

BEFORE THE HEARING EXAMINER FOR
THE CITY OF KENMORE

In the Matter of the SEPA Appeal of:

THE LODGE AT ST. EDWARD

FINAL SITE PLAN RECOMMENDATION
AND DECISION ON FEIS APPEAL
NO. CSP16-0077

How to Use this Document

This Recommendation and Decision is more than 50 pages long, but it is designed to provide easy and direct access to whatever information the reader needs to evaluate The Lodge at St. Edward project. Please note that this Recommendation and Decision makes a recommendation on a site plan application and a final decision on an appeal on the adequacy of the Final Environmental Impact Statement (“FEIS”) for the project. The City Council only needs to make a decision on the site plan application, which is addressed in the first 19 pages of this Recommendation and Decision. A two-page summary of the Recommendation and Decision is provided at p. 5. An overview of the project is detailed in Finding of Fact (“FOF”) No. 3, p. 7. The Table of Contents below identifies where every issue concerning the proposal is addressed in this Recommendation and Decision. A summary of the two days of hearing testimony is attached as Appendix A. The summary includes citations to every five pages of hearing transcripts, so that it should be easy to locate the summarized testimony in the transcripts themselves. As noted in the summary of this Recommendation and Decision, the major outstanding issue of concern for the proposal is parking. That issue is addressed in more detail in FOF No. 7, 8, 9(A) and 12 and Conclusions of Law (“COL”) No. 2, 7, and 8. An overview of the proposal’s conformance to the City’s development standards is provided in FOF No. 9.

TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
SUMMARY	5
ORAL TESTIMONY.....	6
EXHIBITS	6
FINDINGS OF FACT (SITE PLAN AND FEIS)	7
Procedural	7
1. Applicant.....	7
2. Hearing.....	7
Substantive.....	7
3. Site/Proposal Description.....	7
4. Characteristics of the Area.....	8
5. History of the Site Prior to Acquisition by Washington State Parks.	8
6. Washington State Parks Efforts to Use the Site.....	8
SITE PLAN.....	9
Findings of Fact	9
7. Primary Use of Proposal.	9
8. Conference Use Doesn't Add Significantly to Traffic Generation.....	10
9. Conformity to Development Standards	10
10. Compatibility with Character and Appearance of Existing Development.....	16
Conclusions of Law	17
1. Authority of Hearing Examiner	17
2. Proposal Properly Classified as a Hotel Use.....	17
3. Review Criteria	18
SEPA APPEAL (State Environmental Policy Act, chapter 43.21C RCW).....	19
Conclusions of Law	19
4. Examiner Authority.	19
5. Standard of Review	20
Appeal Issue No. 1	21
Conclusion of Law	21
6. WAC 197-11-080 and WAC 197-11-335.....	21

Appeal Issue No. 2.....	22
Findings of Fact for Appeal Issue No. 2.....	22
11. Issue as Presented	22
12. Parking	22
13. Marbled Murrelet	27
14. Noise	31
15. Light; Light and Glare	32
16. Wildlife	32
Conclusions of Law for Appeal Issue No. 2.....	33
7. Parking FEIS Analysis Adequate.....	33
8. Sufficient Basis for Parking Monitoring Plan.....	34
9. Impacts to Marbled Murrelets Too Remote and Speculative	35
10. FEIS Analysis of Noise Impacts Adequate.....	35
11. FEIS Adequately Assesses Light Impacts	36
12. SEPA Condition Requiring Enhanced Lighting Plan Justified.....	36
13. FEIS Adequately Addresses Wildlife Impacts	37
14. SEPA Condition Requiring Posting of Hour Restrictions Justified	37
15. Public Services and Other Issues Dismissed as Abandoned.....	37
16. Remaining Appeal No. 2 Issues Dismissed as Abandoned	37
Appeal Issue No. 3.....	38
FOF 17. Issue as Presented	38
COL 17. FEIS Adequately Addresses Flora Impacts	39
Appeal Issue No. 4.....	39
Appeal Issue No. 5.....	39
Appeal Issue No. 6.....	39
FOF 18. Issue as Presented.....	40
COL 18. FEIS Adequately Assessed Trip Generation Impacts	41
Appeal Issue No. 7.....	41
Appeal Issue No. 8.....	42
COL 19. Parking Mitigation Meets Requirements of SEPA Rules	42
Appeal Issue No. 9.....	43
COL 20. Parking Mitigation Compliant with SEPA Rules	43
Appeal Issue No. 10.....	43

IMPCOL 21. Methodology of Parking and Traffic Analysis Adequate	44
Appeal Issue No. 12	44
FOF 19. Issue as Presented	44
COL 22. FEIS Analysis of Cumulative Traffic and Wildlife Impacts Adequate	45
Appeal Issue No. 13	45
COL 23. FEIS Analysis of Cumulative Impact of Ballfields Adequate	45
Appeal Issue No. 14 – 16	45
Appeal Issue No. 17	45
FOF 20. Issue as Presented	46
COL 24. CAMP Subject to Examiner Jurisdiction	48
COL 25. FEIS Adequately Addresses Impacts Related to Conformance to CAMP	48
Appeal Issue No. 18	48
FOF 21. Issue as Presented	48
COL 26. Parking Mitigation Compliant with SEPA Rules	49
Appeal Issue No. 19	49
FOF 22. Issue as Presented	49
COL 27. Responses to DEIS Comments Consistent with SEPA Rules.....	51
Appeal Issue No. 20	51
Appeal Issue No. 21 and 22	51
Appeal Issue No. 23	51
COL 28. Dismissed as Based on Inapplicable Threshold SEPA Rules	51
Appeal Issue No. 24	52
Appeal Issue No. 25	52
COL 29. Appeal Issue No 25 Dismissed as Violation of KMC 19.30.080	52
DECISION	52
Recommended Mitigation as Exercise of SEPA Substantive Authority	54

SUMMARY

This document is a recommendation from the Hearing Examiner on a site plan application and a final decision on an appeal of the adequacy of a Final EIS (FEIS) associated with the site plan application. It is recommended that the City Council approve the site plan application. The FEIS is found to be adequate and its appeal is denied.

The Applicant proposes to convert the 80,900-square foot seminary building in St. Edward Park into a lodge with 16,600 square feet of conference facilities and approximately 35,000 square feet of lodging space. Exterior modifications are limited to (1) the addition of a multi-level parking garage in the middle of the grounds that is slightly above ground level, (2) expanded surface parking, (3) replacement of an outdoor volleyball court listed in the National Register of Historic Places with an organic garden, and (4) landscaping. An overview of the exterior changes in the proposal is readily observed by comparing the site plan of the proposal, FEIS Figure 2-4, with the aerial site map of the proposal, FEIS Figure 2-3. Washington State Parks has approved a 62-year lease granting the Applicant 5.5 acres of seminary grounds to use for this purpose.

Although exterior modifications are arguably modest, the project has been of significant public concern. The project is in a historically registered structure amid historically registered grounds in the middle of a 316-acre park on the shores of Lake Washington. To further complicate matters, the City is also involved in the concurrent development of ballfields in St. Edward Park. The impacts associated with these special circumstances have resulted in thousands of pages of documented analysis and two full days of hearing before the Hearing Examiner.

The Applicant and City staff have done a thorough job in addressing all impacts and ensuring that they are fully mitigated to legislatively acceptable levels. During the hearing, the Applicant's owner, project manager and architect demonstrated significant experience and sensitivity in working with historical properties and assuring that they are maintained for public as well as private benefit. Public access is required by the Applicant's lease to the outdoor seminary grounds and interior common areas of the seminary building. The one and significant deficiency in the Applicant's evaluation of project impacts is parking. Under any common sense or technical evaluation of the Applicant's parking analysis, it is unreasonable to conclude from the underlying data that the proposed 153 parking will meet parking demand on a regular basis.

The FEIS addresses parking demand, concluding at page 1-10 that the 153 spaces "*would meet the demand for most conference/meeting events.*" Upon questioning of the Applicant's traffic engineer, it was revealed that the data used to reach this conclusion did not provide that assurance. The conclusion was based upon an evaluation of seven¹ days of conference attendance in January, 2013 at Cedarbrook Lodge in the City of SeaTac. The traffic engineer recognized that parking data from Cedarbrook may

¹ The traffic study noted that traffic counts were taken over seven days between January 11, 2013 and January 20, 2013. DEIS, Appendix H, att. B, p 1. It's unclear from the study whether conference guest counts were limited to the days traffic counts were taken or whether the guest counts were taken over the entire time frame from January 11, 2013 through January 20, 2013.

be skewed low, since the proximity of the lodge to Sea-Tac Airport meant that some conference guests would access the site by taxi or shuttle. Prorating conference attendance down to the somewhat smaller size of the Applicant's proposal, the daily average conference attendance for the proposal would be 129 conference guests per day. With parking demand at the rate of 0.9 parking spaces per conference guest, this leaves 37 parking spaces for lodging guests. At 0.45 parking spaces needed per occupied hotel room, this means that on average the hotel rooms cannot be more than 82% occupied to avoid exceeding parking supply. In the Applicant's favor, it is recognized that the Institute of Transportation Engineers (ITE) Parking Generation manual estimates a need for only 89 parking spaces at the site. But this estimate is based upon a "hotel" category that doesn't distinguish between hotels with conference rooms and those without. 129 conference guests comprises less than a third of the functional capacity of the proposed conference center. In the FEIS, the Applicant noted that maximum functional capacity would be 550 conference guests. These numbers make it questionable that parking supply will be sufficient under "most" circumstances. In the absence of any other data in the record, it is reasonable to be skeptical about the sufficiency of parking.

In order to ensure that parking will be sufficient, it is recommended that the City Council impose a condition requiring monitoring of parking sufficiency over a three-year period. If parking proves deficient, the Applicant would have to institute mitigation measures from a menu of options that includes restricting the sizes of events, requiring the acquisition of off-site parking rights, or amending the site plan for additional parking.

ORAL TESTIMONY

A summary of the two days of hearing is attached as Appendix A.

EXHIBITS

An exhibit list is attached as Appendix B.

FINDINGS OF FACT (SITE PLAN AND FEIS)

Procedural²

1. Applicant. The Applicant is Daniels Real Estate.
2. Hearing. A hearing on the site plan application and FEIS appeal was held on March 1 and March 2, 2017. The FEIS Appeal and site plan hearings were consolidated, meaning that one combined hearing was held for the site plan application and FEIS appeal, creating one administrative record. The hearing commenced with testimony on the site plan application, where anyone could testify. Once the site plan testimony was concluded, testimony was allowed for the FEIS appeal. Only the Applicant, SEPA Appellant, Property Owner (Washington State Parks) and City were allowed to participate in the FEIS appeal portion of the consolidated hearing.

Substantive

3. Site/Proposal Description. The Applicant proposes to convert the 80,900-square foot seminary building in St. Edward State Park into a lodge with conference facilities. Washington State Parks has approved a 62-year lease granting the Applicant to use 5.5 acres of seminary grounds for this purpose. Existing land uses within the lease area include: the former St. Edward Seminary Building, a gymnasium, swimming pool building, volleyball court, surface parking, and open space (south of the pool building). As part of the lease, the applicant would acquire and dedicate to State Parks for public use and benefit an approximately 9.9-acre, privately-owned parcel that is located contiguous to the northwest corner of the park.

The applicant proposes to rehabilitate the existing deteriorating St. Edward Seminary building for use as a lodge-type hotel with up to 100 guest rooms, 16,600 square feet of meeting/conference rooms, administrative spaces, an exercise facility/wellness spa, restaurant and a café. A portion of the meeting/conference room space could potentially be utilized for a variety of programming uses, including classes, events and programs in support of outdoor education and recreation including a 1,250 to 2,000 square foot portion of which would be used by a non-profit organization or public institution. Section 2.4 of the lease requires the Applicant to provide public access to the seminary grounds and the common areas of the seminary building. The application will reuse the historic seminary building and preserve the historic and architectural integrity of the structure by not modifying the exterior of the building and by maintaining the interior character of the building as much as possible. No changes are proposed for the gymnasium or the pool. The proposed action would provide 153 on-site parking spaces for guests and staff of the Lodge at St. Edward within a structured parking garage (located partly below ground) and surface parking located to the north of the gymnasium in an existing lot. Existing

² FOF No. 2-5 are based upon uncontested findings in the staff report. FOF No. 6 is based upon uncontested facts identified in the Applicant's First Motion to Dismiss, Ex. A45. Ex. A45 contains references pertinent exhibits for each of the factual assertions used for FOF No. 6. The SEPA Appellant provided what appears to be an accurate explanation for why the attempted prior uses in FOF No. 6 failed in Ex. S8.

surface parking areas surrounding the Seminary Building would be improved for park users, including a resurfaced/restriped surface parking area east of the Seminary Building and pool, and an expanded surface parking area to the northeast of the gymnasium. The Applicant asserts that no net loss of parking for the general public would occur. No changes would occur to site access.

Currently, the north portion of the first floor of the Seminary Building (Grand Dining Hall) may be rented from State Parks for receptions, parties, and so forth; room capacity (per fire code) is 49 people. Public access is restricted on all other portions of the first floor, as well as floors above and below the first floor.

4. Characteristics of the Area. The site is located in the central portion of the 316-acre St. Edward State Park. The site is bordered on all sides by park property with the ballfield and ballfield parking located immediately east of the seminary site. The Lake Washington shoreline is located approximately 1,500 feet (0.3 mile) to the west of the site. The site is already developed, containing the seminary building (approximately 80,000 square feet in size), the gymnasium (approximately 14,000 square feet), the pool house (approximately 10,000 square feet), and associated surface parking. Access to the parking lot serving the site is off NE 145th Street and Juanita Drive NE on the east. Forest surrounds most of the site, with streams and wetlands to the north and east. The areas surrounding the Park property are predominately residential.

5. History of the Site Prior to Acquisition by Washington State Parks. Construction of the St. Edward Seminary Building began in 1930 and was completed in 1931. The building served as a major college-level seminary from 1935 to 1958. A 316-acre portion of the campus of St. Edward Seminary – less the site of St. Thomas Seminary (now the Bastyr University campus) was sold to the State of Washington in 1977. The St. Edward Seminary property was placed on the Washington Heritage Register in 1997 and was listed in the National Register of Historic Places in 2007.

6. Washington State Parks Efforts to Use the Site. According to uncontested assertions made in the Applicant's Motion to Dismiss, Ex. A45, Washington State Parks has struggled for years to preserve the historic character of the seminary building. Current repair estimates range from \$23 to \$50 million. Annual maintenance costs approach \$100,000 per year. Several past attempts to use the space have not succeeded. In the 1980s, a plan to convert the building into temporary housing for refugees fleeing wars and genocide in Southeast Asia failed. In the mid-2000s, plans to convert the seminary building into a brewery and hotel failed due to the adoption of regulations prohibiting alcohol sales in the park. A more recent effort to convert the building into offices for a data security firm also failed.

In 2014, the Washington State Parks Commission decided that it should either develop an acceptable rehabilitation proposal within one year or vacate the facility entirely. The Commission set a deadline for September 30, 2015 for its staff to identify a rehabilitation proposal and announced that, if no reasonable proposal was brought within that time, the seminary would be vacated, fenced off, and completely closed to the public. Commission staff released a request for proposals for use of the seminary grounds. The proposal subject to this site plan and FEIS review was the only response.

On January 9, 2017, the Washington State Parks and Recreation Commission voted unanimously to accept the 62-year lease with Daniels Real Estate of Seattle to rehabilitate the St. Edward Seminary

Building at St. Edward State Park. As part of the agreement, Daniels agreed to purchase a 9.7-acre private property (referred to as the “McDonald’s Property”) that lies adjacent to the park and transfer ownership to State Parks in exchange for adaptive re-use of the building as a lodge. The property adds to the park’s acreage and natural area along Lake Washington.

SITE PLAN

Findings of Fact:

7. Primary Use of Proposal. A major factual issue for application of the City’s parking standards as identified in COL No. 2 is whether the proposal will be primarily used as a conference center. Staff takes the position that since the meeting rooms are not large enough to hold large conferences that the conference room use is not the primary use of the proposal. It is determined that staff is correct in this conclusion, but part of the factual basis for the conclusion is in error.

During the appeal hearing, staff asserted that the proposed facility isn’t a conference center because it isn’t developed “primarily” as a meeting center. Tr. 52:22-56:2. This position was based upon the opinion that the meeting space was too small to accommodate large conferences. This position is questionable. Eilean Davis, a senior planner testifying for the City, testified that she considered the facility to be a hotel with meeting rooms as opposed to a conference center because the largest meeting room as depicted in the EIS floor plans, Figures 2.5-2.7 of the FEIS, is only 1,357 square feet. Id. Ms. Davis believed this amount of space isn’t sufficient to hold the general session portions of large conferences and that, therefore, the proposed meeting space will only accommodate relatively small meetings. Id. Ms. Davis overlooked the approximately 2,400-square-foot meeting room located in the basement of the proposed facility. See FEIS Figure 2-5³. The Cedarbrook occupancy charts, Ex. S2, advertise that its 2,184 square foot meeting spaces can accommodate 100 people in a classroom seating arrangement and 150 in a theater seating arrangement. Further, the Applicant appears to consider the floor plans to be conceptual, which means walls could be removed and meeting rooms expanded. The Applicant’s project manager testified that the floor plans for the hotel rooms were likely to be changed, since the living quarters as depicted in the FEIS floor plans are too small for typical hotel accommodations. Tr. 448:2-14.

