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Reply to: Seattle Office

July 17, 2017

VIA E-MAIL TO [prc@seattle.gov](mailto:prc@seattle.gov)

Seattle Department of Construction and Inspections (SDCI)  
Attn: PRC  
P.O. Box 34019  
Seattle, WA 98104-4019

Re: Updated SEPA Addendum for 5<sup>th</sup> and Virginia Proposal, Project No. 3019699

Dear SDCI:

I am writing on behalf of the Escala Owners Association to comment on the updated Addendum for the 5<sup>th</sup> and Virginia Proposal that was issued on July 3, 2017. These comments supplement the comments in my previous letters regarding the EIS Addendum that was issued on December 15, 2016.

**A. SDCI Continues to Violate the State Environmental Policy Act Procedural Requirements for Environmental Review**

With the updated Addendum, SDCI has done nothing to remedy the major procedural legal errors that were outlined in my January 12, 2017 letter.

The City's approach to environmental review continues to violate the requirements of the State Environmental Policy Act (SEPA). Ch. 43.21C RCW; Ch. 197-11 WAC. As I outlined in more detail in my previous letter (and incorporate here), when a Determination of Significance is issued for a proposal, SDCI must prepare a draft and a final EIS (or SEIS) (following a scoping process) that contains everything set forth in WAC 197-11-440 and that follows the public process in WAC 197-11-500 through 570. SDCI has created its own makeshift process for review of this proposal - preparing an "Addendum" to a 12 year old programmatic EIS - without even purporting to meet the requirements of SEPA for environmental review of this site specific project. This approach constitutes an outright obvious and bold violation of SEPA that is simply not credible.

Despite that this approach is so blatantly inconsistent with the law, SDCI has now decided to issue an "updated" Addendum instead of taking the first step towards preparing an EIS - issuing the requisite scoping notice for preparation of an EIS. It's certainly not in the public interest, and frankly, not even in the developer's interest, for SDCI to continue cobbling together this strange

ad-hoc approach of its own invention. Perhaps you are hoping to save time, but this obviously illegal approach will, in the long run, end up being far more inconvenient to everyone involved.

## **B. The Updated Addendum for the 5<sup>th</sup> and Virginia Proposal Is Inadequate**

The updated Addendum for the 5<sup>th</sup> and Virginia project is profoundly inadequate. It is a cryptic document that doesn't even come close to meeting the requirements of SEPA. My previous comments on the December Addendum largely still apply to the updated version with a few changes as described below.

There are several items that are legally required that still that aren't in the Addendum at all. (Nor were they in the previous Addendum, nor were they in the old 2005 programmatic EIS for the rezone). SDCI still has not performed an analysis of alternatives for the proposal. *See* RCW 43.21C.030; WAC 197-11-400; WAC 197-11-402; WAC 197-11-440(5) and (6); WAC 197-11-792(2)(b). There is still no "Summary" for the proposal as described and required by WAC 197-11-440(4) and there is still no discussion of the existing environment for many of the elements of the environment as is required by WAC 197-11-440(6). These are fundamental errors that render the Addendum inadequate on its face.

In addition to that, the disclosure and analysis of environmental impacts of the 5<sup>th</sup> and Virginia Proposal in the Addendum is inadequate. An EIS must provide impartial discussion of significant environmental impacts and shall inform decision makers and the public of reasonable alternatives, including mitigation measures, which would avoid or minimize adverse impacts or enhance environmental quality. WAC 197-11-400; WAC 197-11-440. The range of impacts to be analyzed in an EIS include direct, indirect, and cumulative impacts. WAC 197-11-792(2); WAC 197-11-060; SMC 25.05.670. SDCI must summarize significant adverse impacts that cannot or will not be mitigated. *Id.* The environmental review must clearly indicate those mitigation measures, if any, that could be implemented or might be required, as well as those, if any, that agencies or applicants are committed to implement. *Id.* It must indicate what the intended environmental benefits of mitigation measures are for significant impacts, and may discuss their technical feasibility and economic practicability, if there is concern about whether a mitigation measure is capable of being accomplished. *Id.* EISs shall serve as the means of assessing the environmental impact of a proposed agency action, rather than justifying decisions already made. WAC 197-11-402(10). The Addendum does not meet these requirements.

