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HEARING EXAMINER

BEFORE THE HEARING EXAMINER  
FOR THE CITY OF SEATTLE

In the Matter of the Appeal of  
AVALONBAY COMMUNITIES, INC.  
from a Determination of Nonsignificance by the  
Director, Department of Planning and  
Development.

Hearing Examiner File No. \_\_\_\_\_

NOTICE OF APPEAL

**I. APPELLANT INFORMATION**

**A. Appellant**

Appellant is AvalonBay Communities, Inc. Appellant's address is 600 108<sup>th</sup> Ave NE  
Suite 840, Bellevue, WA 98004.

**B. Authorized Representative**

Appellant's authorized representatives are Jack McCullough and Courtney Flora,  
McCullough Hill Leary P.S., 701 Fifth Avenue, Suite 6600, Seattle, WA 98104, 206-812-3388  
(telephone), 206-812-3389 (facsimile), [jack@mhseattle.com](mailto:jack@mhseattle.com) and [cflora@mhseattle.com](mailto:cflora@mhseattle.com).

**II. DECISION BEING APPEALED**

The decision being appealed is the issuance of a Determination of Nonsignificance  
("DNS") by the Department of Planning and Development ("DPD") for proposed amendments to

**McCULLOUGH HILL LEARY, P.S**

701 Fifth Avenue, Suite 6600  
Seattle, WA 98104  
206.812.3388  
206.812.3389 fax

1 the Pike/Pine Conservation Overlay District (“Proposal”) in the City of Seattle’s Land Use Code  
2 (Seattle Municipal Code (“SMC”) Title 23). The DNS is attached as Exhibit 1.

### 3 III. APPEAL INFORMATION

#### 4 A. Appellant’s Interest in Decision

5 Appellant is a company that develops, redevelops, acquires and manages high-quality  
6 apartment communities across the United States. AvalonBay has a number of projects in the  
7 Seattle area, including a pending project located at 600 E Pike Street (“Project”). The Project is  
8 located in the Pike/Pine Overlay District, and it could be affected by the new regulations. As  
9 illustrated on pages 7 – 8 of the June 20, 2013 Staff Report, the proposed regulations are  
10 specifically designed to prevent the development of the Project, as proposed. If applied to the  
11 Project, the Proposal would significantly impact the size, height and configuration of the Project  
12 and may render it infeasible to build. In addition, the Proposal, if adopted, would govern any  
13 future changes to an approved Master Use Permit (“MUP”) for the Project.  
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16 Among other things, the Proposal limits the amount of floor area that can be built above  
17 35’ on larger sites (over 30,000 sq. ft. in size), and it requires all character structures on a lot to  
18 be retained, either fully or partially, when zoning incentives are used. These new regulations  
19 essentially downzone the Pike/Pine corridor—an area in which building size is already severely  
20 restricted relative to comparable commercial zones. The Proposal will significantly impact  
21 building owners who seek to develop or redevelop their properties, and in some cases will  
22 deprive them of the ability to redevelop their properties. As a result, some large blocks of  
23 property in the Pike/Pine corridor will not be redeveloped, causing adverse physical and aesthetic  
24 impacts such as vacant lots and deteriorated buildings. Indeed, AvalonBay’s current Project, the  
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**McCULLOUGH HILL LEARY, P.S.**

701 Fifth Avenue, Suite 6600

Seattle, WA 98104

206.812.3388

206.812.3389 fax

1 result of years of planning and significant financial investment, could be rendered infeasible.

2 The Proposal and its adverse impacts will harm Appellant.

3 **B. Objections to Decision**

4 SEPA requires that a threshold determination must be “based upon information  
5 reasonably sufficient to evaluate the environmental impact of a proposal.” WAC 197-11-335.

6 Here, the DNS fails to identify such information and is, on its face, deficient in this respect.

7  
8 The stated purpose of the Proposal is to “address issues related to the scale of projects on  
9 development sites that are much larger than what was anticipated. . .”. DNS at 2. In other  
10 words, the Proposal was designed to reduce the scale of buildings on large lots. Despite this  
11 clear statement of purpose, the DNS analysis states that the Proposal would result in no  
12 significant direct adverse impacts on the built environment and is “unlikely to result in indirect  
13 or cumulative impacts related to land use or height, bulk and scale.” DNS at 5. This is  
14 disingenuous. If the City crafts legislation to reduce the size and scale of large buildings, it must  
15 analyze the direct effects of that legislation during the SEPA process. That analysis was not  
16 conducted here.

17  
18 Rather than analyzing the probable effects of the Proposal, the DNS summarily concludes  
19 that the Proposal will discourage the assembly of large lots, which will “help promote greater  
20 compatibility between new projects and the existing development context.” DNS at 8. There is  
21 no discussion of the potential impact on development or redevelopment of existing Projects, and  
22 no discussion of the environmental impact of a proposal that will render development of large  
23 lots infeasible. This analysis was conducted in direct contravention of the SEPA rules, which  
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1 prohibit agencies from weighing the assumed beneficial aspects of a proposal against its adverse  
2 impacts. WAC 197-11-330(5). The City failed to conduct an adequate analysis under SEPA.