From the facts in the record, the conference room predominates in terms of parking demand and occupancy, while hotel use predominates in terms of space. Since the Cedarbrook Lodge data shows that its 2,184-square foot meeting room can accommodate a general session of 100 to 150 people depending on seating arrangement, it is concluded that the 2,400-square-foot meeting room of the proposal can accommodate a similar number of people—which is not a small meeting as opined by City staff. Of course, other meetings and smaller conferences can be held concurrently with a conference of 100-150 guests. The Applicant asserts a maximum functional occupancy of 550 people for the meeting rooms as noted in p. 2-8 and 2-9 of the FEIS. As determined in FOF No. 12, data

³ Figure 2-5 identifies the area of the meeting room as 3,200 square feet. However, approximately 800 square feet of that space is sectioned off into separate meeting rooms.

prorated from average parking of a similar sized lodge/conference facility estimates an average of 129 conference attendees per day. There doesn't appear to be any data in the administrative record that identifies the maximum or average occupancies of the hotel rooms. However, given the small size of the hotel rooms it is reasonable to conclude that maximum occupancy would be two hotel guests per room. At maximum functional occupancy of the hotel and conference rooms, the conference rooms will likely accommodate over two times as many people as the hotel rooms. In terms of parking demand, Table 3.12-5 identifies that the proposal is estimated to generate daytime parking demand of 0.45 parking spaces per occupied hotel room and 0.90 parking spaces per conference guest. Accordingly, at maximum functional occupancy of the hotel and conference rooms, the conference rooms will likely generate roughly⁴ five times more demand for parking than the hotel rooms. In terms of space, hotel space predominates, with the project architect testifying that total lodging space is 35,000 square feet. Tr. 380:23-25; 381:1.

Given the mixed nature of the primacy of the conference room use within the proposal, it cannot be conclusively determined that the conference rooms serve as the primary use of the facility.

Given that the floor plans of the proposed meeting rooms played a key role in the staff's assessment of parking adequacy, the conditions of approval will provide that the proposal is limited to the maximum meeting room sizes depicted in the floor plans.

8. Conference Use Doesn't Add Significantly to Traffic Generation. As determined in FOF No. 12.D, the only available information on average conference attendance yields a daily average attendance of 129 persons for the proposal. On its face, it appears that this would significantly add to trips generated by a 100-room hotel. However, Table 3.12-2 of the Draft EIS (DEIS) reveals that, based upon the Applicant's traffic study, the number of PM Peak Hour trips is only increased from 0.70 trips per room to 0.83 trips per room during PM Peak Hour, a 19% increase. Since PM Peak Hour is the time when added traffic has the greatest adverse impact, it is an appropriate time to assess the significance of added traffic.

9. Conformity to Development Standards.⁵ The project will conform to applicable development standards as follows:

A. Parking. Finding IV(9)(g) of the staff report concludes that the Applicant was authorized by KMC 18.40.020(B) to submit a parking demand study to determine the required number

⁴ This number is tempered by the fact that conference room guests may also be hotel guests at the same time. Under any analysis, however, parking demand from conference guests at full occupancy is significantly greater than parking demand by hotel guests.

⁵ Conformity to development standards is usually assessed via conclusions of law. However, site plan review standards are highly detailed and technical. In the absence of any disagreement over the application or any indication in the record of a code compliance issue, the examiner will rely upon assurances made by staff that standards are met, based upon the staff's exercise of professional judgment. Since these determinations of conformity are based upon staff expertise instead of application of law to fact, the determinations regarding conformance to development standards are treated as findings of fact.

of parking spaces. KMC 18.40.020(B) only allows the use of parking demand studies for unclassified uses. Therefore, Finding IV(9)(g) directly conflicts with Finding IV(5)(a), which determines that the proposed use is in fact a classified use, specifically a hotel. In fact, if the proposal is unclassified as required by KMC 18.40.020(B), it would be a prohibited use because the P zone per KMC 18.28.020 only authorizes expressly permitted uses (none of which apply) and classified uses approved via site plan review that aren't prohibited. As determined in COL No. 2, the proposal qualifies as a hotel use, which is a classified use. As a hotel use, KMC 18.40.030 requires one parking space per bedroom, which would be 100 parking spaces for the proposal. Since the Applicant is proposing 153 parking spaces, the proposal meets applicable parking code requirements.

In accordance with KMC 18.40.030.E, any development providing 6 or more parking stalls shall provide bicycle parking. The site plan depicts a proposed bike rack on the southern portion of the site and complies with the bicycle parking requirements (Exhibit 13). It is recommended that the application be conditioned such that bike parking standards are verified prior to engineering permit issuance.

B. Transportation. City staff have reviewed the application for compliance with the City's transportation standards and have found it to be fully compliant.

a. The application is subject to compliance with KMC 12.50 and the 2016 City of Kenmore Road Standards (COKRS) and shall be reviewed for compliance prior to engineering permit issuance.

b. The project qualifies as an adaptive reuse project of a registered historic site and the historic registration includes the park entrance road. Per COKRS 1.06.I, the project is not required to fully comply with all portions of COKRS, but must still provide safe site access for all users. The applicant's traffic and parking analysis (Exhibit 14) demonstrates that safe site access can be provided without new frontage improvements and/or access road improvements. Accordingly, the application does not include a requirement to provide frontage improvements along Juanita Drive or to improve the existing access road to current standards.

c. The vehicle entrance to the primary park and parking areas serving the seminary building is located on the eastern side of the park and is accessed from Juanita Drive NE. As noted in the applicant's traffic and parking analysis (Exhibit 14), the project complies with concurrency and safe site access standards per KMC 12.80. The existing signalized intersection at Juanita Drive NE and NE 145th St. has the capacity for the vehicle trips related to background population growth over time, development of the lodge, and renovations to the ballfield.

d. The project, per the applicant's traffic and parking analysis (Exhibit 14), is anticipated to generate 83 PM peak-hour vehicle trips. The City assesses impact fees based on mobility units and uses a conversion rate of 1.45 mobility units per PM peak-hour vehicle trip for lodging type projects. Accordingly, the project will be required to

pay traffic impact fees for 120 mobility units at the time of building permit application, consistent with KMC 20.47, at the rates in affect at that time. The number of mobility units generated by the project and the required traffic impact fee is subject to change if the project scope and/or proposed uses change.

e. Per KMC 18.40.100, the project is required to provide pedestrian and bicycle access at all site arrival points and adjacent parking lots. The arrival point is determined by the intersection of Juanita Drive and NE 145th St. A gravel pathway currently meanders between the main portion of the project site and the arrival point. The existing gravel path shall be improved to be compliant with current Americans with Disabilities Act (ADA) regulations to the maximum extent feasible while maintaining the historic nature of the existing roadway and trail. Additional ADA compliant walkways will be required between the entrance trail, proposed parking areas, or point of interest created, and the main building entrance. The application will be conditioned such that walkway and ADA standards are verified prior to engineering permit issuance.

C. Drainage (Chapter 13.35 KMC and 2009 KCSWDM). City staff have determined that the proposal is consistent with the City's drainage standards as follows:

a. The application is subject to compliance with the 2009 King County Surface Water Design Manual (KCSWDM), as adopted and amended in KMC 13.35 and shall be reviewed for compliance prior to engineering permit issuance.

b. Based on the scope of proposed improvements, the project is a "redevelopment" as defined by the KCSWDM. The application will create approximately 99,400 square feet of new impervious surfaces, mostly in the form of parking, and will require drainage review pursuant to KMC 13.35 and KCSWDM 1.1.1.

c. A full drainage report pertaining to the downstream analysis and conceptual sizing of facilities (including existing, historic, and proposed land coverage areas) per the 2009 KCSWDM and KMC 13.35 is required.

d. New drainage easements and/or covenants may be required to be recorded on the property title to allow for public inspection of the system and to ensure future maintenance of the proposed system can be completed. The need for easements or covenants shall be reviewed prior to engineering permit approval and shall be recorded prior to issuance of a certificate of occupancy for the building.

D. Project Design (Chapter 18.50 KMC). City staff have determined that the proposal conforms to the City's design standards as follows:

a. The site is subject to the design requirements per Chapter 18.50 KMC.

b. For proposed existing structure reuse or other activities that are less than new construction, the City shall determine the extent of compliance with the design standards as appropriate to recognize current conditions and further the intent of the design standards. The required design or development standards shall be related to the improvements proposed pursuant to KMC 18.50.220.

c. Compliance with applicable design standards have been reviewed based on the scope of the alterations to the existing site and building. The application meets applicable design standards based on the following:

- i. Purpose (KMC 18.50.010): The application will re-use the historic seminary building and preserve the historic and architectural integrity of the structure by not modifying the exterior of the building and maintaining the interior character of the building as much as possible. The planned re-use of the building will ensure continued use of the site.
- ii. Re-use of Facilities – Purpose (KMC 18.50.180): The application will encourage the adaptive re-use of an existing historic resource that will continue to serve the community. City and Parks review of the redevelopment plans will ensure the permanent re-use of the historic seminary building as listed on the National Historic Register. Final review of the re-use requirements will be conducted during construction permit review.
- iii. Re-use of Facilities – Standards for Conversion of Historic Building (KMC 18.50.220): In order to ensure that significant features of the property are protected pursuant to Chapter KMC 2.20, the following design standards apply to the conversion of the historic seminary building:

- The application will not increase the gross floor area of the seminary building.
- Additions are not planned for the rehabilitation and re-use of the structure.

E. Critical Areas (Chapter 18.55 KMC). City staff have determined that the proposal complies with the City's critical area regulations as follows:

a. Areas to the north and east of the project site contain Class II wetlands and Type 4 streams. These areas are located at least 300 feet outside of the project boundary. There is a geological hazard area more than 500 feet to the southwest of the project boundary and to the north of the project boundary (Exhibit 12). The Lake Washington shoreline, which is about 1,500 feet to the west of the project site. No improvements or alterations are proposed within the site boundary that would impact environmentally critical areas.

b. The project site is located approximately one-quarter mile east of a bald eagle nest, a protected species, and 0.3 miles east of the Lake Washington shoreline. The project site is located outside of the bald eagle shoreline foraging area. Evidence of pileated woodpecker, a candidate species, and their habitat was observed in the forested areas surrounding the site

boundary. The application does not include any clearing, grading, or land disturbing activity. The final construction permits should be reviewed to confirm construction activities do not warrant further review for compliance with wildlife and habitat protection standards.

F. Water and Sewer (Title 13 KMC and Chapter 18.45 KMC). City staff have determined that the proposal complies with the City's water and sewer standards as follows:

a. The Northshore Utility District (NUD) provides water and sewer service to the site. The Northshore Fire District reviewed the application for compliance with KMC 18.45.030 and 18.45.040 for adequate water and sewer services.

b. Certificates of water and sewer availability were provided by the Northshore Utility District (Exhibits 15 & 16).

c. The site currently has a 12-inch domestic water line which can be used for the proposed lodge and restaurant. The water availability certificate indicates that the existing water service provides approximately 3,000 to 4,000 gallons per minute with approximately 105 PSI available.

d. The water line was installed in the mid-1980's and a site inspection of the path of the water line was recently performed. There were no visible problems indicated with the water line. However, the water line bisects steep terrain and as such a method to provide a temporary service, in the event of a failure, will need to be analyzed.

e. If irrigation is provided, a separate meter and backflow assembly will be required.

f. The site is currently connected to the NUD sewer system. The existing 8-inch sewer line originates to the east, in Juanita Drive NE, and ends approximately 650 feet east of the seminary building. The line then transitions to a private sanitary sewer line that serves the seminary building and other surrounding structures in the park. Northshore Utility District review comments state that the sewer lines and manholes within the project site area will need to be updated and/or replaced to meet projected occupant capacity when project is in operation (Exhibit 17).

G. Fire Protection and Emergency Access (KMC Title 15 and KMC 18.45).

a. Fire protection and emergency access requirements are outlined in KMC 18.45.080 and Title 15 KMC. The Northshore Fire Marshal reviewed the application for compliance with applicable requirements and will require the development of a life safety plan and review of the water system examination results to ensure satisfaction of fire protection and emergency access requirements.

b. Existing domestic and fire protection connections are located on site and have been determined adequate for fire flow by the Northshore Fire District.

- c. Fire Marshal conditions have been incorporated into the Recommended Conditions of Approval section below.
- H. Landscaping (Chapter 18.35 KMC). City staff have determined that the proposal complies with applicable landscaping standards as follows:
- a. The application has been reviewed for compliance with the landscape standards in Chapter 18.35 KMC. The proposed use is a non-listed use for landscape screening purposes pursuant to KMC 18.35.030. Landscaping requirements will be determined and specified by the design review process and will be installed as part of the project impact mitigation enhancements.
 - b. Parking lot landscaping is proposed near planned parking areas to provide additional landscaped open space within the site area that would be accessible to the public. Parking lot landscaping is also proposed in areas where alterations to the existing parking area are planned. The site plan (Exhibit 13) depicts areas of new parking lot landscaping. A final landscape plan will be reviewed at the time of construction permit review to ensure that the cultural integrity of the area and existing landscaping is maintained.
- I. Park Zone and General Development Standards (Chapter 18.28 and 18.30 KMC). City Staff have determined that the proposal complies with zoning district and general development standards as follows:
- a. The site is zoned P (Parks). The proposed Lodge at Saint Edward is classified as a “Hotel” pursuant to the zoning code definition in KMC 18.20, and could include a central kitchen and dining room and accessory shops and services catering to the general public and it could include, among other facilities, a central kitchen, dining room, and accessory shops and services catering to the general public. Meeting rooms, exercise facilities, and spas are considered allowed accessory uses to the primary Hotel use. KMC 18.20.035. Depending on the organization involved, use of space in the building by a non-profit organization would be considered an allowed accessory use to the Hotel, an allowed accessory use to the established Parks use of the State Park, or a cultural facility—all permitted uses. KMC 18.28.020 Table A & KMC 18.20.045.
 - b. While a “hotel” is classified in the zoning code, it is not specifically listed as being permitted, conditionally permitted, or prohibited in the Parks zone use allowances in KMC 18.28.020, Table A. Pursuant to KMC 18.28.020.B, classified land uses not listed or prohibited in Table A may be allowed through completion of a Site Plan Review process in accordance with KMC 18.28.060 and Chapter 18.105 KMC. As noted above, the Site Plan Review is required to go through a Type 4 land use review process. An approval of the Site Plan application would establish the proposed Lodge at Saint Edward as a permitted Hotel use on the site along with allowed accessory uses.
 - c. The proposed re-use of the existing structure on site will not alter any physical

dimensions of the existing structure. Any future alterations to the site or the structure's size, shape, or height will be reviewed for compliance with the Parks zoning development standards pursuant to KMC 18.28.040.

d. Trash and storage space for development shall comply with the size, location, and screening standards in KMC 18.30.250. The proposed storage location has been reviewed for the size, location, and screening standards and determined to comply. The application will be conditioned for construction permits to be reviewed for compliance with these provisions.

10. Compatibility with Character and Appearance of Existing Development. The proposal is consistent with appearance and character of the existing development. Issues of compatibility are addressed as follows:

A. Nuns' Garden. Anne Aagard testified that she was concerned that the Nuns' Garden, located to the northeast of the proposed lease area, would be damaged by proposed parking. Tr. 120. The Nuns' Garden is listed on the National Register of Historic Places and was a garden used by the seminary nuns for their enjoyment and as a place of worship and contemplation. See Ex. A1, p. 3 of Section 7. The Nuns' Garden is actually located outside of the project site and no construction is proposed on or adjacent to it. TR. 442:16-21. A recommended condition of approval will also prohibit any development in the Nuns' Garden.

B. Exterior Modifications. Exterior alterations are modest and do not appear to significantly detract from the historical character of the grounds. Ms. Aagard testified that she did not believe the multi-level parking garage and modifications to the access road along the west side of the project are consistent with the historical character of the seminary grounds. Tr. 124: 13-125:6. There do not appear to be any elevations or any detailed information in the record on the parking structure other than that it is composed of more than one level and will not be as tall as the seminary building. See Tr. 76:14-25; 77:1-8. However, the project architect testified that the parking garage would have a vegetated roof that people will be able to cross on foot, implying that the roof will be close to ground level. Tr. 376:1-19. The only other exterior alteration of significance is the replacement of the volleyball courts with an organic garden. Overall, these alterations only take up a small portion of the 5.5 acre leased premises. From these circumstances it is determined that the character of the grounds will remain intact.

