

ORDINANCE _____

1
2 AN ORDINANCE related to land use and zoning, amending Chapter 23.48 of the Seattle
3 Municipal Code; creating new SM/D 40-85 and SM/D 40-65 zoning classifications;
4 adopting an affordable housing incentive program for increased height in areas zoned
5 SM/D 40-85 or SM/D 40-65; and amending the Official Land Use Map at pages 72-73 to
6 rezone land in the West Dravus commercial area to SM/D 40-85 and SM/D 40-65
7 contingent upon the creation of a Local Improvement District to finance transportation
8 improvements.

9 WHEREAS the Seattle Comprehensive Plan, policy LU6, provides that “the City Council may
10 permit greater heights on commercially-zoned sites in the Interbay area along and near
11 W. Dravus Street between 15th Avenue W. and 20th Avenue W., through overlay zoning,
12 zoning map amendment, or other implementing measures”; and

13 WHEREAS on October 3, 2006 the City Council adopted Resolution 30804 calling for
14 consideration of an overlay zone or other zoning options, including height limit increases,
15 to promote mixed-use development in the W. Dravus Commercial area, and directing the
16 Department of Planning and Development to prepare legislation; and

17 WHEREAS the goals of the zoning change in the W. Dravus Commercial area are to preserve
18 and enhance the existing industrial employment base, provide opportunities for higher-
19 density transit oriented development, create workforce housing in a new pedestrian-
20 oriented, mixed use center in proximity to existing open space resources, and to promote
21 a jobs housing balance within a walkable neighborhood; and

22 WHEREAS the W. Dravus Commercial Area is not located within an urban center or urban
23 village and new mixed use development of this area will require investments in
24 transportation infrastructure that are not a capital priority of the City; and

25 WHEREAS Council Resolution 30804 directed the Department of Planning and Development to
26 consider providing financing for transportation and other public facilities through
27 creation of a Local Improvement District; and

28 WHEREAS changes in zone classification and height limit have the potential to substantially
increase the development capacity of lots in the W. Dravus commercial area; and

WHEREAS RCW 36.70A.540 provides express authority for the City to establish incentive
programs to ensure that a portion of new housing created through increases in
development capacity be affordable; and

1 WHEREAS on December 4, 2006, the City Council adopted Resolution 30939 affirming the
2 Council’s and Mayor’s support for the use of new affordable housing incentive program
3 authority; NOW, THEREFORE,

4 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

5 Section 1. Subsection A of Section 23.48.002 of the Seattle Municipal Code, as last
6 amended by Ordinance 121782, is amended as follows:

7 **23.48.002 Scope of provisions.**

8 A. This chapter identifies uses that are or may be permitted in ~~((the))~~ Seattle Mixed (SM)
9 zones and establishes development standards. The SM zone boundaries are shown on the Official
10 Land Use Map. The “D” suffix with a height limit range may be applied to SM-zoned land in
11 the West Dravus area.

12 * * *

13 Section 2. Subsection A of Section 23.48.010 of the Seattle Municipal Code, as last
14 amended by Ordinance 121782, is amended as follows:

15 **23.48.010 General structure height.**

16 A. Maximum Height. Maximum structure height shall be forty (40) feet, fifty-five (55)
17 feet, sixty-five (65) feet, seventy-five (75) feet, eighty-five (85) feet or one hundred twenty-five
18 (125) feet as designated on the Official Land Use Map, Chapter 23.32, except as provided in
19 ~~((subsection B of))~~ this Section or in Section 23.48.016.

20 * * *

21 Section 3. A new Section 23.48.011 of the Seattle Municipal Code, is adopted to read as
22 follows:

23 **23.48.011 Affordable Housing Incentive Program**

1 A. Additional Height Conditioned on Low-income Housing. In the SM/D 40-65 and the
2 SM/D 40-85 zones additional building height may be obtained for mixed-use projects and single-
3 purpose residential projects if the applicant provides low-income housing, or makes a payment in
4 lieu thereof, under the terms of this section.

5 B. Finding; Definitions.

6 1. Pursuant to the authority of RCW 36.70A.540, the City finds that the higher
7 income levels specified in this subsection B, rather than those stated in RCW 36.70A.540, are
8 needed to address local housing market conditions in each of the areas and zones to which this
9 section applies.
10

11 2. For purposes of this section, the following definitions apply:

12 a. “Affordable unit” means a unit of low-income housing provided as a
13 condition to bonus development.
14

15 b. “Base height limit” means forty (40) feet.

