

**BEFORE THE HEARING EXAMINER
FOR CITY OF VANCOUVER**

In the Matter of the Application of)	NO. PRJ-163131/LUP-82094
)	
)	
Kirkland Development LLC)	Kirkland Renaissance Boardwalk
)	
)	
For Approval of a Master Plan, Design)	FINDINGS, CONCLUSIONS,
Review, Zoning Variance, Shoreline)	AND RECOMMENDATIONS
Substantial Development Permit, and)	
<u>Shoreline Conditional Use Permit</u>)	

SUMMARY OF RECOMMENDATION

The Hearing Examiner recommends to Vancouver City Council that the requests for master plan, design review, shoreline substantial development permit, and shoreline conditional use permit approval should be **GRANTED** subject to conditions. The Examiner recommends that the request for a zoning variance should be **DENIED**.

SUMMARY OF RECORD

Request:

Kirkland Development LLC (Applicant) requested master plan, design review, shoreline substantial development permit, shoreline conditional use permit, and zoning variance approval to construct a mixed-use development consisting of 217 multi-family dwelling units, 115,500 square feet of commercial space, and 370 underground parking spaces at property currently addressed as 101 and 111 SE Columbia Way. A zoning variance was requested to allow floor area in excess of 12,000 feet on a floor over 75 feet above ground.

Hearing Date:

The Vancouver Hearing Examiner conducted a virtual open record hearing on the application on January 17, 2023. In an abundance of caution, the record was held open through January 19, 2023 to allow for written public comment from members of the public who experienced difficulty joining the virtual hearing (if any), with additional time arranged for responses by the parties. No post-hearing public comment was submitted, and the record closed on January 19, 2023.

Testimony:

At the open record hearing the following individuals presented testimony under oath:

- Keith Jones, Senior Planner, City of Vancouver
- Cristina Haworth, Senior Planner, Otak (for Applicant)
- Ron Dean, Senior Project Designer, Otak (for Applicant)

Exhibits:

The following exhibits were admitted through the open record hearing process:

- Exhibit 1 Staff Report to the Hearing Examiner, dated January 3, 2023
- A. Application Form
 - B. Traffic Impact Fee Estimate
 - C. Applicant Narrative, including the following appendices:¹
 - A. Development Agreement, dated July 12, 2021
 - B(1). Traffic Debit Memo, dated March 17, 2022
 - B(2). [duplicate of Exhibit 1.P]
 - C. Driveway Engineering Analysis, dated March 22, 2022²
 - D. Preliminary Stormwater Technical Information Report, dated December 2021
 - I. Arborist Report and Level V Tree Plan, dated December 30, 2021
 - L. Letter from Clark County Public Health, dated January 27, 2022
 - R. Sight Distance Analysis, dated March 17, 2022
 - D. Site Plan
 - E. Landscape Plans
 - F. Grading and Erosion Control Plan
 - G. Building Elevations
 - H. Floor Plans
 - I. JARPA for Department of Natural Resources
 - J. Department of Archaeological and Historic Preservation letter, dated December 10, 2021
 - K. Washington State Department of Transportation letter, dated November 14, 2022
 - L. Washington State Department of Transportation Aviation letters, dated November 9, 2022 and November 16, 2021
 - M. Department of Ecology letter, dated November 14, 2022
 - N. Schematic Foundation memo, dated March 4, 2022

¹ At hearing, the appendices to the Applicant's narrative (Exhibit 1.C) were not offered in the record. During deliberations, the undersigned determined that review of source documents was required to draft accurate findings and conclusions and make correct recommendations to Council. The undersigned requested (via email to the hearing clerk) that the record be supplemented with these appendices to the narrative (as well as with the final SEPA determination and notice of hearing). The original appendix numbering scheme has been retained.

² Identified in the Narrative (Exhibit 1.C) as a Driveway Engineering Analysis, the document submitted as Appendix C to Exhibit 1.C is a minor road modification request related to the pavement cutting moratorium in effect on SE Columbia way.

- O. Seawall memo, dated March 4, 2022
- P. Traffic Analysis Report (Waterfront East), dated August 2020
- Q. Critical Areas Report, dated December 27, 2021
- R. Hydraulic Report, dated February 17, 2022
- S. Geotechnical Report, dated December 10, 2021

Exhibit 2 Applicant PowerPoint

Exhibit 3 Plan Sheet A5 annotated with 200-foot shoreline jurisdiction and 100-foot residential setback

Exhibit 4 Plan Sheet C01 annotated with storm sewer easement highlighted

Exhibit 5 Plan Sheet EX01 annotated to show existing five-foot easement at east boundary and the location of the additional required 15-foot easement

Exhibit 6 Memorandum from Amanda Romero, dated January 19, 2023, re: Solid Waste Staff Report Revision

Exhibit 7 Revised Staff Report sections 11.70 and 11.80

Exhibit 8 Notice of Application, Remote Public Hearing, and Optional SEPA Determination of Non-significance, dated October 13, 2022

Exhibit 9 Memorandum from Casey McKenna, Otak re: Solid Waste Staff Report Revision

Exhibit 10 Final SEPA Determination of Non-significance, issued November 17, 2022

After considering the testimony and exhibits admitted into the record, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

Background

1. Kirkland Development LLC (Applicant) requested master plan, design review, shoreline substantial development permit, shoreline conditional use permit, and zoning variance approval to construct a mixed-use development project consisting of 217 multi-family dwelling units, 115,500 square feet of commercial space, and 370 underground parking spaces on 2.03 acres currently addressed as 101 and 111 SE Columbia Way. The Applicant also requested that a shoreline exemption be granted for redevelopment of a riverfront boardwalk. *Exhibits 1, 1.A, 1.C, 1.D, and 2.*
2. The subject property is on the Columbia River shoreline, a shoreline of statewide significance, just east of the Interstate 5 bridge and on the south side of Columbia Way. The regulated shoreline extends 200 feet from the ordinary high water mark,

encompassing nearly all of the subject property and triggering the requirement for a shoreline substantial development permit. The City of Vancouver Shoreline Master Program (SMP) designates the subject property as a High Intensity shoreline environment. *Exhibits 1, 1.C, and 2.*

3. Surrounding land uses include: the Waterfront Park to the east, which is owned by the National Park Service and is part of the Fort Vancouver Historic Site; vacant land to the north, which is owned by the National Park Service and the Burlington Northern Railroad; an electrical substation and associated parking to the northwest, which is owned by Clark PUD; and public right-of-way and PUD-owned land to the west. *Exhibit 1.C.*
4. The subject property is currently developed with a restaurant (Who Song and Larry's) and surface parking. A second restaurant – Joe's Crab Shack – had previously been on site but was recently closed and demolished. A shared-use path – the Renaissance Trail – runs along the property's Columbia Way frontage. A dilapidated pier/boardwalk, not currently open to the public, extends over the river next to the southwest corner of the subject property on land owned by the City. There is a concrete sidewalk along the waterfront connecting the restaurant area to the park to the east. *Exhibits 1.C, 1.I, and 5.*
5. The proposed redevelopment of the site would include the following components:
 - Construction of a single mixed-use building, which would occupy most of the site area. The building would include 217 multi-family dwelling units and approximately 115,500 square feet of commercial space. The design concept is based on a waterfall, with the building consisting of multiple sub-parts of varying height, creating a cascade effect. The residential units would be on the upper floors of the taller, northern portion of the building; the ground floor of this part of the structure would consist of commercial uses and the residential lobby. The shorter, southern portion of the building, facing the Columbia River, would contain commercial uses only. The building would include ground level tunnel-like openings for pedestrian and vehicular access through the site. It should be noted that while these openings create the appearance of five separate building footprints on the ground level floor plan, it is a single building with the building subparts connecting at the second level and above. A large central courtyard would open to the sky. The building as proposed requires a zoning variance from Vancouver Municipal Code (VMC) 20.630.050.C, because more than 12,000 feet of gross floor area is proposed for a floor that is more than 75 feet in height.
 - Construction of a one-story underground parking garage beneath the building, which would include 370 parking spaces, including 100 electric vehicle spaces.
 - Reconstruction of the Renaissance Trail as part of proposed frontage improvements on Columbia Way. The reconstructed Renaissance Trail would be designed to the City's Heritage Sidewalk standard.
 - Replacement of the dilapidated pier/boardwalk with a new public riverfront trail (identified as Renaissance Boardwalk in some project materials) to be located at the ordinary high water mark. The Applicant requested a Statement of Exemption

from the shoreline substantial development permit requirement for this work pursuant to SMP 2.3, arguing that the work constitutes normal maintenance or repair.

- Installation of a public stormwater pipe and outfall along the eastern property boundary, to replace an existing, deteriorated 27-inch public stormwater pipe that is located approximately 40 feet west of the eastern property boundary. A public trail would be placed within the easement to provide a connection between the Renaissance Trail on Columbia Way and the new boardwalk. A shoreline conditional use permit is needed for this utility work.

Exhibits 1.C, 1.C.D, 1.D, 1.G, 1.H, 1.I and 2; Ron Dean Testimony.