### **1. Cumulative impacts**

The updated Addendum fails to analyze cumulative impacts associated with land use; environmental health; height, bulk and scale impacts; greenhouse gas emissions; aesthetics; public facilities; transportation; and construction impacts. The Addendum fails to adequately disclose and analyze the impacts of other proposed developments in the immediate area that will cause cumulative impacts related to each of these environmental elements. SDCI must conduct a cumulative impacts study of impacts that will be caused by the multiple developments proposed in the immediate area.

**2. Height, bulk, and scale impacts (including aesthetics, view, privacy, health and shadows/light impacts)**

The Addendum's discussion of project specific height, bulk, and scale, aesthetic, view, health and shadow/light impacts of the 5<sup>th</sup> and Virginia proposal is inadequate. As a starting point, the Addendum categorized these elements of the environment in a way that does not make sense. The Addendum presents "aesthetics" as a major element with the sub-elements under that being height, bulk, and scale; light, glare, shadows; and viewshed. The overarching environmental element here is height, bulk and scale. The height bulk and scale of the building *causes* adverse aesthetic, privacy, view, and shadow/light impacts. In other words, these latter impacts are caused *as a result of* the height, bulk, and scale of the proposal. The central method for mitigating these impacts would be to change the height, bulk, and scale of the proposal via SMC 25.05.675.G.

Also, there is still no discussion of the existing environment in the Addendum on this topic as is required by WAC 197-11-440(6).

The Addendum contains a section called "Aesthetics – Height, Bulk, and Scale." See Addendum at 10. That section does not contain any disclosure or analysis of the actual height, bulk, and scale impacts of the project. Under the heading "Project Impacts," the Addendum refers the reader to Appendix E and states that the Design Review Board reviewed the 5<sup>th</sup> and Virginia design progression through four meetings and the proposed design was modified in response to the Design Review Board and SDCI staff direction. *Id.* This entire section just recites basic facts and nowhere includes any description of the actual impacts of the proposal.

Appendix E is the Final Recommendation of the Downtown Design Review Board (DRB) that was issued after the final meeting, which was held on December 20, 2016. The implication in the Addendum is that this report contains a full and adequate disclosure and analysis of the project's adverse impacts. That is incorrect. It is a mistake to conflate the Design Review process with the SEPA process. To the extent that the Seattle City code regulations allow or require this, those regulations are in violation of state law. To the extent that those regulations leave room for SDCI to pursue a process that is consistent with SEPA, SDCI has most certainly dropped the ball.

The DRB report does not contain a full and adequate disclosure and analysis of the significant adverse environmental impacts associated with the height, bulk, and scale of this proposal. For the reasons that I laid out in my February 19, 2016 and January 12, 2017 letters to SDCI for this project, the DRB process is broken and resulted in conclusions that were based on incorrect and incomplete information. The volunteer Design Review Board engaged in window dressing only – they did not conduct a SEPA level analysis of impacts. In fact, SDCI staff made it very clear, time and time again throughout that process, that the DRB did not have jurisdiction over SEPA issues and was not conducting an analysis pursuant to SEPA. They made it clear that SEPA review would occur later in the process. They did not follow the SEPA process for public input on the impacts, nor did they apply the SEPA legal parameters for environmental review under SEPA. The Design Review Board is focused entirely on the Design Guidelines only. Design Guidelines and the DRB process is subjective and qualitative. It's an art – it's personal and inherently based on a gut artistic judgement. Two architects applying the same set of guidelines may apply them very differently

from each other. SEPA is technical, factual and quantitative. It's based on evidence and facts that are verifiable with measurable results. Furthermore, the legal standards are completely different. The legal requirements for review of impacts under SEPA analysis is very different from the Design Guidelines.

To add to that, the impacts associated with the project should have been disclosed and analyzed through SEPA review *before* the Design Review Board issued its final recommendation, not the other way around. The City was legally required to issue the final EIS before the Design Review Board's final recommendation was issued. The disclosure and analysis of environmental impacts must occur before committing to a particular course of action. WAC 197-11-055(2)(c); WAC 197-11-448(1); *City of Des Moines v. Puget Sound Regional Council*, 108 Wn. App. 836, 849 (1999). Among other things, SDCI was required to consider alternatives before the Design Review Board made a decision. WAC 197-11-792(2)(b); WAC 197-11-070(1)(b). No action concerning the proposal shall be taken that would limit the choice of reasonable alternatives until the responsible official issues a final EIS. *Id.* Furthermore, the EIS was supposed to inform the Design Review Board and the public of mitigation measures that would avoid or minimize adverse impacts of the proposal before the DRB made a decision. WAC 197-22-400(2) and (6).

