ATTACHMENT A

GREEN

FINDINGS AND RECOMMENDATION OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Application of **CF 312357**

KEVIN CLEARY, BAYLIS ARCHITECTS
For Wallace GT-Northgate II, LLC

DPD Project No.: 3014776

for a contract rezone of property addressed as 525 Northeast Northgate Way

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Introduction

The applicant, Wallace GT-Northgate II, LLC, seeks a contract rezone from NC3-65 to NC3-85 (actual development height would be limited to 70 feet under a Property Use and Development Agreement) for 72,983 square feet of property located at 525 NE Northgate Way.

The public hearing on this application was held on June 4, 2013, before the undersigned Deputy Hearing Examiner. The Director's SEPA determination on the proposal was not appealed. Represented at the hearing were the Director, Department of Planning and Development (DPD), by Bruce Rips, Senior Land Use Planner; and the applicant, by Aaron Laing, attorney at law. The record was held open after the hearing for the Examiner's inspection of the site on June 9, 2013.

For purposes of this recommendation, all section numbers refer to the Seattle Municipal Code ("SMC" or "Code"), as amended, unless otherwise indicated. After due consideration of the evidence elicited during the hearing, the following shall constitute the findings of fact, conclusions and recommendation of the Hearing Examiner on this application.

Findings of Fact

Site and Vicinity

1. The site is addressed as 525 NE Northgate Way, and is located mid-block between 5th Avenue NE and 8th Avenue NE on the south side of NE Northgate Way. Northgate Mall is approximately one block west of the site.

2. The site is approximately 72,985 square feet and is currently being developed under MUP 3012842, which was approved by DPD on February 7, 2013. That decision approved a seven-story structure with 253 residential units above and below-grade parking for 269 vehicles on the property, within the existing 65-foot height limit. The older single-story buildings formerly on the site were demolished as part of the site preparation under the issued MUP.

3. The property is bounded by NE Northgate Way to the north and by an alley to the south. There is a one-story Sleep Country store to the east and to the west is a six-story mixed-use structure, the 507 Northgate building, which separates the site from Northgate Mall. An eight-story apartment complex is located one-half block north along 8th Avenue NE, and there is a Target/Best Buy site a half-block to the northwest. Other nearby development includes a mix of residential and commercial uses. A City park, Hubbard Homestead Park, is located northeast of the site, and Northgate Park is approximately three blocks to the south.

4. NE Northgate Way is a principal arterial. Fifth Avenue NE is a minor arterial, and 8th Avenue NE is a non-arterial access street.

5. The topography in the area slopes gently from west to east and from north to south. There are no Environmentally Critical Areas on the site and it is not within the shoreline environment.

6. The site is zoned Neighborhood Commercial 3 with a 65-foot height limit (NC3-65) and is located within the Northgate Urban Center and the Northgate Overlay District. The surrounding area is zoned NC3. The northern portion of Northgate Mall has an 85' height limit; the southern portion of the Mall and the Thornton Place complex south of NE 105th Street has a 125' height limit. East of Fifth Avenue NE and south of NE Northgate Way, the height limit is 65' and continues to step down in height to a 40' limit east of Eighth Avenue NE. North of NE Northgate Way, the zoning ranges from NC3-85 across from the mall, to NC3-40 and NC3-64 along the NE Northgate Way corridor. Properties north of the commercial corridor are zoned Multi-family Midrise and Lowrise 3.

Proposal

7. The proposal is for a seven-story mixed-use structure with 24,614 square feet of commercial use fronting NE Northgate Way, 266 residential units above, and parking for 269 vehicles provided at- and below-grade.

8. As noted above, DPD has issued MUP approval to the applicant for a seven-story mixed-use project with 253 residential units above commercial space, with 269 parking spaces at the 65-foot height limit.