6. Development of the project is governed by a Development Agreement entered into between the City and the Applicant on July 12, 2021. The Development Agreement specifies certain required development components. The required components include removal of the pier and construction of the Renaissance Boardwalk along the seawall. *Exhibit 1.C.A.*
7. The subject property is within two overlay districts: the Noise Impact Overlay District (VMC 20.520), which applies to properties with unusually high levels of aircraft, railroad, and/or traffic noise, and the Airport Height Overlay District (VMC 20.570), which applies to properties within the vicinity of Pearson Field Airport. The subject property is within the approach zone to Pearson Field, which is to the east of the subject property. Planning Staff recommended conditions of approval to address the requirements of these overlay districts, including conditions requiring the Applicant to submit a noise impact reduction plan, record a noise disclosure statement, and obtain a determination of no hazard to air navigation from the FAA. To meet the noise reduction performance standards of the overlay district, the Applicant proposes to use building materials that would reduce interior noise limits to an average of 45 Ldn or less. *Exhibit 1, page 9; Exhibit 1.C, VMC 20.520; VMC 20.570.*
8. The subject property is within the Columbia Shoreline Enhancement Plan District (VMC 20.620). Development within the plan district requires approval of a master development plan per the planned development chapter of the VMC, plus compliance with additional criteria including consistency with the current Comprehensive Plan and zoning regulations, coordination of phased developed, and consistency with the Shoreline Management Act (SMA), City of Vancouver Shoreline Master Program (SMP), and the City's waterfront trail policy. *VMC 20.620.030.B.* Consistent with these requirements, the Applicant has submitted a master development plan for approval, which contains the information required by VMC 20.260.070, and shoreline permit applications for consistency with the SMA and SMP. No phasing is proposed. The proposal includes reconstructing the Renaissance Trail along the subject property frontage and re-establishing a riverfront trail connection. *Exhibits 1, 1.C, page 51.*
9. The subject property is within the City Center (CX) zone, and the Comprehensive Plan designation is Commercial. *Exhibit 1.* The purpose of the CX zone is "to provide for a

concentrated mix of retail, office, civic, and housing uses in downtown Vancouver.”
VMC 20.430.020.D. Retail, eating and drinking establishments, office, and multi-family residential uses are allowed in the CX zone. *VMC Table 20.430.030-1.* There are no setback, lot coverage, minimum landscaping, or lot dimension requirements applicable to the zone. The only CX development standard is the maximum building height standard, which is governed by *VMC Figure 20.630-4. VMC Table 20.430.040-1; Exhibit 1.*

Zoning Variance

10. The maximum building heights in the Downtown Plan District vary from 40 feet to 300 feet. *VMC 20.630.050.* Figure 20.630-4 of the ordinance divides the Downtown Plan District into numerous subareas (some extremely small) and assigns different maximum building heights or maximum building height ranges to each. The subarea containing the subject property has a maximum building height range of 50 to 100 feet. Subareas to the west along the waterfront have progressively higher height allowances. *VMC Figure 20.630-4.* As specified in *VMC 20.630.050.C*, “the low number of the range identifies the maximum building height (inclusive of any roof-top appurtenance) that may be achieved outright.” *VMC 20.630.050.C.* To achieve an increase in building height above the low number of the range, the following criteria must be met:

1. Up to 50% increase in building height (inclusive of any roof-top appurtenance), may be allowed outright, by the Planning Official through the site plan review process upon making the following findings:
 - a. Such increase in height complies with FAA regulation, Part 77, as confirmed by the FAA, through issuance of a determination of no hazard to air navigation; and
 - b. Such increase in height will not affect the safe and efficient use of navigable airspace following consultation with the Pearson Field Airport Manager.
2. Over 50% and up to the high number of a given range, increase in building height (inclusive of any roof-top appurtenance), may be allowed by the Planning Official through the site plan review process upon making the following findings:
 - a. Such increase in height complies with FAA regulation, Part 77, as confirmed by the FAA, through issuance of a determination of no hazard to air navigation; and
 - b. Such increase in height will not affect the safe and efficient use of navigable airspace following consultation with the Pearson Field Airport Manager; and
 - c. The gross floor area of the building at each floor over 50% above the low number of any given range and up to the high number of a given range shall not exceed 12,000 square feet.

VMC 20.630.050.C. In this case, a 50% height increase over the low number of the range is 75 feet. Thus, for the subject property, assuming FAA and Pearson Field requirements can be satisfied, the maximum floor area on floors over 75 feet is 12,000 square feet.

Exhibit 1.

11. The proposed building varies in height, with the commercial portion fronting the Columbia River reaching approximately 49 feet, two inches and the residential portion to

the north reaching 100 feet. Floors 8 and 9 would exceed 75 feet in height. The Applicant proposes 27,022 square feet of floor area on Floor 8 (exceeding the maximum by 15,022 square feet) and 3,271 square feet of floor area on Floor 9. The Applicant submitted that Floor 9 is limited to 3,271 square feet because FAA height restrictions allow for that height only on the far west end of the residential tower, due to the glide slope from Pearson Field. *Exhibits 1.C, 1.G, 1.H, 2, and 3; Cristina Haworth Testimony.*

12. The Applicant requested a variance from the square footage limitation of VMC 20.630.050.C.2.c for Floor 8. In support of the request, the Applicant noted certain development constraints applicable to the site, including utility easements running along the eastern and western property lines, the regulatory constraints associated with being closer to Pearson Field than other sites in the Downtown District and within a regulated shoreline, and the unusual shape of the property. (The street side of the parcel is rounded, and the west end of the site is narrower than the east end). The Applicant argued that the subject property is more height restricted than other parcels in the vicinity, as it is the only privately-owned land within the 50 to 100-foot height district. The Applicant submitted that the additional area on Floor 8 is requested to make up for buildable area lost due to other constraints, arguing that the additional residential units would benefit the public, and that the additional building mass on Floor 8 would not be detrimental because the subject property is separated from other properties by significant infrastructure to the north and west and by trees to the east. *Exhibit 1.C, 2, and 3; Cristina Haworth Testimony.*
13. The easements on the subject property include a portion of a 40-foot wide storm sewer easement associated with I-5. Per comments submitted by the Washington State Department of Transportation, no building or building overhang may encroach into the easement. As visually depicted in Exhibit 3, the easement encumbers a small wedge of land along the western extent of the subject property. The easement along the eastern property line encumbers a width of five feet. However, as part of the proposed project, a new 15-foot easement would be placed in the same location for the relocated storm sewer line. The remainder of the site is potentially developable. The proposed building design leaves an open area in the center of the site, which area is compliant with the shoreline setback for residential development. *Exhibits 1.K, 3, 4, and 5.*
14. City Planning Staff submitted that the variance should be denied, arguing that the height limits depicted in Figure 20.630-4 were “purposely adjusted to address different areas of the downtown and [] established in consultation with FAA and the airport manager at Pearson Airpark.” *Exhibit 1, page 8.* With respect to the limitation to 12,000 square feet, Staff was unaware of the specific rationale but submitted that since FAA/Pearson Field issues were otherwise addressed, the reason for the limit likely relates to planning principles regarding bulk, mass, and scale and preservation of views to the river through downtown. *Keith Jones Testimony.* Staff argued that substantial development can occur with the floor area available to the Applicant, and that a zoning text amendment would be the appropriate avenue for relief from the 12,000 square foot limit for area over 75 feet in height. *Exhibit 1, page 8; Keith Jones Testimony.*

15. The Applicant has not yet received FAA clearance of the proposed building height, and the manager of Pearson Airpark did not submit comments into the record. *Exhibit 1.C.*
16. The loss of some of the Floor 8 dwelling units would not cause the density of the project to fall below the minimum of 190 dwelling units established in the Development Agreement. At present, 217 dwelling units are proposed and 27 of them are planned for Floor 8. There would still be 190 dwelling units on the site even if all Floor 8 dwelling units were eliminated (which they would not need to be as 12,000 square feet would still be available for development). *Exhibit 1.C.A, Section 4.2.3; Exhibit 1.H.* At hearing, the Applicant representative testified that additional housing units could not be placed in the southern portion of the building or in the center of the site because the required shoreline setback for residential development was 100 feet. *Cristina Haworth Testimony.* This testimony may have been misunderstood by the undersigned or was in error, because pursuant to SMP Table 6-1, the shoreline setback for multifamily residential uses is 35 feet. *SMP Table 6-1.*

Design

17. The project is subject to design review pursuant to VMC 20.265. The subject property is within the Central City Plan District design review district. *VMC Figure 20.265-1; Exhibit 1.* Because the subject property does not contain buildings listed on the local or national historic register, review by the Historic Preservation Commission is not required. *Exhibit 1.C, page 35.*
18. The Applicant submitted plans demonstrating consistency with applicable design standards, as follows:
 - The proposed site design places “active” commercial uses on the ground floor adjacent to public areas. Restaurants and outdoor seating would face the Renaissance Boardwalk.
 - Parking would be below grade within a parking structure. Only short-term parking and loading would be provided along the internal drive aisle.
 - A gathering space accessible from the interior of the building would be located where the building does not directly abut the sidewalk due to easement constraints.
 - The vertical continuity of building facades along Columbia Way would be maintained to a height exceeding two floors.
 - Rooflines would be consistent with the building’s use and surroundings, and would include details for visual interest, including a sloped profile in the northern (residential) portion and tiered roof decks with planters in the southern portion.
 - Within the building façade, projections of portions of the upper floors would provide visual interest.
 - In an area where there is a wall in excess of 15 lineal feet but windows are not feasible (which would occur only along a small portion of the eastern façade, adjacent to a solid waste and recycling room), wall plantings would be used to enhance the

appearance of the wall.

- Rain protection on the north side of the building would be provided through awnings and building recesses. Projections and cantilevered building masses would provide rain protection on the south side of the building. These features would be more than eight feet above the sidewalk.
- Pedestrian amenities including benches, planters, and trash receptacles would be provided on site.
- Trash dumpsters would be enclosed in rooms.
- A variety of materials would be used for walking surfaces. Plazas would be surfaced with pavers in geometric patterns. The boardwalk would be paved with patterned concrete and pavers.
- Light standards would be compatible with the character of the building. Lighting would be used to accent benches, railings, and planters, and would be provided along sidewalks and the Renaissance Trail for pedestrian safety.
- The site design provides visual access to the Columbia River.
- Public art is proposed throughout the site.
- Deciduous trees from the City's approved list would be planted along Columbia Way as part of proposed frontage improvements.
- Most of the plantings on site would be placed in raised planters that could also serve as seating.
- Parking would be provided at a rate exceeding the minimum City standard by 14%, to account for the lack of street parking on Columbia Way and to avoid overflow parking on the park site to the east.
- Elevators to the parking garages would be located in accessible areas.
- A single building is proposed, but with multiple sections designed to create a strong visual relationship. The overall design is inspired by a waterfall, with the structure cascading towards the Columbia River. The design makes optimal use of the waterfront setting by placing the lowest building heights along the river so that views can be maintained from the upper floors of the residential area behind.
- The building height is proportionate to the scale of Columbia Way.
- The proposed mixed-use development would provide increased opportunities for informal and planned activities beyond 9:00 am to 5:00 pm work hours.
- The building would be oriented both to Columbia Way and to the boardwalk. Retail would be accommodated on the ground level.
- Awnings would be placed to define the first floor.
- Lighting along the waterfront trail would conform to City standards.

