

**FINAL FINDINGS AND DECISION BY CITY COUNCIL**  
**RENDERED ON March 5, 2014**

**CASE FILE NUMBER: LU 13-214772 DZ DZM, MS, AD**  
**PC # 13-212680**  
**Park Avenue West (South Park Block 4)**

**GENERAL INFORMATION**

**Applicant:** TVA Architects, Robert Thompson  
920 SW 6<sup>th</sup> Ave, Ste. 1500  
Portland, OR 97204

**Owners:** West Park Avenue LLC, Lamont Smith  
805 SW Broadway #2020  
Portland, OR 97205-3360

City of Portland  
Bureau of Parks and Recreation  
1120 SW 5<sup>th</sup> Avenue #132  
Portland, OR 97204

**Site Address:** Building site: 728 SW 9<sup>th</sup> Avenue  
Floor Area Transfer site: 877 SW Taylor Street, 800 SW Yamhill Street,  
825 WI/SW Park Avenue

**Legal Description:** PORTLAND PARK BLOCKS BLOCK 4 LOTS 1-4, PORTLAND;  
PORTLAND PARK BLOCK, BLOCK 4; PORTLAND PARK BLOCK 5;  
PORTLAND, PORTLAND PARK BLOCKS, BLOCK 5, LOT 4

**Plan District:** Central City - Downtown

**Zoning:** CXd: Central Commercial zone with a design overlay

**Case Type:** DZM – Design Review with Modifications  
MS – Central City Master Plan  
AD – Adjustment

**Procedure:** Type III, with a public hearing before the Design Commission. The decision of the Design Commission was appealed to City Council.

**Proposal:** The applicant seeks **Design Review** for a new 30-story mixed-use tower. The project includes underground parking, 2 floors of retail, 15 floors of housing (203 units), and 13 floors of office. The tower was approved in 2007 as a 33-story tower and also in 2009 as a 26-story tower (07-140633 DZM, MS, AD; 07-169105 PR; 09-104171 DZ; and 09-136017 DZM MS). The 2007 design included housing, the 2009 design removed the housing, and the 2013 design reinserts a housing component. The current proposal matches the 26-story tower's exterior design exactly, but includes 4 additional floors. Other than the additional 4 floors, nothing else about the exterior design has changed.

A **Central City Master Plan (CCMP) Amendment** is necessary to allow an increase in the transfer of floor area from Director Park (formerly known as Park Block 5) to the proposed tower site (Park Block 4). The maximum development capacity of each of the two blocks is 12:1 (9:1 base FAR + 3:1 bonus FAR). In 2009 a CCMP approval allowed a 9.1:1 FAR transfer. The

current proposal is for an additional 2.6:1 FAR transfer, for a total FAR transfer of 11.7:1 from Director Park to Park Block 4.

**Modification Requests:**

1. 33.130.210.B.1., Height –A Modification is requested so that the spire may rise more than 10’ above the height limit. The proposed spire will be 41’-7” above the site’s 460’ height limit.
2. 33.266.310 Loading Standards –Size of loading spaces – Two on-site 10’ x 35’ x 13’ full-size loading spaces are required. The proposal includes a loading dock on the SW Park Avenue façade. The loading dock can accommodate one full-size loading space, one sub-standard loading space for 22’-5” wide vehicles, and a dedicated trash pick-up space. The result of this configuration is that the full-size and sub-standard loading spaces cannot be utilized at the same time. A Modification to this standard is requested.

**Adjustment Request:**

1. 33.510 Map 510-9, Parking Access Restricted Streets – All four streets are designated as Parking Access Restricted. The proposal includes access to the loading area and the below-grade parking at SW Park Avenue.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The relevant approval criteria are:

- 33.420 Design Overlay Zone
- 33.805 Adjustments
- 33.825 Design Review
- 33.510.255 Central City Master Plans
- 33.825.040 Modifications That Would Better Meet Design Review Requirements
- Central City Fundamental Design Guidelines

## ANALYSIS

**Site and Vicinity:** The 20,000 square foot building site (Park Block 4), bounded by SW Yamhill Street and SW Morrison Street to the north and south and SW Park Avenue and SW 9<sup>th</sup> Avenue to the east and west, takes up an entire city Park Block in Portland’s Downtown. The MAX light rail line runs along SW Yamhill and Morrison Streets, which are designated Regional Transitway/Major Transit Priority Streets, Central City Transit Pedestrian Streets, and Local Service Bikeways. SW 9<sup>th</sup> Avenue and Park Ave are both designated City Walkways. The site is within the Downtown Pedestrian District. The 20,000 square foot transfer site (Park Block 5), bounded by SW Yamhill and SW Morrison to the north and south and SW Park Avenue and SW 9<sup>th</sup> Avenue to the east and west, also takes up an entire city Park Block in Portland’s Downtown. This block is developed with the newest public park located in a Park Block, Director Park. Director Park is more urban in its approach than the traditional South Park Blocks and is developed with a public fountain, a small retail pavilion building, 2 access points to the public parking garage below the site and a variety of outdoor gathering and seating areas – one of which is under a grand canopy cover.

The site is part of the downtown Park Blocks, which run north-south between Park Avenue and 9<sup>th</sup> Avenue. The South Park Blocks run through the University District and Cultural District, and the North Park Blocks extend north from W Burnside Street to NW Glisan Street in the Pearl District neighborhood. The subject site is located in the area known as the Midtown Park Blocks, which extends from SW Salmon Street to W Burnside. Portland’s Park Blocks were platted for public use in the late 1840s by Daniel H. Lowndale and William Chapman. While their original concept to create 25 contiguous public blocks for parks, schools, and public markets extending north to south was never fully realized, the existing 18 blocks remain a

defining element of Portland. As the city has developed around them, each block has taken on its own distinct identity. Unlike the park blocks to the north and south, the Mid-town Park Blocks have primarily been developed, except for three public park spaces: Director Park [South Park Block 5], O'Bryant Square and Ankeny Plaza.

**Zoning:**

The Central Commercial Zone (CX) is intended to provide for commercial development within Portland's most urban and intense areas. A broad range of uses is allowed to reflect Portland's role as a commercial, cultural and governmental center. Development is intended to be very intense with high building coverage, large buildings, and buildings placed close together. Development is intended to be pedestrian-oriented with a strong emphasis on a safe and attractive streetscape.

The Design Overlay Zone [d] promotes the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. This is achieved through the creation of design districts and applying the Design Overlay Zone as part of community planning projects, development of design guidelines for each district, and by requiring design review. In addition, design review ensures that certain types of infill development will be compatible with the neighborhood and enhance the area.

**Land Use History:** City records indicate that prior land use reviews include the following:

1. LUR 93-010686 DZ (reference file # 93-00687): Approval for new awnings with signage on ground floor of existing building.
2. LUR 01-007453 DZ (reference file # 01-00054): Approval for one new awning with signage on south elevation of existing building, near the corner of SW Morrison and 9<sup>th</sup> Avenue.
3. LU 05-141016 PR: Approval of Central City Parking Review for a new underground parking garage at South Park Block 5, to be constructed as an extension of the existing Fox Tower parking garage, directly east. No new access proposed; access remains from existing entry and exit in Fox Tower on SW Taylor Street. The new garage contains 606 Visitor stalls and 71 Preservation stalls.
4. LU 06-163144 DZ: Approval of Design Review for South Park Block 5's location of stair and mechanical shaft near corner of SW Yamhill Street and 9<sup>th</sup> Avenue, and stair, elevator lobby, and mechanical shaft along SW Park Avenue about 53' from SW Taylor Street property line, associated with underground parking approved under LU 05-141016 PR.
5. PC 07-112764: Design Advice for a new 33-story mixed-use building, including a transfer of FAR from Park Block 5.
6. LU 07-136525 DZM: Approval of Design Review for the design of two parking pavilion structures [locations approved under LU 06-163144 DZ] at South Park Block 5.
7. LU 07-143667 DZM: Approval of Design Review for new café building to be located at South Park Block 5.
8. LU 07-140633 MS DZM AD: Type III Design Review approval of a 33-story mixed-use building consisting of retail, offices, condominiums, and six levels of below-grade parking with a total of approximately 341 parking stalls. This review also included a Central City Master Plan Review to enable floor area (base floor area and bonus floor area) to transfer from Park Block 5 [block bounded by Park, 9<sup>th</sup>, Yamhill and Taylor] to Park Block 4 [block bounded by Park, 9<sup>th</sup>, Yamhill and Morrison].
9. LU 07-169105 PR: Approval of a Central City Parking Review to allow the Park Avenue West parking access at SW Park Avenue to be within 75' of a light rail alignment.
10. LU 09-104171 DZ – Changes to the Design of the Park Avenue West Tower, including: An increase in the width of the curb-cut for the loading bay and parking garage from 46'-0" to 51'- 3"; changes to the size and placement of balconies on the uppermost floors, and the addition of a balcony on the east façade of the seventh floor; the removal of one residential floor, and an increase in floor-to-floor heights to provide for structural and HVAC equipment, thereby maintaining the original approved building height of 476 ft (515 ft including spire); a reduction in the total floor area from 474,000 square feet to 473,986

square feet. As a result, there is a reduction in the Base FAR transferred from Park Block 5 to Park Block 4 (Park Avenue West Tower) from 8.7:1 or 174,000 square feet to 8.6993:1 or 173,986 square feet; a reduction in the total number of automobile parking spaces from 317 to 253; and an increase in the number of long-term bicycle parking spaces provided (from 60 to 69), a change in the bike parking stall dimensions and type (wall mounted), and an increase in the size of the bike parking locker rooms (from 688 square feet to 767 square feet).

11. LU 09-136017 MS DZM – Approval for changes to the Design of the Park Avenue West Tower, including: Reduction of the building height from 515'-0" to 450'-0", with a reduction in the total number of floors from 33 to 26; and elimination of 10 floors of residential use, and an increase in office floors by 4, for a total of 2 floors of retail, 24 floors of office use, and zero floors of residential use; An increase in the width of the curb-cut for the loading bay and parking garage from 46'-0" to 51'- $\frac{3}{4}$ " (approved through the Type II review, LU 09-104171 DZ); A reduction in the total number of automobile parking spaces between the first Type III review and the current Type III review, from 317 to 259; An increase in the number of long-term bicycle parking spaces provided (from 60 to 80), and an increase in the size of the bike parking locker rooms (from 688 square feet to 700 square feet). Also, a Central City Master Plan approval to enable floor area to transfer from Park Block 5 to Park Block 4. Park Block 5 will retain a base FAR of 0.3:1 to accommodate 3 small park structures, and 9.1:1 FAR (181,750 SF) FAR will be transferred to Park Block 4. 2.6:1(52,000 SF) will be retained, unused on-site. Park Block 4 will achieve a 2.3:1 bonus FAR, which includes 0.9 bonus FAR through the "retail use bonus option", and 1.4 bonus FAR through the "locker room bonus option". Park Block 4 will be allowed to develop the site with a 20.4:1 FAR (408,000 SF), including 9.1:1 FAR transferred from Park Block 5, and 11.3:1 from the base (9:1) and bonus FAR (2.3:1) achieved on Park Block 4.
12. LU 13-181341 DZ –Type II DZ appealed, but withdrawn before an appeal hearing occurred. The proposal was for changes to the design of the Park Avenue West Tower, including: adding 4 floors to the mid-section of the tower for a total of 30 stories – 2 floors of retail, 15 floors of housing, and 13 floors of office. All other exterior design components of the building were to remain the same. The building's total height proposed to increase from 407' to 460' – including rooftop mechanical equipment.