C. Wildlife. Elizabeth Mooney testified she was concerned about impacts of the proposal to surrounding wildlife, insufficient consideration of the cumulative impacts with the ballfields, and City conflicts of interest arising from concurrent development of the ballfields. Tr. 131:1-148:8. Cumulative impacts with the ballfields and wildlife impacts were not found to be significantly adverse as determined in FOF No. 19. As to conflicts of interest, the findings and conclusions of this Recommendation and Decision are based solely upon evidence presented by professionals and concerned citizens. There is no basis to reasonably conclude that any of the evidence found

pertinent to these findings and conclusions was inaccurate due to any conflict of interest arising from the concurrent development of nearby ballfields.

- D. Trees. Ann Anderson requested that the examiner review the Applicant's arborist report, since tree retention is often an afterthought in development proposals. Tr. 148:10-23. The Arborist Report, Ex. 40, notes that the project site has 73 trees. According to report, ten trees are proposed for removal to accommodate proposed parking expansion just outside of the northeastern portion of the project site. Chapter 18.57 KMC requires tree retention of at least 210 tree units. The project will retain 325.2 units per the report. Since the tree removal does not exceed the City's tree retention standards, impacts on trees and to the character of the site by tree removal are not found to be significant.

Conclusions of Law

1. Authority of Hearing Examiner. Site plan reviews for classified uses in the P zone are classified as a Type 4 review by KMC 18.105.030(B). KMC 19.25.020(A)(4) provides that the hearing examiner shall establish the record and make recommendations to the City Council on Type 4 applications.
2. Proposal Properly Classified as a Hotel Use. The staff report correctly classified the proposed use as hotel. From the uses classified in the use tables of the zoning code, the proposal qualifies as either a conference center or hotel. Since the conference rooms cannot be considered the primary use of the proposal, the use is most accurately classified as a hotel use.

A hotel is defined by KMC 18.20.1375 as a building or portion thereof designed or used for transient rental for sleeping purposes. KMC 18.20.1375 doesn't include conference centers or meeting rooms within the definition of hotel. However, KMC 18.28.030 authorizes accessory uses in the P zone. KMC 18.20.035 defines an accessory use as "...typically subordinate in size to the principal use; that would not contribute significantly to traffic generation, noise, or nuisance; and that supports the primary use operation without displacing it." In terms of traffic, noise or nuisance, the only questionable issue is whether the proposal would significantly increase traffic generation. As determined in FOF No. 8, conference use would only increase PM Trip generation by 19%, which isn't a significant increase when assessing primary use. For the reasons identified in FOF No. 7, the conference rooms are not considered to displace the hotel use of the facility. Given that many conference room attendees could concurrently serve as hotel guests, it is also concluded that the conference room use supports the hotel use. For all these reasons, the proposed use satisfies the hotel definition.

A conference center is defined by KMC 18.20.560 as follows:

"Conference center" means an establishment developed primarily as a meeting facility, including only facilities for recreation, overnight lodging, and related activities provided for conference participants.

As determined in Finding of Fact No. 9, there is mixed data relevant to whether or not the proposed use is “primarily” developed as a meeting facility. As noted in FOF No. 3, total hotel room space is almost twice the size of meeting space. Given that the definition states “developed primarily” as opposed to “used primarily” as a meeting facility, the comparative amount of space would appear to be significant to the definition. From the context of parking standards, the comparative parking demand created by the hotel rooms verses conference rooms would be of logical significance. As noted in FOF No. 7, the parking demand created by the meeting rooms will be roughly five times greater than that created by the hotel rooms at full functional occupancy. However, it must be recognized that the “conference center” definition is not a definition that applies only to the parking standard; it applies throughout the zoning code, including the tables of allowed uses. Even though from a parking standpoint the use of the facility is “primarily” a conference facility, in other parts of the code the size and aesthetics of the facility plays a larger role. Given the ambiguity in the applicability of the conference center definition, the more clearly applicable hotel definition is found to apply.

3. Review Criteria. KMC 18.105.050 governs the criteria for site plan review. Applicable criteria are quoted in italics and applied through corresponding conclusions of law below:

KMC 18.105.050(A): *The city manager may approve, deny, or approve with conditions an application for a site plan review. The decision shall be based on the following approval criteria:*

1. Conformity with adopted City and State rules and regulations in effect on the date the complete application was filed;

A. The criterion is met, as the proposal is consistent with applicable development standards as determined in FOF No. 9 and COL No. 2.

KMC 18.105.050(A)(2): *Consideration of the recommendations or comments of interested parties and those agencies having pertinent expertise or jurisdiction, consistent with the requirements of this title;*

B. The criterion is met, as all of the dozens of public comment letters and agency comment letters have been submitted, reviewed and responded to, from the DEIS through this Recommendation and Decision.

KMC 18.105.050(A)(3): *Compatibility with the character and appearance of existing or proposed development in the vicinity of the subject property;*

C. The criterion is met, since the proposal only involves modest exterior parking and access road modifications and limited interior changes focused upon maintaining historical character and improving upon public access inside the building. For the reasons outlined in FOF No. 10 and FOF No. 19, these changes are not significantly adverse and are compatible with the character and appearance of the existing development and surrounding uses.

KMC 18.105.050(A)(4): *Compatibility with plans for existing and proposed pedestrian and vehicular traffic in the vicinity of the subject property; and*

- D. The criterion is met. No transportation plans applicable to the project have been alleged other than the City's adopted level of service standards. As determined in FOF No. 9 and 17, the proposal will not violate adopted level of service standards. No other plans regarding pedestrian or vehicular traffic appear to apply to the proposal.

KMC 18.105.050(A)(5): *Conformity with the City's comprehensive plan.*

- E. The criterion is met. The proposal is consistent with applicable comprehensive plan policies as follows:
- a. Policy LU-1.1.1 of the Land Use Element states that the City should: "*Encourage development within Kenmore that creates and supports a healthy and diverse community. Kenmore should contain affordable housing and employment opportunities and should protect the natural environment and significant cultural resources.*" The proposal would create employment opportunities in the hotel, spa, restaurant, and café; would have no significant impacts on the environment; and would maintain and preserve the historic seminary building.
 - b. Policy LU-3.2.2 states that the City should: "*Encourage land uses and development that retain and enhance significant historic and archaeological resources and sustain historic community character.*" The proposal would retain and maintain the historic and archaeological character of the seminary building; changes to the historic exterior character of the building are not proposed and the interior character of the structure would be maintained as much as possible.
 - c. Policy LU-12.1.3: "*Encourage private reinvestment in residential and commercial areas by...investigating mechanisms that support historic residential and commercial sites or neighborhoods.*" The proposal encourages private reinvestment in a commercial site located within a residential area that will support and maintain the historic character of the neighborhood.

SEPA APPEAL (State Environmental Policy Act, chapter 43.21C RCW)

Conclusions of Law

4. Examiner Authority. KMC 19.35.160(A) provides that appeals of FEIS adequacy shall be heard by the hearing examiner pursuant to KMC 19.30.070. KMC 19.30.070(A), which applies to most if not all administrative appeals, provides that appeals to the hearing examiner shall be final subject to appeal to superior court. However, KMC 19.25.020(B) provides that "*all Type 2, 3 and 4 decisions included in*

consolidated permit applications that would require more than one type of land use decision process may be processed and decided together, including any administrative appeals, using the highest-numbered land use decision type applicable to the project application.” (emphasis added).

Despite KMC 19.25.020(B), at the hearing, the City and Applicant argued that the City Council is barred from considering the SEPA appeal and that the examiner’s decision must be final. The parties were not able to cite to any legal authority at the time, but it appears this position is likely based upon WAC 197-11-680(3)(a)(iv), which provides that “[a]n agency shall provide for only one administrative appeal of a threshold determination or of the adequacy of an EIS; successive administrative appeals on these issues within the same agency are not allowed.” Read strictly, this quoted language only prohibits an appeal of an examiner FEIS adequacy decision to the City Council. A recommendation of the examiner is not technically reviewed by the City Council as a “successive appeal” and hence would technically not violate WAC 197-11-680(3)(a)(iv). However, the SEPA handbook (published by DOE as an interpretive guide to the SEPA rules) interprets the “successive appeal” language as encompassing “successive review”:

ADS, DNS, or EIS are each subject to a single administrative appeal proceeding. Successive reviews within the same agency are not allowed. For example, a hearing examiner’s decision on the appeal of a DS cannot be further reviewed by the local legislative body. Further consideration is limited to review by a court as part of a judicial appeal.

SEPA Online Handbook, Washington State Department of Ecology, Section 11.1.

Under the SEPA Handbook language, consideration of the FEIS adequacy appeal by the City Council is prohibited. Given the SEPA handbook and the lack of any objection to barring City Council review of the FEIS Appeal, the examiner’s authority on the FEIS appeal is construed as issuing a final decision subject to appeal to superior court.

5. Standard of Review. At the pre-hearing conference the hearing examiner identified the basic standard of review for EIS adequacy as the “Rule of Reason.” The most recent Washington State judicial manifestation of the Rule of Reason was enunciated as follows:

We examine the legal sufficiency of the environmental data contained in an EIS to determine whether the EIS is adequate under SEPA. We test EIS adequacy according to the “rule of reason.” The EIS must present decision makers with a “‘reasonably thorough discussion of the significant aspects of the probable environmental consequences’ of the agency’s decision.” An EIS aids the decision-making process and need not address every conceivable effect or alternative to a proposed project. “[T]he EIS need include only information sufficiently beneficial to the decision-making process to justify the cost of its inclusion. Impacts or alternatives which have insufficient causal relationship, likelihood, or reliability to influence decisionmakers are “remote” or “speculative” and may be excluded from an EIS.’

Cascade Bicycle Club v. Puget Sound Regional Council, 175 Wash. App. 494, 508-09 (2013).

Other comments often cited in the legal briefing on EIS adequacy include the following:

- A. Challenges may not “*flyspeck*” an EIS; omissions in analysis may be “*unfortunate, but not fatal.*” *Mentor v. Kitsap County*, 22 Wn. App. 285, 290 (1978).
- B. The “*comprehensive review envisioned by SEPA is to be detailed and does not invite a lackadaisical approach.*” *Leschi Improvement Council v. Washington State Highway Commission*, 84 Wn.2d 271, 280 (1978).
- C. SEPA requires agencies to take a “*hard look*” at environmental factors. *PUD No. 1 of Clark County v. PCHB*, 137 Wn. App. 150, 158 (2007).
- D. Finally, the hearing examiner must give “*substantial weight*” to the Responsible Official’s determination that the EIS is legally adequate. RCW 43.21C.090

Appeal Issue No. 1

The SEPA responsible official did not require or collect the necessary or adequate information upon which to make a decision regarding parking, traffic, drainage, air quality, noise pollution, light pollution, existing park culture, impacts on current park users, adjacent property owners and residents of the community, character and livability of the surrounding neighborhoods (including parking ingress and egress to adjacent properties), quality of life of nearby residents and pedestrians, child safety, public services, flooding and flood-ways, wildlife, bio-diversity, and flora degradation, light and glare, soil erosion, and groundwater and drainage patterns. The level of analysis and information were inadequate and fell below meeting the burden of review required by the responsible official under the State Environmental Policy Act (SEPA), ch. 43.21A RCW, and state and local regulation implementing that law, including WAC 197-11-080 and WAC 197-11-335.

Conclusion of Law

6. WAC 197-11-080 and WAC 197-11-335. The Appellant has cited WAC 197-11-080 and WAC 197-11-335 as the legal basis for determining that specified impacts were inadequately addressed in Appeal Issue No. 1. WAC 197-11-080 sets out how incomplete or unavailable information should be addressed. The factual issues of Appeal Issue No. 1 are identical to the factual issues of Appeal Issue No. 2. For the reasons identified in the assessment of the factual issues of Appeal Issue No. 2, below, information was sufficient to assess impacts or there were no significant impacts to assess. In either event, the information was neither incomplete or unavailable. Consequently, there is no basis to conclude that the FEIS was inadequate due to incomplete or unavailable information under WAC 197-11-080. WAC 197-11-335 applies to threshold determinations, which is irrelevant to an appeal based upon the adequacy of an FEIS.

Appeal Issue No. 2

The proposed Lodge at St. Edward is likely to have significant adverse and unmitigated impacts on parking, traffic, drainage, air quality, noise pollution, light pollution, existing park culture, impacts on current park users, adjacent property owners and residents of the community, character and livability of the surrounding neighborhoods (including parking ingress and egress to adjacent properties), quality of life of nearby residents and pedestrians, child safety, public services, flooding and floodways, wildlife, bio-diversity, and flora degradation, and light and glare. These impacts have not been adequately identified, analyzed, or mitigated in the FEIS.

Findings of Fact for Appeal Issue No. 2

11. Issue as Presented. At hearing, the Examiner granted the Applicant's motion to remove from Appeal Issue No. 1 issues pertaining to drainage, air quality, police, flooding, soil erosion, and ground water, as the Appellant did not pursue these issues at the hearing. The traffic issues raised by the Appellant are addressed under other appeal issues. The remaining issues are individually addressed as follows:

12. Parking. The most difficult SEPA appeal issue is the adequacy of the EIS parking analysis. It is concluded that the EIS provides a reasonably thorough discussion of the parking demands created by the proposal and thus satisfies the Rule of Reason for adequacy. However, the FEIS' conclusion that proposed parking is adequate is a questionable one given the supporting data. The information used to support the FEIS supports the conclusion that the 153 parking spaces proposed by the Applicant may not be sufficient to meet parking demand on a regular basis. Based upon these conclusions, it is recommended that the City Council employ its SEPA authority to condition the project with monitoring requirements that will ensure adequate parking.

- A. Basis of Parking Concern. Parking is a significant concern to the SEPA Appellant because Appellant believes that overflow from the proposal lodge parking would likely use the public parking of St. Edward Park. St. Edward has 220 public parking spaces. See App. H, Section 2.6. The Appellant testified that on nice weekends in the summer months, the parking at St. Edward is at full capacity and that large events at the proposal would create parking problems for park users. Tr. 299:16-23.
- B. Applicant's Adequacy Argument Not Compelling. Prior to assessing the parking information contained in the FEIS, it must be noted that the Applicant's position on adequacy of parking analysis was not compelling. The Applicant argued that the FEIS parking analysis was adequate solely because the FEIS identified that at full hotel occupancy there would be enough parking to accommodate 120 additional conference guests and that if parking wasn't sufficient, then excess parking could be accommodated at Bastyr or by valet parking. See, e.g. Tr. 610:25-612:17. When parking is a concern in a land use application, the obvious and primary issue is whether proposed parking will

meet demand. According to the Applicant, an adequate EIS parking analysis only needs to identify how much parking remains available when one part of a multi-use building is at full occupancy. That position is absurd. In the absence of some estimate of parking demand, data on parking availability is useless. If the information in the FEIS were limited to parking supply, the FEIS parking analysis would be unquestionably inadequate.

- C. FEIS Conclusions on Adequacy of 153 Parking Spaces. Despite the shortcomings of the Applicant's arguments, useful information on parking demand was presented in the FEIS and this information can be used by the decision maker to adequately mitigate against parking impacts. Ironically, the Applicant used this same information to support its questionable FEIS conclusion that parking would be adequate. The FEIS, at page 1-10, concludes that the spaces available for up to 120 guests "*would meet the demand for most conference/meeting events.*" This conclusion is evidently based upon the conclusion of the Applicant's traffic expert, Jennifer Barnes, who concluded at page 15 of her firm's traffic report, Appendix H to the DEIS, that "[t]he proposed on-site parking is expected to exceed parking demand under most conditions with the Lodge alternatives." The DEIS and traffic study do not identify how Ms. Barnes arrived at this conclusion.
- D. Cedarbrook Study Shows 153 Spaces Inadequate. It was only when pressed at the hearing that Ms. Barnes stated she based her conclusion that parking was adequate upon a traffic study of a comparable facility located close to the Sea-Tac Airport, Cedarbrook Lodge. Tr. 559:1 through 560:4. The traffic study for Cedarbrook Lodge was issued on February 18, 2013 for a proposed expansion of that facility. At the time of the study, the Cedarbrook Lodge had 110 guest rooms and 18,000 square feet of meeting space, compared to the 100 guest rooms and 16,600 square feet of meeting rooms for the subject proposal. See DEIS, app. H, att. B. The Cedarbrook study was conducted over a ten-day period from January 11, 2013 to January 20, 2013. Ms. Barnes' conclusion was based upon the traffic and parking counts taken during this ten-day period, which apparently were taken over seven days of traffic counts. See Footnote No. 1. During cross-examination, Ms. Barnes was unable to state the number of guests that would typically use the conference facilities at St. Edward. Tr. 543:22-544:25. The DEIS also acknowledges that the parking demand rate for Cedarbrook conference guests was probably less than the proposal's conference guest rate, because Cedarbrook is close to Sea-Tac and many of its guests are transported by taxi and airport shuttle instead of by personal car. Tr. 528:15-20. See DEIS p. 3.12-7.

