedestrian trips generated by a WSCC convention would be guests of the proposed hotel. Peak pedestrian trips by the hotel are expected to be about 825 per hour. As noted above, a 12-foot sidewalk has a capacity of almost 13,000 pedestrians per hour. Therefore, the sidewalks adjacent to the hotel project could easily accommodate the cumulative pedestrian loads associated both with hotel trips and pedestrian trips generated by the largest events at WSCC.

The WSCC expansion likely will include substantial parking supply; the Feasibility Study estimated that over 2,700 parking stalls could be provided in five levels of parking. It is expected that the WSCC will perform additional analysis to determine its parking needs and impacts. It is anticipated, however, that the WSCC would accommodate its parking demand and there would be no cumulative off-site parking impacts.

One of the key issues noted by the WSCC Feasibility Study is freight access. A large convention could generate up to 15 trucks per hour. A Terry Avenue extension over I-5 would provide a new link for WSCC truck traffic to approach and leave the site and would reduce truck traffic at existing intersections. If constructed, that new link also would improve truck access to the proposed hotel site, since the vast majority of freight movements are expected to originate in areas south of downtown Seattle. This could reduce the distance that trucks need to travel on First Hill or on downtown streets to reach the site, thereby reducing the potential freight impacts of the hotel project.

The FSEIS analysis considered the direct, indirect and cumulative impacts of the EIS alternatives as they relate to the overall transportation system and parking demand. The subject site is within the area analyzed in the FSEIS and the proposed development is within the range of actions and impacts evaluated in the FSEIS.

MITIGATION

A Construction Transportation Management Plan will be required to be submitted to DPD prior to issuance of any demolition, grading/excavation, or construction permits. The plan will be required to document the measures listed on page 3.10.78 of the *Ninth & Stewart Mixed-Use Development FSEIS (Vol. 1)*. A pro-rata mitigation payment of \$6,720 for study intersections within SDOT's Active Traffic Management program will be required of the applicant. The project will also be required to mitigate traffic impacts by participating in the City of Seattle transportation mitigation program for South Lake Union as outlined in DPD Client Assistance Memo (CAM) 243. A pro-rata mitigation payment of \$265 for uncompleted capital projects in South Lake Union will be required of the applicant. Additional mitigation will be required in the form of submission and approval of plans for the following: a traffic control plan, including trigger levels, to accommodate existing surges, for large events at the hotel that have a specific ending time; a parking management plan to be implemented for large events, which would include, but not be limited to, the measures identified on page 3.10.80 of the *Ninth & Stewart Mixed-Use Development FSEIS (Vol 1)*; a loading dock management plan that would discourage trucks from using the north/south portion of the alley.

DECISION - STATE ENVIRONMENTAL POLICY ACT

THE DIRECTOR OF DPD HAS DETERMINED THAT THE FSEIS HAS PROVIDED ADEQUATE ANALYSIS OF THE ALTERNATIVE PROPOSALS FOR THE SITE. THE PROPOSAL, MUP #3016917, IS APPROVED WITH CONDITIONS.

SEPA - CONDITIONS OF APPROVAL

Prior to Issuance of a Building Permit

1. If the applicant intends to work outside of the limits of the hours of construction described in condition #9, a Construction Noise Management Plan shall be required, subject to review and approval by DPD prior to issuance of any demolition, grading, or building permit, whichever is first. The Plan shall include proposed management of construction related noise, efforts to mitigate noise impacts, and community outreach efforts to allow people within the immediate area of the project to have opportunities to contact the site to express concern about noise. Elements of noise mitigation may be incorporated into any Construction Management Plans required to mitigate any short-term transportation impacts that result from the project.

2. The applicant shall provide DPD with a copy of a Construction Haul Route, approved by Seattle Department of Transportation.
3. A DPD approved Construction Parking Plan is required, demonstrating that specific locations and amounts of parking in nearby off-street parking lots will accommodate the project's parking demand during construction. This plan shall be provided to the Land Use Planner for review and approval (michael.dorey@seattle.gov).
4. The applicant shall make a pro rata mitigation payment pursuant to CAM 243 in the amount of \$265 to the City of Seattle.
5. The applicant shall make a pro-rata mitigation payment of \$6,720 to the City of Seattle for study intersections within SDOT's Active Traffic Management program.

Prior to Certificate of Occupancy

6. The applicant would submit to DPD's Traffic Planner, John Shaw, for review and approval, a traffic control plan, including trigger levels, to accommodate existing surges, for large events at the hotel that have a specific ending time.
7. The applicant would submit to DPD's Traffic Planner, John Shaw, a parking management plan to be implemented for large event, which would include, but not be limited to, the measures identified on page 3.10.80 of the *Ninth & Stewart Mixed-Use Development FSEIS (Vol.1)*.
8. The applicant will submit to DPD's Traffic Planner, John Shaw, a loading dock management plan that would discourage trucks from using the north/south portion of the alley that connects Howell Street and 9th Avenue.

During Construction

9. Construction activities (including but not limited to demolition, grading, deliveries, framing, roofing, and painting) shall be limited to non-holiday weekdays from 7am to 6pm. Interior work that involves mechanical equipment, including compressors and generators, may be allowed on Saturdays between 9am and 6pm once the shell of the structure is completely enclosed, provided windows and doors remain closed. Non-noisy activities, such as site security, monitoring, weather protection shall not be limited by this condition. This condition may be modified through a Construction Noise Management Plan, required prior to issuance of a building permit as noted in condition #1.

DESIGN REVIEW - CONDITIONS OF APPROVAL

Prior to Issuance of the MUP

10. The Green Street landscaping plan for 9th Avenue shall be changed into an integrated strategy that includes special paving and plantings *and* street furniture as part of a comprehensive design that fosters and elicits a strong and distinctive desire for people to want to be there.

Prior to Certificate of Occupancy

11. The Land Use Planner shall inspect materials, colors, and design of the constructed project. All items shall be constructed and finished as shown at the design recommendation meetings and the subsequently updated Master Use Plan set. Any change to the proposed design, materials, or colors shall require prior approval by the Land Use Planner (Michael Dorcy 206-615-1393 or michael.dorcy@seattle.gov).
12. The applicant shall provide a landscape certificate from Director's Rule 10-2011, indicating that all vegetation has been installed per the approved landscape plans. Any change to the landscape plans approved with this Master Use Permit shall be approved by the Land Use Planner (michael.dorcy@seattle.gov).

For the Life of the Project

13. The building and landscape design shall be substantially consistent with the materials represented at the Recommendation meetings and in the materials submitted after the Recommendation meeting, before the MUP issuance. Any change to the proposed design, including materials or colors, shall require prior approval by the Land Use Planner (Michael Dorcy, 206-615-1393, or michael.dorcy@seattle.gov).

Signature: (signature on file) Date: October 13, 2014
Michael Dorcy
Senior Land Use Planner
Department of Planning and Development

**Interpretation of the Director
Under Seattle Municipal Code Title 23**

Regarding the Use of the

Property at

808 Howell Street

**Hearing Examiner File:
MUP-14-016/S-14-003**

**DPD Interpretation No. 14-009
(DPD Project No. 3019031)**

Background

This interpretation was requested by attorney Peter Eglick on behalf of the Alliance for a Livable Denny Triangle and UNITE HERE Local 8 in conjunction with an appeal of the SEPA and Design Review decisions relating to Project No. 3016917, a hotel development. The proposed development would be located on the downtown block bounded by Eighth and Ninth Avenues and Howell and Stewart Streets. That block is divided into two non-contiguous parcels by an L-shaped alley. Two alternative development proposals were offered, one entailing vacation of the alley and the other leaving the dedicated alley in place. Project No. 3016917 and this interpretation relate to the latter proposal. All proposed floor area would be on the portion of the property to the west of the alley, but the amount of floor area exceeds what could be allowed under the Floor Area Ratio ("FAR") standards applied based only on the area of the portion of the property to the west of the alley. For convenience, the area to the west of the alley is referred to here as Lot A and the portion to the east is referred to as Lot B. The questions raised in the request for interpretation include whether the entire property, on both sides of the alley, may be regarded as a single lot for purposes of the FAR standards, or whether development potential from Lot B may be applied to Lot A either as an in-block transfer of development rights ("TDR") or a "combined lot development" according to SMC 23.49.041.

A separate issue raised in the request for interpretation is whether a drawing on Sheet G0009 of the plans purporting to depict the "Allowable Massing Per Code" is inconsistent with the application, meaning, and intent of the Land Use Code. The illustration shows a building envelope based on the applicable height and tower width limits and setback requirements. It is asserted in the request that this is inaccurate and misleading as a building on the site would be further constrained by the FAR limit. FAR limits typically have the effect of limiting the bulk of structures, though in theory a building with very high ceilings could be built to the full allowable dimensions based on specific bulk standards such as height limits and setback requirements without exceeding the FAR limit. As a helpful reference, plans may depict a building envelope showing the spaces structure may be permitted to occupy, based on these specific bulk standards. This is what we would understand the illustration on Sheet G0009 to represent. No assertion has been made that the drawing does not accurately reflect a potential building envelope based on the specific bulk standards. We do not believe this issue raises any question subject to the Land Use Code interpretation process, and we have not addressed it further in this interpretation.

Findings of Fact

1. The property that is the subject of this interpretation is within Block 27, Heirs of S. A. Bell's 2nd Addition. As originally platted, an alley ran through the block from Howell Street to Stewart Street. In 1927, a portion of that alley was vacated, and in 1928 a different area, extending from the remaining portion of the alley to Ninth Avenue, was dedicated, resulting in an L-shaped alley dividing the property into two non-contiguous parcels. The parcel to the east of the alley ("Lot B") consists of platted Lots 10, 11, 12 and a portion of Lot 9. This property is currently developed as a surface parking lot. The parcel to the west, across the alley ("Lot A") consists of Lots 1 through 8, a portion of Lot 9, and the segment of former alley vacated in 1927. The former Greyhound bus station historically operated on a portion of Lot A, and parking for the bus station was on Lot B.
2. Lot A has an area of 63,924 square feet. Lot B has an area of 28,107 square feet.
3. In 1993, the Department issued a letter reflecting an opinion that the Greyhound property was a single building site, notwithstanding the alley that separated the parking area from the station. This determination was based on how the property had historically been treated in permits. Based on that letter, the Department initially provided guidance to the current applicant that the property could be treated as a single lot for purposes of development standards such as the FAR limit.
4. The entire block is in a DOC2 500/300-500 zone. In that zone, the base FAR allowed is 5, and the maximum is 14. (SMC 23.49.011.) Some floor area is not counted towards the FAR limit, such as floor area below grade and areas devoted to particular uses specified in Section 23.49.011. Of the balance, an area equivalent to 5 times the lot area is base FAR, which may be built without requiring the use of any incentives. Additional area above the base FAR, up to the maximum of 14 times the lot area, may be achieved through incentives. The first portion of the bonus area, .75 times the lot area, must be achieved through purchase of regional development credits. Of the remainder, 75 percent must be achieved through incentive provisions for affordable housing and child care, either by actually providing them or by paying into funds that are applied to provision of housing and child care. The remaining 25 percent of the balance may be supported through bonus and TDR incentives for other amenities.
5. "Lot" is defined at SMC 23.84A.024 as follows:

"Lot" means, except for the purposes of a TDR sending lot for Landmark TDR or housing TDR, a sending lot for South Downtown Historic TDR or South Downtown Historic TDP, and a sending lot for open space TDR, a parcel of land that qualifies for separate development or has been separately developed. A lot is the unit that the development standards of each zone are typically applied to. A lot shall abut upon and be accessible from a private or public street sufficiently improved for vehicle travel or abut upon and be accessible from an exclusive, unobstructed permanent access easement. A lot may not be divided by a street or alley (Exhibit A for 23.84A.024).

1. For purposes of a TDR sending lot for Landmark TDR, "lot" means the parcel described in the ordinance approving controls for the sending lot.

2. For purposes of a sending lot for housing TDR, "lot" means the smallest parcel or combination of contiguous parcels, as described in the County real property records at any time after January 4, 1993, that contain the structure or structures that make the TDR eligible for transfer.

3. For purposes of a sending lot for South Downtown Historic TDR or South Downtown Historic TDP, "lot" means the smallest parcel or combination of contiguous parcels, as described in the County real property records at any time after March 31, 2011, that contain the contributing structure or structures that make the TDR or TDP eligible for transfer.

4. For purposes of a sending lot for open space TDR, the definition of lot in Section 23.49.017 applies.

6. The provisions governing transfer of development rights from one lot to another are set forth in Section 23.49.014. In the DOC2 zone, there is no restriction on the types of TDR allowed between lots within the same block. Section 23.49.014.B.1 provides in part:

Maximum transferable floor area except from lots in South Downtown. This subsection 23.49.014.B.1 applies to sending lots that are not in South Downtown.

* * *

e. For purposes of this subsection 23.49.014.B.1, the eligible lot area is the total area of the sending lot, reduced by the excess, if any, of the total of accessory surface parking over $\frac{1}{4}$ of the total area of the footprints of all structures on the sending lot;

7. Under specific circumstances, Section 23.49.041 allows multiple lots on the same block to be combined, "whether contiguous or not, solely for the purpose of allowing some or all of the capacity for chargeable floor area on one such lot under this chapter to be used on one or more other lots...." The text of that section is appended to this interpretation. According to subsection A, "bonus capacity" from a sending lot—i.e. FAR in excess of the base FAR, achieved through incentives—may be transferred in this manner. Subsection B limits the transfer of base FAR: Base FAR may be transferred pursuant Section 23.49.041 only if the bonus capacity is first transferred. (Base FAR may otherwise be transferred, according to the general standards of Section 23.49.014 for TDRs, but not as a part of a combined lot development under Section 23.49.041.) Subsection E requires that the combined lot arrangement be documented in a recorded agreement.
8. According to Section 23.49.041.D, in order for the combined lot development approach to be applied, the Department must determine, as a Type I decision, that this would result in a significant public benefit. Some examples provided are preservation of a landmark structure, or provision of public facilities serving the downtown population, or "improved massing of development on the block that achieves a better relationship with surrounding conditions, including: better integration with adjacent development, greater compatibility with an established scale of development, especially relative to landmark structure, or improved conditions for adjacent public open spaces, designated green streets, or other special street environments...."

9. A table reflecting FAR bonuses and TDR tabulations is provided on page G0003 of the plans, and is attached to this interpretation. According to a notation, the numbers reflect application of the "one development site" approach. The calculations in that table are based on a total chargeable floor area of 1,011,335 square feet. Under a subsequent recalculation, this total figure was revised very slightly, to 1,011,327 square feet.
10. A zoning correction notice was issued by the Department on November 19, 2014 requiring amended calculations and other documentation demonstrating that the project meets the FAR standards based on the provision in SMC 23.49.041 for combined lot development. On November 21, David Schneider of LMN Architects provided a response to the correction sheet and associated revisions to the plans. This response included revised calculations and a description of the public benefits proposed as a basis for the approval. At the Department's request, a more detailed description of the public benefits, with illustrations, and a revised FAR table were submitted on December 1. Bradley Wilburn of DPD replied on December 2 with an email reflecting a conclusion that the proposal met the standards for a combined lot development. The materials submitted on December 1 and Mr. Wilburn's response are appended to this interpretation.

Conclusions

1. In the context of most sections of the Land Use Code where the word "lot" is used, it means the site of a development; the unit to which development standards such as lot coverage or FAR limits are applied. Such a "lot" may consist of multiple separate parcels, such as platted lots, even if those parcels were previously separately developed. However, by definition, a "lot" may not be divided by a street or alley. In this case there is a record of a determination that property to the east of the alley was treated under a former zoning code as a part of the site of the Greyhound station, to the west of the alley. But if the property is to be redeveloped, the new development is subject to the current standards and definitions. Under current code, two parcels separated by an alley cannot be treated as a single lot.
2. The historically established use of Lot B is as accessory surface parking for the Greyhound station. Under the general rules for transfer of development rights, in Section 23.49.014, the area of Lot B that would be eligible as a sending lot is reduced by the excess of the area devoted to accessory parking over the total area of the footprints of the structures on Lot B. Because there are no structures and only accessory parking on Lot B, the area eligible for sending TDRs is effectively reduced to zero. However, as an alternative to a standard in-block TDR, Section 23.49.041 allows lots on the same block to be combined solely for the purpose of FAR standards, even if they are separated by an alley. Where this provision is applied, **base** FAR may be transferred **only if all of the bonus capacity of the sending lot is first transferred.**
3. Under the applicable zoning, the base FAR limit is 5, and additional FAR may be attained through bonusing provisions such as provision of amenities and contributions towards housing and child care, up to a maximum of 14. Lot A has an area of 63,924 square feet, which is sufficient to support "base" floor area of 319,620 square feet, and "bonus" floor area of 575,316 square feet. Lot B has an area of 28,107 square feet, which would support 140,535 square feet of "base" floor area and 252,963 square feet of "bonus" floor area. The proposed development includes 1,011,327 square feet of chargeable floor area. Applying the combined-lot approach of Section

23.49.041, the base FAR of Lot A would first be applied, leaving 691,707 square feet. The next 575,316 square feet of that would need to be bonus FAR based on the area of Lot A. This would leave 116,391 square feet of proposed floor area that must be transferred from Lot B under the rules for combined lot development. Because this is less than the total "bonus" floor area capacity of Lot B (which must be transferred first), all of the capacity transferred from Lot B must be "bonus" floor area, and the total area that must be supported as bonus FAR is 691,707 square feet.

4. The first .75 FAR applied from Lot A, and also the first .75 FAR transferred from Lot B, must be achieved through purchase of regional development credits. This totals approximately 69,023 square feet, leaving 622,684 square feet. Of that, 75 percent, or 467,013 square feet, must be supported through provision of or contribution towards housing and child care, and the remaining 25 percent, or 155,671 square feet, through other amenities and TDRs, as allowed by the code.
5. The revised calculations provided by the architect divided the FAR calculations into floor area associated with Lot A and floor area associated with Lot B. For example, they show that 395,530 square feet of floor area associated with Lot A and 71,483 square feet associated with Lot B was to be supported through housing and child care bonuses. The sum of these areas is 467,013 square feet, which matches the Department's calculation, provided above. Likewise, the figures provided for floor area to be supported by purchase of rural development credits and the figures provided for floor area to be supported through other amenities and TDRs, when added up, match the calculations above.
6. In order to take advantage of the provision for combined lot development the approach must result in a significant public benefit. The project applicants have pointed to two benefits: Pedestrian circulation will be enhanced as a result of a through-block connection and other improvements, and the proposed structures are massed in a way that achieves a better relationship with surrounding conditions. As reflected in its reply, the Department has concluded that this benefit is sufficient to support the application of the combined lot development approach to this project.

Decision

The parcels on either side of the alley in Block 27, Heirs of Sarah A Bell's 2nd Addition, do not comprise a single "lot" for purposes of a new development under current Land Use Code standards. They may be combined for the purposes of FAR standards, pursuant to Section 23.49.041, allowing development capacity of Lot B to be applied on Lot A. The proposed development meets the standards for the combined lot approach under Section 23.49.041.

Entered this 2nd day of December, 2014.



Andrew S. McKim
Land Use Planner – Supervisor

23.49.041 Combined lot development

When authorized by the Director pursuant to this section, lots located on the same block in DOC1 or DOC2 zones, or in DMC zones with a maximum FAR of ten (10), or lots zoned DOC1 and DMC on the same block, may be combined, whether contiguous or not, solely for the purpose of allowing some or all of the capacity for chargeable floor area on one such lot under this chapter to be used on one (1) or more other lots, according to the following provisions:

- A. Up to all of the capacity on one (1) lot, referred to in this section as the "sending lot," for chargeable floor area in addition to the base FAR, pursuant to Section 23.49.011 (referred to in this section as "bonus capacity"), may be used on one or more other lots, subject to compliance with all conditions to use of such bonus capacity, pursuant to Sections 23.49.011-.014, as modified in this section. For purposes of applying any conditions related to amenities or features provided on site under Section 23.49.013 only the lot or lots on which such bonus capacity shall be used are considered to be the lot or site using a bonus. Criteria for use of bonus that apply to the structure or structures shall be applied only to the structure(s) on the lots using the transferred bonus capacity.
- B. Only if all of the bonus capacity on one (1) lot shall be used on other lots pursuant to this section, there may also be transferred from the sending lot, to one or more such other lots, up to all of the unused base FAR on the sending lot, without regard to limits on the transfer or on use of TDR in Section 23.49.014. Such transfer shall be treated as a transfer of TDR for purposes of determining remaining development capacity on the sending lot and TDR available to transfer under SMC 23.49.014, but shall be treated as additional base FAR on the other lots, and to the extent so treated shall not qualify such lots for bonus development. If less than all of the bonus capacity of the sending lot shall be used on such other lots, then unused base FAR on the sending lot still may be transferred to the extent permitted for within-block TDR under Section 23.49.014, and if the sending lot qualifies for transfer of TDR under any other category of sending lot in Table 23.49.014A, such unused base FAR may be transferred to the extent permitted for such category, but in each case only to satisfy in part the conditions to use of bonus capacity, not as additional base FAR.
- C. To the extent permitted by the Director, the maximum chargeable floor area for any one (1) or more lots in the combined lot development may be increased up to the combined maximum chargeable floor area under Section 23.49.011 computed for all lots participating in the combined lot development. To the extent permitted by the Director, and subject to subsection B of this section, the base floor area for any one (1) or more lots in the combined lot development may be increased up to the combined maximum base chargeable floor area under Section 23.49.011 computed for all lots participating in the combined lot development.

D. The Director shall allow combined lot development only to the extent that the Director determines, in a Type I land use decision, that permitting more chargeable floor area than would otherwise be allowed on a lot shall result in a significant public benefit. In addition to features for which floor area bonuses are granted, the Director may also consider the following as public benefits that could satisfy this condition when provided for as a result of the lot combination:

1. preservation of a landmark structure located on the block or adjacent blocks;
2. uses serving the downtown residential community, such as a grocery store, at appropriate locations;
3. public facilities serving the Downtown population, including schools, parks, community centers, human service facilities, and clinics;
4. transportation facilities promoting pedestrian circulation and transit use, including through block pedestrian connections, transit stations and bus layover facilities;
5. Short-term parking on blocks within convenient walking distance of the retail core or other Downtown business areas where the amount of available short term parking is determined to be insufficient;
6. a significant amount of housing serving households with a range of income levels;
7. improved massing of development on the block that achieves a better relationship with surrounding conditions, including: better integration with adjacent development, greater compatibility with an established scale of development, especially relative to landmark structures, or improved conditions for adjacent public open spaces, designated green streets, or other special street environments;
8. public view protection within an area; and/or
9. arts and cultural facilities, including a museum or museum expansion space.

