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**BEFORE THE HEARING EXAMINER
FOR THE CITY OF BAINBRIDGE ISLAND**

In the Matter of the Applications of
**Michael & Darden Burns, LLC, on Behalf of
Madison Avenue Development, Inc.**
For Approval of a Major Site Plan and Design Review
and Major Conditional Use Permit

NO. PLN 50880 SPR/CUP
CITY'S POST-HEARING BRIEF

I. INTRODUCTION

Pursuant to the Post-Hearing Order issued by the Hearing Examiner on January 24, 2020, this brief responds to the legal issues raised during the testimony at the January 23 hearing. Declarations of Heather Wright, David Greetham, and Michael J. Michael responding to specific points in the testimony are being separately filed with the Hearing Examiner this morning. The City understands that Winslow Neighbors attempted to submit a 25-page legal memorandum the day after the hearing and that the Hearing Examiner has decided not to consider that memorandum because it did not comply with the Post-Hearing Order. The City agrees with that determination, particularly given the fact that the memorandum was never provided to the City's attorney or the attorney for the Applicant. The City will therefore not be directly responding to the memorandum in this Post-Hearing Brief.

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II. LEGAL ISSUES

1) Is the Hearing Examiner bound to follow the Planning Commission's recommendation and deny the SPR and CUP? [NO]

2) Can a material detriment from traffic, noise, and parking be shown under the CUP criteria where an MDNS was issued and no significant adverse impact from traffic, noise and parking exists? [NO]

3) Was the Traffic Impact Analysis (TIA) for the Winslow Hotel project a "thorough" analysis as required by BIMC 15.40.025? [YES]

4) Will there be a materially detrimental effect from Winslow Hotel traffic on uses and properties in the vicinity? [NO]

5) Will there be a materially detrimental effect from Winslow Hotel noise on uses and properties in the vicinity? [NO]

6) Will there be a materially detrimental effect from Winslow Hotel parking on uses and properties in the vicinity? [NO]

7) Does the fact that the Winslow Hotel building contains more than one permitted use in addition to the hotel mean that the hotel is not allowed? [NO]

8) Is the Winslow Hotel project consistent with the City's design guidelines and building height requirements? [YES]

9) Is the Winslow Hotel project consistent with the City's Comprehensive Plan? [YES].

10) Should the Hearing Examiner deny the CUP and SPR until the Bonus FAR requested by the Applicant is finally approved?

III. ANALYSIS

24 A. **The Hearing Examiner is not required to "confirm" the Planning Commission's**
25 **recommended denial of the CUP and SPR.**
26

1 At the outset of its presentation, Winslow Neighbors misstated the requirements of BIMC
2 2.16.040.E.6.b and 2.16.110.E.5.b. Contrary to Winslow Neighbors' characterizations, these code
3 sections do not require the Hearing Examiner to "confirm" the Planning Commission's
4 recommendation of denial unless the specific criteria set forth in the provisions are met. Instead,
5 both provisions contemplate an approval by the Hearing Examiner and incorporation of any
6 conditions of approval recommended by the Planning Commission into the Hearing Examiner's
7 approval. BIMC 2.16.110.E.5.b relates to conditional use permits and provides as follows:

8 The hearing examiner shall make compliance with the
9 recommendations of the planning commission a condition of
10 approval, unless the hearing examiner concludes that the
11 recommendations:

- 12 i. Reflect inconsistent application of design guidelines or any
13 applicable provisions of this code;
- 14 ii. Exceed the authority of the design review board or planning
15 commission;
- 16 iii. Conflict with SEPA conditions or other regulatory
17 requirements applicable to the project; or
- 18 iv. Conflict with requirements of local, state, or federal law.

19 (Emphasis added). Similarly, BIMC 2.16.040.E.6.b relating to major site plan and design review
20 provides that "[t]he director shall make compliance with the recommendations of the design review
21 board and/or planning commission a condition of approval [of the SPR], unless the director
22 concludes that the recommendations" meet the same criteria as those set forth in BIMC
23 2.16.110.E.5.b quoted above. (Emphasis added). The plain language of these code sections
24 contemplates a Planning Commission recommendation of approval, not denial, for it is obvious
25 that a Planning Commission recommendation of denial cannot be made a "condition of approval"
26 by the Director or the Hearing Examiner. Given the plain language of the code, the Hearing
Examiner is not bound to deny the project simply because the Planning Commission recommended
denial.

1 **B. The finality of the MDNS for the Winslow Hotel Project supports a finding that the**
2 **Project will not be materially detrimental to uses or property in the vicinity.**

3 An MDNS is a determination by the SEPA responsible official that a proposal will not have
4 a significant adverse environmental impact if certain mitigating conditions are imposed. WAC
5 197-11-350; *Anderson v. Pierce County*, 86 Wn. App. 290, 303, 936 P.2d 432 (1997); *Indian Trail*
6 *Prop. Owner's Ass'n. v. City of Spokane*, 76 Wn. App. 430, 442, 886 P.2d 209 (1994). When
7 Winslow Neighbors withdrew its appeal of the MDNS for the Winslow Hotel Project, the City's
8 determination that the mitigation measures would be effective in preventing any significant
9 adverse impacts from traffic, parking, and noise became final and not subject to further challenge.
10 *Snohomish Cy. Fire Prot. Dist. No. 9 v. Snohomish Cy. Bdry. Rev. Bd.*, 97 Wn.2d 922, 928-29, 652
11 P.2d 1356 (1982).

12 While Winslow Neighbors concedes the validity of the City's MDNS, it nevertheless
13 argues that the Winslow Hotel project will be materially detrimental to uses and property in the
14 vicinity in violation of BIMC 2.16.110.F.1.c because of the traffic, parking, and noise impacts that
15 are conclusively mitigated by the MDNS. This is incorrect. When one compares the standard for
16 determining whether a project will have a significant adverse environmental impact under SEPA
17 with the standard for determining whether a project will be materially detrimental under the CUP
18 criteria, it is obvious that one cannot find a material detriment when no significant adverse impact
19 exists.

20 The Bainbridge Island Municipal Code does not define the term "materially detrimental"
21 for purposes of the CUP criteria and there are no Washington cases that directly define the term
22 either. Where words in a statute or ordinance are undefined, courts often resort to the dictionary
23 definition. *See, e.g., Cornu-Labat v. Hosp. Dist. No. 2 of Grant County*, 177 Wn.2d 221, 231, 298
24 P.3d 741 (2013); *State v. Watson*, 146 Wn.2d 947, 954, 51 P.3d 66 (2002). *Merriam-Webster's*
25 *Online Dictionary* (www.merriam-webster.com) defines "material" as meaning "having real
26 importance or great consequences." *Merriam-Webster's Online Dictionary* also defines

1 “detrimental” as meaning “obviously harmful; damaging.” Washington courts, while not directly
2 defining the term “materially detrimental,” have also seemingly added a third requirement, and
3 that is that the detrimental impact must not be mitigated by project conditions. *See, e.g., City of*
4 *Medina v. T-Mobile, USA*, 123 Wn. App. 19, 34-35, 95 P.2d 377 (2004) (paint and other measures
5 taken to disguise wireless communications facility minimized adverse effects on neighboring
6 properties and facility was therefore not materially detrimental to neighboring properties); *Phillips*
7 *v. City of Brier*, 24 Wn. App. 615, 623, 604 P.2d 495 (1979) (increased traffic and noise were
8 adverse effects that could not be mitigated by project conditions and city properly found material
9 detriment). Thus, for a project to be “materially detrimental” to uses and properties in the vicinity,
10 its effects must be (a) important or of great consequence; (b) obviously harmful or damaging,
11 including as the result of impacts like traffic and noise; and (c) not mitigated by the project
12 conditions.