**Agency Review prior to November 8<sup>th</sup> Staff Recommendation:** A "Notice of proposal in Your Neighborhood" was mailed on November 1, 2013. The following Bureaus have responded:

The Life-Safety Plans Examiner of BDS responded with the following comment:

1) A separate Building Permit is required for the work proposed and the proposal must be designed to meet all applicable building codes and ordinances...2) It is recommended the applicant contact the Process Management section at (503) 823-7452 to request a process manager to assist in coordinating the City reviews for this project and arrange a Preliminary Fire and Life Safety Meeting with Fire and Building Plans Examiners... 3) A separate Mechanical Permit is required for the work proposed. OMSC 106.1... 4) Accessible parking is required. Accessible van parking spaces must be at least 9 feet wide with an adjacent access aisle at least 8 feet wide. Accessible parking spaces must be at least 9 feet wide with an adjacent access aisle at least 6 feet wide. OSSC 1106.7 ANSI 117.1 –Section 502...5) Doors and windows shall not open or project into the public right-of-way. OSSC 3202.2

*Please see Exhibit E-1 for additional information*

The Bureau of Transportation Engineering responded with the following comment: PBOT has no objection to the proposed amendments of the previously approved Design Review. The proposed structure has been previously reviewed & supported by PBOT under 07-140633 DZM MS AD, 09-104171 DZ, and 09-136017 DZM MS.

*Please see Exhibit E-2 for additional information*

The Fire Bureau responded with the following comment:

A separate building permit is required for this proposal. All applicable Fire Code requirements will apply at the time of permit review and development. Please contact the Fire Marshal's Office with any specific questions you may have regarding this proposal.

*Please see Exhibit E-3 for additional information*

The Bureau of Environmental Services responded with the following comment:

BES has no objection to the proposed amendments of the previously approved Design Review. The proposed structure has been previously reviewed by BES under 07-140633 MS, 09-104171 DZ, and 09-136017 DZ.

*Please see Exhibit E-4 for additional information*

The Water Bureau responded with the following comment:

The Water Bureau has no concerns regarding the requested Design Review with proposed Adjustments and Modifications to zoning code standards, and the Central City Master Plan Amendment for the proposed building as described in this LUR, for the property located 728 SW 9th Ave.

*Please see Exhibit E-5 for additional information*

**Agency Review prior to November 8<sup>th</sup> Staff Recommendation:** The following Bureaus have responded:

The Bureau of Parks-Forestry Division responded on November 19, 2013 with the following comment:

No concerns. Any existing street trees will need to be protected or their loss mitigated at a rate of \$300/diameter per inch.

Site Development Section of BDS responded on November 15, 2013 with the following comment:

No concerns.

**Procedural Background:** A Notice of Proposal in Your Neighborhood was mailed on November 1, 2013. A public hearing was held before the Design Commission on November 21, 2013. The record was left open until November 27, 2013 for all interested parties to respond to issues raised at the hearing. The record remained open until December 5, 2013 for all interested parties to rebut the testimony, evidence, and argument submitted during the first open record period. Finally, the Applicant was granted until December 12, 2013 to submit final written argument. On December 19, 2013, the Design Commission approved the present application. This appeal followed.

## **FINDINGS AND CONCLUSIONS OF LAW**

### **(1) DEVELOPMENT STANDARDS (33.130, 33.266, 33.510)**

**Note:** *The proposal does not have to meet all development standards in order to be approved during this land use review process, but will have to meet those standards (or have the appropriate adjustments/modifications approved) before a building permit can be issued. As such, the list below may not be an exhaustive list of every applicable development standard.*

### **Table130-1 Commercial Zone Primary Uses**

This project includes the following permitted uses in the Central Commercial (CX) Zone: Household Living, Retail Sales and Service, and Office Uses.

#### **33.510.200 Floor Area Ratios [FAR] & 33.510.210 FAR and Height Bonus Options**

Base FAR allowed for South Park Block 4 is 9:1. Additional FAR is allowed through bonus and/or transfer. As part of the requested CCMP Amendment South Park Block 4 will gain additional FAR through both bonus and transfer, for a total FAR of 23.7:1 FAR (474,000 SF).

*Note: While the current proposal is similar to the Floor Area Ratio (FAR) of the original 2007 building approval, the approval from 2009 differs and supersedes the 2007 design. A CCMP Amendment is now required for revisions to the proposed FAR transfer approved in 2009 between Park Block 5 and the subject site.*

In 2009, a CCMP Amendment enabled a transfer of 9.1:1 FAR (181,750 SF) from Park Block 5 to Park Block 4. The current CCMP amendment requests an additional 2.6:1 FAR (52,000 SF) be transferred from Park Block 5 to Park Block 4 for a total of 11.7:1 FAR (234,000 SF) transferred to Park Block 4.

Park Block 5 FAR: Park Block 5 will achieve a 3:1 bonus FAR – .5 bonus FAR through the “water feature/public fountain bonus option” and 2.5 bonus FAR through the “locker room bonus option”. The drawings indicate the square footage of the proposed locker rooms that are included in the Park Block 5 parking garage to meet the locker room bonus option. Also, 110% of required long-term bike spaces will be provided. Park Block 5 will retain a base FAR of 0.3:1 to accommodate 3 small park structures. The remaining 11.7:1 FAR will be transferred to Park Block 4.

Park Block 4 FAR: Park Block 4 will achieve a 3:1 bonus FAR through the “retail use bonus option”. If approved through a Central City Master Plan Park Block 4 will be allowed to develop the site with a 23.7:1 FAR (474,000 SF) – 11.7 FAR transferred from Park Block 5 and 12:1 from the maximum development potential of Park Block 5.

#### **33.510.205 Height**

Base height allowed for this site is 460'. The proposal is for a building that is 460'-0" tall to the top of the mechanical penthouse. 33.130.210 allows for a projection (like the proposed spire) to rise 10' above the height limit. The proposed spire rises 41'-7" above the height limit. A Modification to this standard is requested through the current Type III review.

#### **33.130.230 Ground-Floor Windows**

At all four frontages, the ground-level exterior walls (9' above finished grade) must include windows for at least 50% of the length and 25% of the area of the ground-level walls. Required window areas must be either windows that allow views into working areas or lobbies, pedestrian entrances, or display windows set into the wall. This requirement is met and exceeded on all frontages: north elevation has 84% of its length and 69% of its area as window; the east elevation has 50% of its length and 37% of its area as window; the south elevation has 84% of its length and 72% of its area as window; the west elevation has 61% of its length and 50% of its area as ground floor window.

#### **33.130.235 Screening**

The proposal includes garbage and recycling collection areas within the building. The proposal does not include mechanical equipment on the ground.

**33.130.240 Pedestrian Standards**

The proposal should include direct pedestrian connections between all building entrances and adjacent sidewalks per this section. The building fills the entire block. The building entrances connect to the sidewalk with direct connections.

**33.130.242 Transit Street Main Entrance**

SW Yamhill and Morrison Streets are designated Transit Streets. At least one main entrance for each nonresidential tenant space facing the transit street must: be within 25 feet of the transit street; allow pedestrians to both enter and exit the building; and either 1) face the transit street or 2) be at an angle of up to 45 degrees from the transit street, measured from the street property line. The main entrance that meets the standards above must be unlocked during regular business hours.

The tenant spaces that face SW Yamhill and Morrison Streets must include doors that meet these standards. This standard is met at the north and south retail entrances.

**33.130.300 Street Trees**

The Urban Forester requires street trees for all new developments. At the time of building permit review, the proposed project will demonstrate compliance with Urban Forester regulations for this site. Street trees are being provided, and comply with the Urban Forester requirements.

**33.266.210 Required Bicycle Parking**

Based on 203 residential units, 176,980 SF of Office Uses, and 28,820 SF of Retail Sales And Service Uses, the following requirements were determined:

Residential

Required long-term spaces: 305

Required short-term spaces: 11

Office

Required long-term spaces: 18

Required short-term spaces: 5

Retail Sales And Service

Required long-term spaces: 3

Required short-term spaces: 6

*Total required long-term spaces: 326*

*Total required short-term spaces: 22*

The proposed long-term bike spaces are located on the submitted plans. Required short-term bike parking cannot be located in the right-of-way. Required bike parking must occur on site or the applicant must pay into the bike fund per 33.266.220 A.2.d. The applicant will pay into the bike parking fund to comply with the site's short-term bicycle parking requirements, as there is inadequate space on site. (The applicant has also provided long-term bicycle parking within the Fox Tower garage expansion in order to meet the 110% requirement for the "bicycle locker room FAR bonus" for Park Block 5.)

**33.266.310 Loading Standards**

Two on-site 10' x 35' x 13' loading spaces are required. The proposal includes a loading dock on the SW Park Avenue façade. The loading dock can accommodate one full-size loading vehicle, one sub-standard loading vehicle for 22'-5" wide vehicles, and a dedicated trash pick-up space. Additionally, the full-size and sub-standard loading spaces cannot be utilized at the same time. A Modification to this standard is requested through the current Type III review.

**33.510.215 Required Building Lines**

The site has required building lines at all four frontages. This standard is met or exceeded at all streets.

**33.510.225 Ground-Floor Active Uses**

This standard applies to all four frontages. Each ground level elevation must meet these standards for 50% of each frontage. Areas designed to accommodate active uses must meet the following standards: 1) minimum 12' distance from the finished floor to the bottom of the structure above, 2) minimum 25' depth, 3) the street-facing façade must include windows and doors, or be structurally designed so that windows and doors can be added when the space is converted to active building uses, and 4) vehicle areas are not allowed in the portions of a building that are required to meet these standards. Additionally, areas designed to accommodate active uses must meet the Accessibility Chapter of the State of Oregon Structural Specialty Code, which is administered by BDS. This standard is met on all four frontages.

**33.510.261 and .263 Parking**

There is no minimum parking requirement for this Central City Plan District site. The site is within the DT2 area of the Central City. Proposed parking is classified as Growth Parking or Residential Parking. The maximum allowed ratio for Retail Growth Parking is 1 space per 1,000 SF of net building area for that use. The maximum allowed ratio for Office Growth Parking is .7 spaces per 1,000 SF of net building area for that use. The maximum allowed ratio for Residential Parking is 1.35 per unit. The drawings indicate 259 spaces are proposed, which is under the maximum allowed (341 spaces were approved through the previous 2007 Type III review). 33.510.263 A.4.b. requires a certain amount of carpool parking.

**Map 510-9 Parking Access Restricted Streets**

Per Map 510-9, all four adjacent streets are parking access restricted streets. The proposed loading and parking access for this building is from SW Park Avenue. An Adjustment to this standard is requested through the current Type III Design Review.