9. The applicant seeks a contract rezone in order to add five feet of additional height to the project. The additional height would allow for increased floor-to-ceiling heights in the commercial spaces (without reducing residential ceiling heights), thus allowing for a greater variety of potential retail tenants, e.g., those with minimum "clear" standards such as small grocers or drugstores. The revised development proposal adds 12 additional residential units (which are permitted under the current zoning). While the proposed rezone is for an NC3-85 designation, the applicant proposes a PUDA to limit the development height at this site to 70 feet.

Zoning history

10. The site, together with the surrounding parcels, was rezoned from Commercial 1-65 to NC3-65 in conjunction with the 1993 adoption of the Northgate Area Comprehensive Plan and the Northgate Overlay District. The Northgate Comprehensive Plan was amended in 2004 and 2012, and serves as the neighborhood plan for the Northgate area.

11. In 2009, the City issued the Northgate Urban Center Rezone Final Environmental Impact Statement (FEIS), examining alternatives for zoning changes in the area. The FEIS included discussion of a No Action Alternative and three action alternatives to amend the subarea plan, as well as potential Code amendments. The subject site is located within Subarea D of the Northgate Urban Center.

12. Alternative 1 in the FEIS, titled "Broad Rezone," involved a rezone of all properties within the study area, increasing density or height relative by one increment relative to their current zoning; e.g., the subject site would be rezoned to NC3-85. Alternative 2, the "Focused Rezone," would have rezoned the site and surrounding properties by one increment in height, again resulting in the site being rezoned to NC3-85. Alternative 3, the "Urban Design Framework," would have increased the height of the site and the surrounding properties to NC3-125.

13. The FEIS concluded that none of the alternatives, including Alternative 3 with a 125-foot height limit, would result in significant unavoidable land use impacts.

14. The Applicant's information indicates that the proposed development of the site at a 70-foot height limit will result in the highest vertical elevation of the building achieving 344.8 feet. The adjacent development to the west, the 507 Northgate Building, achieves a highest vertical elevation of 354.68 feet.

15. The Applicant has submitted a shadow study which compares the impacts of shadows cast by the building at 65 feet and at the proposed 70 feet. Ex. 8.

Design review and DPD decision

16. The proposal under MUP 3012842 was reviewed by the Northeast Design Review Board. At its Final Recommendation Meeting on November 19, 2012, the Board unanimously recommended approval of the design, the requested development standard departures, together with recommended conditions.

17. The Director's MUP decision and recommendation was issued on May 2, 2013. The Director granted design review approval with the conditions recommended by the Board.

18. The Director's SEPA decision analyzed the proposal's potential long-term and short-term environmental impacts and imposed conditions to mitigate construction-related impacts and to address access between the site and nearby roads and property. In addition, the Northgate Coordinated Investment Transportation Plan (CTIP) requires that the project is required to help fund, on a pro-rata basis, those capital projects identified in the CTIP, and the Director has identified this condition in the SEPA decision. (The applicant has already paid its pro-rata share of $61,187.)

19. No appeals of the SEPA or Design Review decisions were filed with the Hearing Examiner.

20. The Director recommends approval of the proposed contract rezone with a PUDA to limit the height at this site to 70 feet.

21. Three public comment letters were received by the Department on the rezone application expressing support for the proposed height increase. No written comments were submitted to the Hearing Examiner and no member of the public offered testimony at the hearing.

Codes

22. SMC 23.34.007 provides that "*In evaluating proposed rezones, the provisions of this chapter shall be weighed and balanced together to determine which zone or height designation best meets those provisions.*" The section also states that "*No single criterion or group of criteria shall be applied as an absolute requirement or test of the appropriateness of a zone designation, nor is there a hierarchy or priority of rezone considerations, unless a provision indicates the intent to constitute a requirement or sole criterion.*

23. SMC 23.34.008 states the general rezone criteria. The criteria address the zoned capacity and density for urban villages; the match between the zone criteria and area characteristics; the zoning history and precedential effect of the rezone; neighborhood plans that apply; zoning principles that address relative intensities of zones, buffers, boundaries; impacts of the rezone, both positive and negative; any relevant changed circumstances; the presence of overlay districts or critical areas, and whether the area is within an incentive zoning suffix.

