BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeal of ESCALA OWNERS ASSOCIATION from a decision issued by the Director, Seattle Department of Construction and Inspections	Hearing Examiner File: MUP-19-031 (DD, DR, S, SU, W) Department Reference: 3018037-LU CITY AND APPLICANT'S JOINT MOTION FOR PARTIAL DISMISSAL

I. INTRODUCTION AND RELIEF REQUESTED

This is an appeal of the Master Use Permit ("MUP") granted for Respondent Seattle Downtown Hotel & Residences, LLC's ("Applicant") application to construct a 54-story mixed-use building ("Project") in the City of Seattle ("City"). The MUP includes two components: (1) design review approval under the Seattle Municipal Code ("SMC" or "Code") Chapter 23.41; (2) the City's State Environmental Policy Act ("SEPA") decision including both procedural compliance with SEPA and imposition of conditions pursuant to the City's substantive SEPA authority. Appellant Escala Owners Association ("Appellant") has appealed the Analysis and Decision of the Director of the Seattle Department of Construction and Inspections ("Decision"),

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

issued October 10, 2019, as well as the code interpretation that will be provided pursuant to SMC 23.88.020 in response to Appellant's Request for Land Use Code Interpretation.

For the reasons provided in this motion, many of the claims raised in Appellant's appeal of the Decision must be dismissed as a matter of law. Several claims are, in whole or in part, subject to dismissal for more than one reason. When one claim is discussed in multiple sections of this motion, those arguments should be understood as arguments in the alternative. A brief list of arguments, organized by claim, is provided at the end of this motion for the Examiner's convenience. The claims that must be dismissed include the following:

- Claims that were not included in the Notice of Appeal and are insufficiently specific. In Appellant's Clarification of Issues ("Clarification") Appellant improperly attempts to add new and untimely allegations relating to the land use, environmental health, energy/greenhouse gas emissions, aesthetics (height, bulk and scale, light, glare and shadows), wind, historic and cultural resources, transportation and parking and construction elements of the environment to Claims III.2.1.e, 2.1.g, 2.1.j, 2.1.k, 2.1.l and 2.1.m. These claims were not raised in the Notice of Appeal (except to the extent that Claims 2.1.a and 2.1b raise issues relating to transportation and environmental health). This broad reference to these elements of the environment also fails to raise specific claims. These claims are insufficiently specific, even after the "Clarification" provided by Appellant, and must be dismissed. Among other claims, the City and Applicant request the Examiner determine the Appellant did not raise claims regarding impacts of reduction of light on human health, since this claim was never expressly stated, either in the Notice of Appeal or the "Clarification."

- Claims concerning evaluation of or impacts to transportation elements of the environment. Chapter 43.21C RCW, which controls appeals of SEPA determinations in the City

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

pursuant to SMC 25.05.680, expressly exempts mixed-use projects from appeal under SEPA "on the basis of the evaluation of or impacts to transportation elements of the environment." RCW 43.21C.500(1). The majority of Appellant's SEPA claims relate to the City's evaluation of the Project's alleged transportation impacts. Because the Project is consistent with the transportation element of the City's comprehensive plan, and because its traffic impacts are expressly mitigated by a City ordinance of general application, it is exempt from appeal on this basis. *Id.* As a result, Claims III.2.1a. and 2.1.c must be dismissed in their entirety and the portions of Claims III.2.1.d, 2.1.e, 2.1.f, 2.1.g, 2.1j, 2.1.k, 2.1.l and 2.1.m relating to transportation must be dismissed.

- Claims relating to issues that were not raised by Appellant or any other person in SEPA comments. These claims are portions of Claim III.2.1.b and portions of Claim III.2.1.d. Impacts from alleged Property contamination were not raised as an issue in SEPA comments, other than a single paragraph in one letter suggesting that the Applicant check whether an underground storage tank ("UST") in a nearby building is leaking. Contamination allegations beyond this isolated question cannot be raised for the first time on appeal.

- Claim relating to compliance with SMC 23.41. These Claims are III.2.1.h, 2.2.b, 2.2.c and 2.2.e. Compliance with SMC 23.41 is not subject to appeal to the Examiner under the City Code.

- Claims that are incorrect as a matter of law. These include Appellant's assertion in Claims III.2.1.h and 2.2.b that the Downtown Design Review Board ("Board") could not issue a recommendation until SEPA is complete. These claims fail under both the mandatory processes of the City Code and SEPA. These also include Claims III.2.1.b, 2.1.c, 2.1.f, 2.1.g, 2.1.i, 2.1.k, and 2.1.m, which assert various SEPA procedural requirements that do not apply

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

here.

For the reasons described in this motion, Respondents Applicant and City respectfully request that the Hearing Examiner dismiss these claims.

II. STATEMENT OF FACTS

The Project is a proposed 54-story mixed use building with hotel, 233 apartment units, retail, and parking for 140 vehicles.[1] The Project's address is 1903 5th Avenue, and it will be located on a parcel (the "Project Site") at the southeast corner of a block bounded by Virginia Street, 5th Avenue and the Monorail, Stewart Street and 4th Avenue in the Belltown neighborhood of the City's downtown.

City review of the Project has spanned more than five years. The Board held its initial Early Design Guidance ("EDG") meeting for the Project on December 16, 2014. The second EDG meeting was held on September 29, 2015. A third EDG meeting was held on December 15, 2015. Public comment was offered and considered at these meetings, including comments from Appellant's members. The Board held a Design Review Recommendation Meeting on August 16, 2016. During this meeting, the Board heard public comment, deliberated, and recommended approval of the Project contingent on compliance with several specific conditions. City staff worked with the Applicant to ensure compliance with these conditions in a process that resulted in revisions to the Project nearly two years after the Design Review Recommendation Meeting. After ensuring compliance with the Board's conditions, the City accepted the Board's recommendation and approved the Project's design.