SEPA's requirements are to be met early in the process before momentum builds in favor of one alternative or another. WAC 197-11-055(2); *Lands Council v. Washington State Parks and Recreation Commission*, 176 Wn. App. 787, 803-04, 309 P.3d 734, 742-43 (2013); *King County v. Boundary Review Board*, 122 Wn.2d 648, 663 (1993). The lead agency shall commence preparation of an EIS as close as possible to the time the agency is developing or is presented with a proposal so that preparation can be completed in time for the final statement to be included in appropriate recommendations or report on the proposal. WAC 197-11-406. The statement shall be prepared early enough so that it can serve practically as an important contribution to the decision-making process and will not be used to rationalize or justify decisions already made. *Id.*

Here, the City issued the Addendum *after* the Design Review Board made its final decision to approve the Proposal. Therefore, the disclosure and analysis of environmental impacts occurred after the DRB committed the City to a particular course of action in violation of SEPA. A proper EIS for the project would have served an important contribution to the decision-making process for the DRB. But instead, the Design Review Board made its final decision before the significant environmental impacts of the proposal and reasonable alternatives, including mitigation measures were disclosed and analyzed. The Design Review Board's decision limited the choice of reasonable alternatives before the Addendum was even prepared. There can be no doubt that the DRB's final approval built momentum in favor of one alternative. Now, the Addendum has been prepared to rationalize and justify a decision that has already been made. To the extent that the City of Seattle Code requires this illegal process, then the City Code provisions are inconsistent with and violate SEPA.

The next section in the Addendum is called "Aesthetics – Light, Glare, and Shadows." *See* Addendum at 14-17. The Downtown EIS discussion in that section is (like in other sections) not useful at all in understanding the specific impacts of this proposal. The discussion of project

specific impacts includes a brief discussion of shadow impacts on “private property” and refers the reader to Appendix G.

Stepping back for a moment, it’s important to first clarify exactly what the impacts are with respect to this section. The terminology - “shadow” impacts - that is used by the Addendum is a misnomer that directs attention away from the severity of the problem. “Shadows” are the dark areas produced by the building when the sun is out. Those shadows are less prevalent on a cloudy day and they move and change from morning to afternoon and from season to season. The impacts to Escala residents are not “shadow” impacts. The impacts to Escala are about lack of daylight. We are talking about a full and complete blockage of daylight every day, all day, throughout the entire year for many people who live on the alley side of the Escala. This level of lack of daylight is known to cause serious health impacts. This is a health issue. This is not about periodic shadow impacts depending on where the sun is in the morning or afternoon.

After Douglaston incorrectly reported to the DRB that there would be no impact on access to daylight for Escala residents from this proposal, Escala hired Professor Joel Loveland, a renowned expert in the field, to conduct a study of the impacts. The results of his analysis were striking and Escala submitted that study to SDCI before the first Addendum was prepared. Of particular importance in that study are the details about the adverse impacts that a lack of daylight can cause to a person’s health and well-being. This information constitutes clear and convincing evidence of devastating impacts to the residents of Escala. The Addendum doesn’t mention the information in and/or the conclusions of that study.

A proper EIS would include a study like that prepared by Professor Loveland. It would identify the Escala, provide simulations and pictures that show specific sections of the Escala as they are now, provide a pictorial analysis of how they would be directly impacted, and assess the impacts caused by the lack of daylight. Instead, the Addendum relies on “shadow diagrams” that were prepared by the Developer for the July 7, 2015 meeting that analyze an entirely different issue and that completely miss the point. Escala has provided evidence that shows that health of residents of Escala is at stake with this proposal and the Addendum focused on a shadow study. The Addendum uses the vague “private property” reference instead of referring to the Escala by name. Incredibly, the Addendum doesn’t mention the Loveland study at all. The Addendum also fails to mention that the Design Board didn’t consider Loveland study solely because it was provided, according to them, too late in the process and they had already made up their minds on the height, bulk and scale of the project before they received that information. I note that this was before the DRB issued its final decision. Now SDCI has also ignored this information in the SEPA review.

In light of what we know from the Loveland study, it is flat out remarkable that the Addendum concludes that there will be no significant adverse impacts to nearby private property on this subject. *See* Addendum at 14. The Addendum states:

While some shadow impacts to nearby private property are anticipated, the impacts are not expected to be significant.