13 The SEPA standards for significant adverse impacts and the issuance of an MDNS are very
14 similar. Under WAC 197-11-752, “impacts” are “effects upon the elements of the environment
15 listed in WAC 197-11-444,” a list that includes traffic, parking, and noise. A “significant” impact
16 is one that has “a reasonable likelihood of more than a moderate adverse impact on environmental
17 quality.” WAC 197-11-794. The term “adverse” is not defined by SEPA, but *Merriam-Webster’s*
18 *Online Dictionary* defines it as “causing harm: harmful.” And, as pointed out above, an MDNS
19 can only be issued if the SEPA responsible official determines that the mitigation measures
20 imposed will prevent any significant adverse environmental impacts from occurring. Thus, for
21 SEPA purposes, a significant adverse impact exists if the impacts of the project are (a) more than
22 moderate; (b) harmful, including as the result of the project’s effects on traffic, noise, or parking;
23 and (c) not mitigated by the mitigation measures imposed through an MDNS.

24 As the Hearing Examiner can see, the two standards are very similar, so similar in fact that
25 it is impossible to meet one standard and not meet the other, and impossible to violate one standard
26 and not violate the other. A “more than moderate” impact is clearly an effect that is “important or

1 of great consequence,” “harmful” is “harmful,” and “not mitigated” is “not mitigated.” It is thus
2 impossible for a project to have no significant environmental impacts on traffic, parking, and noise
3 and yet be materially detrimental for those same reasons, just as it is impossible for a project to be
4 materially detrimental because of its effects on traffic, noise, and parking and yet have no
5 significant adverse environmental impact.

6 No Washington case dictates a different result. While some Washington courts have held
7 that a determination of environmental nonsignificance by one agency is not legally binding on
8 another agency reviewing a project under other permit criteria, *see, e.g., Bellevue Farm Owners v.*
9 *Shoreline Hrgs Bd.*, 100 Wn. App. 341, 355, 997 P.2d 380 (2000) (County’s DNS did not preclude
10 Shoreline Hearings Board from reviewing project for compliance with Shoreline Management
11 Act), “legally binding” is not what the City is arguing. Instead, the City is simply stating that the
12 standards for “materially detrimental” and “significant adverse environmental impact” are so
13 similar that when a project has no significant adverse impact on traffic, noise, or parking, it cannot
14 by definition be “materially detrimental” for those same reasons. The City’s MDNS therefore
15 strongly supports a conclusion by staff and a requested finding by the Hearing Examiner that the
16 Winslow Hotel’s traffic, noise, and parking will not have a “materially detrimental” effect on uses
17 and properties in the vicinity and does not violate the CUP criterion in BIMC 2.16.110.F.1.c.

18 **C. The Traffic Impact Analysis (TIA) for the Winslow Hotel Project meets the**
19 **requirements for a “thorough review” under BIMC 15.40.025.**

20 Winslow Neighbors’ transportation consultant, Ross Tilghman, erroneously contended that
21 the TIA for the Winslow Hotel Project was not a “thorough review of the immediate and long-
22 range effects of the traffic generated by the project” as required BIMC 15.40.025. In support of
23 this contention, Mr. Tilghman argued that (a) the trip generation rates in the *ITE Trip Generation*
24 *Manual* used for the TIA underestimate traffic from a hotel with the uses proposed in the Winslow
25 Hotel project, (b) the TIA did not adequately account for pedestrian traffic volumes, and (c) the
26 TIA did not adequately account for surges related to ferry traffic. The City understands that the

1 Applicant will be submitting a declaration from its transportation consultant addressing each of
2 these issues in detail, and the City will address them only briefly herein.

3 With respect to the ITE trip generation rate contention, as the Declaration of Michael J.
4 Michael ("Michael Declaration) submitted contemporaneously with this brief shows, use of the
5 ITE trip generation rates is the industry standard and is consistent with the City's traffic modeling
6 and TIA requirements as set forth in the City's Island Wide Transportation Plan (IWTP) and
7 Municipal Code. Michael Declaration at pp. 2 – 4, ¶¶ 4 - 10. The *ITE Trip Generation Manual*
8 defines a hotel for purposes of trip generation rates as "a place of lodging that provides sleeping
9 accommodations and supporting facilities such as restaurants, cocktail lounges, meeting and
10 banquet rooms or convention facilities, limited recreational facilities (pool, fitness room), and/or
11 other retail and service shops." Michael Declaration at p. 4, ¶ 12; Exhibit 15 at p. 101. All uses
12 proposed for the Winslow Hotel are included in this ITE definition and the ITE trip generation
13 rates are thus entirely appropriate for use in evaluating the Winslow Hotel's traffic impacts.
14 Michael Declaration at p. 4, ¶ 12. Mr. Tilghman failed to demonstrate that the ITE rates were
15 flawed or that their use kept the Winslow Hotel TIA from being a thorough analysis.

16 With respect to Mr. Tilghman's argument that the TIA failed to consider pedestrian
17 volumes and their effects on traffic operations, this is incorrect. To the extent that pedestrian
18 volumes contribute to traffic congestion, those delays are inherently accounted for in both the
19 existing and projected levels of service. Michael Declaration at p. 5, ¶ 14. In other words, if
20 pedestrians cause traffic delays in crossing streets, those delays will be reflected in the levels of
21 service at the crossing points, both under existing and projected conditions. Pedestrian volumes
22 and their effects on traffic operations were therefore adequately considered in the TIA.

23 Finally, with respect to Mr. Tilghman's argument that the TIA did not adequately consider
24 surges from ferry traffic, this is also incorrect. While not specifically called out in the TIA, ferry
25 traffic was definitely reflected in both the AM and PM peak hour volumes described. Michael
26 Declaration at p. 5, ¶ 13; Exhibits 12 and 15. The traffic counts attached to the TIA show traffic

1 volumes on the various intersection legs for every 15-minute period during the AM and PM peak
2 hours. *Id.* Ferry traffic obviously contributes to these volumes whenever the ferry docks or sails
3 and any volume surge from ferry traffic is therefore clearly shown. Ferry traffic is adequately
4 accounted for in the TIA.