E. The fee owners of each of the combined lots shall execute an appropriate agreement or instrument, which shall include the legal descriptions of each lot and shall be recorded in the King County real property records. In the agreement or instrument, the owners shall acknowledge the extent to which development capacity on each sending lot is reduced by the use of such capacity on another lot or lots, at least for so long as the chargeable floor area for which such capacity is used remains on such other lot or lots. The deed or instrument shall also provide that its covenants and conditions shall run with the land and shall be specifically enforceable by the parties and by the City of Seattle.

F. Nothing in this Section shall allow the development on any lot in a combined lot development to exceed or deviate from height limits or other development standards.

Ord.123046 § 65, 2009; Ord.122054 § 40, 2006.

McKim, Andy

From: Wilburn, Bradley
Sent: Tuesday, December 02, 2014 7:29 AM
To: Dave Schneider
Cc: McKim, Andy
Subject: RE: Project: Eighth and Howell Convention Hotel - File Transfer - Combined Lot Development Response

Good morning Dave-

Thank you for your quick response addressing DPD's concerns for a more fully evolved combined lot development analysis. After careful consideration of the revised materials, DPD agrees the project as designed meets the criteria in keeping with SMC 23.49.041.D. DPD, approves the project proposal meets the combined lot development standards, pursuant to Section SMC 23.49.041.

Please note, you will need to revise the Declaration Regarding Extra Non-Residential Floor Area Bonus to align with the new calculations.

Respectfully yours,

Bradley Wilburn,
Senior Land Use Planner



City of Seattle
Department of Planning and Development
700 Fifth Avenue, Suite 2000
Seattle, WA 98124-4019
bradley.wilburn@seattle.gov
(206) 615-0508

From: Dave Schneider [<mailto:dschneider@lmnarchitects.com>]
Sent: Monday, December 01, 2014 10:09 PM
To: Wilburn, Bradley
Subject: Project: Eighth and Howell Convention Hotel - File Transfer - Combined Lot Development Response

IMPORTANT: Click a link below to access files associated with this transmittal that came in through the LMN Architects Info Exchange web site. The attached file contains the transmittal details.

[Download all associated files](#)

Project Name: Eighth and Howell Convention Hotel

Project Number: 14026-MR
From: Dave Schneider (LMN Architects)
To: Bradley Wilburn (City of Seattle)
CC: Shauna Decker (R.C. Hedreen Co); Ryan Durkan (Hillis Clark Martin & Peterson)
Subject: Combined Lot Development Response
Sent via: Info Exchange
Expiration Date: 12/16/2014
Remarks: Bradley

Here is the revised FAR/TDR calculation table and the correction response packet for your review and approval.

Please call me in the morning if there are any issues.

Thanks, Dave

Transferred Files

NAME	TYPE	DATE	TIME	SIZE
<u>2014-12-01 Alt 6 FAR-TDR Calculation - LMN.pdf</u>	PDF File	12/1/2014	8:51 PM	69 KB
<u>2014-12-01 Combined Lot Development Public Benefits BOOK.pdf</u>	PDF File	12/1/2014	10:04 PM	57,652 KB

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8th & Howell Combined Lot Development

NOTE: THE 8TH & HOWELL PROJECT IS PURSUING THE "COMBINED LOT DEVELOPMENT" APPROACH TO FAR BONUS AREA AND HEIGHT PER SMC 23.49.041.

FAR ANALYSIS	A	BASE 5 FAR B	75% OF 1 C	75% OF 9 FAR LESS RDC D	5% MIN. OF 9 FAR E	BALANCE OF 9 FAR			TOTAL FAR H
						F	G		
				75% OF REMAINING FAR (I - B - C) x .75	(I - B - C) x .05	(I - B - C) x .125	25% OF REMAINING FAR		A x 14
			REGIONAL DEVELOPMENT CREDITS (75% OF A)	HOUSING & CHILDCARE	LANDMARK TDR (MIN 5% OF D+E+F+G) IF AVAILABLE	PERFORMING ARTS TDR (MIN 50% OF E+F+G) IF AVAILABLE	REMAINING REQUIREMENTS BONUS AMENITY 23,49.013 + NON HOUSING TDR		
RECEIVING SITE	63,924	319,620	47,943	395,530	26,369	131,843			894,936
RECEIVING SITE SUB-TOTAL									
SENDING SITE	28,107	140,535	21,080	71,483	4,766	23,828			116,391
SENDING SITE SUB-TOTAL									
RECEIVING SITE WITH TRANSFER				467,013		221,592			
RECEIVING SITE WITH TRANSFER SUB-TOTAL									
TARGET		319,620	69,023	467,013	31,135	77,836	46,701		1,011,327
OWNED		319,620	1		112,816	3	34,036	4	
PROVIDED THROUGH AMENITY BONUS								0	
\$72.88 Contribution to low income housing		22.88		\$10,685,257					
PERFORMANCE - HOUSING				72,854					
\$3.97 Contribution to child care		3.97		\$1,854,042					
PERFORMANCE - CHILDCARE (# OF CHILDREN)				59					
TDR REMAINING TO PURCHASE			69,023		8,818				
TDR REMAINING TO BANK									
TOTAL FAR SUMMARY		319,620	69,023	467,013	121,634	34,036	0	0	1,011,327

Public Amenity bonus	Ratio	Area	Factor	Total
1 No amenity bonus available		0 sf	0	0 sf
				0 sf

Footnotes
 1 Base FAR- No amenity or TDR required
 2 Building area for affordable housing to build per City formula (C x 0.156)
 3 Chamber of Commerce Building - 215 Columbia St. + WSTTC Eagles Building
 4 Seattle theater group deed 20080820001414
 5 Childcare capacity to build per City formula (C x 0.000127)

8th & HOWELL

COMBINED DEVELOPMENT PUBLIC BENEFITS PLAN 2014

PROJECT INFORMATION:

Property Address: 808 Howell Street
Seattle, WA 98101

DPD Project #: 3016917

Owner: R.C. Hedreen & Co.
217 Pine Street, Ste 200
Seattle, WA 98101
206.624.8909

Architect: LMN Architects
801 Second Ave, Suite 501
Seattle, WA 98104

DPD Contact: Michael Dorcy
206.615.1393
michael.dorcy@seattle.gov

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1 RESPONSE LETTER

To: Bradley Wilburn
 From: David Schneider
 Subject: Response to Zoning Correction Notice #3 dated November 19, 2014
 Date: November 21, 2014
 Revised December 1, 2014

This response responds to item 2.i only. All other items were previously addressed in the September 24, 2014 resubmittal.

2. (Modified Request 2) Floor Area Ratio (FAR). SMC 23.49.011. It appears the proposal is in compliance with allowed FAR, but unfortunately, I'm unable to verify gross floor area with information contained within plan set. "Gross floor area" means the number of square feet of total floor area bounded by the inside surface of the exterior wall of the structure as measured at the floor line. Please provide detail to verify compliance to SMC 23.49.011. Additionally, I cannot confirm the actual development site in order to base my analysis on.

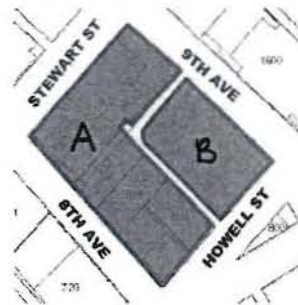
i). FAR calculations provided are based on the assumption that the two portions of the development site separated by an alley comprise a single site. This is not consistent with the Code standards and definitions. Please provide revised calculations and documentation showing how this proposed development meets FAR standards found in SMC 23.49.041.

ii). It appears this project will be taking advantage of increased FAR & height utilizing the following: Housing and childcare, Landmark TDR, Performing Arts TDR, etc. I need verifiable documentation which then will be turned over to Laura Hewitt Walker with the Office of Housing.

Laura Hewitt Walker
 Strategic Advisor – Incentive Programs, Land Use & Planning
 Office of Housing
 City of Seattle
 PO Box 94725, Seattle, WA 98124-4725
 700 5 Ave. 57 Floor, Seattle
 laura.hewitt@seattle.gov
 206.684.0429

Response: See response below as well as SHT G0002 and G0003 for revised Combined Lot Development FAR/ TDR Bonus Tabulation and adjusted lot coverage and site area references.

In response to DPD's correction notice, the Applicant applies to use the combined lot development method for obtaining the necessary floor area for Project No. 3016917, pursuant to SMC 23.59.041. The development site, or receiving lot, is a three-quarter block bounded by 9th Avenue, Stewart Street, 8th Avenue, and Howell Street (Parcel A). The sending lot will be the remaining one-quarter block at the corner of 9th Avenue and Howell Street (Parcel B). The following image depicts the entire block.



Parcel A Lot Area: 63,924 sf
 Parcel B Lot Area: 28,107 sf

COMBINED LOT DEVELOPMENT CALCULATION

The Project is located in the DOC2 500/300-500 zone with a base floor area ratio (FAR) of 5 and a maximum FAR of 14. The Project requires 1,011,327 square feet of chargeable floor area. With a maximum FAR of 14, Parcel A can support 894,936 sf of development. The remaining 116,391 sf will be sent from Parcel B through a combined lot development. The calculation for the combined lot development is set out below.

Receiving Lot Max FAR 14 - 894,936		Sending Lot Need 95,311 from 75/25 +21,080 from RDC	
25% BONUS TIER OTHER	75% BONUS TIER HOUSING BONUS/ CHILDCARE/ HOUSING TDR	25% BONUS TIER OTHER	75% BONUS TIER HOUSING BONUS/ CHILDCARE/ HOUSING TDR
131,843 sf	395,530 sf	23,828 sf	71,483 sf
Rural Development Credits (0.75 FAR – 47,943 sf)		Rural Development Credits (0.75 FAR – 21,080 sf)	
BASE (5 FAR – 319,620 sf)		BASE (5 FAR – 140,535 sf)	
LOT AREA (63,924 sf)		LOT AREA (28,107 sf)	

Thus, the Project will obtain a total of 69,023 sf from regional development credits, 467,013 sf from the housing/childcare bonus, and 155,671 sf from TDRs and bonus amenities.

COMBINED LOT DEVELOPMENT PUBLIC BENEFITS

The Director can allow combined lot development to the extent the Director determines in a Type I land use decision that permitting more chargeable floor area than would otherwise be allowed on a lot results in a significant public benefit. SMC 23.49.041.D.

In addition to the features for which floor area bonuses are granted (including public open space amenities and green street improvements, pursuant to SMC 23.49.013), the Director may also consider the following as public benefits:

1. Preservation of a landmark structure;
2. Uses serving the downtown residential community;
3. Public features serving the downtown population;
4. Transportation facilities promoting pedestrian circulation and transit use, including through block pedestrian connection, transit stations and bus layover facilities;
5. Short-term parking on blocks within convenient walking distance of the retail core;
6. A significant amount of housing serving households with a range of income levels;
7. Improved massing of development that achieves a better relationship with surrounding conditions;
8. Public view protection; and
9. Arts and cultural facilities.

The Project results in a significant public benefit as a result of the combined lot development. The combined lot development allows greater density to be concentrated on the three-quarter block development site, which creates the necessary floor area for a convention hotel, shifts much of the density away from the 9th Avenue green street, and affords more opportunities for improvements to the pedestrian environment, as discussed further below.

4. Transportation facilities promoting pedestrian circulation and transit use, including through block pedestrian connection, transit stations and bus layover facilities.

There is a through block connection that connects 9th Avenue and 8th Avenue across the site. The through block connection has been deliberately designed to enhance pedestrian circulation. The through block connection is not a code requirement in this zone, and it will improve pedestrian circulation in the neighborhood because pedestrians will be able to walk through the center of the site and go from 9th Avenue to 8th Avenue without going around the block to Stewart Street or Howell Street. It will have refined pavement, a protected walkway with overhead weather protection between 8th Avenue and the alley, lighting with pedestrian-scale poles, and bollards and planters to create an inviting and safe shared-use zone for pedestrians and vehicles. The through block connection will be secure. Refer to pages 4-9.

The Project has also dedicated private property from Parcel B to provide a "turn-around" at the south end of the alley to allow southbound vehicles to proceed to self or valet parking without exiting the site and crossing the public sidewalk at Howell Street. This will make for a much safer sidewalk condition for Howell Street pedestrians. Refer to pages 6-7.

7. Improved massing of development that achieves a better relationship with surrounding conditions.

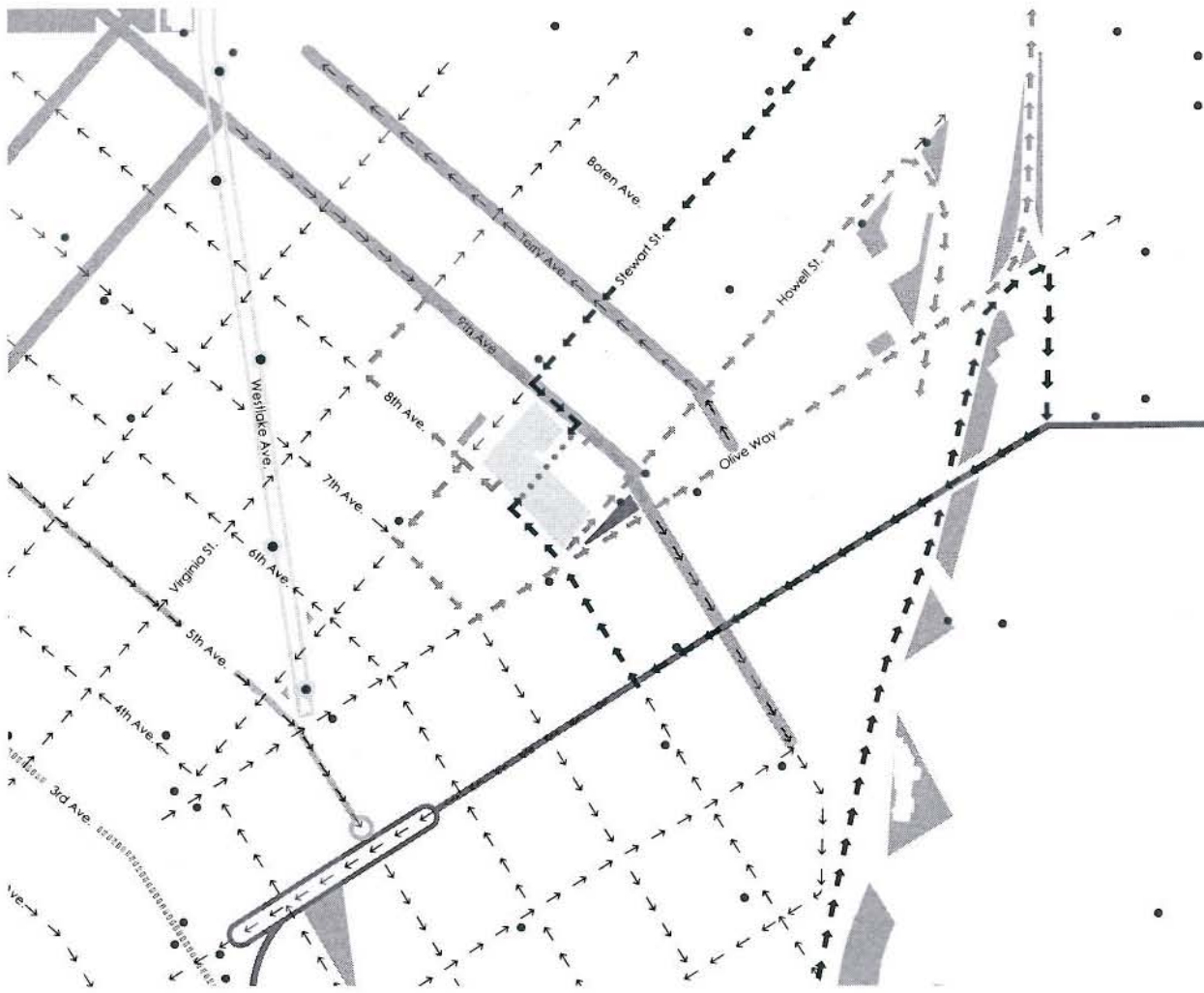
The increased density on the receiving lot (Parcel A) improves the massing by achieving a better relationship with surrounding uses.

- The combined lot development allows the density to be concentrated on the larger three-quarter block site that can more easily accommodate the density.
- The combined lot development allows the tower and the massing to be concentrated on 8th Avenue, rather than on the 9th Avenue green street, which achieves a better relationship with the surrounding conditions. Refer to pages 10-19.
- The combined lot development allows the bulk to be concentrated on the SW corner of the site, which is closer to the downtown core, and allows lower scale development to occur to the NE, closer to the Denny Triangle Neighborhood.
- The density can be concentrated in a size that accommodates a convention hotel that takes a more dramatic form, where the podium is divided vertically into two primary components, and the tower is a simple vertical expression with modulation along the north elevation.

CONCLUSION:

In conclusion, we request that you approve the use of the combined lot development method for obtaining the necessary floor area for Project No. 3016917. The project satisfies the requirements of SMC 23.49.041 and will provide significant public benefits.

2 PROMOTING PEDESTRIAN CIRCULATION



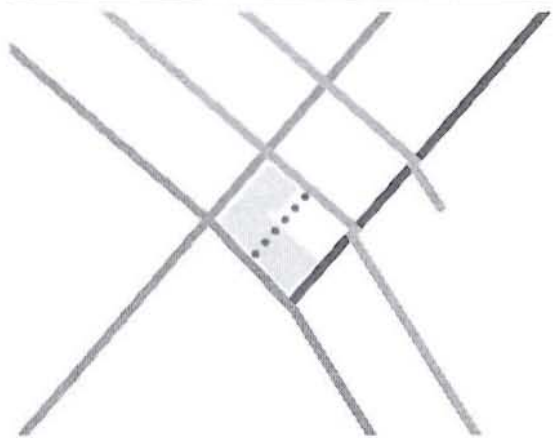
NEIGHBORHOOD TRAFFIC PATTERNS AND SITE ACCESS

- The streets surrounding the site at Eighth and Howell serve a variety of uses, and are predominantly one-way. Approaches to the site from Interstate 5 lead from Stewart Street to the north and 8th Avenue to the South. Local access to and from the site is complicated by the immediately adjacent one way traffic patterns that prohibit around-the-block circulation. The heavy east-west circulation along Stewart and Howell streets makes direct vehicular access from these streets less desirable.

The design creates a public benefit with the through-block connection allowing convenient access between 8th and 9th Avenues.

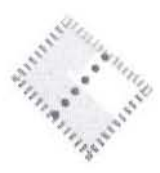
- Through-Block Connection
- ◀ Site
- ➔ Access from I-5
- ➔ Access to I-5
- Street Direction
- Light Rail
- Streetcar
- Monorail
- Restricted Bus Street
- Bus Stop
- Green Street / Open Space

PEDESTRIAN STREET CLASSIFICATIONS & SIDEWALK DESIGNATIONS



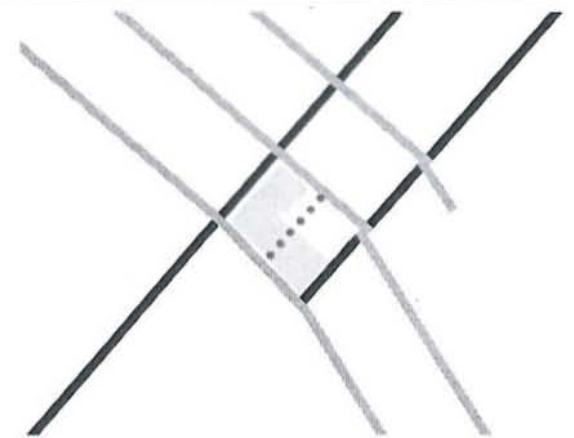
Pedestrian Street Classifications

- Green Street
- Class I Pedestrian Street
- Class II Pedestrian Street



Sidewalk Designations

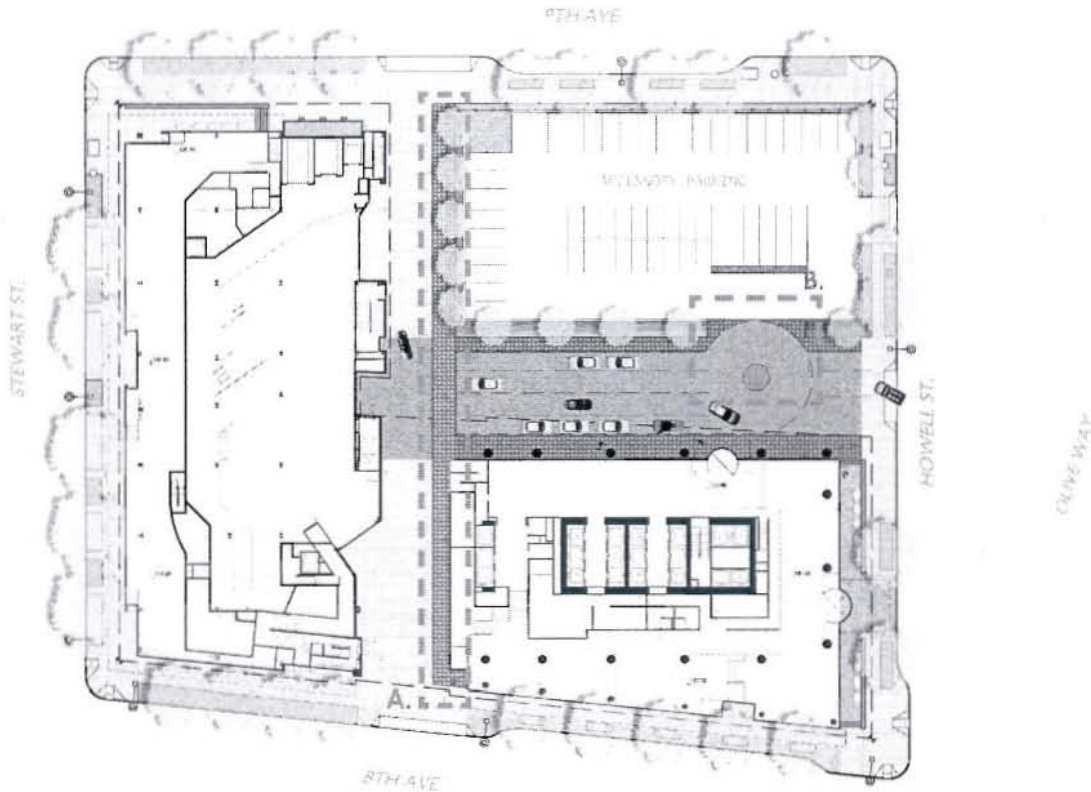
- 15 feet required; sidewalk located on opposite side of bus stops
- Varied width due to Green Street Requirements



