



City of Seattle
Greg Nichols, Mayor

Department of Planning and Development
Diane Sugimura, Director

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

Application Number: 3006158
Applicant Name: Greg Thomas of Kindred Healthcare
Address of Proposal: 1334 Terry Avenue

SUMMARY OF PROPOSED ACTION

Land Use Application to change the use of an existing nursing home to a long term acute care and skilled nursing unit facility for a total of 52,284 sq. ft. (80 beds). Surface parking for 23 vehicles to be provided on-site (plus 95 parking spaces to be provided off-site).

The following approvals are required:

SEPA - Environmental Determination - (Chapter 25.05, Seattle Municipal Code (SMC))

Administrative Conditional Use Permit- to allow an institution which does not meet the development standards for Institutions in a multi-family zone (Seattle Municipal Code 23.45.122). Proposed use would not meet the institution dispersion standard.

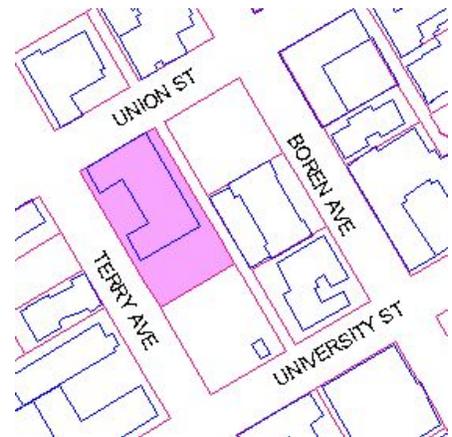
SEPA DETERMINATION

- Exempt DNS MDNS EIS
- DNS with conditions
- DNS involving non-exempt grading or demolition or involving another agency with jurisdiction.

BACKGROUND DATA

Site and Vicinity Description

The site is located at the southeast corner of Terry Avenue and Union Street in the First Hill neighborhood. The existing 1964 four-story structure that will remain formerly was used as a nursing home. The south side of the property contains a surface parking area for the site. The site is zoned Mid-Rise (MR).



Abutting the site to the south is a parking lot for the Virginia Mason Hospital complex of buildings (a Major Institution). All adjacent Virginia Mason properties are zoned High Rise with a Major Institution Overlay (HR- MIO). To the east across the alley that extends between Union and University Streets are three multi-family residential buildings, the Bolero Condominiums fronting on Union Street, the Sovereign Apartments to the south of this, and the 1020 University Apartments fronting on University Street. All three structures front on Boren Avenue to the east. To the north and west across Union Street and Terry Avenue are numerous multi-family structures, including the newly expanded Horizon House Retirement Community extending along Terry Avenue to University Street. All surrounding residential properties described are also zoned Mid-Rise (MR).

Proposal

To convert a former nursing home building to a combination 50-bed long-term acute care (LTAC) hospital (an institution) with a 30-bed skilled nursing unit (SNU) (nursing home) for 80 total patient / resident beds. The proposal will add 2,376 square feet to the first floor for administrative offices and a new elevator. This additional area will be in the existing covered parking and service area under the second floor and will not increase the building's footprint (outside area).

The applicant describes the proposed hospital (LTAC) and nursing home (SNU) operation as follows: LTAC patients would be transferred to the facility from short-term acute care hospitals throughout the state and beyond for specialized nursing and medical care for extended periods of time, typically 30 days. The LTAC facility would provide complex medical care to generally non-ambulatory patients through the services of a team of physicians. The SNU patients would receive skilled nursing and rehabilitation care and are typically recovering from major orthopedic surgical procedures or neurological injuries. All LTAC and SNU patients are in-patients.