The City also analyzed the Project in compliance with the procedural requirements of

[1] This statement of facts is drawn from the Decision, which is attached to the Notice of Appeal, and the Declaration of Courtney A. Kaylor in Support of Motion to Dismiss ("Kaylor Declaration").

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

SEPA. The City determined that because of the Project's nature and its Belltown location, its impacts had already been sufficiently evaluated in the Draft Environmental Impact Statement ("DEIS") and Final Environmental Impact Statement ("FEIS") for the Seattle Downtown Height and Density Changes. The DEIS (which was published in 2003) and FEIS (published in 2005) evaluated zoning changes within the City's downtown, including the direct, indirect, and cumulative impacts of allowing additional height and density. The City determined that the Project's potential significant impacts were within the range of impacts analyzed in the FEIS, and it therefore decided to use the FEIS to evaluate the Project as provided by SMC 25.05.600. In addition, the City completed a comprehensive analysis of the site-specific potential environmental impacts of the Project, which were not significant. The City set forth this analysis in a document entitled "Addendum to the Final Environmental Impact Statement for the Downtown Height and Density Changes EIS prepared for the 1903 5th Ave. Development, Master Use Permit No. 3018037" ("Addendum"), which was published September 14, 2017. On the same day, the City issued a Notice of Revised Application, Adoption of Final Environmental Impact Statement and Availability of Addendum ("Addendum Notice"). The Addendum Notice solicited public comment on the Addendum. The Addendum considered four possible scenarios for development at the Project Site and analyzed them in light of ten different areas of environmental impact. The project-specific analysis in the Addendum did not substantively change the analysis of significant impacts and alternatives in the FEIS. The City published updated versions of the Addendum Notice on October 9, 2017, and August 5, 2019. Both notices solicited public comment.

The City considered information in the FEIS and Addendum (including the numerous, project-specific technical analyses and reports attached to the Addendum) to determine the scope

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

of potential short- and long-term impacts. The City also considered the mitigation for these impacts that was proposed by the Applicant, as well as additional mitigation required by City laws and policies. This analysis is documented in detail at pages 28 through 37 of the Decision. The City concluded that no mitigation was warranted for the less-than-significant impacts the Project would have relating to greenhouse gas emissions, land use, public views, and shadows on designed public open spaces; that no mitigation beyond that already required and/or proposed would be necessary for impacts relating to construction, environmental health, height, bulk, scale, light, glare, and historic resources; and that the City has no SEPA authority to mitigate for parking impacts (which were unlikely to be significant in any event).

The Decision also considered the Project's likely transportation impacts. The City concluded that any transportation impacts would be consistent with the analysis in the FEIS and that the Project would not alter the Level of Service ("LOS") at any of thirteen nearby street intersections or to noticeably increase delay along "[k]ey corridors where congestion was anticipated" by the FEIS. Decision, p. 36. The City also determined that due to the potential increase in delays in the alley arising from use of the Project's loading berths, a plan for managing deliveries in the alley ("Dock Management Plan") must be approved before issuance of a construction permit. Pages 38 and 39 of the Decision detail the numerous requirements for the Dock Management Plan, which include the designation of a Dock Master (with enumerated responsibilities); restrictions on vendor access route, acceptance of delivered parcels, truck size, and hotel purchase orders; signage requirements; and residential move-in/move-out scheduling, timing, and truck size.

The City issued the Decision on October 10, 2019. Appellant filed its Notice of Appeal and Request for Code Interpretation on October 24, 2019. At the Prehearing Conference on

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

November 7, 2019, the Applicant's counsel requested clarification that the scope of certain claims in the Notice of Appeal would not extend beyond elements of the environment already identified in Section III.2.1.a and b, and the Examiner allowed Appellant to provide a written response. On November 12, 2019, Appellant filed the Clarification, which asserted in part that "[t]he issues stated in Section 2.1(e), (g), (j), (k), (l), and (m) in the Notice of Appeal are intended to encompass elements of the environment beyond those that are identified in Sections 2.1(a) and (b)." Clarification, p. 1. These elements include "land use, environmental health, energy/greenhouse gas emissions, aesthetics (height, bulk, and scale, light, glare, and shadows), wind, historic and cultural resources, transportation and parking and construction elements of the environment for the [Project]." *Id.*, p. 1.

As authorized by the City of Seattle Hearing Examiner Rules of Practice and Procedure ("HER") and by the Examiner's November 8, 2019 Prehearing Order, the Applicant and the City now seek partial dismissal of this appeal.

III. STATEMENT OF ISSUES

The issues raised in this motion are whether the Examiner should dismiss: (1) Claims that were not raised in the Notice of Appeal and are vague; (2) Claims relating to transportation, which are not subject to appeal under RCW 43.21C.500; (3) Claims relating to matters not previously raised in SEPA comments; (4) Claims relating to compliance with SMC 23.41; and (5) Claims that are incorrect as a matter of law.

IV. EVIDENCE RELIED UPON

This motion relies on the papers and pleadings in this matter, including the Notice of Appeal and its attachments, and the Kaylor Declaration submitted concurrently with this motion.

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

V. AUTHORITY

A. The Examiner may dismiss an appeal over which the Examiner lacks jurisdiction or that is without merit on its face.

Pursuant to HER 3.02(a), "[a]n appeal may be dismissed without a hearing if the Hearing Examiner determines that it fails to state a claim for which the Hearing Examiner has jurisdiction to grant relief or is without merit on its face." HER 3.02(b) allows any party to request dismissal of all or part of an appeal by motion.

B. The Examiner should dismiss claims not raised in the Notice of Appeal.

19 days after filing its Notice of Appeal, Appellant filed the Clarification, which asserts that Claims 2.1.e, 2.1.g, 2.1.j, 2.1.k, 2.1.l, and 2.1.m "are intended to encompass" an assortment of at least 12 elements of the environment that are not otherwise mentioned anywhere in the Notice of Appeal (except to the extent that Claim 2.1.a addresses transportation and 2.1.b addresses environmental health). The list of elements in the Clarification includes every element of the environment discussed in the Addendum and the Decision (other than viewshed impacts). Appellant's attempt to use the Clarification to amend its Notice of Appeal must be denied.