24. SMC 23.34.009 addresses the designation of height limits in a commercial or industrial zone. Under this section, the factors to be considered are the function of the zone; the topography of the area and its surroundings; height and scale of the area; compatibility with the surrounding area; and neighborhood plans.

Conclusions

1. The Hearing Examiner has jurisdiction to make a recommendation on the proposed rezone to City Council, pursuant to SMC 23.76.052.

2. Under SMC 23.34.007, the rezone provisions are to be weighed and balanced to determine the appropriate zone designation. No single criterion or group of criteria are to be applied as an absolute requirement or test of appropriateness of a zone designation, nor is there a hierarchy or priority of rezone considerations unless specified by the Code. The subject site is in the Northgate Urban Center and is therefore subject to the provisions of Chapter 23.34 SMC that apply to urban centers and villages. The proposal is not a shoreline environment redesignation and is not a correction of a mapping area, so the provisions of SMC 23.34.007 which apply to such actions, do not apply to this application.

General rezone criteria

3. Effect on zoned capacity. SMC 23.34.008.A requires that, within the urban center or urban village, the zoned capacity taken as a whole shall be no less than 125 percent of the applicable adopted growth target, and not less than the density established in the Comprehensive Plan. The adopted growth target is for an additional 2,500 additional dwelling units between 2004 and 2024, and the target density is for 15 dwelling units per acre by 2024. The proposed rezone would not reduce the zoned capacity for the Northgate Urban Center; zoned capacity will continue to exceed 125 percent of the growth target for the Northgate Urban Center. The proposal would therefore meet this standard.

4. Match between zone criteria and area characteristics. The most appropriate zone designation is that for which the provisions for designation of the zone type and the locational criteria for the specific zone, match the characteristics of the area to be rezoned better than any other designation. In this case, no change is proposed to the NC3 designation, and the NC3 criteria continue to match the characteristics of the area better than any other zone designation. The proposed change to the height designation is discussed below.

5. Zoning history and precedential effect. Under this criterion, the previous and potential zoning changes, both in and around the proposal site, are to be examined. Recent zoning changes in the area include the approved rezones, from Midrise to NC3-85, for properties located approximately five blocks west of this site, at 11300 and 11301 Third Avenue NE. The proposed height increase would be consistent with potential zoning changes that have been considered for this site and the area in the Northgate Comprehensive Plan and FEIS, as well as actual zoning changes nearby. The rezone for additional height could be precedential, although such a trend would seem to be consistent with the Northgate Comprehensive Plan goals and policies which relate to increasing density and intensity of uses in the Northgate core area,

6. Neighborhood Plans. The site is within the boundaries of the adopted Northgate Comprehensive Plan, which is the neighborhood plan for this area. The 1993 Northgate Comprehensive Plan was the basis for the 1993 rezone of the site from C1-65 to NC3-65. The current Northgate Comprehensive Plan does not analyze the site for rezoning, nor does it specify criteria for evaluating future rezones for this site.

7. The proposed rezone is generally consistent with several goals and policies of the Plan. The proposed development at the increased height would allow for redevelopment of the former low-rise retail site, and would implement NG-G2, which calls for *"A thriving, vital, mixed-use center of concentrated development surrounded by healthy single family neighborhoods."* The rezone of this site within the Northgate core would be consistent with NG-G4, which provides: *"the most intense and dense development activity is concentrated within the core"* and NG-P1, *"Encourage development of the core...with densities sufficient to support transit."* The proposed height increase facilitates the project's inclusion of attractive street level commercial spaces which is consistent with NG-P8.5 *("Support future potential rezones to higher intensity designations in the North Core Subarea. In considering such rezones, pay particular attention to the development of an environment that creates a network of pedestrian connections and that encourages pedestrian activity.")* NG-P7 calls for maintenance of a *"transition between zones where significantly different intensities of development are allowed;"* the proposal would not affect the transition between the existing NC zoning and the adjacent properties or lowrise multi-family and single family zones several blocks to the north, south and east. The NC3-40 and NC3-65 properties to the east and south will provide a buffer to the Lowrise zones further south and east.