Vehicular Classifications

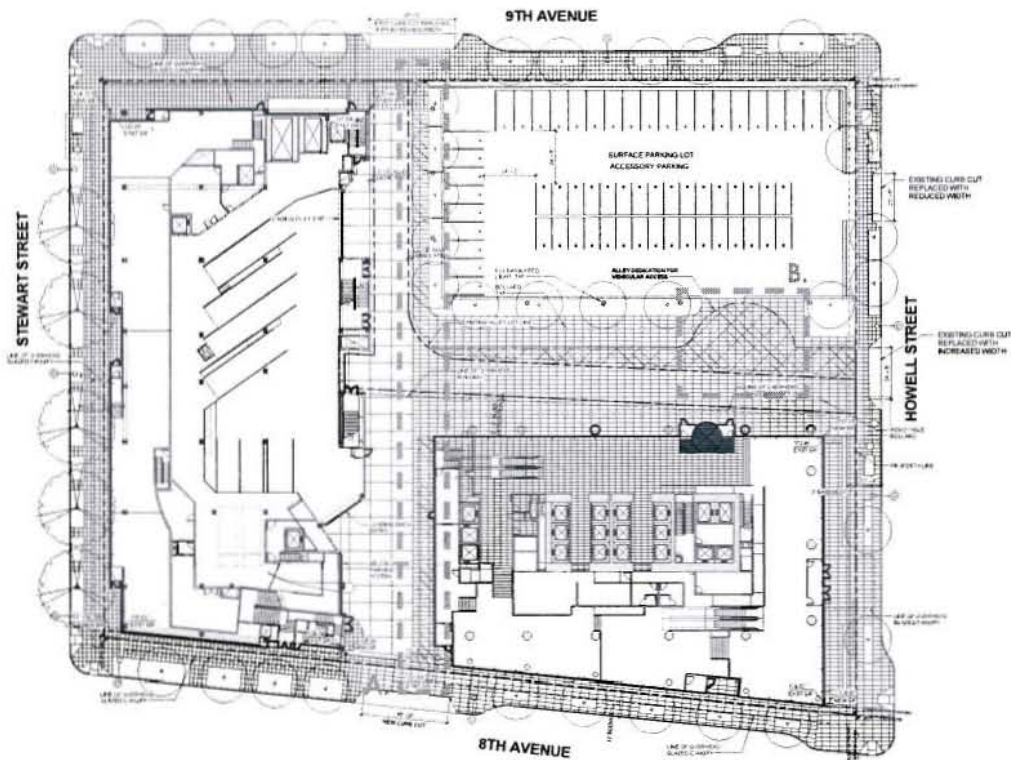
- Green Street
- Minor Arterial Street
- Primary Transit Street

THROUGH-BLOCK CONNECTION



ILLUSTRATIVE SITE PLAN

- A. The project proposes to provide a pedestrian public benefit with a through block pedestrian connection. The pedestrian walkway will be made of enhanced stone paving with weather protection on the 8th & Howell property and a landscape buffer along the north edge of Parcel B. The full length of the walkway will be provided with pedestrian lighting to create a safety and inviting environment for public use.
- B. The project proposes a vehicular turn-around on Parcel B at the south leg of the alley. This will allow drop-off at the hotel with southbound self-parkers and valet users to proceed to the parking garage entry without leaving the site and crossing the Howell Street sidewalk.



SITE PLAN

- A. The project proposes to provide a 6' easement along the south edge of the through block connection dedicated to a pedestrian walkway that connects 8th and 9th Avenues.
- B. The project proposes a surface dedication on the west side of Parcel B to accommodate a vehicular turn-around to enable southbound alley traffic from crossing the Howell Street sidewalk and promote pedestrian safety.

THROUGH-BLOCK CONNECTION

CONCEPT

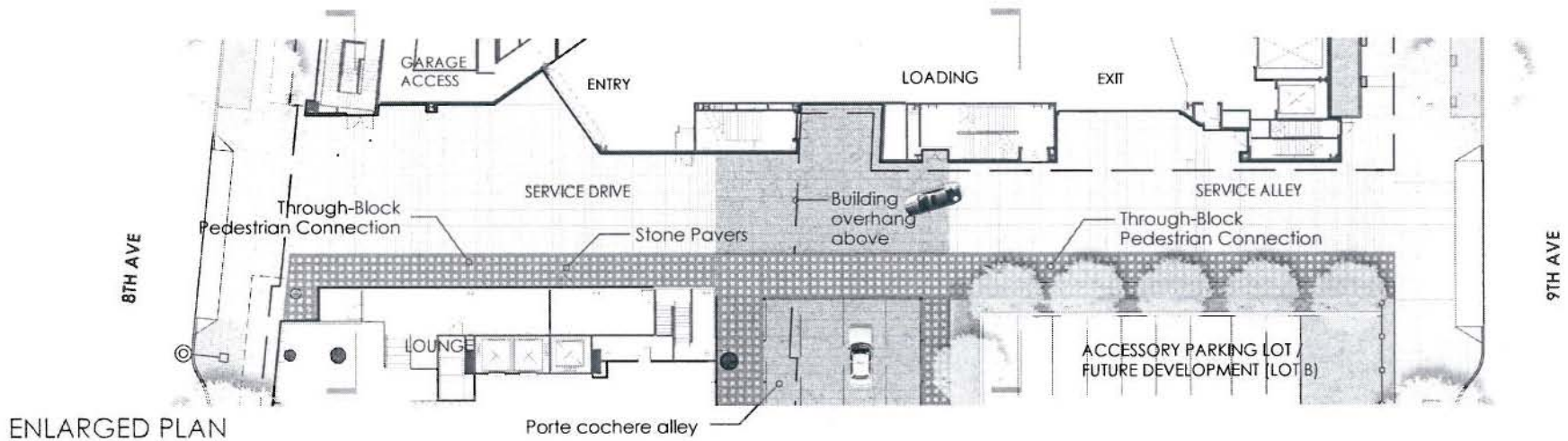
The through-block connection performs an important function allowing for safe passage of visitors and those passing through. A portion of the existing alley and project property will be used to provide access to loading and parking areas. A continuous and protected pedestrian walk links 8th and 9th Avenues.

PROGRAM ELEMENTS

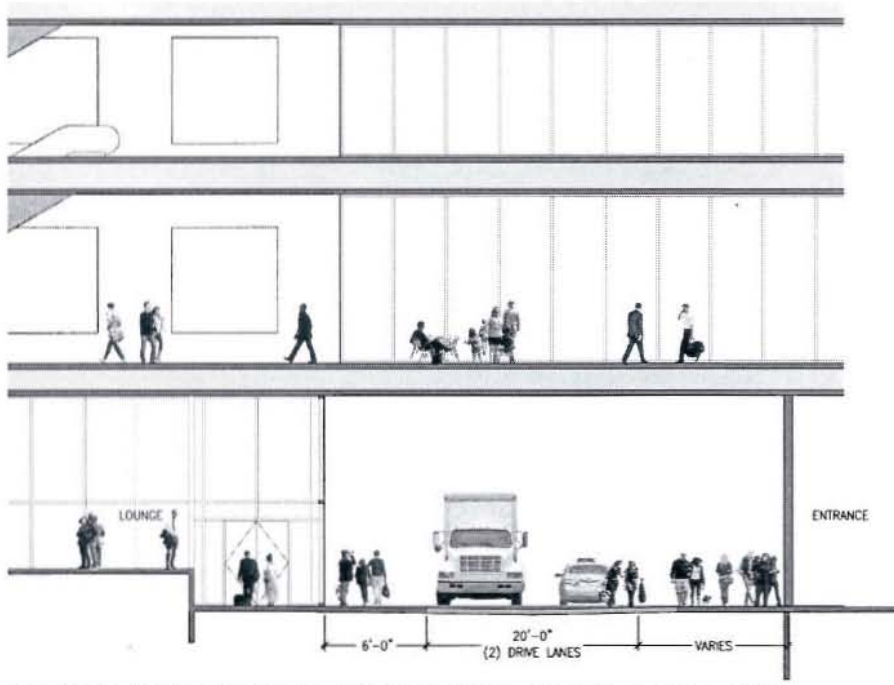
- Hotel and public parking garage access
- Safe and secure pedestrian access
- Site lighting with pedestrian scale poles
- Refined paving at pedestrian sidewalks
- Enhanced stone paving to designate the pedestrian walkway
- Protection from weather on 8th & Howell site
- Landscape buffer along accessory parking lot



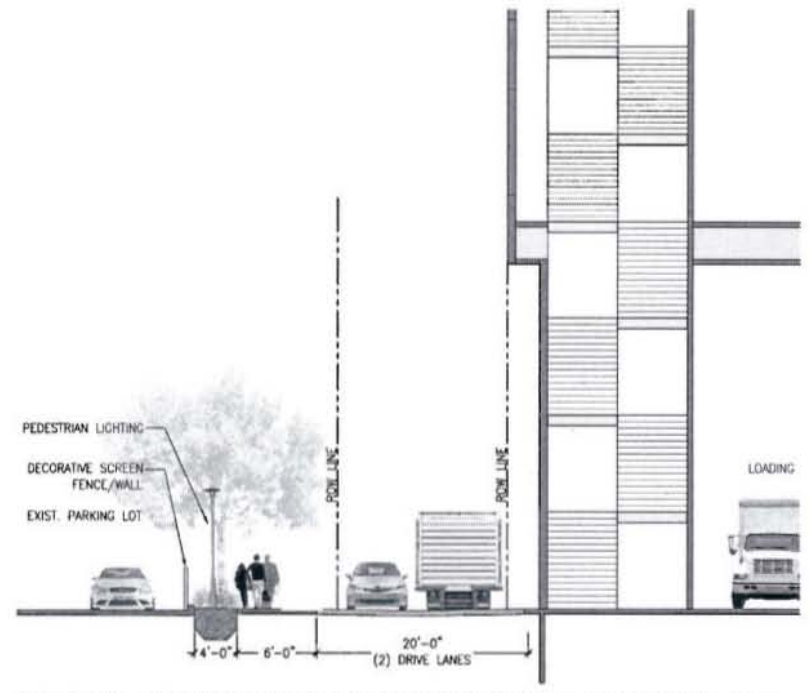
Screen wall with planting at parking lot edge
REFERENCE IMAGERY



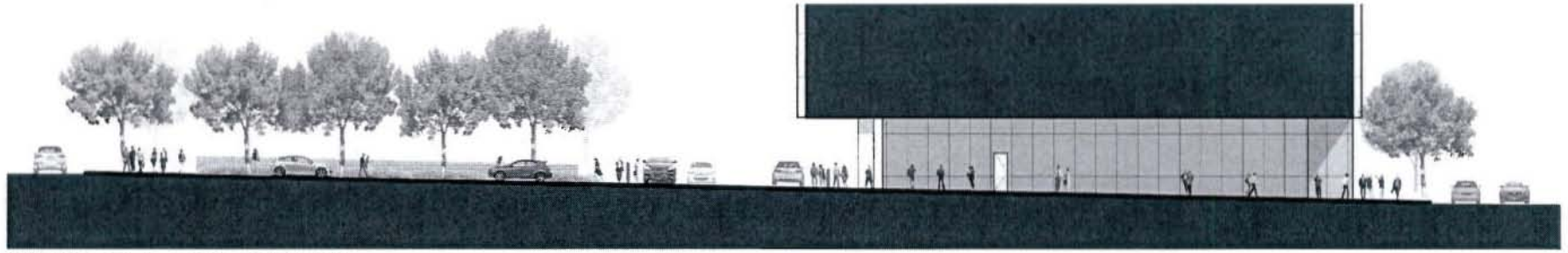
ENLARGED PLAN



SECTION AT THROUGH-BLOCK CONNECTION NEAR 8TH AVE



SECTION AT THROUGH-BLOCK CONNECTION NEAR 9TH AVE



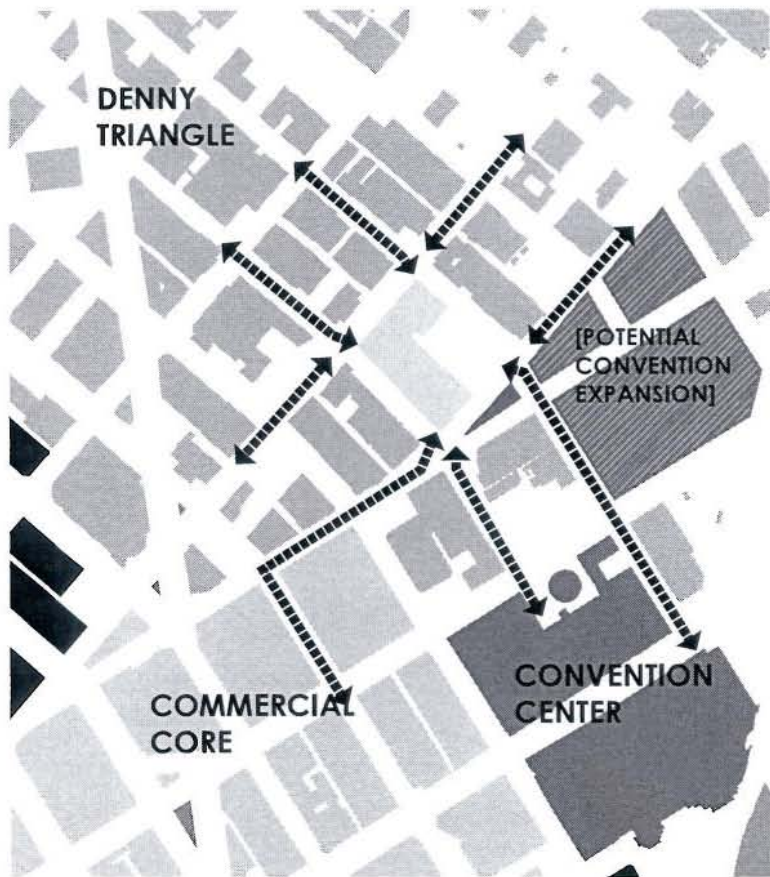
ELEVATION FACING SOUTH

3 IMPROVED DEVELOPMENT MASSING



- Site
- Park
- Office
- Residential
- Hospitality
- Commercial
- Civic

SURROUNDING USES AND PROGRAMMING

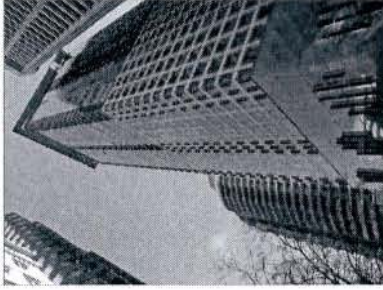


MIXED-USE, COMMERCIAL AND CONVENTION PROGRAMS

The project site is uniquely positioned at the intersection of the city's primary commercial, convention and mixed use neighborhoods. The proposed program seeks to merge these uses into a significant urban and architectural collage.

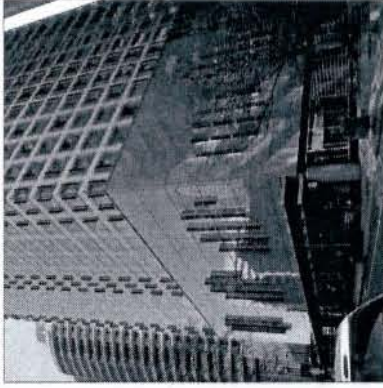
The opportunity to transfer FAR from Parcel B to Parcel A creates a public benefit of improved massing of the development of the full block by making the massing of the block biggest at the SW corner where it is a more appropriate response to the downtown commercial core. It is smaller at the N and NW edge of the block where it better relates to the lower scale of the Denny Triangle Neighborhood and the Parcel B massing will be an effective mediator of scale between the taller hotel tower and the smaller meeting/ballroom podium since the available Parcel B FAR will reduce from about 394,000 to 277,000.

NEIGHBORHOOD BUILDING EXAMPLES



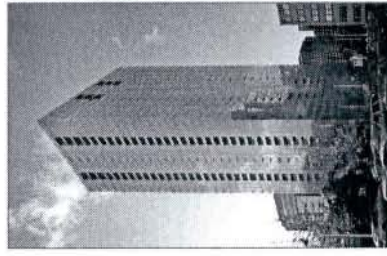
A 737 Olive Way

Olive 8, 39 story mixed-use with condominium residential and hotel uses, 2009.
Height: 459 feet



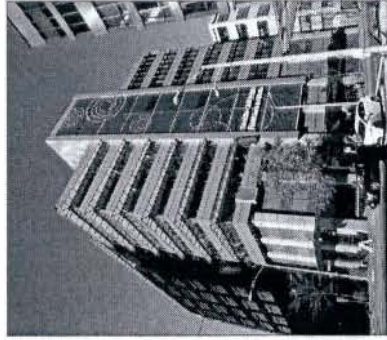
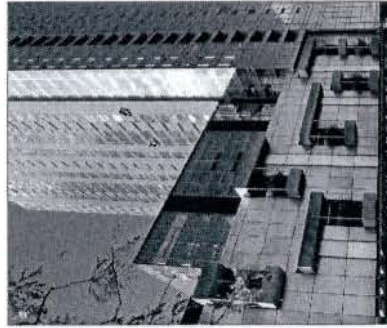
B 509 Olive Way

The Clivian, condominium residential.



C 1833 Terry Avenue

Aspira Apartments, 37-story apartment building. LMN Architects, 2009.
Height: 400 feet



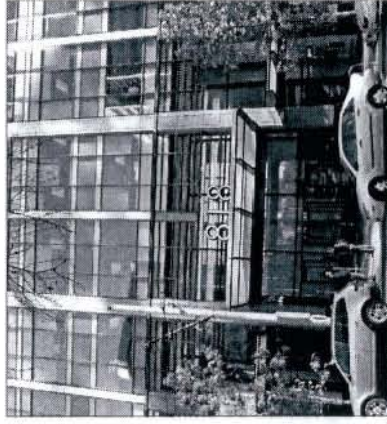
D 1900 9th Avenue

Seattle Children's Research Institute

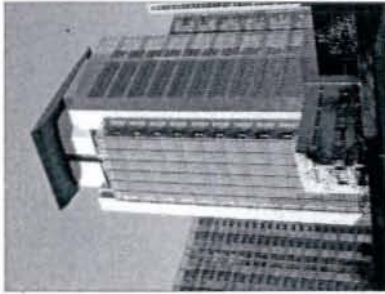


E 818 Stewart Street

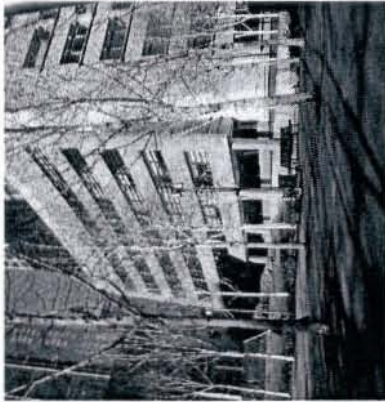
Office tower.



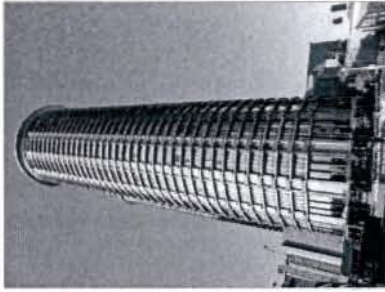
NEIGHBORHOOD BUILDING EXAMPLES (CONT)



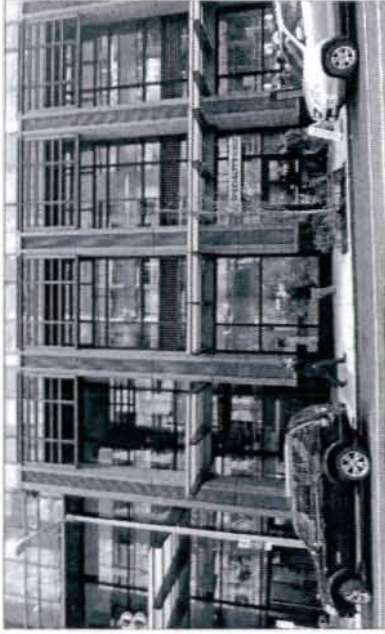
F 700 Stewart St
Federal Courthouse Building



G 1910 5th Avenue
Westin Hotel Seattle



H 1910 2nd Avenue
Office tower



K 911 Pine Street
The Paramount Theater



J 800 Convention Place
Washington State Convention & Trade Center



NEIGHBORHOOD ANALYSIS: ADJACENT STREETSCAPES



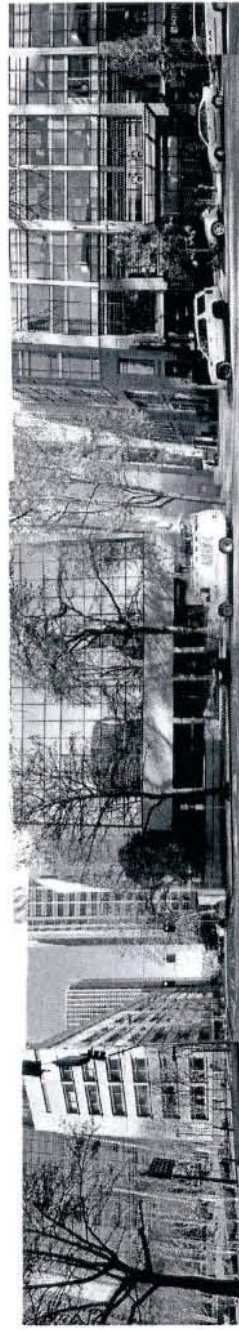
E 100 WEST WYOMING STREET/645P



F 100 WEST WYOMING STREET/645E



G 100 WEST WYOMING STREET/645M



H 100 WEST WYOMING STREET/645H

3 IMPROVED DEVELOPMENT MASSING



AREA ZONING MAP + MAXIMUM BUILDABLE ENVELOPE

Allowable Height

500 feet for commercial development
300 to 500* feet for residential development

Upper Level Setback

A continuous upper-level setback of 15' must be provided on the street frontage abutting 9th Avenue, a designated green street, above a height of 45'.