**(2) DESIGN REVIEW (33.825)****Chapter 33.825 Design Review****Section 33.825.010 Purpose of Design Review**

Design review ensures that development conserves and enhances the recognized special design values of a site or area. Design review is used to ensure the conservation, enhancement, and continued vitality of the identified scenic, architectural, and cultural values of each design district or area. Design review ensures that certain types of infill development will be compatible with the neighborhood and enhance the area. Design review is also used in certain cases to review public and private projects to ensure that they are of a high design quality.

**Section 33.825.055 Design Review Approval Criteria**

A design review application will be approved if the review body finds the applicant to have shown that the proposal complies with the design guidelines for the area.

**Findings:** The site is designated with design overlay zoning (d); therefore the proposal requires Design Review approval. Because of the site's location, the applicable design guidelines are the Central City Fundamental Design Guidelines.

**Central City Fundamental Design Guidelines**

These guidelines provide the constitutional framework for all design review areas in the Central City. The Central City Fundamental Design Guidelines and the River District Design Guidelines focus on four general categories. **(A) Portland Personality**, addresses design issues

and elements that reinforce and enhance Portland's character. **(B) Pedestrian Emphasis**, addresses design issues and elements that contribute to a successful pedestrian environment. **(C) Project Design**, addresses specific building characteristics and their relationships to the public environment. **(D) Special Areas**, provides design guidelines for the four special areas of the Central City.

### **Central City Plan Design Goals**

This set of goals are those developed to guide development throughout the Central City. They apply within the River District as well as to the other seven Central City policy areas. The nine goals for design review within the Central City are as follows:

1. Encourage urban design excellence in the Central City;
2. Integrate urban design and preservation of our heritage into the development process;
3. Enhance the character of the Central City's districts;
4. Promote the development of diversity and areas of special character within the Central City;
5. Establish an urban design relationship between the Central City's districts and the Central City as a whole;
6. Provide for a pleasant, rich and diverse pedestrian experience for pedestrians;
7. Provide for the humanization of the Central City through promotion of the arts;
8. Assist in creating a 24-hour Central City which is safe, humane and prosperous;
9. Ensure that new development is at a human scale and that it relates to the scale and desired character of its setting and the Central City as a whole.

*The City Council has considered all guidelines and has addressed only those guidelines considered applicable to this project.*

**A2. Emphasize Portland Themes.** When provided, integrate Portland-related themes with the development's overall design concept.

**Findings for A2:** The proposed building is located within downtown's Midtown Park Blocks and will further enhance development activity in the vicinity to help make this section of town what it is anticipated to become. As stated at the Design Advice Request [DAR] in 2007, this building is "the realization of a 30 year plan; it is exactly what the Central City Plan desires." Portland's desire for a 24-hour downtown is clearly being furthered by this proposal. The mix and amount of uses within this building is commendable. The layout of retail should be a catalyst for the commercial desires in this area of town. Portland's development is consistently incorporating many "green" features to create sustainable projects. Comments at the prior DAR included requests for information on how this building will incorporate sustainable elements. The evidence submitted includes a long list of design accommodations to fulfill the equivalent of a LEED Platinum certification [for example, the building will include daylighting, nightcooling, high performance lighting, operable windows, recapturing mechanical heat, a highly reflective roof, rainwater harvesting, low VOC paints, etc.] ***This guideline is therefore met.***

**A3. Respect the Portland Block Structures.** Maintain and extend the traditional 200-foot block pattern to preserve the Central City's ratio of open space to built space.

**Findings for A3:** The site is one of a series of park blocks platted at 200' X 100', half the size of downtown Portland's typical block pattern. The narrowness of the block presents special design challenges which the proposed design tackles admirably. With the approval of the proposed FAR transfer, the development capacity will almost double in size. The design solution on such a small floor plate is an elegant "point tower". This density transfer has the benefit of allowing a new public park to be built on Park Block 5, as intended by Portland's early civic leaders, without a loss of overall development capacity. Another challenge met in this proposal is to utilize the ground floor in an efficient manner that maximizes active uses at all four streets. ***This guideline is therefore met.***

- A4. Use Unifying Elements.** Integrate unifying elements and/or develop new features that help unify and connect individual buildings and different areas.
- A5. Enhance, Embellish, and Identify Areas.** Enhance an area by reflecting the local character within the right-of-way. Embellish an area by integrating elements in new development that build on the area's character. Identify an area's special features or qualities by integrating them into new development.
- B3. Bridge Pedestrian Obstacles.** Bridge across barriers and obstacles to pedestrian movement by connecting the pedestrian system with innovative, well-marked crossings and consistent sidewalk designs.
- B4. Provide Stopping and Viewing Places.** Provide safe, comfortable places where people can stop, view, socialize and rest. Ensure that these places do not conflict with other sidewalk uses.
- B5. Make Plazas, Parks and Open Space Successful.** Orient building elements such as main entries, lobbies, windows, and balconies to face public parks, plazas, and open spaces. Where provided, integrate water features and/or public art to enhance the public open space. Develop locally oriented pocket parks that incorporate amenities for nearby patrons.
- C6. Develop Transitions between Buildings and Public Spaces.** Develop transitions between private development and public open space. Use site design features such as movement zones, landscape element, gathering places, and seating opportunities to develop transition areas where private development directly abuts a dedicated public open space.
- D1. Park Blocks.** Orient building entrances, lobbies, balconies, terraces, windows, and active use areas to the Park Blocks. In the South Park Blocks, strengthen the area's emphasis on history, education, and the arts by integrating special building elements, such as water features or public art. In the Midtown Park Blocks, strengthen the connection between the North and South Park Blocks by using a related system of right-of-way elements, materials, and patterns. In the North Park Blocks, strengthen the area's role as a binding element between New China/Japantown and the Pearl District.

**Findings for A4, A5, B3, B4, B5, C6, and D1:** This site couldn't be more central in Portland's downtown. It is located between the two light rail alignments, between Park and 9<sup>th</sup> [Park Block streets], and highly visible/tangible from Pioneer Courthouse Square and Director Park [South Park Block 5]. There is obviously a level of responsibility that comes with a site as pivotal as this. The chain of Park Blocks through the Central City provides a unique environment and a special amenity for downtown residents, workers, and visitors. The Park Blocks provide opportunities to eat, shop, exercise, learn, and relax. During Portland's history, the influences of different individuals, governments, and development markets subdivided the chain of Park Blocks, and today the Park Blocks can be identified in three sections: the South Park Blocks, the Midtown Park Blocks, and the North Park Blocks. The character of the Midtown Park Blocks is unique because these Park Blocks have been commercially developed. The narrow streets and consistent street walls of the Midtown Park Blocks help to develop a strong sense of urban enclosure and create an effective contrast to the rest of the Park Blocks.

The most significant change to the proposal from an urban design perspective is the increase in building height from the 2009 Type III Design Review, and the reintroduction of the building's residential component. The current proposal reflects a more slender proportion than the design approved in 2009, and is taller than the neighboring Fox Tower, resulting in a more prominent addition to the Portland skyline. The promise of the original design to help reshape the Portland skyline and downtown was supported whole-heartedly by the Design Commission and City Council in 2007, and the current proposal retains much of the building's original character and remains a dynamic new element to downtown. The architectural team succeeded in adjusting the 2009 design to retain the building's appearance of verticality and finely detailed skin, and the increase in height proposed by the current proposal only enhances the building's slender appearance. This

supports the urban character of the building and its architectural relationship to existing buildings in the vicinity.

The changes proposed to the ground floor of the building have a relatively minor impact on the building design from what was approved through the prior Design Review processes and are, for the most part, related to reintroducing the residential component of the proposal and internal to the building. The reinsertion of a residential lobby on the ground floor is one of the few design changes since the prior Type III Design Review in 2009. The aspects of the building's ground floor that aid in its integration with the surrounding built environment and help to activate the sidewalk and park, such as its mostly transparent ground floor with active uses and multiple entries, are retained in the current proposal. Minor changes approved through the Type II Design Review in 2009 are retained, such as the addition of solid wall area on the west façade. This modifies the building's appearance slightly, but retains the building's compatibility with the neighborhood and its public spaces due to the building's general transparency and accessibility at the ground floor; the building exceeds the ground floor window standards on all frontages.

The construction of the tower helps to define urban edges and compliment the streetscape design. The project plans to meet City standards in the right-of-way to continue the already established standards for the area. How this building is perceived from the two nearby public open spaces, Pioneer Courthouse Square and Director Park, is evident in the drawings. They clearly depict the enclosure this building creates. The building's relationship, both physically and economically with the adjacent Director Park continues to represent a significant benefit to downtown. The current proposal, with its significant residential component, will benefit the park greatly by increasing the use of the park around the clock and enhancing its safety in the evenings when the retail and office uses in the neighborhood have diminished.

Director Park and retail in the near vicinity have evolved to become very vibrant and successful aspects of the neighborhood since this building was first proposed in 2007. Not only does the creation of Director Park further the historic vision of downtown Portland by extending the link between the south and north park blocks, it has created a much-used outdoor pedestrian space within the mixed-use neighborhood surrounding the park. Both the park, and the proposed building that enabled the park's existence, are very positive and stimulating additions to downtown Portland. ***These guidelines are therefore met.***

**A7. Establish and Maintain a Sense of Urban Enclosure.** Define public rights-of-way by creating and maintaining a sense of urban enclosure.

**A8. Contribute to a Vibrant Streetscape.** Integrate building setbacks with adjacent sidewalks to increase the space for potential public use. Develop visual and physical connections into buildings' active interior spaces from adjacent sidewalks. Use architectural elements such as atriums, grand entries and large ground-level windows to reveal important interior spaces and activities.

**B1. Reinforce and Enhance the Pedestrian System.** Maintain a convenient access route for pedestrian travel where a public right-of-way exists or has existed. Develop and define the different zones of a sidewalk: building frontage zone, street furniture zone, movement zone, and the curb. Develop pedestrian access routes to supplement the public right-of-way system through superblocks or other large blocks.

**C7. Design Corners that Build Active Intersections.** Use design elements including, but not limited to, varying building heights, changes in façade plane, large windows, awnings, canopies, marquees, signs and pedestrian entrances to highlight building corners. Locate flexible sidewalk-level retail opportunities at building corners. Locate stairs, elevators, and other upper floor building access points toward the middle of the block.

**C8. Differentiate the Sidewalk-Level of Buildings.** Differentiate the sidewalk-level of the building from the middle and top by using elements including, but not limited to, different exterior materials, awnings, signs, and large windows.

**C9. Develop Flexible Sidewalk-Level Spaces.** Develop flexible spaces at the sidewalk-level of buildings to accommodate a variety of active uses.

**Findings for A7, A8, B1, C7, C8 and C9:** No significant changes are proposed to the design of the building's ground floor skin from the design that was approved through the previous 2009 Type III Design Review. The interior changes proposed are minor, and include the reinsertion of the residential lobby. With the majority of the ground floor façade comprised of window area into active retail space, particularly on the north and south facades that face the Director Park and the MAX stops, the building design continues to foster an activated pedestrian environment.

Some balconies on the north and south facades, facing the park and the MAX stops, enable a continued animation of the façade on the upper floors that help support an active building. In addition, the transparent glazing approved through the original Type III review has been retained, which should further help to activate and humanize the appearance of the tower.