Institutions such as the proposed hospital are allowed outright in a Mid-Rise zone if they meet the development standards of Land Use Code sections 23.45.092 through 23.45.102 (SMC 23.45.090). Nursing homes are allowed outright. The existing building, which was built in 1964 in conformance with the Land Use Code at that time, does not completely conform to the following current Land Use development standards: front setback on Terry Avenue (SMC 23.45.096), side set-back facing Union Street (SMC 23.45.096), structure depth maximum of 78-feet (SMC 23.45.094), and dimensions of required modulation for the allowed structure width (SMC 23.45.094). The proposed new use does not propose any change or increase to any of these existing non-conformities. However this proposal does not meet the following two Code standards:

- Institutional Dispersion Criterion of SMC 23.45.102, which requires a 600-foot separation between the lot lines of a proposed institution and any other institution. The subject lot abuts the existing Virginia Mason parking lot to the south, which is a part of the Virginia Mason Major Institution.
- The proposed location of the oxygen storage tank enclosure structure in the existing parking lot approximately 4.5 feet from the rear (alley) property line, which is within the required 10-foot rear set-back for this type of structure.

A new institution that does not meet the development standards of 23.45.090 may be permitted in multi-family zones after satisfying the Administrative Conditional Use criteria of SMC 23.45.116 and 122.

Public Comment

Nine comment letters were received during and after the public comment period that ended on August 29, 2007. One letter expressed support of the project. The remainder objected to the project and /or raised concerns about negative impacts to their (condominium) property values, noise from emergency vehicles and utility equipment, glare from proposed reflective window coverings, added traffic congestion and increased parking demands. One letter expressed the preference for the site to become a park that would have easier accessibility for senior citizens than the nearby Freeway Park.

ANALYSIS - ADMINISTRATIVE CONDITIONAL USE

Section 23.45.122 of the Seattle Municipal Code provides that institutions that do not meet the development standards established in SMC 23.45.090 may be permitted as an *administrative conditional use* subject to the requirements and conditioning considerations of the Section. The applicable criteria are discussed below.

A. Bulk and Siting. In order to accommodate the special needs of the proposed institution, and to better site the facility with respect to its surroundings, the Director may modify the applicable development standards for modulation, landscaping, provision of open space, and structure width, depth and setbacks. In determining whether to allow such modifications, the Director shall balance the needs of the institution against the compatibility of the proposed institution with the residential scale and character of the surrounding area.

The proposed facility does not propose to increase the existing non-conformities listed under “Proposal” above. No modification of development standards for modulation, landscaping, open space, or structure width and depth are requested. It does request the placement of the oxygen storage tank enclosure structure within the 10-foot rear setback and approximately 4.5-feet from the alley (rear) property line. Fire Code regulations require a 19-foot height for the enclosure wall in order to extend above the oxygen tank and block the “line of sight” to the nearest window if less than 50 feet. The nearest windows are to the north in the facility itself. The closest windows of the Bolero and Sovereign buildings to the east across the alley are just over 50 feet from the closest edge of the enclosure but are further from the tank itself.

The oxygen tank structure, along with the adjacent emergency generator and its enclosure, was originally proposed along the south property line and within the rear and side set-backs but the applicants agreed to move it closer to their structure in order to not unnecessarily constrain the window locations of any future development on the adjacent property. The 12-foot 8-inch generator enclosure was also moved next to their structure.

The proposed new location is acceptable because it is across the alley from the 14.5-foot high concrete block garage wall of the Sovereign and will not block views from any of the Sovereign’s dwelling units. The closest resident windows to the top of the enclosure are over 50 feet in distance and are located above the enclosure height. The enclosure will be minimally visible from these lower windows. The proposed location of the oxygen tank enclosure in the parking lot, close to the existing building and partially in the rear setback is not anticipated to have any affect on the surrounding residential scale and character due to the existing conditions discussed above.

While the enclosure will not cause visual space or safety constraints on the adjacent (across the alley) buildings, for general visual attractiveness it will be constructed with textured concrete block, have a decorative access door assembly (facing the parking lot), and have landscape screening on its alley side.

Because no change to the bulk and siting of the existing building is proposed, no affect on the surrounding residential scale and character is anticipated from the proposed uses. The re-used facility will, however, include an extensively reconfigured landscape and screening plan for the two street frontages and parking lot area and include updating of the exterior of the building. These proposed upgrades will make the existing and bland 4-story 1960's structure more of a visual asset to the surrounding neighborhood.