Upper-level Width Limit

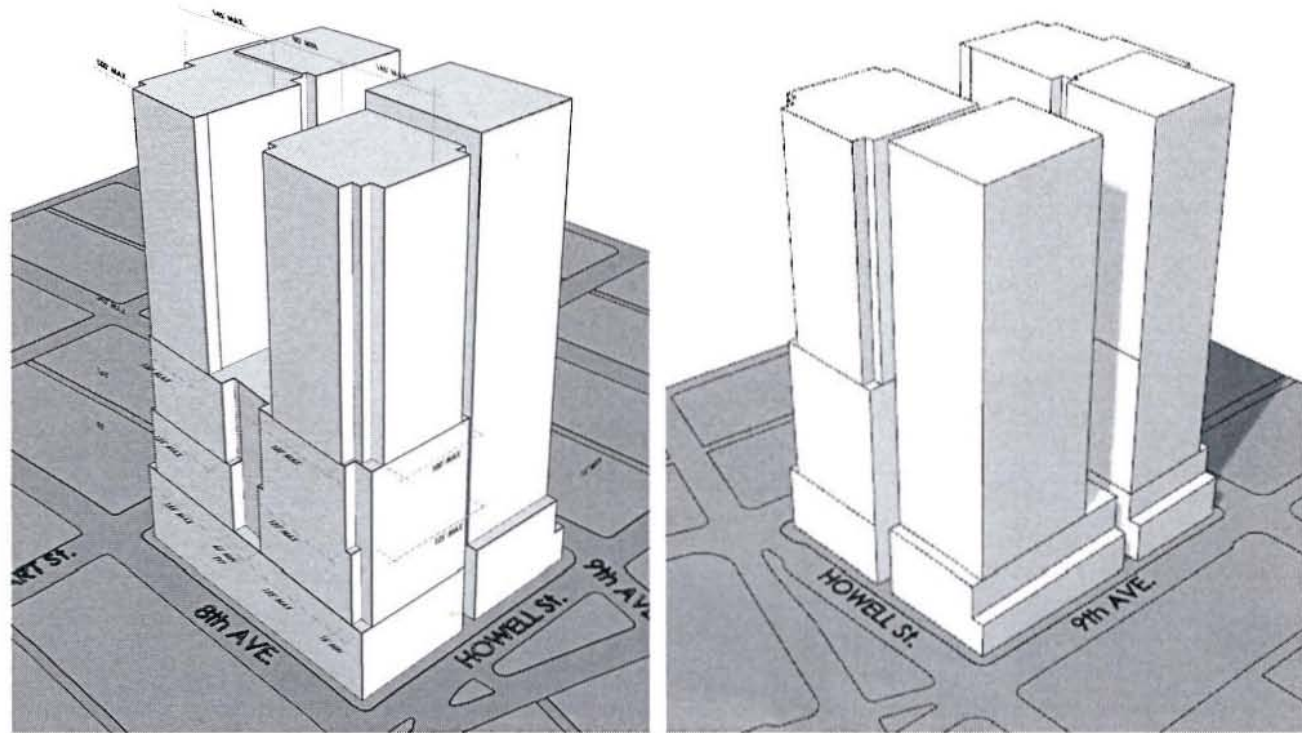
On lots that exceed 200' in width and depth the maximum facade width parallel to the North-South Avenues (i.e. 8th Avenue) is 145' above 240' in height and the tower must be separated by 80' from any other tower above 240' on the same lot.

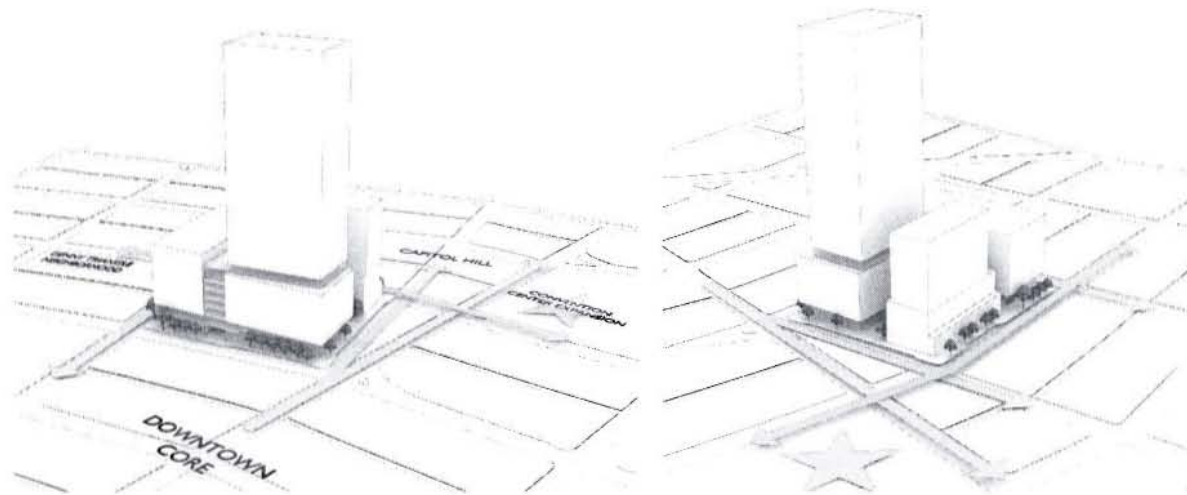
Access Opportunities and Constraints:

As shown in the urban design analysis the site is easily accessible by all modes of transportation, including buses, light rail, and streetcar. The current alley configuration directs traffic onto the site from Howell Street and 9th Avenue. The Seattle Municipal Code prefers that access to the site occur off the alley with 8th Avenue as the next best alternative.

Facade Modulation

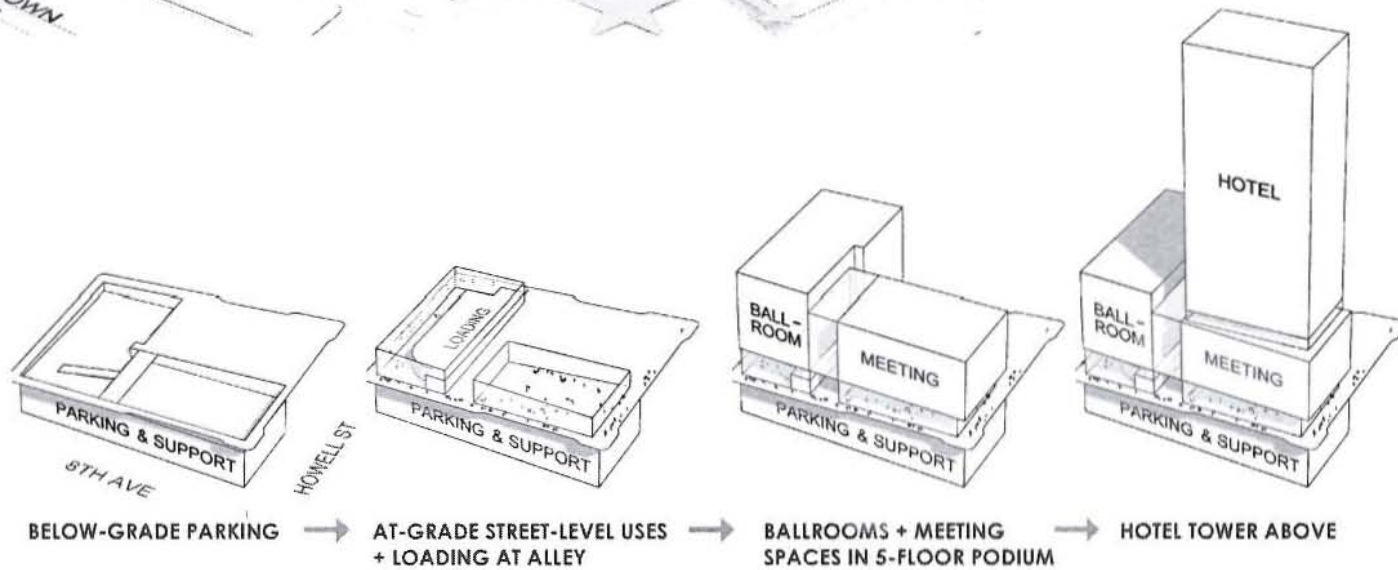
Facades must be modulated above a height of 85' or stepped back 15' for at least 60' in width. The maximum length of an unmodulated facade within 15' of the property line varies by height. Facades between 36' and 160' in elevation have a maximum width of 155'. Facades between 161' and 240' in elevation have a maximum width of 125'. Facades between 241' and 500' in elevation have a maximum width of 100'.





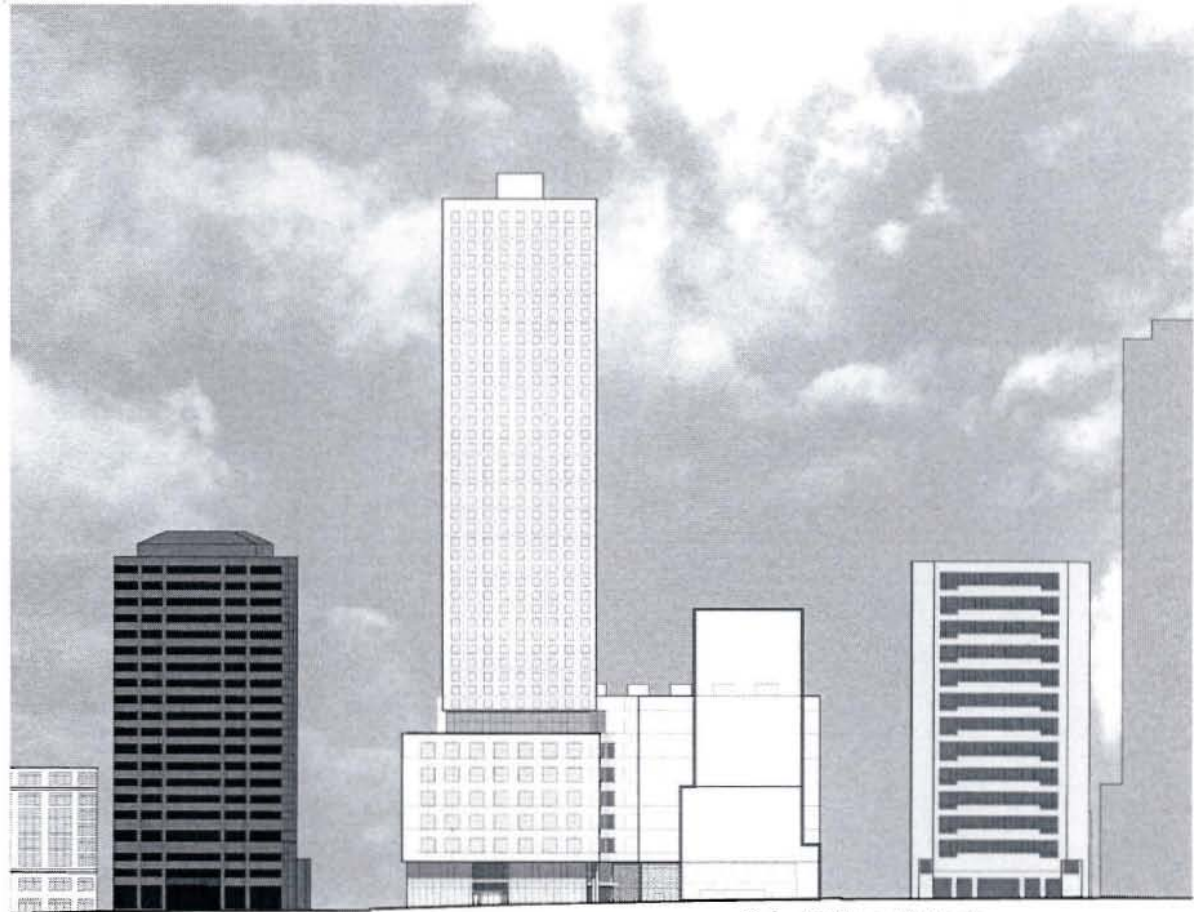
IMPROVED MASSING

The project proposes to improve the massing of the development and achieve a better relationship with the surrounding condition. The opportunity to shift FAR and building density to other parts of the block allows for a more prominent hotel tower to capture the SW corner of the site in keeping with the high rise scale of the adjacent towers in the downtown commercial core. As illustrated on the adjacent pages in the building elevations, the reduced capacity of Parcel B also responds more effectively to the surrounding building scale. The potential development of Parcel B along with the low massing of the 8th & Howell podium along Stewart Street creates an improved daylight condition at both Stewart Street and the 9th Avenue Green Street.



SOUTH ELEVATION ON HOWELL STREET

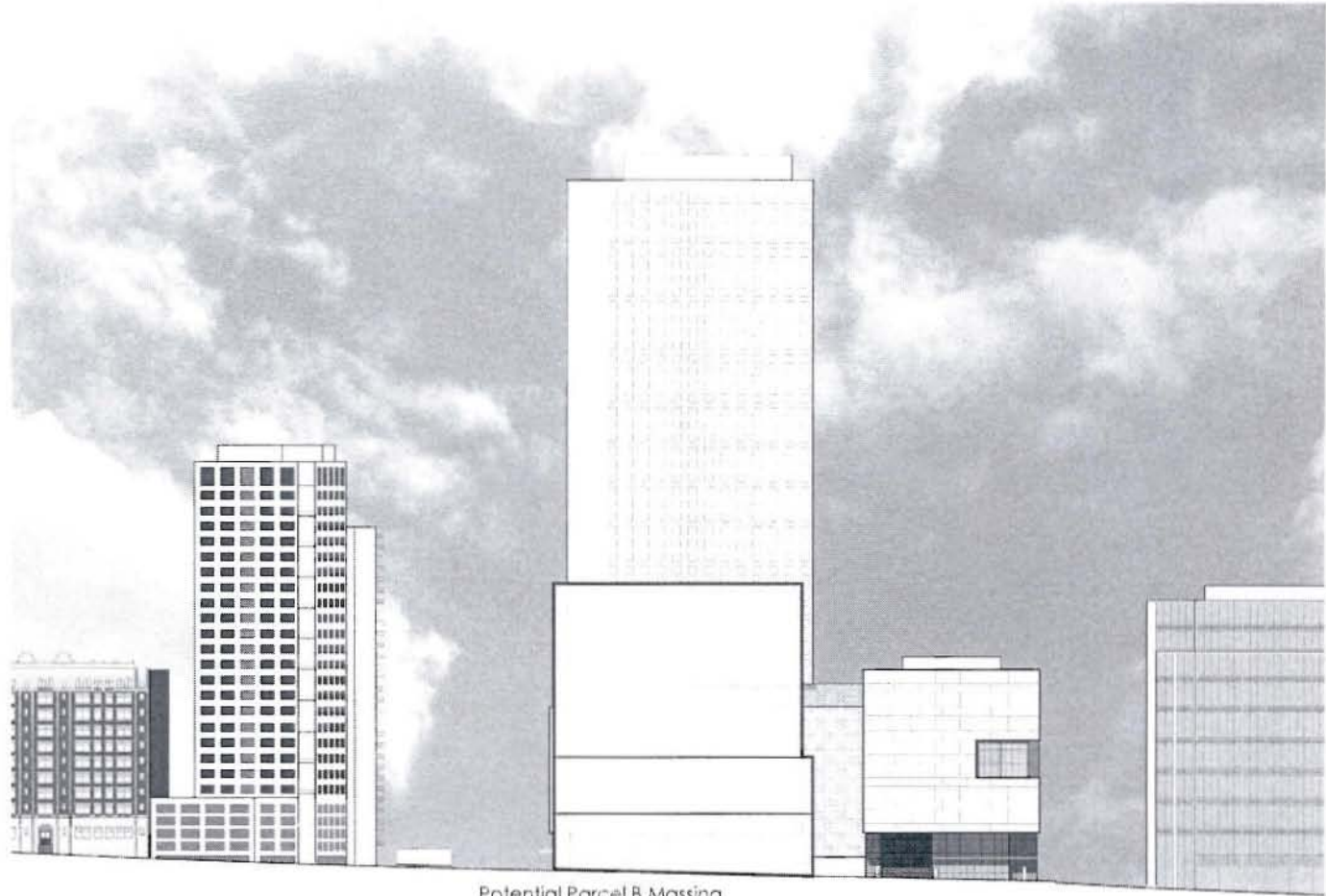
The design proposal allows for a more favorable massing along the 9th Avenue Green Street with a scale that erodes from the prominence of the hotel lower at the SW corner across the site to the podium and the low scale height of the Denny Triangle Neighborhood. The potential development of Parcel B effectively mediates the scale of buildings along south side of Howell Street.



Potential Parcel B Massing

EAST ELEVATION ON 9TH AVENUE

The transfer in FAR across the block allows for a prominent hotel tower at the corner of 8th and Howell beyond while creating a responsive layering of building scales that transition down the 9th Avenue Green Street from the convention center north into Denny Triangle Neighborhood.



Potential Parcel B Massing

**Interpretation of the Director
Under Seattle Municipal Code Title 23**

**Regarding the Use of the
Property at
808 Howell Street**

**Hearing Examiner File:
MUP-14-016/S-14-003**

**DPD Interpretation No. 14-010
(DPD Project No. 3019349)**

I. Background

This interpretation was requested on December 11, 2014¹ by attorney Peter Eglick on behalf of the Alliance for a Livable Denny Triangle and UNITE HERE Local 8 in conjunction with an appeal of the SEPA and Design Review decisions relating to Project No. 3016917, a hotel development. This is the second interpretation DPD has issued relating to that project, and the findings and conclusions of the earlier interpretation are incorporated in this interpretation to the extent that they bear on the issues raised. As authorized under SMC 23.88.020.C.3, this interpretation is provided in the form of a memorandum rather than with enumerated findings and conclusions.

II. The area of Lot B, the sending parcel, was appropriately included in the calculation of the amount of regional development credit to be applied as a basis for the proposed chargeable floor area over the base FAR on Lot A.

The request for interpretation, at Paragraph 4, points out that chargeable floor area for purchase of regional development credit is only expressly provided for when a new structure is built on a lot. We assume this statement is based on SMC 23.49.011.A.2.a. Because no new structure is proposed on Lot B, it is asserted that the area of Lot B should not be taken into consideration in determining how much of the proposed chargeable floor area should be supported through purchase of regional development credits. We do not agree.

As we understand the appellant's argument, absent a new structure on Lot B, the portion of the bonus FAR associated with the area of Lot B and supported by purchase of regional development credits cannot be transferred to Lot A. Because all of the bonus capacity must be transferred before any base FAR is transferred, no base FAR may be transferred from Lot B to Lot A either. Only bonus floor area supported by housing, child care, and other amenities and TDRs may be transferred. However, if a structure is built on Lot B, no matter how small, the remaining development credit from Lot B may be

¹ This interpretation is issued pursuant to the Hearing Examiner's order. The Department has argued that the request is not timely according to the deadlines in SMC 23.88.020.C.3. By preparing the interpretation, the Department does not concede that the request for interpretation was timely.

applied on Lot A. We can think of no policy objective that would be served by requiring that a structure be built on the sending lot in order to take full advantage of the combined-lot approach, and we do not believe that the code requires this.

Section 23.49.041 does not merely say that the development capacity of one lot may be transferred to another; it says that the lots may be “**combined**” for this purpose. This means that the property may be treated as if it were a single lot, for the purpose of determining where the total development capacity may be applied, subject to the limitations of the section. If the lots are to be combined in this manner, and for this purpose, the first .75 FAR of bonus capacity should be calculated based on the combined lot area rather than just the area of the receiving portion of the property.

Section 23.49.041 allows lots within a block to be combined for purposes of allowing some **or all** of the capacity for chargeable floor area on one lot to be used on another. Requiring that a structure be built on Lot B in order fully take advantage of the FAR associated with Lot B is inconsistent with the intent of the code that all of the capacity for chargeable floor area be available for transfer.² If such a requirement had been intended, surely it would have been expressly provided in Section 23.49.041.

The approach advocated by the appellant, under which all of the development capacity transferred from Lot B is supported by bonuses, amenities and TDRs **other than** purchase of regional development credits, is at odds with the hierarchy established in the code for features that must be used to support bonus FAR: Under Section 23.49.011.A.2.a, the **first** increment of bonus FAR above the base FAR is to be supported by purchase of regional development credits. In a DOC2 zone, the first .75 FAR of chargeable floor area provided above the base FAR must be supported through acquisition of regional development credits. That amount of bonus floor area must be supported by regional development credits before housing and child care credits, or any other amenity, may be used to support any additional bonus floor area. The approach advocated by the appellant would apply bonus FAR from Lot B based on other credits and amenities before first applying bonus FAR from Lot B based on regional development credits. This would be contrary to the priorities reflected in the code.

The request for interpretation, at Paragraph 5, suggests that the City is inappropriately giving something up by allowing the area of Lot B to be considered in determining how much regional development credit should be applied. We disagree. All of the chargeable floor area in excess of the base floor area on Lot A will be supported by credits and amenities. The code reflects a clear policy choice that regional development credit should be applied first, with the amount determined based on the full area of the property involved. We can think of no reason the priorities would differ for projects taking advantage of the combined lot development approach.

Section 23.49.041 allows otherwise separate lots to be combined, or treated as one, for the purpose of FAR standards. A new structure **is** proposed on the combined property in this case. The first increment of bonus FAR, to be supported with regional development credits, is appropriately calculated based on the entire area of the combined property.

² Although it would be possible to build a structure on Lot B that is limited to uses that are exempt from FAR calculations and thus contains no chargeable floor area, it is unclear what purpose would be served by requiring this in order to take full advantage of Section 23.49.041.

III. The massing of the proposed development, with structure bulk concentrated at the southerly corner in exchange for reduced bulk elsewhere (including on Lot B) is a significant public benefit that serves as an appropriate basis for approving the “combined lot development” approach.

A. It is not necessary to show that a public benefit pointed to as a basis for approval of a combined lot development could occur only in the context of a combined lot development.