5 **D. The Winslow Hotel's traffic will not have a materially detrimental effect on uses and**
6 **properties in the vicinity.**

7 As discussed in Section III.B above, in order for a project's traffic to have a "materially
8 detrimental" effect on uses and properties in the vicinity, its effects must be (a) important or of
9 great consequence; (b) obviously harmful or damaging, including as the result of impacts like
10 traffic and noise; and (c) not mitigated by the project conditions. The traffic-related conditions
11 imposed by the City's MDNS are robust and adequately mitigate any traffic impacts from the
12 Winslow Hotel project. The MDNS sets forth ten separate conditions directly addressing project
13 traffic, including requirements to improve of the frontage of the adjacent property with bike lanes
14 and sidewalks to provide for alternative modes of transportation (Exhibit 30, Condition 3 on page
15 2); install a mid-block crosswalk on Winslow Way West between Wood Avenue SW and Finch
16 Avenue (Exhibit 30, Condition 4 on p.2); operate a shuttle service for guests to and from the ferry
17 terminal to reduce ferry-related traffic (Exhibit 30, Condition 6 on page 3); operate a shared bicycle
18 or electric-assisted bicycle program to reduce vehicle trips within the downtown area (Exhibit 30,
19 Condition 7 on page 3); establish a communications program to inform guests about alternative
20 modes of transportation (Exhibit 30, Condition 8 on page 3); maintain staggered check-in times
21 coinciding with the ferry schedule to avoid guests arriving all at once (Exhibit 30, Condition 9 on
22 page 3); monitor and report trip and mode data (Exhibit 30, Condition 11 on page 3); and
23 potentially impose additional operational conditions if monitoring reveals that the other conditions
24 are not sufficient to mitigate traffic impacts (Exhibit 30, Condition 12 on page 3). These conditions
25 are all aimed at reducing and managing potential traffic impacts from the Winslow Hotel project.
26 Because the effectiveness of these mitigation measures is beyond challenge after dismissal of

1 Winslow Neighbors' SEPA appeal, the Hearing Examiner should similarly conclude that the
2 measures will adequately mitigate and prevent any material detriment. None of the evidence
3 presented at the hearing demonstrated otherwise.

4 **E. The Winslow Hotel project noise will not have a material detriment on uses and**
5 **properties in the vicinity.**

6 The City understands that the Applicant will be presenting evidence on noise and will
7 therefore address this issue only briefly here. The City's SEPA Responsible Official carefully
8 considered the potential noise impacts of the Winslow Hotel Project and imposed several
9 conditions in the MDNS directly addressing noise. First, the MDNS requires that all commercial
10 service deliveries "shall occur at the loading docks in the west wing of the building," a location
11 that substantially reduces the potential for noise reaching the surrounding neighborhood. Exhibit
12 30, Condition 16 on page 3. Second, the MDNS requires that all "solid waste facilities shall be
13 enclosed within the building" and that "pickup shall occur under the building" in an area
14 completely shielded from the surrounding neighborhood. Exhibit 30, Condition 16 on page 3.
15 Third, the MDNS requires that all "solid waste pickup shall occur between 10:00 a.m. and 12:00
16 p.m. in accordance with the letter from Bainbridge Disposal dated December 5, 2018," thus
17 limiting noise from solid waste pickup to a time of day that will least disturb the neighborhood.
18 Exhibit 30, Condition 15 on page 3. Fourth, with respect to outdoor events, the MDNS requires
19 that the noise attenuation provided by the courtyard design, including the bandshell, must be
20 supplemented with a six foot high wall or fence along the west property line abutting the Wood
21 Avenue Townhomes to the west and the planting of additional vegetation along the southern and
22 eastern perimeter of the site abutting residential properties. Exhibit 30, Condition 17 on page 3;
23 Exhibit 30, Condition 20 on page 3. Fifth, the MDNS requires that noise levels be measured at a
24 minimum of six events occupying the large banquet room and courtyard during the first two years
25 of operation, that reports be provided to the City regarding these measurements and any noise
26 complaints received, and that additional conditions, such as a limitation on the frequency, size,

1 and hours of events, testing by an acoustical engineer to establish noise reduction measures,
2 additional screening, and an event and courtyard management plan, will be imposed if necessary
3 to mitigate impacts disclosed by the reports. Exhibit 30, Conditions 11 and 12 on page 3. Finally,
4 the MDNS requires that the applicant inform immediately abutting neighbors of the dates and
5 times of outdoor events so that neighbors can act as informal noise monitors and report their
6 concerns to the City. Exhibit 30, Condition 14 on page 3.

7 In addition to the MDNS conditions, the proposed project conditions expressly require that
8 no use of the property shall exceed the maximum environmental noise levels established by WAC
9 173-60 WAC, as adopted in Chapter 16.16 of the BIMC. Exhibit 1, Project Condition 25 on page
10 41. Those noise levels were expressly adopted by the City “to control the level of noise in a manner
11 which promotes use, value and enjoyment of property, sleep and repose, and quality of the
12 environment and commerce.” BIMC 16.16.001. Compliance with the noise levels in the code will
13 ensure that noise is kept at a healthful and non-disturbing level.

14 The conditions imposed by the MDNS and proposed as project conditions are more than
15 adequate to address the potential noise impacts of the Winslow Hotel project. The conditions
16 impose operational restraints on service deliveries and solid waste pickup that will fully mitigate
17 any potential noise impacts from those activities. The conditions also require physical
18 improvements in the form of walls, fences, and landscaping that will provide noise attenuation for
19 adjacent properties from outdoor events. And if the conditions fail, the required monitoring,
20 reporting, and additional physical and operational restraints that will be imposed will mitigate the
21 noise impacts to a level that is not “materially detrimental.” With the conditions, noise from the
22 Winslow Hotel project will not be “materially detrimental” to uses or properties in the vicinity.

23 **F. The Winslow Hotel parking will not be materially detrimental to uses and properties**
24 **in the vicinity.**

25 The Bainbridge Island zoning code does not set forth any specific parking requirements for
26 hotel uses in the Mixed Use Town Center District. Instead, Table 18.15.020-2 provides that

1 parking requirements shall be established by the director. For
2 determination by the director, the applicant shall supply (a)
3 documentation regarding actual parking demand for the proposed
4 use; or (b) technical studies prepared by a qualified professional
relating to the parking need for the proposed use; or (c) required
parking for the proposed use as determined by other comparable
jurisdictions.

5 In this case, the Applicant chose option (b) and provided the City with studies prepared by
6 its qualified parking professional, Walker Consultants. Exhibit 11; Exhibit 13. The City
7 understands that the Applicant will be submitting evidence from Walker Consultants addressing
8 the parking issues raised at the hearing. The City would simply point out, that as with traffic and
9 noise, the parking-related conditions imposed on the MDNS and the proposed project conditions
10 will adequate ensure that no material detriment to other uses and properties will occur as the result
11 of the Winslow Hotel's parking. Michael Declaration at p. 5, ¶ 15. In addition to the traffic-related
12 conditions, all of which are intended to reduce the number of vehicles coming to the site and
13 needing to park, the MDNS requires that parking signs be placed near each vehicle entrance to
14 direct drivers where to park and to prevent parking offsite (Exhibit 30, Condition 10 on page 3);
15 requires that parking space occupancy during major events be monitored and reported to the City
16 (Exhibit 30, Condition 11 on page 3); and requires that additional conditions, such potential limits
17 on room occupancy and size and frequency of events, and obtaining additional parking offsite
18 through offsite parking agreements, be imposed if the monitoring demonstrates the need (Exhibit
19 30, Condition 12 on page 3). Proposed Project Condition 28 (Exhibit 1, page 41) requires that the
20 180 spaces available onsite be supplemented by an additional 16 off-site spaces unless use of the
21 7,964 square foot event space onsite is limited to 6,200 square feet. These conditions, taken
22 together will ensure that parking from the Winslow Hotel will not be "materially detrimental" to
23 uses and properties in the vicinity. Michael Declaration at p. 5, ¶ 15. Nothing submitted by
24 Winslow Neighbors or any other participant in the hearing demonstrates otherwise.