The existing parking areas were approved under a previous Land Use Code that required minimal or no screening and landscaping in comparison to today's Land Use Code. To minimize the visual and lighting glare impacts of the parking lots on the surrounding residential uses the project incorporates the *parking lot screening* and *light and glare* standards for *Institutions* in SMC 23.45.098 and 100. The south parking lot will have a solid screening wall along the south and west property lines, landscaping and trees have been included, landscape screening has been included along the alley side of the proposed oxygen tank enclosure, and all proposed lighting (for the parking lot and building) is designed to illuminate downward and of a degree that spill over lighting and glare onto adjacent residential properties is minimized. The northwest corner parking (4 spaces) has similarly been screened by a solid wall and landscaping.

B. Dispersion Criterion

The Land Use Code requires the lot line of a proposed institution be at least 600 feet from the lot line of another institution unless separated by a physical element, such as an open space, topographical break, or freeway. However, if no substantial aggravation of parking shortages, traffic safety hazards, and noise to the surrounding areas would occur, the institution may be permitted.

The proposed institution directly abuts the lot line of the Virginia Mason Institutional boundary to the south and is at the northern edge of the larger First Hill neighborhood that contains an extensive array of institutional and smaller medical facilities and services.

Per the analysis in Criteria C and D below, the proposed project is not anticipated to aggravate the above issues (parking shortages, traffic safety, and noise). Considering this, the proximity of the proposed new institution should not have any substantial impacts on the surrounding neighborhood. The former use of the site was a nursing home. Similar to this former use, the proposed use will have residents along with the array of full time health care and general employees (janitorial, culinary, and administrative) for their care. At the same time, the facility's proposed location is complimentary to and will be helped by First Hill's surrounding medical uses. Abutting a similar medical institution in an area with a substantial supply of and orientation to medical care facilities will likely reduce the creation of the traffic and parking impacts since medical personal can walk or use existing shuttle service to access the facility. For these reasons and those cited elsewhere in this document the Director finds that the location of the proposed institution should be approved.

C. Noise.

The Director may condition the permit in order to mitigate potential noise problems. Measures to be used by the Director for this purpose include, but are not limited to the following: landscaping, sound barriers or fences, mounding or berming, adjustments to yards or the location of refuse storage areas, or parking development standards, design modification and fixing of hours for use of areas.

The proposed use will house 80 patients in a semi-long term capacity. There will be no emergency room intake capacity or day to day out-patient services. Patients will arrive at the facility typically by ambulance. Typically ambulances will be used for non-emergency purposes only and so do not use sirens or flashing lights. There is a possibility of emergency ambulance use for transporting patients away from the facility, similar to aid car service to any residential building in the neighborhood, but this is expected to be infrequent. However, the project will be **Conditioned** to have a standing operating policy instructing all ambulance services arriving or departing to turn off sirens and flashing lights before arrival at the site.

Other possible project related noise sources are the proposed exterior emergency power generator and alley located trash compactor / dumpster. The exterior location of a power generator could have negative impacts on the occupants of the adjacent residential buildings caused by its expected sound levels during use and the hours during which it would be tested. The dumpster(s) location, configuration and hours of access could also have a noise impact on the occupants of the surrounding residential buildings.

In response to generator noise concerns the applicant explained that the generator is used only when City Light power is not available during an emergency, which is rare. A backup power source such as this is typical for all similar facilities. However, the generator must be “exercised” for one hour every two weeks for testing and general maintenance. A full surround weather and sound housing is proposed that will muffle its full operating sound output to a level acceptable by the City’s Noise Ordinance for proximity to adjacent residential properties, which is 65 dBA at 7 meters (approximately 21 feet) from the source. (Note, typically emergency generators are exempt from the Noise Control Ordinance. However, because of the Conditional Use approval element of this proposal conformance with this standard is being required, and according to documents submitted by the applicant, will be met). The generator and housing will be on the west side of the above described oxygen tank enclosure and thus have an additional level of sound buffering between it and the residential area to the east.

To assure the proposed level of generator noise does not affect nearby residences during typical morning, evening, and night “at home” hours, this proposal is **Conditioned** to limit the generator testing times to between 10 AM and 3 PM Monday through Friday.

The trash compactor / dumpster previously used for the existing building was located outside the building and along the alley. The new proposal continues this same location but includes a partial concrete wall for sound buffering and proposes to contract with the same waste disposal firm as the adjacent Bolero Condominiums in order to have same day and time pick-up, and thereby reduce the number of noise generating pick-ups.