The problem with Ms. Barnes' testimony is that the Cedarbrook study doesn't support her conclusions. During the January 11, 2013 through January 20, 2013 traffic data collection period for the Cedarbrook study, the Cedarbrook conference facility had daily conference attendance ranging from 100 to 200 guests with an average of 140 guests per day. See DEIS, Appendix H, att. B, p. 4. Scaled down on a prorated basis based on comparable conference facility area (18,000 square feet for Cedarbrook versus 16,600 feet for the proposal), that equates to an average of 129 guests per day for the Applicant's proposal. As previously noted, the Applicant's traffic consultant had concluded that parking for only up to 120 guests would be available at full hotel occupancy. The Applicant's traffic

consultant also determined from the Cedarbrook data that 0.9 parking spaces are needed per conference guest. See DEIS, Table 3.12-5. Using the Cedarbrook conference data, this means that 116 parking spaces are needed for the average 129 conference guests, leaving 37 parking spaces for hotel guests. The Applicant's consultant determined that 0.45 parking spaces are needed per hotel room occupancy during daytime use, see DEIS Table 3.12.-5, meaning that on a day of average conference attendance, the hotel cannot be at greater than at 82% occupancy to avoid exceeding parking supply. If occupancy is greater, or if conference attendance is more than average, the number of parking stalls would be insufficient to meet parking demand.

As previously noted, the Applicant's traffic analysis acknowledges that parking generation rates per conference guest for the proposal are probably higher than at Cedarbrook because Cedarbrook patrons will more frequently use taxis and airport shuttles due to the proximity of Sea-Tac Airport. Given these circumstances, it is questionable to conclude that "*under most conditions,*" parking will be sufficient. It is recognized that hotel occupancy may rarely exceed 82%, but in the absence of any evidence to the contrary, it is statistically implausible that under "*most conditions*" conference attendance will remain at or below average numbers on a regular basis. One could give some deference to Ms. Barnes' professional judgment on the issue, but Ms. Barnes was adamant in her testimony that she didn't know how many people would typically attend conferences. Tr. 543:22 through 544:25.

- E. Functional Occupancies Support Suggest 153 Spaces Inadequate. The inadequacy of the parking is further highlighted by information presented by the Appellant. The Appellant submitted Cedarbrook floor plans obtained from the facility that identified occupancy limits for each of its meeting rooms based upon six types of seating arrangements, ranging from the lowest-capacity "U-Shape" seating to the maximum functional occupancy of "Cocktail Seating." See Ex. S2. Based upon this occupancy data, the Appellant determined that the maximum occupancy of all meeting rooms combined for Cedarbrook was 1017 people and the minimum occupancy was 544. See Ex. S5. Prorating to the smaller meeting space of the subject proposal, the Appellant determined that the maximum/minimum occupancy for the proposal is 938/487⁶. In short, if one conference uses the minimum occupancy "U-Shaped" seating arrangements for its registrants, as noted at p. 3.12-11 of the DEIS, it will exceed parking capacity if it has more than 120 registrants when the hotel is fully booked with overnight guests. If the hotel has no overnight guests, parking demand will exceed supply when there are more than 170

⁶ The Appellant arrived at a figure of 986/528, which was based upon a total meeting space of 17,077 square feet of total meeting space as advertised on the Cedarbrook website, Ex. S2. The 938/487 figure is based upon a total meeting space of 18,000 square feet for Cedarbrook as reported in the Cedarbrook traffic study, Att. B to app. H to DEIS. The Cedarbrook traffic study is found to be more accurate on total meeting space for purposes of comparison because the methodology of the two traffic reports (written by the same consulting firm) in determining meeting area is likely more comparable than the methodology used to report meeting space at the Cedarbrook website.

registrants⁷. Under this latter scenario, parking demand for an empty hotel would exceed capacity for a conference that takes up less than a third of available meeting space at the minimum occupancy “U-Shaped” seating arrangement. Of course, most professional conferences don’t use the space-wasting “U-Shaped” arrangement, but usually economize with classroom seating, which more than doubles capacity in larger meeting rooms. Given all these factors, it is reasonable to conclude that just one large conference on its own, taking less than a third of the facility’s meeting space, will exceed parking demand. A couple weddings with just 100-200 guests each scheduled during a summer weekend, when parking demand is greatest in the surrounding park, could significantly exceed facility parking and place a significant strain on public parking available in the St. Edward Park.

- F. City’s Parking Standards Suggest Parking Inadequate. Another indicator that the proposed parking is inadequate is the City’s parking standards. Adopted parking standards are often determinative on the adequacy of parking, since they identify what has been legislatively determined to be adequate parking for a specific community. In this case, as noted in COL No. 2, the proposal doesn’t fit neatly into any of the City’s use classifications and it can be only marginally concluded that the proposal qualifies as a hotel instead of a conference center. As further noted in COL No. 2, as a hotel use, the City’s parking standards only require 100 parking places, which is easily met by the project. However, as an indicator of parking demand, the City’s conference center use classification is far more telling. As noted in COL No. 2, the City’s hotel use definition doesn’t mention conference or meeting room space. It is likely that conference or meeting space played little or no role in estimating parking demand for overall hotel use. However, parking demand created by conference center use obviously does take parking demand created by conference center use in to account. The Applicant’s architect testified that the proposal includes 35,000 square feet of lodging space. Tr. 280:25-281:1. If the proposal were just a 16,600 square foot conference center instead of a 16,600 square foot conference center with 35,000 square feet of lodging space, there would be no question that the proposal would qualify as a conference center. As a 16,600 square foot conference center, KMC 18.30.040 would require 332 parking spaces for the facility, based upon the rate of one parking space per 50 square feet of meeting space. It would be fairly absurd to conclude that since the proposal has added 35,000 square feet of lodging space that parking demand is cut in half. The City’s conference center parking standard was clearly more specifically directed at estimating conference center parking demand. Under that standard, the proposed 153 spaces are inadequate.
- G. Maximum Building Code Occupancy Argument Irrelevant. The Applicant’s architect, Ron Wright, testified that the maximum building code occupancies are rarely used. Tr. 376:20-380:16. This testimony was irrelevant. The Cedarbrook analysis used by the

⁷ The total amount of parking proposed for the proposal is 153 spaces. The traffic study for the proposal determined that conference guests generate a demand of 0.9 parking spaces per conference attendee, which means that 170 guests would need 153 spaces.

SEPA Appellant, FOF No. 11(E), was based upon occupancies dependent upon seating arrangements, not maximum building code occupancies. See Ex. S2. This Recommendation and Decision refers to the Cedarbrook seating plan occupancies as “functional occupancies” to distinguish them from building code occupancies. Further, even if maximum functional occupancies are rarely met, it is difficult to believe that “*under most conditions*” the conference facilities will be operating at less than a third of functional capacity, the maximum occupancy that can be attained with an empty hotel before exceeding parking demand as determined in Finding of Fact No. 13(E).

H. ITE Parking Demand Studies Arguably Support Adequacy. The Institute of Traffic Engineers Parking Generation 4th Ed. estimates parking demand of only 89 parking spaces for the facility. See DEIS Table 3.12-5. This is based on the “Hotel” designation, which is defined as “places of lodging that provide sleeping accommodation and supporting facilities, such as restaurants, cocktail lounges, meeting and banquet rooms, or convention facilities.” Tr. 59:21-60:7. The FEIS determined that the ITE hotel rate applies to the proposal and the Appellants did not identify any more appropriate category. Ms. Barnes confirmed there is no conference center designation in the ITE parking generation manual and that the “Hotel” ITE definition fits the proposed use precisely. Tr. 536:22-537:23. However, Ms. Barnes’ use of Cedarbrook data reveals that she didn’t believe that the ITE hotel classification was well suited to assess traffic and parking impacts of a hotel with a significantly sized conference center. Ms. Barnes’ election to supplement her analysis with Cedarbrook unfortunately falls under the “no good deed goes unpunished” category, but nonetheless her resort to Cedarbrook data evidences the inadequacy of the ITE “Hotel” category for estimating parking demand.

I. Small Size Proposed Conference Room Suggests Smaller Conferences than Cedarbrook. One argument not raised by the Applicant but derived from the City’s parking “conference center” interpretation is that the largest meeting room in the proposal is substantially smaller than the meeting room in Cedarbrook. Excluding the 4,190-square foot “Reflections Gallery” in the Cedarbrook floorplans, which for some reason can’t be used for most types of conference seating, the largest conference room in Cedarbrook is 3,276 square feet. This 3,276-square-foot meeting room enables conference seating of up to 175 guests and theater seating up to 225 guests, which is 75 more conference guests than the proposal could accommodate in its largest meeting room under the floorplans depicted in the FEIS. If the Applicant doesn’t change the floor plans to create a larger meeting room, the limitations in maximum meeting space could have a downward influence on average daily attendance. Ms. Barnes could have factored this reduction in maximum meeting room space when she employed her expertise to determine that proposed parking was adequate, but this would be contrary to her testimony. Ms. Barnes testified that she was unable to accurately ascertain projected demand because the conference center hadn’t been designed yet. Tr. 560:5-10. This begs the question of how she was able to conclude the proposed parking was sufficient in the first place.

J. FEIS Establishes Reasonable Concern that Parking Will Often Be Insufficient. Overall, even with the substantial weight due the SEPA responsible official’s determination of

FEIS adequacy, the majority of evidence in the record supports a reasonable concern that the proposed parking will not be sufficient to meet parking demand on a regular basis. The only direct data on parking demand, from the Cedarbrook study, reveals that on an average day parking demand will only be sufficient if the hotel operates at less than 82% occupancy. As determined in FOF No. 11(E), average conference attendance is less than a third of functional occupancy. This means that on the sunny weekends of summer, when St. Edward Park parking is in high demand, a large wedding or similar gathering in combination with other conference center events could easily exceed available parking. The Cedarbrook data is particularly concerning since the Applicant's traffic consultant acknowledged it probably underestimates parking demand for the proposal. ITE data suggests that parking may be adequate, but this is based upon a hotel use classification that doesn't distinguish between hotels with conference centers and those without. The Applicant's traffic consultant acknowledged the deficiencies of the Hotel classification by adding the Cedarbrook data to her parking demand analysis. City parking standards directed at stand-alone conference centers suggest that the parking for the facility should be twice as much as proposed.

13. Marbled Murrelet. The second most compelling appeal issue raised by the SEPA Appellant was the marbled murrelet, a species listed as threatened under the Endangered Species Act. Tr. 198:25-199:1. The Appellant constructed a compelling and creative case that although the project site is not anywhere near any marbled murrelet habitat currently, St. Edward Park will be an ideal habitat for marbled murrelet habitat a couple decades from now when park trees become old enough to qualify as old growth forest. As shall be discussed, there are significant problems with this argument, but properly presented it could serve as a valid foundation for an adequacy appeal. However, the Appellant's argument ultimately did not hold up when it came to establishing that this proposal, which is primarily limited to the conversion of an existing building to a hotel, would adversely affect marbled murrelet nests. Given that the proposal will make only nominal exterior changes to the facility and will add a negligible amount of daytime foot traffic on the trails, impacts to the murrelet are limited to nighttime use of the trails. The evidence is too remote and speculative to conclude that the proposal would create any significant adverse impacts to marbled murrelet nests due to night time trail use.

A. Qualifications of Witnesses.

a. Dr. William Bain provided the marbled murrelet testimony for the Appellant. Dr. Bain had significantly more expertise in working with marbled murrelet than any other witness at the hearing. He earned a Ph.D. in biology from the University of California at Santa Cruz. Tr. 197:9-10. He is one of about 70 certified marbled murrelet observers, a qualification that requires field experience and identification skills plus attendance at annual trainings. Tr. 197:17-23. Though his primary specialty is killer whales and other marine mammals, killer whales and marbled murrelets share offshore habitat. Tr. 210:22-24. He has done over 10,000 hours of fieldwork in this habitat, routinely cataloguing the location of marbled murrelets he observes. Tr. 197:11-12, 211:15-23. He has recently done more in-depth monitoring for the U.S. Fish and Wildlife Service, focusing on disturbance of marbled murrelets. Tr. 211-12, 213:17-19. Though he has not published his own work on the marbled murrelets, he has contributed to a publication related to how noisemaking

devices may be use to ward marbled murrelets away from gill nets. Tr. 197:12-16. And he testified he has collected enough data on the marbled murrelets to write the equivalent of a master's thesis on the species. Tr. 238:12-16. Of the witnesses who testified regarding the marbled murrelet, Dr. Bain has the most focused and relevant experience with the species.

b. The Applicant had two primary witnesses address this issue. The first was Ms. Nel Lund, a wetland ecologist whose firm compiled a wetland and wildlife study for this project. Tr. 453-54. She is a professional wetland scientist, but she personally does not focus on wildlife. Tr. 454:3-21. The applicant's arborist, Mr. Scott Baker, has 40 years' experience in arboriculture with an urban forestry specialization. Tr. 480:3-11. He is a registered consultant arborist with the American Society of Consulting Arborists, and he is a board-certified Master Arborist. Tr. 480-82. Mr. Baker is familiar with the marbled murrelet from that background, but he denied involvement in any previous projects concerning the marbled murrelet. Tr. 486:15-25, 489-90. Of the witnesses, Mr. Baker has the most experience identifying and working with old-growth forests.

B. Characteristics of the Marbled Murrelet. Marbled murrelets are coast-oriented birds who nest in trees and feed at sea, traveling back and forth to feed the chicks left in the nest. Tr. 199:12-23. Dr. Bain testified that marbled murrelets will only nest in habitat that meets three conditions: 1) old-growth forest; 2) tree stands more than 60 acres in size; and 3) a site less than 50 miles from Puget Sound. Tr. 199:3-7, 200:5-6. Dr. Bain and Mr. Baker both stated that "old-growth" for the murrelet's purposes would include trees more than 100 years old. Tr. 199:6, 487:4-9. Marbled murrelets leave their nests in the early morning and come back around dusk, spending most of the day at sea. They rely on the cover of darkness to prevent predators from observing their nests. Tr. 201:10-19. The marbled murrelets value their privacy and will tend to nest away from human activity. Tr. 273-75.

C. Likelihood of Marbled Murrelet Nesting in St. Edward State Park.

a. No party disputes that St. Edward State Park is not suitable marbled murrelet habitat right now. Tr. 199:7-9, 487-88. As Dr. Bain and Mr. Baker testified, the area was logged in the 1920s. Tr. 222:20, 488:11-14. Dr. Bain testified that within the life of the lease, in about 20 years, the trees will be old enough to qualify as old-growth. Tr. 219:1-5. Marbled murrelets are likely to still be on the endangered species list in 60 years. Tr. 219:5-6. Because this park is much closer to the shoreline than other known nesting sites, Dr. Bain believes that the energy savings will make St. Edward a good nesting option. Tr. 199:12-23, 204:18-20. He identified two areas of the park which he believed could provide enough buffer for future nests. Tr. 473-75.

b. Mr. Baker estimated that it would take over 30 years before the park could possibly become murrelet habitat. Tr. 488:3-11. He noted that the park currently has patches of invasive species, which he speculated could make the forest less attractive to the murrelet. Tr. 488-89. More importantly, he noted that determining whether a forest is old-growth is more complex than calculating the age of individual trees. Tr. 489:2-5.

A key component of old-growth forests is that no biomass has been removed by logging, so the biomass from fallen trees stays in the system. Tr. 492-93. Based on the timing of logging at St. Edward, Mr. Baker thought it likely that, after the area was logged, the debris was burned and the forest was left to regrow naturally without replanting. Tr. 493:10-16. In that case, it could take more time for the forest to return to an old-growth state appropriate for marbled murrelets.