16 c. “Bonus development” means floor area allowed in stories wholly or in
17 part above the base height limit on condition that low-income housing be provided, or that a
18 payment in lieu thereof be made, under this section.
19

20 d. “Certificate of occupancy” means the first certificate of occupancy
21 issued by the City for a project, whether temporary or permanent, unless otherwise specified.

22 e. In the case of rental units, “low-income housing” means housing
23 affordable to and occupied by households with incomes no higher than the lesser of eighty
24 percent of median income, as defined in section 23.84A.025, or the maximum level permitted by
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1 RCW 36.70A.540 as in effect when the determination of affordability is made, and “low-income
2 household” means such a household.

3 f. In the case of owner occupancy housing units, “low-income housing”
4 means housing affordable to and occupied by households with incomes no higher than the lesser
5 of median income, as defined in section 23.84A.025, or the maximum level permitted by RCW
6 36.70A.540 as in effect when the determination of affordability is made, and “low-income
7 household” means such a household.
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9 C. Bonus Options. Bonus development may be allowed when low-income housing is
10 developed (the “performance option”) or when the applicant makes a payment to the City in lieu
11 of providing low-income housing (the “payment option”), or when a combination of the
12 performance and payment options is used, in accordance with this section.
13

14 1. Performance option.

15 a. The applicant shall provide low-income housing with a gross floor area
16 equal to the greater of (i) eleven (11) percent of the gross floor area of all stories on the lot that
17 are wholly or in part above the base height limit, or (ii) seven hundred (700) square feet.
18

19 b. Each affordable unit shall serve only low-income households for a
20 minimum period of fifty (50) years. For rental housing, rent shall be limited so that housing
21 costs, including rent and basic utilities, shall not exceed thirty (30) percent of the applicable
22 income limit for the unit under this section, all as determined by the Housing Director, for a
23 minimum period of fifty (50) years. For owner-occupied housing, the initial sale price shall not
24 exceed an amount determined by the Housing Director to be consistent with affordable housing
25 for a low-income household with the average family size expected to occupy the unit based on
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1 the number of bedrooms, and the units shall be subject to recorded instruments satisfactory to the
2 Housing Director providing for sales prices on any resale consistent with affordability on the
3 same basis for at least fifty (50) years. The Housing Director may promulgate rules specifying
4 the method of determining affordability, including eligible monthly housing costs. The Housing
5 Director may also promulgate rules for determining whether units satisfy the requirements of this
6 section and any requirements relating to down-payment amount, design, quality, maintenance
7 and condition of the low-income housing.
8

9 c. Affordable units each shall include at least three hundred fifty (350) net
10 square feet, and they shall be provided in a range of sizes consistent with RCW 36.70A.540. The
11 affordable units shall comply with all other requirements of RCW 36.70A.540, as in effect on the
12 date as of which the provisions of this title apply to the application for a use permit for the
13 project using the bonus development. Affordable units that are developed as part of the project
14 using bonus development shall be completed and ready for occupancy at or before the time when
15 a certificate of occupancy is issued for any other units in that project, and as a condition to any
16 right of the applicant to such a certificate of occupancy. The Housing Director may provide, by
17 rule promulgated after the effective date of this ordinance, for terms and conditions on which an
18 extension of time may be allowed due to delays that the applicant could not reasonably have
19 avoided.
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22 d. If the affordable units are not being developed within the project using
23 the bonus development:

24 (i) The applicant must ensure that a certificate of occupancy for the
25 affordable units is issued before or within two (2) years after the date that the first building
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1 permit, other than for grading and shoring, is issued for the project using the bonus development,
2 or such later date as the Housing Director may approve based on delays that the applicant or
3 housing developer could not reasonably have avoided and conditioned on the security provided
4 under subsection C1d(ii) of this section being extended and increased as may be necessary. To
5 the extent the City receives payment through a letter of credit or other security in an amount
6 determined under subsection C1d(ii) of this section, the obligation of the applicant to provide
7 affordable units will be deemed satisfied.
8