Exhibits 1.C, 1.D, 1.E, 1.G, and 1.H. Of note, many of the features listed in this finding

could not be verified from the plans and elevations in the record; however, Planning Staff concurred that the Applicant's materials demonstrate compliance with the City's design standards. *Exhibit 1.*

19. The proposal would not affect relationships between existing structures in the vicinity, or between existing structures and open space. The only structure on site is a two-story restaurant building, which is surrounded by surface parking and minimal landscaping. The only building in the vicinity is the Clark PUD building to the north. The I-5 bridge is west of and visible from the site, and the Burlington Northern Railroad tracks are to the north of the site. The proposal would include open spaces providing visual access to the river. Pedestrians would be able to walk through the building via courtyards. *Exhibits 1.C and 2.*
20. Consistent with the requirements of the Development Agreement, the Applicant proposes to construct the building consistent with the LEED Gold standard.³ LEED addresses several categories of environmental concern, including water efficiency, energy usage, indoor air quality, and materials sourcing. Natural gas would not be used to serve the residential units. *Exhibit 1.C.*

Access, Traffic, and Parking

21. Vehicular access to the development would be from SE Columbia Way, a minor arterial. The Applicant proposes a looped driveway that would connect to SE Columbia Way at two locations, and a separate driveway from SE Columbia Way that would lead directly into the underground parking structure. The looped driveway would pass through the building. *Exhibits 1 and 1.D.*
22. The existing street section along the property frontage includes asphalt roadway and a curb, gutter, planter strip, 14-foot wide shared-use path (Renaissance Trail), and storm drainage. *Exhibit 1.* Proposed street improvements would include widening the street to provide two 12-foot travel lanes and a 14-foot center turn lane and reconstructing the Renaissance Trail to the Heritage Sidewalk standard (Standard Detail T02-02). The sidewalk would be 14 feet wide including four-foot-wide tree wells. *Exhibit 4; Exhibit 1.C.* As recommended by City Staff, an existing pedestrian crossing would be reconstructed and enhanced with lights, and to maintain continued bicycle and pedestrian connectivity along the site during construction, the existing shared-use path would be required to remain open until such time that the riverfront boardwalk is constructed. In addition, storm drainage, lighting, striping, and signage would need to be installed consistent with City standards. *Exhibit 1.*
23. Southeast Columbia Way is subject to a street cut moratorium that is in effect through October of 2024. The Applicant has received City approval of a minor road modification for deviation from the moratorium to cut the street for installation of utilities and frontage improvements. *Exhibits 1 and 1.C.C.*

³ The Applicant will not be seeking LEED certification through the United States Green Building Council, but will self-certify that the requirements are satisfied. *Exhibit 1.C, page 9; Ron Dean Testimony.*

24. For street frontages in excess of 125 feet, City property access standards (VMC 11.80.110) limit the number of driveways along a street frontage to two, unless additional driveways are justified by a traffic engineering study. The Applicant proposes three driveways, including two for the looped driveway and one for the parking garage. *Exhibit 1.C and 4.* The Applicant submitted a sight distance study indicating that all three driveways would meet or exceed minimum sight distance standards. *Exhibit 1.C.R.* City Transportation Staff have no concerns with the proposal. However, in order for the project to demonstrate consistency with code requirements, City Staff recommended that the Applicant provide the code-required justification prior to civil plan approval. Staff requested that the justification include the reason for the third driveway, alternatives that were considered, and the reason why alternatives are not feasible. *Exhibit 7.* This information was not provided in the sight distance study. *Exhibit 1.C.R.*
25. A traffic analysis report was prepared for a different version of the project in August of 2020, which was used to inform the Development Agreement. The project scope at the time was 125,000 square feet of commercial space and 219 apartment units. Based on the trip generation rates contained in the Institute of Transportation Engineers (ITE) *Trip Generation Manual*, 10th Edition for mid-rise housing (ITE land use code 221) and shopping center (ITE land use code 820), the earlier version of the project was expected to generate 2,756 net new average daily trips, including 157 AM peak hour trips and 314 PM peak hour trips. The traffic analysis found that the surrounding street system has capacity to accommodate the projected traffic volumes. *Exhibits 1 and 1.P.*
26. The Development Agreement vested the project to the 314 PM peak hour trips calculated in the August 2020 traffic study and required that the Applicant submit a trip debiting memo in conjunction with the project application. *Exhibit 1.C.A.* The Applicant submitted the required trip debiting memo, which found that with the current slightly smaller project scope, the project would generate 2,713 net new average daily trips, including 156 AM peak hour trips and 312 PM peak hour trips. Thus, the current project is within the allowances of the Development Agreement. *Exhibits 1 and 1.C.B1.*
27. The proposal is expected to add 18 AM peak hour trips to the City's Grove Street/Columbia House Blvd/SR-14 WB Off-Ramp traffic mitigation project. The Applicant would be required to pay a proportionate share contribution to the project of \$10,800.00. The Applicant would also be required to pay transportation impact fees pursuant to VMC 20.915, and concurrency modeling fees for adding PM peak hour trips to Mill Plain Blvd and Fourth Plain Blvd transportation management zones. *Exhibits 1 and 1.C.B1.*
28. The minimum number of parking stalls for the multi-family residential portion of the use is 0.75 space per dwelling unit (163 spaces for the 217 units proposed), and one space per 1,000 square feet of floor area for the commercial portion of the use (107 spaces for 106,659 square feet of floor area). The Applicant proposes to provide 217 residential parking spaces and 153 commercial parking spaces, for a total of 370 parking spaces. Consistent with the Development Agreement, stacking technology would be used to reduce the footprint of the parking area, and at least 100 stalls would be equipped with

electric vehicle charging stations. In addition, both long and short-term bicycle parking areas would be provided. *Exhibit 1.C, pages 9, 28, and 132; Exhibits 1.H and 1.C.A.*

Solid Waste Disposal

29. VMC 20.970 contains detailed requirements for solid waste disposal and recycling. Staff determined that the project complies with most of these requirements, but identified three areas of concern: tenant access, the size of the commercial trash room, and vehicle access to pick up areas. *Exhibit 1.*
30. With respect to tenant access, VMC 20.970.040.A.3 specifies that the maximum distance between any residential unit and the closest garbage/recycling room is 150 feet. The proposed floor plans depict that 175 of the units would be within 150 feet of a garbage/recycling room. The remaining 42 units (approximately six per floor) would exceed this standard, with distances of between 150 and 200 feet from a garbage/recycling room. To address this issue, Staff recommended that the plans be revised, or that the Applicant obtain a variance from or minor adjustment of the provision. The Applicant proposes to seek a minor adjustment at the time of building permit review. *Exhibits 6 and 9.*
31. With respect to commercial solid waste storage, Staff submitted that the 1,208 square foot room proposed does not meet the standard of 100 square feet plus 10 square feet per 1,000 square feet of gross floor area. To address this issue, Staff recommended that the area be increased 1,255 square feet. *Exhibit 1.*
32. With respect to collection vehicle access, the site plan allows collection vehicles to access the commercial solid waste storage room without the need to drive through the site beneath the building overhangs. The building overhangs as proposed are 13 feet, 8 inches, whereas the minimum required is 14 feet, 6 inches. However, the location of the residential storage room is such that a collection vehicle would not be able to access without going beneath the second floor of the building. Staff submitted that the issue could be resolved by either raising the height of the building overhangs or by consolidating the residential solid waste into the commercial storage area on collection days. This would require the area of commercial storage to be increased. *Exhibit 1, pages 16-17.*

Parks and Schools

33. The subject property is located within the bounds of Park District A and the Vancouver School District. Any school aged residents of the multifamily dwellings would attend Harney Elementary, Discovery Middle, and Hudson's Bay High Schools. Payment of park and school impact fees would be required pursuant to VMC 20.915 to mitigate impacts to parks and schools. The fee amounts are based on the fee schedule in effect at the time of building permit application and are payable at the time of building permit issuance. The estimated fee amount is \$3,476 per dwelling unit for parks and \$2,486 per dwelling unit for schools. *Exhibit 1; VMC 20.915.020*

Utilities and Stormwater

34. The proposed development would connect to the municipal water and sewer systems. Based on the Applicant's preliminary plans and subject to recommended conditions, the City is satisfied that municipal utility requirements can be met on the site. *Exhibits 1 and 1.C.L.*
35. An existing 27-inch stormwater pipe, which serves upstream uses, crosses the eastern portion of the subject property and outfalls to the Columbia River. As part of the instant project, the Applicant proposes to relocate the pipe closer to the eastern property line. *Exhibits 1 and 1.C.D.*
36. Stormwater runoff from the developed site would discharge to the Columbia River via the relocated stormwater pipe. Because the river is a flow control-exempt waterbody, no on-site stormwater detention is required. However, a StormFilter vault would be used for water quality treatment of on-site runoff, and four StormFilter catch basins would be used to treat street runoff. StormFilter proprietary technology has been approved by the Washington State Department of Ecology for basic water quality treatment. City Staff submitted that the Applicant's preliminary stormwater report demonstrates that City stormwater requirements can be satisfied on the site. *Exhibits 1 and 1.C.D.*
37. The Applicant has submitted a preliminary erosion control plan demonstrating that the City's erosion control requirements can be met on the site. *Exhibit 1.*
38. The Fire Department reviewed the proposal and determined that it can meet the requirements of VMC Title 16 and the International Fire Code. The Department's recommended conditions of approval address fire hydrants, fire apparatus access, and signage. *Exhibit 1.*