As approved through the Design Reviews in 2009, the solid wall area along the ground floor of the west façade visually frames the lobby entrances, and provides a degree of visual pause between the retail areas at the corners and the centralized lobby. In addition, the stone wall area helps further differentiate the more solid podium form from the metal and glass of the tower. Paired with the stepped concrete base at the ground floor, and the solid corners along the east façade, the stone wall area adds visual weight to the lower level as it meets the sidewalk, reinforcing the prominence of the ground level of the building through a change in material. The recessed and covered entries on the north and south facades, along with the lobby entrances that face SW 9<sup>th</sup> Avenue, encourage active intersections and pedestrian interactivity along the north, west, and south frontages. A more sculptural approach is expressed on the ground floor of the north and south facades, as is consistent with the design of the tower. The building's generous pedestrian entries and ground floor canopies, with their relationship to the sidewalk, the park, and the transit stop, create flexible urban spaces that help to enliven the neighborhood. ***These guidelines are therefore met.***

**B2. Protect the Pedestrian.** Protect the pedestrian environment from vehicular movement. Develop integrated identification, sign, and sidewalk-oriented night-lighting systems that offer safety, interest, and diversity to the pedestrian. Incorporate building equipment, mechanical exhaust routing systems, and/or service areas in a manner that does not detract from the pedestrian environment.

**Findings for B2:** The majority of mechanical equipment servicing the building is located above the pedestrian realm, with only a gas regulator room that houses the gas meters for the building located at the ground level adjacent to the loading bay on the east façade. The mechanical penthouse has been formed as an elegant, stepped top to the tower, an integral component of the building, and completely shields the mechanical equipment housed within from the pedestrian realm. The form of the penthouse resolves the compositional symmetry of the east and west elevations, and the dynamism of the north and south elevations, and is a clear extension of the building's architectural design. Thus, the building not only screens mechanical equipment from views, it does so in an architecturally pleasing and cohesive manner. In addition, the vehicular area at the ground level is of a very modest size for such a large building, which minimizes the interaction between pedestrian and vehicular traffic, thus helping to protect the pedestrian at the sidewalk. The vehicular entrances at the sidewalk measure approximately 52-feet in width total, and exit

and enter onto SW Park Avenue, which is a one-way street with on street parking on both sides of the street, helping to further slow traffic and protect the pedestrian. ***This guideline is therefore met.***

**B6. Develop Weather Protection.** Develop integrated weather protection systems at the sidewalk-level of buildings to mitigate the effects of rain, wind, glare, shadow, reflection, and sunlight on the pedestrian environment.

**C10. Integrate Encroachments.** Size and place encroachments in the public right-of-way to visually and physically enhance the pedestrian environment. Locate permitted skybridges toward the middle of the block, and where they will be physically unobtrusive. Design skybridges to be visually level and transparent.

**Findings for B6 and C10:** The proposal includes building coverage above the recessed ground floor entrances and canopies integrated into the podium, which provide adequate rain protection for pedestrians. The rain protection, along with the exuberance of the retail storefront windows/display cases at the ground level and above, will clearly activate the public realm of the city. This ground level interface is especially important with a building of this size. The building will not negatively affect the nearby public open spaces with shadow. The glass is intended to be clear, minimizing glare and reflectivity. ***These guidelines are therefore met.***

**B7. Integrate Barrier-Free Design.** Integrate access systems for all people with the building's overall design concept.

**Findings for B7:** Park Avenue West complies with the Americans with Disabilities Act (ADA) as incorporated into the International Specialty Code. Access systems are integrated into the building's design concept, and the retail doors placed at the northwest and southwest corners are ADA accessible. ***This guideline is therefore met.***

**C1. Enhance View Opportunities.** Orient windows, entrances, balconies and other building elements to surrounding points of interest and activity. Size and place new buildings to protect existing views and view corridors. Develop building façades that create visual connections to adjacent public spaces.

**C2. Promote Quality and Permanence in Development.** Use design principles and building materials that promote quality and permanence.

**C4. Complement the Context of Existing Buildings.** Complement the context of existing buildings by using and adding to the local design vocabulary.

**C5. Design for Coherency.** Integrate the different building and design elements including, but not limited to, construction materials, roofs, entrances, as well as window, door, sign, and lighting systems, to achieve a coherent composition.

**C11. Integrate Roofs and Use Rooftops.** Integrate roof function, shape, surface materials, and colors with the building's overall design concept. Size and place rooftop mechanical equipment, penthouses, other components, and related screening elements to enhance views of the Central City's skyline, as well as views from other buildings or vantage points. Develop rooftop terraces, gardens, and associated landscaped areas to be effective stormwater management tools.

**Findings for C1, C2, C4, C5 and C11:** The building is an attractive and dynamic addition to downtown, and the proposed tower design, which is 4 stories taller than the 2009 approved tower, only enhances the building's contribution to the Portland skyline and the slender proportions of the tower. The current proposal maintains the 2009 design revisions with the addition of vertical projections at the corners of the north and south facades, vertical and horizontal fins on the east and west facades, the re-positioning of balconies, and the re-proportioning of the building top. These design approaches help emphasize the verticality and intricacy of the building skin that characterized the original design from

2007. The increased building height proposed in the current review further emphasizes the building's verticality, which was a design characteristic much lauded by the Design Commission and City Council in 2007. In addition, the design continues to incorporate quality building materials, and a highly sculptural form that responds in very distinct manners to the urban environment surrounding its four sides. The well-defined base and top, with strong vertical elements connecting the two, is retained by the proposal. In addition, the building maintains its unique urban relationship with the Director Park abutting the south edge of the building.

Materials, wall sections and details of the building's skin have been presented to demonstrate appropriate quality for such a high-profile downtown site. The renderings and models showing the building in context emphasize the building's positive contribution to the City and the skyline. Aspects of the design that have been critical to the success of the building proposal include: 1) Clarity of the glazing – people will be able to see through the building, the clear glazing will help alleviate potential negative impacts of mass; 2) The building strikes a delicate balance between having its own identity and being a compatible structure with the Fox Tower, as they make up two sides of both Pioneer Courthouse Square and Director Park; 3) Sculptural aspects of the building top have been refined, especially the detailing and materials. It is depicted at many important vantage points around the City; 4) This building helps to define Portland's skyline and can become a landmark in the skyline – it will be distinctive, and exuberant; 5) The glazing system is not mundane - it includes details that are perceptible and of a high quality.

Furthermore, the addition of 4 floors has been undertaken in an architecturally cohesive manner that retains 2009 building design. The building's core compositional elements, including the top, middle, and base, compositional symmetry facing east and west, and sculptural asymmetry facing north and south are perfectly preserved by the current proposal. The tracery-like element of vertical and horizontal fins on the east and west facade is maintained and creates a dynamic surface treatment for the residential floors. Key balconies are retained on the north and south facades, which are arguably the more urban frontages with views to the Director Park and the transit mall. Many of the aspects of the building that received the highest level of scrutiny at the previous Type III hearings and DAR have been left unchanged throughout the many revisions to the building design. The clarity of the glazing, architectural compatibility, and the building's sculptural character has changed very little from 2007 to the current design. The current changes proposed, the reinsertion of residential use in the building, the addition of four floors, and the subsequent increase in building height, are all positive additions to the building design. These changes maintain the previously approved building design from 2009 while increasing the building's height and creating a more slender proportionality. The building continues to present a very sculptural and formal dynamism, with more slender proportions, and is a significant new addition to the Portland skyline. ***These guidelines are therefore met.***

**C12. Integrate Exterior Lighting.** Integrate exterior lighting and its staging or structural components with the building's overall design concept. Use exterior lighting to highlight the building's architecture, being sensitive to its impacts on the skyline at night.

**Findings for C12:** Exterior lighting is well integrated into the building design, primarily at the street level to provide adequate lighting for pedestrians at night. Lighting is integrated into the canopies at the lower level, which is augmented by light from display windows in the retail portions of the podium level. The top of the building is subtly illuminated to act as a beacon, and a memorable place-maker in the Portland skyline. ***This guideline is therefore met.***

### **(3) CENTRAL CITY MASTER PLAN AMENDMENT (33.510)**

#### **33.510.255 A. Purpose**

In general, a CCMP--and the proposed amendments to the approved 2009 CCMP for this site--adds development potential and flexibility for projects in specified areas. The additional development potential and flexibility is possible because the plan is used to demonstrate that the policy objectives of the Central City Plan and the public service needs of the area are addressed. A CCMP is an option; an applicant is not required to apply for a CCMP for a proposed development. Although not applicable here, a CCMP may also be created through a legislative process initiated by the City.

**Description of Requested CCMP Amendment:** The **CCMP Amendment** request is necessary to increase the floor area (bonus floor area) to transfer from Park Block 5 [the Director Park block bounded by Park, 9<sup>th</sup>, Yamhill and Taylor] to Park Block 4 [block bounded by Park, 9<sup>th</sup>, Yamhill and Morrison]. The maximum development capacity of each of the two blocks is 12:1 (9:1 base FAR + 3:1 FAR bonus FAR). While previous 2007 and 2009 CCMP's were approved for the prior buildings through the land use process, the proposal has changed from 2009 and with it the amount of FAR proposed to transfer between Park Block 5 (Director Park) and the Park Block 4 (Park Avenue West Tower). This requires an amendment to the most recent CCMP approved in 2009. The current proposal is for an additional 2.6:1 FAR transfer, for a total FAR transfer of 11.7:1 from Director Park to Park Block 4.

Park Block 5 FAR: Park Block 5 achieves a 3:1 bonus FAR – .5 bonus FAR through the “water feature/public fountain bonus option” and 2.5 bonus FAR through the “locker room bonus option”. Park Block 5 will retain a base FAR of 0.3:1 to accommodate 3 small park structures, and 11.7:1 FAR (234,000 SF) FAR will be transferred to Park Block 4. This differs from the previous Type III CCMP approval from 2009, in which 2.6:1 (52,000 SF) was retained unused at Park Block 5, and only 9.1:1 FAR or (181,750 SF) was transferred to Park Block 4.

Park Block 4 FAR: Park Block 4 will achieve a 3:1 bonus FAR through the “residential bonus option”. If approved through a Central City Master Plan Park Block 4 will be allowed to develop the site with a 23.7:1 FAR (11.7 FAR transferred from Park Block 5 and 12:1 from the maximum development potential of Park Block 4.) In the previous 2009 Type III approval, Park Block 4 achieved a 2.3:1 bonus FAR, which included 0.9 bonus FAR through the “retail use bonus option”, and 1.4 bonus FAR through the “locker room bonus option”. At that time, Park Block 4 was allowed to develop the site with a 20.4:1 FAR (408,000 SF), including 9.1:1 FAR transferred from Park Block 5, and 11.3:1 from the Park Block 4 base (9:1) and bonus (2.3:1). The drawings indicate the square footage of the proposed locker rooms that are included in the Park Block 5 parking garage to meet the locker room bonus option. Additionally, 110% of required long-term bike spaces will be provided.