- D. Availability of Alternative Nesting Sites. It is logical to infer a strong inverse causal relationship between the incidence of suitable habitat in the region and the likelihood of an actual nesting site at St. Edward State Park in the future. For example, if St. Edward will be the only 60-plus-acre old-growth site within five miles of Puget Sound 20 years from now, that type of statistic strongly supports Dr. Bain's opinion that a future nesting site is likely at the project site. Indeed, Dr. Bain testified that "essentially all" of the marbled murrelet's coastal breeding habitat in the region has been lost. Tr. 204:7-10. The population now nests in the foothills, much further from shore. Tr. 204:14-15. Dr. Bain's written statement suggests that there may be only three other sites in the "area" that may develop marbled murrelet habitat in the future, but he does not define the "area" and it is not clear that these are the only suitable sites. There is no information in the record about how much suitable habitat exists, or may soon exist, in the Puget Sound region. Dr. Bain testified that this is an open question, as the Department of Natural Resources is now preparing a forest plan for this "nesting area" (again, not defined in the record) that could add as much as 21,000 acres (or subtract as much as 1,000 acres) of marbled murrelet breeding habitat. If DNR increases their habitat acreage, it is less critical that St. Edward State Park be preserved. Tr. 200:14-21, 202:1-15.
- E. Significant Adverse Impacts to Future Marbled Murrelet Nests Not Established. Regardless of whether St. Edward is "likely" to become marbled murrelet habitat in the next 20 to 60 years, the Appellant's marbled murrelet arguments ultimately do not reveal any inadequacy in the FEIS, because the Appellant didn't establish that the proposal would create significant adverse impacts to any future marbled murrelet nests in the park. If such a nest were located at St. Edward park 20 years from now. The exterior impacts of the proposed conversion are relatively modest, and neither Dr. Bain nor Mr. Baker believed that murrelets would ever nest in the leased project area. Tr. 222:5-9, 234:3-9, 487:15-23. Dr. Bain conceded that nothing proposed within in the project area was likely to directly affect the marbled murrelet; the primary concern would be traffic to and from the site. Tr. 216:1-4. Dr. Bain noted six potential impacts to marbled murrelets, mostly related to increased traffic to, from, and within the park:
- a. Food scraps: Dr. Bain testified that increased use of any sort would increase the number of food scraps in the park, which would attract crows and other predators. Tr. 201:6-9, 236:2-8. But he did not dispute that the park is heavily used, hosting about 865,000 people per year per the EIS. Tr. 232:13, 237:4-8. There was no testimony on whether food scraps are an issue now, and no evidence was presented that the lodge guests would generate significantly more food scraps than the current park baseline.
 - b. Light: Dr. Bain testified that increased light levels in the park could allow predators to observe murrelets' movements and raid their nests while they are out at sea. Tr.

201:10-19. Ms. Lund agreed that light impacts from this project are likely to cause wildlife to avoid the project area, though she did not have hard data on these effects or on how well the forest would buffer them from wildlife. Tr. 465-68, 471-72. She recognized that the timing of the light and glare would make a difference to wildlife. Tr. 478-79. But when Dr. Bain questioned Ms. Lund, the two witnesses agreed that marbled murrelets would avoid the project site anyway and would nest in parts of the park that are at least a quarter mile from the project site. Tr. 473-75. Dr. Bain expressed concern that any light from the project would be reflected toward the water by snow or clouds, but he admitted that this reflected light would likely not be materially different from the existing reflected light of surrounding development, particularly if “done right.” Tr. 226-28, 236:21-24. Mr. Ding, who performed the applicant’s light and glare study, opined that the mitigation measures identified are sufficient to address light spillage. Tr. 579-80.

c. Noise: Dr. Bain testified that marbled murrelets are more easily disturbed by noise than many other birds, a fact not considered in the EIS. Tr. 228:5-10. Dr. Bain testified that noises like yelling would be a concern, but a normal conversation would not be an issue. Tr. 205:2-5. Ms. Lund was not sure how the forest might buffer noise from the project site, but she testified that, based on a preliminary overview, noise levels would have to increase 20 to 25 decibels to disturb species such as the marbled murrelet. Tr. 465-69. Dr. Bain mentioned noise standards based on Navy studies, though it is not clear if he and Ms. Lund are referring to the same standard. Tr. 238:22-239:1. Dr. Bain noted that the research on marbled murrelets and gill nets suggests that a much lower level of noise would affect murrelet behavior. Tr. 239:1-3. Aside from new noise due to nighttime trail use (discussed below), the evidence does not establish that the project site will create noise impacts that would disrupt future murrelet nesting.

d. Human visual contact: Dr. Bain testified that it is a concern if humans are close enough for marbled murrelets to see them. A 300-foot buffer is recommended, though Dr. Bain noted that the science is not necessarily adequate to support that. Tr. 205:6-10. Witnesses agreed that the murrelet would avoid the project site and frequently-used trails. Tr. 473-75. The project does not add new trails to the park area. Tr. 230:23-231:1. Given that the project site is already developed and there are an estimated 865,000 people a year who use the park already, the appellants did not establish that the additional lodge guests would materially affect human visual contact at the project site or within the trail system.

e. Vehicle collisions: Dr. Bain briefly suggested that vehicle collisions might be an issue. Tr. 201:20-25. He agreed with the EIS’ conclusion that an increase in car traffic to and from the site may affect wildlife. Tr. 224:18-225:6. Since, as multiple witnesses testified, the marbled murrelet is unlikely to frequent existing human travel routes, the appellants did not demonstrate that this would have significant impacts on the marbled murrelet.

f. Trail use: As Dr. Bain testified, the largest potential impact is from additional human activity within the park and along the trails. He did not dispute Mr. Kaseguma's suggestion that the trails would have perhaps 100 new users a day from the project. He agreed that, based on an estimated 865,000 annual park attendance now, that would only represent a 4.2% increase in traffic. Tr. 236-37. However, Dr. Bain testified that the timing of use is important: new trail users at night or within two hours of dawn or dusk would have greater impacts on the marbled murrelet than new daytime users. Tr. 237:7-13. In any event, as discussed in COL No. 13, there is nothing in the record to reasonably suggest that there will be enough nighttime trail use to have significant impacts, and mitigation identified in COL No. 14 should aid in clarifying trail hours for lodge guests and discouraging nighttime trail use that could affect a range of wildlife—including any future populations of marbled murrelet.

14. Noise. Tracey Hendershott testified that at night the park is currently closed and the proposal would change this by enabling night time use of the seminary building, which in turn would lead to noise generating activities that could adversely affect wildlife. Tr. 170:8-15.

- A. Sources of night time noise. Ms. Hendershott noted that night time noise generating activity could involve activity in the seminary building and grounds, vehicles coming in from the road and people using adjoining trails, particularly trails to the water's edge. This noise could affect wildlife and deprive it of a chance to rest after all-day human activity. Tr. 195:4-12.
- B. Noise can Potentially Adverse Wildlife. Ms. Hendershot submitted written materials referencing studies that have determined that the magnitude of noise impacts on individual animals or population health is unknown. The studies show that impacts to human activity on trails displace animals and cause some to shift their activity from daytime to nighttime hours. The studies conclude that this displacement in time and space "*may carry survival costs for wildlife such as increased predation or decreased feeding efficiency at night for certain species.*" Ex. S7, Nighttime Access Management Paper, p. 5.
- C. FEIS Mitigation Partially Addresses Noise. The DEIS contains a mitigation measure at page 3.3-13 that requires the Applicant to avoid or limit construction activities during February through July to minimize disturbances to nearby breeding birds as feasible. The applicant's wildlife expert, Neil Lund, testified that if this mitigation is followed, there shouldn't be a significant impact to breeding birds in the area. Tr. 468:1-9.
- D. DEIS Identifies Noise Impacts. Section 3.3-10 of the DEIS acknowledges "*that Operational noise and light from the proposed project could also affect wildlife in the site vicinity. Since use of the park is not currently permitted after dusk, the greatest long-term effect from the project would occur in the form of increased noise from dusk to dawn*" and also that "*[c]onstruction activities would be limited to daylight hours, and temporary increases in noise could temporarily disturb wildlife occurring adjacent to the project area.*"
- E. No Protected Species at Project Site. According to the uncontested findings of the Applicant's Habitat Assessment of St. Edward State Park Seminary, DEIS Section 3.3;3.3.1, there are no

protected species located at the “animal study area,” which was comprised of the project lease area and areas approximately 900 feet beyond the lease area, as depicted at p. 3.3-2 of the DEIS.

15. Light; Light and Glare. The SEPA Appellants assert that the FEIS fails to adequately address night time lighting impacts on plants, fish and wildlife. Tr. 170:24-25.

- A. Light Can Affect Human Health and Ecosystems. Tracey Hendershott submitted an article from the Audubon Society that notes that artificial light is a form of pollution that impacts human health and entire ecosystems. The article noted that the American Medical Association published an article encouraging municipalities to follow good lighting practices when selecting street lighting to “*minimize potential human and environmental effects.*” Ex. S7, “Light Pollution-the Reversible Scourge on Our Night Sky.”
- B. Comprehensive Plan Requires Mitigation of Light Impacts. Comp Plan Policy LU 13.3.2 requires “...*appropriate illumination levels and light shields and direction for lighting standards along streets and in public open spaces and parks.*” City staff determined that the Applicant has prepared a careful lighting design that is appropriate for its location within the park consistent with LU 13.3.2. Tr. 38:7-10.
- C. Project Light Could Affect Lake Washington Fish. Dr. Bain, the Appellant’s marbled murrelet witness, testified that light from the proposal could potentially bounce off clouds or snow and illuminate Lake Washington, thus adversely affecting fish. Tr. 227:15-17. Dr. Bain acknowledged that in this regard the light from the proposal wouldn’t be that different from other development around the area, but that somebody should measure it. Tr. 227:20-228:1.
- D. DEIS Recognizes Light Impacts. Section 3.3-10 of the DEIS acknowledges “*that operational noise and light from the proposed project could also affect wildlife in the site vicinity. Since use of the park is not currently permitted after dusk, the greatest long-term effect from the project would occur in the form of increased noise from dusk to dawn*”
- E. FEIS Mitigation Measures Address Light Impacts. Jeff Ding, the project manager for the EIS, testified that he evaluated light impacts for the EIS. Mr. Ding is a land use planner with 16 years’ experience with a focus on environmental review. For the EIS he compared current light conditions, which are minimal, with light impacts that would result from the proposal. Mr. Ding determined that there would be light spill from construction work and daily operations and that this spillage could affect wildlife as disclosed in Section 3.8 of the DEIS. Tr. 576-80. In Mr. Ding’s opinion, mitigation measures identified at Section 3.8.3 of the DEIS, which require shielded and downward lighting for operations and construction work, should be sufficient to adequately mitigate against light impacts. Tr. 580:22-24.

16. Wildlife. Noise and light impacts to wildlife have already been addressed separately. The only remaining impact to wildlife raised by the Appellant is added trail use.

- A. Addition of Trail Trips Insignificant. During the hearing, the City assumed in its questioning that Dr. Bain had estimated that the proposal would add 100 trail users to St. Edward Park on a daily basis. See Tr. 237. Dr. Bain didn't in fact make any such estimate, but the 100 trips isn't an entirely speculative maximum daily trail use estimate, given that there are 100 hotel rooms proposed. Ex. A26, p. 7, which contains the most recent park attendance figures, notes that in 2007 park attendance was 865,000 people. As noted by the City in its questioning of Dr. Baine, if all 865,000 persons are considered to use the trails, the added trail use generated by the proposal would only be a 4.2% increase over 2007 park attendance. Tr. at p. 237, ln 1-6. Even using 200 added trail trips per day, which would account for the large majority of hotel and conference guests on an average day, the increase in trail use is negligible and the Appellant presented no evidence that such a nominal increase in trail use could create significant adverse impacts to wildlife and nothing in the record suggests such impacts as a reasonable possibility.
- B. Night Time Trail Use Likely Insignificant. Dr. Baine was particularly concerned about night time trail use. As noted in FOF No. 14, noise from day-time trail use can displace wildlife activity to night hours, so presumably night time trail use would be more disruptive to wildlife if that is the last refuge for activity. The Lake Washington shoreline is 1,500 feet away, see FOF No. 3, so it is possible that some guests may make walk the trails in the dark to get to the shoreline. However, park rules prohibit night time trail use. See WAC 352-32-050. There is nothing in the record to reasonably suggest that significant numbers of proposal patrons will elect to walk to the shoreline or anywhere else in the dark in violation of park rules. Early morning hours at first light when the park isn't yet open could be a draw to early morning joggers. To mitigate the situation if the City Council is concerned about trail use during closed park hours, a condition could be added to the site plan decision to require the applicant to post restrictions on trail heads close to the proposal and also provide that information in written form to hotel guests.

Conclusions of Law for Appeal Issue No. 2

7. Parking FEIS Analysis Adequate. The parking analysis in the FEIS is adequate under the Rule of Reason. Under the Rule of Reason the FEIS adequately addresses parking if it provides a reasonably thorough discussion of the significant aspects of the parking impacts of the proposal. The FEIS accomplishes this by providing sufficient information to reveal that the proposed 153 parking spaces is not likely to be sufficient to meet parking demand. In the absence of any information on average hotel occupancy rates, it is appropriate to apply the "worst case" full hotel occupancy scenario to assess the adequacy of parking required by WAC 197-11-080 when applying the Cedarbrook data on average conference attendance. As determined in Finding of Fact No. 12(D), the average number of conference center guests for the hotel based upon Cedarbrook data is 129. The DEIS concludes at p. 3.12-11 that the proposed 153 parking spaces can only accommodate 120 guests at full occupancy. Even if the worst-case scenario isn't employed, the other factors addressing parking demand in FOF No. 12 strongly suggest the potential for parking overflow as a frequent occurrence. Further, the City's parking standards, as applied in FOF No. 12(F) reasonably indicate that the upper levels of average parking demand could approach 332 spaces. It would have been useful for the FEIS to evaluate the impacts of project overflow parking on St. Edward Park parking, such as how often St.

Edward Park parking is full and the options available for overflow parking. However, the Rule of Reason does not require that every conceivable impact be addressed as concluded at COL No. 5. Under the overall reasonableness standard of the Rule of Reason, the determinative inquiry is whether the FEIS provides a sufficiently thorough discussion of parking impacts to enable the City Council to ascertain whether there are significant parking impacts and to a limited degree, how those impacts can be mitigated. In this regard, the information in the FEIS provides sound legal justification for mitigation that should ensure adequate parking as addressed in COL No. 10 on parking mitigation. In this regard, the FEIS parking analysis has proven to be sufficient and satisfies the Rule of Reason.

8. Sufficient Basis for Parking Monitoring Plan as Exercise of SEPA Substantive Authority. KMC 19.35.070(B) authorizes the exercise of SEPA substantive authority to condition a project if due to unusual circumstances of a development project, existing regulations are inadequate to mitigate against impacts. As demonstrated by FOF No. 7 and 12 and COL No. 2, the proposal doesn't fit squarely into the parking use standards. Although the proposal is properly classified as a "hotel" for purposes of zoning code regulations, its impacts are likely more aligned with the "conference center" classification in terms of parking impacts. In addition, the proposal is in the middle of a state park with limited parking. On sunny weekends, any overflow parking from the project can potentially take away from 220 overflowing public parking spaces of St. Edward Park. To further exacerbate matters, the development of the ballfields takes away an area that has been used for overflow parking in the past, further limiting options during times of peak parking demand.

KMC 19.35.070(B) requires that the exercise of SEPA authority be based upon SEPA policies. KMC 19.35.070(A)(2) adopts the City's comprehensive plan as a SEPA policy. The most directly applicable comprehensive plan policy is Policy T-2.4.2, which provides as follows: "[e]nsure that regulations require appropriate parking for business customers." A policy of more general application, Policy LU-2.4.3, seeks to "[e]nsure that infrastructure and facilities are sized appropriately to community needs and are located with attention to the desired neighborhood character." To ensure that the site plan regulations provide an adequate amount of parking as contemplated in Policy T-2.4.2, it is necessary to require additional parking mitigation through SEPA due to the unusual circumstances of the proposal as identified in the preceding paragraph. To ensure that the amount of parking is sized appropriately to avoid taking parking away from St. Edwards as encouraged by Policy LU-2.4.3, additional SEPA parking mitigation is necessary.

Since the FEIS has revealed that there is a good chance that the 153 parking spaces is inadequate to meet parking demand, it is recommended that the City Council exercise its SEPA authority to impose the following condition to ensure adequate parking:

The Applicant shall prepare a parking monitoring plan, subject to approval by staff prior to issuance of any certificate of occupancy, that monitors the adequacy of parking over a three-year period from the date that the proposal is fully operational. The monitoring plan shall be targeted at the three largest conference/meeting room events held at the proposal each year. The results of the monitoring shall be submitted to City staff at the end of each of the three years subsequent to full proposal operations. To the extent reasonably practicable, the monitoring reports shall identify how much parking was used for the proposal and how many proposal patrons park off-site. If

the reports reveal that parking is inadequate, the Applicant shall implement remedial measures to assure adequate parking. These measures may include a shared off-site parking agreement, valet parking, an approve site plan amendment for additional parking or limitations on conference center use. The remediation measures shall be subject to staff approval and staff may order peer review at the expense of the Applicant to verify that the proposed remedies will effectively address parking deficiencies. If remediation measures are found necessary, the Applicant will have to submit another three-year monitoring plan subject to the same terms and conditions as the first monitoring plan.