Shoreline and Critical Areas

39. Based on FEMA special flood hazard area mapping, the southern portion of the site is within the 100-year floodplain of the Columbia River, and the northern portion of the site is within the 500-year floodplain. A small portion of the existing boardwalk and seawall are within the floodway. Hydraulic modeling was performed to determine the impact of the project on flood levels. The conclusion of the study was that the project would have no effect on the base flood elevation. *Exhibit 1.R.*
40. A Geotechnical Engineering Report was submitted for the site. One of the issues evaluated in the report was risk of liquefaction during an earthquake, as the site is mapped as having high liquefaction potential. The conclusion of the study was that, based on the soils observed on site, and the proposed removal of liquefaction-susceptible fill soils from under the building footprint for the garage, the risk of structurally damaging liquefaction on site is low. *Exhibit 1.S.*
41. Potential impacts to the seawall were also evaluated by a geotechnical engineer. The construction of the new building is expected to reduce the static and seismic loading on the seawall. The pressure on the seawall would be reduced by removing some of the soil

behind the wall for construction of the underground parking garage. The riverfront boardwalk would also be designed to avoid loading the seawall. The concrete beams supporting the boardwalk would be cantilevered, leaving a small gap between the bottom of the boardwalk and the seawall. *Exhibits 1.N and 1.O.*

42. The Columbia River within the project area is designated critical habitat for Lower Columbia River Chinook, Coho, Columbia River Chum, all of which are listed as threatened species under the Endangered Species Act. The project area is also designated critical habitat for bull trout species. *Exhibit 1.Q, page 6.*
43. The banks of the Columbia River in the project area are armored with articulated concrete blocks, large boulders, concrete slabs, and riprap. Bank armoring extends to rock and concrete walls that meet the parking area and the paved park trail. *Exhibit 1.Q, page 5.*
44. The City's shoreline critical areas regulations designate the Columbia River, a Type S stream (i.e., a shoreline of the state), as a Fish and Wildlife Habitat Conservation Area. The regulations require a 100-foot riparian management area (RMA) from the OHWM of Type S streams, and a 75-foot riparian buffer (RB) from the edge of the RMA. *SMP 5A – 20.740.110.* Development may occur within the RB provided that planned mitigation results in no net loss of riparian habitat functions and that functionally significant habitat is preserved. Development may occur within the RMA if it is a water-dependent, water-related or water-enjoyment activity with no feasible alternative, or if it is a road or utility facility that cannot be feasibly located outside of the RMA, which minimizes and mitigates for unavoidable impacts, or if it is mitigation for activities allowed by the SMP. *SMP 5A – 20.740.110.C.2.*
45. The riparian buffer on the project site is poorly functioning, with only narrow strips of vegetation at the top of the rock walls, consisting of primarily of non-native species including English ivy, indigo bush, and Himalayan blackberry. Few trees are present at the edges of hard surfaces. *Exhibit 1.Q, page 5.* The majority of the RMA and RB consist of paved surfaces and buildings. Pursuant to VMC 20.740.110, when impervious surfaces from previous development completely functionally isolate the RMA or RB from the waterbody, the regulated riparian area shall extend from the OHWM to the impervious surfaces. For the subject property, the functioning RMA and RB include the narrow strips of vegetation at the top of the rock walls and end of existing paved areas. *Exhibit 1.Q, page 5.*
46. Approximately 1,603 square feet of low-functioning RMA would be permanently impacted by construction of a cantilevered concrete boardwalk in the southwest portion of the site. Removal of the existing pier in that area is required by the Development Agreement, and the new boardwalk would provide public access consistent with the SMP. Vegetation to be removed would include one shore pine and one red alder growing in landscaped areas at the edge of paved surfaces. Areas of English ivy, false indigo, and Himalayan blackberry sprouting from fractured concrete walls and rubble between the existing pier and the edge of the parking lot would be shaded by the new boardwalk. To compensate for the loss of RMA, approximately 2,949 square feet of shallow water

habitat would be enhanced along the shoreline through removal of the existing wood pier (2,949 square feet) and cutting 59 timber piles at ground level, which would remove overwater shading and improve the habitat for use by juvenile salmonids. The Applicant's consultant submitted that with this mitigation the proposal would result in no net loss of shoreline functions, consistent with the criteria of SMP 20.740.060. *Exhibit 1.Q, pages 7 and 8.* Restoration of the shoreline currently impacted by the pier would be based on a plan developed by qualified biologists and engineers, consistent with SMP 5.5. *Exhibit 1.C, pages 85-87.*

47. To minimize impacts to the Columbia River, best management practices to be implemented during piling removal would include: following the Washington Department of Fish and Wildlife-approved in-water work window; staging equipment in upland areas; removing treated wood pilings during summer low water conditions; installing silt curtains as needed; removing cut piles by crane or excavator to avoid dragging; minimizing damage to wood piles during removal to avoid treatment compounds entering the water; disposing of the pilings at an upland off-site facility; not attempting to clean material from the pilings; and not removing the pilings through shaking or vibrating. *Exhibit 1.Q, page 9.*
48. The Shoreline Master Program (SMP) designates the subject property as a High Intensity shoreline environment. Water-related/water-enjoyment commercial uses (such as restaurants) are permitted in the High Intensity environment with a minimum setback of 25 feet, and a maximum building height of 35 feet when within 100 feet of the shoreline, or 45 feet when more than 100 feet of the shoreline. For non-water oriented commercial uses (such as offices), the minimum setback is 100 feet and the maximum building height is 35 feet. *SMP Table 6-1.* Building heights in excess of 35 feet are allowed pursuant to SMP 6.4.3.7, which specifies that mixed-use commercial development may use the height limit of the underlying zone when the project meets SMP 6.3.4 and SMP 5.8.1 (commercial use and visual access provisions), is located on a High Intensity shoreline of the Columbia River within the Columbia River Shoreline Enhancement Plan District, has a formally-approved master plan that complies with the SMP including SMP 3.2 (shoreline of the state provisions), includes water-oriented uses, provides public access to the shoreline, and restores degraded shorelines. *Exhibit 1.C, page 112; SMP 6.3.4.7; SMP Table 6-1.* The Applicant proposes to utilize the height allowance of the underlying CX zone pursuant to SMP 6.4.3.7. The south side of the mixed-use building, which would contain both water-related/water-enjoyment and non-water-oriented uses, would be approximately 50 feet high. *Exhibits 1.C, 1.G, and 3.*
49. With respect to building setbacks, the south side of the proposed mixed-use building would be set back 25 feet from the ordinary high water mark. Based on consultation with Department of Ecology staff, City Planning staff submitted that as long as water-related/water-enjoyment uses are on the ground floor of the building, the non-water-oriented uses could be on the higher floors consistent with the setback standard. The Applicant proposes to place restaurants (a water-related/water-enjoyment use) on the ground floor of the south side of the building. *Exhibits 1 and 3.*

50. Multifamily residential development is permitted in the High Intensity shoreline environment with a setback of 35 feet and a maximum building height of 35 feet. *SMP Table 6-1*. The proposed apartment units would be within the northern portion of the building, more than 35 feet from the ordinary high water mark. *Exhibits 2 and 3*. The residential tower would reach a height of 100 feet, consistent with the property zoning, based on the exemption from the height limit provided for master planned mixed-use developments. *Exhibit 1.C, page 112; SMP 6.3.4.7*.
51. Consistent with the SMP's commercial regulations, the project has demonstrated compliance with applicable SMP provisions as follows: no net loss of ecological functions; loading and service areas would be in the interior of the site and not waterward of the structure; and the non-water-oriented commercial uses (e.g., offices) would be incorporated into a master planned, mixed-use project that includes water-oriented uses, and which provides public benefits including public access and ecological restoration. The non-water-oriented uses would occupy less than 85% of the parcel frontage. *SMP 6.3.4; Exhibit 1.C, pages 113-114*.
52. Consistent with the SMP's goals and policies for shorelines of statewide significance (SMP 3.2), the project would increase public access and recreational opportunities within the shoreline, and includes restoration of an area impacted by the existing pier. Development would be focused in an already developed shoreline area; no natural shoreline would be affected. *Exhibit 1.C, page 81*.
53. Underground utilities that are perpendicular to the shoreline require a shoreline conditional use permit in the High Intensity shoreline. *SMP Table 6-1*. The new stormwater pipe would be placed within a public easement along the eastern property line. The work would be within a previously developed area and the outfall would be above the ordinary high water mark. A walkway within the easement would provide a connection between the Renaissance Trail along Columbia Way and the riverfront trail. Thus, the use would enhance public use of the shoreline. It would also facilitate development of the site consistent with the High Intensity shoreline designation. To minimize shoreline disturbance, the existing stormwater pipe, which outfalls below the ordinary high water mark, would be filled with grout and left in place. *Exhibit 1.C, pages 78-80*.
54. Consistent with the utilities regulations of the SMP, the proposed stormwater pipe would be installed underground. The location within the shoreline jurisdiction is unavoidable because the outfall is the Columbia River. The stormwater line would be installed in an already paved area near the existing stormwater line, in the most direct route feasible. The outfall would not affect any native aquatic vegetation; the location would be within a concrete-hardened bank. *Exhibit 1.C, pages 119-120*.
55. Consistent with the SMP's general shoreline use regulations (SMP 5.1), the proposed restaurant uses closest to the river would be classified as water-oriented/water-enjoyment uses. The development would not require shoreline stabilization and would not affect surface navigation. The building design considers impacts to public views by providing a

view corridor through the building from the Renaissance Trail, and a view corridor would also be provided from the Renaissance Trail through the easement along the eastern property line. The public would also have access to the riverfront boardwalk. *Exhibit 1.C, pages 81-82.*