1. New claims cannot be added at this late date.

HER 3.01(d)(3) requires that an appeal include "[a] brief statement of the appellant's issues on appeal, noting appellant's *specific objections* to the decision or action being appealed." (Emphasis added.) Rule 3.05 provides: "For good cause shown, the Hearing Examiner may allow an appeal to be amended *no later than 10 days after the date on which it was filed*." (Emphasis added.) Under the Rules, the Examiner cannot allow Appellant's tardy attempt at amendment 19 days after filing its Notice of Appeal.

As the Examiner observed in *Moehring*, HE File No. MUP-18-001, Order on Motion to Dismiss (March 15, 2018), at 3: "[A]ny issue not raised in the Notice of Appeal, may not be

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

raised later in the hearing process." In *Moehring*, the Examiner rejected an appellant's "attempt[] to introduce new issues in his response [to a motion] that were not identified in the Notice of Appeal" and declared those issues "dismissed." *Id.* In another case, an appellant sought to expand the scope of one of its claims through an argument in a response to a motion to dismiss. *See Durslag*, HE File No. MUP-17-022, Order on Applicant's Motion to Dismiss (Aug. 21, 2017), at 3. The appellant asserted that its Notice of Appeal, which alleged only that a proposal failed to serve the public interest, also "involve[d] the question of whether the staff correctly determined that the public interest is served because the proposal 'creates the potential for additional housing opportunities within the City.'" *Id.* The Examiner rejected this attempt as well.

Appellant now seeks to do precisely what was forbidden in *Moehring* and *Durslag*. Claims III.2.1.e, 2.1.g, 2.1.j, 2.1.k, 2.1.l, and 2.1.m contained no indication that they relate to any of the elements of the environment listed in the Clarification and cannot therefore provide a basis for a late amendment of the Notice of the Appeal that brings these elements into the case. To the contrary: "[B]road catch-all language that does not identify a specific issue . . . cannot be relied upon to shoehorn in new (more specific) issues." *Moehring*, *supra*, at 3.[2]

The Examiner must reject Appellant's attempt to add new issues not raised in the Notice of Appeal and dismiss the newly added elements of the environment from Claims III.2.1.e, 2.1.g, 2.1.j, 2.1.k, 2.1.l and 2.1.m.

2. The new claims are not sufficiently specific.

Even if these claims were construed to "encompass" the elements in the Clarification,

[2] In a previous appeal by this Appellant that raised many of the same issues, the Notice of Appeal expressly cited and raised specific objections regarding many of the elements of the environment listed in the Clarification – demonstrating that Appellant is fully capable of properly raising such claims. *Escala Owners Association*, HE File No. MUP-17-035, Notice of Appeal (Nov. 9, 2017).

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

they would still require dismissal because Appellant failed to allege any specific errors in the City's analysis of these elements.

In appeals of Type II Decisions, the City Code requires that "*[s]pecific* objections to the Director's decision and the relief sought shall be stated in the written appeal." SMC 23.76.022.C.3.a (emphasis added). Similarly, the HER require the Notice of Appeal to "not[e] appellant's *specific* objections to the decision or action being appealed." HER 3.01(d)(3) (emphasis added).

Notices of Appeal to the Examiner are routinely subject to motions to dismiss for failure to note objections with sufficient specificity. For example, in *Cromwell*, HE File No. MUP 17-027, Order on Owner's and Applicant's Motion to Dismiss, (Oct. 10, 2017), at 2, the Examiner considered appeal claims that a SEPA decision "with no conditions imposed does not fully take into account all relevant ECA issues" and that a "full evaluation of the potentially significant impacts on the environmentally critical area resources and the mitigation measures is needed." The Examiner concluded that the claim "simply states the Appellants' opinion that the DNS for the proposal is inadequate" and should be dismissed because it "does not state any facts in support of the opinion or identify any aspect of the ECA that was not evaluated by the Department." *Id.*

In another case, the appellant asserted that an environmental checklist contained "'intentional and substantial misstatements of facts.'" *Safe and Affordable Seattle*, HE File No. MUP-18-019, Order on Motion to Dismiss (Oct. 5, 2018), at 1. The Examiner concluded that this claim failed to "identify any specific errors in the checklist" and dismissed it under HER 3.01(d)(3) for its "fail[ure] to state specific objections concerning the errors it alleges." *Id.* Similarly, the Examiner has cautioned that "broad catch-all language that does not identify a

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

specific issue such as alleging that the Decision is inadequate for its 'failure to conform to other applicable land use code provisions,' fails to provide the specificity required under HER 3.01.d.3." *Moehring*, HE File No. MUP-18-001, Order on Motion to Dismiss (March 15, 2018), at 3. Claims that are "mere generalized statements should be dismissed." *Id.*

Here, Appellant's "Clarification" is no more than the addition of a laundry list of all but one of the elements of the environment addressed in the Addendum. Appellant fails to identify any specific alleged defect in the analysis or mitigation relating to these newly added elements of the environment. This is insufficient to provide Respondents with reasonable notice of the specific claims Appellant will raise at hearing. Among other claims, the City and Applicant request the Examiner determine the Appellant did not raise claims regarding impacts of loss of light on human health, since this claim was never expressly stated, either in the Notice of Appeal or the "Clarification."

The claims identified in the Clarification should not be construed to encompass the previously unasserted elements of the environment listed in the Clarification. But even if they were understood as such, they must be dismissed.