25 **G. The spa, retail shop, and banquet facilities proposed for the hotel are permitted uses**
26 **in the Core District and only the hotel requires a conditional use permit.**

1
2 All uses proposed in the Winslow Hotel project are outright permitted uses, except the
3 hotel, which is a conditional use. Declaration of David Greetham (“Greetham Declaration”) at p.
4 5, ¶ 12. *See, also*, BIMC Table 18.09.020 and definitions in BIMC 18.36.030. There is nothing in
5 the Bainbridge Island Municipal Code which suggests that permitted uses cannot be in the same
6 building as a conditional use, or that permitted uses cannot be considered accessory uses to a
7 conditional use. *See*, BIMC 18.36.030(12) (“Accessory use” means a use customarily incidental
8 and related to the principal use on the same lot.”). The spa, retail shop, banquet facilities are either
9 permitted uses in their own right or are accessory uses to the conditional hotel use and are allowed
10 on the Winslow Hotel property under either scenario. Greetham Declaration at p. 5, ¶ 12. Location
11 of the other uses in the Winslow Hotel building does not change the nature of the hotel as a
12 conditional use. *Id.*

13 **H. The Winslow Hotel project meets the City’s Design Guidelines and building height**
14 **requirements.**

15 The Winslow Hotel project’s compliance with the City’s Design Guidelines is discussed
16 in detail in the Greetham Declaration at pages 2 - 4 and that discussion will not be repeated here.
17 It must also be remembered that the Design Review Board reviewed the Winslow Hotel project at
18 six separate meetings and issued its final Findings and Recommendation on June 17, 2019,
19 determining that the Winslow Hotel project meets all City Design Guidelines. Declaration of
20 Heather Wright (“Wright Declaration”) at pp. 2 – 3, ¶¶ 6 – 7; Exhibit 21. While the Planning
21 Commission’s decision quotes from a previous draft of the DRB’s findings in which some
22 concerns were raised, that draft was never adopted by the DRB and the DRB’s final Findings and
23 Recommendations reflect none of the concerns expressed in the quoted draft. Wright Declaration
24 at pp. 2 – 3, ¶¶ 7 - 9. The Planning Director relied on the DRB’s final Findings and
25 Recommendation in making her recommendation to the Hearing Examiner for approval of the
26 CUP and SPR. Wright Declaration at p. 3, ¶¶ 9. For the reasons set forth in the Greetham

1 Declaration (p. 2 ¶ 4), the City Staff Report (Exhibit 1 at page 32), and the DRB’s final Findings
2 and Recommendation approving the project design (Exhibit 21), the City’s Design Guidelines are
3 met by Winslow Hotel project.

4 It was uncontested at the hearing that the Winslow Hotel project meets the City’s building
5 height requirements when measured using the flat roof standard in BIMC 18.12.050.C. Some
6 project opponents contended, however, that the building height should have been measured using
7 the pitched roof standard because the project was required to have a pitched roof under Guideline
8 9 of the Mixed Use Town Center/Core Design District Design Guidelines. As discussed in the
9 Greetham Declaration at pp. 3 – 4, ¶ 9, the Winslow Hotel was not required to have a pitched roof
10 under because of the flexibility afforded buildings that use solar panels to have a flat roof. The
11 contention that the building height should have been measured using the pitched roof standards is
12 therefore not correct.

13 **I. The Winslow Hotel project is consistent with the City’s comprehensive plan.**

14 Washington courts have recognized that “where the zoning code expressly requires a
15 proposed use to comply with the... comprehensive plan, [both the zoning code standards and] the
16 comprehensive plan standards must be met.” *Lakeside Indus. v. Thurston County*, 119 Wn. App.
17 886, 898, 83 P.3d 433 (2004) (citing *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 43, 873 P.2d
18 498 (1994)). This requirement is qualified, however, and two Washington cases illustrate the
19 limits. In *Lakeside Indus. v. Thurston County*, *supra*, Division II of the Court of Appeals was
20 called upon to review a decision of the Board of County Commissioners denying a special use
21 permit to construct and operate an asphalt manufacturing and recycling plant. The County hearing
22 examiner approved the permit, but the Board of County Commissioners concluded that the
23 proposed asphalt plant was not consistent with the policies contained in the Nisqually Sub-Area
24 Plan and reversed the hearing examiner. On appeal in the Court of Appeals, the County argued
25 that asphalt plant was inconsistent with the subarea plan’s prohibition on “large scale commercial
26 development.” While the court acknowledged the ruling in *Weyerhaeuser* and the fact that the

1 Thurston County Code required special use permits to comply with the County's comprehensive
2 plan, the court nevertheless overturned the decision of the Board of County Commissioners,
3 holding that the Board could

4 not invoke the plan's general purpose statements to overrule the
5 specific authority granted by the zoning code to manufacture asphalt
6 as an accessory use to mining. *See Weyerhaeuser*, 124 Wn.2d at 43.
7 The Board's decision violates the rule that specific zoning laws
8 control over general purpose growth management statements and
9 fails to provide meaningful standards for review of a county decision
10 to deny a permit. *Sunderland Family Treatment Servs. v. City of
11 Pasco*, 127 Wn.2d 782, 797, 903 P.2d 986 (1995).

12 119 Wn. App. at 897-98.

13 Similarly, in *Pinecrest Homeowners Ass'n v. Cloninger & Assocs.*, 115 Wn. App. 611, 62
14 P.3d 938 (2003), Division III of the Court of Appeals was called upon to review the Spokane City
15 Council's approval of a mixed-use rezone. The City's hearing examiner had denied the application
16 because the City had no mixed-use zoning regulations. The City Council reversed the hearing
17 examiner based upon its determination that the mixed-use policies in the City's comprehensive
18 plan provided an adequate basis for the rezone. The Court of Appeals disagreed. The court
19 explained its reasoning as follows:

20 The question is whether or not the Comprehensive Plan can
21 be used to evaluate the propriety of a project for mixed-use
22 development in the absence of appropriate zoning regulations. And
23 our answer is that it cannot.

24 Land use regulations are unconstitutionally vague if they
25 empower an administrative agency to make discretionary, arbitrary
26 decisions based on standards which are vague, unarticulated, and
unpublished. *Anderson [v. Issaquah]*, 70 Wn. App. at 75, 851 P.2d
744. And that is precisely what is going on here...

The goals set out in the Lincoln Heights Specific Plan and
just that - goals. They are hortatory. But they are not regulations,
guidelines, or the kind of specific criteria necessary for land use
decisions. They do not provide the necessary certainty to avoid
arbitrary decisions.

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2 115 Wn. App. at 622-24.

3 The *Lakeside* and *Cloninger* decisions thus stand for the following proposition: while a
4 land use permit must be consistent with the comprehensive plan when the decision criteria require
5 consistency, general goals and policies in a comprehensive plan are not specific enough to use as
6 approval or denial criteria when making permit decisions. Specific comprehensive plan policies,
7 such as policies prohibiting particular uses or requiring particular setbacks, may meet the test set
8 out in *Lakeside* and *Cloninger*, but general, advisory policies will not.

9 Much of the testimony at the hearing centered around Guiding Principle #1 in the
10 Bainbridge Island Comprehensive Plan, which states, as a matter of policy direction, that the City
11 should “preserve the special character of the Island, which includes downtown Winslow’s small
12 town atmosphere and function...” The importance of the Island’s special character and the small
13 town atmosphere of Winslow cannot be overstated, and the mention of that character and
14 atmosphere in the first Guiding Principle in the Comprehensive Plan is an indication of how highly
15 the community values them. However, as a policy statement, Guiding Principle #1 is simply too
16 general to serve as grounds for denying or conditioning a project under the *Lakeside* and *Cloninger*
17 decisions.