As the appellant notes, in order to authorize the combined lot development approach under SMC 23.49.041.D, the Director must determine that a significant public benefit will occur *as a result*. One way to read this would be as a “but-for” test, accepting a particular public benefit as a basis for allowing the approach only if that public benefit could not otherwise occur. However, the introductory language in Section 23.49.041.D must be taken in context: Nine examples are provided of public benefits that could satisfy the requirement, and for most of those examples, it is unlikely that the identified benefit feature would be entirely dependent on the shifting of development potential that occurs under the combined lot development approach. For example, it is difficult to see how application of the combined lot development approach would be necessary in order to preserve a landmark structure on a different block, or provide a grocery store, or a clinic. Taken in the context of the section, we read the introductory language of SMC 23.49.041.D as requiring that the proposed development that would occur *as a result of* applying the combined lot development approach to FAR measurement *must include* a significant public benefit.

B. The massing in this case, with bulk concentrated in the hotel project in exchange for less bulk elsewhere, truly is the result of shifting development potential from Lot B to Lot A.

Even if we were to conclude that a “but-for” test should apply and that the public benefit proposed as a basis for allowing the combined-lot approach much flow directly from the operation of that approach, the improved massing pointed to by the applicants in this case actually does stem from the application of the provision. The extent to which development potential was shifted from Lot B to Lot A, allowing the proposed massing, relies on the operation of the combined-lot development approach.

C. The proposed massing in this case provides a significant public benefit.

The suggestion that the asserted benefit is the increased bulk in the area of the hotel tower alone is simplistic: Massing is as much about where the structures won’t be as it is about where they will be. Potential future development on Lot B is significantly reduced as a result of the application of the combined lot development approach in this case.

As pointed out in the applicant’s submittal, the proposed massing of the development is designed to achieve a better relationship with the surrounding conditions. The prominent hotel tower is proposed on the southernmost corner of the block, closest to the tall buildings in the downtown commercial core, leaving less proposed development and less development potential on the remainder of the property, including on Lot B, which fronts along Ninth Avenue, designated as a green street. Placement of the tower on the south corner of the block helps to minimize shading of other properties and of the green street, and separates the bulkiest part of the development from adjacent properties with less intensive

zoning or developments. The fact that the proposed massing is desirable and beneficial is reflected by the approval of this massing by the Design Review Board.

It is the Department's view that the improved massing that is possible as a result of application of the combined-lot approach on its own provides sufficient public benefit to serve as a basis for allowing that approach.

D. "Improved massing of development" may appropriately be considered as a basis for approving the combined lot development approach for FAR, even if the massing of the development was considered by the Design Review Board.

The request for interpretation asserts that mere compliance with regulations such as code standards should not constitute a public benefit that provides the basis for approving a combined lot development. While we agree that bare compliance with applicable development standards would be a meager basis for approving a combined lot development, we find nothing in the code that suggests inclusion of a particular feature, use or configuration cannot at the same time satisfy a standard or design review guideline and also provide a public benefit that is worthy of allowing a combined lot development.

In particular, if the Design Review Board approves a project in part based on the inclusion of a particular feature, we see no basis in code or logic for saying that that desirable feature cannot also be counted as a public benefit for purposes of allowing a combined lot development. "Improved massing of development on the block that achieves a better relationship with surrounding conditions," while undeniably something the Design Review Board would pay attention to, is also specifically listed as an example of a significant public benefit that can serve as a basis for allowing the combined-lot approach.

In any case, the desirable massing in this case results from application of the combined lot development approach. It would have been beyond the authority of the Design Review Board to require that the applicants adopt this approach and provide a public benefit to support it. So, although the Design Review Board approved of the proposed massing, it is not fair to say that this benefit has been double-counted, as it cannot be said to have been required through design review.

IV. The through-block pedestrian connection also may be counted as a significant public benefit serving as a basis for allowing the combined-lot development approach.

Although it is rightly noted that the proposed pedestrian connection through the block would not shorten the distance of a pedestrian's trip around the property, it would provide a respite from the noise and bustle of the sidewalks that run alongside the streets. In addition, a portion of the path would pass under the proposed building, providing weather protection. The pedestrian path through Lot A could be provided even if a combined-lot development were not approved, but the portion of the path across Lot B, providing access to Ninth Avenue, would not be provided in the absence of a combine-lot development approach. However, even if we were to conclude that the proposed pedestrian path was not dependent upon allowing the combined-lot development approach, it is a genuine amenity specifically offered in exchange for allowance of the combined-lot development approach, and may fairly be pointed to as a further basis, in addition to the improved structural massing, for approving that approach.

- V. **Approval of the project based on the combined-lot development approach rather than the mistaken single-lot approach does not require further review by the Design Review Board.**
 - A. **The Design Review Board plays no role in deciding whether a project is eligible for the combined lot approach.**

SMC 23.49.041.D specifies that the determination whether a project qualifies for the one-lot development approach is to be made by the Director as a Type I decision. If the intent had been to delegate this decision to the Design Review Board, the code would have expressly done so.

- B. **The design of the proposed structure, applying the combined lot provision for FAR measurement, does not differ in any significant way from what was considered and approved by the Design Review Board.**

As noted in the request for interpretation, the massing of the structure is within the purview of the Design Review Board. However, that massing is not changed in any way by the application of the combined lot development approach. The package submitted by the applicants describing the benefits proposed as a basis for allowing the combined-lot development approach provided more details about the pedestrian pathway than the Design Review Board had reviewed, but these additional proposed enhancements do not significantly alter the project, and do not provide a basis for returning the project to the Design Review Board for further review.

The request for interpretation, in Item 7 on Page 5, asserts that the Design Review Board reviewed the project assuming code compliance, without knowing the building exceeded the maximum FAR, and that review by the Design Review Board based on a code-compliant project has yet to occur. We disagree: Although there may have been a misunderstanding about *how* the FAR standards were met, the proposed structures and improvements considered by the Design Review Board **were code-compliant**, subject to the Department's Type I determination that the project qualified for the combined lot approach to FAR measurement. There is no reason that the path used for meeting the FAR standard would have affected the Design Review Board's recommendation.

Decision

The credits and amenities proposed to serve as a basis for proposed bonus floor area for Project No. 3016917 were properly calculated, and in particular the FAR associated with purchase of regional development credits was properly calculated based on the combined area of Lots A and B. The improved massing achieved through application of the combined lot development approach is a significant public benefit sufficient to support the application of that approach, and the proposed provision of a through-block pedestrian path provides a further significant public benefit that also supports allowing the combined lot development approach to be applied.

Entered January 5, 2015.



Andrew S. McKim
Land Use Planner – Supervisor

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of

**ALLIANCE FOR A LIVABLE DENNY
TRIANGLE and UNITE HERE LOCAL 8**

from a decision and interpretation by the
Director, Department of Planning and
Development, on a Master Use Permit

Hearing Examiner File:
**MUP-14-016(DR,W)
S-14-003**

Department Reference:
3016917

**ORDER ON APPLICANT'S
MOTION TO DISMISS
FOR LACK OF STANDING**

The Director of the Department of Planning and Development ("Department") issued a decision on October 13, 2014 approving a proposal by R.C. Hedreen Company ("Applicant") to construct a hotel structure on property at 808 Howell Street. Pursuant to the State Environmental Policy Act, Chapter 43.21 SMC, as adopted by the City of Seattle at Chapter 25.05 SMC ("SEPA"), the Department had prepared a Supplemental Environmental Impact Statement ("SEIS") that analyzed the environmental impacts of the proposal, and the Department determined that the SEIS presented an adequate analysis of the proposal's impacts. The Appellants, Alliance for a Livable Denny Triangle ("Alliance") and Unite Here Local 8 ("UNITE HERE") (jointly "Appellants"), filed an appeal of the Department's decision on October 24, 2014, and a "Supplemented Notice of Appeal" on October 27, 2014. The Applicant filed a motion to dismiss the appeal for lack of Appellant standing to bring it, and the motion was fully briefed.

SMC 25.05.680.A.1 provides the SEPA appeal procedures for proposals that require a Master Use Permit ("MUP") for which the Department is the lead agency under SEPA. SMC 23.76.022 states that "appeals may be initiated by any person significantly affected by or interested in the permit." However, SEPA is a state law that is administered at the local level by local jurisdictions. The applicable state statute, RCW 43.21C.075(4), authorizes appeals by persons "aggrieved by agency action" and is controlling.

SEPA grants an aggrieved person the right to judicial review of an agency's compliance with its terms. *Harris v. Pierce County* 84 Wn. App. 222, 232, 928 P.2d 1111 (1996) ... "A party wishing to challenge actions under SEPA must meet a two-part standing test: (1) the alleged endangered interest must fall within the zone of interests SEPA protects, and (2) the party must allege an injury in fact."

Lands Council v. Washington State Parks and Recreation Com'n., 176 Wn. App. 787, 799, 309 P.3d 734 (2013) quoting *Kucera v. State Dep't of Transp.*, 140 Wn. 2d 200, 212, 995 P.2d 63 (2000).

The zone of interests protected by SEPA is extensive, and the first part of the standing test "is easily met in environmental suits because of the abundance of laws affecting use of our

natural resources." *Save a Valuable Environment (SAVE) v. City of Bothell*, 89 Wn. 2d 862, 866, 576 P.2d 401 (1978). See *Lands Council v. Washington State Parks and Recreation Com'n. supra*. The appeal states that the Appellants include members "who work and/or live in the impact area for the proposed project and who regularly utilize the streets, pedestrian walkways, and public amenities in the project impact area." It states that those members "reside, work, drive, walk, ride (on public transit) and utilize public amenities within the project impact area," and will be "immediately and directly impacted by the proposed project through its impacts on: traffic; housing; height, bulk, and scale; pedestrian circulation; shadowing; and other aspects and elements of the environment" and by the "inadequacy of the SEIS". Supplemented Notice of Appeal at 1-2. Thus, the interests sought to be protected by this appeal are within the zone of interests protected by SEPA.

The Applicant contends that the Appellants' members do not meet the "injury in fact" element of the standing test for SEPA. That "element is satisfied when a plaintiff alleges the challenged action will cause 'specific and perceptible harm.'" *Kucera v. Department of Transp. supra* at 213 quoting *Leavitt v. Jefferson Cnty.*, 74 Wn. App. 668, 679, 875 P.2d 681 (1994). "A sufficient injury in fact is properly pleaded when a property owner alleges 'immediate, concrete and specific' damage to property, even though the allegation may be 'speculative and undocumented.'" *Id.*

In *Kucera*, the court determined that private property owners who had alleged damage to both private and public shorelines from a passenger-only ferry had met the requirements for pleading an injury in fact and were seeking to protect more than an economic interest. In *Lands Council v. Washington State Parks and Recreation Com'n. supra*, the Commission was unsuccessful in claiming that a non-profit organization would be unable to show that immediate injury would flow from a Commission decision, and the Commission "did not dispute that expansion of the ski area would cause injury in fact to members of the Lands Council by limiting or preventing their present use of the area." *Id.* at 799. And in *Leavitt v. Jefferson Cnty. supra*, the court "[assumed] Leavitt [had] established standing for purposes of review" although "Leavitt's alleged impacts are speculative and undocumented; they are possible, not necessary, impacts of the Board's adoption of the Code. However, the claimed impacts are within the interests protected by SEPA and Leavitt alleges that they will directly impact her property and interests." *Id.* at 679 (emphasis added). In response to the Applicant's motion, some of both Appellants' members produced declarations showing that they reside and/or work near the proposal site and alleging that the proposal will have adverse housing, light, noise, and transportation impacts that will affect them. The Appellants' members meet the two-part test for standing under SEPA.¹

The Applicant also challenges the Appellants' standing to bring this appeal on behalf of their members. The court in *SAVE v. City of Bothell, supra*, citing reasons of efficiency and ease of access to the judicial process for individuals with common interests, stated that it agreed with the position taken by other courts, "that a non-profit corporation or association which shows that one or more of its members are specifically injured by a government action may

¹ The Applicant points out that the Appellants reside near the proposal site but do not own property there, unlike the plaintiffs in some of the reported SEPA cases. However, with the exception of economic impacts, it would seem both nearby renters and nearby owners would suffer similar impacts from the proposal, and the Applicant does not cite authority for distinguishing between the two groups.

represent those members in proceedings for judicial review." *Id.* at 867. More recently, the court in *Magnolia Neighborhood Planning Council v. City of Seattle*, 155 Wn. App. 305, 313, 230 P.3d 190 (2010) reached a similar conclusion on the issue of a non-profit corporation's standing in a SEPA case. It found that "Magnolia has established standing: it is a party representing the interests of those owning property adjacent to a City-proposed project and who allege that the project will injure their property without SEPA review." The Appellants clearly have standing under this standard in that they are representing the interests of their members who meet the two-part standing test under SEPA.

The Applicant relies on a line of cases which hold that an association may file an action on behalf of its members when: 1) the members would have standing to bring the action; 2) the interests the association seeks to protect are germane to its purpose; and 3) neither the claim asserted nor the relief requested requires the participation of the individual members. *See, e.g., Riverview Community Group v. Spencer and Livingston*, 181 Wn. 2d 888, 894, 337 P.3d 1076 (2014)(action for injunction and to impose equitable covenant on real property); *Five Corners Family Farms v. State*, 173 Wn. 2d 296, 304, 268 P.3d 892 (2011)(action for declaratory judgment and injunction related to withdrawal of public groundwater); *International Ass'n of Firefighters v. Spokane Airports*, 146 Wn. 2d 207, 213-214, 45 P.3d 186 (2002)(conversion action seeking reimbursement of funds from employer).²

Assuming that the three-part test advocated by the Applicant applies to this appeal, the case of *Riverview Community Group v. Spencer and Livingston supra* is instructive. In *Riverview*, some of the homeowners in subdivisions developed by the defendants formed the Riverview Community Group to file a lawsuit seeking to prevent the defendants from selling off a former golf course as individual home sites. The court said of the group:

Riverview has satisfied this [three-part] test. Several of its members have filed sworn declarations that establish the basis of a claim, satisfying the first element of [the test]. The homeowners formed Riverview with the purpose of defending their interests, satisfying the second element. Finally, Riverview can pursue this claim for equitable or injunctive relief without the participation of individual members.

Id. at 894. As stated above, both Appellants have members who would have individual standing to bring this action and thus, both Appellants meet the first element of the three-part test.

The facts set forth in the Declarations of Carla Barrick, Chase J. Craig, Tim Allen, Kaaren Black, Melody Swett, and Stefan Moritz, filed in support of the Appellants' opposition to the Applicant's motion, establish that, as in *Riverview*, the members formed Appellant Alliance "with the purpose of defending their interests". According to the declarations, neighbors first came together informally. They researched and discussed the proposal and submitted comments on it. When Ms. Barrick found an article quoting a member of UNITE HERE

² The Applicant did not cite, and the Examiner has not found a case involving a challenge under SEPA in which the court applied this three-part test to resolve the question of an organization's standing to represent its members.

expressing concerns similar to those of her neighborhood group, she contacted that person. The person was leaving UNITE HERE and gave the neighbors the name of Stefan Moritz to contact at UNITE HERE. They did so, and invited him to attend their next meeting. Meanwhile, the neighbors attended several meetings of the Design Review Board on the proposal. Mr. Moritz kept them updated on the progress of the proposal, and at their meetings, they discussed the possibility of appealing the Department's upcoming decision on it. Although not stated in the declarations, it can be assumed that they also discussed the issue of financing the appeal, as the Alliance had no funds to do so. Declaration of Spencer Hall, Exhibit B, Excerpts of Deposition Carla Barrick at 76-77.

In October of 2014, when the Department's decision was imminent, the group incorporated, using documents prepared by the attorney for UNITE HERE. The Articles of Incorporation³ state that the Alliance is organized to advocate for sustainable development in Downtown Seattle, including the Denny Triangle neighborhood; to advocate for specific issues, including traffic solutions and affordable housing; to educate and provide information to community and government officials; and to undertake "litigation, on its own and on behalf of its members" that is "necessary, useful or desirable" to further the accomplishment of the Alliance's other purposes, and to do so "alone or in conjunction or cooperation with others, whether such others be persons or organizations of any kind or nature". *Id.* at 1. The Alliance satisfies the second element of the three-part test.⁴

With respect to the third element of the test for standing, the claims made and relief requested by the Alliance do not require the participation of its individual members. The Alliance has standing to bring this appeal under the three-part test advocated by the Applicant.

As noted, Appellant UNITE HERE has members who would have individual standing to file the appeal. And the claims made and relief requested in the appeal do not require the participation of UNITE HERE's individual members. Thus, UNITE HERE meets the first and third elements of the three-part test for standing. The Applicant asserts that UNITE HERE has not shown that the organizational purpose of UNITE HERE Local 8, as opposed to the national organization, is germane to the issues in this appeal. Section 5 of the national constitution states the objectives of the national union as uniting all workers for the following purposes, among others:

-
- iv. to advance the economic, social and political interests of UNITE HERE, its affiliates, their members and their dependents;
 - v. to facilitate the moral and social advancement of its members' condition and status in life;
 - vi. to seek the advancement of democracy and the improvement of general economic, social, political and educational conditions and standards of workers in the countries of North America
-

³ Declaration of Spencer Hall, Exhibit B, Exhibit 6 to the Deposition Carla Barrick.

⁴ In an opinion concurring with this section of the majority opinion in *Riverview*, Justice Gordon McCloud points out that in some cases, organizations are formed with the sole purpose of bringing a lawsuit, and that there is no authority barring such organizations from filing suit on behalf of their members. *Id.* at 902-03.

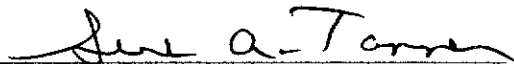
- ix. to engage in charitable, cultural, social, legislative, educational, civic, welfare, community, political and other activities which directly or indirectly advance such objectives;
- x. to disseminate information among its members regarding economic, social, political, and other matters affecting their lives and welfare....

Declaration of Erik Van Rossum at 3-4. These objectives are germane to the interests UNITE HERE seeks to protect in this appeal.

The Applicant argues that the broad objectives set forth in the national constitution do not establish UNITE HERE's purposes because the national constitution also provides that "[a]ffiliates may adopt constitutions and/or by-laws not inconsistent with this Constitution," and UNITE HERE may have adopted "more limited or different purposes." Declaration of Colin M. George in support of R.C Hedreen's reply memorandum; R.C. Hedreen's reply memorandum at 6. However, the language quoted by the Applicant is preceded by the statement that "[t]his document is the official Constitution of UNITE HERE. *Id.* Therefore, the national constitution governs UNITE HERE and would apply to the extent that UNITE HERE's local constitution may have omitted some of the national constitution's objectives. Thus, it is more probable that the phrase "[a]ffiliates may adopt constitutions and/or by-laws not inconsistent with this Constitution," means that UNITE HERE's local constitution, if it exists, may include objectives in addition to those listed in the national constitution as long as they are not inconsistent with the national constitution. UNITE HERE has standing to bring this appeal.

The motion is **DENIED**.

Entered this 13th day of May, 2015.


Sue A. Tanner, Hearing Examiner
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**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

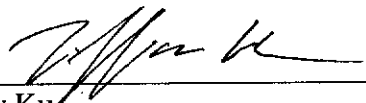
CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Order on Applicant's Motion to Dismiss for Lack of Standing and Order on Motions to Dismiss and for Partial Judgment** to each person listed below, or on the attached mailing list, in the matter of **Alliance for a Livable Denny Triangle and Unite Here Local 8**, Hearing Examiner Files: **MUP-14-016 (DR, W) and S-14-003**, in the manner indicated.

Party	Method of Service
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Dated: May 13, 2015



 Tiffany Ku
 Legal Assistant

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of

**ALLIANCE FOR A LIVABLE DENNY
TRIANGLE and UNITE HERE LOCAL 8**

from a decision and interpretation by the
Director, Department of Planning and
Development, on a Master Use Permit

Hearing Examiner File:
**MUP-14-016(DR,W)
S-14-003**

Department Reference:
3016917

**ORDER ON MOTIONS TO
DISMISS AND FOR PARTIAL
SUMMARY JUDGMENT**

R.C. Hedreen Company, the applicant, filed a motion to dismiss certain issues in this appeal for lack of jurisdiction and lack of merit. The Director of the Department of Planning and Development filed a motion for partial dismissal and partial summary judgment on certain appeal issues. The motions were fully briefed, and the Hearing Examiner has considered all documents submitted on the motions as well as the case file for the appeal.

Facts

The Director of the Department of Planning and Development (“Department”) issued a decision on October 13, 2014, approving a proposal by R.C. Hedreen Company (“Applicant”) to construct a hotel structure on property at 808 Howell Street. Pursuant to the State Environmental Policy Act, Chapter 43.21C RCW, as adopted by the City of Seattle at Chapter 25.05 SMC (“SEPA”), the Department had prepared a Supplemental Environmental Impact Statement (“SEIS”) that analyzed the environmental impacts of the proposal.¹ The Department determined that the SEIS presented an adequate analysis of the proposal’s impacts.

On October 24, 2014, the Appellants, Alliance for a Livable Denny Triangle (“Alliance”) and Unite Here Local 8 (“Unite”) (jointly “Appellants”), filed an appeal of the Department’s decision and a request for a code interpretation, which challenged the Department’s conclusion that the property could be treated as a single site. The property is comprised of two lots that are separated by an “L-shaped” alley. The lot to the north and west of the alley is referred to as “Lot A,” and the lot to the south and east of the alley is referred to as “Lot B”. The interpretation request argued that development on Lot A could exceed the maximum allowable floor area ratio (“FAR”) only by using the “combined lot development” process provided in SMC 23.49.041. On October 27, 2014, the Appellants filed a “Supplemented Notice of Appeal”.

The Department determined that treating the property as a single site for purposes of floor area ratio (“FAR”) calculations was, in fact, contrary to the Code and the Applicant was required to provide revised FAR calculations and documentation showing how the proposal met the requirements for combined lot development. The Applicant submitted the requested analysis approximately two weeks later. The following day, December 2, 2014, the Department issued a “Type I” land use

¹ The SEIS also analyzed the impacts of an alternative project at the same location that would fill the entire block and require an alley vacation.

decision determining that the proposal met the Code's requirements for a combined lot development, including the requisite "significant public benefit".² On the same day, the Department issued Interpretation No. 14-009, which agreed with the Appellants' position, that the property could not be treated as a single site. Rather than withdrawing the Director's decision, which was based on a proposal that involved treating the subject property as a single site for purposes of FAR calculations, the Department analyzed in the Interpretation the proposal's compliance with the requirements for a combined lot development and determined it met all Code requirements for such a development.