To further minimize potential dumpster area noise this proposal is *Conditioned* to require the use of a dumpster / compactor design or method of use that will prevent the loud banging of the door or lid when opening or closing during daily use.

D. Transportation Plan.

1. *A transportation plan shall be required for proposed new institutions and for those institutions proposing expansions which are larger than four thousand (4,000) square feet of structure are and/or required to provide twenty (20) or more parking spaces.*
2. *The Director shall determine the level of detail to be disclosed in the transportation plan based on the probable impacts and / or scale of the proposed institution. Consideration of the following elements...may be required: traffic, parking area, parking overflow, safety, availability of mass transit.*
3. *The Director may condition a permit to mitigate potential traffic and parking problems. Measures which may be used by the Director for this purpose include, but are not limited to, the following:*
 - c. *Increasing (on-site) parking space requirements to reduce overflow of vehicles into the on-street parking supply.*

A Transportation Plan stating the anticipated traffic, parking demand, on-site parking capacity, and availability of mass transit was submitted with the MUP application and reviewed by DPD's Transportation Planner. Based on the operation of similar Kindred facilities, the plan outlined the expected modes and times of arrival / departure for patients, hospital employees, medical staff, and visitors as follows:

Patient transport will be generally by ambulance (in non-emergency mode), "cabulance", or private vehicle and during normal day-time hours. Per the *Condition* under *Noise* above, it will be a facility policy and requirement that arriving and departing emergency ambulance services will shut off sirens and flashing lights when approaching and departing from the facility.

A total of 110 hospital employees are expected and will be spread out over the 24 hour / 7-day work week. Twenty-eight of these would be administrative / business and operate on an 8 hour shift Monday through Friday. The remaining eighty-two employees will be on 12-hour shifts 7 days per week. Both 8-hour and 12-hour shift employees will arrive by private vehicle, ride-share vehicle, public transportation and some by foot and bicycle. Ten medical staff are expected to arrive and depart randomly during the hours of 7 AM and 7 PM. Medical staff would arrive primarily by private car or walk from nearby hospitals and medical offices. Visitors will arrive and depart during daytime hours by private car, public transportation, or foot.

According to the submitted Transportation Plan and confirmed by DPD's Transportation Planner, anticipated peak parking demand from the above groups will require 118 parking spaces during the hours of 9 AM to 3 PM Monday to Friday. However, the new site plan will only have 23 parking spaces. (Parking for the former nursing home's site plan was already below the number of parking spaces required for this former use [a parking deficit]. Parking deficits may be continued even when a change of use occurs [SMC 23.42.128.A]). The 23 spaces will be reserved for visitors and medical staff only. These two groups generate the most need for short term, hence on-site, parking.

Although the proposed use anticipates a peak parking demand of 118 spaces while only providing 23 spaces on site, the applicant proposes to provide this deficit off site within walking distance to the facility. Consequently, the project is **Conditioned** to provide the deficit of 95 parking spaces in nearby off-street parking facilities and reserve the on-site parking spaces for visitors and medical staff. To assure the availability of this number of spaces for the life of the project a *parking covenant* (indicating the locations where parking will be located and the number of spaces at each location) shall be recorded with King County and a copy of the recorded document submitted to DPD before MUP permit issuance.

The site has numerous bus stops and routes with a variety of frequent headways from one-tenth to two-tenths of a mile (and more within one-quarter of a mile). These routes serve connect to Downtown, the surrounding neighborhoods, and the wider region. Many employees of the adjacent Virginia Mason and associated medical facilities use these for commuting.

In addition to the existing availability of public transportation, the project proposes to include an on-site “Commuting Center” and designated staff person to make alternative transportation information available (carpools, vanpools, and public transportation) and encourage and coordinate its use among facility staff. This “Commuting Center” and designated staff member will assist in reducing project traffic generation and parking demand. To assure employees and visitor have continuous access to alternative transportation information for the life of the facility, the project is **Conditioned** to provide and maintain the proposed “Commuting Center”.

The existing parking lot will provide 19 of the 23 on-site parking spaces. Four parking spaces will be located in the other existing parking location at the northwest corner of the site. Both locations will utilize existing curb cuts. No traffic or pedestrian safety impacts are anticipated from the continued use of these locations.