9 (ii) The applicant shall provide to the City an irrevocable letter of
10 credit, or other sufficient security approved by the Housing Director, prior to and as a condition
11 of issuance of the first building permit, other than for grading and shoring, for the project using
12 the bonus development, unless completion of the affordable units has already been documented
13 to the satisfaction of the Housing Director and the affordable units are subject to recorded
14 restrictions satisfactory to the Housing Director. The letter of credit or other security shall be in
15 an amount and on terms so that at the end of the period specified in subsection C1d(i) of this
16 section, or on any earlier date thirty (30) days before the letter of credit or other security will
17 expire, if the housing does not qualify or is not provided in a sufficient amount to satisfy the
18 terms of this section, the City shall receive a cash payment for housing in the amount determined
19 pursuant to subsection C2 of this section, after credit for any affordable units then provided and
20 accepted by the Housing Director, plus an amount equal to interest on such payment, at the rate
21 equal to the prime rate quoted by Bank of America or its successor at the time the letter of credit
22 or other security is provided, plus three (3) percent per annum, from the date of issuance of the
23 first building permit, other than for excavation and shoring, for the project using the bonus
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1 development. If and when the City becomes entitled to realize on any such security, the Housing
2 Director shall take appropriate steps to do so, and the amounts realized, net of any costs to the
3 City, shall be used in the same manner as cash payments for housing made under this section.

4 e. No subsidies for bonused housing; Exception.

5 (i) The Housing Director may require, as a condition of any bonus
6 development under the performance option, that the owner of the lot upon which the affordable
7 units are located agree not to seek or accept any subsidies, including without limitation those
8 items referred to subsection C1e(ii) of this section, related to housing.
9

10 (ii) In general, no bonus development may be earned by providing
11 housing if:

12 (a) Any person is receiving or will receive with respect to
13 the housing any charitable contributions or public subsidies for housing development or
14 operation, including, but not limited to, tax exempt bond financing, tax credits, federal loans or
15 grants, City of Seattle housing loans or grants, county housing funds, or State of Washington
16 housing funds; or
17

18 (b) The housing is or would be, independent of the
19 requirements for the bonus development, subject to any restrictions on the income of occupants,
20 rents or sale prices.

21 (iii) The Housing Director may provide, by rule promulgated after
22 the effective date of this ordinance, for terms and conditions relating to exceptions to the
23 restriction on subsidies in this subsection when allowing an exception would result in a more
24 favorable outcome, in the opinion of the Housing Director.
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1 f. If the Housing Director certifies to the Director that either

2 (i) the applicant has provided the City with a letter of credit or
3 other sufficient security pursuant to subsection C1d(ii) of this section; or

4 (ii) there have been recorded one or more agreements or
5 instruments satisfactory to the Housing Director providing for occupancy and affordability
6 restrictions on affordable units with the minimum floor area determined under this section, all
7 affordable units have been completed, and the affordable units are on a different lot from the
8 bonus development or are in one or more condominium units separate from the bonus
9 development under condominium documents acceptable to the Housing Director,
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11 then any failure of the affordable units to satisfy the requirements of this subsection C shall not
12 affect the right to maintain or occupy the bonus development. Unless and until the Housing
13 Director shall certify as set forth in subsections C1f(i) or C1f(ii) of this section, it shall be a
14 continuing permit condition, whether or not expressly stated, for each project obtaining bonus
15 development based on the provision of housing under this subsection, that the affordable units
16 shall be maintained in compliance with the terms of this section, as documented to the
17 satisfaction of the Housing Director. The Housing Director may provide by rule for
18 circumstances in which affordable units may be replaced if lost due to casualty or other causes,
19 and for terms and conditions upon which a cash payment may be made in lieu of continuing to
20 provide affordable units under the terms of this subsection C1.
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1 g. The Housing Director is authorized to accept and execute agreements
2 and instruments to implement this section. Issuance of the certificate of occupancy for the project
3 using the bonus development may be conditioned on such agreements and instruments.

4 h. The housing owner, in the case of rental housing, shall provide annual
5 reports and pay an annual monitoring fee to the Office of Housing of sixty-five (65) dollars for
6 each affordable unit. In the case of affordable units for owner-occupancy, the recorded resale
7 restrictions shall include a provision requiring payment to the City, on any sale or other transfer,
8 of a fee of five hundred (500) dollars for the review and processing of documents to determine
9 compliance with income and affordability restrictions.
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11 2. Payment option.