3. Since they were not meaningfully clarified, these claims remain insufficiently specific and should be dismissed.

As the Applicant stated at the prehearing conference, Claims III.2.1.e, 2.1.j, 2.1.k, 2.1.l and 2.1.m do not indicate specific objections to the Decision. Their generalized assertions fail to comply with HER 3.01(d)(3), and they should therefore be dismissed, in whole or in part, as follows:

- Claim 2.1.e, although it purports to describe a legal error, fails to state any actual "objection" to the Decision. It refers to SEPA's "scope" but makes no specific assertion of

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

inadequate analysis. The Claim also fails to identify the "statement" in the Addendum to which it refers. The specific phrase used by Appellant does not appear in the Addendum.

- Claim 2.1.j states that the DEIS and FEIS "do not adequately address environmental considerations," an impenetrably broad assertion that contains no specific objection whatsoever.

- Claim 2.1.k asserts that the DEIS and FEIS are "not accurate" and "not reasonably up to date" but identifies no statement in either document that is allegedly inaccurate or outdated; no impact or element of the environment that the documents fail to analyze; and no other specific objection.

- Claim 2.1.l references "substantial changes" and "new information" but does not indicate what changes or information supposedly required a different process.

- Claim 2.1.m contains no specific assertion of error other than the alleged failure to evaluate a "no-action" alternative. The allegations that the environmental documents "do not contain an adequate analysis" and include "fundamental errors," which are not based on any specific information, should be dismissed.

The addition of a list of elements of the environment in Appellant's "Clarification" does not correct these deficiencies because no specific claims are made regarding these elements. All of these claims must be dismissed.

C. The Examiner lacks jurisdiction over Appellant's claims relating to transportation impacts.

Appellant's primary assertion in this appeal is that the City failed to adequately analyze and mitigate transportation impacts – specifically, the "significant adverse traffic circulation, loading, and access impacts as well as vehicular and pedestrian safety issues associated with the alley that runs from Virginia to Stewart" that Appellant claims will result from the Project.

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

Notice of Appeal, p. 1. These claims, however, must be dismissed because they are expressly exempted from SEPA appeals by the SEPA statute itself.

The section of SEPA that establishes this exemption, RCW 43.21C.500, is entitled "Certain project actions evaluated under this chapter by a city or town planning under RCW 36.70A.040—When exempt from appeals under this chapter." The section reads, in full:

> (1) A project action pertaining to residential, multifamily, or mixed use development evaluated under this chapter by a city or town planning under RCW 36.70A.040 is exempt from appeals under this chapter on the basis of the evaluation of or impacts to transportation elements of the environment, so long as the project does not present significant adverse impacts to the state-owned transportation system as determined by the department of transportation and the project is:
>
> (a) (i) Consistent with a locally adopted transportation plan; or
> (ii) Consistent with the transportation element of a comprehensive plan; and
>
> (b) (i) A project for which traffic or parking impact fees are imposed pursuant to RCW 82.02.050 through 82.02.090; or
> (ii) A project for which traffic or parking impacts are expressly mitigated by an ordinance, or ordinances, of general application adopted by the city or town.
>
> (2) For purposes of this section, "impacts to transportation elements of the environment" include impacts to transportation systems; vehicular traffic; waterborne, rail, and air traffic; parking; movement or circulation of people or goods; and traffic hazards.

RCW 43.21C.500.[3] RCW 43.21C.500 is jurisdictional in nature and does not allow for the pendency of an appeal that conflicts with its exemption.

The Project meets each of the requirements incorporated in RCW 43.21C.500. As a result, the Decision is exempt from appeal under SEPA on the basis of transportation issues. The Examiner therefore lacks jurisdiction to hear such appeal claims and must dismiss them.

[3] RCW 43.21C.500 requires no action on the part of the City to be effective. SMC 25.05.680 (SEPA statute controls). While not required, the City has adopted provisions functionally identical to RCW 43.21C.500 through its passage of Ordinance 125964.

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

1. The Decision is within the scope of RCW 43.21C.500.

It cannot be disputed that the Decision is a project action; that the Project is a mixed-use development; or that the City plans under RCW 36.70A.040. There is no suggestion in the Notice of Appeal (nor has there been any suggestion throughout the five-year consideration of the Project) that the Project will result in significant adverse impacts to state-owned transportation systems. The Decision must therefore be exempt from appeals of its transportation-related determinations as long as the Project meets the criteria established by RCW 43.21C.500(a) and (b). As explained below, the Project meets these criteria as a matter of law: it is consistent with the transportation element of the City's comprehensive plan ("Comprehensive Plan" or "Plan"), and its traffic impacts are expressly mitigated by an ordinance of general application.

2. The Project is consistent with the Comprehensive Plan Transportation Element.

As required by RCW 43.21C.500(1)(a)(ii), the Project is "[c]onsistent with the transportation element of [the City's] comprehensive plan." In general, the City has determined that the Project complies with all applicable provisions of its Land Use Code, which is comprised of "a set of regulations and procedures for the use of land which are consistent with and implement the City's Comprehensive Plan." *See* SMC 23.02.020.A. None of the claims in the Notice of Appeal – even those that challenge the Project's compliance with particular code provisions – call the Project's compliance with the Comprehensive Plan into question. The Project serves the Plan's goal of "concentrating development in urban villages well served by transit." Plan, p. 92. None of the Project's likely transportation impacts documented by the Applicant, discussed by the City, or alleged by Appellant are expected to lead to any failures under the Plan's Level of Service ("LOS") standard for transportation impacts, which focuses

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

primarily on reducing "the share of all trips that are made by people driving alone." *Id*. To the contrary: the Project's "lack of on-site parking may encourage more [Project residents] to give up their car and rely on alternatives such as transit and car-sharing," and "many of the retail patrons will be passerby traffic or accommodated by transit." Decision, p. 33. Nor is there any indication that the Project will meaningfully increase traffic on City streets or transit routes – and even if there were, the Plan specifically anticipates that the downtown area will experience "higher future volumes on most avenues and streets, and increased congestion." Plan, p. 459. The Project is fully consistent with the transportation element of the Plan, as required by 43.21C.500(1)(a)(ii).