Addendum at 14. This is an incredibly bold and incorrect conclusion in light of the clear and convincing information that we have given to you that proves otherwise. And then - after concluding that there will be no significant impacts to nearby private properties, the Addendum states:

Various units in existing buildings in the vicinity of the project may experience increased shadowing as a result of the project, and occupants of the units may consider that impact to be significant.

*Id.* I ask you to pause a moment to reflect on what the Addendum is saying here – it is saying that there will be no significant impacts to the people next door. Then it says that the people next door might think that it is a significant impact even though it isn't. Really. That's what this Addendum is saying. It's just remarkable.

In truth, if the Addendum was honest, it would state that there will be significant impacts to access to natural daylight to the alley-side residents of the Escala. This is not "maybe," it is certain. Residents at Escala will have their daylight reduced by more than 75 percent. Residents at the Escala will be living in a cavern in the dark every day and will have to keep their lights on. They will commonly experience adequate daylight conditions for only 12 percent of daytime hours. There is an enormous amount of research that shows that this could have severe health impacts. In the winter months, there will be only negligible daylight reaching these residents. That is a significant health impact that is avoidable by increasing the setback of the building via SMC 25.05.675.G. As it stands, the Addendum is misrepresenting and downplaying the impacts in an attempt to justify approval of the design approved by the Design Review Board before SEPA review was completed.

The next section in the Addendum, Section F, is titled "Aesthetics – Viewshed." Addendum at 14. The Addendum indicates that comments were received requesting analysis of potential changes to private views and indicates that a general discussion of those impacts is provided in Appendix H. The Addendum states:

Views south and westward toward Puget Sound, the Olympic Mountains, and the Downtown skyline from private properties east and north of the 5<sup>th</sup> and Virginia Development could be impeded if the 5<sup>th</sup> and Virginia Development is taller than the viewers' viewing point.

Views to the north and east, toward South Lake Union, Capitol Hill, and the Cascade Mountains could also be impeded.

Addendum at 15. These two sentences opining that there is a chance that views "could be impeded" does not constitute adequate disclosure and analysis of the actual impacts of the proposal on views of residents of Escala. Like with the light impacts discussion, it is strange that the Addendum does not name the Escala. The analysis of the actual impacts to the views of the residents of Escala is virtually nonexistent and the conclusions are completely off-base. This building will completely block the view for every resident of the Escala on the alley side of the

building. There are no views from the Escala that are taller than the proposed building – the height of the proposed building dwarfs the Escala. An impartial, objective EIS would conclude that there will be significant adverse impacts to views to the Escala residents.

The Addendum's comment that "the existing urban development patterns near the 5<sup>th</sup> and Virginia development may already impact many such views from nearby private properties," is dismissive of the true impact of the view from Escala residences of this building.

The discussion in Appendix H about the Downtown EIS is not at all useful with respect to understanding the specific impacts of the 5<sup>th</sup> and Virginia proposal to the views of Escala residents. While there is an analysis of views in Appendix H, that analysis looks at views from public parks and a few downtown spots when looking at the building from those locations.

The impacts to the Escala are not analyzed in the images at all. The section titled "potential impacts to private views" does not receive the same level of analysis as the other views – there are no images with viewpoints shown from the Escala. There is only speculation about the impacts (based on no analysis whatsoever) that is almost laughable in its obvious failure to accurately disclose the true impacts of views to the Escala. The fact that the Addendum does not acknowledge that or show an honest analysis with images of the reality is error as a matter of law.

The Addendum states:

No significant adverse impacts are anticipated from the 5<sup>th</sup> and Virginia development and no mitigation is necessary.

Then, in the next breath, the Addendum states:

Views from various existing buildings in the vicinity of the proposed project will change as a result of construction of the project, as is generally the case when a new high-rise building is constructed in a dense urban environment. Some occupants of the existing buildings will likely consider changes to their views to be adverse and significant.

Addendum at 15. Again, like with the daylight impacts, the EIS concludes that there will be no significant adverse impacts, which is flat out incorrect and somewhat shocking in its blind eye toward reality. And again, the Addendum states that while those neighbors may consider the changes to be adverse and significant, those neighbors are wrong because they are not significant.