12 a. In lieu of all or part of the performance option, an applicant may pay an
13 amount determined as follows, subject to the minimum and maximum amounts determined under
14 subsections C2b and C2c of this section:
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16 (1) Ten (10) dollars per gross square foot in each of the first four
17 (4) stories wholly or in part above the base height limit;

18 (2) Fifteen dollars (\$15.00) per gross square foot in each of the
19 next three (3) stories above those subject to subsection C2a(1) of this section;

20 (3) Twenty dollars (\$20.00) per gross square foot for the next four
21 (4) stories above those subject to subsection C2a(2) of this section;

22 (4) Twenty-five dollars(\$25.00) per gross square foot above those
23 subject to subsection C2a(3) of this section.
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1 b. The maximum payment in lieu is an average of eighteen dollars and
2 ninety-four cents(\$18.94) per gross square foot of bonus development; and

3 c. The minimum payment in lieu is an average of fifteen dollars (\$15.00)
4 per gross square foot of bonus development.

5 d. The Housing Director shall use cash payments and any earnings thereon
6 to support the development of low-income housing in any manner now or hereafter permitted by
7 RCW 36.70A.540, which may include support provided through loans or grants to public or
8 private owners or developers of housing and through loans or grants to low-income households
9 for home purchases.
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11 e. Cash payments shall be made prior to issuance, and as a condition to
12 issuance, of any building permit after the first building permit for a project, and in any event
13 before any permit for any construction activity other than excavation and shoring is issued,
14 unless the applicant elects in writing to defer payment. If the applicant elects to defer payment,
15 then the issuance of any certificate of occupancy for the project shall be conditioned upon
16 payment of the full amount of the cash payment determined under this section, plus an interest
17 factor equal to that amount multiplied by the increase, if any, in the Consumer Price Index, All
18 Urban Consumers, West Region, All Items, 1962-64=100, as published monthly, from the last
19 month prior to the date when payment would have been required if deferred payment had not
20 been elected, to the last month for which data are available at the time of payment. If the index
21 specified in this subsection is not available for any reason, the Director shall select a substitute
22 cost of living index. In no case shall the interest factor be less than zero (0).
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1 f. Payments in lieu of affordable units shall be deposited in a special
2 account established solely to support the development of low-income housing as defined in this
3 section, including the City's costs to administer projects, not to exceed ten (10) percent of the
4 payments. Earnings on balances in the special account shall accrue to that account.
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6 3. The Director and the Housing Director are authorized jointly to adopt rules to
7 interpret and implement the provisions of this subsection C, in addition to rules that may be
8 adopted by the Housing Director independently as authorized in this section.
9

10 4. Nothing in this section shall be construed to confer on any owner or developer
11 of housing any development rights or property interests. Because the availability and terms of the
12 allowance of bonus development depend on the regulations in effect at the relevant time for the
13 project proposing to use such bonus development, pursuant to SMC 23.76.026, any approvals or
14 agreements by the Housing Director regarding the eligibility of actual or proposed housing as to
15 satisfy conditions for bonus development do not grant any vested rights, nor guarantee that any
16 bonus development will be permitted based on such housing.
17

18 Section 4. Section 23.48.016 of the Seattle Municipal Code, which section
19 was last amended by Ordinance 122611, is amended to add a new subsection C as follows:
20

21 **23.48.016 Standards applicable to specific areas.**

22 * * *

23 C. Seattle Mixed/D 40-85 and /D 40-65
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1 1. Height Limit for Nonresidential Uses. Structures in the SM/D 40-85 or the
2 SM/D 40-65 zone are subject to a height limit of 40 feet, except as otherwise provided in this
3 subsection C.

4 2. Additional Height for Certain Structures with Only Residential Uses Above
5 Forty (40) Feet. Structures in the SM/D 40-85 zone that have only residential uses above a
6 height of forty (40) feet have a maximum height limit of eighty-five (85) feet and structures in
7 the SM/D 40-65 zone that have only residential uses above a height of forty (40) feet have a
8 maximum height limit of sixty-five (65) feet, in each case only if the applicant provides low-
9 income housing, or a payment in lieu thereof, pursuant to section 23.48.011.

10 3. Building Setbacks on W. Dravus Street. For any structure allowed additional
11 height under subsection C2 of this section, the portion of the structure above forty-five (45) feet
12 in height shall be set back at least fifty (50) feet from W. Dravus Street, except as provided in
13 subsections C4 and C5 of this section.