3 The City's rushed process effectively precluded a meaningful environmental analysis. A  
4 review of the key dates is instructive. The SEPA checklist was prepared on June 17, 2013. One  
5 day later, on June 18, the DNS was issued. Two days after that, on June 20, the City issued its  
6 Staff Report, revised Proposal (which was substantially different than the public review draft  
7 issued on May 23), and Notice of Decision. Notably, the SEPA comment deadline was July 5,  
8 which fell in the middle of a long holiday weekend. Finally, contrary to its long-standing policy  
9 of waiting until the SEPA process is complete before scheduling a public hearing, the City sent  
10 out notice on July 8 that it has already scheduled a public City Council hearing on the Proposal  
11 for August 7, 2013. This entire process suggests a rush to judgment and a concerted effort to  
12 foreclose meaningful environmental analysis and public review. Furthermore, the City  
13 improperly failed to encourage public involvement and communicate with affected stakeholder  
14 property owners prior to putting forth the Proposal.

15 Finally, the City may issue a DNS only when the proposal under consideration will not  
16 have significant adverse environmental impacts. WAC 197-11-340(1); SMC 25.05.340.A. In  
17 contrast, if a proposal will have probable significant adverse impacts on the environment, the  
18 City must issue a Determination of Significance ("DS") and prepare an Environmental Impact  
19 Statement ("EIS"). WAC 197-11-360(1); SMC 25.05.360.A. The DNS erroneously asserts that  
20 the Proposal will have no significant adverse environmental impacts. The opposite is true. The  
21 Proposal will harm local property owners and result in reduced redevelopment opportunities.  
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**MCCULLOUGH HILL LEARY, P.S.**

701 Fifth Avenue, Suite 6600

Seattle, WA 98104

206.812.3388

206.812.3389 fax

1           The Proposal will have significant adverse environmental impacts in the areas of the built  
2 environment, land use, and relationship to existing land use plans and aesthetics. The City's  
3 current Pike/Pine Overlay District regulations were adopted in 2009 and amended in 2010 and  
4 2011. The current District regulations encourage the retention of character structures (buildings  
5 in existence prior to 1940) by providing a 10 foot height increase, an exemption of residential  
6 floor area from FAR calculations, and larger floor sizes above a height of 35 feet if character  
7 structures are retained. Current regulations also establish a lower FAR limit than would  
8 otherwise apply under the base commercial zoning (2 vs. 4.25), with the exception of certain lots  
9 than are 18,000 sq. ft. or less. The zoning incentives are what make development in the  
10 Pike/Pine corridor economically feasible; they help compensate for the severe FAR restrictions  
11 in this area.  
12

13  
14           Now, in response to what DPD characterizes as a "recent development boom" in the  
15 Pike/Pine neighborhood, the City is proposing amendments to the Pike/Pine Overlay District that  
16 are specifically designed to decrease the floor area of buildings on larger sites. Specifically, the  
17 Proposal would make two changes on larger lots: (1) it would require that *all* character structures  
18 on a lot be partially retained when zoning incentives are used; and (2) it would reduce the bulk of  
19 buildings on large lots by allowing only one portion of a structure to extend above 35' in height,  
20 removing the current exemption to floor size limits when a portion of a new structure extends  
21 over an existing character structure, and adding maximum width and depth limits on lots within  
22 the Conservation Core for portions of a structure above 35 feet in height on lots not occupied by  
23 a character structure. The result is a further reduction to FAR that will render development and  
24 redevelopment of large sites infeasible. In addition, the Proposal's removal of exemptions for  
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1 floor area that extends over character structures may have the unintended effect of incentivizing  
2 developers to demolish character structures, an effect that is clearly contrary to the City's and the  
3 neighborhood's intent.

4 Under SEPA, "built environment," "land use," and "aesthetics" are elements of the  
5 environment. WAC 197-11-444. In addition to considering these areas, which the Proposal  
6 directly impacts, courts have also held that impacts to these elements of the environment  
7 resulting from economic effects are environmental impacts that must be considered under SEPA.  
8 *West 514, Inc. v. County of Spokane*, 53 Wn. App. 838, 847-848, 779 P.2d 1065 (1989) ("[W]e  
9 recognize that if the *probable* effect of competition is downtown blight such that the built  
10 environment is affected, then discussion of that effect in an EIS is called for." (emphasis in  
11 original)); *Indian Trail Property Association v. City of Spokane*, 76 Wn. App. 430, 444, 886 P.2d  
12 209 (1994) ("We agree that if the probable effect of competition is such that the "built  
13 environment" is affected, review is called for by WAC 197-11-444(2).").

14 The Proposal will result in probable significant adverse physical impacts to the built  
15 environment, land use and aesthetics. With respect to the built environment and land use, the  
16 Proposal's limitation on floor area above a height of 35' and requirement that all character  
17 structures be preserved in order to use zoning incentives will significantly reduce the size of  
18 buildings on large lots. Citing to specific examples, including the proposed Project (the Phil  
19 Smart Dealership site), the Staff Report illustrates how the new regulations will decrease the  
20 floor area and height that can be achieved on large sites. In the currently challenging economic  
21 climate, the removal of these zoning incentives and new restrictions on building size, coupled  
22 with uncertainty related to how these new regulations will be applied, will have a chilling effect  
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**MCCULLOUGH HILL LEARY, P.S.**

701 Fifth Avenue, Suite 6600  
Seattle, WA 98104  
206.812.3388  
206.812.3389 fax

1 on development and redevelopment in the Pike/Pine corridor. Redevelopment projects will not  
2 move forward, resulting in deteriorated buildings and large undeveloped or redeveloped sites.