In sum, the height, bulk, and scale impacts of this proposal as described above will be significant and they have not been adequately disclosed, analyzed, or mitigated. The design review process did not provide sufficient mitigation for the height, bulk, and scale impacts of this proposal and the Addendum failed to indicate mitigation measures that could be implemented or might be required to mitigate height, bulk, and scale impacts. The Addendum fails to identify obvious and feasible mitigation that could be applied to this project as explicitly stated in SMC 25.05.675.G.2,

such as increasing the setbacks, limiting the height of the development, modifying the bulk of the development, or repositioning the development on the site to address and mitigate the significant impacts of the proposal.

### **3. Land use impacts**

The Addendum's discussion of land use impacts of the 5<sup>th</sup> and Virginia proposal is inadequate. *See* Addendum at 7. The project will have significant adverse land use impacts that have not been disclosed or analyzed.

First, there is still no discussion of the existing environment in the Addendum as is required by WAC 197-11-440(6). Nor is this anywhere to be found in Appendix B. While the heading in Appendix B says "existing conditions," the text itself does not contain any such discussion of existing land use conditions that will be specifically impacted by the 5<sup>th</sup> and Virginia Project.

Second, there is literally no meaningful analysis of actual land use impacts in the Addendum. The Addendum states only:

The project site is located in Seattle's downtown urban center, within the Belltown neighborhood. The proposed action would be consistent with development and uses that exist, are under construction, or are in the permitting process throughout the Belltown area. Please refer to the fact sheet in Section 1 of this EIS Addendum for project details of the proposed project. See Appendix B for further information and a discussion of consistency with plans, policies, and regulations.

Addendum at 7. The first sentence in that above quote is a basic fact, not a disclosure of land use impacts. The second sentence is a vague, conclusory and incorrect statement that contains no meaningful or realistic disclosure of the actual land use impacts. The third and fourth sentences simply refer to the reader to the fact sheet (which provides no discussion of land use impacts) and Appendix B.

Appendix B states that the Downtown EIS evaluated the impacts of allowing commercial office buildings and high rise residential buildings to be increased in height from the previous allowed height of 300 feet to a height limit of 600 feet in the downtown office core to "DOC 2" zone – the zoning district within which the proposed action is located. Addendum, App. B at B-1. There is no citation to this analysis, there is no indication whatsoever of where that analysis is located in the Downtown EIS, and there is no summary provided to tell us what the analysis of impacts looked like. There is no mention or explanation of how that analysis related to or was relevant to this specific project site.

With no citation yet again, Appendix B states that the Downtown EIS evaluated the impacts of the rezone and determined that the increase was consistent with the City's Comprehensive Plan and neighborhood plans and was not unavoidable. *Id.* This occurred in 2005. This analysis covered the



entire downtown area, not the specific project site. A general analysis of impacts to the entire downtown area from a rezone based on outdated Comprehensive Plans and neighborhood plans is hardly relevant to determining the land use impacts of the 5<sup>th</sup> and Virginia project in 2017.

Appendix B also states that potential mitigation strategies identified in the Downtown EIS included rezones of some areas to promote residential uses and other legislative fixes. *Id.* Again, this information is provided with no citation to the relevant page numbers for this in the 2005 EIS. There is no indication of where those rezones or other mitigation measures were even remotely connected to this particular site or whether they were employed. More importantly, the idea that mitigation proposed which involved rezones and other broad legislative approaches is in any way relevant to this project amplifies the absurdity of relying on the Downtown EIS for this site-specific project. Mitigation strategies identified in the Downtown EIS cannot be applied to this site-specific project – they are legislative rezones considered for the entire downtown area – not specific mitigation for this specific project.

With respect to specific Project impacts, Appendix B states “Over the past several years, many new developments have been proposed and several are under construction in the vicinity of the project site.” *Id.* But the Addendum does not identify those developments, where they are, and how they have affected the existing environment and/or may cause cumulative impacts to the area when considered in conjunction with the 5<sup>th</sup> and Virginia development proposal. Proper review would list all of the developments and provide a map to show where they are. But, all it says in Appendix B is that the 5<sup>th</sup> and Virginia development would be “consistent with development trends that are occurring.” That is not an analysis of impacts. That is a vague conclusion with no analysis to support it. It is a rationalization meant to support the development.

Appendix B states that Downtown Mixed Residential (DMR/R 145/65) zoning with a lower height is located across Virginia Street to the northwest and across Third Avenue one block to the southwest. The Addendum reveals that Downtown Residential Commercial zoning with 170-foot height (DRC 85-170) is located at approximately one block to the southeast, across Olive Way. After stating these basic facts, the Addendum stops there. There is no discussion or evaluation of impacts associated with this proposal’s adjacency to these less intensive zones.