14 4. Projections Allowed in Setback. When a setback is required under subsection
15 C3 of this section, the first four (4) feet of horizontal projection of decks, balconies with open
16 railings, eaves, cornices, and gutters are permitted in the required setback.

17 5. Exceptions and Rooftop Features. Height in addition to the limit applicable
18 under subsection C1 or C2 of this section, and in addition to the limit applicable in a required
19 setback area under subsection C3 of this section, is allowed for pitched roofs and certain rooftop
20 features as set forth in subsections D and E of Section 23.48.010.

21 Section 5. Attached to this ordinance is a zoning map, identified as Exhibit A and
22 incorporated herein by this reference. The Official Land Use Map, as adopted by Section
23

1 23.32.016 and as previously amended, is amended to rezone certain land shown on pages 72-73
2 from C2-40 to SM/D 40-85 and SM/D 40-65, as shown on Exhibit A. This section shall not take
3 effect until creation of a Local Improvement District formed for the purpose of financing the
4 transportation improvements identified on Exhibit B to this ordinance, which is incorporated
5 herein by this reference. For purposes of this section, a Local Improvement District will be
6 considered created on expiration of the protest period specified in RCW 35.43.180, after the
7 passage of an ordinance establishing such district and ordering such improvements, without the
8 filing of a protest divesting the City of the authority to proceed.
9

10 Section 6. Effective Date. Except as otherwise expressly provided, this ordinance shall
11 take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not
12 approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as
13 provided by Municipal Code Section 1.04.020.
14

15 Passed by the City Council the ____ day of _____, 2008, and
16 signed by me in open session in authentication of its passage this
17 ____ day of _____, 2008.
18

19
20 _____
21 President _____ of the City Council

22 Approved by me this ____ day of _____, 2008.
23

24
25 _____
26 Gregory J. Nickels, Mayor
27

Filed by me this ____ day of _____, 2008.

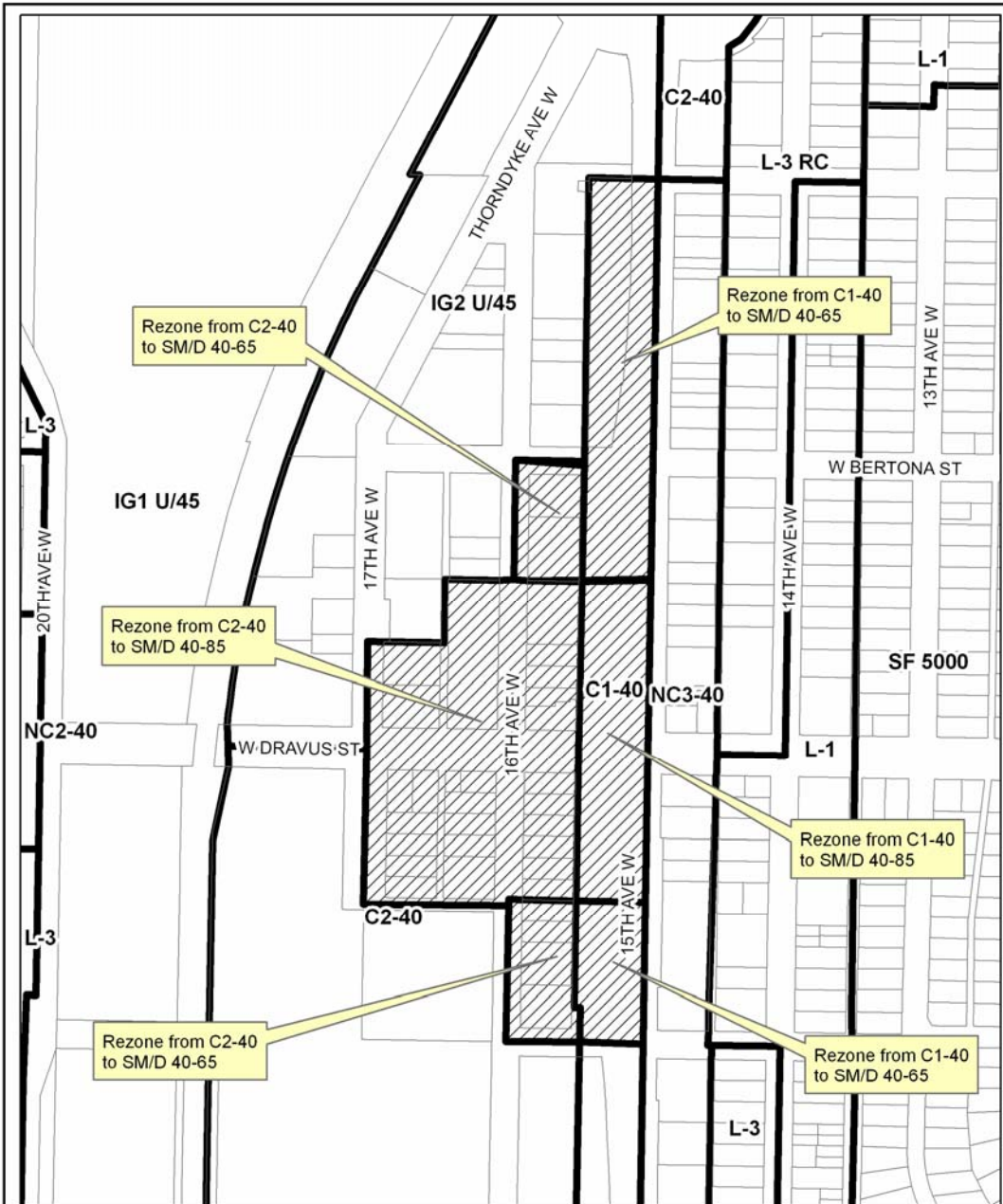
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City Clerk

