

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

Project Name: Living Building Program Code Amendments

Applicant Name: City of Seattle - Department of Planning and Development

Address of Proposal: Industrial Commercial zones with height limits of 45 feet or less, and located in Urban Centers or Urban Villages

**SUMMARY OF PROPOSED ACTION**

The Department of Planning and Development is proposing to amend the Land Use Code to support design flexibility in developments participating in the Living Building Program pilot project. The amendments would accommodate building heights 20 feet above zoned height limits in certain Industrial Commercial zones with height limits of 45 feet or less and within Urban Villages or Urban Centers, when the building’s designers are attempting to meet objectives of the Living Building Program. The amendments would also exempt ground floor retail space from being counted against density limits (e.g., floor area ratio [FAR] limits).

The following approval is required:

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

**SEPA DETERMINATION:**       Exempt     DNS     MDNS     EIS  
 DNS with conditions  
 DNS involving non-exempt grading, or  
demolition, or another agency with jurisdiction.

**Background**

The Living Building Challenge is a green building rating system created by the International Living Building Institute to measure buildings with high degrees of sustainable design. The Challenge measures buildings according to six performance areas relating to “Site, Energy, Materials, Water, Indoor Quality, and Beauty + Inspiration.” The principles for design promote use of recycled materials, rainwater and wastewater capture, treatment and reuse, innovative lighting, heating, ventilation and energy use, and avoidance of environmentally sensitive sites. In order to meet stringent performance standards, building designs seek to minimize impacts upon the environment and become as sustainable as possible through use of innovative techniques. These can result in buildings that look different and operate differently than typical buildings, and may

involve elements and practices that vary from the norms assumed by the land use or building codes that apply to a given property.

In late 2009, the City enacted rules in Ordinance 123206 relating to a Living Building Pilot Program, which included provisions for design review of related proposals and a listing of the possible types of departures from code requirements that would be possible as part of design review. These included the possibility of departures from a set list of standards such as accessory uses, size-of-use limits, quantity of parking, and open space quantity.

The Pilot Program provides for up to 12 projects to participate over a 3-year period. To participate, project applicants must submit a plan demonstrating how their proposal would meet each of the prerequisites of the Living Building Challenge. Projects are admitted on a first-come, first-serve basis according to when a complete application is submitted. Since its inception in 2009, one project has participated and been completed.