56. Consistent with SMP 5.1.2, direct impacts to the Columbia River have been avoided. Some impact to the RMA is unavoidable to provide public access to the river as required by the Development Agreement and the SMP. The impact has been minimized by placing the boardwalk landward of the ordinary high water mark. Mitigation for impacts would be provided through removal of the existing pier. *Exhibit 1.C, pages 83-84.*
57. Consistent with the SMP's public access provisions (SMP 5.4), public access to the shoreline would be provided through the Renaissance Boardwalk/riverfront trail, which would connect to the Renaissance Trail at both the western and eastern property boundaries. The eastern extent of the riverfront trail would eventually connect to the National Park Service Waterfront Park to the east. Because the adjacent land uses are public park to the east and public right-of-way to the west, no protections against trespass to neighboring properties are needed. The public access would be connected to a barrier-free route of travel and would include ADA facilities. The public use of the riverfront trail would be preserved through a public access easement. Signage and interpretative displays would be provided consistent with City ordinances and the Development Agreement as applicable. The riverfront trail would be maintained by the Applicant. *Exhibit 1.C, pages 85-87.*
58. Because the subject property is a developed site that consists almost entirely of impervious surfaces, some of the site planning requirements of SMP 5.6 do not apply. With respect to the applicable requirements, the project utilizes an existing transportation corridor and provides pedestrians with safe and convenient circulation facilities. The parking garage would be below ground and would not be visible except from the entrance from Columbia Way. Portions of the boardwalk would be cantilevered to minimize impacts to the shoreline. No fences are proposed. There are no aquaculture operations nearby. *Exhibit 1.C, pages 87-91.*
59. Consistent with the clearing, grading, fill and excavation requirements of the SMP, no excavation or fill would be placed waterward of the ordinary high water mark. *Exhibit 1.C, pages 89-91.*
60. SMP 5.6.3.1 requires non-single-family structures to incorporate architectural features that provide compatibility with adjacent properties, enhance views of the landscape from the water, and reduce scale to the extent possible. In this case, surrounding properties are publicly owned and there is only one building in the vicinity. Raised planters would be used to landscape the site and enhance views from the water. The building would include sections with differing shapes and heights to minimize scale. *Exhibit 1.C, page 91; Exhibit 2.*
61. SMP 5.6.3.2 and 5.6.3.3 address building materials, requiring surfaces adjacent to the

water to minimize reflected light, and requiring structures taller than two stories to have façade treatments and windows designed to prevent bird collisions. The Applicant submitted that primary exterior material of the river-facing portion of the building is non-reflective fiber cement panel. No specific information was provided on prevention of bird collisions, but the Applicant submitted that evaluation of the technology would be completed during permitting. *Exhibit 1.C, page 92.*

62. The vegetation conservation provisions set forth in SMP 5.7 are largely inapplicable due to the existing character of the site. Most of the vegetation outside of the riparian area consists of parking lot landscaping, which would be removed for redevelopment of the site. There are no mature or multi-storied plant communities on the site. *Exhibit 1.C, pages 92-93.*
63. Consistent with the view and aesthetics requirements of SMP 5.8, the proposal includes visual access from the proposed boardwalk, and from the Renaissance Trail through the pathways along the property lines. No residential views would be affected by the development. Views towards the Interstate Bridge from the Vancouver Land Bridge and from the Waterfront Park would be partially obstructed, but views from those properties to the south and southeast would not be affected. *Exhibit 1.C, page 94.*
64. The project would meet the water quality requirements of SMP 5.9 through treatment of stormwater runoff prior to discharge into the river and through implementation of erosion and sediment control best management practices during construction. *Exhibit 1.C, pages 95-96.*
65. Because the subject property is in an area of high probability for discovery of archaeological resources, the Applicant had an archaeological survey prepared for the site. The survey recommendation was that a monitoring and inadvertent discovery plan (MIDP) be implemented during site development. The Washington Department of Archaeology and Historic Preservation (DAHP) concurred with the result, and the requirement has been incorporated into the recommended conditions of approval. *Exhibits 1 and 1.J.*

Shoreline Exemption

66. The existing boardwalk/pier was legally established in 1975 pursuant to shoreline permit number V-21-75. The Applicant proposes to replace it with a boardwalk located entirely landward of the ordinary high water mark, but with no setback from the ordinary high water mark. The SMP's current setback standard for water-related recreational uses in the High Intensity designation, including trails, is 20 feet. *SMP Table 6-1; Exhibit 1.C.*
67. The Applicant seeks an exemption from the SSDP requirement for the boardwalk replacement as "normal maintenance or repair of existing legally-established structures" pursuant to SMP 2.3.2.2, so as to allow it to be constructed at the ordinary high water mark without need of a variance. *Keith Jones Testimony; Exhibit 1.C.* The provision specifies that "replacement of a structure or a development may be authorized as repair where such replacement is the common method of repair for the type of structure or

development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location, and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment.” *SMC 2.3.2.2*. The Applicant submitted, and City Planning Staff concurred, that the boardwalk portion of the project meets the criteria for repair.⁴ It would be placed in the same general location as the existing boardwalk, except pulled back to the ordinary high water mark so as to restore previously shaded nearshore habitat. It would be sized to accommodate current fire access and multimodal use requirements. *Exhibits 1 and 1.C*.

68. Section 2.5.3 of the SMP has provisions on nonconforming structures that are also relevant to the review, in that they, similarly to the “normal maintenance or repair” exemption from the SSDP requirement, allow a nonconforming structure to be maintained or repaired. *SMP 2.5.3*. However, per *SMP 2.5.3.3*, the existing boardwalk, which is located between the eastern boundary of Wintler Park and the railroad bridge, is expressly designated as considered a conforming use because it was approved via a shoreline permit.

Notice and Comments

69. In written comments, the Washington Department of Ecology identified the solid waste management and water quality requirements that apply to the project, including the requirement to obtain coverage under the Construction Stormwater General Permit. Ecology’s comments were incorporated into the recommended conditions of permit approval. *Exhibit 1.M*.
70. The Washington State Department of Transportation (WSDOT) submitted comments requesting that lighting on site comply with RCW 47.36.180 to avoid glare to motorists on I-5, and requesting that its 40-foot wide sewer easement remain unencumbered. These requests were incorporated into the recommended conditions of approval. *Exhibits 1 and 1.K*.
71. The WSDOT Aviation Division submitted comments expressing concern that the project represents development that is incompatible with Pearson Field. The subject property is near the west end of Pearson Field Runway 8, in an area identified by WSDOT as Zone 2. WSDOT recommended that mixed-use developments be prohibited in Zone 2 due to the mass congregation of people, as Zone 2 is the area where the risk of aircraft accident is the greatest. *Exhibit 1.L*.
72. Pursuant to the State Environmental Policy Act (SEPA), the City of Vancouver acted as lead agency for review of environmental impacts caused by the proposal. After review of

⁴ The undersigned notes that it is not abundantly clear in the record that the proposed replacement is similar in scale to the existing boardwalk. In some materials, it sounds like the boardwalk extends all the way along the southern property line, while in others, it is just the big pier at southwest corner. The information provided in Exhibit 5 is hard to read. Google Maps shows some kind of walkway along southern property line, but it is not evident whether it is publicly accessible, or is just a paved setback. The information as to the level of public access approved in 1975 is vague and that decision isn’t in the record.

the Applicant's environmental checklist and application materials, the SEPA Responsible Official issued a notice of application, virtual public hearing, and optional determination of non-significance (DNS) on October 13, 2022. After reviewing agency comments submitted during the comment period, the City issued a final DNS on November 17, 2022. The City received no public comment on the application. *Exhibits 1 and 8; Keith Jones Testimony.*

73. At the conclusion of the hearing, City Staff maintained their recommendation for approval of the master plan and the shoreline permits, and also maintained their recommendation for denial of the zoning variance. *Exhibit 1; Keith Jones Testimony.*

CONCLUSIONS

Jurisdiction:

Pursuant to VMC 20.210.020.D, when more than one permit is required for a given proposal, all applications are consolidated into a single review subject to the highest type of procedure that applies to any of the applications. In this case, the application with the highest type of procedure is the planned development, which is a Type IV review process. The Hearing Examiner has jurisdiction to issue findings, conclusions, and recommendations to City Council on planned development applications. Consequently, recommendations will be issued for the zoning variance and shoreline permits also. Pursuant to SMP 7.4.4, the City's action on the shoreline conditional use permit is a recommendation to the Washington State Department of Ecology.

Criteria for Review:

Zoning Variance

Pursuant to VMC 20.290.040.B, the applicant for a Type II Variance (i.e., a variance exceeding 20 percent of the standard) must demonstrate compliance with the following criteria:

1. Unusual circumstances or conditions apply to the property and/or the intended use that do not apply generally to other property in the same vicinity or district;
2. Such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant such as is possessed by the owners of other properties in the same vicinity or district;
3. The variance requested is the least necessary to relieve the unusual circumstances or conditions identified in Subsection (1) above;
4. The authorization of such variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or district in which property is located;
5. Any impacts resulting from the variance are mitigated to the extent practicable; and
6. If more than one variance is being requested, the cumulative effect of the variances results in a project that is still consistent with the overall purpose of the underlying zoning district.