3 The Proposal is also inconsistent with the City's Comprehensive Plan, which encourages  
4 local economic development, including development in downtown, industrial and commercial  
5 areas, and high technology businesses. *See e.g.*, Comprehensive Plan, LU 42; Economic  
6 Element, EDG5 ("Encourage the growth of key economic sectors . . ."); ED1 ("Strive to  
7 maintain the economic health and importance of downtown as the economic center of the city . .  
8 ."); ED4 ("Strive to provide a wide range of goods and services to residents and businesses in  
9 urban centers and villages by encouraging appropriate retail development in these areas."); ED10  
10 ("Encourage key sectors of Seattle's economy that provide opportunities for long term growth . .  
11 ."); ED12 ("Seek ways to create a local business environment that promotes the establishment,  
12 retention, and expansion of high-technology industries in the city. . ."); ED16.5 ("Support key  
13 sectors of Seattle's economy . . ."); ED 27 ("Foster a positive entrepreneurial environment for  
14 business start-up and expansion and support the retention of Seattle's existing business and  
15 major institution base."); ED36 ("Strive to increase communication among government,  
16 business, major institutions and other entities that may provide economic opportunities . . .").

17 Contrary to these provisions of the Comprehensive Plan, the Proposal will harm property owners  
18 by making it infeasible to redevelop large lots in the Pike/Pine neighborhood.

19 For these reasons, DPD erred in issuing a DNS for the Proposal.

#### 20 IV. RELIEF REQUESTED

21 Appellant requests that the Hearing Examiner: (1) reverse the DNS and remand this  
22 matter to DPD for issuance of a DS and preparation of an EIS due to probable significant adverse  
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701 Fifth Avenue, Suite 6600  
Seattle, WA 98104  
206.812.3388  
206.812.3389 fax

1 impacts to the built environment, land use, relationship to existing land use plans and aesthetics,  
2 or in the alternative, direct DPD to rescind the DNS to provide an opportunity for meaningful  
3 public comment and adequate environmental review as required by SEPA; and (2) grant such  
4 other relief as the Hearing Examiner deems just and proper.

5  
6 DATED this 11 day of July, 2013

7 MCCULLOUGH HILL LEARY, P.S.

8  
9 By: 

10 John C. McCullough, WSBA #12740  
11 Courtney Flora, WSBA #29847  
12 Attorneys for Appellant  
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**EXHIBIT 1**

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

**Project Proposal:** Amendments to the Pike/Pine Conservation Overlay District (23.73) in the Land Use Code

**Project Sponsor:** City of Seattle Department of Planning and Development.

**Location of Proposal:** Pike/Pine Urban Center Village: Neighborhood Commercial 3 zones (NC3 and NC3P) within the Pike/Pine Conservation Overlay District

**SUMMARY OF PROPOSED ACTION**

The proposal is a legislative action to amend the Seattle Municipal Code to address issues primarily related to the bulk and scale of new development and the use of incentives for retaining character structures in the Pike/Pine Conservation Overlay District (District) in order to strengthen measures for maintaining and enhancing the character for the Pike/Pine neighborhood. Additional measures are included to clarify existing provisions and to provide additional opportunities for the development of appropriately scaled nonresidential projects within the District.

The following approval is required:

SEPA - Environmental Determination - Chapter 25.05, Seattle Municipal Code.

**SEPA DETERMINATION:**  Exempt  DNS  MDNS  EIS

**BACKGROUND**

In July, 2009, the City Council adopted legislation that, among other things, expanded the boundaries of the original Pike/Pine Overlay District and created a new regulatory emphasis for the area as the Pike/Pine Conservation Overlay District. New provisions limited the scale of new development and encouraged projects to retain existing older structures, identified in the Code as "character structures".

The second phase of work, adopted in 2010, included an update of the neighborhood design guidelines, with the addition of new guidelines, primarily related to height, bulk and scale, addressing the type of development promoted by the 2009 legislation. Adjustments to the 2009 standards were also made to clarify them and make them more consistent with neighborhood objectives.

The third phase, adopted in 2011, included actions to establish a program for the transfer of development potential (TDP) within the Pike/Pine Conservation Overlay District as an additional incentive for retaining "character structures." A Conservation Core was also established within the district to further promote new development that was more compatible with existing conditions.

Councilmembers Tom Rasmussen and Sally Clark are now sponsoring amendments to the District in response to issues raised by the unprecedented development activity occurring in the Pike/Pine neighborhood. The primary focus of this action is to address issues related to the scale of projects on development sites that are much larger than what was anticipated in the previous legislation. In addition, there are actions that allow for new opportunities for commercial development in the area to offset the preponderance of residential development that has occurred since the overlay was first established.

### **Proposal Description**

The proposal includes the following specific actions:

1. Require that all character structures on a lot be partially retained when zoning incentives are used, and give the Design Review Board the flexibility to grant departures from this requirement with guidance from proposed new criteria in the code; and
2. Reduce the bulk of buildings on large lots by further limiting the amount of floor area that can be built above a height of 35 feet by:
  - Allowing only one portion of a structure to extend above 35 feet in height, regardless of site size.
  - Eliminating the current exception to floor size limits that allows portions of a new structure that extend over an existing character structure to be exempt from floor size calculations.
  - Add maximum width and depth limits on lots within the Conservation Core for portions of a structure above 35 feet in height on lots that do not include a character structure.
3. Lift the current limit on the floor area ratio (FAR) for nonresidential uses to allow more square feet of commercial use on lots that are 18,000 square feet or less in size. The change would apply only to lots where the new development would not result in the removal of a character structure. It would promote more employment and daytime activity to balance the large amount of residential units, restaurants, and entertainment businesses that have been built recently, without increasing the pressure to demolish character structures.
4. Remove regulatory barriers by stating that portions of character structures that are retained as part of a larger development are considered to be existing structures for the purposes of applying street-level development standards. As a result, developers would not have to choose between changing a character structure in order to meet current standards and having to request design departures from the Design Review Board.