3. The Project is expressly mitigated by the City's code.

The Project is "[a] project for which traffic . . . impacts are expressly mitigated by an ordinance, or ordinances, of general application adopted by the [City]," as required by RCW 43.21C.500(1)(b)(ii). Several City ordinances that expressly mitigate traffic impacts apply to the Project.

First, if the Project were found not to meet applicable concurrency LOS standards, it would be required by SMC 23.52.006 to commit to installing improvements or implementing a strategy to resolve this noncompliance. Second, the City Code contains provisions mitigating traffic impacts to alleys. The Code requires dedication of property to widen substandard alleys. SMC 23.49.022, 23.53.030. The Code also restricts the standing or parking of a vehicle in an alley. SMC 11.72.020, 11.72.025. The City's "overview" SEPA policy expressly recognizes that "[m]any environmental concerns have been incorporated in the City's codes and development regulations. Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

sufficient mitigation," subject to specified limitations. SMC 23.05.665.D. Third, subject to the overview policy, the City Code expressly provides substantive SEPA authority to "minimize or prevent adverse traffic impacts" based on analysis of "the expected peak traffic and circulation pattern of the proposed project weighed against such factors as the availability of public transit; existing vehicular and pedestrian traffic conditions; accident history; the trend in local area development; parking characteristics of the immediate area; the use of the street as determined by the Seattle Department of Transportation's Seattle Comprehensive Transportation Plan; and the availability of goods, services and recreation within reasonable walking distance." SMC 25.05.675.R.2. Indeed, the City used the authority provided by SMC 25.05.675.R to impose a condition on the Project "to mitigate potential traffic impacts." Decision, p. 37.

The Project complies with RCW 43.21C.500(1)(b)(ii).

4. Transportation-related claims must be dismissed.

Because the Project meets all of the requirements of RCW 43.21C.500, the Decision is "exempt from appeals under [SEPA] on the basis of the evaluation of or impacts to transportation elements of the environment." As a result, the Examiner must dismiss Appellant's claims regarding issues such as "traffic and transportation," "public facilities (the alley)," "traffic circulation, loading, and access impacts," and "vehicular and pedestrian safety issues" (claim 2.1.a); "the present and planned condition and capacity of the impacted alley" (claim 2.1.c); and "demand for services and impacts on the alley and/or requiring improvements to the alley" (claim 2.1.d, partial). In addition, the Examiner must dismiss claims 2.1.e, 2.1.f, 2.1.g, 2.1.i, 2.1.j, 2.1.k, 2.1.l, and 2.1.m to the extent that those claims assert undisclosed, inadequately analyzed, or insufficiently mitigated transportation impacts.

As provided by RCW 43.21C.500(2), WAC 197-11-444(2)(c) and SMC 25.05.444.B.3,

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

"transportation elements of the environment" include "impacts to transportation systems; vehicular traffic; waterborne, rail, and air traffic; parking; movement or circulation of people or goods; and traffic hazards." The Notice of Appeal raises a variety of transportation-related concerns, but all of its claims concerning the alley, loading berths, safety, traffic circulation, and related issues are fundamentally based on "evaluation of or impacts to" one of these "elements of the environment." RCW 43.21C.500.

Several of Appellant's claims attempt to cast impacts on the alley as impacts to "public facilities" rather than to transportation elements. This designation, however, does not remove alley-related claims from RCW 43.21C.500's scope. "Public facilities" are not an element of the environment included on the lists enumerated by WAC 197-11-444 and SMC 25.05.444, which indicate the "elements of the environment" that must be considered "for purposes of analyzing environmental impacts." WAC 197-11-430(4)(d). Instead, the term comes from a code provision establishing "the City's policy to minimize or prevent adverse impacts to existing public services and facilities" (a term that "includes facilities such as . . . streets"). SMC 25.05.675.O. Even assuming the definition of "facility" also includes "alleys," however, that is entirely irrelevant to the applicability of the RCW 43.21C.500 appeal exemption to Appellant's claims. The "public services and facilities" policy in SMC 25.05.675.O allows the City to impose mitigation in certain circumstances. Nothing in SMC 25.05.675.O or RCW 43.21C.500, however, indicates that something that is considered a "public facility" under one provision cannot simultaneously be considered a "transportation element of the environment" under the other. Indeed, it would be absurd to argue that an impact to "transit," which is considered a "service" by SMC 25.05.675.O, could not also be an impact to "transportation systems," "rail traffic," or "movement or circulation of people" under RCW 43.21C.500(2).

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

In the same way, an alley-related impact is a transportation impact even if it also fits criteria justifying the City's invocation of substantive SEPA authority under SMC 25.05.675.O. The plain text of Appellant's claims ("Vehicle traffic and truck loading circulation through the alley is highly constricted."; "This proposal will cause a significant increase in use of the alley and will create significant safety and congestion issues for drivers and pedestrians alike.") belies any assertion that the claims do not concern transportation elements such as "vehicular traffic," "movement or circulation of people or goods," and "traffic hazards." Indeed, the nature of these claims is such that the question of whether the alley is itself a "public facility" is essentially irrelevant. The designation under which the City could impose mitigation for these alleged impacts does not matter: RCW 43.21C.500 asks only whether a claim relates to "evaluation of or impacts to transportation elements of the environment." Appellant has made no claim regarding the alley, loading berths, safety, or any other transportation-related issue that does not fit squarely within the definitions in RCW 43.21C.500(2). As a result, all of these claims must be dismissed.

D. The Examiner should dismiss claims that were not the subject of public comment.

In Claim III.2.1.b, Appellant asserts possible impacts from "contamination" and "vapors from contaminants." Yet, other than a single paragraph suggesting that the Applicant check whether a UST in a nearby building is leaking, no party submitted comments relating to alleged contamination. Except to the limited extent it addresses this single UST, this claim (along with the portions of claim 2.1.d and any other claim that relies on this asserted impact) must be dismissed because it was not an issue raised in public comment.