9. Impacts to Marbled Murrelets Too Remote and Speculative for Inclusion in FEIS. For the reasons detailed in FOF No. 13, the likelihood that the proposal will harm marbled murrelets is too remote and speculative to necessitate inclusion in the FEIS. An EIS “*need analyze only the reasonable alternatives and probable adverse environmental impacts that are significant.*” WAC 197-11-405(1). The marbled murrelet impacts asserted by the Appellant do not qualify as “probable,” defined by the SEPA rules as follows:

"Probable" means likely or reasonably likely to occur, as in "a reasonable probability of more than a moderate effect on the quality of the environment" (see WAC 197-11-794). Probable is used to distinguish likely impacts from those that merely have a possibility of occurring, but are remote or speculative....

WAC 197-11-080. The speculative nature of impacts to future habitat is reflected in the City’s critical area regulations designed to protect threatened species. Those regulations only protect currently existing habitat. See KMC 18.55.500. The unique circumstances of the project site may justify going beyond the City’s regulations with SEPA to assess potential impacts to likely future habitat, but those impacts need to be at least modestly ascertainable for SEPA review to provide any useful information to the decision maker. Those impacts are too remote and speculative in this case to generate any such useful information.

10. FEIS Analysis of Noise Impacts Adequate. The FEIS analysis on noise impacts is adequate under the Rule of Reason. One reason for this conclusion is that the potential impacts to wildlife would not be considered significant. Just about any development project will create some impact to wildlife. Impacts to a particular non-threatened species are arguably not significant because the survival of the species as a whole will not be threatened by the development. Any impact less than this is a judgment and value call as to what impacts should be considered significant. The City Council has made that judgment call by adopting critical area regulations that identify wildlife species that must be protected from development. KMC 18.55.500(A) only requires protection of species listed by the federal or state government as endangered or threatened or herons⁸. As determined in FOF No. 13, there are no protected species at the project site. Since there are no protected species at the project site, impacts to wildlife would not be considered significant even if noise did adversely affect wildlife. Beyond this, the FEIS contains mitigation measures to reduce impacts to wildlife in any event, and no other reasonable mitigation measures are apparent from the record.

⁸ Reference is also made to Washington State regulations addressing bald eagle protection, but the state has stopped regulating the protection of bald eagles since it was delisted as threatened by the state and federal government.

Even if noise impacts to nonthreatened species were significant, those impacts are too remote and speculative to be addressed with any greater detail in the FEIS. As previously noted, the FEIS already acknowledges that night time noise could affect wildlife. The studies presented by Ms. Hendershott don't suggest a more thorough analysis would reveal anything of greater use to the decision maker. In point of fact, the studies acknowledge that specific noise impacts are "unknown" and also identifies impacts that "may" occur. The FEIS says basically the same thing, that wildlife "could" be affected by the operations of the proposal and construction noise "could" disturb wildlife.

Nothing from the noise evidence presented by the Appellant reasonably suggests that further study would reveal any more concrete information beyond what the FEIS already discloses that could be used by the City Council in its review of the Applicant's site plan application. Consequently, giving substantial weight to the SEPA responsible officials determination that the FEIS is adequate, it is concluded that the FEIS provides a reasonably thorough discussion of the significant aspects of the noise impacts created by the proposal and therefore adequately addresses noise impacts under the Rule of Reason.

11. **FEIS Adequately Assesses Light Impacts.** As with noise impacts, the FEIS discloses and assesses light impacts to the extent that the information would be reasonably useful to the decision maker. The SEPA Appellant established through the Ex. S7 Audubon article that light can adversely affect wildlife, but this was readily acknowledged in the DEIS. Further, there is nothing in the record to suggest that any further study on light impacts would provide any more significant useful information. The Audubon article encourages the use of "good lighting" practices to reduce light pollution. Examples of "good lighting" practices identified in the Audubon article, as recommended by the American Medical Association, include minimizing blue-rich white light intensities, setting a threshold for light intensity, and use of property light shielding with lamp dimming control. The Applicant's environmental review expert, Jeff Ding testified that in his opinion the "good lighting" practices recommended as mitigation, i.e. downward lighting and light shielding, would provide adequate mitigation for impacts to nesting birds. Given all these circumstances, it is concluded that giving substantial weight to the SEPA responsible officials determination that the FEIS is adequate, the FEIS provides a reasonably thorough discussion of the significant aspects of the noise impacts created by the proposal and therefore adequately addresses light impacts under the Rule of Reason.

12. **SEPA Condition Requiring Enhanced Lighting Plan Justified.** The fact that the Applicant's own witnesses and the FEIS confirm that light can adversely affect wildlife in addition to the information provided by the Appellant establishes the importance of minimizing light impacts to adjoining wildlife. KMC 19.35.070(B) authorizes the exercise of SEPA substantive authority when unique circumstances are present. The proximity of the proposal to acres of parkland with ample wildlife is certainly a unique circumstance. In this regard, the City Council may wish to consider the exercise of SEPA substantive authority to require that the applicant prepare a lighting plan that demonstrates that lighting intensity will be held to the minimum necessary for functionality and safety and that lighting be directed away from the adjoining undeveloped areas to the maximum extent practicable. Comprehensive Plan Policy LU-21.2.2, a SEPA policy, provides that Kenmore should encourage the conservation of fish, wildlife, and other renewable resources. Conditioning the proposal as suggested with an enhanced lighting plan would help implement this policy.

13. FEIS Adequately Addresses Wildlife Impacts. As noted in FOF No. 14 and 15, light and noise impacts are addressed separately so the only remaining impacts to wildlife is trail use. As noted in FOF No. 16, there is nothing in the record to suggest that the proposal would generate enough added trail use to create significant adverse impacts to wildlife. Part of this conclusion is based upon the fact that park hour restrictions will limit trail use at the time wildlife may be most vulnerable. Given the absence of any significant impacts arising from trail, there were no “significant aspects of the probable environmental consequences” under the Rule of Reason, see COL No. 5, to require FEIS review.

14. SEPA Condition Requiring Posting of Hour Restrictions Justified. In order to ensure that proposal patrons are aware of the park hour restrictions to limit night time trail use, it is suggested that the City Council exercise its SEPA substantive authority to require the Applicant to post trail heads that are close to the project site with park hour restrictions and to provide information to hotel registrants about the restrictions as well. Such a condition would implement Comprehensive Plan Policy LU-21.2.2, which as noted in COL No. 12 encourages the protection of wildlife. The unique circumstances justifying the condition are the centralized location of the proposal in a 316 acre-park.

15. Public Services, Flooding and Flood-ways, Biodiversity, Flora Degradation and Child Safety Dismissed as Abandoned. The applicant presented no evidence and no argument on the issues of public services, flooding and flood-ways, child safety, bio-diversity, and flora degradation. During the site plan hearing a citizen inquired about the safety implications of having new proposed parking adjacent to a play area, but her concerns were fully addressed by City staff who pointed out that there will be no new parking adjacent to any play area. Tr. 104:17-105:18. There is no evidence of any potential child safety impact associated with the proposal. Those issues are dismissed as abandoned, or in the alternative that there is no evidence to reasonably suggest that those impacts would be significant as required for inclusion in an FEIS under the Rule of Reason.

16. Remaining Appeal No. 2 Issues Dismissed as Abandoned. Issues not yet addressed from Appeal Issue No. 2 are impacts to existing park culture; impacts on current park users, adjacent property owners and residents of the community; impacts on character and livability of the surrounding neighborhoods (including parking ingress and egress to adjacent properties); and impacts on quality of life of nearby residents and pedestrians. These issues are dismissed as abandoned.

In response to the Applicant’s first motion to dismiss, filed on February 3, 2017, the Hearing Examiner directed the SEPA Appellant to identify the specific impacts associated with the issues addressed by this COL and how those impacts relate to the impacts that can be considered in environmental review, as listed in WAC 197-11-440. The Appellant’s response, Ex. S15 made no reference to WAC 197-11-440 and provided no clarification as to what the terms addressed by this paragraph (park culture, impacts to park users, etc.) was intended to address. The Appellant should have specifically defined those terms so that the parties could would know how to defend themselves and also whether the impacts contemplated by the Appellant qualified as environmental impacts validly subject to environmental review. Ex. S15 did not provide this needed clarity and instead appeared to add entirely new appeal issues to the appeal. There was no linkage between the terms used in Appeal Issue No. 2 and the issues raised in Ex. S15. The terms addressed by this paragraph

are, therefore, dismissed. Further, park culture, character and livability and quality of life are not by themselves recognized as elements of the environment in WAC 197-11-444, and therefore are not valid impacts subject to EIS review under WAC 197-11-440(6). The reference to parking ingress and egress is specific enough for review and qualifies as a transportation impact under WAC 197-11-444(2)(c). That issue is addressed under another appeal issue.

It is recognized that Examiner's request for a rewrite may have been confusing to the Appellant. However, terms such as "park culture" should not have been in the Appeal statement without further clarification in the first place and the Appellants had no due process right for a second opportunity to write their appeal. Many of the issues that were raised in Ex. S13 were addressed under other appeal issues, so the dismissal doesn't appear to have placed the Appellant at any significant disadvantage.

Appeal Issue No. 3

The proposed Lodge at St. Edward is likely to have significant adverse impacts on the local flora and fauna, which the SEPA responsible official has failed to adequately investigate, disclose, and/or mitigate. The proposal will permanently change the environment for plants and wildlife in the state park ecosystem. These impacts include, but are not limited to, light pollution, which will negatively affect nocturnal and nonnocturnal animals. As mentioned in the DEIS, this light pollution is likely to cause "increased orientation or disorientation" and "could affect foraging, reproduction, communication or other behaviors."

Findings of Fact

17. **Issue as Presented.** Impacts to wildlife, including light pollution, are addressed under Appeal Issue No. 2 so assessment of Appeal Issue No. 3 is limited to flora. The Appellant presented no argument or evidence on impacts to flora.

- A. **No Threatened or Endangered Plant Species.** According to uncontested findings at page 3.3-7 of the DEIS, no threatened or endangered plant species were identified in the study area. The study area was identified as the leased area and areas within approximately 900 feet of the leased area at page 3.3-2 of the DEIS.
- B. **Ten Trees Will Be Removed.** Page 3.3-9 of the DEIS discloses that ten or possibly more trees will likely have to be removed to accommodate expanded parking under the preferred alternative. The City's land alteration requirements, Chapter 15.25 KMC, have provisions that provide for the protection of trees and these provisions will be applied when the applicant applies for a land alteration permit.
- C. **No Significant Adverse Impacts to Flora.** As noted in the wildlife analysis under Appeal Issue No. 2, unless there is fauna that is protected by City regulations that would be

affected by the proposal, fauna impacts are not found to be significant. In this case there is no protected flora except for trees. There is nothing in the record to reasonably suggest that the City's tree protection standards are inadequate to protect the trees. Given these factors, it is determined that the proposal will not create any significant adverse impacts to trees.

Conclusion of Law

17. **FEIS Adequately Addresses Flora Impacts.** As noted in FOF No. 17, the FEIS discloses the removal of trees and tree removal is the only potentially significant flora impact associated with the proposal. Since the City's land clearing standards address the protection of trees in detail and there is nothing in the record to suggest that those standards are inadequate to protect trees, there is no reason for any further analysis of Flora impacts in the FEIS. Under these circumstances, it is concluded that under the Rule of Reason the FEIS analysis of flora is adequate since the FEIS provides for a reasonably thorough discussion of flora impacts. In the alternative, since the Appellant did not pursue its claim that the FEIS was inadequate as to flora impacts, that issue is dismissed as abandoned.

Appeal Issue No. 4

Dismissed as abandoned by the examiner at the hearing.

Appeal Issue No. 5

The SEPA responsible official failed to adequately investigate, analyze, and mitigate for lodge and conference center visitors use of public parking lots, which are grossly underestimated or unrepresented in the FEIS. The result will be intense competition for parking and a reduction in the quality and character of the park experience. Relatedly, the SEPA responsible official erred when he did not accurately or faithfully apply KMC 18.40.030 computation of off street parking. The SEPA responsible official grossly overlooked and accepted the underestimated the parking needs of the Lodge Conference Center.

Parking is fully addressed in the parking analysis under Appeal Issue No. 2.

Appeal Issue No. 6

The SEPA responsible official erred by relying on dated and inadequate traffic and parking analysis by Heffron. The city relied on an inadequate parking and traffic study and failed to clearly understand the parking/traffic issues associated with the proposed Lodge at St. Edward. Relatedly, the SEPA responsible official failed to request a contemporary traffic and parking study, which would include a study of Bastyr University's current traffic and projected traffic growth. The result will be increased traffic on surrounding surface streets and park entrance road and in the

park. By failing to conduct a more thorough analysis of traffic and parking impacts, the SEPA responsible official violated WAC 197-11-080 and WAC 197-11-335.

Findings of Fact

18. Issue as Presented. The issues contained in Appeal Issue No. 6 were elaborated upon in the Appellant's Traffic and Parking Brief, Ex. S13.

- A. Traffic Study Based Upon Compelling Data. The FEIS was clearly not deficient in its analysis of traffic impacts. As noted at page 3.12.-2 of the DEIS, traffic counts for existing traffic conditions were taken on January 12, 2016 and May 3, 2016. Data for existing traffic conditions was taken on days of good weather with baseball practices and a baseball game, so the data is determined to be both current and representative of busy park use. Projected trip generation estimates were made for 2020, when the proposal is anticipated to be open and operating at full occupancy.
- B. Growth Rates, Ballfields and Bastyr University Factored in Traffic Study. As noted in Section 3.12.2 of the DEIS, the 2020 trip estimates were based upon an annual growth rate of 1.1 % (derived from the City's Comprehensive Plan), projected trip generation from Bastyr University and the City's planned ballfields project for St. Edward Park. A growth rate of 4% was assigned to Bastyr University, which exceeds the 3% growth rate projected in the Bastyr Master Plan and the 2.3% historical growth rate between 2008 and 2014. Data on the ballfields project was acquired from the traffic study completed for the ballfields project, Ex. I to the DEIS.
- C. Trip Generation Under Adopted LOS Standards. For the 2020 trip generation of the proposal, the Applicant's traffic engineer found that the PM trip generation under the applicable ITE Hotel category estimated 0.70 trips per occupied room verses 0.83 trips at Cedarbrook Lodge (discussed in the Appeal Issue No. 2 parking analysis) during conference events. The consultant therefore took a conservative approach and used the Cedar Lodge rate. As noted in the DEIS, trip generation for the proposal would probably be less than at Cedarbrook, since a large amount of Cedarbrook traffic would be composed of taxis and airport shuttles, where every ingress or egress to the facility would generate two trips instead of the one for the proposal (hotel occupants would park their cars at the facility, whereas taxis and shuttles instead leave or enter the facility without the occupant). Based upon all this data, the Applicant's traffic consultant concluded at p. 3.12-6 that current LOS at the affected intersection (Juanita Dr NE and NE 145th St) is B and that with or without the project, the consultant determined in Table 3.12-3 of the DEIS that the intersection would operate at LOS C. The City's adopted level of service is D.
- D. Cedarbrook Data Appropriate Basis for Trip Generation Estimates. The Appellant argues that the Cedarbrook data doesn't represent an accurate portrayal of the type of traffic that could be generated by the proposal. The Appellant notes that Cedarbrook conference facilities were only operating at 18% functional capacity during the traffic counts and that

the traffic counts were only taken over a nine-day period in January, 2013, which may not accurately represent typical conference conditions. See Ex. S13. Unlike the situation with the parking data, there is no evidence in the record that directly undermines the judgment of the Applicant's traffic expert or the adequacy determination of the SEPA responsible official that the Cedarbrook data accurately portrays trip generation for the proposal. In the Applicant's parking analysis, the Cedarbrook data relied upon by the Applicant's traffic consultant undermined her conclusion that parking would be sufficient. There is no such conflict of data for trip generation. Further, as discussed in the parking analysis, the limited size of the largest meeting room in the proposal limits the size of single conferences to numbers below the daily average of the reporting period for Cedarbrook. Certainly, other meetings can be held concurrently with a major conference at the proposed facility, and the applicant noted a maximum functional capacity of 550 attendees for the conference rooms at p. 2-9 of the FEIS, but overall there is no compelling evidence in the record to overcome the expert conclusions of the Applicant's traffic consultant that the Cedarbrook data serves as a reliable estimate for average trip generation.

It is also important to recognize that to adequately assess trip generation only average numbers are required. Peak generation rates are of limited value because a high in the trip generation of one use contributing to an intersection may be averaged out by lows from other uses contributing to the intersection. It is likely for this reason that traffic impacts are assessed by average numbers by transportation engineers. A worst-case scenario under WAC197-11-080 is only required if data essential to a reasoned choice amongst alternatives is unavailable or the costs of necessary data acquisition would be exorbitant. As is consistent with all traffic engineers, the Applicant's traffic consultant relied upon average numbers to assess traffic impacts. No compelling evidence was presented to refute the professional judgment of the Applicant's traffic consultant that this methodology and data was sufficient to estimate trip generation, so there was no need for additional data or a worst-case scenario analysis.