5. Exclude street level floor area in character structures that are retained as part of a new development from the calculation of floor area used to determine the number of small commercial spaces required at street level, if the original structure was designed to accommodate large spaces at street level.
6. Allow automotive sales and service uses to locate in character structures, to support retention of Pike/Pine's "auto row" character.
7. Make the regulations easier to use by combining all the standards for retaining character structures into a single code section. This new section would provide more guidance about retaining character structures when zoning incentives are used.
8. Clarify the regulations by making technical corrections.

The chart in Attachment A summarizes the proposed amendments to the Land Use Code by section.

### **Public Comments**

The proposed amendments to the Pike/Pine Conservation Overlay District are part of an extensive community effort to implement key elements of the Pike/Pine neighborhood plan related to the conservation of neighborhood character and existing buildings. Since May 16, 2013, a draft proposal was available for public review. This proposal was discussed at a meeting with the Pike/Pine Urban Neighborhood Committee (P/PUNC) held on May 21, 2011. Follow up meetings were also held with additional stakeholders seeking to comment on the original draft proposal.

Proposed changes to the Land Use Code require City Council approval. Public comment will be taken on the proposed amendments during future Council committee meetings and at a Council public hearing expected to be scheduled in August, 2013.

### **ANALYSIS - SEPA**

The following describes the analysis conducted to determine whether or not the proposal would have a *probable significant adverse environmental impact*. This threshold determination is based on:

- *the proposal*, as described above and in other documents;
- the information contained in the *SEPA checklist*;
- additional information, such as analyses prepared by City staff; and
- the experience of DPD staff in reviewing similar documents and actions.

This proposal is the adoption of legislation and is defined as a non-project action. The initial disclosure of the potential impacts from this action was made in an environmental

checklist dated June 17, 2013. The information in the checklist, a copy of the proposed text changes, a Staff Report prepared by Council Central Staff, and the experience of the lead agency with review of similar legislative actions forms the basis for this analysis and decision.

This is a substantive change to the Land Use Code, to amend the provisions of the Pike/Pine Conservation Overlay District and certain related land use regulations (See Attachment A). These amendments may result in potential impacts and warrants further discussion. However, this proposal is not expected to adversely impact the natural environment or built environment in a significant manner.

### **Short-term Impacts**

As a non-project action and based on the results of this SEPA determination analysis, the proposed amendments are not identified to have any substantial short-term adverse impacts upon the environment. Future potential developments that might be indirectly affected by this legislation and subject to SEPA would be evaluated for their short-term environmental impacts as part of project-related reviews, and related mitigation would be identified as needed.

### **Long-term Impacts**

The proposed amendments to the various sections of the Land Use Code in this legislation are not expected to have significant long-term adverse impacts on any element of the natural or built environment. Most of the recommended code changes clarify and strengthen existing code language and correct oversights from previous amendments, to better achieve the original intent of adopted provisions.

The proposed actions reflect the objectives of the Pike/Pine Neighborhood Plan, and the City of Seattle Comprehensive Plan in encouraging and supporting mixed-use urban environments in which housing, commercial uses, and essential neighborhood goods and services are located in close proximity to promote walking, bicycling, and transit use. These objectives are balanced with the neighborhood's priority for conserving the area's existing, unique character and identity—which is generally expressed in its historic buildings and is seen as critical to its livability and success. On the whole, this type of environment should encourage greater substitution of pedestrian trips for automobile trips, helping to limit transportation impacts of future development.

With respect to differences in the characteristics of future potential development with the proposed amendments, a minor net difference in built-environment impacts could occur, depending on the sizing of future development. At the same time, most of the built-environment implications in terms of land use and housing, and regarding consistency with plans and policies, would be positive in nature. Conserving existing building resources and permitting new development that accommodates growth and is well

integrated with the existing development context are public benefits that enhance the quality of the neighborhood environment. These impacts are described in more detail below, along with a discussion of potential long-term natural environment impacts.

Conserving existing structures should help reduce energy expenditures associated with the demolition and removal of existing buildings.

## **ELEMENTS OF THE ENVIRONMENT**

Adoption of the proposed amendments would result in no immediate adverse short-term environmental impacts because the adoption would be a non-project action. The discussion below evaluates the potential long-term impacts that might conceivably result from differences in future development patterns due to the proposed amendments.

### **Natural Environment**

#### **Earth, Air, Water, Plants and Animals, Energy, Natural Resources, Noise, Releases of Toxic or Hazardous Materials**

The proposed amendments are unlikely to result in any significant adverse natural environmental impacts. The proposed changes would result in no direct impacts, and are unlikely to result in significant indirect or cumulative adverse impacts related to earth, air (including greenhouse gas emissions), water, plants/animals, fisheries, energy, natural resources, sensitive areas, noise, or releases of toxic/hazardous substances. The proposed amendment is a non-project action that would amend the provisions of the Pike/Pine Conservation Overlay District and certain related land use regulations. Since the amendments apply to a large area within the Pike/Pine neighborhood, it is possible that elements of the natural environment on future sites identified for development could be impacted. Development of specific projects on individual sites is subject to the City's existing regulations, such as the Stormwater, Grading and Drainage Ordinance, the Environmentally Critical Areas Ordinance, and Noise Ordinance, and will be subject to environmental review (if they meet or exceed thresholds for environmental review). From a development capacity perspective, the proposed amendment would not result in significant changes to development capacity.