(Seal)




Attachments: Exhibit A: Map of Rezones
Exhibit B: Schedule of Improvements

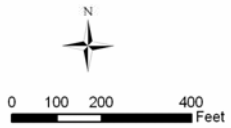
Exhibit A



15TH Ave W and
W Dravus St
Rezone

Legend

-  Rezone Area
-  King County parcel outlines
-  Zone boundaries



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Prepared March 14, 2008 by DPD-GIS

Exhibit B
W. Dravus Study Area
Transportation Impact Mitigation Improvements

- 1. Install traffic signal at the W Dravus Street/17th Avenue W intersection.** This intersection nearly meets signal warrant requirements today, and would certainly meet them with the additional traffic generated by new development. A signal at this location would also facilitate access control measures for vehicles and pedestrian crossings on W Dravus Street.
- 2. Provide left turn lanes on 17th Avenue W approaching the intersection of W Dravus Street.** Provide for dual-left-turn movement on the southbound approach to this intersection (one left-turn lane and one left-thru-right lane). This would require that the intersection have “split phasing” for the northbound and southbound movements. This configuration was evaluated and would result in LOS C operating conditions. The intersection would have the same level of service with single left turn lanes and conventional signal phasing, but the dual-left-turn movement would reduce queue lengths.
- 3. Restrict left turn movements from 16th Avenue W onto W Dravus Street.** This intersection is too close to the interchange at 15th Avenue W to be signalized. Without a signal, left-turn movements could experience long delays and queues. With the proposed signal at 17th Avenue W, these movements can be diverted to that location, which would improve operations and safety. The LOS C condition at W Dravus Street/17th Avenue W assumes the additional traffic associated with this restriction. Left turns from W Dravus Street to both directions of 16th Avenue W should be retained.
- 4. Control access to W Dravus Street between 16th and 17th Avenues W.** Restrict driveways on W Dravus Street to right-turn only for exiting movements. Depending on the separation from adjacent intersections, left-turn movements from W Dravus Street could be allowed. To the extent possible, all access should be directed to 17th Avenue W.
- 5. Improve the intersection at W Bertona Street/15th Avenue W southbound ramp.** This intersection is located at the diverge area for the 15th Avenue W off-ramp. Stripe and separate in-bound (westbound) movements to W Bertona Street from through movements and enlarge the corner radii to accommodate higher-speed maneuvers. Outbound (eastbound) movements should either be prohibited or restricted to right-turn-only onto the ramp. Extend the ramp gore area to prevent eastbound turns directly to the mainline of 15th Avenue W.
- 6. Improve the W Dravus Street/15th Avenue W interchange.** The intersection at the northbound ramps is projected to operate at a poor LOS F in the future if it continues to operate in the all-flash mode during the PM peak hour. The LOS F condition would occur with or without the proposed rezone. Upgrade the signal system at the W Dravus Street/15th Avenue W interchange. With the signal system upgrade[?], the intersection would operate at better than the no action conditions.