A prehearing conference was held in the appeal on December 3, 2014. Because the Interpretation cited a different basis for approving the proposal, which included a public benefit determination not present in the Department's analysis of the proposal as a single site, the Appellants asserted that the Department had issued a new Type I decision that could be appealed via a request for an interpretation under SMC 23.88.020.C.3.c. The Department disagreed, arguing that in light of the fact that the Interpretation agreed with the Appellant's position, the Appellants' interpretation appeal was moot. The Applicant also disagreed with the Appellants, reasoning that any new request for an interpretation would be untimely under the Code. Although the Director's decision was not based on a proposal that used the combined lot approach, the Applicant reasoned that, as part of the Appellants' original interpretation request, they should have requested an interpretation of whether the proposal could be approved using that approach. The Examiner agreed that a new Type I decision had been issued, that the Appellants had a right to appeal it via a request for interpretation under SMC 23.88.020, and that the appeal would be consolidated with this appeal in order to avoid the delay and potential for the multiple appeals and hearings that could result if the matter were instead remanded to the Department.

The prehearing order in this case granted the Appellants the opportunity to request an interpretation from the Department on the proposal's use of the combined lot approach and set a date for the Department to issue the interpretation. The Appellants filed their "Supplement to Request for Interpretation" concerning the proposal on December 11, 2014. The supplement challenged the Department's application of Code provisions on transfer of floor area between lots and its public benefit determination, and asserted that the public benefit determination must be reviewed by the Design Review Board ("DRB"). The request also stated that the "Alliance incorporates in its pending Hearing Examiner appeal as an additional subject of appeal the issues raised in this Supplement as well as any Department response to this Supplement that is inconsistent in whole or in part with the Alliance's requested response and outcome."³ In response to the request, the Department issued Interpretation No. 14-010 on January 5, 2015, affirming its FAR calculations and public benefit determination for the proposal, and concluding that approval of the proposal on a combined lot development basis rather than as a single lot did not require further DRB approval.

Motions

Standard of Review

Rule 3.02(a) of the Hearing Examiner Rules of Practice and Procedure (HER) provides that an appeal "may be dismissed without a hearing if the Hearing Examiner determines that it fails to

² See SMC 23.49.041.D.

³ Letter from Peter J. Eglück to DPD Code Interpretation and Implementation Group and Diane Sugimura, dated 12/11/14.

state a claim for which the Hearing Examiner has jurisdiction to grant relief or is without merit on its face, frivolous, or brought merely to secure delay." A motion to dismiss is treated as a motion for summary judgment when matters outside the pleadings are included with the motion and considered by the decision maker. *Sea-Pac v. United Food and Commercial Workers Local Union 44*, 103 Wn.2d 800, 802, 699 P.2d 217 (1985).

Quasi-judicial bodies, like the Hearing Examiner, may dispose of an issue summarily where there is no genuine issue of material fact. *Kettle Range Conservation Grp. v. Dep't of Natural Res.*, 120 Wn.App. 434, 456, 85 P.3d 894 (2003). HER 1.03(c) states that for questions of practice and procedure not covered by the HERs, the Examiner "may look to the Superior Court Civil Rules for guidance." Civil Rule 56(c) provides that a motion for summary judgment is properly granted where "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." The moving party must demonstrate the absence of a factual dispute, and all facts and reasonable inferences must be considered "in a light most favorable to the nonmoving party." *City of Lakewood v. Pierce Cty.*, 144 Wn.2d 118, 125, 30 P.2d 446 (2001)(citations omitted). Once the moving party demonstrates the absence of an issue of material fact, the burden shifts to the nonmoving party to "set forth specific facts showing that there is a genuine issue for [hearing]." CR 56(e).

Appeal Issue 4.C – Design Review Process

The Applicant and Department seek dismissal of appeal issue 4.C, arguing that the Examiner lacks jurisdiction over procedural issues related to the design review process. Issue 4.C reads as follows: "The Design Review Process Was Conducted and the Board's Guidance and Recommendation Decisions Were Affected With Fundamental Errors".⁴ Requirements for DRB composition, site visits, record review, and recommendations are expressly cited in the appeal, and additional procedural requirements are listed in the Appellants' Opposition to Respondents' Non-Standing Dispositive Motions ("Appellants Brief in Opposition") at pages 5-8.

SMC 23.76.022.C.6 provides that in appeals of "Type II" MUP decisions, the Examiner

shall entertain issues cited in the appeal that relate to compliance with procedures for Type II decisions as required in this Chapter 23.76, compliance with substantive criteria, determinations of nonsignificance (DNSs), adequacy of an EIS upon which the decision was made, or failure to properly approve, condition, or deny a permit based on disclosed adverse environmental impacts, and any requests for an interpretation included in the appeal or consolidated appeal pursuant to Section 23.88.020.C.3.

Most design review decisions, including the Department's design review decision in this case, are Type II decisions. See SMC 23.76.006.C.2.e. Nonetheless, nothing in SMC 23.76.022, or in Chapter 23.41 SMC, which governs the design review process, gives the Examiner jurisdiction over issues that relate to the chapter's numerous procedural requirements. The Appellants' briefing argues that it would be appropriate for the Examiner to have jurisdiction over claims related to the procedural

⁴ Supplemented Notice of Appeal at 4.

requirements in Chapter 23.41, but that argument must be addressed to policy-makers, not to the Examiner.

The Appellants cite SMC 23.41.014.F.2, apparently as a “substantive [criterion]” that was not met in this case.⁵ See SMC 23.76.022.C.6. SMC 23.41.014.F.2 states that “[p]rojects subject to design review must meet all codes and regulatory requirements applicable to the subject site, except as provided in Section 23.41.012” concerning development standard departures. Even if this subsection could be construed to be a substantive criterion and within the Examiner’s jurisdiction on appeal, it could not have affected the validity of the DRB’s decision. It appears within the portion of SMC 23.41.014 that is addressed to the “Director’s Decision,” not within the provisions governing actions required of the DRB. Moreover, the subsection does not state at what point in the application process a project must meet all code requirements. Design review and the MUP process run in parallel. This subsection merely states that except as allowed through the departure process, projects that are subject to design review must also meet code and regulatory requirements at some point prior to the Director’s decision. The Applicant’s motion to dismiss is **GRANTED**, and the Department’s motion is **GRANTED IN PART**. Appeal issue C is **DISMISSED** to the extent that it relates to the procedural requirements of Chapter 23.41 SMC because the Examiner lacks jurisdiction over those requirements.

The Appellants also allege that some of the facts of this case are similar to a recent case before the Examiner that resulted in a remand to the Director. The remand required a return to the DRB for it to review its recommendation in light of corrected direction about the application of a Design Guideline concerning height, bulk and scale together with the design implications of a required reduction in FAR discovered after the DRB had considered the proposal.⁶ The Department argues that the two cases are distinguishable on their facts. However, the briefing and declarations addressed to this issue demonstrate that it presents some issues of material fact that cannot be resolved on the motions. The Department’s motion for summary judgment on this portion of appeal issue 4.C is therefore **DENIED**.

Appeal Issue 4.D - SEPA Procedural Issues

The Applicant and Department seek dismissal of appeal issue 4.D, arguing that the Examiner lacks jurisdiction over SEPA procedural issues. Issue 4.D reads as follows: “The Department Violated SEPA, the Code, and Its Own Rules in Preparing the SEIS; Failed to Properly Carry Out Its Responsibilities for SEIS Preparation; And, Despite Repeated Requests, Withheld Information to Which the Public Was Entitled and Which Was Necessary for Preparation of Informed Comments on the DSEIS.”⁷ The appeal states further that “the Department failed to properly direct preparation of the SEIS,” and that “its preparation was affected with significant conflicts of interest” contrary to DR 41-96 and SMC 25.05.420.”⁸ In their Brief in Opposition, the Appellants further elaborate on appeal issue 4.D:

⁵ Appellants’ Brief in Opposition at 8.

⁶ Hearing Examiner’s decision in MUP-14-006, *In Re the Appeal of Neighbors Encouraging Reasonable Development*.

⁷ Supplemented Notice of Appeal at 5.

⁸ *Id.*

The question is not whether ultimate choices and directions taken by the EIS consultants are defensible as minimally adequate. The question is whether, as will be demonstrated at hearing, the applicable state regulations and DR intended to protect against bias in the choice of choices and directions have been violated. If so, an EIS prepared by consultants so compromised should not be given the benefit of the "substantial weight" doubt in the first place regardless of ultimate "adequacy".⁹

These arguments must be addressed to a different forum. The Examiner's jurisdiction over SEPA issues raised in an appeal is set forth in detail in SMC 23.76.022.C.6, quoted in full above. It does not extend to the procedural issues raised in appeal issue 4.D, and that issue is **DISMISSED**.

Appeal Issues 4.A and 4.B – Notice

The Applicant argues that appeal issue 4.A lacks merit and should be dismissed under HER 3.02(a). The Department seeks summary judgment on the same issue. Appeal issue 4.A reads as follows: "The Department Has Failed to Provide All Required Notices."¹⁰ The Department has established through the declaration of Michael Dorcy that the Department provided all notices required under Chapter 23.76 SMC, and the Appellants did not dispute this in their Brief in Opposition. There is no genuine issue of material fact concerning the Department's having physically provided the notices required for the proposal under Chapter 23.76 SMC. **Judgment is granted in favor of the Department and Applicant on appeal issue 4.A.**

Appeal issue 4.B reads as follows: "Such Notices As Have Been Given, Including, Inter Alia, Review, Comments, and Decision Notices Have Been Fundamentally and Fatally Inaccurate and Misleading."¹¹ It is not clear from the briefing and attachments that this issue has no merit. Accordingly, the Applicant's motion to dismiss appeal issue 4.B is **DENIED**.

Appeal Issue 4.E.2 – Adequacy of SEIS Housing Analysis

The Applicant seeks dismissal of appeal issue 4.E.2 for lack of merit. Appeal issue 4.E.2 reads as follows: "The SEIS fails to adequately and accurately disclose and analyze low income housing impacts and mitigation in that, inter alia, it:

- a. fails to adequately address that hotels have a disproportionate impact on housing supply and demand for affordable housing compared to other commercial uses and developments in the Downtown;
- b. fails to provide information necessary to weighing impacts and required "public benefit" analyses under the Code and analogous questions under SEPA;
- c. does not adequately address the impact of the permanent loss of 48 affordable housing units in the Denny Triangle and the downtown core;
- d. is further inadequate in addressing impacts associated with new low-wage hotel workers in the Hedreen project who will need affordable housing;
- e. fails to provide information and adequate realistic discussion of mitigation for all of these impacts;

⁹ Appellants' Brief in Opposition at 16.

¹⁰ Supplemented Notice of Appeal at 5.

¹¹ *Id.* at 4

- f. does not adequately address cumulative impacts on low-income housing;
- g. fails to forthrightly disclose and address impacts/effects on mitigation of Hedreen's proposed maneuver to avoid the performance and public benefit requirements of "combined lot development" through use of an extra-legal approach, as apparently endorsed by the Director.¹²

The Applicant points to the discussion of housing in the Final SEIS.¹³ That document quotes the City's SEPA policies on housing, and includes a discussion of population and housing in the Denny Triangle, City housing targets for the area, and the existing rental market with a focus on low- and moderate-income housing. It expressly addresses the proposal's on-site housing impact in the removal of 48 affordable, market-rate housing units, and the fact that the City's SEPA policy on housing requires payment of relocation assistance to the residents of those units. The SEIS also briefly discusses the monetary contribution to the City's Low Income Housing Fund that would be required for the Applicant to take advantage of "incentive zoning," i.e., increased FAR, and notes that the amount of the contribution would depend upon the final size of the project and the amount of additional floor area sought. The off-site housing impacts of the various proposal alternatives are also reviewed, including the number of hotel and other service jobs each alternative would likely generate, and the fact that the availability of the jobs could increase the number of people seeking low-income or affordable housing nearby. There is a brief discussion of potential cumulative impacts on housing and social services. Required payments for tenant relocation assistance, and the Code requirements under SMC 23.49.012 for a cash payment or the on-site provision of low-income housing, are discussed as potential mitigation measures.¹⁴

The Appellants argue that the SEIS failed to fully discuss: 1) the history of the City's concern with impacts on housing in the downtown area; 2) the Code's requirement under SMC 23.49.012 for additional mitigation for housing impacts in exchange for development beyond that allowed by basic zoning; and 3) the specific details of how the Applicant would meet those requirements, including the impacts of "DPD's decision to grant Hedreen's Combined Lot development approach and the loss caused to the City's housing fund" resulting, according to the Appellants, from the way in which the Department calculated development credits.¹⁵

The Appellants improperly conflate the SEPA process with City Code requirements. As the City's SEPA Overview Policy states:

It is the City's policy to protect the environment and provide for reasonable property development while enhancing the predictability of land-use regulation. In order to provide predictability, it is the City's intent to incorporate environmental concerns into its codes and development regulations to the maximum extent possible. However, comprehensive land-use controls and other regulations cannot always anticipate or effectively mitigate all adverse environmental impacts.

¹² *Id.* at 6-7.

¹³ Declaration of Spencer Hall in Support of Motion to Dismiss for Lack of Jurisdiction and Lack of Merit, Ex. H.

¹⁴ *Id.*

¹⁵ Appellants' Brief in Opposition at 28.

SMC 25.05.665.A.1. *See also*, SMC 25.05.448 (“Relationship of EIS to other considerations”). The City has incorporated its enhanced concern about the impact of certain types of development on low-income housing downtown into a mitigation program under SMC 23.49.012, which is part of the Code chapter on downtown zoning. The program offers applicants the opportunity to voluntarily agree to pay housing impact mitigation in exchange for the bonus density that creates some of those impacts. As recounted in the Declaration of Thomas Eanes, the City’s authority to adopt this program derives from the Growth Management Act,¹⁶ not from SEPA.¹⁷ As noted, the SEIS includes a brief discussion of the monetary contribution to low income housing that is required for the Applicant to take advantage of bonus density under SMC 23.49.012. No further analysis concerning the Code’s requirement, or the manner in which the Applicant will comply with it, is required under SEPA. Further, under SMC 25.05.675.I, the City’s SEPA policy on housing, mitigation for housing impacts is limited to compliance with the Tenant Relocation Assistance Ordinance, Chapter 22.210 SMC. The policy does not address, or even refer to the bonus density/housing impact mitigation program in SMC 23.49.012.

The Appellants also argue that the SEIS was prepared “for use by the City Council in making the street vacation decision on the ‘larger’ Hedreen project for which applications are still pending.”¹⁸ They note that the issue of whether a street vacation is in the public interest is central to the Council’s decision on a street vacation application and argue that the SEIS does not meet the requirements of the City’s Street Vacation Policies. However, the Appellants cite no authority for the proposition that the street vacation process is linked to the SEPA process, and it is not. The Council conducts a separate public benefits analysis for street vacations,¹⁹ and the Street Vacation Policies have not been adopted as SEPA policies by the City.

The adequacy of an EIS is a question of law, reviewed de novo. *Citizens for Clean Air v. Spokane*, 114 Wn.2d 20, 34, 785 P.2d 447 (1990). EIS adequacy refers to the legal sufficiency of the environmental data contained in the document. *Glasser v. City of Seattle*, 139 Wn.App. 728, 739, 162 P.3d 1134 (2007). EIS adequacy is reviewed under the “rule of reason,” which requires that the EIS include a “‘reasonably thorough discussion of the significant aspects of the probable environmental consequences’” of an agency’s decision. *Id.* at 740, quoting *Cheney v. Mountlake Terrace*, 87 Wn.2d 338, 344-45, 552 P.2d 184 (1976). There is no genuine issue of material fact concerning the adequacy of the SEIS analysis of housing impacts. It presents a reasonably thorough discussion of those impacts and thus, as a matter of law, the housing impact section of the SEIS, Section 3.8, is adequate under SEPA. **Judgment is granted in favor of the Department and Applicant on appeal issue 4.E.2.**

Code Interpretation Appeal Issues

The Applicant seeks dismissal of appeal issues related to the subject property being treated as “a single site,” or “one lot” for purposes of FAR calculations and specifically cites appeal issue 4.E.3. That appeal issue reads as follows: “The SEIS and the Director’s Decision failed to adequately disclose and address the land-use impacts, including Code, Plan, and policy inconsistencies of not

¹⁶ RCW 36.70A.540.

¹⁷ Declaration of Thomas Eanes in Support of Appellants’ Opposition to Respondents’ Dispositive Motions at 5-7.

¹⁸ Appellants’ Brief in Opposition at 27.

¹⁹ *See* CF 310078, Street Vacation Policies as Amended July, 2009.

only the public alley vacation, but the public alley usurpation and the 'one lot' artifice inherent in the approved Hedreen no-alley-vacation proposal."²⁰ In light of the issues that have been raised concerning the use of the combined lot approach for the proposal, and the Department's treatment of Lot A and B as a single lot for some purposes under that approach, it is not clear at present that appeal issue 4.E.3 is necessarily moot. The motion is therefore **DENIED**.

Both the Applicant and Department seek dismissal of the Appellants' appeal of the Department's initial Code interpretation, Interpretation No. 14-009, as moot because the Interpretation concluded, as asserted by the Appellants, that the subject property could not be treated as one lot for purposes of development. The Appellants did not oppose this request. When the October 24, 2014 interpretation request and Interpretation No. 14-009 are placed side by side, it appears that every issue raised in the request that was subject to interpretation was resolved in the Appellants' favor. Accordingly, the motions are **GRANTED**, and the following language in section 2 of the Supplemented Appeal is **STRICKEN**: "as well as a copy of the Alliance's concurrent Request for Interpretation, which is an integral part of this Appeal;" and "The issues raised by the Request for Interpretation and the resulting Director's Interpretations, if inconsistent with the Alliance's requested interpretations, are explicitly incorporated into this Notice of Appeal for resolution."

The Applicant seeks dismissal of the Appellants' appeal of the second Code interpretation on two grounds. First, the Applicant asserts that the appeal was not filed within the 14-day appeal period set forth in SMC 23.88.020.F and/or was never appealed. That Code section provides that "[a]n interpretation that is unrelated to any specific project application ... may be appealed by any person to the Hearing Examiner. Such an appeal shall be filed with the Hearing Examiner by five p.m. (5:00 p.m.) on the fourteenth calendar day following publication of the notice of interpretation."

Although the Appellants' second Code interpretation request was not related to a specific project *application*, it was not governed by SMC 23.88.020.F. The Appellants' appeal of their first Code interpretation request was timely under SMC 23.88.020.C.3.c, which requires that it be filed within the time limit for an appeal of the related project application. As noted above, the Department issued Code Interpretation 14-009, which agreed with the Appellants' contention that the property could not be treated as a single site, but the Department did not withdraw the Director's decision that was based on the property being treated as a single site for purposes of FAR calculations. Instead, the Interpretation went on to analyze the issue of whether the proposal would meet all Code requirements for a combined lot development, including the requirement for providing a "significant public benefit". SMC 23.49.041.D. Rather than remanding the Director's decision on the proposal to the Department for revision and re-noticing, as requested by the Appellants, the Examiner allowed the Appellants the opportunity to request an interpretation concerning the Department's approval of the proposal using the combined lot development. This was reflected in the Prehearing Order entered on December 3, 2014. The Appellants' second Code interpretation request was submitted on December 11, 2014, within the time allowed by the Prehearing Order. It includes language incorporating an appeal of the interpretation into this appeal. It substantially complies with the requirements of SMC 23.88.020.C.3.c as applied to the unusual procedural setting of this case. The alternative of a remand remains available.

²⁰ Supplemented Notice of Appeal at 7.

The Applicant also cites SMC 23.76.004.B and argues that the Examiner lacks jurisdiction over the appeal of the second Code interpretation because the Department's decision to approve the proposal under the combined lot development approach was a Type I decision, which cannot be appealed to the Examiner. Nonetheless, SMC 23.88.020 creates a limited exception to the prohibition on administrative appeals of the Director's Type I decisions. That section states that "a decision by the Director as to the meaning, application or intent of any development regulation in Title 23 ... as it relates to a specific property ... is known as an "interpretation ... A request for interpretation, and a subsequent appeal to the Hearing Examiner if available, are administrative remedies that must be exhausted before judicial review of a decision subject to an interpretation may be sought." SMC 23.88.020.A. As noted, the appeal was available under SMC 23.88.020.C.3.c and complied with that Code section. The motion to dismiss the appeal of the second Code interpretation is **DENIED**.

The Department requests summary judgment on the Appellants' code interpretation issues, but it is clear from the briefing and the declarations and attachments that the code interpretations raise genuine issues of mixed fact and law and are therefore not appropriate for summary judgment. The motion is **DENIED**.

Entered this 13th day of May, 2015.



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**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of

**ALLIANCE FOR A LIVABLE DENNY
TRIANGLE and UNITE HERE LOCAL 8**

from a decision and interpretation by the
Director, Department of Planning and
Development, on a Master Use Permit

Hearing Examiner File:
**MUP-14-016 (DR,W)
S-14-003**


Department Reference:
3016917

**ORDER ON MOTIONS
TO STRIKE WITNESS
AND IN LIMINE**

The Applicant has moved to strike Ryan Durkan, co-counsel for the Applicant in this matter, from the Appellants' final witness list. Ms. Durkan is listed as a witness to provide testimony concerning a meeting she participated in that included several other individuals, some of whom also have been listed as witnesses by various parties. Because the information sought from Ms. Durkan can be elicited from other witnesses who are not counsel for a party in this case, there is no compelling reason for her to testify. To the extent the testimony of those witnesses could be objected to as hearsay, the parties are referred to Hearing Examiner Rule 2.17. The name of Ryan Durkan is STRICKEN from the Appellants' witness list.

The Department has moved to exclude testimony in any form from the Design Review Board members listed on the Appellants' witness list and from Thomas Eanes, an expert witness listed by the Appellants. The motion is GRANTED as to the members of the Design Review Board. As individual members of a deliberative body, they cannot testify to the thoughts, intent or understanding of that body. The name of each person identified on the Appellants' witness list as a member of the Design Review Board is STRICKEN. The parties may address the motion to strike the testimony Thomas Eanes at the outset of the hearing.