### **Built Environment**

#### **Land Use, Height/Bulk/Scale**

The amendments would result in no significant direct adverse impacts and are unlikely to result in indirect or cumulative impacts related to land use or height, bulk, and scale.

**Land Use.** The proposed amendments, under limited conditions, remove current restrictions on the amount of nonresidential uses permitted in new development. This change will increase opportunities for a greater diversity of uses in the district, thereby

adding to the employment population and generating greater daytime activity to support local businesses beyond the restaurants and entertainment uses that support evening activity and have begun to dominate the mix of commercial uses.

Prior to the 2009 amendments, nonresidential uses were limited throughout the original overlay to an amount that was less than half of that allowed for residential uses. Under the 2009 amendments, nonresidential development was, under limited conditions, permitted the same maximum FAR limit allowed by the underlying zoning (4.25 FAR in the NC3 65 zones), but only on small lots of 18,000 square feet or less on the edges of the District. Furthermore, as an incentive for small scale infill development, small lots of 8,000 square feet or less in the NC3 65 zone within the District were also allowed to be developed with nonresidential uses, with no FAR limit, provided that the lot to be redeveloped was either vacant or only used for parking. To date, no nonresidential projects have taken advantage of these special allowances.

Under the proposal, the greater FAR of the underlying zone for lots of 18,000 square feet or less would be available without restrictions on location within the District, provided that: 1) no character structures are removed, and 2) on lots with more than one character structure, at least one character structure must be retained as an entire structure. It is important to consider the magnitude of potential impacts related to this change in terms of how the mix of uses might be altered in the area, since different uses generate different types of impacts. Furthermore, as an area identified for a residential emphasis in the Comprehensive Plan, it is important to ensure that such changes would not deter the Pike/Pine neighborhood from achieving Comprehensive Plan growth targets for housing.

DPD examined how the proposed changes might alter the development capacity in the District, which provides an indication of the area's potential for accommodating different amounts and types of uses. Adjustments were made to the DPD model used to determine development capacity to reflect changed conditions under the proposal.

Lots meeting the size criteria (18,000 square feet or less) were identified, and the same assumptions applied regarding the percentage of lot area that would be developed with residential uses (75%) versus nonresidential uses (25%). However, for the nonresidential lot area, instead of the 2 FAR limit that now applies to nonresidential uses in the model, it was assumed that the maximum FAR allowed by the underlying zoning would be achieved (4.25 FAR in most cases). This is higher than the limits typically assumed for similar commercial areas in the citywide analysis (2.5 FAR), which is based on a generalization of the densities observed in real development in a wide variety of locations. The higher FAR assumed for these lots in Pike Pine is appropriate because of the development climate in the area. In addition, given the limited number of sites that would be affected, it is assumed that new nonresidential development would likely build to the maximum limits allowed to take advantage of this special opportunity in an area where such uses would otherwise be restricted. Furthermore, it was assumed that all other lots in the District identified as potentially available for redevelopment (those lots

over 18,000 square feet) would be developed for residential uses, which is more consistent with observed conditions in the area since the overlay was established.

Using the assumptions described above, the estimated increase in capacity for nonresidential uses as a result of the proposed changes would be slightly over 200,000 square feet. While there is theoretically capacity for nonresidential development under current conditions, very little has occurred to date beyond limited amounts of commercial space in mixed use residential projects. In an area where there has been essentially no significant development of nonresidential projects in almost two decades, perhaps the most significant change would be that some nonresidential projects might actually occur. However, while allowing the higher FAR may increase the attractiveness of building a nonresidential project, given the limits imposed on eligible sites, the types of projects would likely be small hotel or office projects geared to a specialized market, since the lot size limits and requirements for retaining existing character structures would not likely attract more standard development targeting a broader market. The end result may be a limited number of higher density (4.25 FAR) nonresidential projects, perhaps three or four, dispersed within the District. The amount or concentration of new uses that could result would not make a significant difference in impacts in the area.


While, over the long term, the proposed amendments may provide some additional opportunities for more nonresidential projects, it would only be to a minor degree, and mixed use/residential development is expected to continue to dominate, as it has over the last several years. Of the 22 projects just recently completed, currently under construction, or in the permit pipeline, only two, or nine percent, are nonresidential. The nonresidential projects include a gymnasium addition to Northwest School and a small mixed use project that is primarily for office and retail use, with three residential units.

While the proposed changes do allow for a limited increase in opportunities for nonresidential development, incentives allowing greater floor area for residential projects remain. Projects using the incentives frequently exceed the maximum FAR assumed for residential use, reinforcing this use as the preferred choice for development. Current development conditions substantiate the strong demand for housing in the area; the total of new units added since 2011, units now under construction, and units in projects now applying for permits is about 2,400. Furthermore, from observations of recent development, the residential densities achieved in actual projects in the area are consistently higher than the densities assumed in the development capacity model (likely due to both the greater floor area of projects and average unit sizes that are lower than what is assumed for residential development in the capacity model). Since the area has already exceeded the current Comprehensive Plan growth targets for housing, which call for adding new units for 600 households between 2004 and 2024, the proposal will not diminish the area's ability to meet Comprehensive Plan growth targets.