### **The Proposal**

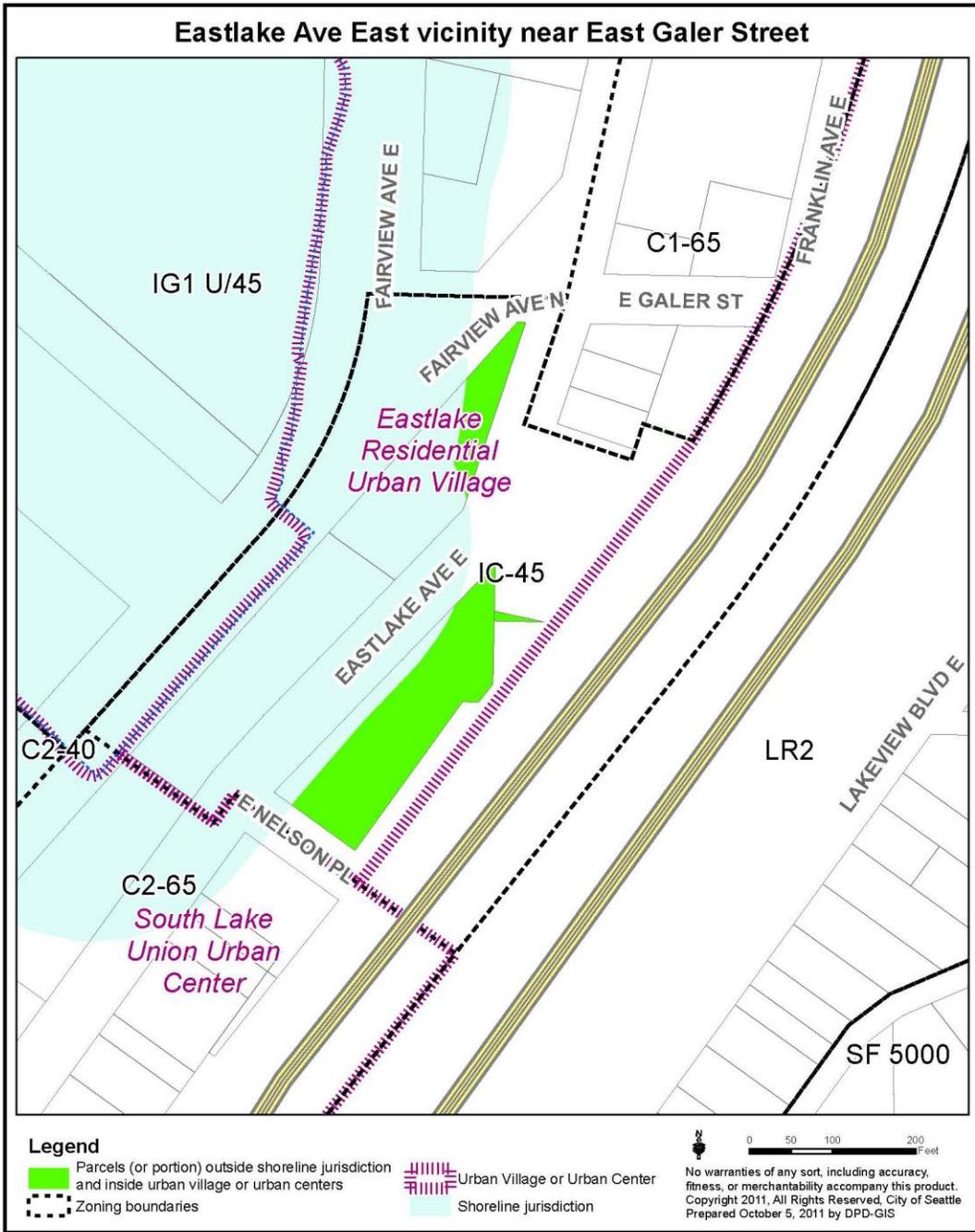
The Department of Planning and Development (DPD) is proposing to amend the Land Use Code to extend the timeframe of the pilot program, accommodate additional design flexibility in the pilot program, and improve the ability of the program to allow builders to test Living Building construction.

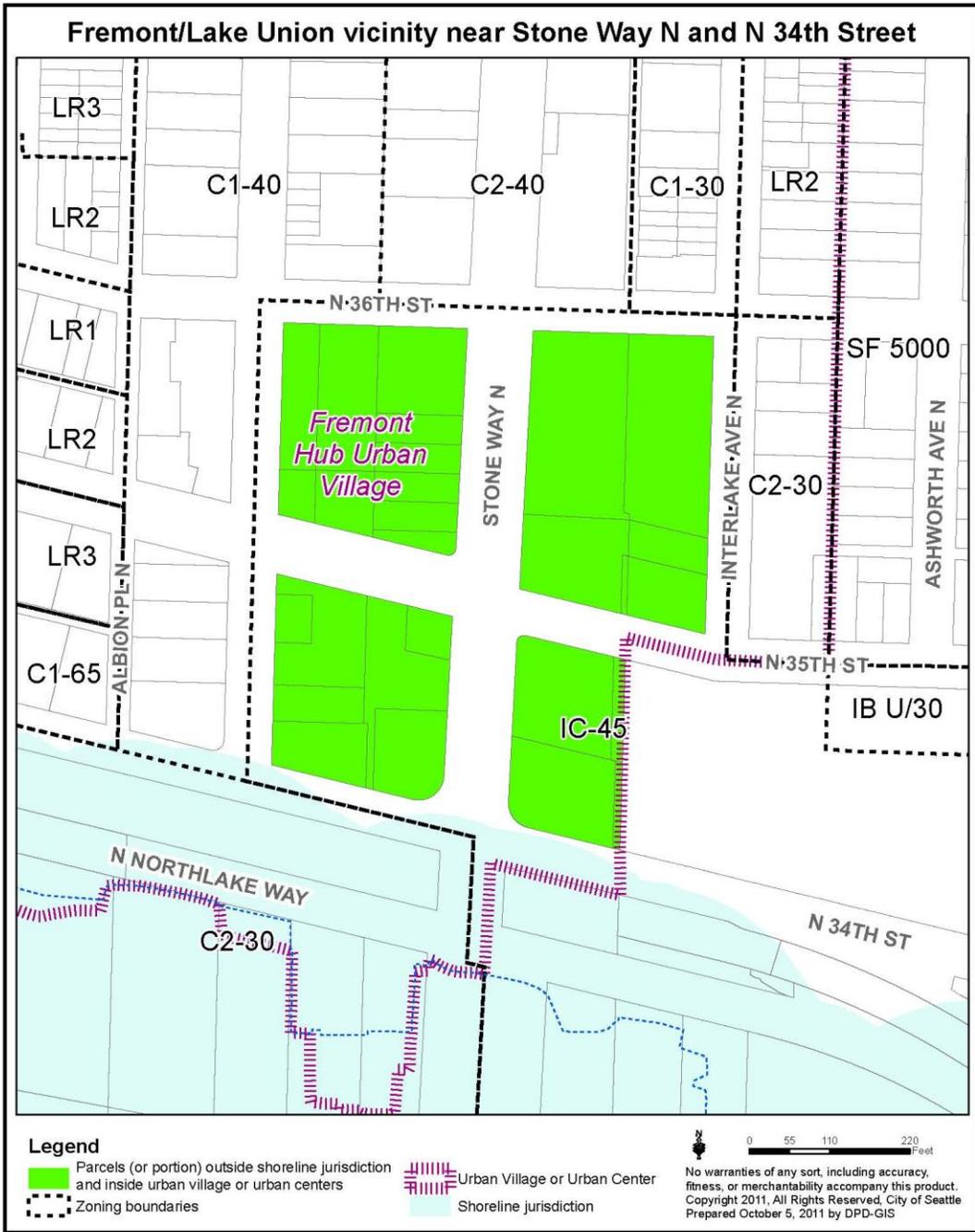
The proposed amendments would add the following departures to the Design Review process for buildings participating in the Living Building Pilot Program:

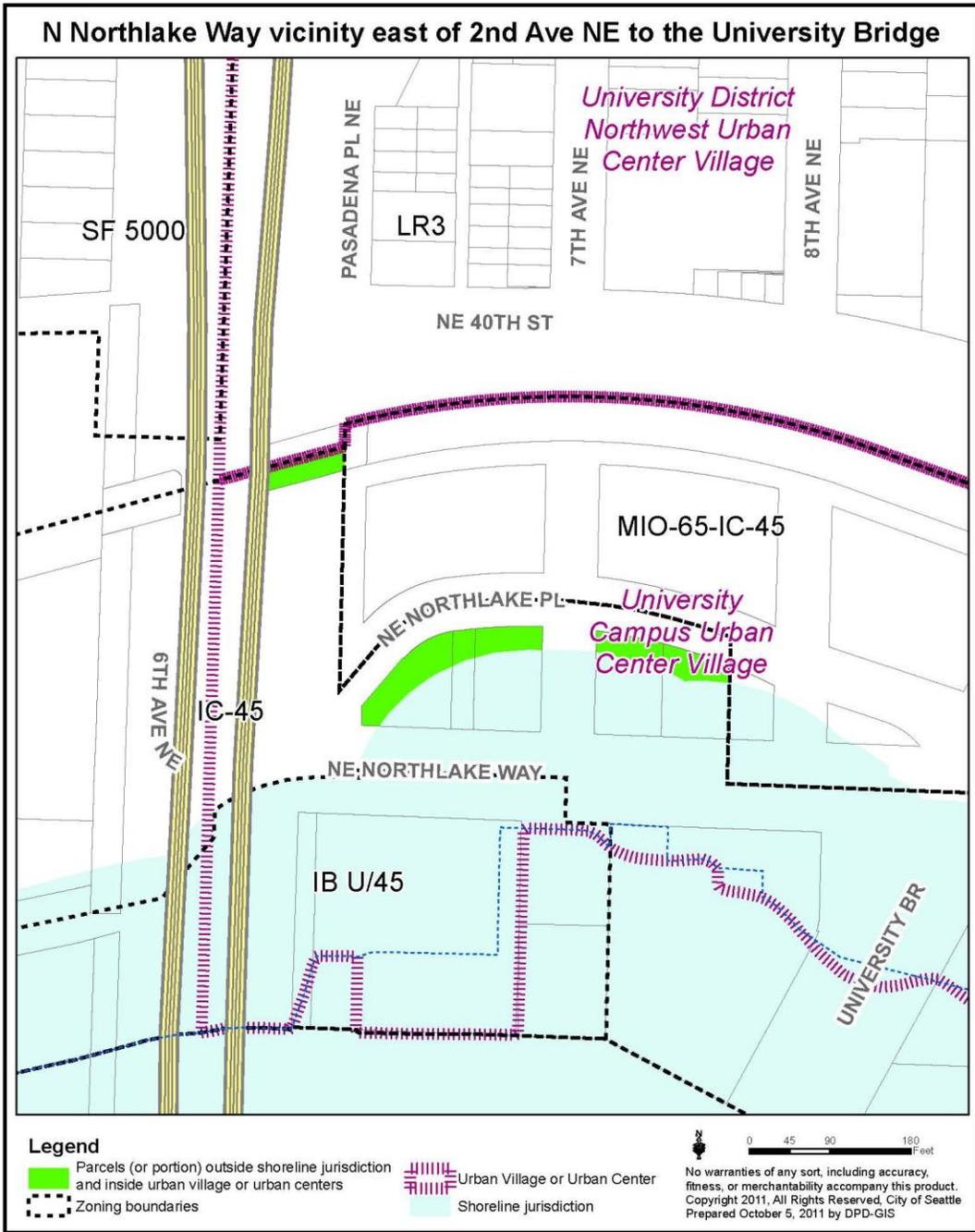
- building height increases up to 20 feet above the zone height limit for Industrial Commercial (IC) zones with a zoned height limit of 45 feet or less that are within Urban Villages or Urban Centers;
- exempt ground floor retail space from Floor Area Ratio (FAR) limits for non-residential buildings in IC zones within Urban Villages or Urban Centers, to accommodate such uses without detracting from building design efficiency potential.