Master Plan

Pursuant to VMC 20.620.030.A, a master plan approval is required prior to development in the Columbia River Shoreline Enhancement Plan district, which shall be processed per the requirements of VMC 20.260, Planned Developments. Pursuant to VMC 20.260.050.A, to receive approval for a planned development, the Applicant must demonstrate compliance with all of the following criteria:

1. Content. The concept plan contains all of the components required in Section 20.260.070. Compliance with all applicable standards. The proposed development and uses comply with all applicable standards of the Title, except where adjustments are being approved as part of the concept plan application, pursuant to Section 20.260.030(D)(2).
2. Architectural and site design. The proposed development demonstrates the use of innovative, aesthetic, energy-efficient and environmentally-friendly architectural and site design.
3. Transportation system capacity. There is either sufficient capacity in the transportation system to safely support the development proposed in all future phases or there will be adequate capacity by the time each phase of development is completed.
4. Availability of public services. There is either sufficient capacity within public services such as water supply, police and fire services, and sanitary waste and storm water disposal, to adequately serve the development proposed in all future phases, or there will be adequate capacity available by the time each phase is completed.
5. Protection of designated resources. City-designated resources such as historic landmarks, significant trees and sensitive natural resources are protected in compliance with the standards in this and other Titles of the VMC.
6. Compatibility with adjacent uses. The concept plan contains design, landscaping, parking/traffic management and multi-modal transportation elements that limit conflicts between the planned development and adjacent uses. If zoning districts are shifted per section 20.260.020(C) VMC, there shall be a demonstration that the reconfiguration of uses is compatible with surrounding uses by means of appropriate setbacks, design features or other techniques.
7. Mitigation of off-site impacts. All potential off-site impacts including litter, noise, shading, glare and traffic, will be identified and mitigated to the extent practicable.

Design Review

Pursuant to VMC 20.265.040.A, the decision maker shall base all reviews of the design of any proposed construction, remodeling or development according to the following criteria:

1. The requirements, guidelines, and applicable provisions of this Title that are applicable to the zoning district where the property is located and including all additional zoning regulations which may apply to the use or to its area by provision for overlay district, or made applicable by any conditional use or variance approval;
2. The Downtown Design Guidelines Manual kept on file and available for public

inspection at the Community Development Department or VMC 20.640 Vancouver Central Park Plan District, as applicable;

3. The relationship found to exist between existing structures and open space, and between existing structures and other structures in the vicinity, and the expected effect of the proposed construction upon such relationships;
4. The impact of the proposed construction on adjacent uses, including impact of new or revised parking and pedestrian uses; and
5. The protection of neighboring uses from identifiable adverse effects of the design of the proposed construction.

Shoreline Conditional Use Permit

Pursuant to the City's Shoreline Master Program at Sections 2.7.3 and 7.4.4, for uses that are listed in the SMP as conditional uses in the environment in which they are proposed to be located, the conditional use application may be approved or approved with conditions if the decision maker finds the Applicant has demonstrated consistency with the following criteria:

1. The proposed use is consistent with the policies of RCW 90.58.020, WAC 173-27-160 and all provisions of this Program;
2. The use will not interfere with normal public use of public shorelines;
3. The proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Plan and this Program;
4. The proposed use will cause no significant adverse effects to the shoreline designation in which it is to be located;
5. The public interest will suffer no substantial detrimental effect; and
6. Consideration has been given to the cumulative impact of additional requests for like actions in the area.

Shoreline Substantial Development Permit

Pursuant to the City's Shoreline Master Program Section 7.4.3.2 and 2.2, the decision maker may approve an application for a shoreline substantial development permit if the proposal is consistent with the following criteria:

1. The policies and procedures of the Shoreline Management Act of 1971, as amended (RCW 90.58).
2. The provisions of WAC 173-27 or its successor.
3. The City of Vancouver Shoreline Master Program.

Shoreline Management Act

Chapter 90.58 RCW, the Washington State Shoreline Management Act (SMA) of 1971, establishes a cooperative program of shoreline management between the local and state governments with local government having the primary responsibility for initiating the planning required by the chapter and administering the regulatory program consistent with

the Act. The City of Vancouver Shoreline Master Program provides goals, policies, and regulatory standards for ensuring that development within the shorelines of the state is consistent the policies and provisions of Chapter 90.58 RCW.

The intent of the policies of RCW 90.58.020 is to foster “all reasonable and appropriate uses” and to protect against adverse effects to the public health, the land, and its vegetation and wildlife. The Shoreline Management Act mandates that local governments adopt shoreline management programs that give preference to uses that (in the following order of preference): recognize and protect the statewide interest over local interest; preserve the natural character of the shoreline; result in long term over short term benefit; protect the resources and ecology of the shoreline; increase public access to publicly owned areas of the shorelines; and increase recreational opportunities for the public in the shoreline. The public’s opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state is to be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses that are consistent with control of pollution and prevention of damage to the natural environment, or that are unique to or dependent upon use of the state’s shoreline, are to be given preference.

Washington Administrative Code

WAC 173-27-140 Review criteria for all development

- (1) No authorization to undertake use or development on shorelines of the state shall be granted by the local government unless upon review the use or development is determined to be consistent with the policy and provisions of the Shoreline Management Act and the master program.
- (2) No permit shall be issued for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

WAC 173-27-150

- (2) Local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the local master program.

WAC 173-27-190 Permits for substantial development, conditional use, or variance.

- (1) Each permit for a substantial development, conditional use or variance, issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140 (5)(a) and (b).

Shoreline Exemption

SMP 2.3.1: General Requirements

1. Except as specifically excepted by statute (Section 2.1.1), all proposed uses and development occurring within shoreline jurisdiction must conform to the Act and this Program.

2. Uses and developments that are not considered substantial developments pursuant to RCW 90.58.030(3)(e), WAC 173-27-040, and Section 2.3.2 of this Program shall not require a substantial development permit but shall conform to the policies and regulations of this Program and the Act and shall obtain a Statement of Exemption (Sections 2.3.3 and 7.4.2).
3. A use or development that is listed as a conditional use pursuant to this Program or is an unclassified use or development must obtain a conditional use permit (Section 2.7 and 7.4.4) even if the development or use does not require a substantial development permit.
4. When a development or use is proposed that does not meet the bulk, dimensional, and/or performance standards of this Program, such development or use shall only be authorized by approval of a shoreline variance (Section 2.6 and 7.4.5) even if the development or use does not require a substantial development permit.
5. If a shoreline substantial development permit is required for any part of a proposed development, then a shoreline substantial development permit is required for the entire proposed development project.
6. Exemptions from the requirement to obtain a shoreline substantial development permit shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemptions from the substantial development permit process.
7. The burden of proof that a development or use is exempt from the requirement to obtain a shoreline substantial development permit is on the applicant for the development action.

SMP 2.3.2: List of Exemptions

The following activities shall be considered exempt from the requirement to obtain a shoreline substantial development permit but shall obtain a statement of exemption, as provided for in Section 2.3.3.

1. Any development of which the total cost or fair market value does not exceed seven thousand forty-seven dollars (\$7,047.00)
2. Normal maintenance or repair of existing legally-established structures or developments, including damage by accident, fire, or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location, and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location, and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment....

SMP 2.3.3: Statements of Exemption

1. Any person claiming exemption from the substantial development permit requirements shall make an application to the Shoreline Administrator for such an exemption in the manner prescribed by the Shoreline Administrator....
2. The Shoreline Administrator is authorized to grant or deny requests for statements of exemption from the shoreline substantial development permit requirement for uses and developments within shorelines that are specifically listed in Section 2.3.2. The statement shall be in writing and shall indicate the specific exemption of this Program that is being applied to the development, and shall provide a summary of the Shoreline Administrator's analysis of the consistency of the project with this Program and the Act.
3. Statements of exemption may contain conditions and/or mitigating measures of approval to achieve consistency and compliance with the provisions of this Program and Act.
4. A denial of an exemption shall be in writing and shall identify the reason(s) for the denial.
5. The letter shall be sent per section 7.4.2.
6. The Shoreline Administrator's decision on a statement of exemption may be appealed in accordance with the procedures in Section 7.4.8.
7. Exempt activities shall not be conducted until a statement of exemption has been obtained from the Shoreline Administrator.

Conclusions Based on Findings:

A. Variance

1. The Applicant has not demonstrated that a variance is necessary to preserve and enjoy a "substantial property right" per variance criterion 2. The building height allowed by right in the Applicant's height zone is 50 feet, or 75 feet with FAA and Pearson Field approval. Heights higher than that are conditional, and therefore not a "right." In this case, the Applicant seeks to be alleviated from the condition that floors above 75 feet are limited to 12,000 square feet. Because there is no right at issue, denying the requested variance does not prevent the Applicant from exercising any rights. Further, the site plans demonstrate that the Applicant is able to develop significant commercial and residential space within the code's dimensional standards, expressly enough to meet the requirements of the Development Agreement. *Findings 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16.*
2. Although the Applicant argued that it should receive additional building area on Floor 8 to make up for building area lost elsewhere on the site, the Hearing Examiner does not find the Applicant's evidence on site constraints to be sufficiently compelling to warrant granting a variance. In general, the presence of easements on a parcel is not unique, and in this case, the easements at issue do not constrain a substantial portion of the site. With respect to the FAA height limits affecting Floor 9, the limit is due to the close proximity of the Pearson Field runway, which is a reason to exercise caution in granting additional building area at the highest levels of the building. Finally, the Applicant has made design choices that result in undeveloped area in the center of the site, which detracts from the

argument that the other site constraints are the source of the problem. *Findings 10, 11, 12, 13, 14, 15, and 16.*

3. Although the Applicant argued that its height restriction is more severe than other properties in the vicinity, this is an argument that would more appropriately be made in support of a zoning code amendment, not a variance. The restriction itself cannot be the basis for a variance from the restriction. In the adopted code, a height limit was expressly applied to the subject property for a specific reason. Further, even if the Applicant is uniquely affected by the height restriction, the Applicant is not uniquely affected by the floor area limit of 12,000 square feet within the highest height range. Figure 20.630-4 depicts that numerous properties are subject to a height range in which, per VMC 20.630.050.C, the highest floors are limited to 12,000 square feet. Consequently, the Hearing Examiner concludes that, on the record submitted, to grant the requested variance would be to grant a special privilege. *Findings 14 and 16.*