"Where the objection to an EIS is saved until the parties receive an unfavorable decision, the purposes of SEPA are frustrated." *Kitsap Cty. v. State Dep't of Nat. Res.*, 99 Wn.2d 386,

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

391, 662 P.2d 381, 384 (1983). Accordingly, SMC 25.05.545.B provides that a "[l]ack of comment by other agencies or members of the public on environmental documents, within the time periods specified by these rules, shall be construed as a lack of objection to the environmental analysis." In light of the policy that governs SEPA procedures, this requirement prohibits the assertion of an issue in a SEPA claim if that issue was not raised (in a public comment or otherwise) before the agency made its final determination.

A recent Examiner decision, which concluded that a person may not file a SEPA appeal without first filing a public comment during the agency's review process, ably explains why this is so. The Examiner determined that the intent of SMC 25.05.545.B's "lack of objection" language is "clear: if another agency or the public fails to comment, the lead agency may assume that entity has no objection to the environmental document." *Safe and Affordable Seattle*, HE File No. W-19-006, Order on Motion to Dismiss (Oct. 24, 2019), at 5. Thus, "[p]resumably, if a member had no objection to the environmental analysis, there would be no valid reason to appeal the DNS." *Id.* The Examiner persuasively described the "good policy reasons for this interpretation," which include the nature of the SEPA process – "a series of procedural steps," in which a deadline for commenting "allows the lead agency an organized timeline on which to review comments, address them in the FEIS, or change the document." *Id.* The alternative would be a "chaotic and inefficient" process that would "frustrate[]" the "purpose of SEPA." *Id.* The Examiner concluded that "there is a requirement to comment on issues prior to appealing the environmental document," though "a citizen who has commented . . . need not raise all possible issues" before appealing. *Id.*

Safe Seattle did not confront the issue of a Notice of Appeal asserting a claim that was never the subject of public comment, by the appellant or otherwise. Its rationale, however,

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

applies directly to such situations as well. "[I]f there is no comment, it may be considered by the lead agency as a lack of objection to the environmental analysis," *id.*, inducing the agency to continue its environmental review process without being on notice of an objection that could require it to start again from the beginning. It is for this reason that exhaustion of available administrative remedies is generally required prior to judicial review of agency action:

> Reversal of an agency on grounds not raised before the agency could have a seriously demoralizing effect on administrative conduct. Knowing that even decisions made with the utmost care might be reversed on heretofore undisclosed grounds, administrative agencies could become careless in their decisionmaking. . . . [The principle] thus serves important policy goals associated with the integrity of the administrative process.

See King County v. Washington State Boundary Review Board for King County, 122 Wn.2d 648, 670, 860 P.2d 1024 (1993).

Here, the City issued multiple notices of the Addendum and solicited public comment. Assertions of impacts from "contaminants" were not raised before the City during its review of the Project, other than other than a single paragraph relating to one nearby UST. Accordingly, the City had no opportunity to consider these objections and remedy them prior to issuance of the Decision. Because no comments were submitted on this issue, other than the limited comment regarding the UST, it cannot now be raised for the first time on appeal. Except to the extent they addresses this single UST, Claims III.2.1.b and the portion of Claim 2.1.d relating to contamination must be dismissed.

E. The Examiner lacks jurisdiction over Design Review procedural claims.

In Claims 2.1.h and 2.2.b, Claim 2.2.c, and Claim 2.2.e, Appellant makes assertions that the Examiner lacks jurisdiction to adjudicate. All four claims concern design review procedures under SMC Chapter 23.41. The first two claims assert that the Board erred in recommending design review approval of the Project prior to the completion of SEPA review; the third claim

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

asserts that the Board failed to review public comments in accordance with SMC 23.41.014; and the fourth claim asserts that the City should not have adopted the Board's recommendation because of alleged (and unspecified) conflicts with (unspecified) conditions that "should have been" imposed under SEPA.

These claims must be dismissed because the Examiner lacks jurisdiction over claims of procedural error in the Design Review Process. The Examiner's appeal jurisdiction extends to "compliance with the procedures for Type II decisions *as required in this Chapter 23.76*" and "compliance with substantive criteria" more generally. SMC 23.76.022.C.6. Design Review *procedures*, however, are not established by SMC Chapter 23.76, and the Examiner may not hear claims based on them. *Escala Owners Association*, HE File No. MUP-17-035, Order on Motion for Summary Judgment (February 15, 2018), at 20; *Save Madison Valley*, HE File No. MUP 18-020 & S-18-011, Order on Motion to Dismiss (Nov. 19, 2018), at 5.

F. The Examiner must dismiss claims that are incorrect as a matter of law.

1. Claim 2.1.c must be dismissed because it relies on a permissive Code provision.

If it is not dismissed under RCW 43.21C.500, Claim III.2.1.c should be dismissed because it does not assert a violation of a legal requirement and is duplicative. SMC 25.05.675.O.2.b[4] states: "The decisionmaker may require, as part of the environmental review of a project, a reasonable assessment of the present and planned condition and capacity of public services and facilities to serve the area affected by the proposal." To the extent that this claim asserts a failure to comply with a procedural requirement, it must be dismissed because the cited provision uses the word "may," not "shall." Failure to comply with a non-mandatory

[4] The claim quotes language from this provision, although the Notice of Appeal cites SMC 25.05.675.O.1.

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

requirement does not provide a basis for appeal. To the extent this claim asserts that the environmental analysis required for the Project was not a "reasonable assessment," it merely duplicates the assertions in claim 2.1.a and elsewhere in the appeal regarding the alleged inadequacy of the FEIS and Addendum.

2. Claim 2.1.f must be dismissed because scoping is not required for an Addendum.

Claim 2.1.f claims that the scope of impacts addressed in the Addendum and FEIS were incomplete and that SDCI failed to follow the proper scoping process. Yet, scoping is not required for an Addendum. SMC 25.05.625, which identifies required procedures for an Addendum, does not require scoping. In addition, it is far too late to challenge the scoping process for the DEIS and FEIS, which occurred in or before 2003.