The proposal would affect areas zoned IC 45, the Industrial Commercial zone with a 45-foot height limit, which are present primarily in such areas as four blocks in the Fremont/Lake Union vicinity near Stone Way N and N 34<sup>th</sup> Street, a couple of properties in the Eastlake Avenue E vicinity near E Galer Street, and portions of a few properties in the N Northlake Way vicinity east of 2<sup>nd</sup> Avenue NE to the University Bridge vicinity. See Figures 1, 2 and 3.

The amended code provisions could be used in future development on eligible sites in certain IC zones to accommodate increased height in “living buildings” for certain building features and/or floor area, and/or to increase the total floor area size of “living buildings” through the exempting of certain ground floor retail space from FAR limits.







One proposed development project that could be affected by the non-project proposal is known. The “Stone 34” proposed development, MUP #3012601 at 3400 Stone Way N, would construct a 5-story office building containing approximately 13,900 gross square feet (gsf) of ground floor retail/entertainment uses, 110,600 gsf of office space, and a three-level, below-grade parking structure providing approximately 216 parking spaces. The project would require the demolition and removal of two existing one-story structures and an existing parking lot. This development would rely upon the proposed legislative changes to the code in order to reach its full proposed height and size.

Information about the “Stone 34” proposed development project is included in the checklist to help illustrate and evaluate a possible development outcome (in effect providing a level of SEPA “phased review” for that proposal) for an eligible property that is assumed as likely to be redeveloped. That proposed development project is distinct from this non-project regulatory proposal, and if it proceeds will be subject to other future permit reviews, including environmental review.

### **Public Comment**

Proposed changes to the Land Use Code require City Council approval. Public comment will be taken on the proposed amendments at a future City Council Public Hearing.

The sufficiency of a prior version of this environmental review issued on September 12, 2011 was appealed to the Hearing Examiner, which generated public comment letters and e-mails to DPD. A majority of commenters were residents of the neighborhood, and others included local business representatives. A majority of the neighborhood residents interchangeably addressed the non-project proposal and the 3400 Stone Way project development proposal.

### **ANALYSIS - SEPA**

This proposal is an adoption of legislation, which is defined as a non-project action. This action is not categorically exempt (SMC 25.05.800). A threshold determination is required for any proposal that meets the definition of “action” and is not categorically exempt.