#### **33.510.255 E. Approval criteria**

A Central City master plan application will be approved if the review body finds that the applicant has shown that all of the following approval criteria are met:

#### **1. The proposed plan is consistent with the policy objectives of the Central City Plan;**

**Findings:** Each policy is addressed separately.

*Policy 1: Economic Development. Build upon the Central City as the economic heart of the Columbia Basin, and guide its growth to further the City's prosperity and livability.*

**Findings:** The current proposal represents an increase in the FAR to be transferred from Park Block 5 to Park Block 4 from what was approved through the previous CCMP in 2009. In the case of the building's impact on the City's economic development, the contribution of office space results in the potential for job creation. Both the Central City Plan and Metro's 2040 Growth Management Plan envision downtown Portland as the economic, retail, cultural, educational and governmental heart of the region. Specific references from the Central City Plan include the need to "foster the development of at least 50,000 additional new jobs in the Central City by the year 2010", "enhance downtown's dominance in professional services and as a business headquarters locations", and foster "significant growth in new office and retail activity" thus "keeping Portland competitive with other regional and national centers".

As a result of competing suburban job growth, the Central City's employment base was found to be declining as a percentage of overall growth. Because it has very little "green field" development potential, unlike outlying suburban areas, the only way that the Central City can compete for its fair share of economic growth, primarily in the office, retail and service sectors, is through redevelopment and "densification". For example, with the Park Avenue West Tower's 176,980 SF of office space and assuming four employees/1,000 gsf, the proposed tower will accommodate nearly 708 office workers at full occupancy. With a significant number of retail jobs for the 28,820 SF of proposed retail space, the tower at full capacity will accommodate a considerable number of new jobs in downtown Portland.

**Therefore, the proposed density transfer is in keeping with this policy.**

*Policy 2: The Willamette Riverfront. Enhance the Willamette River as the focal point for views, public activities, and development which knits the City together.*

**Findings:** The proposed site is not adjacent to or near the Willamette River. **Therefore, this policy does not apply.**

*Policy 3: Housing. Maintain the Central City's status as Oregon's principal high-density housing area by keeping housing production in pace with new job creation.*

**Findings:** The proposed Park Avenue West Tower is only one of a few projects (e.g., KOIN Tower and Indigo) which vertically integrate ground-floor retail and both above-grade offices and housing. These projects are highly prized in the Central City Plan that notes that such mixed-use projects "reinforce the Central City as a lively urban area, especially during evenings"; help create a "thriving urban center that accommodates diverse activities such as working, playing, meeting, living, shopping, and celebrating"; and foster the "integration of residential and commercial uses in the Central City's core which are a fundamental component of the ideal 24-hour city." As described in the findings above addressing Policy 1, the tower will generate the capacity to accommodate a significant number of new jobs. The provision of 203 units of on-site housing adds to an increasing stock of downtown rental units, townhouses and condominiums. Together with other existing housing that has been built in or close to the downtown core, the proposed project will provide ample opportunities for these employees to both live and work downtown. This mix of uses in sufficient quantities to be economically viable would not be possible without the proposed density bonus.

As addressed more fully in Section (4) below (Additional Findings Related to Appeal Issues), this policy in the Central City Plan includes aspirational objectives intended to guide private development and the creation of new City regulations throughout the Central City. The aspirational nature of these objectives is reflected in the use of words such as "encourage", "promote" and "foster." Where this plan policy is applied to individual land use reviews, as here, the use of aspirational language reflects the Council's intent that individual development proposals should contribute toward implementation of the policy and its objectives, but are not expected to fully accomplish each policy or objective. This is further illustrated by the sweeping nature of the objectives supporting Policy 3, including:

“Promote the construction of at least 5,000 new housing units in the Central City by the year 2010,” and “Encourage the development of housing in a wide range of types and prices and rent levels.” No individual development proposal could provide 5,000 new housing units or contain a wide range of housing types, prices, and rent levels to fully implement these objectives. To be approved, however, an individual proposal can and should contribute toward incremental achievement of the applicable objectives supporting Policy 3.

The proposed Park Avenue West Tower provides one type of housing (market rate housing). Together with nearby housing, which includes affordable housing projects near PGE Park and Bud Clark Commons, and the likelihood for additional housing projects nearby (possibly spurred by this particular development), this Core area of downtown will have a healthy mix of housing types to meet Policy 3 and its aspirational objectives, including objective 3C. ***The proposed project is consistent with this policy.***

*Policy 4: Improve the Central City’s accessibility to the rest of the region and its ability to accommodate growth by extending the light rail system and by maintaining and improving other forms of transit and the street and highway system, while preserving and enhancing the City’s livability.*

Findings: The Central City is the region’s most “transit-rich” zone with multiple LRT and Streetcar routes, expansions of these rail lines and extensive TriMet bus system. The extension of mass transit is a public not private function. However, the Central City Plan calls for reinforcing “the link between transit and land use by encouraging transit-oriented development and supporting increased residential and employment densities along transit streets, at existing light rail transit stations, and at other major activity centers”.

For it to remain competitive so that workers beyond its boundaries will continue to make the in-bound commute, the Central City must continue to develop the capacity to accommodate new family-wage jobs in a variety of employment sectors. As noted above, the proposed tower will generate capacity for a significant number of new jobs. Good opportunities for work in the Central City even for those households that choose not to reside there will be supportive of and be supported by this mass transit system. Without the proposed density transfer, the project would not generate this number of Central City jobs. ***Therefore, this policy is met.***

*Policy 5: Human Services. Provide social and health services for special needs populations and assist dependent individuals to become more independent.*

Findings: The proposed project does not include human service components. ***Therefore, this policy does not apply.***

*Policy 6: Public Safety. Protect all citizens and their property, and create an environment in which people feel safe.*

Findings: One of the key attributes of Central City development since the adoption of the Central City Plan is the creation of the “24-hour” neighborhood where people can live, work, shop, study, celebrate and recreate. The key is providing a diversity of uses including ample housing. Downtown residents support businesses and cultural venues with no additional traffic impacts and provide the “eyes” and “ears” to create a safer and more inviting environment 24-hours a day, seven days a week. This is especially important for the new Director Park over which the Park Avenue West Tower residents will look. Providing housing at this location will enliven the immediate environment and increase the sense of safety and security. The proposed mixed-use project of this type and density supports this policy. ***Therefore, this policy is met.***

*Policy 7: Natural Environment. Improve the Central City’s environment by reducing pollution, keeping the Central City clean and green, and providing opportunities to enjoy nature.*

**Findings:** The proposed project continues to comply with this policy in one very important way. The proposed transfer of density from South Park Block 5 to South Park Block 4 has enabled the donation of the surface rights to South Park Block 5 to Portland Parks & Recreation (PPR) for a new urban park, which has increased active and passive open space, helped to keep the Central City clean and “green”, and provided opportunities to enjoy nature in an urban context. Secondly, a project that combines a mix of uses including retail, office and housing creates opportunities for a greater use of alternative modes – walking, biking and transit – thus, reducing transportation-related pollution and use of fossil fuels. Thirdly, the project provides more employment and retail opportunities to serve downtown residents; and conserves energy use through more compact development and green building design. Thus, the building helps to reduce pollution and energy consumption. **By facilitating the donation of South Park Block 5 for a new public park, the proposed density transfer complies with this policy.**

*Policy 8: Parks and Open Spaces. Build a park and open space system of linked facilities that tie the Central City districts together and to the surrounding community.*

**Findings:** The City’s founders envisioned a string of narrow urban squares in what are now known as the West and East Park Blocks, located between SW Park/9<sup>th</sup> Avenues and SW 3<sup>rd</sup>/4<sup>th</sup> Avenues, respectively. A significant number of West Park Blocks have become permanent open space including the blocks from SW Salmon Street southward through the PSU campus and from NW Couch Street northward to NW Hoyt Street through the Pearl District. The donation by the Marilyn Moyer Charitable Trust of the surface development rights of South Park Block 5, which used to be a surface parking lot, for a “link” in this “necklace” of greenery is an exceptional opportunity that has been realized in Director Park. Director Park is a highly successful urban recreational space that provides a dynamic venue for pedestrians to enjoy downtown and the surrounding retail and mixed-use environment. As envisioned by the city’s early civic fathers, the Park Blocks provide the “linked facilities that tie the Central City districts together” in keeping with this policy. However, given the need to reinforce the Central City’s role as the region’s economic, retail, cultural, educational and governmental heart, the creation of this new park could not be undertaken without the loss of the significant development capacity on the block.

**Therefore, this proposed density transfer allows for the realization of both new open space, and in keeping with this policy, the full development potential of the subject sites.**

*Policy 9: Culture and Entertainment. Provide and promote facilities, programs and public events and festivals that reinforce the Central City’s role as a cultural and entertainment center for the metropolitan and northwest region.*

**Findings:** There is no better way to reinforce the Central City’s role as the region’s cultural and entertainment center than to add new jobs, housing, and retail opportunities within the district, both increasing the total number of patrons/donors and providing access in a manner that reduces transportation impacts. The proposed tower could not support the proposed mix of retail, housing and office capacity it does without the approval of the proposed density transfer. **Therefore, the proposal is in keeping with this policy.**

*Policy 10: Education. Expand education opportunities to meet the needs of Portland’s growing population and businesses, and establish the Central City a center of academic and cultural learning.*

**Findings:** The proposed project does not have an educational component. **Therefore, this policy does not apply.**

*Policy 11: Preserve and enhance the historically- and architecturally-important buildings and places and promote the creation of our own legacy for the future. Findings:* There are no buildings on the site of the proposed tower that are on the Historic Register or otherwise

formally designated as historically- or architecturally-important buildings. **Therefore, this policy does not apply.**

*Policy 12: Urban Design. Enhance the Central City as a livable, walkable area which focuses on the river and captures the glitter and excitement of city living.*

Findings: This tower fills a “gap” in the skyline from the Willamette River, falling as it does north of the Fox Tower and south of the US Bank Tower to the north. When viewed from the Park Blocks to the south, the 30-floor tower provides a slim silhouette that punctuates this narrow green corridor. By providing a mix of uses including retail, offices and housing, which would only be possible if the density transfer is approved, the building will accommodate a significant number of new employees and 203 new households to utilize better the many amenities of the Central City using alternative modes of transportation such as walking, biking and transit. Realizing the intended density on South Park Block 4 so that South Park Block 5 was able to be developed as a public park, ensures that there will be the increasing number of employees and residents needed for the Central City to maintain its prominence as the region’s most diverse and exciting urban district.