Conclusion of Law

18. **FEIS Adequately Assessed Trip Generation Impacts.** All of the deficiencies alleged by the Appellant on trip generation analysis were in fact well addressed in the Applicant's traffic analysis. As identified in FOF No. 8, the Applicant's traffic analysis did a thorough and accurate job in assessing cumulative traffic growth. The proposal will clearly keep affected intersections at below adopted level of services standards, so no adverse impacts are anticipated. As required by the Rule of Reason, the trip generation analysis provides a reasonably thorough discussion of the significant aspects of the traffic impacts created by the proposal and therefore adequately addresses traffic impacts.

Appeal Issue No. 7

The SEPA responsible official accepted traffic and parking analysis that will seriously underestimate traffic and parking mitigation fees due to the city of Kenmore for the

Lodge at St. Edward. Without an accurate estimate of the proposal's traffic and parking impacts, the resulting fees will be inadequate to mitigate the proposal's significant adverse environmental impacts.

Parking and traffic impacts are adequately addressed as determined in the assessment of Appeal Issues No. 2 and 6. The remaining portion of Appeal Issue No. 7, i.e. the computation of park and traffic impact fees, is beyond the jurisdiction of the examiner as ruled in the Examiner's Rulings on Applicant's First Motion to Dismiss, Ex. 22(C).

Appeal Issue No. 8

The SEPA responsible official failed to require proof that the proposed Lodge at St. Edward has access to offsite parking for the term of the lease. The Heffron study is misleading with suggested solutions to internal traffic and parking. No evidence was presented by Heffron that such solutions were in place and workable. The result will be difficult and/or no parking for some of the general public.

Conclusion of Law

19. **Parking Mitigation Meets Requirements of SEPA Rules.** The Heffron solutions identified in the Appeal issue are valet parking or off-site parking at Bastyr University. See DEIS, p. 3.12-11. WAC 197-11-440(6) mandates that the "Affected environment, significant impacts, and mitigation measures" section of an FEIS "shall discuss reasonable measures that would significantly mitigate significant environmental impacts of the project and indicate the intended environmental benefits of those mitigation measures." The Heffron study accomplished this through the suggested mitigation measures – an off-site parking arrangement and valet parking are reasonable measures in the sense that they can be implemented and the opinion of the Heffron expert is that they will solve any overflow problems. The Appellant essentially argued at hearing that an off-site parking arrangement with Bastyr University is not reasonable because there's no evidence that Bastyr would be willing to enter into such an agreement or that it has sufficient extra parking for such an arrangement. Tr. 628:15-24. It certainly is within the realm of possibility that an off-site parking arrangement may not be possible. However, the courts have made it clear that not every impact must be completely mitigated in an EIS. As noted by one court in response to the argument that mitigation in an EIS was incomplete:

".... a FEIS does not require inclusion of specific remedies of each environmental impact. The basic purpose for requiring a FEIS is to require local governments to consider total environmental and ecological factors to the fullest extent when taking 'major actions significantly affecting the quality of the environment.' Wash. State Boundary Review Bd., 122 Wn.2d at 659 (quoting Lassila v. City of Wenatchee, 89 Wn.2d 804, 813, 576 P.2d 54 (1978) (quoting RCW 43.21C.030(c))."

Residents Opposed to Kittitas Turbines, 165 Wn.2d 275, 312 (2008).

In this case, the information in the EIS was sufficient to enable the examiner to recommend mitigation measures that should eliminate significant adverse parking impacts. Given the case law and the added mitigation, there is no need for additional discussion of mitigation for parking impacts in the FEIS.

Appeal Issue No. 9

The SEPA responsible official failed to analyze how the Lodge at St. Edward will be held responsible for parking and traffic impacts. The documents only stated that Daniels Real Estate would be responsible for parking for lodge and conference center guests but not how the city or Washington State Parks will be able to enforce this responsibility. The result will be that, after the Lodge is built, there will be no compelling reason for the Lodge operator to provide parking solutions. These impacts can only be mitigated by devising fines and sanctions payable to the City of Kenmore to be levied aggressively against the lodge operator to ensure “no net loss of parking for the general public would occur,” the stated standard in the FEIS.

Conclusion of Law

20. Parking Mitigation Compliant with SEPA Rules. As noted in the analysis of Appeal Issue No. 8, the FEIS contains mitigation measures that are reasonably sufficient to address parking impacts. As further noted in the preceding analysis, additional mitigation recommended by the examiner will help ensure that the proposal has adequate on-site parking. There is no evidence in the record to reasonably suggest that with adequate on-site parking that patrons of the proposal would still elect to park further away from the project site to public parking spaces in the park. Since discussion of mitigation satisfies applicable SEPA rules as determined in COL No. 19, no further analysis is necessary under the Rule of Reason.

Appeal Issue No. 10

Dismissed at hearing as abandoned.

Appeal Issue No. 11

The SEPA responsible official failed to require a comprehensive accounting for the number of people that could fill each occupancy at capacity (e.g., hotel, conference facility, restaurant, bar, cafe, spa). Without a comprehensive and transparent accounting of numbers of people, the totality of environmental impacts cannot be accurately assessed for many of the impact categories included in this FEIS, particularly regarding traffic and parking and impact to general public visitors to the park. Relatedly, The SEPA responsible official failed to provide a comprehensive study of current daily visitors to the park at peak times during the months of May-September, how many cars require parking, how many current car trips to the park and the projected growth due to population increases in the area. By failing to acknowledge

these data gaps, by failing to collect the missing information, and/or by failing to justify, the city's decision to proceed notwithstanding this missing information, the SEPA responsible official violated the procedural requirements of WAC 197-11-080 and the FEIS is not premised on information reasonably sufficient to evaluate the proposal's environmental impacts as required by WAC 197-11-335.

Conclusion of Law

21. **Methodology of Parking and Traffic Analysis Adequate.** Appeal Issue No. 11 essentially asserts that the methodology used by the Applicant's traffic engineer was incorrect. Ultimately, the examiner did conclude that the conclusions of the Applicant's traffic consultant on sufficiency of parking was not supported by the data she used to reach that conclusion. However, there's been no compelling evidence presented that the methodology used by the traffic consultant fails to meet industry standards or does not accurately assess traffic and parking impacts if used correctly. The Appellant has presented no expert testimony to the contrary. Given these circumstances and the deference due the determination of the SEPA responsible official, it is concluded that the methodology used by the Applicant's traffic consultant has enabled a reasonably thorough discussion of the significant aspects of the traffic and parking impacts created by the proposal.

Appeal Issue No. 12

The SEPA responsible official did not place the findings in context, each of the impact categories (particularly traffic and parking) with the projected growth for Seattle, the Puget Sound region, Washington State and neighboring Bastyr University. This project is not occurring in a vacuum. Good planning requires the project be built with a plan for the neighbors and future growth. Responsible stewardship requires understanding how all of the pieces will come together in the future. The City of Kenmore can seriously damage future prospects for Kenmore, Kirkland and St. Edward State Park. By failing to analyze these aspects of the context surrounding the proposed Lodge at St. Edward, the SEPA responsible official has failed to investigate the proposal's adverse significant impacts within the meaning of WAC 197-11-794 and has not collected reasonably sufficient information within the meaning of WAC 197-11-335.

Finding of Fact

19. **Issue as Presented.** The Appellant argued that the FEIS fails to address cumulative impacts for traffic, parking and wildlife. See Ex. S13 and Tr. 345-348.

A. **Cumulative Traffic, Parking and Wildlife impacts all addressed in FEIS.** Cumulative impacts of traffic were well addressed for the proposal as identified in the analysis of Appeal Issue No. 6. Cumulative impacts of parking are identified at page 3.12-14 of the DEIS, where it is noted that development of the ballfields could result in the loss of overflow parking. Page 3.3-12 of the DEIS contains a page of cumulative impact analysis on wildlife, which includes cumulative impacts associated with the ballfield development.

Conclusion of Law

22. **FEIS Analysis of Cumulative Traffic, Parking and Wildlife Impacts Adequate.** Under the Rule of Reason and the deference due the adequacy determination of the SEPA responsible official, there was a reasonably thorough discussion of cumulative impacts in the FEIS and it is considered adequate. As concluded under Appeal Issue No. 9, the FEIS discussion was unquestionably adequate for cumulative traffic impacts. Further discussion on the cumulative impacts of loss of overflow parking occasioned by development of the ballfields would have been marginally helpful, but since the conditions of approval will assure adequate parking on-site that added information takes on less significance. The DEIS also contained a thorough enough discussion on wildlife cumulative impacts given that no protected species is within range of the adverse effects of the proposal.

Appeal Issue No. 13

The FEIS fails to consider significant adverse cumulative effects flowing from the city's current plan to expand the nearby ballfields and associated facilities at St. Edward State Park. The significant adverse impacts associated with the proposed Lodge at St. Edward will be exacerbated by similar adverse impacts associated with the ballfield expansion. Is this all we need to say here? Seems weak.

Conclusion of Law

23. **FEIS Analysis of Cumulative Impact of Ballfields Adequate.** The ballfields are addressed in the cumulative impact analysis identified in the assessment of Appeal Issue No. 12. The trip generation of the ballfields was included in the Applicant's traffic analysis as outlined in the analysis of Appeal Issue No. 6. Cumulative parking impacts should be rendered nominal by the recommended mitigation. Wildlife impacts, as identified in the assessment of Appeal Issues No. 2 and 3, are nominal given the absence of any protected wildlife species in the vicinity of the project area. Given these factors, it is determined that the FEIS provides a reasonably thorough discussion of the significant cumulative impact issues pursued by the Appellant in their appeal.

Appeal Issue No. 14 – 16

Dismissed as abandoned during appeal hearing.

Appeal Issue No. 17

The proposed Lodge at St. Edward conflicts significantly with the St. Edward State Park Management Plan (Oct. 20, 2008), including provisions of the management plan concerning future uses of the seminary building. The SEPA responsible official failed to adequately identify, analyze, or mitigate significant impacts flowing from the proposal's many conflicts with the management plan.

Findings of Fact

20. Issue as Presented. The SEPA Appellant is specifically concerned that the proposal fails to comply with Management Plan policies that require the use of the seminary be subordinate to and complimentary to the primary attraction and use of St. Edward Park as a place of outdoor recreation. The Appellant believes that the priority use for the seminary building should be outdoor recreation and traditional park activities. Tr. 312:15-25. These concerns were raised by Rebecca Hirt, one of the stakeholders who for two years served on the advisory committee that worked the Management Plan. Tr. 311:14-25. Ms. Hirt testified that she was concerned that the seminary would only be welcoming to paying lodge guests. Tr. 314:1-14. She was also concerned that the volleyball court, listed on the national historical register, was proposed for removal. Tr. 314:15-23. Ms. Hirt believed that the proposed use of the seminary grounds would overtake park use. Tr. 315: 23-25.

A. St. Edward State Park Management Plan. The St. Edward State Park Management Plan, also known as the St. Edward CAMP (classification and management planning project), was adopted by the Washington State Parks Commission on October 20 2008. As testified by the Washington State Parks Environmental Program Manager, Jessica Logan, the CAMP serves as the zoning code for St. Edward State Park. Tr. 397-98.

B. Seminary Ground Use Will Remain Subordinate and Complimentary to Recreational Use. The seminary grounds will remain subordinate and complimentary to the recreational use of St. Edward Park. This determination is based upon the size of the project area, the intensity of use and the modest degree of exterior alterations. St. Edward Park is 316 acres in size. See Figure 2-2, FEIS. The seminary grounds only take up 5.5 acres of the park and part of the proposal involves the addition of the 9.9-acre private parcel. Exterior alterations to the building are modest and are limited to restriped parking to the north of the seminary building, the addition of a multi-level structured parking garage in the center of the seminary grounds, modifications to an access road, landscaping improvements and the replacement of a volleyball court area with an organic garden. Tr. 76:14-25; 77:1-8; FEIS Figure 2-3 and 2-4. Modifications would be subject to the design standards of the Secretary of Interior's Standards for Treatment of Historic Preservation. The overall impact on intensity of use is also modest. As noted in other parts of this decision, all project impacts (which are all related to intensity) are nonsignificant.

C. Priority Use of Seminary Remains Parks and Recreation. It is determined that the proposal is consistent with the priority use policy of the St. Edward CAMP. P. 17 of the St. Edward CAMP requires that “[p]riority should be given to uses of the Seminary Building which support outdoor recreation and traditional park activities.” Except for the removal of the volleyball court, the proposal doesn't affect any recreational activities outside of the facility and will increase public access to the seminary building overall. As testified by Ms. Wang, the basement and first floor of the seminary building will still be open to the public, including the restrooms. Tr. 445:23-447:14. This public access, in addition to access to the outdoor seminary grounds, is required by Section 2.4 of the lease. See Ex. P7. This represents an increase in public access over the currently closed condition. As testified by

Ms. Logan, Washington Parks environmental program manager, the building is currently only available by appointment only and the Applicant's proposal to make the building accessible to the public is more public access than was provided by Washington Parks in the 40 years it has owned the seminary grounds. Tr. 403:1-16. The organic garden will be fenced, but that will be to keep dogs out and the public will still be able to go in. Tr. 448:15-18, 449:2-11. The gymnasium at the proposal site is under a ten-year lease for youth basketball camps and the pool has remained closed since 2009. See FEIS, p. 1-7.

Perhaps the greatest shortcoming of the proposal from the standpoint of the priority CAMP policy is the loss of the volleyball court. The volleyball court is listed in the National Register of Historic Places, as documented in Ex A19, Section 7, p. 4 and App. C of DEIS, 9/22/17 minutes, p. 1. The applicant will be replacing the volleyball court with an organic garden. Given the National Register designation of the project, there's no question that removal of the volleyball courts represents both a loss of a recreational facility and a historical resource. However, as testified by Ms. Logan, removal of the volleyball court must be done in conformance with Secretary of the Interior regulations, which will probably entail the addition of signage identifying the former location of the volleyball courts. Given that the removal and alteration of registered historical sites is regulated by the federal government, those standards are compelling as to what constitutes an acceptable level of alteration/removal to a historical resource. Tr. 404:1-19. The loss of the volleyball courts as a recreational resource is also of arguably limited significance, given the relatively limited size of the facility and its limited seasonal use. No witnesses testified about current usage of the volleyball court, though Mr. Hirt noted that the area around the court is now used for the Friends of St. Edward State Park kids' day. Tr. 338:4-12.

The SEPA Appellant testified that it would like to see the seminary building used for an environmental learning center. Such a use may be more consistent with "outdoor recreation and traditional park activities," but the Washington State Parks has no plans to use the entire facility for that purpose. As noted in FOF No. 6, Washington State Parks has made multiple attempts to find a feasible use for the proposal and after a rigorous selection process, has come upon the subject proposal as the only feasible means of continued use of the site. If the proposal doesn't go through, Washington Parks staff have been directed to vacate the site. Tr. 408. In its own right, the proposed use goes far in making itself a historical and recreational resource to Park users in conformance with the objective to make outdoor recreation and traditional park activities a priority use. When compared to the only alternative, vacation of the premises, see FOF No. 6, the proposed use is clearly the superior alternative given the recreational and park use priorities assigned by the St. Edward CAMP. Finally, the priority policy is a "should" policy, not a mandatory "shall" policy, evidencing that the priority is only a preference and that practical considerations, such as those faced by Washington State Parks in the absence of other feasible use alternatives, may have to be determinative.

Conclusions of Law

24. CAMP Subject to Examiner Jurisdiction. Washington State Parks and the Applicant have both objected to the Hearing Examiner’s application of the St. Edward Park CAMP on the basis of lack of jurisdiction. The CAMP is not a policy adopted by the City of Kenmore. However, WAC 197-11-444(b)(i) recognizes as an element of the environment, the “*relationship to existing land use plans...*” WAC 977-11-400(6) requires an environmental impact statement “... describe the existing environment that will be affected by the proposal.” Consequently, conformance to applicable land use plans is a relevant consideration in an EIS, which in turn is subject to the jurisdiction of the hearing examiner. If Washington State Parks had made any formal express determination on the conformance of the proposal to the St. Edward CAMP, that determination would certainly have been dispositive. However, no such formal and express Washington State Parks application of the CAMP is in evidence. The applicability of the St. Edward CAMP policies raised by the SEPA Appellant are particularly germane to this FEIS challenge, because they concern environmental impacts related to park and historical resources. In the absence of any directly applicable standards, assessment of impacts to park and historical resources becomes a highly subjective inquiry. The St. Edward CAMP provides some well-balanced objectivity to the measurement of those impacts, based upon the input of a citizen’s advisory committee composed of a diverse group of stake holders and approved under the expertise of the Washington State Parks Commission. See Ex. A26, p. 2-3.