The disclosure of the potential impacts from this proposal was made in an environmental checklist submitted by the applicant dated March 30, 2012. The information in the checklist, the Director’s Report and Recommendation, other information provided by the applicant, and the experience of the lead agency with review of similar regulations and proposals, form the basis for this analysis and decision.

### **ELEMENTS OF THE ENVIRONMENT**

Adoption of the recommended Code amendments would result in no immediate adverse short-term impacts because the adoption would be a non-project action. The discussion

below evaluates the potential long-term adverse environmental impacts that might conceivably result from future development relevant to the proposal.

## **Natural Environment**

### **Earth, Air, Water, Plants & Animals, Environmental Health**

No potentially significant adverse impacts to the natural environment are identified for this non-project proposal. The relevant buildings affected by the proposal, by virtue of efforts to design a “living building,” would be seeking to reduce, minimize or otherwise offset their environmental impact footprint, including avoiding impacts on sensitive areas and natural elements such as drainage systems. Similarly, the intent to avoid impacts upon the atmosphere and natural systems means the potential for significant adverse natural environmental impacts is relatively low.

The location of eligible properties in the affected industrial-zoned, highly urban vicinities that would exclude shoreline areas means there is little direct or indirect potential for probable adverse effects on natural habitats for plants and animals including marine habitats. However, the proximity of the 34<sup>th</sup>/Stone Way vicinity properties to shoreline buffer area is noted as a factor that would present a slight potential for adverse impacts upon shorelines or shoreline buffer areas there if a worst-case accidental event occurred that released hazardous materials into earth, groundwater or surface drainage, or air emissions and those releases were not captured by sewers or on-site drainage control systems. There is also a potential for an adverse impact of hazardous material exposure or releases due to demolition of existing buildings and/or disturbance of soils, in the worst case, to the extent that such hazards might be present in buildings or site soils due to past or present uses in the 34<sup>th</sup>/Stone Way vicinity, or in the other potentially eligible U-District and Eastlake locations. (For the 3400 Stone Way development proposal, study information and statements by applicants indicate they intend to comply with permitting requirements to the extent applicable to that site.)

If future living buildings are built, their construction would generate disturbances of earth and on-site drainage patterns, and would generate air emissions due to soil disturbance, construction equipment and building activities during the construction period. The net increment of added development potential attributable to the non-project proposal is difficult to quantify, but would be expected to add only slightly to the potential magnitude of these impacts due to its ability to add more space to a future development for mechanical or other floor area purposes, and such proposed developments would be subject to SEPA review at a later date as long as thresholds for review are met.

With reference to technical aspects of a possible “living building,” minor indirect discharges could occur if new technologies incorporated into these buildings resulted in inadvertent discharges due to standard or non-standard function, such as the noise generation due to windmills or discharge of treated wastewater through rain gardens, or due to failure of new technologies, such as the backup of on-site wastewater treatment. New technologies would still need to meet the requirements of noise and odor standards as well as the public health, plumbing, electrical, mechanical and building codes, which

would tend to minimize the potential for worst-case discharges that might represent adverse environmental impacts.

Significant cumulative adverse impacts upon natural environmental elements are not likely. While the combination of two or more future “living buildings” in a given area such as the 34<sup>th</sup>/Stone Way vicinity would incrementally generate more potential for cumulative impacts upon the natural environment (during and after construction), such impacts are not likely to be more than minor in magnitude. Rather, the environmentally-protective intent and function built into living building proposals would limit this potential for adverse cumulative impacts.

In reference to the non-project proposal’s primary topics of increased flexibility for 20 feet additional height and the ability to exempt street-level uses from density limits, the potential for adverse natural environmental impacts due to these additional increments of development would be minimal because the physical effects would be experienced through taller buildings with assumed similar footprints. The added building height and bulk would be unlikely to cause any significant detrimental effect on the natural environment. This conclusion is reinforced in that there is no known specific high-quality animal or plant habitat within the directly affected area. Also, added height of 20 feet would not be anticipated to affect flyways for birds or similar sorts of potential wildlife impacts in any significant adverse manner.