B. Master Plan – Planned Development

1. As conditioned, the plans demonstrate compliance with the content requirements and development standards for planned developments set forth in VMC 20.260. The proposed uses are allowed in the CX zone. However, because the criteria for a zoning variance are not satisfied, a condition is needed to ensure that the floor area above 75 feet in height does not exceed 12,000 square feet. Adequate parking would be provided. *Findings 2, 6, 7, 8, 9, 10, 11, 12, 13, 14, 19, 21, 28, 29, 30, 31, 32, 69, 70, 71, 72, and 73.*
2. As conditioned, the development demonstrates use of innovative, aesthetic, energy-efficient and environmentally friendly architectural and site design. The project would be designed to LEED Gold standards, use stacking technology to reduce the scale of the parking area, provide visual access to the river in multiple locations, and implement a design concept that is compatible with the riverfront setting. *Findings 5, 17, 18, 19, 20, and 73.*
3. There is sufficient capacity in the transportation system for the traffic generated by the development. *Findings 21, 22, 23, 24, 25, 26, 27, and 28.*
4. Adequate public services are available to the development. In addition, the project includes stormwater pipe improvements that would benefit the public. *Findings 34, 35, 36, 37, 38, 60, 70, 71, 72, and 73.*
5. As conditioned, natural and historic resources would be protected consistent with ordinance standards. No high-functioning habitat would be disturbed by the development. Consistent with the critical areas criteria of VMC 20.740.060, impacts to the RMA of the Columbia River for development of the boardwalk would be mitigated through removal of the pier. There would be no net loss of shoreline functions. Implementation of a monitoring and inadvertent discovery plan as required in the recommended conditions would ensure that any archaeological resources present on the site are protected. *Findings 39, 40, 41, 42, 43, 44, 45, 46, 47, 59, 65, 72, and 73.*

6. As conditioned, the proposed development would be compatible with adjacent uses. The amount of on-site parking would exceed the minimum required by code to reduce the risk of spillover into the adjacent public park. Lighting would be restricted consistent with WSDOT comments to ensure that glare from the site does not impact motorists on I-5. The site design would provide connections between the Renaissance Trail and the proposed boardwalk. *Findings 2, 3, 4, 5, 6, 7, 8, 9, 18, 19, 20, 22, 58, 69, 70, 71, 72, and 73.*
7. Mitigation of off-site impacts would be accomplished through payment of park, school, and traffic mitigation fees. Lighting would be installed consistent with applicable City and state standards. The interior open spaces would include trash receptacles. There are no immediately adjacent land uses that would be affected by noise from the development. Noise impacts from external sources such as the Pearson Field, the Portland Airport, and the railroad would be addressed through implementation of a Noise Impact Reduction Plan. *Findings 5, 7, 18, 22, 27, 29, 30, 31, 32, 33, 70, 71, 72, and 73.*

C. Design Review

1. As conditioned, the proposal is consistent with the requirements of the CX zone and the applicable overlay districts. The only CX development standard that is applicable to the use is building height. Because the criteria for a variance from the floor area limit of VMC 20.630.050 are not satisfied, the conditions of approval limit floors over 75 feet to a gross floor area of 12,000 square feet. Minor changes to building design may be required to meet the City's solid waste disposal requirements. These changes, if warranted, are addressed in the conditions of approval. *Findings 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 29, 30, 31, 32, 69, 70, 71, 72, and 73.*
2. As conditioned, the proposal is consistent with the applicable design guidelines. *Findings 17, 18, 19, 20, and 73.*
3. The proposed development would not adversely affect existing relationships between buildings or between buildings and open space. *Findings 5, 7, 18, 22, 27, 29, 30, 31, 32, 33, 70, 71, 72, and 73.*
4. As conditioned, the proposal would not adversely affect adjacent uses. The conditions of approval incorporate the requirements of WSDOT to prevent the impacts of glare on motorists and require a no hazard determination from the FAA to ensure that there are no adverse impacts to aviation or public safety due to the project's close proximity to Pearson Field. The conditions also require public access to the Renaissance Trail to be maintained during construction until the riverfront boardwalk is completed. *Findings 2, 3, 4, 5, 6, 7, 8, 9, 18, 19, 20, 22, 58, 69, 70, 71, 72, and 73.*
5. As described above, the conditions of approval include provisions to protect neighboring uses from the potential effects of glare and building height. *Findings 5, 6, 7, 8, 9, 18, 19, 20, 22, 58, 69, 70, 71, 72, and 73.*

D. Shoreline Conditional Use Permit

1. As conditioned, the proposed storm pipe relocation is consistent with the policies of RCW 90.58.020, WAC 173-27-160 and all applicable provisions of the SMP. The proposed utility project is consistent with RCW 90.58.020 in that it would be located underground in a developed portion of the shoreline, such that no natural area or public view would be impacted, and the easement containing the pipe would allow for public access to the shoreline. The use requires a shoreline location because the stormwater outfalls to the river. WAC 173-27-160 contains the review criteria for shoreline conditional use permits. The City's conditional use criteria track the state criteria closely, such that compliance with the City's criteria will result in compliance with the state criteria. The proposed utility project is consistent with the applicable regulations of the SMP as follows. The use is allowed in the High Intensity shoreline designation with approval of a shoreline conditional use permit. Consistent with SMP 6.3.14, the storm pipe would be located underground, would preserve the natural landscape, would not affect scenic views, and would support – not conflict with – surrounding land uses. The outfall would be above the ordinary high water mark within a previously hardened bank. *Findings 2, 5, 8, 35, 36, 37, 48, 53, 57, 58, 64, 69, 70, 71, 72, and 73.*
2. The utility installation would not interfere with normal public use of public shorelines. A public pathway to the riverfront boardwalk would be provided within the utility easement. *Findings 2, 5, 8, 35, 36, 37, 48, 53, 57, 58, 64, 69, 70, 71, 72, and 73.*
3. The proposed stormwater pipe replacement would be compatible with other authorized uses in the area. The storm pipe would accommodate runoff from upstream properties as well as runoff from the subject property and would be placed underground. *Findings 2, 5, 8, 35, 36, 37, 48, 53, 57, 58, 64, 69, 70, 71, 72, and 73.*
4. As conditioned to ensure construction complies with applicable City regulations regarding erosion control, construction access, etc., the utility replacement would cause no significant adverse effects to the High Intensity designation. *Findings 2, 5, 8, 35, 36, 37, 48, 53, 57, 58, 64, 69, 70, 71, 72, and 73.*
5. The record contains no evidence that would support a conclusion of substantial detrimental effect to the public interest if the utility project is completed as conditioned herein. The proposed pipe would replace an existing deteriorated pipe. *Findings 2, 5, 8, 35, 36, 37, 48, 53, 57, 58, 64, 69, 70, 71, 72, and 73.*
6. Consideration was given to the cumulative impact of additional requests for like actions in the area. As conditioned, no issues of concern have been identified. *Findings 2, 5, 8, 35, 36, 37, 48, 53, 57, 58, 64, 69, 70, 71, 72, and 73.*

E. Shoreline Substantial Development Permit

1. As conditioned, the proposal is consistent with the policies and procedures of the Shoreline Management Act. The proposal represents a reasonable use of the High Intensity shoreline, which would provide long-term benefits to the public through significant shoreline access improvements, which improvements would provide

connections to the adjacent park and to the City's Renaissance Trail network. The project represents the redevelopment of a previously developed site, so no natural shoreline areas would be affected. Pollution would be controlled through the proposed stormwater improvements and erosion control plan. *Findings 2, 3, 5, 6, 8, 9, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 69, 70, 71, 72, and 73.*

2. As conditioned, the proposal would be consistent with WAC 173-27. Although the proposal is for a building exceeding 35 feet above grade, no residential views would be affected, and the master program allows for the additional height. *Findings 5, 6, 7, 8, 9, 10, 11, 18, 19, and 73.*
3. As conditioned, the proposal is consistent with applicable provisions of the SMP, as summarized in the Findings. With approval of the master plan, the inclusion of restaurants on the ground floor of the building, the development of the boardwalk, and the removal of the existing pier (requirements of SMP 6.3.4.7 and Table 6-1), the proposed mixed-use building meets the height and setback standards of the High Intensity zone. A condition has been added to ensure that building design includes adequate provisions for avoiding bird collisions to be consistent with SMP 5.6.3.2 and 5.6.3.3. As concluded below, the City Council's decision on what shoreline permitting is in fact required to replace the existing boardwalk as/where proposed would address the question of compliance with the 20-foot shoreline setback. *Findings 2, 3, 5, 6, 8, 9, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 69, 70, 71, 72, and 73.*

F. Shoreline Substantial Development Permit Exemption

1. Pursuant to SMP 2.3.3.2, decisions on requests for shoreline exemption are decided by the Shoreline Administrator. It was not clear in the staff report and Applicant materials whether a shoreline exemption had been administratively approved prior to the hearing or was required to be made as part of the instant proceedings and included in the instant recommendation to Council for final decision. At hearing, Staff clarified that a decision on exemption is requested in the instant proceedings. *Finding 67.* However, a close read of the SMP generates confusion as to whether a shoreline exemption can be granted in the instant case or can accomplish the intention stated by Planning Staff of allowing replacement of the existing boardwalk without a shoreline variance. Section 2.3.1 of the SMP is clear that (1) the statement of exemption is an exemption from the requirement to obtain a shoreline substantial development permit, it is not an exemption from compliance with the regulations of the SMP, (2) projects that do not meet the SMP's bulk and dimensional standards require a shoreline variance even if the project is exempt from the requirement to obtain a shoreline substantial development permit, and (3) when a project contains exempt development and non-exempt development, the entire project requires an SSDP. Thus, the SMP can be read to mean that the proposed boardwalk, as an integral part of a planned development, does not qualify for an exemption.
2. One potential alternative to shoreline exemption is that the SMP contains provisions that allow for repair or replacement of legally nonconforming structures. *SMP 2.5.3.*

However, the SMP expressly designates the existing boardwalk as “conforming.” The designation of “conforming” would appear to have the function of expressly removing the right for property owners to apply for repair as legally nonconforming structures under SMP 2.5.3.2. The question of whether the “conforming” designation has this effect is a question of legislative intent, which is best decided by City Council. The question is confusing because the Development Agreement - which expressly requires replacement of the boardwalk and essentially directs that the waterfront path be placed on the seawall - and the SMP - which was clearly adopted with redevelopment of the subject property in mind and which requires redevelopment to be brought into compliance with the current SMP setback – were adopted by Council at approximately the same time and yet require two different outcomes. The City’s Hearing Examiner requests that the legislative body review the two governing documents against the proposal and determine whether SMP Section 2.5.3.3’s apparent designation of the boardwalk as “conforming” means it is not eligible for repair as a legally nonconforming structure under SMP 2.5.3.2. If this designation does render the boardwalk ineligible for repair as a nonconforming structure, then exemption and variance appear to be the only means of replacing the boardwalk in the shoreline as proposed.