3. Claim 2.1.g must be dismissed because an Addendum need not contain the same information as an EIS.

Claim 2.1.g claims that the FEIS and Addendum did not contain all of the information that is required by WAC 197-11-440. Yet, WAC 197-11-440 specifies the contents of an EIS, not an Addendum. The Addendum need not include all of the items included in an EIS. WAC 197-11-625; SMC 25.05.625. In addition, it is far to late to challenge the contents of the FEIS, which was issued in 2005.

4. Claims 2.1.h and 2.2.b must be dismissed because, under the City Code, the Board must issue a recommendation before SEPA is complete.

In Claims 2.1.h and 2.2.b, Appellant claims that the Board may not issue a design review recommendation before SEPA is complete. Yet, the City Code mandates this process. Under the Code, the Board makes its design review recommendation, SDCI reviews the recommendation and issues the final design review decision as part of the MUP, which also includes the City's final SEPA decision. SMC Ch. 23.41, SMC Ch. 23.76. Issuance of a Board recommendation

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

prior to the completion of SEPA analysis is fully in accordance with the requirements of the Code and SEPA. The Board "does not have decision making authority" but instead "is a recommending body, and the Director retains final decision making authority with regard to design review and to SEPA." *Escala Owners, supra*, at 20. There is no legal requirement for a final SEPA decision to be issued prior to a recommendation; the only requirement is that SEPA be issued before the City takes action on a proposal. WAC 197-11-655(3). Here, that action is issuance of the MUP.

What is more, Appellant effectively admits that claims 2.1.h and 2.2.b should be dismissed. In claim 2.1.h, Appellant asserts that "[t]o the extent that the Seattle code requires this, we challenge the legality of those provisions as applied in this case," and it makes the same pronouncement in claim 2.2.b. This provides yet another reason for dismissal of these claims, as the Examiner lacks jurisdiction over challenges to the Code. *Save Madison Valley*, *supra*, at 2 ("The Examiner's task is to review this decision under the legislative framework adopted by the Seattle City Council. There is no delegation of authority by code for the Examiner to determine whether a code conflicts with state law.").

The Examiner must dismiss Claims 2.1.h and 2.2.b because they are incorrect as a matter of law and, since they challenge adopted Code procedures, the Examiner lacks jurisdiction over them.

5. Claim 2.1.i must be dismissed because SEPA allows the use of existing environmental documents.

Appellant argues in Claim 2.1.i that the City was required to issue a new EIS for the Project rather than an Addendum because the Project received a Determination of Significance ("DS"). This argument is directly contradicted by SEPA itself, which expressly authorizes agencies to "use in whole or in part existing environmental documents for new project or

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

nonproject actions" that "have similar elements that provide a basis for comparing their environmental consequences such as timing, types of impacts, alternatives, or geography." RCW 43.21C.034.

Similarly, the SEPA regulations indicate unambiguously that "[a]n agency may use environmental documents that have previously been prepared in order to evaluate proposed actions, alternatives, or environmental impacts," whether "[t]he proposals [are] the same as, or different than, those analyzed in the existing documents." WAC 197-11-600(2). The same regulation allows agencies to use one or more methods to rely on previous environmental analysis, including "adoption" of "all or part of an existing environmental document," and/or preparation of "[a]n addendum, that adds analyses or information about a proposal but does not substantially change the analysis of significant impacts and alternatives in the existing environmental document." WAC 197-11-600(4). When an agency adopts an existing EIS and prepares an addendum, it must "include the statement of adoption with the addendum and circulate both" to stakeholders. WAC 197-11-630(3)(c). That is precisely what the City (which circulated three separate versions of the Addendum Notice) did in this case.

Indeed, in response to similar arguments made by Appellant in a prior appeal (not involving the Applicant), the Examiner rejected Appellant's claim that "the City is procedurally barred by SEPA from adopting the FEIS and using the Addendum." *Escala, supra*, at 3. Instead, the Examiner concluded that "the City is permitted to take these actions to fulfill its SEPA procedural requirements," noting that "'Courts have consistently upheld SEPA's rules allowing for reuse of existing environmental documents 'to avoid "wasteful duplication of environmental analysis and to reduce delay.'" *Id.* (quoting *Thornton Creek Legal Defense Fund v. City of Seattle*, 113 Wn. App. 34, 50, 52 P.3d 522 (2002)).

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

Claim 2.1.i must be rejected for this reason.

6. Claims 2.1.k and 2.1.b must be dismissed because Appellant's claims that prior environmental documents are not reasonably up to date fail.

In Claim 2.1.k, Appellant asserts that the DEIS and FEIS are, definitionally, too "old" and "outdated" to be adopted as existing environmental documents. As with the "existing documents" claims, however, the Examiner has already rejected this argument, ruling that "there is no limit on the age of a document that can be adopted identified in either WAC 197-11-630 or SMC 25.05." *Escala*, *supra*, at 2. Thus, to the extent these claims allege that the age of these documents inherently disqualifies them from serving as a basis for the City's review, these claims must be dismissed.[5]

The same is true of Claim 2.1.b (to the extent not dismissed under arguments raised above). Though an initial reading of this claim suggests a straightforward statement of adverse impacts, its wording actually reflects Appellant's careful avoidance of the assertion that such impacts actually exist, or that any environmental analysis suffered from any specific flaw on this basis. Rather than actually alleging that the Project will *have* impacts relating to contaminants, claim 2.1.b asserts instead that it cannot be known *whether* the Project will have such impacts because the analyses of the issue were too "old" to be relied upon. Yet, Appellant identifies no law that provides for the "expiration" of Environmental Site Assessments. Appellant also raises no specific objection to the reliability of the Environmental Site Assessments discussed in the Addendum; it only, again, asserts that "changes" might have occurred, meaning that relevant impacts "cannot possibly be adequately addressed" in the Addendum. The Examiner should

[5] Claim 2.1.i also cites the FEIS's age as a reason Appellant believes it should not have been used, and this argument should be rejected for the same reason. While Appellant asserts in this Claim that the conclusion that the Project produces no new probable, significant adverse impacts was in error, Appellant fails to identify any specific impacts it claims will occur.