For the sample possible future development project at 3400 Stone Way, a summary overview of the potential for adverse natural environmental impacts includes indications of:

- the presence of fill soils on portions of the site, underlain by a wet sand layer;
- potential for erosion during construction, along with an estimated amount of grading expected to develop the site (approximately 25,000 cubic yards of excavation and importing of 600 cubic yards of structural fill), along with an expressed intent to comply with erosion and drainage control requirements during construction;
- an expected minimal increase in the amount of impervious surfaces on the site with future possible development;
- excavation to approximately 20 to 30 feet below the level of N 34<sup>th</sup> Street;
- a steep slope in the southeastern portion of the site is shown on critical area maps, but may not be present given the current developed conditions on the site. This sort of factor would be explored more in project-level review as to its presence or absence, and the applicant apparently intends to request relief from the prohibition on steep slope development per SMC Section 25.09.180.B.2.a, B.2.b, and B.2.c;
- excavation below the local water table level, and an identified probable need for shallow groundwater control (dewatering) during construction that is estimated for planning purposes in the geotechnical report to be on the order of 20 to 30

- gallons per minute (“...actual flow rate is likely to vary, based on the actual soil conditions encountered”), with discharge into an existing City stormdrain;
- the potential for presence of hazardous materials in structures to be demolished, although a Phase 1 assessment did not indicate the presence of lead paint or asbestos in the existing structures;
  - presence in the site’s soils of residual petrochemicals that would need to be removed as part of construction activities;
  - intended compliance with law and best practices for removal/remediation of such materials; and
  - the applicants’ statement that they have evaluated the proposed building massing on the potential use of solar energy on surrounding sites, and have concluded that no adverse impact to the adjoining properties is anticipated.

These indications suggest a potential for adverse environmental impacts that should be examined in future project-level environmental reviews to verify how they relate to the development proposal that presumably will proceed if the non-project proposal is approved. This will determine if project conditioning in future permit decisions is needed to sufficiently protect the environment; it is assumed that if such conditioning is needed to provide substantive mitigation of impacts that it will be required and implemented, leading to a logical conclusion that the adequate mitigation of adverse environmental impacts is probable.

### **Built Environment**

#### **Land Use, Height/Bulk/Scale, Aesthetics, Public View Protection, Shadows on Open Spaces, Noise, Light/Glare, Historic Preservation**

The functional effect of the non-project proposal for 20 feet of additional building height would be to provide additional flexibility for an applicant to provide an additional floor (for a probable total of 5 floors) and/or different floor-to-floor heights than would otherwise occur. For example, street-level floors could be designed 3 to 8 feet taller than other building stories, which would allow for designs believed to be more efficient for lighting purposes.

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

The non-project proposal would encourage the future development of “living buildings” in a few certain locations, including most notably the 34<sup>th</sup>/Stone Way vicinity, but also in a small portion of the U-District near the University Bridge, and a few lots along Eastlake Ave E near E Galer Street. A pilot program encourages such buildings, and the non-project proposal would increase the potential floor area by exempting ground floor space, and increase the height of such buildings up to 20 feet above the zoned height limit. Such added height could also potentially be used to accommodate equipment or other building features that would facilitate its “living” objectives.

The proposal's accommodation of added building height and bulk and/or building features different than conventional building features would be factors that contribute to an interpretation of adverse land use compatibility impacts. In relation to the affected zone's 45-foot height limit, the degree of height accommodation granted would be approximately 44 percent greater than the zoned height limit, suggesting an adverse level of change in comparison to surrounding existing or potential buildings. At the same time, the maximum degree of change should be interpreted in absolute terms – that it represents up to but not exceeding 20 feet of added height potential. By comparison to many other conditions present around the city, including building-to-building comparisons and zone-to-zone adjacencies, a worst-case net difference of 20 feet in building heights does not represent a physical difference that would necessitate a finding of probable significant adverse impacts in an urban environment such as Seattle. This finding is supported by the added fact that future development proposals of this kind would undergo design review processes, which would lead to moderations of building bulk through massing changes, architectural designs and treatments, and other influences upon building features that would tend to reduce and mitigate the worst-case potential for significant height/bulk/scale impacts.