3. If the undersigned has misconstrued the SMP with respect to the project’s eligibility for a shoreline exemption, the following recommendation is entered. In order to qualify for a shoreline exemption, the replacement of the existing boardwalk must be determined to be “normal repair” pursuant to SMP 2.3.2.2, which allows “replacement of a structure [to] be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location, and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment... .” The record submitted contains insufficient information about the exact extent and location of the existing boardwalk to make an accurate factual determination of compliance with this requirement. The undersigned recommends that the record be supplemented with sufficiently detailed information to allow the determination of whether the proposed replacement boardwalk is similar enough in scale to the previously approved feature that the proposed replacement can qualify for the requested shoreline exemption. *Findings 66, 67, and 68.*
4. If neither the criteria for repair under SMP 2.5.3.2 nor those for shoreline exemption can be satisfied, a shoreline variance may be required. In the opinion of the undersigned, a requirement to obtain a shoreline variance would not be consistent with the apparent intent of Council in adopting the Development Agreement that essentially requires the path to be replaced on the seawall. Nevertheless, on the record submitted, no recommendation can be made on the request for shoreline exemption, and the path forward on the permitting required to replace the boardwalk is deferred to the judgment of the legislative body.

RECOMMENDATIONS

Based on the foregoing findings and conclusions, the requested variance should be **DENIED**. The requested planned development, shoreline conditional use permit, and shoreline substantial development permit should be **APPROVED** subject to the conditions below, which are to be satisfied by the Applicant or successors in interest.

General

1. Comply with the requirements of the Washington State Department of Ecology letter dated November 14, 2022 (Exhibit 1.M).

Prior to Ground Disturbing Activity

2. Prepare an archaeological monitoring & inadvertent discovery plan (MIDP). Submit the MIDP to staff along with any correspondence with the Department of Archaeological and Historic Preservation (DAHP) related to preparation of the MIDP.

Prior to Civil Plan Approval

3. Pay concurrency modeling fee of \$1,500.
4. Pay proportionate share fees totaling \$10,800.
5. The 40-foot sewer easement that runs along the western end of the site shall not be encumbered in any way including building overhangs.
6. Lighting must be shielded and/or directed away from I-5 in accordance with RCW 47.36.180.
7. New and existing fire hydrant locations related to this project shall be shown.
8. Fire department connections shall be shown to be located within 150 feet hose lay of a hydrant.
9. Include the following note on the water utility pages: "Underground fire sprinkler supply mains shall be installed only by contractors in compliance with WAC 212-80 and endorsed in accordance with VMC 16.04.095 under separate permit."
10. Include an approved fire response plan in both the civil plans and the architectural plans.
11. Consistent with Transportation Staff analysis in the record at Exhibit 7, the Applicant shall provide a memo or addendum to the traffic analysis report that discusses the reason for the proposed third site access from SE Columbia Way. This memo or addendum must include a discussion of other access options that were considered and an explanation of why these options are not feasible.
12. The building design shall be amended to include façade treatments, mechanical equipment, and windows designed and arranged to prevent bird collisions using the best available technology consistent with SMP 5.6.3.2 and 5.6.3.3.

Prior to Building Permit Issuance

13. Adjust and/or consolidate boundary lines as necessary to comply with the building code.
14. The 40-foot sewer easement that runs along the western end of the site that shall not be encumbered in any way including building overhangs.
15. Lighting must be shielded and/or directed away from I-5 in accordance with RCW 47.36.180.
16. Obtain a letter of no hazard from the FAA including any approvals for construction cranes.
17. Increase the size of the commercial solid waste room to meet the minimum required solid waste storage space (1,255 square feet). Provide more detail on commercial trash room such as footprints for intended solid waste receptacles and equipment.
18. The project shall ensure adequate solid waste collection vehicle access for residential units as well as commercial units. The proposed design must be altered to ensure adequate access, either by relocating residential collection to the commercial solid waste collection location, or by redesigning the building to allow for collection trucks to safely drive under the two building overhangs, or in some other manner approved by the City. Overhead clearance of 16 feet is advised, but a minimum of 14 feet 6 inches clearance would be reviewed for approval if clear of other obstructions such a surface changes, like speed bumps, or ceiling obstructions.
19. Prepare buildout wastewater discharge flow (demand) estimates. Use one or more industry standard wastewater flow estimation methods. Prepare a brief narrative summarizing methods and submit with the civil plans.
20. Civil plans shall include the following public sanitary sewer improvements and other features: Design downstream public gravity sewer improvements needed to accommodate buildout wastewater flows. Design a new public sanitary sewer extension east in SE Columbia Way to provide depth and additional service laterals. Provide separate sanitary sewer service laterals for each building and/or major type-of-use. Specify which service laterals will serve which buildings and uses. Show and note required outside grease interceptors on the civil and site plans. Specify which plan set (building or civil) will construct.
21. If building plumbing cannot be reasonably be separated and common (shared) service lateral connections must be used, include a brief explanatory note on the civil plans and specify which service laterals will serve which buildings and uses.
22. If common (shared) water meters are required to serve separate primary types-of-use that calculate sewer SDC based on water meter size, include water demand calculations determining nominal water meter sizes that would have been required for each use. Specify on the civil plans or submit separately with the plans.

23. Complete the sanitary sewer design on the civil drawings. Prepare according to Vancouver's current General Requirements and Details for Design and Construction. Address redline comments and submit the final design for civil plan approval.
24. Show Base Flood Elevation on-site and grading plans and all building elevation drawings.
25. Submit narrative for how building will comply with requirements of Chapter 5 of ASCE 7, ASCE 24 and Section 1612 of the International Building Code for buildings located within flood hazard area.
26. Submit a noise impact reduction plan prepared by a Washington-licensed professional engineer or architect for review and approval by the City. The plan shall address the performance standards contained in VMC 20.520 including how the construction will achieve a day/night average interior noise level of 45 Ldn or less.
27. Record a disclosure statement that documents how the premises may be adversely affected by noise for each lot in the development as required by VMC 20.510.
28. Revise the plans so that resident trash rooms are within 150 feet of all units per the tenant access requirements of VMC 20.970.030.A.3, or obtain approval of a variance or approval of a minor adjustment of the requirement from the Planning Official.
29. Revise the plans so that the gross floor area of each floor over 75 feet in height does not exceed 12,000 square feet in area.

Prior to Combustible Construction

30. Fire hydrants for emergency use shall be established and maintained.
31. Fire apparatus access roads shall be established and maintained.
32. Site security measures shall be installed to prevent unauthorized access.
33. Apply for and receive preliminary approval for the smoke control conceptual permit.

During Construction

34. Pay sewer application fees and system development charges for each separate type-of-use. Secure connection permits and connect new building sewers to the new service laterals according to the plumbing code.
35. A final erosion/sedimentation control plan shall be submitted.
36. A final stormwater plan and final storm report shall be submitted.
37. Temporary street and building address signage shall be visible and legible from the street

fronting the property for emergency response during construction.

38. All fire safety provisions of the International Fire Code shall be adhered to.
39. No smoking signage shall be posted throughout the site except in designated smoking areas.
40. Site security shall be maintained to prevent unauthorized access.
41. Consideration for emergency vehicle access shall be taken when staging materials for construction.

Prior to Issuance of Certificate of Occupancy

42. Comply with all requirements set forth on the civil drawings pursuant to the minor road modification approval.
43. Provide the following improvements for SE Columbia Way, per City of Vancouver standards:
 - Install additional pavement width as necessary to meet the required standard.
 - Install 15-foot “Heritage” sidewalk and streetlights. See detailed street lighting requirements below.
 - Install driveway accesses at all approved site entrances.
 - Remove any existing unused driveway accesses.
 - Modify existing striping as necessary.
 - The existing fees crossing that serves the trail to Old Apple Tree Park and the Vancouver Land Bridge must be reconstructed and enhanced to provide a raised pedestrian crossing with RRFB lights and signage.
 - Install traffic control devices as warranted and storm drainage as required by the city stormwater ordinance.


Note: The City of Vancouver will allow phasing of the SE Columbia Way frontage improvements and the riverfront boardwalk in conjunction with any proposed phasing plan. However, pedestrian and bike connectivity must be continually maintained at all times during construction of the project. Therefore, no section of the existing shared-use path along the frontage of SE Columbia Way can be closed until the entire boardwalk is built connecting both ends of the shared use path.

44. Street and address signage shall be visible and legible from the street fronting the property for emergency response. If applicable, individual suite numbers shall be posted at the suite doors. Where applicable, apartment building designations shall be visible and legible from all potential fire lane approaches.
45. Required fire lane signage shall be installed.

46. Any fire protection features identified as being required during the construction permit review shall be installed and approved prior to occupancy.
47. If a fire department Knox-Box was identified as a requirement during the construction permit review, it shall be installed at an approved location and locked with the required content.
48. Permanent vehicle gates crossing required fire lanes shall remain unlocked or open until approved by the fire department.
49. Conditions identified in the construction permit shall be met.
50. All requirements of the applicable fire and building codes and their referenced standards shall be met notwithstanding approved construction plans.
51. A licensed landscape architect shall provide a certificate verifying that the landscaping has been installed per the City-approved construction documents. Please submit to Keith Jones, keith.jones@cityofvancouver.us.

Decided February 3, 2023.

By:



Sharon A. Rice
City of Vancouver Hearing Examiner