Entered this 27th day of May, 2015.


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**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

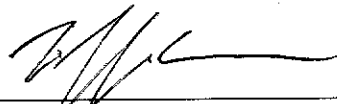
CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Order on Motions to Strike Witness and in Limine** to each person listed below, or on the attached mailing list, in the matter of **Alliance for a Livable Denny Triangle and Unite Here Local 8**, Hearing Examiner Files: **MUP-14-016 (DR, W) and S-14-003**, in the manner indicated.

Party	Method of Service
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Spencer Hall Spencer Hall & Associates 1200 Fifth Avenue, Suite 1414 Seattle, WA 98101 shall@spencerhall-assoc.com Karen Benedict kbenedict@spencerhall-assoc.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
T. Ryan Durkan Hillis Clark Martin & Peterson 1221 Second Avenue, Suite 500 Seattle, WA 98101 ryan.durkan@hcmp.com Debbie Chewing debbie.chewing@hcmp.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger

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<p>Michael Dorcy DPD Michael.Dorcy@seattle.gov</p> <p>Andy McKim Andy.McKim@seattle.gov</p>	<p><input type="checkbox"/> U.S. First Class Mail, postage prepaid</p> <p><input type="checkbox"/> Inter-office Mail</p> <p><input checked="" type="checkbox"/> E-mail</p> <p><input type="checkbox"/> Fax</p> <p><input type="checkbox"/> Hand Delivery</p> <p><input type="checkbox"/> Legal Messenger</p>

Dated: May 27, 2015



 Tiffany Ku
 Legal Assistant

**FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE**

In the Matter of the Appeal of

**ALLIANCE FOR A LIVABLE DENNY
TRIANGLE and UNITE HERE LOCAL 8**

from a decision and interpretation of the Director,
Department of Planning and Development

Hearing Examiner Files:
**MUP-14-016(DR,W)/
S-14-003**

Department Reference:
3016917

Introduction

The Director of the Department of Planning and Development issued design review approval for a hotel structure and associated parking, and a determination pursuant to the State Environmental Policy Act, Chapter 43.21C RCW, as adopted by the City of Seattle, that a Final Supplemental Environmental Impact Statement issued for the project was adequate. The Appellants exercised their right to appeal the Director's design review decision and SEPA determination. The Director also issued two Land Use Code interpretations related to the proposal which the Appellants appealed.

The appeal hearing was held on June 1 through June 5, 2015 before the Hearing Examiner ("Examiner"). The Appellants, Alliance for a Livable Denny Triangle and Unite Here Local 8, were represented by Peter J. Eglick, attorney-at-law; the Applicant, R.C. Hedreen Company, was represented by Spencer Hall, attorney-at-law; and the Director, Department of Planning and Development ("Department"), was represented by Dale N. Johnson and Duncan M. Greene, attorneys-at-law. Following the close of the hearing, the parties submitted written closing arguments, and the record closed with the Examiner's site visit on June 30, 2015.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code (SMC or Code) unless otherwise indicated. After considering the evidence in the record and reviewing the site, the Examiner enters the following findings of fact, conclusions and decision on the appeal.

Findings of Fact

Site and Vicinity

1. The subject site is addressed as 808 Howell Street and is located within the Downtown Urban Center and the Denny Triangle neighborhood. It is zoned Downtown Office Core (DOC) 2 500/300-500 and occupies a full block that is bounded by Stewart Street on the north, Howell Street on the south, Eighth Avenue on the west and Ninth Avenue on the east.

2. Four structures and two surface parking lots are located on the site, including the former Greyhound Bus Terminal and associated parking, a retail building, a four-story mixed use building, and a seven-story office building. Land uses in the immediate vicinity include office, medical research, hotel, residential, religious, and parking. The Washington State Convention Center is located nearby.

3. The site is comprised of two lots that are separated by a 16-foot-wide "L-shaped" alley. The three-quarter block lot to the north and west of the alley is referred to as "Lot A," and the one-quarter block lot to the south and east of the alley is referred to as "Lot B". Vehicular access is via the alley, with curb cuts on 9th Avenue and Howell Street, and via an additional curb cut on 8th Avenue.

4. In the area of the proposal, Howell Street is a principal arterial and transit street with 3-4 one-way travel lanes heading east toward Interstate 5, Stewart Street is a principal arterial and transit street with 2-4 one-way travel lanes heading west from Interstate 5, 8th Avenue is a minor arterial and transit street with two one-way travel lanes heading north, and 9th Avenue, a designated Green Street, is a minor arterial and transit street with two one-way travel lanes heading south.

Proposal

5. The proposal is for a 45-story hotel structure that would include an 8-story podium of 85,000 square feet of meeting rooms and ballrooms, approximately 1,265 hotel rooms, approximately 17,000 square feet of street-level retail and restaurants, and below-grade parking for approximately 500 vehicles. It would be, by far, the largest hotel in the city and would be a convention hotel. Its business model would target national conventions or conferences, and rooms not booked for convention attendees and associated activities would be available for business and leisure travelers. The ballrooms could be booked for social events during off-convention seasons.

6. Another proposal, known as the Ninth and Stewart Development, was a larger project to be developed on the full block and is commonly known as the "full-block proposal". The full-block proposal would require that the alley be vacated. When it appeared that the City Council might not approve the vacation, the Applicant submitted pre-application materials for the proposal at issue in this appeal, which is commonly referred to as the "3/4 block" or "no vacation" development, but is addressed as "the proposal" in this decision.

7. In pre-application discussions about methods for calculating floor area ratio ("FAR"), a question arose about whether Lot A and Lot B could be treated as a single lot.¹ The Department

¹ The Department had issued an opinion letter in 1993 stating that the Greyhound property, which was divided by the alley, was a single site.

gave a preliminary opinion that the property could be treated as one lot but asked the Applicant to provide calculations for “Combined Lot Development”² as an alternative. Exhibit 8 at 2-3.

Design Review

8. The Downtown Design Review Board (“DRB”) held its Early Design Guidance (“EDG”) meeting on the proposal on April 22, 2014. The Applicant’s packet presented at the meeting states that the “proposal is to apply for a Master Use Permit for a combined lot development” on the site. Exhibit 55 at 2. No other information on the combined lot development aspect of the proposal was included in the packet.

9. The DRB heard the Applicant’s analysis of the site and proposal as well as comments from the public. The design showed massing alternatives that included three different locations for the hotel tower. It also showed a new, through-block connection at grade level, connecting 8th Avenue with the east-west leg of the existing alley and 9th Avenue. Passenger vehicles would enter and exit the below-grade parking via 8th Avenue. Passenger drop-offs would occur at a covered area adjacent to the hotel entrance (the *porte cochere*) on the north-south section of the existing alley. That alley section would include one lane of travel in each direction with a vehicle turn-around on Lot B and parking on each side of the driving lanes. The turn-around is intended to reduce on-street circulation by allowing vehicles to move easily from the drop-off area to the parking garage, and allowing vehicles returning to the downtown core to exit more directly to Stewart Street via 8th Avenue. The north-south alley section would intersect the through-block connection in which there would be one lane of travel in each (east-west) direction. Large delivery trucks would access the loading docks via the curb cut at 8th Avenue, back into the loading bays and later exit via 9th Avenue. Smaller trucks could enter the loading area from either 8th or 9th Avenues. See Exhibit 55 at 42 and 43.

10. The DRB discussed the location of the hotel tower and unanimously agreed that it should “anchor the corner of 8th and Howell,” where most of the tower’s shadows would fall across the site. In addition, they focused on the functionality of the alley, stating that it should address the issue of “clearly maintaining a sense of public space and even pedestrian public space within the alley. Aspects of sidewalks ... pedestrian shortcuts, each safe and attractive, need to be addressed.” Exhibit 56 at 5. See Exhibit 16 at 8. The DRB also asked for “a clear presentation of what could be built on” Lot B. Exhibit 56 at 5. See Exhibit 60 at 1. In addition to its design guidance, the DRB identified the siting and design guidelines in the *Design Review Guidelines for Downtown Development* that were of highest priority for the proposal.

11. Following the EDG meeting, the Applicant believed it received authorization from the Department to move forward with the one-lot approach to calculating FAR. Testimony of Schneider. There is no documentary evidence in the record to support that belief. Regardless, when the DRB held its Initial Recommendation meeting on July 15, 2014, the packet submitted

² Under SMC 23.49.041, the Director may authorize combined lot development within the DOC 2 zone, whereby lots located on the same block “may be combined ... solely for the purpose of allowing” chargeable floor area on one lot to be used on the other subject to certain restrictions.

by the Applicant stated that the “applicant has applied for a Master Use Permit utilizing the One Development Site approach”. Exhibit 14 at 2. During its deliberations, the DRB stated that it “had concerns at the [EDG] meeting regarding a sketchy presentation of the alley functions and appearance [but]... The models demonstrated for the DRB that the alley could operate as planned even with a future building on the parking lot site ... The drawings effectively showed how a sense of public space could be maintained in the alley.” Exhibit 16 at 9. The DRB addressed the applicant’s requested departures and recommended approval of the proposal as presented and the departures. Exhibit 16 at 9-12.³

Director’s Review and Decision

12. The proposal site is within the geographic area analyzed in the City’s Downtown Height and Density Final Environmental Impact Statement issued in 2005 (“Downtown EIS”), and the proposal is within the general range of actions and impacts evaluated in the alternatives studied in that document. Under these facts, the environmental impacts of subsequent private projects located within the City’s downtown zone are normally reviewed in an addendum to the Downtown EIS. Testimony of John Shaw. However, in August of 2013, the Appellants’ transportation consultant submitted a letter to the Department analyzing the full block project and arguing that it warranted preparation of a Supplemental Environmental Impact Statement. Exhibit 42.

13. The Department agreed to the need for more extensive environmental review for the proposal. The Department issued a SEPA Determination of Significance for the full-block proposal and alternatives, and required a Supplemental Environmental Impact Statement to build upon the Downtown EIS in analyzing that project’s environmental impacts. The Draft Supplemental Environmental Impact Statement (“DSEIS”) did not include the smaller, 3/4 block proposal as an alternative. However, the impacts of the smaller proposal were covered in the analysis of the larger project’s impacts, and the 3/4 block proposal was added as one of two preferred alternatives and evaluated in the Final Supplemental Environmental Impact Statement (“FSEIS”), Exhibit 21, which was issued on September 29, 2014.

14. The analysis of the proposal’s transportation impacts is found in FEIS Section 3-10 and in the Revised Transportation Technical Report, Appendix G to Exhibit 21. Comment letters and responses on transportation issues are included in FSEIS Section V, and Section IV identifies and discusses common themes, or key issues, raised in comment letters, including parking demand and supply, and the methodology used to estimate vehicle trip generation. Heffron Transportation (“Heffron”) prepared the transportation studies and analysis. Between November of 2013 and June of 2014, the Director issued three correction notices for the Transportation Technical Report. Exhibits 46-48.

15. To provide a baseline against which to evaluate the proposal’s transportation impacts, the FSEIS includes a future “Do Nothing” alternative, in which existing uses on the subject site are

³ A Final Recommendation Meeting on September 16, 2014 addressed some design refinements and two additional departures.

assumed to remain unchanged while proposed and permitted projects are added to the roadway network to estimate base 2020 operational conditions. The analysis evaluated 26 intersections, including five analyzed in the Downtown EIS as operating at LOS E or F during the AM or PM peak hour in 2020.

16. In response to comments on the DSEIS from the Appellants' consultant, Heffron conducted an arterial level of service analysis to evaluate arterial operations on three key corridors near the project site, Olive Way, Howell Street and Stewart Street, to acknowledge the fact that "even well-functioning intersections can experience congestion created by downstream congestion." Exhibit 21 at 3.10-10. The analysis shows that all three corridors currently operate at poor levels of service and are projected to operate at LOS F in the future with very slow travel speeds. *Id.*

17. Heffron did not use the typical method of applying the rates and equations in the Institute of Transportation Engineers ("ITE") *Trip Generation Manual* to determine hotel trip generation because hotels surveyed for the ITE Manual are located primarily in suburban areas and most had fewer than 500 rooms. Exhibit 21 at 3.10-17.

18. To establish the operating parameters for determining trip generation, Heffron relied on discussions with, and information provided by several professionals at two West Coast convention hotels. Relevant local data about the travel characteristics of peak season tourists and weekday arrival and departure schedules were provided by the Renaissance Seattle Hotel and the Seattle Grand Hyatt. *See* Exhibit 21, Appendix G at 39-41. The FSEIS addresses the following key parameters: room occupancy, guests per room, arrivals and departures by day of the week, mode of travel for various types of users, hotel employee shift times, staffing for events, percentage of event attendees who stay at the hotel, excursion trips, taxi and shuttle trips, peak times for event trips, and travel times of hotel guests and employees. *Id.* at 43-51.

19. To account for fluctuations in the use of the various hotel spaces by season or day, Heffron developed five scenarios to evaluate the traffic and parking needs of the hotel and meeting spaces. The underlying concept was to consider the full range of activities that could occur in the hotel. The scenarios Heffron developed were ultimately used by the design team for the project and are reflected in the design of the hotel.

20. Because the hotel is designed for group business, with large numbers of people attending a convention or large meeting, two scenarios assumed large conventions, conferences, or business-type meetings, with one assuming a large breakfast meeting. *Id.* at 40-42. These would have the lowest transportation impact during peak hours according to Heffron's research, which indicated that only 10% of convention attendees can be expected arrive by vehicle, and most do not travel by personal vehicle during their stay. Large breakfast meetings are intended to attract attendees who work downtown, and those who drive into downtown would be expected to park in their usual garage and walk to the meeting event. *Id.* at 44-47; Testimony of Marni Heffron.

21. Heffron's research showed that a group hotel tries not to obligate its meeting spaces without booking hotel rooms with them, so group hotels accept group business first and "fill in" with local meetings and social events. However, three of Heffron's scenarios assumed that the hotel

was not being used for convention or conference activity and estimated trips based on medium to large local social events and smaller weekday events, which would be expected to have higher transportation impacts. Although Heffron's research showed that two maximum capacity social events are unlikely to occur on a weeknight, one scenario includes this condition to determine how it affects traffic. Exhibit 21, Appendix G, at 73. The "operating scenarios were considered to represent conditions between average and near-capacity conditions for meeting or social event attendance." *Id.* at 41.

22. In response to DSEIS comments from the Appellants' consultant, Heffron researched national databases for trip generation information for similarly-sized hotels and found one transportation impact analysis ("TIA") for a peer hotel in San Diego that provided detailed trip generation figures. Heffron's evaluation of the trip generation data from the peer hotel's TIA confirmed the assumptions underlying the trip generation analysis for the proposal. *Id.* at 53-55.

23. Based on the proposal's development program, Heffron prepared trip estimates for the five operating scenarios to identify those with the highest AM and the highest PM peak hour volumes to determine a reasonable, though likely infrequent, near worst-case scenario. *Id.* at 42. Trip distribution patterns were developed for the different types of trips that would be generated by the proposed uses, and the new trips were then assigned to the roadway network in the site vicinity. *Id.* at 59-66.

24. Traffic operations at study area intersections were analyzed with project trips added to the Do-Nothing alternative forecasts. An increase in the forecast delay was shown for most intersections, and the Stewart Street/Boren Avenue intersection was shown to degrade from LOS D to LOS E in the PM peak hour. *Id.* at 70-74. Already poor arterial operations were projected to worsen incrementally with project traffic. *Id.* at 75.

25. The FSEIS includes an analysis of truck access and loading operations. *Id.* at 83-84. The number of truckloads that could be generated was determined from the information obtained from the previously mentioned West Coast convention hotels and from a meeting with the Distribution Manager for the Seattle Sheraton Hotel.⁴ *Id.* at 83. Peak times for truck deliveries are between 4:30 a.m. and 10:00 a.m., and a typical day would include 10 to 25 truck deliveries, most from small trucks and delivery vans. *Id.* On peak days before and after conventions, the West Coast hotels reported an additional 10 to 25 truckloads, and the Seattle Sheraton reported three to 10 additional truck loads. *Id.*

26. The FSEIS also analyzes parking demand and supply. *Id.* at 84-92. On-site supply will be approximately 800 vehicles, but when two large events are scheduled on the same night, approximately 240 vehicles would need to park off-site. In response to a DSEIS comment from the Appellants' Transportation consultant, Heffron included an off-street parking analysis in the FSEIS. It showed that a recent Puget Sound Regional Council parking inventory survey had identified approximately 2,500 parking spaces within two blocks of the project site, and that

⁴ Although the Seattle Sheraton Hotel and the Westin Hotel, the two largest hotels in Seattle, would not release event data to Heffron, the Seattle Sheraton Hotel agreed to share truck loading operation data.

hotel management could arrange for one or more of the available garages to remain open during large events at the proposal site. Exhibit 21 at 3.10-51.

27. At the request of the Department and members of the public, the FSEIS includes an analysis of potential cumulative transportation impacts from the proposal together with the anticipated future expansion of the Washington State Convention Center ("WSCC"). WSCC has produced a draft report of its feasibility study for the project, which Heffron used to review cumulative traffic, freight and parking impacts of the two projects. Exhibit 21, Appendix G at 118-126.

28. The FSEIS concludes with a discussion of measures to mitigate the proposal's impacts to all modes of travel. *Id.* at 127-130.

29. The Director ultimately determined that the FSEIS was adequate and approved the proposal with conditions addressing construction-related issues, mitigation payments, and requirements for a loading dock management plan, and traffic control and parking control plans for large events at the hotel. Exhibit 12 at 28-29.

30. In accordance with SMC 23.41.014.F.3, the Director reviewed the DRB's recommendations and issued design review approval for the proposal with the DRB's recommended conditions.⁵ Exhibit 12 at 14-15.

Appeal and Interpretations

31. The Appellants timely appealed the Director's design review and EIS adequacy decisions.⁶ Pursuant to SMC 23.88.020.C.3.c, they also filed a request for a Land Use Code interpretation, challenging the Department's conclusion that Lot A and Lot B could be treated as a single lot, and arguing that development on Lot A could exceed the maximum allowable floor area ratio ("FAR") only by using the combined lot development process authorized by SMC 23.49.041.

32. After reviewing the interpretation request, the Department determined that the Appellants were correct in their position that the property could not be considered a single lot for purposes of FAR calculations, but decided that a combined lot development approach for the proposal was possible. On November 13, 2014, the Department met with the Applicant's representatives to advise them of the determination and of what additional information the Department would need in order to consider the combined lot development approach. On November 19, 2014, the Department issued a Correction Notice to the Applicant stating the Department's conclusion and requesting the revised calculations and documentation showing how the proposal would meet the requirements for a combined lot development.

⁵ If four or more members of the DRB agree to a recommendation, the Director "shall issue a decision that makes compliance with the recommendation of the Design Review DRB a condition of permit approval," unless the Director concludes that the recommendation inconsistently applies the design review guidelines, exceeds the DRB's authority, conflicts with SEPA conditions or other applicable requirements, or conflicts with state or federal law.

⁶ Several issues raised in the appeal were dismissed following briefing on dispositive motions filed by the Applicant and the Department.

33. The Applicant submitted the requested information on December 1, 2014. It described two significant public benefits to be achieved through combined lot development. See SMC 23.49.041.D, copied below. One benefit was “improved massing of development that achieves a better relationship with surrounding conditions”. The Applicant described the ensuing benefits as concentrating the tower and massing on 8th Avenue, rather than on the 9th Avenue Green Street, which achieved a better relationship with the surrounding conditions and allowed the building bulk to be concentrated on the southwest corner of the site, closer to the downtown core, with lower scale development occurring closer to the Denny Triangle Neighborhood. Exhibit 6 at 3. The second significant public benefit offered was the through block pedestrian connection, which would have distinct pavement, a protected walkway with partial overhead weather protection, lighting, bollards, and other amenities to create an inviting and safe shared-use zone. *Id.*

34. On December 2, 2014, the Department approved the Applicant’s use of the combined lot development process and issued Interpretation No. 14-009, which agreed with the Appellants’ position that the combined lot development approach was required and explained the Director’s conclusion that the application now met all combined lot development requirements. See Exhibit 11.

35. On December 11, 2014, pursuant to the Prehearing Order in this case, the Appellants filed a supplement to their initial interpretation request,⁷ in which they challenged the Department’s interpretation of Code provisions on transfer of FAR between lots and the “public benefit” determination for the combined lot development, and argued that the determination should have been returned to the DRB for its review. The supplement also incorporated the Appellants’ appeal of the Department’s expected response into the existing appeal before the Examiner.

36. On January 5, 2015, the Department issued Interpretation No. 14-010 (“the Interpretation”), which rejected the Appellants’ arguments and reaffirmed the Department’s FAR calculations and public benefit determination for the proposal. The Interpretation incorporated the findings and conclusions of Interpretation No. 14-009 “to the extent they bear on the issues raised” and addressed Code provisions copied below. Exhibit 3.

37. The Interpretation reiterated that under SMC 23.49.041, the area of the sending lot, Lot B could be combined with the area of the receiving lot, Lot A, for purposes of allowing up to all of the chargeable floor area on Lot B to be used on Lot A. The Interpretation construed the language of SMC 23.49.011.A.2.a, above, as modified by SMC 23.49.041 on combined lot development, as meaning that a new structure be included on combined Lot A and Lot B, the “lot for development” in order for the first increment of chargeable floor area above the base FAR of Lot B to be gained by Lot B (for sending to Lot A) through acquisition of regional development credits under SMC 23.58A.044.

⁷ See Order on Motions to Dismiss and for Partial Summary Judgment at 2 for further background.