18 Moreover, development of a property in the Central Core District for a hotel use is not in
19 conflict with the special character and small town atmosphere, as envisioned by the City’s
20 Comprehensive Plan policies and development regulations. Land Use Policy LU-7.3 of the
21 Bainbridge Island Comprehensive Plan provides that “The Central Core is the most densely
22 developed district within the Mixed Use Town Center. Within this Overlay District, residential
23 uses are encouraged, but exclusive office and/or retail uses are permitted.” Policy LU 7.3 and
24 Guiding Principle #1 are implemented through the adoption of the Bainbridge Island zoning code.
25 BIMC 18.03.050 (“The standards and requirements contained in this code, and the district mapping
26 reflected on the official zoning map, have all been made in accordance with the comprehensive

1 plan for the city.”). Development of a hotel in downtown Winslow at the FAR allowed by the
2 code (including allowed Bonus FAR) is thus not inherently incompatible with maintaining the
3 special character and small town atmosphere envisioned by Guiding Principle #1, as Policy LU-
4 7.3 and the Bainbridge Island Zoning Code fulfill that Guiding Principle.

5 The City Staff Report contains a detailed analysis of the Winslow Hotel project’s
6 consistency with the other provisions of the Bainbridge Island Comprehensive Plan. (Exhibit 1 at
7 pages 10 -18. The City stands on that analysis here. The project is consistent with the
8 Comprehensive Plan for the reasons set forth therein.

9 **J. The Hearing Examiner should not deny the project until the Bonus FAR is approved.**

10 During the hearing, some project opponents suggested that the Winslow Hotel project
11 should be denied because the public amenities proposed by the Applicant to achieve the Bonus
12 Floor Area Ratio (FAR) have not yet been approved by the Bainbridge Island City Council. The
13 City staff does not recommend this approach, for the reasons set forth in the Greetham Declaration
14 at pp. 4 – 5, ¶ 10. The project can achieve the Bonus FAR in ways other than approval of public
15 amenities, including but not limited to the purchase of development rights under BIMC
16 18.12.030.E.2, and proposed Project Condition 83 adequately protects the City by requiring the
17 Bonus FAR to be secured prior to building permit. Exhibit 1 at p. 46.

18 IV. CONCLUSION

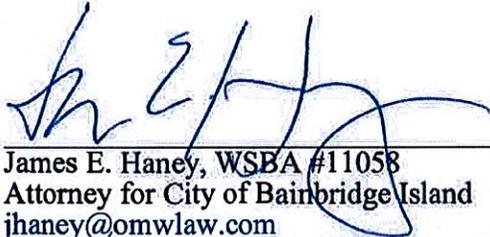
19 The City of Bainbridge Island greatly values public participation and thanks all who took
20 the time and effort to testify at the hearing on the Winslow Hotel project or who submitted written
21 comments for or against the proposal. Public input makes projects better by ensuring that project
22 applicants take that input into account in project design and that the City staff and the Hearing
23 Examiner have all facts and opinions necessary to make a well-reasoned decision on projects and
24 project conditions. The City staff shares the public’s passion for downtown Winslow and its
25 atmosphere. In this case, for the reasons set for the above and in the testimony and exhibits
26 submitted by the City at the hearing and in the Michael, Greetham, and Wright declarations

1 submitted contemporaneously with this brief, the City staff respectfully submits that the Winslow
2 Hotel project meets all of the SPR and CUP criteria for approval and that all of its impacts and
3 effects have been adequately mitigated so as not to cause significant adverse environmental
4 impacts or a material detriment to uses and property in the vicinity. The Planning Director
5 continues to recommend approval of the Major Site Plan and Design Review and the Conditional
6 use permit, subject to the 83 project conditions set forth in the City Staff Report.

7 RESPECTFULLY SUBMITTED this 31st day of January, 2020.

8 OGDEN MURPHY WALLACE, PLLC

9
10
11 By



James E. Haney, WSBA #11058
Attorney for City of Bainbridge Island
jhaney@omwlaw.com
901 Fifth Avenue, Suite 3500
Seattle, WA 98164-2008

1 **DECLARATION OF SERVICE**

2 I, Erin M. Kelly, an employee of Ogden Murphy Wallace, PLLC, certify that on the date
3 below, I filed and served this document in the matter indicated below:

4 ***Hearing Examiner***

5 Carla Lundgren, Administrative Specialist, City of Bainbridge Island
6 280 Madison Ave. N
7 Bainbridge Island
8 Via email to: clundgren@bainbridgewa.gov

9 ***Appellant's Attorney***

10 David Bricklin
11 Bricklin & Newman, LLP
12 1424 Fouth Avenue, Suite 500
13 Seattle, WA 98101
14 Via email to: bricklin@bnd-law.com
15 And to: cahill@bnd-law.com

16 ***Applicant's Attorney***

17 Nancy Bainbridge Rogers
18 Maxwell Burke
19 Cairncross & Hempelmann
20 524 Second Avenue, Suite 500
21 Seattle, WA 98104-2323
22 Via email to nrogers@cairncross.com
23 And to: mburke@cairncross.com
24 And to: awestling@cairncross.com

25 I declare under penalty of perjury under the laws of the State of Washington that the
26 foregoing is true and correct.

EXECUTED at Seattle, Washington this 31st day of January, 2020.

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24 Erin Kelly
25 Legal Assistant
26 ekelly@omwlaw.com

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**BEFORE THE HEARING EXAMINER
FOR THE CITY OF BAINBRIDGE ISLAND**

In the Matter of the Applications of

**Michael & Darden Burns, LLC, on Behalf of
Madison Avenue Development, Inc.**

For Approval of a Major Site Plan and Design Review
and Major Conditional Use Permit

NO. PLN 50880 SPR/CUP

DECLARATION OF MICHAEL J.
MICHAEL

I, Michael J. Michael, make the following voluntary statement based on personal knowledge:

1. I am the Engineering Manager for the City of Bainbridge Island. I am over the age of eighteen and am competent to testify in this matter.

2. I have a Bachelor of Science in Aeronautical and Astronautical Engineering from the University of Washington, which I received in 1991. I also have a Bachelor of Science in Civil Engineering, which I received from St. Martin's College in 1995. I have been a registered Professional Engineer (PE) in Washington since 1999. I have twenty-four years of experience in municipal and civil engineering, and broad experience in all aspects of Public Works infrastructure design, analysis, and construction. I have served as a city engineer or in similar positions for the last thirteen years, with responsibility for engineering and public works-related aspects of

1 development review. My current duties include managing and supervising the City's engineering
2 team, including the City's Development Engineer, Peter Corelis, who issued the concurrency
3 certificate for the Winslow Hotel and analyzed the project for transportation impacts. I have
4 consulted with Mr. Corelis regarding the Winslow Hotel project.

5 3. I am very familiar with the way in which traffic analysis is completed and reviewed
6 in the City of Bainbridge Island under the City's comprehensive plan, the Island Wide
7 Transportation Plan (IWTP), and the provisions of the Bainbridge Island Municipal Code.

8 4. During the hearing on this matter on January 23, 2020, Ross Tilghman testified that
9 the Traffic Impact Analysis (TIA) completed for the Winslow Hotel project was not a "thorough
10 review" of the Project's traffic impacts as required by BIMC 15.40.025. I disagree.