8. Zoning principles. Zoning principles are to be considered, including impacts on less intensive zones and transitions, physical buffers, zone boundaries and height limits. The proposed height change, together with the project's height limit of 70 feet, will reduce or eliminate the impacts of the proposed NC3-85 zone on the adjacent NC3-65 and NC3-40 zones, which will continue to provide a buffer between the site and the LR3 zones further south and east. The relatively small height increase of five feet will not create shadowing or blockage of views, and the site's topography is on average ten feet lower than the adjacent site to the west.

9. There are no natural physical buffers which would separate the zones in this area, but NE Northgate Way separates the site from the NC3-65 area to the north. The existing zone transition in this area is from more intense zoning to the west and north, to less intense zoning to the east and south. The zone boundaries would, consistent with this criterion, follow platted lot lines. The boundaries between commercial and residential areas would not be changed. The subject site is located within an urban village, the Northgate Urban Center, so that height limits greater than forty feet can be considered.

10. Impact evaluation. The proposed height limit increase to 70 feet would not affect the allowable uses, or add floors or floor area to what is allowed under the existing zoning designation. Except for potentially some minimal increase in shadowing on NE

Northgate Way (see Ex. 8, shadow study), no negative environmental impacts would be caused by the height increase. The Director's evaluation of the impacts of this proposal relative to the other factors and on service capacities are adopted and incorporated by reference. The proposal would meet this criterion.

11. Changed circumstances. Changed circumstances are to be taken into account, but are not required to demonstrate whether a proposed rezone is appropriate. Since the 1993 designation of this site, the 2024 growth target for the Northgate Urban Center has been adopted, and language has been added to the Northgate Comprehensive Plan that encourages higher intensity designations in the Northgate core area in which the site is located. The changes are consistent with the proposed height increase.

12. Overlay districts. The site is within the Northgate Overlay District. SMC 23.71.002 identifies the purposes of the Overlay District as: *"A. Create an environment in the Northgate Area that is more amenable to pedestrians and supportive of commercial development; and B. To protect the residential character of residential neighborhoods; and C. Support the use of Northgate as a regional high-capacity transportation center."*

13. The proposed height increase would not conflict with any of the District's purposes and the underlying development project would further the purpose of increasing pedestrian amenities and commercial development.

14. Critical areas. There are no environmental critical areas on or adjacent to the site, so this criterion does not apply.

15. Incentive provisions. The site is not located within a zone with an incentive zoning suffix, so this criterion does not apply.

Height Limits

16. Height limits of the proposed rezone. Under SMC 23.34.009, several factors are to be examined. The height limits are to be consistent with the type and scale of development intended for the zone classification. NC3 zones are intended for intense commercial activity and the proposed height increase is consistent with the type and scale of NC3 development. The increase height limit is not expected to displace preferred uses. The demand for permitted goods or services may be expanded since the additional floor-to-ceiling heights that can be accommodated as a result of the height increase may facilitate commercial and residential spaces that are more desirable for consumers.

17. The topography of the area and its surroundings are also to be considered. The site slopes gradually from west to east with an approximately ten-foot grade change across the site. The adjacent 65-foot mixed-use structure to the west is ten feet higher than the height that would be achieved by the development on this site if the rezone is

granted, so the rooflines would appear to be at the same height. No view blockage is likely.

18. The height and scale of the area are to be considered. The proposed rezone with a limit of 70 feet is consistent with other NC3-65 zoning in the area, and will be compatible with the height and scale of existing development. The proposed height limit would be compatible with actual and zoned heights in the surrounding area, which includes several buildings of comparable or greater height and bulk; e.g., the 507 Northgate building immediately west of the site; the Target/Best Buy a half block to the northwest, and the seven-story apartment complex one-half block north along Eighth Avenue.

19. Neighborhood Plans. The adopted Northgate Area Comprehensive Plan does not recommend or require specific height limits.