**Therefore, this policy is met.**

*Policy 13: Plan Review. Periodically review the progress of the Central City Plan.*

Findings: This is a legislative mandate and does not pertain to a quasi-judicial review of a specific development project. However, the Bureau of Planning and Sustainability is currently undergoing an update of the Central City Plan, “Central City 2035”. **Therefore, this policy does not apply.**

*Policy 14: Downtown. Strengthen the Downtown as the heart of the region, maintain its role as the preeminent business location in the region, expand its role in retailing, housing, and tourism, and reinforce its cultural, educational, entertainment, governmental and ceremonial activities.*

Findings: The proposed project, with its mix of retail, office and housing, would not be possible without the proposed density transfer. Downtown Portland cannot maintain its preeminence as the region’s economic, retail, cultural, educational and governmental center without maintaining its planned density of development. In this case, the proposal would move all of the density permitted by right and through density bonuses on South Park Block 5 to South Park Block 4 so that South Park Block 5 can be developed as a new public park. The proposed density transfer allows the accomplishment of both goals, encouraging development at planned densities and providing additional urban open space needed to support such development. The momentum for bringing the Midtown Park Blocks Vision into reality is growing with the surge of development in the area. **Therefore, this policy is met.**

## **2. The plan ensures that there will be adequate and timely infrastructure capacity for the proposed developments;**

**Findings**: The City has provided adequate infrastructure – sewer, stormwater, water, and transportation – to support the collective development of the two Park Blocks at a total capacity of 24:1. The Service Bureaus have responded with no objections to the proposal (Exhibits 1.-6.) Having said this, the project must meet all City regulations and standards, including those in Title 33 (Zoning), Title 17 (Street Improvements), Portland Stormwater Manual and pertinent building and fire codes.

**Therefore, this approval criterion is met.**

**3. The plan provides for a useful and pleasant circulation system and for adequate open space within the plan boundaries;**

**Findings:** The proposal is the culmination of an extraordinary set of circumstances whereby TMT Development through its Marilyn Moyer Charitable Trust donated the surface development rights of South Park Block 5 to Portland Parks and Recreation for the creation of a new public urban plaza. The creation of an additional park block in public ownership and for public open space fulfills the vision of Portland’s founders.

The tower’s proposed ground-floor design provides a substantial proportion of “active” uses, making the site remarkably efficient, compared to similar-sized buildings on the typical 200’ X 200’ downtown block. As a result, retail uses will make up 11,270 nsf (59%) of the ground floor’s 18,990-gsf footprint. An additional 2,157 nsf (11%) will be devoted to the office and residential lobbies on SW 9<sup>th</sup> Avenue. As a result, “active” ground-floor uses will occupy 70% of the ground floor.

This ground-floor development will greatly enhance the pedestrian environment, thus, supporting LRT that runs along the building’s north and south frontage on SW Morrison and Yamhill Streets, respectively. More important, the development will help to generate pedestrian activity essential to the success of the park; provide park users from among the tower’s residents, office workers, shoppers, clients and visitors; incorporate ground-floor retail activities along SW Yamhill Street to enliven the park’s perimeter; and provide “eyes” and “ears” on the park at all times. Thus, the public park and the proposed Park Avenue West Tower project are mutually-supportive, the park providing much-valued public open space on the tower’s southern side, and the tower providing park users, enhancing the pedestrian environment and creating urban liveliness. **Therefore, this criterion is met.**

**4. Development will be placed and sized to protect significant public viewpoints and public view corridors; and**

**Findings:** The site itself is not within a “scenic overlay zone” as indicated by the fact that there is no “s” overlay designation. As illustrated in the submitted perspective of the tower on the downtown skyline, the building is appropriate in its size and location for the context within which it is located, filling a “gap” in the skyline between the Fox Tower on the south and US Bank Tower on the north. Moreover, it will not block views of the river from the Southwest Hills to the south and west of downtown. **Therefore, this criterion is met.**

**5. There are adequate assurances that required housing that is deferred or proposed for another site will be built.**

**Findings:** The site does not include a requirement for housing. **Therefore, this criterion does not apply.**

**(4) ADDITIONAL FINDINGS RELATED TO APPEAL ISSUES**

The Appellant, SEIU Local 49 by and through its representative, David Noren, raised several issues in its appeal form dated January 7, 2014, in Mr. Noren’s letter, dated February 11, 2014, and at the appeal hearing before City Council on February 12, 2014. The issues concern matters related to the Central City Master Plan amendment component of the present application. These appeal issues are set forth below, along with City Council’s findings and conclusions of law related to each issue.

**A. The Design Commission is the Proper Review Body.**

The Appellant challenges the underlying procedure used to review the applicant's request for Design Review, a CCMP Amendment, Design Modifications and an Adjustment and asserts that the Applicant's request should have been reviewed initially by the Hearings Officer, and not by the Design Commission.

Contrary to Appellant's assertion, the City Council finds that the Design Commission is the proper initial review body in this proceeding under the City's zoning code. The Applicant's proposal to add four stories to the Park Avenue West Tower increases the proposed development by more than 1,000 square feet, which triggers a Type III design review (PCC 33.825.025.A.1.a). Because there is a current CCMP approval for this project, the change to the amount of FAR to be transferred from Park Block 5 to Park Block 4 requires a CCMP amendment, which is processed through a Type II procedure (PCC 33.510.255.G). Under the zoning code, the Design Commission is the assigned review body for design reviews, including height, FAR bonuses and transfers, and modifications of applicable development standards (PCC 33.720.020.C; 33.825.040). Since the sole purpose of the requested master plan is to accomplish a floor area transfer, the Design Commission is the proper body to review this application. Additionally, when an applicant requests more than one land use review, the zoning code directs that the overall application is reviewed by the body assigned to the highest review procedure (PCC 33.720.020.G.1) In this case, because the Type III Design Review procedure was assigned to the Design Commission, the Type II CCMP amendment was also assigned to the Design Commission. Furthermore, as required under ORS 227.175, this Type III Design Review procedure was appealable to City Council, the governing body of the City. For these reasons, the City Council finds that the Design Commission is the proper review body in this proceeding.

**B. Application is Made By and With Approval of Owners.**

Appellant alleges the City Bureau of Parks & Recreation (PPR), as owner of Park Block 5, was required to sign the application form. The City Council finds, however, that the Appellant fails to cite to any zoning code provision requiring a signature by PPR, and, to the extent there is any procedural error, fails to demonstrate that any such error prejudiced its substantial rights.

The application form in this matter is signed by the Applicant, which is the only signature required under the PCC. PCC 33.730.060(C) governs the required information for land use reviews (except land divisions) and requires only "the signature of the applicant" on a land use application. No other signature is required. The zoning code defines the term "applicant" as "a person who applies for a land use review or building permit," which "can be the owner of the property or someone who is representing the owner, such as a\*\*\*developer, consultant or architect." (PCC 33.910.030) The PPR, as owner of Park Block 5, was not required to sign the application form.

Additionally, even though PPR is not required to sign the current application form, its Director, Mike Abbate, confirmed in writing that PPR has no objection to this application and is willing to pursue discussions with the Applicant about the FAR transfer approved by the Council's decision. See Design Commission Record Exhibit H.10 and Exhibit A to 2/11/2014 Noren letter. The application expressly identifies the FAR transfer from Park Block 5 to Park Block 4 as an element of this application. PPR and Park Block 5 were expressly identified in the mailed hearing notices for this application, the staff report to the Design Commission, and the Design Commission's decision. PPR received notice of this current application and the Design Commission's decision, as shown by the notification mailing list. See Covenant attached to Exhibit H.10, as well as Design Commission Record Exhibit D.6. If PPR did not consent to this application, it had numerous opportunities throughout this land use review proceeding to

make that clear and did not do so. Taken as a whole, the evidence in the record demonstrates PPR's acquiescence to the land use reviews the Applicant has requested and the Council approves in this decision.

Finally, the application form in this matter is correctly signed by the applicant's representative, Robert Thompson. By signing the application, Mr. Thompson agrees to the representations contained in the "Responsibility Statement" at the bottom of the application. The "Responsibility Statement" acknowledges the Applicant is responsible for ". . . gaining the permission of the owner(s) of the property listed above in order to apply for this review and for reviewing the responsibility statement with them." The PPR, as owner of Park Block 5, has indicated its awareness of and acquiescence to the present application. The Appellant has not asserted that any failure to obtain PPR's signature or identify PPR as an owner of Park Block 5 on the application form has prejudiced any substantial right of the Appellant, nor does the record support such an assertion. The Appellant participated fully in person and in writing before the Design Commission and the City Council and expressed no misunderstanding about the nature of the Applicant's proposal or the properties involved in the relevant FAR transfer.

The Appellant's argument identifies no factual or legal reason to deny this application, and City Council finds no merit in the Appellant's argument.

**C. FAR Transfer is Allowed in Downtown Subarea.**

Appellant alleges that the requested FAR transfer is prohibited because it is greater than a 3:1 ratio and because it occurs across rights-of-way in the Downtown District. In making this argument, the Appellant relies on a general development standard applicable to CX-zoned property in the Central City Plan District, which prohibits FAR transfers across rights-of-way in the Downtown District. (PCC 33.510.200.D) The Applicant's site is within this subdistrict.

Contrary to Appellant's assertion, the City Council finds that the CCMP process allows exceptions to this development standard—specifically, FAR transfers greater than 3:1 and FAR transfers across rights-of-way in the Downtown District. A CCMP is not required for development projects in the Central City. It is an option a developer may pursue to develop property in a more flexible way than the plan district's general development standards allow. In particular, a CCMP allows greater flexibility in allocating FAR to development sites that will not remain in the same ownership. PCC 33.510.255(B)(1). Notably, this authorization has no locational or other limitation within the Central City.

In this case, Park Block 5 (the property transferring FAR) and Park Block 4 (the property receiving the transferred FAR) are not and will not remain in the same ownership. The City Council interprets PCC 33.510.255.B.1 to allow FAR transfers greater than 3:1 and FAR transfers across rights-of-way for individual development sites that will not remain in the same ownership as a way to achieve the flexibility in development that a CCMP is intended to allow. Based upon this interpretation, the Council has the express authority to approve an FAR transfer greater than 3:1 and across a right-of-way utilizing the flexible regulations of PCC 33.510.255, Central City Master Plans. The City Council finds that this interpretation is reasonable and consistent with applicable code provisions. The Council finds the Appellant's argument ignores the language of the CCMP provisions in PCC 33.510.255.B.1. If, as the Appellants assert, the flexible allocation of floor area explicitly authorized by this section does not override or allow an exception to the general development standard in PCC 33.510.200.D.1, it is not clear what additional flexibility an applicant could achieve with respect to FAR by seeking approval of a CCMP. In effect, the Appellant's argument reads PCC 33.510.255.B.1 out of the code and renders it meaningless.

Additionally, PCC 33.700.070 provides rules for the application of code language. PCC 33.700.070(E)(2) further provides that when regulations at the same level conflict, those that

are more specific to the situation apply. Here, each of the code provisions at issue are at the same level as they are all part of the Central City Plan District regulations: the provision prohibiting FAR transfers greater than 3:1 (PCC 33.510.200(C)(1)), the provision prohibiting FAR transfers across rights-of-way in the Downtown District (PCC 33.510.200(D)(1)), and the provision in the Central City master plan regulations allowing additional flexibility in allocating FAR (PCC 33.510.255(B)(1)).

The limitations on FAR transfers in PCC 33.510.200.D are general in nature, whereas the regulations governing CCMPs in PCC 33.510.255 are more specific. The purpose statement in PCC 33.510.255 states: “The Central City master plan adds development potential and flexibility for projects in specified areas. The additional development potential and flexibility is possible because the plan is used to demonstrate that the policy objectives of the Central City Plan and the public service needs of the area are addressed. The Central City master plan is an option; it is not a requirement.” The CCMP regulations more specifically apply in the limited circumstances where, as here, a CCMP is requested and allowed. A CCMP (and an amendment to a CCMP) involves highly discretionary criteria and must comply with the particular requirements contained in PCC 33.510.255. The City Council finds that the CCMP regulations are more specific than the general Central City Plan District regulations for purposes of the additional FAR transfer requested here and, therefore, that the CCMP regulations control.