Appendix B states that the project has been reviewed for consistency with the applicable land use code regulations and design guidelines and some departures from the development standards were recommended for approval. *Id.* Again, the Addendum just states basic facts with no disclosure or analysis whatsoever of impacts.

It is also critical to note that the fact that the project has been reviewed for consistency with the code is not enough under SEPA. The authors of SEPA intended it to serve as a gap filler for use when development regulations do not adequately address adverse impacts to the environment. *See* RCW 43.21C.240. Because development regulations are adopted on a citywide general basis, they cannot and do not address the specific adverse impacts of each individual proposal. Thus, SEPA requires agencies to review each project on a case-by-case basis so that unique adverse significant impacts of each particular project that are not addressed by the general legislation are disclosed,

analyzed, and mitigated. When the SEPA statute was amended in 1995 to clarify the relationship of SEPA to existing development regulations, the Legislature stated:

The Legislature intends that a primary role of environmental review under Chapter 43.21C RCW is to focus on the gaps and overlaps that may exist in applicable laws and requirements related to a proposed action.

1995 C 347. Section 201. The Addendum does not identify the probable significant adverse environmental impacts associated with land use as required by RCW 43.21C.240; WAC 197-11-158. The Addendum does not consider whether the existing laws provide adequate analysis of and mitigation for the specific adverse impacts of the project as required by those rules. There is no discussion on whether there are significant adverse impacts that are not adequately addressed by the existing laws. To the extent that there are such impacts, those impacts require full analysis and mitigation. That did not occur.

Third, there is literally no summary of existing plans and zoning regulations applicable to the proposal and how the proposal is consistent and inconsistent with them in the Addendum. SEPA rules explicitly require this. WAC 197-11-440(6). The previous Appendix B did contain a summary of the project's relationship to plans, policies, and regulations, but it was deleted entirely in the new Updated Appendix B. While the previous Appendix B was missing quite a bit of disclosure and analysis as I pointed out in my previous comments, at least it was there. Now, for some unknown reason, the entire discussion about plans and regulations was completely deleted from Appendix B. Now there is no analysis whatsoever of existing plans and zoning regulations applicable to the proposal and how the proposal is consistent and inconsistent with them in the updated Addendum. This is despite that the body of the Addendum itself says "See Appendix B for further information and a discussion of consistency with plans, policies, and regulations." Anyone who looks for that won't find it.

Finally, the Addendum's conclusion that there will be no significant unavoidable adverse land use impacts has no basis. As explained above, there is no analysis provided to support that conclusion. But if the analysis had been done, it would be clear that this conclusion is incorrect.

As noted in Appendix B, the proposal site is immediately adjacent to properties zoned Downtown Mixed Residential with (DMR/R 145/65) and approximately one block from properties zoned Downtown Residential Commercial zoning (DRC 85-170). Both of these zones have significantly lower height limits than DOC 2 in addition to bulk regulations that limit the bulk and scale of buildings to a greater degree than DOC 2 zoning. In short, they allow far less intensive development.

DOC 2 zoning is meant for areas that provide high density office and commercial activities. An area is zoned DOC 2 only if large scale office buildings are appropriate and do not adversely affect the pedestrian environment or existing development determined desirable for preservation. In contrast, the DMC zone is meant for areas characterized by lower scale office, retail, and

commercial uses, related to activity in the office core, retail core, or other moderate scale commercial core in the urban center, and with use patterns that may include housing.

The Belltown Urban Center Village's functional designation is primarily residential and it is characterized by lower scale office, retail, and commercial uses. Large-scale buildings within the boundaries of the Belltown Urban Village are inconsistent with the goals of that designation.

DOC 2 zones are required to be adjacent to DOC 1 zones. But, the two and a half block section of DOC 2 that the project site is not adjacent to a DOC 1 zone. When looking at the current zoning map, it is evident that there is a large area that is zoned DRC 85-150 in the Commercial Core Urban Center Village between the DOC 1 zoned properties and two and a half block section of DOC 2 as well as the rest of the Belltown Urban Center Village. Put another way, the DOC 2 zoned properties within the Belltown Urban Center Village boundaries are out of place – they are an anomaly. They are inappropriately located between the DRC 85-150 and the existing DMC zone properties within Belltown. So, by some sort of accident of zoning, we have a DOC 2 zone surrounded by far lower intensity zones in an urban village that promotes lower intensity, residential friendly development. As a result, this proposal will have significant adverse land use impacts to the surrounding area that have not been adequately disclosed.