Also supporting this finding is the physical land use environment in which relevant “living buildings” might be developed with added height per this proposal. The lower Fremont/Wallingford vicinity near 34<sup>th</sup>/Stone Way, for example, has a broadly diverse pattern of commercial, warehouse, low-density residential, office and industrial uses. This pattern distinctively defines the area as a lively mixture of many kinds of activities with residential uses in close proximity to non-residential uses and even marine-oriented uses near Lake Union, all in a manner that retains compatibility sufficiently to support viable residential uses. East of Interlake Avenue N and north of N 35<sup>th</sup> Street, this pattern transitions into the more single-family residential dominated pattern, although the adjacency of residential and non-residential use blocks continues northward near Stone Way N and eastward south of N 35<sup>th</sup> Street near Gasworks Park.

Use patterns across the streets from the affected blocks in this vicinity are similarly varied with residential and non-residential structures of varying age, quality and use types, denoting a relative ability to remain compatible with future possible building development that would be non-residential and possibly including unusual building features and somewhat larger scale. The relatively “heavy” use of the transfer station adjacent to the 3400 Stone Way site is also noted as a use that is capable of not being significantly affected by land use compatibility effects related to this non-project proposal.

Finally, the relationship of affected properties to the single-family residential dominated use pattern east of Interlake Avenue N is acknowledged as representing a contrast from a probable non-residential use pattern, which contributes to a finding of adverse compatibility and height/bulk/scale impacts. However, given the other area use patterns already present, plus the upraised hilly topography in those blocks and the relatively limited presence of residences along those block edges, the actual difference in use and height/bulk/scale as experienced in the physical environment would not be likely to

generate significant adverse land use-related impacts. The fact of future design review processes would further reduce the potential magnitude of this kind of impact.

Also, it is noted that the non-project proposal might increase the likelihood that a participating building would be taller than the current zoned height limits, but possibly not all buildings participating in the Living Building Pilot Program would need additional height. Thus, the number of instances of the potential height-related impact could be infrequent and even less than the limited numbers of opportunities offered by the Pilot Program.

The non-project proposal would also assist in accommodating the presence of street-level uses such as restaurants or other retail establishments that might otherwise be excluded for building efficiency purposes. Such uses would help a building fit into the affected surroundings and thus would be a factor that assists in improving land use compatibility and thus helps mitigate adverse land use impacts.

The example of the 3400 Stone Way development proposal illustrates that potential future building development, using the benefits of the non-project proposal, could occur in a manner whereby building massing is shaped and stepped back and otherwise designed in ways that would assist in achieving overall land use compatibility and avoidance of significant height/bulk/scale impacts.

#### ***Aesthetics/Public View Protection/Shadows on Open Spaces***

The proposal would incrementally increase the potential for adverse visual/aesthetic impacts to occur with future developments related to the proposal. This might be experienced as additional increments of private view blockage and/or the incorporation of unconventional-appearing buildings into the built environment. These are qualitatively interpreted as having adverse but not significant adverse impact potential. This is meant to disclose a physical implication of the non-project proposal, that the visual environment and sightlines from various private locations, as well as from city streets, could be altered. However, it should be noted that private views are not SEPA-protected by the City's environmental policies and procedures in SMC 25.05.675.

In relation to a "scenic route" defined along N 34<sup>th</sup> Street, the non-project proposal would increase the potential total height of buildings next to it near Stone Way. However, this would not be expected to substantially adversely alter the scenic qualities or vistas that are possible from this street. One observation is that if a living building occurred on the *west* side of Stone Way at N 34<sup>th</sup> Street, it could obscure a view to the northern terminus of the Aurora Bridge which is viewed straight ahead on N 34<sup>th</sup> Street.

In relation to Stone Way, potential future development, including that on 3400 Stone Way, could contribute to a slight narrowing of the corridor view southward down Stone Way toward the Downtown skyline, which could obscure view of some Downtown skyline buildings for drivers proceeding south. However, the degree of this change is interpreted as representing an adverse but minor impact on area aesthetics and views.

The example of the 3400 Stone Way development proposal illustrates that potential future building development, using the benefits of the non-project proposal, could occur in a manner whereby building massing is shaped and stepped back and otherwise designed in ways that would assist in limiting visual and aesthetic impacts.

There is no identified probability for adverse shadowing impacts on public open spaces, which are prioritized in 25.05.675.Q to address public parks, public schoolyards, private schools' schoolyards and publicly owned street ends in shoreline areas.

### ***Noise/Light & Glare***

The non-project proposal, in its accommodation of street-level uses and increased building size, would generate only slightly more potential for adverse noise generation, representing a minor adverse potential impact. A “living building” and its occupants would be subject to the City’s noise rules, which would help avoid excessively noisy conditions in the daytime and nighttime.