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

dismiss Claim 2.1.b.

7. Claim 2.1.m must be dismissed because an Addendum is not required to contain an alternatives analysis.

Claim 2.1.m asserts that SDCI failed to conduct an alternatives analysis for the Project. However, none of the authority cited by Appellant requires an alternatives analysis in an Addendum. RCW 43.21C.030 contains general guidelines and does not specify the contents of an Addendum. WAC 197-11-070(1)(b) provides that, until the responsible official issues a Determination of Nonsignificance ("DNS") or FEIS, no action concerning the proposal shall be taken that limits the choice of reasonable alternatives. This does not require an alternatives analysis in an Addendum. WAC 197-11-400 addresses the purpose of an EIS, not an Addendum. WAC 197-11-402 addresses general requirements for an EIS, not an Addendum. WAC 197-11-440(5) addresses the contents of an EIS, not an Addendum. WAC 197-11-792(1)(b) addresses the scope of an EIS, not an Addendum. In addition, it is far too late to challenge the alternatives analysis in the FEIS, which was issued in 2005.

VI. CONCLUSION

In summary:

- Claim 2.1.a must be dismissed because SEPA appeals relating to transportation impacts are exempt under RCW 43.21C.500 (Section C).
- Claim 2.1.b must be dismissed because it was not raised in public comment (except an allegation relating to one UST) (Section D); and because no law invalidates SEPA documents on the basis of age (Section F.6).
- Claim 2.1.c must be dismissed because SEPA appeals relating to transportation impacts are exempt under RCW 43.21C.500 (Section C); and because it relies on a permissive Code provision (Section F.1).

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

- Claim 2.1.d must be dismissed to the extent it relates to transportation impacts exempt under RCW 43.21C.500 (Section C); and to the extent it asserts impacts from contamination (except an allegation relating to one UST) because those issues were not raised in public comment (Section D).

- Claim 2.1.e must be dismissed because it cannot encompass late-added elements of the environment (Section B.1 and 2); because it is insufficiently specific to comply with HER 3.01.(d)(3) (Section B.3); and to the extent it relates to transportation impacts exempt under RCW 43.21C.500 (Section C).

- Claim 2.1.f must be dismissed to the extent it relates to transportation impacts exempt under RCW 43.21C.500 (Section C); and because scoping is not required for an Addendum (Section F.2).

- Claim 2.1.g must be dismissed because it cannot encompass late-added elements of the environment (Section B.1 and 2); to the extent it relates to transportation impacts exempt under RCW 43.21C.500 (Section C); and because an Addendum need not contain the same information as an EIS (Section F.3).

- Claim 2.1.h must be dismissed because the Examiner does not have jurisdiction over Design Review procedural claims (Section E); and because the City Code does not require that SEPA inform design review (Section F.4).

- Claim 2.1.i must be dismissed to the extent it relates to transportation impacts exempt under RCW 43.21C.500 (Section C); and because SEPA allows the use of existing documents (Section F.5).

- Claim 2.1.j must be dismissed because it cannot encompass late-added elements of the environment (Section B.1 and 2); because it is insufficiently specific to comply with HER

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

3.01.(d)(3) (Section B.3); and to the extent it relates to transportation impacts exempt under RCW 43.21C.500 (Section C).

- Claim 2.1.k must be dismissed because it cannot encompass late-added elements of the environment (Section B.1 and 2); because it is insufficiently specific to comply with HER 3.01.(d)(3) (Section B.3); to the extent it relates to transportation impacts exempt under RCW 43.21C.500 (Section C); and because no law invalidates SEPA documents on the basis of age (Section F.6).

- Claim 2.1.l must be dismissed because it cannot encompass late-added elements of the environment (Section B.1 and 2); because it is insufficiently specific to comply with HER 3.01.(d)(3) (Section B.3); and to the extent it relates to transportation impacts exempt under RCW 43.21C.500 (Section C).

- Claim 2.1.m must be dismissed because it cannot encompass late-added elements of the environment (Section B.1 and 2); because it is insufficiently specific to comply with HER 3.01.(d)(3) (Section B.3); to the extent it relates to transportation impacts exempt under RCW 43.21C.500 (Section C); and because an Addendum is not required to contain an alternatives analysis (Section F.7).

- Claim 2.2.b must be dismissed because the Examiner does not have jurisdiction over Design Review procedural claims (Section E); and because the City Code does not require that SEPA inform design review (Section F.4).

- Claim 2.2.c must be dismissed because the Examiner does not have jurisdiction over Design Review procedural claims (Section E).

- Claim 2.2.e must be dismissed because the Examiner does not have jurisdiction over Design Review procedural claims (Section E).

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

For these reasons, Respondents Applicant and City jointly request that the Hearing Examiner dismiss and/or modify this appeal in part.

DATED this 25th day of November, 2019.

s/G. Richard Hill, WSBA #8806
s/Courtney A. Kaylor, WSBA #27519
s/David P. Carpman, WSBA #54753
McCULLOUGH HILL LEARY, PS
701 Fifth Avenue, Suite 6600
Seattle, WA 98104
Tel: 206-812-3388
Fax: 206-812-3398
Email: rich@mhseattle.com
Email: courtney@mhseattle.com
Email: dcarpman@mhseattle.com
Attorneys for Applicants Seattle Downtown Hotel & Residences, LLC

s/Elizabeth A. Anderson, WSBA #34036
Assistant City Attorney
SEATTLE CITY ATTORNEY'S OFFICE
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
Ph: (206) 684-8202
Fax: (206) 684-8284
Email: liza.anderson@seattle.gov
Attorney for Respondent
Seattle Department of Construction & Inspections