20. The proposed rezone to NC3-85 with a limit of 70 feet, would be consistent with the criteria of SMC 23.34.009.

21. On balance, the proposed rezone meets the provisions of Chapter 23.34. Therefore, the Examiner recommends approval of the proposed rezone with the condition set forth below.

Recommendation

The Hearing Examiner recommends **APPROVAL** of the rezone with a PUDA that limits the height of the proposed structure to 70 feet.

Entered this 17th day of June, 2013.

Anne Watanabe
Deputy Hearing Examiner

The following conditions are included in the DPD MUP decision dated May 2, 2013:

Prior to issuance of the building permit:

1. A transportation route plan shall be provided to DPD and SDOT; this plan shall document proposed truck access to and from the site, and shall indicate how pedestrian connections around the site will be maintained during the construction period.

2. Provide a construction worker parking plan with the intent to reduce on-street parking. Construction workers may park on-site once the garage is completed.

3. The development is required to help fund proximate capital project identified in the CTIP on a pro-rata basis. The total amount of this pro-rata contribution is $61,187. The requested amount shall be applied to a specific CTIP project: the planned Northgate Way Corridor Signal Optimization and Prioritization (CTIP Project E-1). Payment of the $61,187 shall occur prior to issuance of a building permit.

During construction

4. Grading, delivery and pouring of concrete and similar noisy activities will be prohibited on Saturdays and Sundays. In addition to the Noise Ordinance requirements, to reduce the noise impact of construction on nearby residences, only the low noise impact work such as that listed below, will be permitted on Saturdays from 9:00 A.M. to 6:00 P.M.:
   A. Surveying and layout.
   B. Testing and tensioning P.T. (post-tensioned) cables, requiring only hydraulic equipment (no cable cutting allowed).
   C. Other ancillary tasks to construction activities will include site security, surveillance, monitoring, and maintenance of weather protecting, water dams and heating equipment.

5. In addition to the Noise Ordinance requirements to reduce the noise impact of construction on nearby properties, all construction activities shall be limited to the following:
   A. Non-holiday weekdays between 7:00 A.M. and 6:00 P.M.
   B. Non-holiday weekdays between 6:00 P.M. and 8:00 P.M. limited to quieter activities based on a DPD-approved mitigation plan and public notice program outlined in the plan.
   C. Saturdays between 9:00 A.M. and 6:00 P.M. limited to quieter activities based on a DPD-approved mitigation plan and public notice program outlined in the plan.
   D. Emergencies or work which must be done to coincide with street closures, utility interruptions or other similar necessary events, limited to quieter activities based on a DPD-approved mitigation plan and public notice program outlined in the plan.

6. Non-noisy activities, such as site security, monitoring, weather protection, shall not be limited by this condition.

7. Large (greater than two-axle) trucks will be prohibited from entering or exiting the site after 3:30 P.M.

8. 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.

Prior to Building Occupancy

9. Construct a modified and improved access connection south to the existing east-west access road that will allow access to both Fifth Avenue Northeast (to the west) and Eighth Avenue (to the east).

Permanent for the Life of the Project

10. The north access to/from NE Northgate Way shall be restricted to allow only right-in/right-out movements.

CONCERNING FURTHER REVIEW

NOTE: It is the responsibility of the person seeking further review to consult appropriate Code sections to determine applicable rights and responsibilities.

Pursuant to SMC 23.76.054, any person substantially affected by a recommendation of the Hearing Examiner may submit an appeal of the Hearing Examiner's recommendation to the City Council. The appeal must be submitted within fourteen (14) calendar days following the date of the issuance of the Hearing Examiner's recommendation, and be addressed to: Seattle City Council Planning, Land Use and Sustainability Committee, c/o Seattle City Clerk, 600 Fourth Avenue Floor 3, P.O. Box 94728. Seattle, WA 98124-4728. The appeal shall clearly identify specific objections to the Hearing Examiner's recommendation and specify the relief sought.