11 5. The transportation-related growth policies and goals of the City of Bainbridge
12 Island are expressed in the Comprehensive Plan as mandated by the Growth Management Act.
13 The Transportation Element of the Comprehensive adopts by reference the Island Wide
14 Transportation Plan (IWTP), which is Appendix C to the Comprehensive Plan. The purpose of
15 the IWTP is to "is to provide the technical data and analysis to facilitate transportation planning
16 and to aid in implementation of the Transportation Element of the Comprehensive Plan. The effort
17 will include the development of a transportation model based on recent traffic counts, land use
18 data, and roadway information that has allowed the analysis of existing and future travel needs.
19 The emphasis in the model is to identify congested areas and the improvements needed to
20 accommodate existing [and] future vehicle traffic considering the needs of all the Island's
21 transportation modes of travel." IWTP at p. 1-1.

22 6. In furtherance of its purpose, the IWTP contains standards and mitigation measures
23 which, if implemented, are expected to meet the goals and policies expressed in the
24 Comprehensive Plan. Portions of these goals and policies are codified in BIMC Chapters 15.30,
25 15.32, and 15.40, while others are contained in the adopted Design and Construction Standards
26 and Specifications. The Winslow Hotel project was evaluated against these goals, policies, and

1 adopted standards and was found to meet (with conditions) the level of service standards adopted
2 and as expressed in the IWTP. The Level of Service (LOS) adopted for the portion of the
3 transportation network affected by the Winslow Hotel project is LOS D, which the IWTP describes
4 as a level where “[o]perating conditions result in lower travel speeds and higher delays at
5 intersections.” IWTP at p. 3-5.

6 7. Transportation Level of Service (LOS) is defined in Chapter 3 the IWTP as “a
7 measurement used in transportation planning to assess the operating performance of the
8 transportation system. For roadways, LOS measures the degree of traffic congestion along a
9 roadway varying from LOS A (free-flow traffic with minimal delays) to LOS F (highly-
10 constrained traffic with long delays).” IWTP at p. 3-5. The IWTP specifies that the LOS for
11 Bainbridge Island transportation facilities is determined by using the quantitative methodologies
12 established in the Highway Capacity Manual (HCM) published by the Transportation Research
13 Board and that the transportation modeling used to assess the performance of the City’s
14 transportation system uses the Institute of Transportation Engineers (ITE) standard practices and
15 data as published by ITE in its *Trip Generation Manual*. IWTP at pp. 3-5, 3-10. The local specific
16 evaluation criteria are contained in the codes and within the City’s Comprehensive Plan as part of
17 the Transportation Element.

18 8. The format and content of the TIA for the Winslow Hotel project was consistent
19 with both prior TIAs accepted by the City as well as the methodologies and analysis used to
20 establish LOS in the IWTP. Staff has used the format and content of prior reports and the
21 methodology used in the IWTP analysis as the basis for accepting “thorough” TIA reports since at
22 least 2015. This process, in addition to the process of staff pre-approving the scope of the TIA for
23 every development project, ensures that the appropriate portion of the transportation network is
24 analyzed for every project requiring a TIA.

25 9. The TIA was also consistent with the format the City requires for independent fee
26 calculations done under the City’s impact fee code, BIMC 15.30.060.A, which requires TIAs

1 supporting those calculations to be prepared in accord with the thoroughness requirements of
2 BIMC 15.40 and to utilize trip generation rates from the ITE *Trip Generation Manual*. While the
3 Winslow Neighbors' TIA was not submitted for an independent fee calculation, the reference to
4 the ITE Manual for those calculations is indicative of the City's intent that the ITE trip generation
5 rates are appropriate and acceptable for TIAs assessing the impacts of development projects.

6 10. The scope of the Winslow Hotel project TIA was pre-approved by the City, used
7 the HCM methodology for LOS established by the IWTP, used the ITE trip generation data, and
8 was consistent with prior TIAs accepted by the City. Based on my knowledge and experience in
9 reviewing TIAs and based on my familiarity with the IWTP and the City's transportation policies,
10 the TIA submitted for the Winslow Hotel project was a "thorough" review of the short and long-
11 term traffic impacts of the project and met the requirements of BIMC 15.40.025.

12 11. Mr. Tilghman also said that the Winslow Hotel TIA was not a thorough study
13 because, in his opinion, the ITE trip generation rate for hotels is too low for hotels that have
14 restaurants, spas, and banquet facilities included. In my experience, the ITE trip generation rates
15 are the industry standard and are universally used by jurisdictions throughout Washington to do
16 traffic analysis. As I stated above, the City of Bainbridge Island's methodology for LOS analysis
17 under the IWTP relies on the ITE trip generation numbers and it would be wholly inconsistent
18 with the IWTP and the LOS standards set forth in that document to use trip generation numbers
19 for a TIA other than those in the ITE.

20 12. The ITE *Trip Generation Manual* (10th Edition) states that, "A hotel is a place of
21 lodging that provides sleeping accommodations and supporting facilities such as restaurants,
22 cocktail lounges, meeting and banquet rooms or convention facilities, limited recreational facilities
23 (pool, fitness room, and/or other retail and service shops." Exhibit 15 at p. 101 (p. 295 of the .pdf
24 format Hearing Examiner packet). The uses proposed for the Winslow Hotel fall squarely within
25 this definition. Based on my knowledge and experience, the TIA for the Winslow Hotel project
26

1 correctly used the ITE trip generation rate for hotels to assess the transportation impacts of the
2 proposal, consistent with the LOS standards set forth in the IWTP.

3 13. Mr. Tilghman also testified that the TIA for the Winslow Hotel project did not
4 appropriately account for surges from ferry traffic. I assume the Applicant will be addressing this
5 further in their response, but based on my knowledge and experience, ferry traffic surges are
6 accounted for in the traffic volumes used in the TIA for LOS because the counts were taken every
7 fifteen minutes during the AM and PM Peak hours.

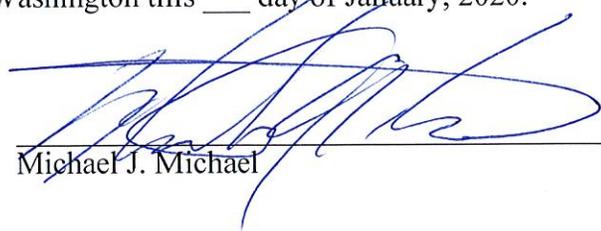
8 14. Mr. Tilghman also asserted that pedestrian volumes were not adequately considered
9 in the TIA. Again, I am assuming the Applicant will be addressing this issue further in its response,
10 but based on my knowledge and experience, delays to vehicular traffic caused by pedestrians are
11 accounted for in the TIA's delay projections.

12 15. Finally, with respect to parking, Mr. Tilghman questioned whether the parking
13 proposed by the Applicant will be adequate. I will leave it to the Applicant's parking consultant
14 to address any technical and substantive issues concerning the parking study, but will point out
15 that the MDNS conditions require that all parking be contained on site, that 143 parking spaces be
16 provided onsite for daily use and that an additional 37 spaces be provide through valet parking
17 when the event space is being used. The conditions also limit the amount of event space that can
18 be used even when these 180 spaces are available and require that the right to use an additional 16
19 off-site and off-street spaces must be acquired before the event space can be fully utilized. Finally,
20 the conditions require that parking be monitored and that if off-site parking becomes an issue,
21 additional limits on room occupancy and event use can be imposed. Based on my knowledge and
22 experience, these conditions are adequate to ensure that parking from the project does not become
23 a material detriment to other uses and properties in the vicinity. The Applicant's ability to use its
24 hotel, restaurant, and event space is directly tied to parking and will be limited to make sure parking
25 is adequate.