According to the information provided in the Transportation Plan and outlined above, and analyzed by the project planner and DPD’s Transportation Planner, the expected traffic and parking is not anticipated to create significant traffic, parking, or safety impacts to the immediate and surrounding area in conjunction with the above **Conditions**.

Public Welfare and Injury to Property in Vicinity

General provisions for conditional uses in multi-family zones (SMC 23.45.116) provide that a use may be approved, conditioned or denied based upon whether it meets the specific criteria set forth for the use and also “whether the use will be materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located.” Further, “the Director may mitigate adverse negative impacts by imposing requirements and conditions deemed necessary for the protection of other properties in the zone or vicinity and the public interest”.

The proposed *institutional* use (hospital) is allowed outright in the Mid-Rise Residential zone if it meets the development standards of 23.45.090 through 23.45.102. The proposed facility will not function materially different or have a materially different affect on the surrounding residential uses than a similar facility proposed in a new structure. The majority of people coming to the site will be employees arriving and departing from the site during normal daytime hours. The activity of the facility will be similar to a residential use with residents (patients) active during the day and evening and quiet during the nighttime hours. If the existing structure were re-used as a nursing home facility (allowed outright without *Administrative Conditional Use* approval) the operation of this facility and affect on the surrounding properties would be substantially the same as the proposed. Because of the proposal site in an area of town with numerous medical facilities it can be considered advantageous to the public welfare and interest to essentially co-locate the proposed facility in this location.

The proposed project is anticipated to create parking demand in excess of the existing parking available on site. Consequently to assure the proposal is not detrimental to the public welfare or injurious to its vicinity, approval is **Conditioned** as outlined in *Transportation Plan* above.

DECISION - ADMINISTRATIVE CONDITIONAL USE

Based on the information provided and analysis performed, and the Departments experience with similar cases, the ADMINISTRATIVE CONDITIONAL USE is **CONDITIONALLY GRANTED.**

CONDITIONS

Listed at the end of this document.

ANALYSIS - SEPA

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated July 12, 2007 and annotated by the Department. The information in the checklist, supplemental information provided by the applicant, project plans, and the experience of the lead agency with review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SMC 23.05.665) discusses the relationship between the City's code/policies and environmental review. The Overview Policy states, in part, "Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation". The Policies also discuss in SMC 23.05.665 D1-7, that in certain circumstances it may be appropriate to deny or mitigate a project based on adverse environmental impacts. This may be specified otherwise in the policies for specific elements of the environment found in SMC 25.05.675. In consideration of these policies, a more detailed discussion of some of the potential impacts is appropriate.

Short-term Impacts

The following temporary or construction-related impacts are expected: decreased air quality due to suspended particulate from building activities and hydrocarbon emissions from construction vehicles and equipment; increased dust caused by construction activities; increased traffic and demand for parking from construction equipment and personnel; and increased noise from construction.

Several adopted City codes and/or ordinances provide mitigation for some of the identified construction related impacts. Compliance with these applicable codes and ordinances will reduce or eliminate most short-term impacts, but the probably impact of construction related noise generated in proximity to the surrounding residential uses requires further discussion and may require SEPA mitigation.

Noise Impacts

Surrounding the project site, with the exception of the parking area directly to the south, are numerous multi-family structures. Construction activity will largely be within the existing structure, although outside work will be done, including construction of screening walls, the generator and oxygen tank enclosures, exterior upgrades, and re-landscaping of the Terry Avenue frontage and other related work. The duration of construction is expected to be approximately 12 months.

Because of the proximity of the surrounding residential structures, the outside work and outside activities in support of the interior work are expected to create adverse impacts on these residences. However, in this situation the protection levels of the Noise Ordinance are considered inadequate for the potential noise impacts. The impacts upon residential uses could be especially adverse in the early morning, in the evening, and on weekends. Consequently, MUP approval in **Conditioned** as follows:

1. All construction activities are subject to the limitations of the Noise Ordinance. Construction activities (including but not limited to demolition, grading, deliveries, roofing, and painting) shall be limited to non-holiday weekdays from 7AM to 6 PM. Interior work may be allowed on Saturdays between 9am and 6pm only if windows and doors are in place and remain closed. Low noise generating activities, such as site security, monitoring, weather protection shall not be limited by this condition.