#### **4. Environmental health impacts**

There have been no changes to the analysis of Environmental Health impacts in the updated Addendum from the previous Addendum and, therefore, the comments set forth in my previous letters and in the March 6, 2017 letter from Pam Jenkins still apply.

#### **5. Traffic, transportation, and public facility impacts**

As this process has moved forward, Escala has repeatedly and exhaustively raised the alarm about the severe transportation, traffic and alley impacts that this project will have. We have raised these issues in every forum and in every format possible. Rather than repeat what we have said over and over again, I refer you to our previous comment letters and meetings with you on the subject. Despite our extraordinary efforts to convince the City to do something about the inevitable mess that will be created by this proposal in the alley (especially combined with other proposed development), the Addendum does not adequately disclose or address the traffic, transportation, and alley (public facility) impacts of the proposal. Our traffic expert, Ross Tilghman, has prepared comments on the Updated Addendum on behalf of Escala and I refer to those comments for details.

One important item that was new in the updated Addendum is worth mentioning here as well. The Project Description in the updated Addendum now includes a site plan (Figure 3) for the 5<sup>th</sup> and Virginia development that wasn't in the Project Description in the last Addendum. This Site Plan raises doubts about conclusions regarding alley impacts that are presented later in the Addendum. There is a wall section shown on that Site Plan that is immediately adjacent to the loading dock. That wall section does not jibe with the drawing used later in Appendix K to demonstrate that a 30 foot truck could successfully back into the north stall. Appendix K, which is the Transportation Impact Analysis for the proposal that was prepared in May, 2017, includes an Appendix F, titled

“Loading Dock Truck Maneuvering.” The figures in that Appendix do not show the wall section. This is critical because it’s plainly evident that the loading dock maneuvering will not work if there is actually a wall next to the loading dock. This conflict demands clarification.

## **6. Construction impacts**

The 5<sup>th</sup> and Virginia project will have probable significant adverse construction impacts that have not been adequately addressed in the Addendum. There is literally no quantifiable discussion of the actual noise and vibration impacts, air quality impacts, light and glare impacts, or other adverse impacts from construction.

The construction impacts associated with environmental health and air quality were summarized and highlighted in the letter from Pam Jenkins to me dated March 6, 2017, which I submitted to SDCI on March 7, 2017. Those were not adequately addressed by the Addendum.

As is the case with the other impacts described above, the Addendum recites basic facts, but does not provide an adequate analysis of the actual true impacts of construction. For example, the Addendum states “the majority of all construction activity would occur during the daytime.” This is a basic, vague fact. There is no indication of when construction would begin in the morning or when it would cease in the evening. Appendix L, which is a “potential” construction management plan, doesn’t help because it’s just a “suggestion.” We have no idea whether these mitigation measures are actually part of the proposal. For all we know, the developer is planning to start work at 4:00 am and stop at 11:00 at night. The EIS should indicate what the actual plans are and analyze the impacts of those plans.

In addition, an adequate EIS would provide a construction schedule, with more specifics about the amount of time expected for construction and the specific activities associated with construction over that timeframe. In the Addendum, there is merely an off-the-cuff remark that construction “could” begin by mid-2017, with building occupancy by 2020. That’s it.

The Addendum states “at times it may be necessary for some construction activity to occur during evening hours to reduce the duration of the overall construction timeframe, and/or because the City requires certain construction activities to occur at that time in order to lessen the impacts to pedestrians and vehicles during the day.” This vague statement is inadequate to understand what the actual impacts will be in the evening and how often and how long they will occur. An adequate EIS would provide more detail about how often this may occur, the specific circumstances under which this may occur, what hours this may occur during the evening, and precisely why the City may require certain construction activities to occur in the evening and what those construction activities would be.

The Addendum specifically addresses traffic impacts, but states “the alley is not expected to be used for construction activities with the limited exception of less than 24 hours of temporary restricted access through the 31.5 month construction period for concrete pouring.” This does not jibe with the site plans associated with project. As far as we have seen, the engineering plans still show the truck ramp during construction entering the construction hole from the alley.