**Height, Bulk, and Scale.** The amendments further encourage the conservation of existing built resources and emphasize compatible development that reflects the



neighborhood's established development context and unique character. One of the primary objectives of the proposed amendments is to further Neighborhood Plan directives to maintain existing buildings in the area and to promote new development that is compatible with the area's established character. For example, Comprehensive Plan Policy P/P-P2 states: "Seek to preserve the architectural and historic character of the neighborhood by exploring conservation incentives or special district designations." To further these objectives, measures are proposed to address the unintended consequences of new development on lots that are much larger than the original provisions anticipated, and, through the use of the incentives, are achieving a project scale that is increasingly regarded as in conflict with the neighborhood's established development context. The proposed amendments address this issue primarily through additional limits on floor sizes above 35 feet in height, the elimination of certain incentives allowing for increases in the floor size limit when a new structure extends over portions of an existing character structure, and requirements that all character structures on a lot be retained, either partially or in whole, if the incentives are to be used.



The proposed adjustments to bulk controls and changes to the use of incentives generally maintain existing development potential on lots that are typical in size to those that have been recently developed, are currently under construction, or that have issued permits, which is generally between 14,000 and 21,000 square feet. The changes, however, will likely reduce development potential on very large lots, particularly lots over 30,000 square feet. On the largest lots, it may not be possible for a project to achieve the maximum FAR allowed, especially without the use of incentives, or unless the lot is divided into two separate development sites. Four large sites in the district, including two sites once occupied by large auto sales and service uses, range between 30,000 and 54,000 square feet in size, and now have vested projects that would not be affected by the proposed changes. Without lot assembly, there are few redevelopable sites of this size remaining in the area (only two parcels over 30,000 square feet have been identified, although more would be possible if existing contiguous lots identified as potential candidates for redevelopment were assembled into a single development site).

The proposed amendments would discourage further lot assembly to create exceptionally large sites, which would help promote greater compatibility between new projects and the existing development context. Within the Conservation Core, existing development standards already discourage the assembly of lots into large development sites. To the extent that the amendments contribute to new development that is more compatible with the desired neighborhood scale and character, the impacts of the proposed action would be positive. Future projects developed pursuant to the provisions of the proposal will require permits, review and project approvals as provided for in the Seattle Municipal Code and will be subject to environmental review as required.

## **Housing**

The proposed changes would result in no direct negative impacts and are unlikely to result in indirect or cumulative impacts related to housing. Generally, proposed provisions are intended to encourage the retention of existing structures for all uses, including housing. No significant reduction in development capacity for housing is anticipated due to the proposal to increase the amount of floor area allowed for nonresidential uses, largely because of the established demand for housing in the area, the incentives for residential development that would remain in place, and the limited number of sites likely to be eligible to take advantage of the allowed FAR increase for nonresidential uses.

## **Transportation, Public Services and Utilities**

The proposed changes would result in no direct adverse impacts on transportation, public services, or utilities, because the changes are non-project actions. While the amendments would allow opportunities for some commercial developments to achieve the higher FAR limits allowed for nonresidential uses by the underlying zoning, generally speaking, any potential impacts of increased capacity for nonresidential uses will be minimized by the limited number of sites that would meet the eligibility, and the more or less dispersed distribution of these sites within the area. Consequently, no significant adverse impacts are expected from this amendment. Furthermore, individual projects may be subject to environmental review if the SEPA thresholds are triggered. Projects subject to SEPA could be conditioned to mitigate any adverse impact on the natural or built environment.

## **Consistency with the Seattle Comprehensive Plan**

The intent of the City's SEPA Land Use Policy is to ensure that proposed uses in development projects are "reasonably compatible with surrounding uses and are consistent with any applicable, adopted goals and policies in Section B of the Land Use Element of the Seattle Comprehensive Plan regarding Land Use Regulation for the area in which the project is located" (SMC 25.05.675J). The proposal applies to property in the Pike/Pine neighborhood; therefore, it is relevant to consider the goals and policies of the Comprehensive Plan relating to the Pike/Pine neighborhood. Under the City's Comprehensive Plan, the Pike/Pine neighborhood is a designated Urban Center Village within the Capitol Hill/First Hill Urban Center.

While the proposal emphasizes the neighborhood's conservation objectives (see discussion under height, bulk and scale), it also retains the Pike/Pine Neighborhood Plan's priority for promoting housing and mixed use development, and is consistent with the Comprehensive Plan goals and policies related to the area, as expressed in area designations and growth targets. Measures proposed to address concerns about the scale of recent development and the use of incentives for retaining character structures are targeted to address issues related to uncharacteristically large redevelopment sites, and

would not have a significant impact on overall development potential in the area. Proposals to allow additional opportunities for nonresidential development would not alter the area's ability to meet residential growth targets, and could, in fact, enhance the area's ability to meet employment growth targets. Overall, there would be no net loss in overall development potential within the area, maintaining sufficient development capacity for the Pike/Pine Urban Center Village to continue to meet Comprehensive Plan growth targets.

**DECISION - SEPA**

The decision was made after review by the responsible official on behalf of the lead agency or a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirements of the State Environmental Policy Act (RCW 43.21C), including the requirement to inform the public agency decisions pursuant to SEPA.

Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030 2c.

Determination of Significance; this proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030 2c.

Signature \_\_\_\_\_  
Dennis C. Meier, Strategic Advisor  
Department of Planning and Development

Date \_\_\_\_\_

**Attachment A: Summary of Proposed Land Use Code Amendments**

	<b>Code Section</b>	<b>Amendment Description ("District" refers to the Pike/Pine Conservation Overlay District)</b>
1.	23.41.012 Design Departures	Delete the criteria for reviewing departures from the standards for retaining a character structure, and move them to the proposed new section 23.73.015 to make the Code easier to use by locating provisions related to retaining character structures in one place.
2.	23.47A.005 - Street Level uses in Commercial zones	Amend the Commercial chapter of the Code to make two provisions consistent with current District regulations:  1) Clarify that automotive retail sales and services may be allowed at street level in Pedestrian zones in new structures that retain a character structure, in recognition of Pike/Pine's history as Seattle's original "auto row"; and  2) Change the list of "Principal Pedestrian Streets" to match the map in the Overlay District. This removes inconsistencies that affect Boylston and Summit Avenues and East Union Street.
3.	23.73.002 - Purpose and Intent	Amend the description of "character structures" to say they are buildings that have been in existence since 1940, rather than that they are buildings that are 75 or more years old (see also amendment #13).
4.	23.73.005 - Adoption of rules to implement District Regulations	Clarify that DPD Director's Rule 3-2012, which lists the character structures that may not be demolished if a developer uses a zoning incentive, may be amended not only by adding buildings to the list but by removing them as well. The process for doing amending the list is already included in the Director's Rule.
5.	23.73.006 - Application of regulations	Correct the cross references in this Section to add the number of the Chapter in the reference.
6.	23.73.008 - Uses at street level	Make it easier for projects that retain character structures to meet the requirement that space be provided at ground level for small businesses 2,000 square feet or less in size, as follows:  1) Clarify that if a character structure originally had a large single space at ground level (such as an auto showroom), the space does not need to be included in the amount of floor area used to determine the number of small spaces required in the

	<b>Code Section</b>	<b>Amendment Description</b> <b>("District" refers to the Pike/Pine Conservation Overlay District)</b>
		<p>project, and that the space does not have to be partitioned into smaller spaces.</p> <p>2) Clarify that the 50-foot limit on the frontage of an individual business on Pike and Pine Streets does not apply to a character structure, if it was designed for use as a single large space.</p>
7.	23.73.009 -- Floor Area Ratio (FAR)	<p>1) Allow an increase from 2 FAR for nonresidential uses to 3, 4.25, or 4.5 FAR (depending on the underlying commercial zone) for small lots (18,000 square feet or less in size), in order to gain a better balance between residential and commercial activities, as follows:</p> <ul style="list-style-type: none"> <li>• Removing the current condition that requires the small lot to be located on the boundary of the District, or across from a nonresidential zone.</li> <li>• Clarifying that the lot area occupied by a character structure that is retained in its entirety on the lot would not count toward the 18,000 square foot lot size, so that property owners would not be penalized for retaining a character structure.</li> <li>• Requiring that character structures on the lot be maintained either partially or in their entirety if the exception is used, and stating that if more than one character structure is located on the lot, at least one entire character structure must be retained.</li> </ul> <p>2) Clarify the current FAR exemption for nonresidential uses within a character structure to state that it applies only if the nonresidential use does not displace existing housing that was in the structure <i>on the date the proposed bill is adopted</i>. Setting a specific date would prevent an owner from converting a residential building to nonresidential uses and forcing tenants out of a building in order to qualify for the FAR exemption.</p> <p>3) Change the provision allowing all residential uses to be exempt from the FAR limit for projects that do not remove character structures listed in DPD Director's Rule 3-2012, to state that the exemption applies only if all character structures on the lot are retained, unless the Design Review Board allows demolition as a departure according to subsection 23.73.015.F.</p> <p>4) Add a cross-reference to the proposed new section 23.73.015 that provides in one place the provisions for "retaining a</p>

	Code Section	Amendment Description ("District" refers to the Pike/Pine Conservation Overlay District)
		character structure," both partially and entirely.
8.	23.73.010 – Floor size limits outside the Conservation Core	<p>In order to keep the bulk of new development more in scale with the neighborhood, particularly on large lots:</p> <ol style="list-style-type: none"> <li>1) Retain the floor size limit of 15,000 square feet above a height of 35 feet, but allow <i>only one</i> portion of a structure on a lot to extend above 35 feet in height, regardless of site size (subsection 23.73.010.A).</li> <li>2) In the exception that allows a 15% increase in the floor size limit (subsection 23.73.010.B.1), remove the first two of the four conditions for earning the exception. The deleted conditions are related to the design of new development and to site conditions (such as location on the edge of the District), which are better addressed by requesting that the Design Review Board grant a departure from the standards. The remaining two conditions for the exception, which focus on the provision of arts-related uses and low-income housing, would remain, and would be granted without the need for a discretionary decision by the DPD Director.</li> <li>3) In the exception allowing a 15% increase in floor size for arts-related uses, make a technical correction by using the term "artist studio dwelling" rather than "artist live/work space", in order to match the definitions in Section 23.84A.032.</li> <li>4) State in the exception that allows a 25% increase in the floor size limit for retaining a character structure (subsection 23.73.010.B.2) that the exception cannot be used if any character structure on the site is demolished, unless the Design Review Board allows demolition as a departure according to subsection 23.73.015.F (note that the 25% increase is available for residential and mixed-use projects, and not projects that are developed to the higher FAR limit for nonresidential uses).</li> <li>5) In the exception that allows a 25% increase, delete the provision that permits new square footage built over a character structure to be exempt from the maximum floor size limit. This provision has created an unintended incentive to build on top of character structures.</li> <li>6) Clarify that the different exceptions for increases in the floor size limits cannot be combined.</li> </ol>