Construction activities outside the above-stated restrictions may be authorized upon approval of a Construction Noise Management Plan to address mitigation of noise impacts resulting from all construction activities. The Plan shall include a discussion on management of construction related noise, efforts to mitigate noise impacts and community outreach efforts to allow people within the immediate area of the project to have opportunities to contact the site to express concern about noise. Elements of noise mitigation may be incorporated into any Construction Management Plans required to mitigate any short-term transportation impacts that result from the project.

Long-term Impacts

Long-term or use-related impacts could be expected as a result project approval including: increased traffic in the area and increased demand for parking; and increased light and glare; increased ambient noise associated with increased human activity, vehicular movement, and infrastructure maintenance (generator testing).

Several adopted City codes and/or ordinances provide mitigation for the identified impacts. Specifically these are the Land Use Code's development standards for institutions in this residential (MR) zone. Following review of the *Administrative Conditional Use* criteria above the project has been *Conditioned* to provide off-site parking for the expected parking demand and a "Commute Center", has been modified to provide parking lot and oxygen tank enclosure screening and decorative enclosure gates, *Conditioned* to restrict emergency generator testing times, include facilities practices to minimize dumpster area noise, and a policy and practice to have all arriving and departing ambulances shut-off sirens and flashing lights before the approach to the facility. Compliance with these *Conditions* is adequate to achieve sufficient mitigation of these probable long term impacts, hence no SEPA mitigation for long-term affects is warranted.

DECISION - SEPA

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

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

CONDITIONS –SEPA

During Construction

The following *Condition* to be enforced during construction shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. If more than one street abuts the site, conditions shall be posted at each street. The conditions will be affixed to placards prepared by DPD. The placards will be issued along with the building permit set of plans. The placards shall be laminated with clear plastic or other waterproofing material and shall remain posted on-site for the duration of the construction.

1. All construction activities are subject to the limitations of the Noise Ordinance. Construction activities (including but not limited to demolition, grading, deliveries, roofing, and painting) shall be limited to non-holiday weekdays from 7AM to 6 PM. Interior work may be allowed on Saturdays between 9am and 6pm only if windows and doors are in place and remain closed. Low noise generating activities, such as site security, monitoring, weather protection shall not be limited by this condition.

Construction activities outside the above-stated restrictions may be authorized upon approval of a Construction Noise Management Plan to address mitigation of noise impacts resulting from all construction activities. The Plan shall include a discussion on management of construction related noise, efforts to mitigate noise impacts and community outreach efforts to allow people within the immediate area of the project to have opportunities to contact the site to express concern about noise. Elements of noise mitigation may be incorporated into any Construction Management Plans required to mitigate any short -term transportation impacts that result from the project.

CONDITIONS -ADMINISTRATIVE CONDITIONAL USE

Non-Appealable Conditions

2. Any proposed changes to the site plan must be submitted to DPD for review and approval by the project Land Use Planner (Art Pederson, 733-9074).
3. Embed all conditions in the cover sheet for the MUP permit and for all subsequent permits including updated MUP plans, and all building permit drawings.

Prior to Issuance of Master Use Permit

4. Submit a draft *parking covenant* (to include the location of the 95 required off site parking spaces) to the DPD planner for review. Record the covenant with King County. Submit a copy of the recorded document to DPD for the MUP file.

For the Life of the Project

5. Have and enforce a standing operating policy instructing all ambulance services arriving or departing to turn off sirens and flashing lights before arrival at the site.
6. Limit emergency generator testing times to between 10 AM and 3 PM Monday through Friday.
7. Use a dumpster / compactor design or method that will prevent the loud banging of the door or lid when opening or closing during daily use.
8. Maintain a "Commuting Center" with a designated staff member to assist employees and visitors with utilizing carpools, vanpools, and public transportation.
9. Reserve the on-site parking spaces for visitors and medical personal (except the ADA stalls).

Signature: (signature on file)
Art Pederson, Land Use Planner
Department of Planning and Development
Land Use Division

Date: March 20, 2008