Based on City Council’s interpretation, the Council finds that the proposed FAR transfer is allowed.

**D. Evidence of FAR Transfer Not Required For Land Use Review.**

At the appeal hearing, the Appellant also argued that the FAR transfer is prohibited because there is no substantial evidence in the record that the FAR transfer has occurred or will occur.

The City Council finds that the Appellant misconstrues the code and the process for achieving an FAR transfer. Before parties negotiate an actual transfer of FAR, the City must approve the proposed FAR transfer as part of a design review, including a CCMP or CCMP amendment approval. There is no need, and certainly no reason, to negotiate an actual transfer of FAR if the transfer is not approved through the land use review process. Once the City approves the proposed building design and FAR transfer, the parties can then negotiate the actual transfer of FAR. PCC 33.700.060(B) only requires evidence of the recorded covenant transferring FAR before a building permit may be issued. Notably, the code does not require evidence the FAR transfer has occurred before the land use review approves the development and associated FAR transfer. Although the City Council finds the Appellant’s argument lacks merit, the Applicant suggested the Council impose an additional condition of approval that states clearly and repeats what PCC 33.700.060.B requires. Consistent with the Applicant’s request, the Council adds Condition B requiring the Applicant to submit a signed and recorded covenant transferring the additional 2.7:1 FAR before a building permit may be issued allowing development that will make use of this additional FAR.

**E. Revisions to Application Did Not Substantially Alter Request.**

Although not raised directly before City Council, Appellant asserted before the Design Commission that the revised application narrative, dated October 22, 2013, was untimely and should not be considered. Specifically, Appellant cited to PCC 33.730.060, which requires that any changes to an application that substantially alter the request must be made at least 10 days before the notice of the request is mailed. As discussed more fully below, however, City Council finds that the revisions to the application did not substantially alter the original request. The revisions simply clarified that, rather than carry forward prior land use review approvals, the Applicant requested re-approval of such reviews, and the Applicant had

addressed all of the applicable approval criteria for each review in the original application narrative, dated October 9, 2013.

The Applicant's original application narrative, dated October 9, 2013, sought to retain and carry forward the following approvals, which were previously approved in LU 07-14063 MS DZM AD:

- The Type II Adjustment to permit vehicle access on a "Parking Access-Restricted" Street;
- The Design Modification to reduce required loading spaces from three (3) to two (2) in order to reduce the width of the shared loading dock/garage entrance on SW Park Avenue; and
- The previous Design Modification to permit the building's spire to extend more than 10' above the maximum height limit of 460'.

Even though the Applicant sought to retain and carry forward the above-referenced approvals, the Applicant addressed all of the applicable approval criteria for each review in the original application narrative, dated October 9, 2013.

As the explanatory cover letter from Robert Thompson, dated October 22, 2013, makes clear, City staff suggested during the pre-application conference that the Applicant request that the above-referenced Adjustment and Design Modifications be re-approved, rather than retained and carried forward. Mr. Thompson's letter also confirms that the initial application narrative adequately addressed all applicable approval criteria for such requests. Following City staff's suggestion, the Applicant submitted an application form, dated October 22, 2013, which clarifies that the Applicant seeks re-approval of the previously approved Adjustment and two Design Modifications. Subsequently, on November 1, 2013, notice of the hearing on the application was mailed, which correctly identified the proposal, including the requests for re-approval of the Adjustment and two Design Modifications.

While a revised application narrative was submitted on November 7, 2013, the revisions were merely clerical and typographical for the purpose of clarifying that the above-referenced Adjustment and two Design Modifications be re-approved, rather than retained and carried forward. No substantive nor substantial changes were made; rather, the revised narrative merely offered clarification of the original request, but did not alter the request in any manner.

For the reasons stated above and as demonstrated in the record, City Council finds that the Applicant's revised application did not substantially alter the original request; therefore, the Design Commission did not err in accepting the revised application.

**F. Private Land Use Covenant is not an Applicable Approval Criterion.**

At the hearing before the Design Commission, Appellant asserted that the private land use covenant entered into between the Applicant and the City limited surface development of Park Block 5 and therefore prevented transfer of FAR from Block 5. See Covenant attached to Exhibit H.10. In its letter to the Design Commission, dated November 27, 2013, Appellant changed its position by stating, "It may be that the private covenant limiting development (and thus limiting floor-area ration that could developed on Block 5) does not of itself prevent transfer of FAR to Block 4." While it appears that Appellant has recanted its original argument, Appellant continues to argue that the private land use covenant is relevant in considering whether the City should impose an affordable housing component to this project. That is, the Appellant contends that since the City, rather than a private entity, is the transferor of FAR, the Council as a matter of policy ought to extract an affordable housing commitment from the Applicant as a condition of this land use review. However, as discussed in regard to Central City Plan Policy 3, City Council finds that there is no applicable approval criterion in this proceeding that requires the City Council to compel the Applicant to include

affordable housing in this review -- whether outright or in exchange for the transfer of FAR from Park Block 5 to Park Block 4 -- and this private covenant is not relevant to this review.

**G. Application Complies with Central City Plan Policy 3, “Housing.”**

Appellant asserts that the application does not comply with the Central City Plan Policy 3.C regarding housing. Specifically, the Appellant contends that because the City is a party to the proposed project, as transferor of bonus FAR from Park Block 5 to Park Block 4, the City is obligated to require an affordable housing component of the project. For the reasons stated above in Section (3)1 , the City Council finds the application complies with Central City Plan Policy 3.C, which represents a broad policy objective to “encourage the development of housing in a wide range of types and prices and rent levels.”

Additionally, Policy 3.C encourages a wide range of housing types and rent levels—from affordable to high-end--- not just affordable housing. The City Council finds that the wide range of housing types and prices encouraged by Policy 3.C refers to a range across the Central City; it does not require this wide range of housing types and prices to be included within a single building. Approval of the pending application will, indeed, add to the existing housing mix within the Central City, albeit not of the type that the Appellant desires.

The Appellant does not cite to any zoning code approval criterion or other law that obligates the City, as transferor of FAR to a project, to require affordable housing as a component of the project. The Appellant observed that the City receives federal funds, which may trigger requirements under the Federal Fair Housing Act. However, the Appellant conceded that the Fair Housing Act requirements are not directly applicable to this land use application, and it is undisputed that no federal funds are being used in the proposed project.

To maintain consistency in the application of the zoning code, the Council is bound by the rules and regulations that govern processing of its land use applications. Absent any generalized zoning code requirement or other generally applicable legal obligation to require an affordable housing component to the proposed project, the City Council finds that it is legally problematic to require this Applicant to include affordable housing as part of this project on an ad hoc basis. To be effective and sustainable, a requirement to include affordable housing in Central City development projects should be adopted through legislative action, not imposed arbitrarily in a quasi-judicial land use review. Since an affordable housing component is not required by any applicable zoning code provision, the Council finds that the project is not required to include affordable housing.

The City Council acknowledges and appreciates the members of SEIU Local 49 that came to testify at the appeal hearing and share their stories. The issue of creating affordable housing close to workers’ jobs is an important one; however, the City Council finds that this land use application is not the proper venue to address this larger policy issue.

For these reasons, the City Council finds that the application meets all applicable approval criteria for a Central City Master Plan amendment; therefore, the appeal is denied.

**(5) MODIFICATION REQUESTS (33.825)**

**33.825.040 Modifications That Will Better Meet Design Review Requirements:**

The review body may consider modification of site-related development standards, including the sign standards of Chapters 32.32 and 32.34 of the Sign Code, as part of the design review process. These modifications are done as part of design review and are not required to go through the adjustment process. Adjustments to use-related development standards (such as floor area ratios, intensity of use, size of the use, number of units, or concentration of uses) are required to go through the adjustment process. Modifications that are denied through design

review may be requested as an adjustment through the adjustment process. The review body will approve requested modifications if it finds that the applicant has shown that the following approval criteria are met:

- A. Better meets design guidelines.** The resulting development will better meet the applicable design guidelines; and
- B. Purpose of the standard.** On balance, the proposal will be consistent with the purpose of the standard for which a modification is requested.

*The following 2 Modifications are requested:*

- 1. 33.130.210.B.1., Height** – A Modification is requested so that the spire may rise more than 10' above the height limit. The proposed spire will rise 41'-7" from the top of the mechanical enclosure which is at the 460' building height limit.

**Findings:** Allowing a building to exceed this standard is easily warranted when the design of the building top is exceptional. Since the building's Design Advice Request with the Design Commission in 2007, there were many requests for the building top to be distinctive, dynamic, exuberant, and an icon. The challenge was set because of the site's critical location in the City's skyline and high visibility from, and close proximity to, two of downtown's important public plazas. It is fair to say that this building will help define Portland's skyline and will become a landmark in the skyline. The submitted information demonstrates the quality of materials, design and detailing of the building top, of which the spire is an integral part. The building's highly sculptural and unique asymmetrical top is capped by the spire, which aids in the vertical and proportionally slender appearance of the tower. These design characteristics fulfill the desires stated by the Design Commission back in 2007 when the building was first conceived. For these reasons, the contribution of the spire helps the building better meet C11 and C2. The purpose statement of the standard is as follows: "The height limits are intended to control the overall scale of buildings. The CX zone allows the tallest buildings, consistent with its desired character." The building top tapers and the spire extends this vertical line, augmenting the overall vertical proportion of the building. ***The Modification criteria are met.***

- 2. 33.266.310, Loading Standards – Vehicle Size** – Two on-site 10' x 35' x 13' loading spaces are required. The proposal includes a loading dock on the SW Park Avenue façade. The loading dock can accommodate one full-size loading vehicle, one sub-standard loading vehicle for 22-5" loading vehicles, and a dedicated trash pick-up space. Additionally, the full-size and sub-standard loading spaces cannot be utilized at the same time. A Modification to this standard is requested.

**Findings:** The purpose of the loading standards is stated in Code Section 33.266.310.A: "A minimum number of loading spaces are required to ensure adequate areas for loading for larger uses and developments. These regulations ensure that the appearance of the loading areas will be consistent with that of parking areas. The regulations ensure that access to and from loading facilities will not have a negative effect on the traffic safety or other transportation functions of the abutting right-of-way".

A modification to this standard maximizes the inclusion of ground level active uses. If this standard were to be met, especially for a site of these dimensions, the result would be a far less successful and active ground level. The studies demonstrate how loading vehicles can maneuver this configuration to ensure the purpose of the standard is met. The following pedestrian-oriented guidelines are better met with this proposal: A8, C7 and C9.