The non-project proposal, in its increase of potential building size, would generate only slightly more potential to add light or glare to its surroundings, representing a slight potential for an adverse impact. The 3400 Stone Way proposal includes intended use of strategies that would reduce energy use, such as reduced lighting levels, occupancy sensors, shades and blinds, and parabolic light fixtures that would also limit and reduce the potential for light/glare spillover impacts to the extent such lighting would be visible to any nearby residents.

### ***Historic Preservation***

No significant adverse impacts are identified with respect to historic preservation. While the added height and density flexibility could induce additional participants in the Living Building Pilot Program, those elements in themselves would not increase risks to known landmarks or potential landmark resources. In any case, rules pertaining to landmarks and potential landmarks would continue to apply in a manner that would reasonably avoid potential for significant adverse impacts to such resources. This conclusion also pertains to potential cultural resources: the environmental checklist for the 3400 Stone Way proposal indicates that its site is within 200 feet of the shoreline meander line and excavation would occur, meaning there would be an unknown potential for cultural resources to be unearthed. This element of that proposal would be examined in more detail in future project-related SEPA review, if that proposal proceeds with permitting.

### **Transportation**

This proposal would generate no immediate transportation impacts because it is a non-project proposal. To the extent that the non-project proposal could result in future development of buildings that add more floor area (by virtue of exempting street-level uses and/or using more building height), a net increase in future vehicle trips from such development could occur.

However, it is not possible to reasonably know or fully estimate the likely future additions of traffic that would occur over time as a result of this proposal. This is due to the following:

- There are no particulars about potential future “living building” designs other than one prospective future development at 3400 Stone Way (described more below);
- It is not known whether the 3400 Stone Way proposal would represent a likely model for other possible “living buildings” or whether other buildings would be designed in other distinct fashions using different elements or technologies. While one “living building” design might utilize added height capability for usable or rentable floor area, another might use the added height capability to accommodate a technological building feature that would assist in the “living” objectives of the building.
- It is not known how many other “living buildings” are reasonably predictable anywhere among the eligible sites or in the 34<sup>th</sup>/Stone Way vicinity in particular.
- The height and potential added floor area could be used for various or multiple purposes in a “living building”, and might or might not be used at all for the purpose of adding rentable floor area.
- Different “living buildings” could also represent different or varied land use types and/or occupancies that would generate different potential levels of traffic generation.

For illustrative and general disclosure purposes, the known future development proposal for office use in MUP #3012601 located at 3400 Stone Way North, is estimated to generate a net increase of 1,350 daily trips, with 184 AM peak hour trips and 174 PM peak hour trips. The traffic study analyzed the PM peak hour condition (5-6 PM) – when cumulative traffic volumes (background plus project site trips) would be the highest during the day. It should be noted that these estimates represent a probable level of impact for the entire future possible development at this location, not the marginal effects of this non-project “living building” proposal.

To the extent that other future “living building” developments could possibly occur in the 34<sup>th</sup>/Stone Way N vicinity, the area could be subject to future levels of adverse cumulative traffic impacts. The portion of added cumulative traffic impact ascribable to this non-project regulatory proposal could only be estimated if the extent that additional floor area and height capabilities were used was known. However, it is not possible to reasonably estimate this at this time. Estimations for the 3400 Stone Way N proposal allow for speculation that another development of that size might be possible, which might add comparable amounts of added traffic. However, again, this sort of estimate of potential future development would not truly represent the cumulative impact potential for this non-project proposal because it would not represent the marginal effects of the living building proposal.

### **Public Services & Utilities**

As noted in the environmental checklist, increased density through future development related to the non-project proposal would result in increased demand for public services. However, this potential would be relatively minor and difficult to predict because the

extent to which future development would utilize the added capabilities to provide usable floor area is unknown. Due to the nature of the pilot program and its objectives to promote minimally consuming buildings, the non-project proposal is not likely to substantially adversely increase demand on utilities, and thus no significant adverse impacts on utilities are anticipated.

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 requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

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

Signature: \_\_\_\_\_ (signature on file) Date: April 9, 2011  
Gordon Clowers, Urban Planner 2  
Department of Planning and Development