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I certify under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct, to the best of my knowledge.

EXECUTED at Bainbridge Island, Washington this ___ day of January, 2020.



Michael J. Michael

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**BEFORE THE HEARING EXAMINER
FOR THE CITY OF BAINBRIDGE ISLAND**

In the Matter of the Applications of

**Michael & Darden Burns, LLC, on Behalf of
Madison Avenue Development, Inc.**

For Approval of a Major Site Plan and Design Review
and Major Conditional Use Permit

NO. PLN 50880 SPR/CUP

DECLARATION OF HEATHER WRIGHT

I, Heather Wright, make the following voluntary statement based on personal knowledge:

1. I am the Planning Director for the City of Bainbridge Island. I am over the age of eighteen and am competent to testify in this matter.
2. I have a Bachelor of Science in Geography with a Concentration in Environmental Analysis. I also have a Masters in Urban Planning with Specializations in Land Use Planning and Environmental and Spatial Analysis.
3. I have fifteen years of Island planning experience and I have served the City of Bainbridge Island for twelve of those years as associate planner, senior planner, planning manager, and planning director. I am very familiar with the City's land use codes, comprehensive plan, design guidelines, and permit processes and I have applied my knowledge and experience in my review of the Winslow Hotel Project.

1 4. David Greetham, the City's Planning Manager, has submitted a separate declaration
2 providing a response to certain issues regarding the Winslow Hotel's compliance with the City's
3 design guidelines. I have reviewed that response and wholeheartedly concur with Mr. Greetham's
4 analysis. I will not duplicate that analysis here, but I want the Hearing Examiner to know that I
5 believe it to be correct.

6 5. I do want to address the Design Review Board (DRB) and Planning Commission
7 recommendations on this project. For the reasons set forth in the City's Post-Hearing Brief, I agree
8 that the BIMC does not require the Hearing Examiner to "confirm" the Planning Commission's
9 recommendation of denial unless certain conditions are met. The code criteria, specifically BIMC
10 2.16.110.E.6 and BIMC 2.16.040.E.5, state that the Examiner must incorporate the Planning
11 Commission's recommendation in his "conditions of approval," and obviously denial can't be an
12 approval condition. My reading of the code is that the Hearing Examiner is not bound by the
13 Planning Commission's recommendation in this matter.

14 6. In accord with BIMC 2.16.040.D and BIMC 2.16.110.E, the DRB has the duty and
15 responsibility to make recommendations on major site plan review and major conditional use
16 permits. The DRB is to review a project for compliance with applicable design guidelines and to
17 ensure the project reflects any revisions recommended by the design review board. The DRB is to
18 forward written findings, their determination of the project's consistency with the design
19 guidelines, the design checklist and their recommendation, including any conditions to the planner.
20 Any condition attached to a recommendation must be intended to achieve consistency with one or
21 more specific design guidelines. The design review board's written findings will be included in
22 the staff report transmitted to the director or planning commission. BIMC 2.16.040.E.4; BIMC
23 2.16.110.E.2.

24 7. The Winslow Hotel project was reviewed by the DRB at six separate meetings. As
25 the City staff report (Exhibit 1) indicates, the DRB was provided with design guideline checklists
26 filled out by the Applicant (Exhibit 20) and discussed those checklists, information and

1 presentation materials provided by the Applicant, the recommendations of staff, and the design
2 guidelines before reaching a decision. On June 17, 2019, the DRB issued its final Findings and
3 Recommendation, signed by the DRB chair. Exhibit 21. The DRB determined that “[t]he project,
4 as conditioned, is found to be consisted with the applicable design guidelines (Core Overlay
5 District Guidelines, Guidelines for Commercial and Mixed-Use Projects and General Design
6 Guidelines for overlay districts.” The DRB also determined that “[t]he project is not proposing
7 any departures from the design guidelines.” Based on these findings, the DRB recommended
8 approval of the project.

9 8. In making its recommendation of denial, the Planning Commission quoted from
10 what the Commission apparently believed to be a DRB decision that the Winslow Hotel does not
11 meet certain of the City’s design guidelines. From my review of the record, it appears that what
12 the Planning Commission was quoting from were draft findings and recommendations prepared
13 by the DRB chair and that were never adopted by the DRB. The actual, adopted Findings and
14 Recommendation are those that in the Hearing Examiner’s record as Exhibit 21.

15 9. If the Planning Commission relied on the draft decision as the decision of the DRB,
16 that appears to be a mistake. In making my determination as Planning Director, I relied on the
17 final, signed DRB decision and its recommendation that the project be approved.

18 I declare under penalty of perjury under the laws of the State of Washington and the United
19 States of America that the foregoing is true and correct to the best of my knowledge.

20 EXECUTED at Bainbridge Island, Washington this 30 day of January, 2020.

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22 Heather Wright
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**BEFORE THE HEARING EXAMINER
FOR THE CITY OF BAINBRIDGE ISLAND**

In the Matter of the Applications of
**Michael & Darden Burns, LLC, on Behalf of
Madison Avenue Development, Inc.**
For Approval of a Major Site Plan and Design Review
and Major Conditional Use Permit

NO. PLN 50880 SPR/CUP

DECLARATION OF DAVID
GREETHAM

I, David Greetham, make the following voluntary statement based on personal knowledge:

1. I am the Planning Manager for the City of Bainbridge Island. I am over the age of eighteen and am competent to testify in this matter.

2. I have a Bachelor of Arts in Environmental Planning from the University of Washington. I have thirty-three years of experience in land use planning and environmental review. My job duties include supervising and managing the City of Bainbridge Island's planning team. I am thoroughly familiar with the City's land use code, comprehensive plan, design guidelines, and permit processes and make this declaration based on my knowledge and experience and based on my review of the Winslow Hotel Project.

3. In response to the testimony given at the January 23, 2020 hearing in this matter, I have reviewed the City's design guidelines and their application to the Winslow Hotel project.

1 Specifically, I have looked at Guideline 7 of the Commercial and Mixed-Use Design Guidelines
2 for all Zoning Districts (building facades and pedestrian passages), and Guideline 9 of the Mixed
3 Use Town Center/Core District Design Guidelines (building design/roof appearance), as those
4 were repeatedly referred to at the hearing. These Guidelines are in the Hearing Examiner's record
5 in the checklists submitted as Exhibit 20.

6 4. I assume that the Applicant will be addressing these Guidelines in their response,
7 but I wanted to do so as well. At the outset, it is important to recognize that the Design Guidelines
8 that were used to review the Winslow Hotel project are intended to be flexible. The Introduction
9 to the Design Guidelines says that

10 Design review is not intended to alter the land uses or density
11 allowed through zoning. The design guidelines offer a flexible tool,
12 which together with the requirements of the zoning regulations, will
13 allow new development to respond better to the distinctive character
14 of its surroundings.

15 ...