25. FEIS Adequately Addresses Impacts Related to Conformance to CAMP. As determined in FOF No. 20, the proposal is consistent with the St. Edward CAMP in regards to the policies raised by the SEPA Appellant. As concluded in COL No. 5, an FEIS is only required to consider “*the significant aspects of the probable environmental consequences' of the agency's decision.*” Since there are no significant impacts resulting from CAMP conformance, there are no significant aspects of probable environmental consequences of the conformance issue and no FEIS evaluation of CAMP conformance is therefore required.

Appeal Issue No. 18

The various mitigation measures identified in the FEIS (including “alternative mitigation measures) are not sufficient to reduce the proposal’s adverse impacts to nonsignificant levels. As such, the FEIS has failed to disclose the project’s many significant adverse environmental impacts, which, in almost all instances, are reported to be insignificant solely by virtue of the inadequate mitigation measures.

Findings of Fact

21. Issue as Presented. The only mitigation measure specifically identified by the SEPA Appellant was the mitigation measures for parking identified at p. 1-21 of the FEIS, where mitigation measures for insufficient parking are identified as valet parking and a potential agreement with Bastyr University. As noted at page 3.12-11 of the DEIS, parking at Bastyr is located more than a half mile from the project site, so any shared parking arrangement would necessitate a shuttle. The Appellant asserts in Ex. S13, p. 3 that the Bastyr parking mitigation measure is insufficient because it doesn’t identify where the parking will be located, whether it will be available when it’s needed and whether proposal patrons will use the shuttle.

Conclusion of Law

26. **Parking Mitigation Compliant with SEPA Rules.** It is determined that the FEIS adequately addresses parking mitigation. The SEPA rules are not very stringent as to what is required for mitigation. WAC 197-11-440(6) simply requires that the EIS “...discuss reasonable mitigation measures that would significantly mitigate..” impacts that must be addressed in the EIS. WAC 197-11-440(6)(c)(iv) states that “[t]he EIS need not analyze mitigation measures in detail unless they involve substantial changes to the proposal causing significant adverse impacts, or new information regarding significant impacts, and those measures will not be subsequently analyzed under SEPA.” These SEPA rules define the level of mitigation analysis that qualifies as “reasonable” under the Rule of Reason. As is clear from the SEPA rules, the EIS need not provide for mitigation measures that eliminate all adverse impacts, it need only identify mitigation that significantly mitigates impacts. This is consistent with case law that provides that an FEIS does not require inclusion of specific remedies of each environmental impact. *See Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation Council*, 165 Wn.2d 275, 312 (2008). The FEIS offers little assurance that the Bastyr mitigation will work, much less how it will work, but that level of detail isn’t required for an EIS. It is reasonable to conclude, especially with the deference due the SEPA responsible official’s determination of adequacy, that (1) an implementation of the recommended mitigation will “significantly” reduce parking impacts as required by WAC 197-11-440(6) and (2) the level of detail is commensurate with that required by WAC 197-11-440(6)(c)(iv). Further, the FEIS provided a reasonably thorough discussion of environmental impacts such that it provided the examiner with enough information to recommend more stringent mitigation that should serve to mitigate parking impacts to nonsignificant levels. Given these factors, it is concluded that the parking mitigation recommended in the FEIS meets applicable SEPA requirements.

Appeal Issue No. 19

The SEPA responsible official did not respond to comments as required by WAC 197-11-560. In many instances, the SEPA responsible official did not address individual issues, facts, and argument raised in public comments, or, where a response was provided, the response was not substantive or meaningful. This fell below the standard required by SEPA and SEPA’s implementing regulations.

Findings of Fact

22. **Issue as Presented.** The Examiner’s February 23, 2017 Order on Applicant’s First Motion to Dismiss, Ex. 22(C) directed the Appellant to rewrite Issue No. 19 “...to specifically identify which responses to public were inadequate and why they were inadequate.” The SEPA Appellant responded in Ex. A15 that responses to a letter from Rebecca Hirt were not adequate. Comments and responses identified in Ex. A15 are individually assessed as follows:

- A. **Mitigation.** Ms. Hirt expressed concern that mitigation was only recommended as something that could be done as opposed to something that should be done. The response was that the FEIS identified mitigation measures. This response is adequate because it

identifies that the FEIS complies with the SEPA requirements for mitigation, i.e. identify mitigation. There is no SEPA requirement mandating a mitigation plan that eliminates all impacts, as discussed in COL No. 26. As noted in the *Kittitas* case when it disposed of the notion that an FEIS must remedy all environmental impacts, “[t]he basic purpose for requiring a FEIS is to require local governments to consider total environmental and ecological factors to the fullest extent when taking major actions significantly affecting the quality of the environment.” 165 Wn.2d at 312 (inner quotations omitted). As noted in the Applicant’s prehearing brief, Ex. A47:

The procedural obligation to include mitigation measures is sometimes confused with a substantive obligation to mitigate adverse environmental impacts. The purpose of the EIS is to disclose, not dispose.

Richard L. Settle, *The Washington State Environmental Policy Act: A legal and Policy Analysis*, Cha. 14 Section 14.01.

In responding that the FEIS identified mitigation measures, the SEPA responsible official was merely stating that the FEIS did what was required by SEPA. It certainly would have been helpful to be more direct in this conclusion, but from a reasonableness standpoint the failure to identify the legal basis for not providing more does not meaningfully deprive the decision with environmental information necessary to make an informed decision. In this regard the response must be considered adequate.

- B. CAMP Noncompliance. Issues of noncompliance addressed under Appeal Issue No. 18 were also addressed in Ms. Hirt’s letter. The response was an overview of the decision-making process employed by Washington State Parks in choosing the proposal for use of the seminary. Although the examiner ultimately determined that compliance issues with the CAMP are relevant to the environmental impacts of the proposal, see COL No. 24, it was reasonable to conclude that Washington State Parks implicitly considered CAMP policies in its decision-making process and that Parks was in the best position to evaluate compliance since the CAMP is a Parks adopted document. The fact that the seminary grounds and the first floor and basement of the seminary building will be open to the public would have been useful information to add to the response, see FOF No. 20(C). This information is apparently not anywhere in the FEIS or DEIS. However, finding the EIS inadequate because of some missing pieces of potentially useful information in the comment responses would be considered “fly specking” the document, which as noted in FOF No. 10 is not grounds for a finding of inadequacy. Overall, given that the CAMP document is a Parks document and there are no environmental impacts associated with the application of the document, the response was adequate.
- C. Steep Slopes. Ms. Hirt commented that the 9.9 acre McDonald property has steep slopes so its benefits as park property cannot be adequately assessed without noting the grade of the slope. The response did not identify the grade of the slope, but did note that the property could be developed under the City’s development standards and that transferring it to St. Edward Park would enable Washington State Parks to maintain its natural state for wildlife

and recreational use. The response was adequate. There is nothing in the record to suggest that the grade of the slopes would provide any more useful information than what was already disclosed in the response. The information provided by the SEPA responsible official provided enough information to assess the environmental benefits of annexing the McDonald property into St Edward Park.

- D. Lighting. Ms. Hirt noted that there was insufficient information on how lighting would be mitigated. The SEPA responsible official responded that lighting would have to comply with City lighting standards. The response was adequate. The City's lighting standards, KMC 18.30.070, identify the design standards that will mitigate against light impacts. The recommended conditions of approval for the site plan also contain additional lighting mitigation.

Conclusions of Law

27. Responses to DEIS Comments Consistent with SEPA Rules. WAC 197-11-560 governs how to respond to DEIS comments. This rule generally requires the SEPA responsible official to make changes to the DEIS in response to the comments or explain why no further response is necessary. In the examples raised by the SEPA Appellant, supra, the SEPA responsible official chose to explain why further response wasn't necessary. For the reasons identified in Finding of Fact No. 23, these responses were adequate as none of the comments warranted any revision or addendum to the FEIS.

Appeal Issue No. 20

Dismissed as abandoned during the appeal hearing.

Appeal Issue No. 21 and 22

Dismissed for lack of jurisdiction in the Examiner's February 27, 2017 Order on Washington State Parks Commission Request for Reconsideration, Ex. 22(E), and the Examiner's February 23, 2017 Rulings on Applicant's First Motion to Dismiss, Ex. 22(C).

Appeal Issue No. 23

In review the Lodge project's probable environmental impacts, the SEPA responsible official failed to: (a) consider the environmental context of the project, in violation of WAC 197-22-330(3)(a)[sic]; (b) consider the environmental effect of the projects many smaller impacts, in violation of WAC 197-11-330(3)(c) and (c) failed to consider the project's catalytic and precedential impacts, in violation of WAC 197-11-330(3)(iv).

Conclusion of Law

28. Appeal Issue No. 23 Dismissed as Based on Inapplicable Threshold SEPA Rules. The Appeal issue is beyond the scope of this appeal and is dismissed. Appeal Issue No. 23 addresses compliance

with WAC 197-11-330, which is limited to the environmental factors the SEPA responsible official must consider in determining whether an EIS is required for a proposal. This appeal addresses the adequacy of the FEIS, not the threshold decision of whether an EIS should have been required in the first place.

Appeal Issue No. 24

Dismissed for lack of jurisdiction in the Examiner's February 23, 2017 Rulings on Applicant's First Motion to Dismiss, Ex. 22(C).

Appeal Issue No. 25

Appellants reserve the right to amend this notice of appeal as necessary to add additional assignments of error.

Conclusion of Law

29. Appeal Issue No 25 Dismissed as Violation of KMC 19.30.080. KMC 19.30.080(B) provides that “[t]he scope of an appeal shall be based principally on matters or issues raised in the statement of appeal.” Pursuant to this provision, no appeal issues outside those raised in the Appellant's Appeal are authorized and Appeal Issue No. 25 is dismissed.

DECISION

Based upon the Findings of Fact and Conclusions of Law determined and concluded in this decision and recommendation, it is concluded that the FEIS is adequate under the “Rule of Reason” and applicable EIS SEPA rules and that the site plan application meets all applicable review criteria. Based upon this conclusion, it is decided that the appeal on FEIS adequacy is denied and it is recommended that the City Council approve the site plan application. The site plan application is recommended for approval provided that the following conditions are imposed:

1. All subsequent permit applications and plans shall comply with the approved site plan (Exhibit 13), conditions of approval provided herein, applicable zoning regulations of the Parks (P) zone, general development standards in KMC 18.30, development standards in KMC 18.50, and shall incorporate all required features and elements associated with compliance with the Parks Development Standards in KMC 18.28, or specifically conditioned otherwise. Any modifications to design features shall require City approval.
2. Site Plan approval shall be subject to the time limitations stated in KMC 18.105.060.
3. Site Plan approval does not limit the applicant's responsibility to obtain required permits or licenses from the State or other regulatory body. Subsequent permits shall generally comply with exhibits unless otherwise approved by the City.
4. An engineering permit shall be obtained for construction of all required site improvements.

Engineering plans for all improvements shall be submitted for review and approval by the City prior to engineering permit issuance. The improvements shown on the approved plans shall be constructed and approved by the City of Kenmore prior to issuance of a certificate of occupancy for the building.

5. Separate permits are required for building improvements and fire sprinkler/alarm improvements and modifications as identified by the City of Kenmore and Northshore Fire Marshal.
6. A final landscape plan complying with KMC 18.35 shall be filed for review as part of permit review.
7. Construction permits shall be reviewed for compliance with applicable wildlife habitat protection standards in KMC 18.55.530.
8. Compliance with the design requirements for historic uses as specified in KMC 18.50 shall be verified as part of engineering and building permit reviews. The City shall review the engineering and building permit plans consistent with its code for treatment of historic resources, including considering whether the building permit plans meet the Secretary of Interior's Standards for the Treatment of Historic Properties for Rehabilitation (Exhibit 18).".
9. Prior to engineering permit issuance, the project shall be reviewed for compliance with KMC 13.35 and 2009 KCSWDM as adopted. Required drainage improvements shall be installed and fully functional prior to certificate of occupancy for the building. Any required easements or covenants for future inspection and maintenance of the proposed storm drain system shall be recorded on title prior to issuance of a final certificate of occupancy for the building. Any required easements or covenants for future inspection and maintenance of the proposed storm drain system shall be negotiated between the tenant and the property owner
10. Prior to engineering permit issuance, the project shall be reviewed for compliance with adequate pedestrian and bicycle facilities consistent with KMC 18.40.100. Walkway facilities shall be compliant with current ADA requirements to the maximum extent feasible, while preserving the historic nature of the roadway and park trail system.
11. Prior to engineering permit issuance, if there are changes to the scope of the project, the project shall be re-reviewed for compliance with adequate parking per KMC 18.40.030 and the applicant's traffic and parking analysis.
12. Prior to engineering permit issuance, the project shall be reviewed for compliance with the bike parking provisions in KMC 18.45.030.E.
13. The project will be required to pay traffic impact fees for 120 mobility units at the time of building permit application, consistent with KMC 20.47, at the rates in affect at that time. The number of mobility units generated by the project and the required traffic impact fee is subject to change if the project scope, and/or proposed uses, change.
14. The existing dead-end water lines within the project will require looping per Northshore Utility District (NUD) requirements. A Developer Extension Agreement with NUD will be required. Applicant shall coordinate with NUD to obtain the necessary permits and system design requirements.
15. The existing sewer system on the project site will require improvements per NUD requirements. The applicant shall coordinate directly with the Northshore Utility District for applicable water/sewer permits and system design requirements.

16. The structure is constructed of primarily noncombustible materials. Interior renovation plans include a new fire alarm and fire sprinkler system as a part of this renovation project, and will be reviewed as part of the engineering/building permit process, and by the Northshore Fire District (NFD).
17. Adequate fire flow shall be provided for the building in accordance with City of Kenmore and NFD requirements.
18. The project will require a life safety plan as required by the City of Kenmore and Northshore Fire District.
19. The results of the research and field examination of the water supply conducted by NUD will be provided to NFD.
20. A road monitoring plan shall be provided and implemented prior to completion of the project, to maintain continuous emergency access along NE 145th Street.
21. An approved method of ensuring that the existing access road is kept clear of obstructions at all times will be required.
22. An emergency access key box ("Knox box") will be required to be installed on the building and inspected by NFD.
23. All fire department conditions shall be inspected and approved prior to final certificate of occupancy for the site.
24. Approved walkways are required outside of each exit. The walkways shall extend from the exit door to an approved yard, court, or public way, as determined and inspected by NFD.
25. If irrigation is provided, a separate meter and backflow assembly is required.
26. A Double Check Valve Assembly (DCVA) is required directly behind the domestic water meter.
27. Prior to issuance of certificate of occupancy, the applicant shall provide an ADA compliant walkway adjacent to the existing parking lot entrance near the building public access entrance. The new sidewalk shall connect with the existing walkways between the building and Juanita Drive NE, be ADA compliant and inspected by the City.
28. The proposal is considered to include meeting room sizes as depicted in Figures 2-5 through 2-7 of the FEIS. The size of the meeting rooms was used to assess parking for the proposal as outlined in FOF No. 7. Any material increase in individual sizes of the meeting rooms will need to be reviewed as an amendment to the site plan.
29. Alterations to Nun's Garden are prohibited except to the extent done to improve the site as a historical resource in conformance with applicable historical preservation regulations.

Recommended Mitigation as Exercise of SEPA Substantive Authority


S1: The Applicant shall prepare a parking monitoring plan, subject to approval by staff prior to issuance of any certificate of occupancy, that monitors the adequacy of parking over a three-year period commencing from the date that the proposal is fully operational. The monitoring plan shall be targeted at the three largest conference/meeting room events held at the proposal each year. The results of the monitoring shall be submitted to City staff at the end of each of the three years subsequent to full proposal operations. To the extent reasonably practicable, the monitoring reports shall identify how much parking was used for the proposal and how many proposal patrons park off-site. If the reports reveal that parking is inadequate, the Applicant shall implement remedial measures to assure adequate parking. These measures may include a shared off-site parking agreement, valet parking, an approve

site plan amendment for additional parking or limitations on conference center use. The remediation measures shall be subject to staff approval and staff may order peer review at the expense of the Applicant to verify that the proposed remedies will effectively address parking deficiencies. If remediation measures are found necessary, the Applicant shall submit another three-year monitoring plan subject to the same terms and conditions applicable to the first monitoring plan. See COL No. 8.

S2: The applicant shall prepare a lighting plan subject to approval by City staff that demonstrates that lighting intensity will be held to the minimum necessary for functionality and safety and that lighting shall be directed away from the adjoining undeveloped areas to the maximum extent practicable. See COL No. 12.

S3: To the extent allowed and encouraged by Washington State Parks, the Applicant shall post trail heads and trail access points within a quarter of a mile of the project grounds with notice of park hours. Written information shall also be provided to all lodge guests regarding park hours. See COL No. 14.

Dated this 24th day of March, 2017.



Phil A. Olbrechts

City of Kenmore Hearing Examiner

Right of Reconsideration

Hearing parties may seek reconsideration of this decision pursuant to Kenmore Hearing Examiner 23. Requests for reconsideration must be filed with the City Clerk five days from the date of issuance of this Recommendation and Final Decision.