Portland Transportation supports the current proposal through the following comments: "PBOT has no objection to the proposed amendments of the previously approved Design Review. The proposed structure has been previously reviewed & supported by PBOT under

07-140633 DZM MS AD, 09-104171 DZ, and 09-136017 DZM MS.” (Exhibit E.2) As they remain relevant to the current proposal, this report brings forward the Portland Transportation comments from the original 2007 land use review for reference (Exhibit E.6). Those comments follow:

“Loading spaces: Since the last public hearing on this matter, City staff from the Bureau of Development Services and Portland Transportation suggested a minor change to the proposed curb cut for the combined loading spaces/parking garage entrance, as a result of the Design Commission’s expressed concerns. The applicant has re-designed the curb cut to narrow it in order to minimize potential conflicts with pedestrians and bicyclists and to minimize the number of on-street parking spaces that will need to be removed to accommodate said access to the site. Accordingly, the two previously proposed parallel and angled loading spaces have been altered. The applicant is now proposing one angled and full-dimensioned space, and one perpendicular, but shorter space (abutting the trash compactor). As shown on the revised plans, though the new configuration shows a space for a smaller vehicle, the space has been re-designed such that there would be room in the loading area for only one truck at a time (either the full size or the shorter loading vehicle).

Portland Transportation staff reviewed the TIS’ analysis regarding the proposed parking garage, and concurs with the summaries contained therein. Turning movement exercises were done and the applicant has demonstrated that there is sufficient space on SW Park Avenue for trucks to back into and pull out of the proposed loading docks. The TIS concluded that although there was sufficient maneuvering space for the anticipated delivery vehicles on SW Park Avenue, that it would also be necessary to eliminate some of the on-street parking spaces on the west side of the street between the loading spaces and SW Morrison Street. The applicant’s traffic consultant then made comments with regard to the loading activities at the nearby Nordstrom building and suggested that at times, a truck making deliveries to the store during the early morning hours extends out into SW Park Avenue.

The new combined curb cut that has resulted from the reconfigured loading spaces will eliminate approximately 3 spaces on the west side of NW Park (between the loading spaces and SW Morrison). Portland Transportation can support the loss of these parking spaces since the remaining spaces on the east side of the street will be retained as well as all of the existing on-street parking spaces along SW 9th. The reported loading activities at Nordstrom, if it is occurring, is in violation of their loading agreement with the City that allows for temporary blockage of the sidewalk only, during loading activities. To address the expressed concerns that the new building’s residents may have problems accessing the new parking garage, the City may pursue enforcement action with Nordstrom to rectify the alleged partial staging in SW Park. Additionally, metered parking along SW Park (on both sides) could be restricted to certain hours of the day/evening. Furthermore, and as typically required with new loading spaces in confined areas, time limitations can be established for loading activities associated with the new building to minimize potential conflicts with the loading activities associated with Nordstrom.

Portland Transportation staff has received information regarding the proposed garbage pick-up operations for the new building. There will be garbage collection in the vicinity of the proposed loading spaces via a compactor. The operation will include a vehicle coming to the site, retrieving the compactor from within the loading area and taking it to be unloaded off-site (an operation that will take roughly 1 hour. Standard early morning pick-up (prior to 6:30 am) for this operation will be the practice at the new building, 1-2 times per week. Portland Transportation is not concerned with this operation given the even earlier times for general building loading activities.

To specifically address the “traffic safety” component of this purpose statement, Portland Transportation suggests that this component includes safety for all modes, including pedestrians. Considering that the proposed structure will be located in the core of the Central City Plan District and Downtown Pedestrian District, there is a highly recognizable pedestrian environment on and around the subject block. With regard to potential impacts to pedestrians in the area related to the proposed loading spaces and loading activities, Portland Transportation staff is not concerned that pedestrians will be negatively impacted, from an operational perspective. The loading and garbage activities will occur during early morning hours where there is limited pedestrian traffic along the abutting sidewalks. There will be limited opportunities for conflicts to occur between pedestrians and the vehicles associated with the loading and garbage collection activities at the subject site. As mentioned previously, the applicant has reconfigured the proposed combined curb cut for the loading and parking garage operations of the building to reduce the length of the curb cut as much as possible. This was done to minimize the distance pedestrians will need to traverse which will in turn, enhance their safety. To further ensure the safety of the pedestrians walking along the sidewalk corridor along SW Park in relation to the proposed loading spaces, the applicant will be required to install an audio and visual warning system to warn pedestrians of exiting vehicles from the loading spaces/parking garage.

Portland Transportation recognizes that the subject site and the surrounding activities, current and forthcoming, offer challenges in terms of considering loading options for the proposed high-rise building. There is really no one ideal or perfect solution to locating a loading area on the site. The alternative proposed by the applicant, for two on-site loading spaces located along SW Park Avenue, can really be considered as the only viable option for a loading area on-site. Requiring the applicant to provide the necessary maneuvering area, configuration and dimensional requirements to allow for forward motion entry and egress into and from standard sized loading spaces would result in a larger curb cut and undoubtedly result in a substantial redesign of this side of the proposed building. The results would be a pedestrian environment that would be less inviting and potentially more difficult to traverse from the pedestrian perspective (given the wider curb cut) and a design that potentially might have difficulties meeting other Zoning Code design requirements, standards, goals and policies.

Portland Transportation can support the applicant’s modification requests noted above since all of the applicable approval criteria are satisfied.

***The Modification criteria are met.***

## **(6) ADJUSTMENT REQUESTS (33.805)**

### **33.805.010 Purpose**

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

### 33.805.040 Approval Criteria

The approval criteria for signs are stated in Title 32. All other adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. have been met.

*The following Adjustment is requested:*

**33.510 Map 510-9, Parking Access Restricted Streets** – All four streets are designated as Parking Access Restricted. The proposal includes access to loading and the below-grade parking at SW Park Avenue.

- A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and
- B. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in a C, E, or I zone, the proposal will be consistent with the desired character of the area; and
- E. Any impacts resulting from the adjustment are mitigated to the extent practical; and

**Findings for A, B and E:** The site is a difficult site in terms of providing parking/loading access. All four streets are designated as “Parking Access Restricted Streets” and two streets, Yamhill and Morrison, are the light rail alignments. Rather than explore the light rail alignments, the applicant, BDS Staff and PBOT staff all concurred that parking/loading access should be from either Park or 9<sup>th</sup>. The design team chose SW Park.

As stated in Zoning Code Section 33.510.261, “the parking and access regulations implement the Central City Transportation Management Plan by managing the supply of off-street parking to improve mobility, promote the use of alternative modes, support existing and new economic development, maintain air quality, and enhance the urban form of the Central City”.

Because the project is located on the region’s light-rail transit system and just a few blocks from the bus and streetcar lines, provides underground parking and maximizes active ground level uses, the project is consistent with the purpose of the regulation and consistent with the desired character of the area.

The proposed curb cut for the parking garage and loading spaces will be the only such curb cut associated with the new high rise building. It will be located on the north side of the block along SW Park. With the eventual direction change to north-bound traffic only along the street, the location of the curb cut will reduce the potential for conflicts between cars entering the garage and loading vehicles making deliveries, with the light-rail lines along SW Morrison and SW Yamhill. As described previously under the modification discussion, Staff can conclude that the proposed loading spaces will not have any significant impacts to traffic, transit, pedestrian and bicycle modes of transportation in the area.

***The criteria are met.***

- C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

**Findings:** One Adjustment is requested. ***This criterion does not apply.***

- D. City-designated scenic resources and historic resources are preserved; and

**Findings:** There are no city-designated scenic or historic resources on this site. ***This criterion does not apply.***

F. If in an environmental zone, the proposal has a few significant detrimental environmental impacts on the resource and resource values as is practicable;

**Findings:** This site is not within an environmental zone. ***This criterion does not apply.***

## DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

## CONCLUSIONS

The design review process exists to promote the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. This building sits within downtown's Midtown Park Blocks and will further enhance the successful retail and recreational center that has developed around Director Park (Park Block 5). The proposed tower is a direct result of the park, due to the proposed density transfer between Park Block 5 and Park Block 4, and will benefit the park's safety and vitality with additional retail, office and residential uses adjacent to the park. As stated at the Design Advice Request [DAR] in 2007 this building is, "the realization of a 30 year plan; it is exactly what the Central City Plan desires." Portland's desire for a 24-hour downtown is clearly being furthered with this proposal. The mix and amount of uses within this building is commendable. In addition, the proposed tower provides an energetic new addition to the Portland skyline, and the additional height proposed by this revised design allows the tower the more slender proportions and significant height originally envisioned and supported in 2007. The Central City Master Plan, the Design Review with Modifications, and the Adjustment are all supported by the applicable design guidelines/approval criteria and therefore warrant approval.

## CITY COUNCIL DECISION

It is the decision of the City Council to deny the appeal, uphold the Design Commission's decision, and to approve the application with an additional condition of approval. The effect of the Council's decision is:

**1) Approval of Design Review** for a full-block, 30-story retail, residential and office development in the Central City Plan District.

**2) Approval of a Central City Master Plan amendment.**

The previous CCMP under LU 09-136017 DZ MS approved a 9.1:1 floor area ratio transfer from Park Block 5 to Park Block 4. The current CCMP amendment requests an additional 2.6:1 FAR (52,000 SF) be transferred from Park Block 5 to Park Block 4 for a total of 11.7:1 FAR (234,000 SF) transferred to Park Block 4.

Park Block 5 FAR: Park Block 5 will achieve a 3:1 bonus FAR – .5 bonus FAR through the "water feature/public fountain bonus option" and 2.5 bonus FAR through the "locker room bonus option". Park Block 5 will retain a base FAR of 0.3:1 to accommodate 3 small park structures. The remaining 11.7:1 FAR will be transferred to Park Block 4.

Park Block 4 FAR: Park Block 4 will achieve a 3:1 bonus FAR through the “residential bonus option. Through the Central City Master Plan process Park Block 4 will be allowed to develop the site with a 23.7:1 FAR (474,000 SF) – 11.7 FAR transferred from Park Block 5 and 12:1 from the maximum development potential of Park Block 4.

**3) Approval of 2 Modification Requests.**

1. 33.130.210.B.1. and 2, Height –A Modification is requested so that the spire may rise more than 10’ above the height limit. The proposed spire will be 41’-7” above the site’s 460’ height limit.

2. 33.266.310 Loading Standards – Vehicle Size – Two on-site 10’ x 35’ x 13’ loading spaces are required. The proposal includes a loading dock on the SW Park Avenue façade. The loading dock can accommodate one full-size loading vehicle, one sub-standard loading vehicle for 22-5” loading vehicles, and a dedicated trash pick-up space. Additionally, the full-size and sub-standard loading spaces cannot be utilized at the same time.

**4) Approval of 1 Adjustment Request.**

33.510 Map 510-9, Parking Access Restricted Streets – All four streets are designated as Parking Access Restricted. The proposal includes access to loading and the below-grade parking at SW Park Avenue.

**Approvals** per Exhibits C.1-C-82, signed, stamped, and dated December 19, 2013, subject to the following Conditions of Approval:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in the drawings contained in Exhibits C.1-C.82. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 13-214772 DZM, MS, AD. No field changes allowed."
- B. As required by PCC 33.700.060.B, the Applicant will submit a signed and recorded covenant for the transfer of an additional 2.6:1 FAR from Park Block 5 to Park Block 4 before BDS may issue a building permit for any development using this transferred FAR.

=====