16 The guidelines are meant to indicate preferred conditions, while
17 allowing for other equal or better solutions to be considered. Design
18 guidelines are not intended to be like quantitative, fixed zoning
19 standards. They are to be applied with an attitude of flexibility.
20 Each development site and project will have particular
21 characteristics that may suggest some guidelines be emphasized and
22 others de-emphasized. Repetitive, "cookie cutter" solutions are not
23 desired. However, the guidelines do set forth a threshold of design
24 expectations and shall not be ignored. While the design criteria
25 contained in this document are not regulations, each proponent of a
26 project has an obligation to demonstrate how each guideline has
been addressed. Both the general guidelines and the appropriate
guidelines for each district apply. While alternative solutions can
be proposed, none of the criteria can be disregarded. It is to be
expected that if criteria have been insufficiently addressed,
conditions will be placed upon a project to assure that the criteria
have been sufficiently addressed.

City of Bainbridge Island Ordinance No, 2011-2, Exhibit A at pp. 1-2. (All Bainbridge Island
ordinances referred to in my declaration can be found through the following hyperlink:
<https://www.bainbridgewa.gov/253/Ordinances-Resolutions>).

1 5. Here, the DRB reviewed the Winslow Hotel project and determined that each of
2 the Design Guidelines was sufficiently addressed and the DRB's signed Findings and
3 Recommendation indicates that every Design Guideline has been met by the project. Exhibit 21.
4 Several of the commenters at the hearing focused on the two Guidelines identified in the preceding
5 paragraph and I will address each of those Guidelines in turn below.

6 6. Guideline 7 of the Commercial and Mixed-Use Guidelines for all Zoning District
7 states that "Facades over 128' in length shall be separated by pedestrian passage or open space.
8 Passages shall be at least 12' wide and two stories in height if covered. Façade setbacks should be
9 expressed at the roof line by changes in place. Passage should connect to public open space."

10 7. The Design Guidelines do not define "façade," but the Merriam-Webster definition
11 is "the face or front of a building." The face of the proposed Winslow Hotel building is divided
12 into three sections. The Applicant originally proposed to provide access/passage to the open space
13 and Coastal Redwood in the hotel courtyard through the glass entryway in the façade. This was
14 reiterated at the public hearing, where the Applicant indicated a willingness to make the courtyard
15 physically accessible to the public. Based on my review and my consultation with the Planning
16 Director, the visual and physical access to the courtyard open space and Coastal Redwood met the
17 general intent of the Design Guideline.

18 8. Guideline 9 of the Mixed Use Town Center/Core District Design Guidelines states
19 that "Buildings located within 100 feet of the residential zones outside the Core shall incorporate
20 pitched roof forms." The Guidelines do allow for flexibility in roof form, however. In addition to
21 the general flexibility provision set forth above in paragraph 4, the Design Guidelines applicable
22 to the Winslow Hotel project state that "None of the Design Guidelines are intended to deter or
23 prevent the construction of buildings that exemplify *green building or low impact development*
24 *standards. Such standards are encouraged.*" City of Bainbridge Island Ordinance No. 2009-04,
25 Appendix A at p. 43. (readopted by City of Bainbridge Island Ordinance No. 2011-02, Exhibit A
26 at p. 148) (Emphasis added). In addition, Guideline 9 of the Mixed Use Town Center/Core District

1 Design Guidelines says that, "Flat, unembellished roofs are not desired. However, flat roofs may
2 be appropriate for green building purposes, for example to accommodate green roofs or solar
3 panels." Ex. 20. Further, the Municipal Code relating to Design Standards and Guidelines
4 includes a section stating that "The site designs of all new development and redevelopment should
5 accommodate energy-conserving and water-conserving technology and design principles
6 providing for solar and other renewable energy production where possible..." BIMC 18.18.020.
7 The Winslow Hotel is designed to accommodate solar panels and a flat roof provides more solar
8 exposure than a pitched roof does. Based on my review and my consultation with the Planning
9 Director, my conclusion is that the roof design of the Winslow Hotel meets the intent of the Design
10 Guideline, given the flexibility of the Guidelines when it comes to green building elements like
11 solar panels.

12 9. One final note regarding Guideline 9 is appropriate. The over-arching design
13 principle for the Central Core District Design Guidelines is that the Guidelines "are aimed at
14 encouraging a diversity in design, with an emphasis on the richness of activities, furnishings and
15 materials *at the street level*." City of Bainbridge Island Ordinance No. 2009-04, Appendix A at p.
16 43 (readopted by City of Bainbridge Island Ordinance 2011-02, Exhibit A at p. 148). The focus
17 of the Guidelines is thus on how a building looks from the street level, which in the case of the
18 Winslow Hotel, means along Winslow Way, along the north property line. The existing residence
19 on the R-8 residential property is on the opposite side of the Winslow Hotel building from Winslow
20 Way, i.e., the street level view that the Guidelines are intended to protect.

21 10. It was also asserted by some project opponents during the hearing that the Hearing
22 Examiner could not approve the Winslow Hotel project unless the public benefits required to
23 achieve the Bonus FAR had already been secured. The City's current administrative practice is
24 not to require a project applicant to secure the Bonus FAR prior to approval of a site plan or
25 conditional use permit because (a) the project may not be approved or may not be built; (b) there
26 are multiple ways of achieving the prerequisites for the Bonus FAR under BIMC 18.12.030.E, and

1 (c) the project can be conditioned, as recommended here in Conditions 81 – 83 in the Staff Report
2 (Exhibit 1) to require the Bonus FAR to be earned before any building permit is issued that would
3 cause the project to exceed the standard 0.6 commercial FAR provided in the BIMC. If the City
4 Council does not pass a resolution approving the Bonus FAR in consideration for public amenities
5 and infrastructure, as provided in BIMC 18.12.030.E.3, the Applicant would still have the option
6 of pursuing the Bonus FAR through one of the other methods described in the code, including
7 purchasing development rights for the FAR at the rates published in the City’s fee schedule. BIMC
8 18.12.030.E.2. Given the options, and the conditions, the City staff does not recommend that the
9 permits be denied until the Bonus FAR is secured.

10 11. Project opponents also argued that the required building height in the City’s code
11 is exceeded by the Winslow Hotel project. This argument was based on the building height for
12 pitched roofs, however, and because the building is not required to have a pitched roof for the
13 reasons described above, the building height does not violate the code.

14 12. Finally, one commenter expressed concern that a hotel is not intended to include
15 other proposed associated uses, including a banquet facility, a spa, and a retail shop, and that if it
16 does so, it is not really a hotel. This is incorrect. Based on my review of the code and my
17 consultation with the Planning Director, the hotel may include the additional uses. BIMC
18 18.03.010 provides that in order to be allowed in a zoning district, a use must be a “permitted or
19 conditional use of land under the use regulations of Chapter 18.09 BIMC.” “Hotels” are a
20 conditional use in the Core District, but “retail sales,” “restaurants,” “entertainment facilities”
21 (including “concert venues”), “personal services,” “professional services,” and “cultural facilities”
22 (including “convention centers”) are all permitted uses. BIMC Table 18.09.020 Use Table, and
23 BIMC 18.36.030 Definitions. The definitions of these terms are broad enough to include the uses
24 proposed in the Winslow Hotel as permitted uses in the Core. The fact that they are located in one
25 building along with the hotel does not make them unpermitted uses or change the hotel use that is
26

1 allowed as a conditional use something other than a hotel. For further analysis regarding the
2 proposed uses, see the "Proposed Use/Definition" table in the Staff Report (Exhibit 1 at p. 25).

3 I declare under penalty of perjury under the laws of the State of Washington and the United
4 States of America that the foregoing is true and correct to the best of my knowledge.

5 EXECUTED at Bainbridge Island, Washington this 31st day of January, 2020.

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7 _____
8 David Greetham

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