	<b>Code Section</b>	<b>Amendment Description ("District" refers to the Pike/Pine Conservation Overlay District)</b>
		7) Delete the explanation of what is required to qualify as retention of a character structure, and instead add cross-references to the proposed new Section 23.73.015 that puts these provisions in one place.
9.	23.73.012 -- Structure width and depth limits	<p>Clarify this section as follows:</p> <ol style="list-style-type: none"> <li>1) Reorganize the section so that it is clear which regulations apply inside and outside of the Conservation Core area.</li> <li>2) Within the Conservation Core area, clarify that the exemption for portions of a new structure that extend over a character structure from measuring the width or depth limits can only be used for one character structure.</li> <li>3) Change the width and depth limits for lots in the Conservation Core area that do not include a character structure. Currently such lots are not subject to a width and depth limit; the proposal would add this requirement for portions of structures above 35 feet in height.</li> <li>4) Add cross-references to the proposed new Section 23.73.015 that explains the provisions for "retaining a character structure" to the subsections that exempt character structures from the calculations of maximum width and depth.</li> </ol>
10.	23.73.014 -- Height exceptions	<p>Clarify this section as follows:</p> <ol style="list-style-type: none"> <li>1) Make non-substantive clarifications.</li> <li>2) In the height exception that allows an additional 4 feet in height to accommodate nonresidential uses on the ground floor, state that character structures that are retained as part of a new project will be treated as existing structures for purposes of transparency requirements.</li> <li>3) State that the 10-foot height incentive for retaining a character structure cannot be used if any character structure on the site is demolished, unless the Design Review Board allows demolition as a departure according to subsection 23.73.015.F.</li> <li>4) Delete the explanation of what is required to qualify as retention of a character structure, and add a cross-reference to the proposed new Section 23.73.015 that puts these provisions in one place.</li> </ol>
11.	23.73.015 --	Add a new Section that:

	Code Section	Amendment Description ("District" refers to the Pike/Pine Conservation Overlay District)
	Retaining a character structure	<p>1) Puts in one place all the provisions for retaining character structures (either a portion or entirely) for the purpose of receiving an exemption or an incentive.</p> <p>2) Adds new conditions in subsection 23.7.015.A for the retention of an <i>entire</i> character structure, including:</p> <ul style="list-style-type: none"> <li>• Maintenance of all exterior facades;</li> <li>• Limits on significant structural alterations or additions;</li> <li>• Allowance for limited additions, such as filling in air courts or similar spaces not visible from the street; and</li> <li>• Prohibiting projections of a new structure over the character structure, except for architectural features such as balconies.</li> </ul> <p>3) Uses the current provisions from Section 23.73.010 to describe what is required for a <i>portion</i> of a character structure to be considered retained (subsection 23.73.015.B), with the following additions:</p> <ul style="list-style-type: none"> <li>• In the requirement that new structures must be set back at least 15 feet from the street-facing facades of the character structure, allow architectural projections such as cornices, eaves, and balconies to project into the 15-foot setback; and</li> <li>• In the requirement that the original floor-to-ceiling height of the character structure be maintained, provides an exception for provision of access to persons with disabilities.</li> </ul> <p>4) States in subsection 23.73.015.C that for both full and partial retention of a character structure, the structure must be maintained as approved in the Master Use Permit, and in a manner that complies with applicable codes for the life of the project.</p> <p>5) In order to make it easier to preserve the historic aspects of character structures, adds a provision in subsection 23.73.015.D that retained portions of character structures are considered "existing structures" for the purposes of applying the street-level standards in the underlying commercial zone. This would prevent the need for changes to the character structure in order to meet the standards for transparency and blank walls.</p> <p>6) Provides guidance for departures from the standards for</p>



	<b>Code Section</b>	<b>Amendment Description</b> <b>("District" refers to the Pike/Pine Conservation Overlay District)</b>
		<p>retaining a character structure (subsection 23.73.015.E).</p> <p>7) Provides criteria for the Design Review Board determination on whether a character structure may be demolished on a lot while still allowing the use of incentives for additional height and upper level floor size (subsection 23.73.015.F).</p>
12.	23.73.024 – Transfer of development potential (TDP)	<p>1) State that using transferred development potential allows the receiving site to take advantage of the exception allowing a 25% increase in the upper level floor size limit (subsection 23.73.024.A).</p> <p>2) State that on the receiving site, all character structures must be retained as entire structures, unless the Design Review Board approves a departure according to subsection 23.73.015.F.</p> <p>3) Add cross-references to the proposed new Section 23.73.015 that explains the provisions for "retaining a character structure" (subsection 23.73.024.B).</p>
13.	23.84A.008 "C" [Definitions]	<p>Change the definition of "character structure" to state that such buildings have been in existence since 1940, rather than "for at least 75 years". This clarifies that the focus of the District is on structures that are related to Pike/Pine's history as Seattle's original "auto row".</p>