Furthermore, the conclusion that construction access would be primarily from Virginia Street has not been properly analyzed or vetted. As we have mentioned time and time again, Virginia Street is utilized by METRO on that block as a 24/7 Bus waiting area immediately next to the property site. This plan for access must be approved by METRO in addition to the Seattle Department of Transportation. Appendix L states that a “possible” construction plan would direct the contractor to “work with” METRO staff to arrange for temporary stop closures or layover area if needed. This is a big deal. First of all, METRO may not agree to using that access area at all. Second, even if it did, what are the impacts associated with limits placed on access by METRO? What does “temporary” mean? When would that happen and for how long and how would that affect truck traffic? Would this extend the construction time overall? In addition to all of these unknowns, the question of whether the Seattle Department of Transportation would approve this access should (like METRO) also be resolved before environmental review, not after environmental review. This is a major issue. If either METRO or the Seattle Department of Transportation do not approve access from Virginia, the truck traffic will cause a severe impact to the alley that requires a full analysis. Five thousand truck trips, 10 to 16 trucks per hour or up to 32 truck trips (16 in and 16 out) per hour will have severe impacts to traffic in the area as well regardless of where the access to the site ends up. The same is true for truck traffic during foundation continuous pours and other concrete work. The Addendum should not so casually conclude that construction access will be from Virginia Street without more review.

Escala has previously commented on the impacts associated with having a crane immediately above the building. The Addendum does not mention that issue.

The conclusion that there will be no significant cumulative construction impacts is based on inadequate analysis and is incorrect. There is no remote attempt to even determine what projects are in the pipeline, when those other projects will be under construction and/or whether their construction would coincide with the construction of this project. The Addendum does not even list the other projects that are in the permitting process at this time in the area. The information provided is inadequate.

It goes without saying that the conclusion that there will be no significant adverse impacts and no significant unavoidable adverse impacts is incorrect. The Addendum is inadequate on its face.

**7. SMC 25.05.675 does not limit the scope of the SEPA analysis of significant adverse impacts for each environmental element.**

Throughout Section 2, the Addendum repeats the same error over and over again in its “policy context” description for each environmental element considered. The language in the Addendum implies that the substantive SEPA policies in SMC 25.05.675 limit the scope of disclosure and analysis of significant impacts. That is not true. That interpretation is inconsistent with the law.

The substantive SEPA policies in SMC 25.05.675 “serve as the basis for exercising substantive SEPA authority pursuant to” WAC 197-11-660. That provision speaks solely to the City’s substantive authority and mitigation. In contrast, the range of impacts to be considered procedurally in an EIS can go beyond the scope of substantive authority and mitigation. See WAC

197-11-792. The Addendum erred in stating that SMC 25.05.675 limits the scope of the SEPA analysis for each environmental element.

While on the subject of SMC 25.05.675, it is unclear why the updated Addendum removed the quotation of the relevant policies from SMC 25.05.675 for each of the elements of the environment throughout this section. That was helpful information for the public. The removal of those quotes from the first Addendum to the updated Addendum makes no sense.

### **C. Conclusion**

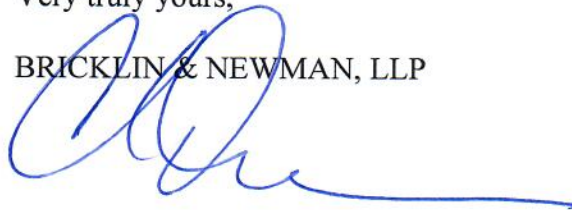
SDCI's approach to environmental review for this proposal violates SEPA and the Addendum is inadequate on its face. SDCI has not performed an analysis of alternatives for the proposal. There is no Summary for the proposal as required by WAC 197-11-440(4) and there is still no discussion of the existing environment for many of the elements of the environment as is required by WAC 197-11-440(6). The Addendum's disclosure and analysis of environmental impacts is clearly inadequate.

SDCI must prepare a draft and final EIS (or SEIS) following a scoping process that contains everything set forth in WAC 197-11-440 and that follows the public process in WAC 197-11-500 through 570. The EIS must provide an adequate and impartial discussion of significant environmental impacts and shall inform decision makers and the public of reasonable alternatives, including mitigation measures, which would avoid or minimize adverse impacts or enhance environmental quality.

An EIS needs to be prepared to adequately assess the environmental impact of the 5<sup>th</sup> and Virginia Proposal, not an Addendum that simply justifies a decision that has already been made.

Very truly yours,

BRICKLIN & NEWMAN, LLP



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CMN:psc

cc: Escala Owners Association