38. The Interpretation also addressed the requirements of SMC 23.49.041.D, that combined lot development may be allowed "only to the extent that the Director determines, in a Type I land use decision, that permitting more chargeable floor area than would otherwise be allowed on the lot *shall result in a significant public benefit.*" Emphasis added. The Interpretation rejected a "but for" reading of the "result in" language because for most of the examples listed in SMC 23.49.041.D, "it is unlikely that the identified benefit would be entirely dependent on the shifting of development potential that occurs under the combined lot development approach." Exhibit 3 at 3. Instead, the Director interpreted the "result in" requirement as meaning that "the proposed development that would occur **as a result of** applying the combined lot development approach to Floor Area Ratio (FAR) measurement **must include** a significant public benefit." *Id.* Emphasis original. The Interpretation reaffirmed that the proposal's "improved massing" and "through-block pedestrian connection" qualified as significant public benefits. Specifically, the Interpretation concluded that:

- the massing of the proposed development, "with structure bulk concentrated at the southerly corner in exchange for reduced bulk elsewhere (including on Lot B) is a significant public benefit that serves as an appropriate basis for approving the 'combined lot development approach.'"
- "[i]t is not necessary to show that a public benefit pointed to as a basis for approval of a combined lot development could occur only in the context of a combined lot development."
- "[t]he massing in this case, with bulk concentrated in the hotel project in exchange for less bulk elsewhere, truly is the result of shifting development potential from Lot B to Lot A."
- the "proposed massing in this case provides a significant public benefit."
- the "through-block pedestrian connection also may be counted as a significant public benefit serving as a basis for allowing the combined-lot development approach."

Exhibit 3 at 3-4.

Applicable Law

39. FAR is defined in SMC 23.84A.012. It is essentially a fraction in which the amount of gross or chargeable floor area in a structure is the numerator, and the area of the lot on which the structure(s) is located is the denominator. (*See* Exhibit 23.84A.012A in the Code for examples.)

40. SMC 23.49.011 governs FAR in the Downtown zones. Under SMC 23.49.011.A, the base FAR in the DOC2 zone is 5, and the maximum FAR is 14.

41. SMC 23.49.014.A.4 prohibits the transfer of development rights or potential floor area from one lot to another "except as expressly permitted pursuant to this Chapter 23.49."

42. SMC 23.49.011.A.2 states that "[c]hargeable floor area shall not exceed the applicable base FAR except as expressly authorized pursuant to this Chapter 23.49." SMC 23.49.011.A.2.a

provides that in the DOC2 zone, “if chargeable floor area above the base FAR *is allowed on a lot for development that includes a new structure* ... the first increment of chargeable floor area above the base FAR ... shall be gained by acquiring regional development credits pursuant to Section 23.58A.044.” Emphasis added.

43. SMC 23.49.011.A.2.b states that in the DOC2 zone, “additional chargeable floor area above the first increment of FAR that exceeds the base FAR may be obtained only by qualifying for floor area bonuses pursuant to Section 23.49.012 [bonus floor area for agreements for low income housing and child care] or 23.49.013 [bonus floor area for specific amenities], or by the transfer of transferable development rights pursuant to Section 23.49.014, or both.”

44. SMC 23.49.041 governs combined lot development. It reads in pertinent part as follows:

When authorized by the Director pursuant to this section, lots located on the same block in DOC1 or DOC2 zones ... may be combined, whether contiguous or not, *solely for the purpose of allowing some or all of the capacity for chargeable floor area on one such lot under this chapter to be used on one (1) or more other lots*, according to the following provisions:

A. *Up to all of the capacity on one (1) lot*, referred to in this section as the “sending lot,” for chargeable floor area in addition to the base FAR, pursuant to Section 23.49.011 (referred to in this section as “bonus capacity”), *may be used on one or more other lots, subject to compliance with all conditions to use of such bonus capacity, pursuant to Sections 23.49.011—.014, as modified in this section....*

B. Only if all of the bonus capacity on one (1) lot shall be used on other lots pursuant to this section, there may also be transferred from the sending lot, to one or more such other lots, up to all of the unused base FAR on the sending lot, without regard to limits on the transfer or on use of TDR in Section 23.49.014....

....

D. The Director shall allow combined lot development only to the extent that the Director determines, *in a Type I land use decision*, that permitting more chargeable floor area than would otherwise be allowed on a lot *shall result in a significant public benefit*. In addition to features for which floor area bonuses are granted, the Director may also consider the following as public benefits that could satisfy this condition *when provided for as a result of the lot combination*:

1. preservation of a landmark structure located on the block or adjacent blocks;
2. uses serving the downtown residential community, such as a grocery store, at appropriate locations;
3. public facilities serving the Downtown population, including schools, parks, community centers, human service facilities, and clinics;

4. *transportation facilities promoting pedestrian circulation and transit use, including through block pedestrian connections, transit stations and bus layover facilities;*
5. Short-term parking on blocks within convenient walking distance of the retail core or other Downtown business areas where the amount of available short term parking is determined to be insufficient;
6. a significant amount of housing serving households with a range of income levels;
7. *improved massing of development on the block that achieves a better relationship with surrounding conditions, including: better integration with adjacent development, greater compatibility with an established scale of development, especially relative to landmark structures, or improved conditions for adjacent public open spaces, designated green streets, or other special street environments;*
8. public view protection within an area; and/or
9. arts and cultural facilities, including a museum or museum expansion space.

E. The fee owners of each of the combined lots shall execute an appropriate agreement or instrument, which shall include the legal descriptions of each lot and shall be recorded in the King County real property records. In the agreement or instrument, the owners shall acknowledge the extent to which development capacity on each sending lot is reduced by the use of such capacity on another lot or lots, at least for so long as the chargeable floor area for which such capacity is used remains on such other lot or lots. The deed or instrument shall also provide that its covenants and conditions shall run with the land and shall be specifically enforceable by the parties and by the City of Seattle.

Emphasis added.

Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to Chapter 23.76 SMC. Appeals are considered de novo, and the Examiner must give substantial weight to the Director's design review decision and Land Use Code interpretation. SMC 23.76.022 C.6 and C.7; SMC 23.88.020.G.5. The Appellant bears the burden of proving that they were "clearly erroneous." *Brown v. Tacoma*, 30 Wn. App. 762, 637 P.2d 1005 (1981). This is a deferential standard of review, under which the Director's decision may be reversed only if the Examiner, on review of the entire record, and in light of the public policy expressed in the underlying law, is left with the definite and firm conviction that a mistake has been made. *Moss v. Bellingham*, 109 Wn. App. 6, 13, 31 P.3d 703 (2001).
2. The adequacy of an EIS is reviewed under the "rule of reason," which requires that decision makers be presented with "a 'reasonably thorough discussion of the significant aspects of the probable environmental consequences'" of a decision. *Cascade Bicycle Club v. Puget Sound*

Regional Council, 175 Wn. App. 494, 508-509, 306 P.3d 1031 (2013) quoting *Cheney v. Mountlake Terrace*, 87 Wn.2d 338, 522 P.2d 184 (1976)). The focus is “to determine whether the environmental effects of the proposed action are disclosed, discussed and substantiated by opinion and data.” *Solid Waste Alternative Proponents (SWAP) v. Okanogan County*, 66 Wn.App. 439, 442, 832 P.2d 503 (1992).

3. The Appellants initially claim that the notices given by the Department for “review, comment, and decision” on the proposal “have been fundamentally and fatally inaccurate and misleading.”⁸ The notices the Appellants object to include those issued for the DRB’s meetings on the proposal. Although the Examiner lacks jurisdiction over the procedural requirements of Chapter 23.41 SMC on design review, SMC 23.41.008.E.1 provides that notices of DRB meetings are to be provided in accordance with the notice procedures for Master Use Permits in Chapter 23.76. Those notice requirements are part of the procedural requirements for Type II permits over which the Examiner does have jurisdiction. SMC 23.76.022.C.6.

4. The Appellants focus on the requirements of SMC 23.76.012.C.2 that notice must include the “project description, location of the project ... and “a list of the land use decisions sought.” The appeal states that “virtually all of the notices for the project ... do not accurately describe the physical scope of the proposed use and the lots encompassed by it,” leading to confusion on the part of the public and the DRB. A major objection is that the notices referred to the proposal as a “3/4 block development” and included a map of the immediate project area that showed the full project block, but with only three-quarters of the block, Lot A, shaded. Nonetheless, it is clear from the record that references to the proposal as the “3/4 block proposal” and the map were both intended to distinguish it from the “full-block proposal” for the same property that had recently gone through Department and DRB review. Further, the notices stated that the map was only for illustrative purposes, and that the documents in the Department’s files were controlling. See e.g., Exhibit 15, Transcript of Deposition of Michael Dorcy, exhibit 15. Further, there is no credible evidence in the record that either the public or the DRB was confused by the notices.

5. The Appellants also contend that the notices were deficient in not including notice that the proposal required a public benefits determination by the Director for combined lot development, included a temporary parking lot, or “effectively usurped the public alley for private purposes,”⁹ which might have been important to the DRB and the public. The Code is clear that the Director’s public benefits determination is made “in a Type I land use decision”. SMC 23.49.041.D. It is true that the determination may address project features that are also of interest to certain City administrative bodies, such as the Landmarks Preservation Board or, as here, the DRB, which considered the alley and through-block connection and the project’s massing from a design perspective. But the Appellants have not identified anything in the Code that would require, or even allow, the Director’s Type I determination to be reviewed by such bodies. Review was available in this case only through the land use code interpretation process in SMC 23.88.020.C.3.c, which the Appellants pursued. The Appellant’s reference to the temporary parking lot simply restates their opinion that Lot B was excluded from the notices. As

⁸ Supplemented Notice of Appeal at 4.

⁹ Appellants’ Post-Hearing Reply Brief at 26.

discussed above, it was not. And the proposal's use of the public alley for truck and passenger vehicle access could be ascertained from a review of the Department's files, to which the public was referred by the notices. *See e.g.*, Exhibit 15, Transcript of Deposition of Michael Dorcy, exhibit 15.

6. The Appellants argue that the proposal must be remanded to the DRB because its review of the proposal was based on the one development site approach for purposes of FAR calculations and thus, did not consider the features offered by the Applicant (improved massing and the through block connection) to fulfill the significant public benefit requirement for combined lot development. This claim is addressed in the preceding conclusion. Further, the Code expressly allows the Department, through a Type I decision, to approve bonus development at the time the Master Use Permit decision is issued, i.e., after the DRB issues its recommendation, as long as any permitted alternative means to achieve the bonus development "would be consistent with this Section 23.49.011 and any other conditions of the permit, including Design Review if applicable." SMC 23.49.011.A.4.

7. The Appellants also contend that the DRB was misled about the role of Lot B in the proposal and about its authority to influence development on Lot B, but the Appellants' allegations that the DRB was unclear on this issue are not supported by the record. The DRB expressly addressed Lot B and asked for a "clear presentation of what could be built on" it. Exhibit 56 at 5. *See* Exhibit 60 at 1. After seeing a three-dimensional model of potential massing on Lot B, the DRB stated that the "models demonstrated ... that the alley could operate as planned even with a future building on the parking lot site." Exhibit 16 at 9. There is no legal basis for remanding the proposal to the DRB.

8. The Appellants challenge the adequacy of the FSEIS transportation analysis for the proposal on several grounds. They contend that it fails to adequately describe existing traffic conditions, particularly the backups on 9th Avenue in the vicinity of the project. However, it is quite clear from the FSEIS that the existing dismal operations on arterials in the project vicinity affect intersection operations, including those at 9th Avenue, during the peak hours, and that traffic at that time of day will remain highly congested with or without the proposal. The Appellants point to the fact that such congestion will affect traffic operations at the proposal's access driveways, but the FSEIS acknowledges the potential for congestion and the possible need for off-duty police traffic control, similar to that used across the street from the subject site, and in many other places throughout downtown, during peak time events. FSEIS at 78. The Appellants argue that the solution will not work due to 9th Avenue's limited capacity, but they produced no documentation to support that claim.

9. The Appellants' fundamental disagreement with the transportation analysis is that it was developed using a scenario approach. The Appellants' transportation consultant prefers to use a different analytical methodology, a "design day" approach, which considers the activity level achieved through different combinations of events on one given day. He believes it gives a

better idea of a potential “worst case” than the scenario approach.¹⁰ Testimony of Tilghman. Heffron is familiar with the “design day” approach and considered using it. Exhibit 21, Appendix G at 39-41; Testimony of Marni Heffron. However, she determined that in light of breadth of events that could occur at this type of hotel, it would be irresponsible to restrict the analysis to a single design day.¹¹ *Id.*

10. The Appellants challenge some of the numbers applied in particular operating parameters used to determine trip generation. They dispute some of the employee shift information Heffron obtained from the Renaissance and Seattle Grand Hyatt hotels and point to hotel employee schedules for one week in August of 2014 to show that if those shift hours are used, the full-block proposal would generate up to 17 more employee vehicle trips during the PM peak hour than are shown in the FSEIS. They use trip generation rates used in transportation analyses done for other, dissimilar hotels to question the trip generation rates used for business and leisure travelers for the full-block project. They dispute the start times assumed for social events at the proposal, which were based on peer hotel information, and assert that more attendees will be arriving during the PM peak hour than the number used in the FSEIS. Applying their calculations, the Appellants conclude that peak hour trips would exceed those that were predicted for the site in the 2005 Downtown EIS. But even if the Appellants’ calculations are assumed to be accurate, or more reliable than those used in the FSEIS, the Appellants do not explain the relevance of their conclusion that the proposal’s peak hour trips would exceed those included in the Downtown EIS. That is not a hallmark of an inadequate FSEIS.

11. The Appellants contend that because the Seattle Sheraton and the two West Coast convention hotels that supplied truck loading data are smaller than the proposal, Heffron should not have relied on them in the truck loading analysis for the proposal. However, Heffron explained that in her experience with truck loading data for many different types and sizes of facilities, truck trips do not necessarily scale to the size of the facility. So a small facility may receive nearly as many truck trips as a similar larger facility, but the trucks would only partially unload at the smaller facility but would fully unload at the larger one. She had used the truck loading information from the West Coast hotels in the DSEIS, and when the Seattle Sheraton offered its truck loading information, she reviewed it to validate the information previously received. Testimony of Marni Heffron.

12. The Appellants challenge the FSEIS parking analysis but offered nothing that showed it was inadequate. They also contend, but did not prove that the discussion of mitigation for parking impacts is inadequate. Further, the City’s SEPA policy on parking states that “no” SEPA authority is provided to mitigate the impact of development on parking availability in the Downtown and South Lake Union Urban Centers.” SMC 25.05.675.M.2.b (1).

¹⁰ Although both transportation consultants focused on worst-case, or near worst-case conditions, SEPA does not require a worst-case analysis in most cases. Only if agencies choose to proceed in the absence of vital information is a worst-case analysis required in environmental documents. *See* SMC 25.05.080.C.

¹¹ In any event, Heffron determined that cumulative attendance for “hybrid” events, such as convention events held in one ballroom and several smaller meeting rooms at the same time another ballroom was being used for a social event, would not exceed the maximum capacity conditions evaluated in the scenario approach. Exhibit 21, Appendix G at 40-41.

13. Most of the details of the Appellant's consultant's critique of the transportation analysis are already included in Section V of the FSEIS along with Heffron's responses to them. It is not unusual for experts to disagree on the appropriate analytical approach to a given assignment. The Appellants have shown that the transportation analysis could have been done differently. They have not shown that Heffron's analysis failed to meet industry standards, or that it failed to present the Department with a reasonably thorough discussion of the significant aspects of the proposal's probable transportation impacts. The transportation impacts of the proposal were disclosed, discussed and substantiated by well-researched data and opinion.

14. In their challenge to the Interpretation, the Appellants' assert that FAR and regional development credits for the proposal were calculated improperly. They argue that a sending lot cannot send capacity that it does not have or cannot obtain, and that because a new structure is not proposed on Lot B, it is not authorized by SMC 23.49.011.A.2.b to obtain regional development credits, and thus, cannot send them to Lot A. They argue that by treating the two lots as if they are one lot for purposes of calculating regional development credits, the Director is ignoring the sequence for FAR calculations required by the Code. The Director counters that the Appellants' interpretation of SMC 23.49.011.A.2.b would lead to the absurd result of requiring the construction of an insignificant structure, such as a fence, on Lot B in order for Lot B to transfer FAR through purchase of regional development credits. The Director also notes that the Appellants' interpretation would be contrary to the Code's clear policy of supporting the regional development credit program, and would ignore key language in SMC 23.49.041.A, including provisions that: 1) allow lots to be combined for the purpose of allowing the chargeable floor area on one lot to be used on the other; 2) state that the requirements of SMC 23.49.011, concerning the use of a lot's capacity, are "modified in this section [23.49.041]"; and 3) expressly state that "[c]riteria for use of bonus that apply to the structure or structures shall be applied *only to the structure(s) on the lots using the transferred bonus capacity.*" (Emphasis added.)

15. The arguments advanced by the parties concerning the correct application of SMC 23.49.011 and .041 clearly demonstrate that the meaning of those Code sections is not plain on their face. The logic in the Appellants' interpretation is attractive, but it contravenes several rules of statutory construction, and it does not overcome the deference to be accorded to the Director's Interpretation.

16. The Appellants reject the Director's construction of the "result in" language in SMC 23.49.041.D and propose, instead that use of the combined lot development approach must facilitate achieving the identified public benefit. The two constructions are not dissimilar.

17. The Appellants dispute the Interpretation's conclusion that the proposed combined lot development would result in, or facilitate, improved massing. They argue that the tower's massing and location were already approved by the DRB in the design review process. However, the DRB was addressing the proposal's mass based on a "one lot" approach and reviewed the it from a design prospective only. After the Department determined that the one lot approach was not authorized, the proposal's massing could be achieved under the Code only

through the combined lot development approach. Thus, it resulted from, or was facilitated by that approach.

18. The Appellants argue that the question of whether or not the massing on the block truly “achieves a better relationship with surrounding conditions” depends upon what can be constructed on Lot B, which is cited in the Interpretation as having significantly reduced development potential as a result of the transfer of FAR from it to Lot A through combined lot development. The evidence in the record shows that with Lot B’s remaining FAR, it could be developed with a building approximately 19 stories in height. If developed as a residential structure, it would have a reduced floor plate but could be constructed to the full height allowed in the zone. However, construction of a tall tower on Lot B would be likely whether or not some of Lot B’s FAR was transferred to Lot A. This reality does not affect the validity of the Director’s conclusion that combined lot development facilitates development on Lot A that concentrates the massing closest to the tall buildings in the downtown core and away from the Green Street, allows for a transition in height between the tower and less intensive adjacent development, and minimizes the development’s shading of other properties and the Green Street.

19. The Appellants also dispute the Interpretation’s conclusion that the proposed combined lot development would result in, or facilitate, the through block pedestrian connection. They contend that it was part of the proposal reviewed by the DRB. But the six-foot dedicated easement provided across the Applicant’s property for the connection was not included in the earlier proposal reviewed by the DRB. It was offered as part of the combined lot development package.

20. The Appellants contend that the proposed pedestrian connection is not safe and thus, does not constitute a significant public benefit. However, testimony from Department witnesses established that final Department approval is contingent on the resolution of any safety issues to the satisfaction of the Seattle Department of Transportation (“SDOT”). Further, testimony from the Department and the project architect demonstrated that the Department has already identified the specific safety issues raised by the Appellants for resolution in conjunction with SDOT. The Appellants also raised concerns that the connection would not be fully accessible and thus, could not qualify as a significant public benefit, but they do not cite any Code requirement that the Director consider the technical details of safety and accessibility as part of a Director’s determination to allow combined lot development.

21. In their reply brief, the Appellants raised for the first time the issue of whether the improved massing or through-block connection are consistent with the City’s Downtown Amenity Standards. They also raised an issue in their Post-Hearing Opening Brief about the timing of the Department’s decision on the project’s proposed FAR calculations as addressed in SMC 23.49.011.A.4. Because neither issue was called out in the Appellants’ December 14, 2014 supplement to their request for the interpretation, both are untimely and will not be considered.

22. The Appellants have shown that opinions can differ on whether or not a particular project feature is facilitated by combined lot development and constitutes a significant public benefit,

but they have not demonstrated that the Director's conclusions on these issues, as reflected in Interpretation No. 15-010, are clearly erroneous.


23. The Appellants addressed a SEPA issue in their Post-Hearing Opening Brief that was not included in their appeal. They argued that the FSEIS was inadequate for failing to address issues associated with combined lot development and the fact that the project includes Lot B. This issue is untimely and will not be considered.

24. The Appellants presented no evidence on several of their appeal issues: 1) that the DRB recommendation and Director's decision failed to properly implement SEPA policies, the Comprehensive Plan, and Design Review Guidelines and policies;¹² 2) that the FSEIS and Director's decision failed to adequately disclose and address the land use impacts and policy inconsistencies of the "public alley usurpation and the 'one lot' artifice inherent in the approved Hedreen no-alley vacation proposal;"¹³ 3) that the FSEIS, including its response to public comments, presumes that the project should be approved "and/or that the impacts of the project were previously known and accepted;"¹⁴ and 4) that the FSEIS traffic analysis fails to adequately address transit service issues and off-site pedestrian impacts.¹⁵ Accordingly, those claims are waived.

Decision

The Director's SEPA determination, design review decision, and Interpretation No. 14-010 are each **AFFIRMED**.

Entered this 14th day of July, 2015.


Sue A. Tanner
Hearing Examiner

Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

¹² Supplemented Appeal at 4-5.

¹³ *Id.* at 7. The Appellants included argument and comments on this issue in their briefing, but they did not cite any authority that would grant the Examiner jurisdiction over it.

¹⁴ *Id.* at 7-8.

¹⁵ *Id.* at 6.

The decision of the Hearing Examiner in this case is the final decision for the City of Seattle. In accordance with RCW 36.70C.040, a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the decision is issued unless a motion for reconsideration is filed, in which case a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the order on the motion for reconsideration is issued.

The person seeking review must arrange for and initially bear the cost of preparing a verbatim transcript of the hearing. Instructions for preparation of the transcript are available from the Office of Hearing Examiner. Please direct all mail to: PO Box 94729, Seattle, Washington 98124-4729. Office address: 700 Fifth Avenue, Suite 4000. Telephone: (206) 684-0521.

Appellants:

Alliance for a Livable Denny
Triangle and Unite Here Local 8
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Seattle, WA 98104

Department Director:

Diane Sugimura, Director, DPD
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Applicant:

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**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

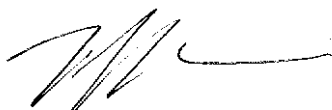
CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **CORRECTED Findings and Decision** to each person listed below, or on the attached mailing list, in the matter of **Alliance for a Livable Denny Triangle and Unite Here Local 8**, Hearing Examiner Files: **MUP-14-016 (DR, W) and S-14-003**, in the manner indicated.

Party	Method of Service
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Dated: July 22, 2015



 Tiffany Ku
 Legal Assistant