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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

NO. 68463-9-I

FRIENDS OF NORTH KELSEY,

Appellant,

v.

CITY OF MONROE, a municipal corporation; PACLAND; NORTH
KELSEY, LLC, a Washington limited liability corporation,

Respondents

and

DIANE and EDWARD ELLIOTT,

Third-Party Respondents.

BRIEF OF APPELLANT FRIENDS OF NORTH KELSEY

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I. INTRODUCTION

Friends of North Kelsey filed this appeal to challenge the Monroe City Council's approval of the development of a new Wal-Mart within the North Kelsey Planned Development Area in the City of Monroe.

In 2001, the citizens and elected officials of the City of Monroe began a lengthy, resource-intensive process to define a vision for the development of an area of land owned by the City known as the "North Kelsey" area.¹ That effort culminated in the City's adoption of the North Kelsey Development Plan in 2003. That Plan set forth a vision for pedestrian friendly, multi-use development, organized around an internally connected set of public open spaces with architectural design that would be unique to Monroe. The concept was for a local Monroe village green and open space community area where people would leave their cars and walk around to shop, work, and recreate.

On April 12, 2011, the Monroe City Council approved a proposal to develop a 151,719 square foot Wal-Mart Superstore in the North Kelsey area. The formulaic architecture and traffic-oriented layout was a stark contrast to

¹ The citizens of Monroe spent an enormous amount of time and resources developing the North Kelsey Development Plan. There were at least five Planning Commission work sessions, a public Open House, a City Council work session, and

the vision and requirements of the North Kelsey Development Plan. The *use* proposed by Wal-Mart was consistent with the Plan, but the design and layout of the proposal were inconsistent with the Plan. The proposal was entirely out of sync with the site configuration, site planning, and architectural and building design goals and guidelines in the Plan.

The North Kelsey Development Plan has regulatory effect with defined legal parameters within which the City Council must conduct itself in its quasi-judicial role to apply the law as written. The design guidelines are a critical regulatory tool in implementing the design related goals and objectives for the planned development area. Provisions that contain the word “should” are defined by the Plan as being mandatory with limited exceptions and the Council repeatedly erred by interpreting those provisions incorrectly, disregarding the guidelines entirely, and paying no heed to the lack of evidence for its decision.

This is an issue of great importance to the citizens of Monroe. The record contains over 400 pages of citizen comments, CP 1233-1459; CP 2181-2361, and many citizens testified at the hearing on the issue. Nearly 100 pages of the record consist of petitions with signatures of supporters,

additional public meetings and hearings held over a span of approximately two years. CP 1968-1970; CP 2045-2079.

neighbors, and residents opposed to the proposal (potentially over 1,500 signatures). CP 2219-2317. The citizens of Monroe care deeply about the impact this will have on the North Kelsey Area.

II. ASSIGNMENTS OF ERROR

Assignment of Error No. 1: The trial court erred when it rejected appellant's request to reverse the decision of the Monroe City Council on grounds that the decision was an erroneous interpretation of the law, was not supported by substantial evidence, and was a clearly erroneous application of the law to the facts.

Issues Pertaining to Assignment of Error No. 1:

- Wal-Mart's proposal is inconsistent with the North Kelsey Development Plan and Design Guidelines.
- Wal-Mart's proposal is not a planned action because it is inconsistent with and fails to implement the North Kelsey Development Plan and the North Kelsey Design Guidelines.

Assignment of Error No. 2: The Monroe City Council erred when it concluded that the applicant's development proposal complies with all applicable provisions in the North Kelsey Development Plan and the North Kelsey Design Guidelines. (CP 719-738; CP 2700; CP 2579.)

Issues Pertaining to Assignment of Error No. 2:

- Wal-Mart's proposal is inconsistent with the North Kelsey Development Plan and Design Guidelines.

Appellant assigns error to the findings and conclusions adopted by the Monroe City Council as they are set forth in CP 725-737 and CP 2609-2611, including but not limited to those findings and conclusions that are quoted in this brief in Section IV.C.

Assignment of Error No. 3: The Monroe City Council erred when it concluded that the Wal-Mart proposal qualifies as a planned action. (CP 721, CP 2699, CP 2579)

Issues Pertaining to Assignment of Error No. 3:

- Wal-Mart's proposal is not a planned action because it is inconsistent with and fails to implement the North Kelsey Development Plan and the North Kelsey Design Guidelines.

Appellant assigns error to the findings and conclusions adopted by the Monroe City Council as they are set forth in CP 725-737 and CP 2609-2611, including but not limited to those findings and conclusions that are quoted in this brief in Section IV.C.

III. STATEMENT OF THE CASE

A. The North Kelsey Development Plan

The City of Monroe owns nearly 100 acres of land in an area referred to as the North Kelsey Planning Area. CP 1966. That area is located north of SR-2, south of the proposed SR-2 bypass, east of the 522 overpass and west of Chain Lake Road. CP 304; CP 1967.

Following a lengthy, comprehensive, and resource-intensive planning process, the City ultimately adopted the North Kelsey Development Plan in 2003. CP 307-311. The North Kelsey Development Plan focused on 55 acres of land within the North Kelsey planning area, which included the “North Kelsey north area” and the “North Kelsey south area.” CP 304; CP 308. The two areas combined are referred to as the “North Kelsey Planned Development Area.” CP 314. The North Kelsey Development Plan contains standards that govern development in the North Kelsey Planned Development Area. CP 305-375. Those standards are the focus of this appeal and are discussed at length herein.

B. The Sale of the Project Site to North Kelsey, LLC

On December 17, 2010, the Monroe City Council entered into a Purchase Agreement with North Kelsey, LLC for the sale of approximately

24 acres of land within the North Kelsey Planned Development Area to North Kelsey, LLC. CP 2674. The subject property was the “North Kelsey north area” located at the north end of the North Kelsey Planned Development Area. CP 304.

The Purchase Agreement required that the City approve whatever development was proposed as a condition of the sale of the property. CP 2681-2683. The contract conditioned the sale of the property on the receipt of all government approvals “deemed necessary by” the developer for the development and occupancy of the project subject only to conditions “acceptable” to the developer. CP 2681. Thus, the City Council was obligated to approve the project if the City wanted to sell the property.

C. The Wal-Mart Proposal and the Administrative Process Associated with the Proposal

On January 5, 2011, approximately two weeks after the Purchase Agreement had been finalized, Wal-Mart’s consultant, PacLand, submitted applications for a binding site plan and grading permit to develop the property that the City had contracted to sell to North Kelsey, LLC. CP 740-774. With this filing, it became evident to the public that the development on the north Kelsey site would be a Wal-Mart Superstore.

In stark contrast to the North Kelsey Development Plan for that area, Wal-Mart proposed a design and site plan that conformed to Wal-Mart's corporate formulaic architecture and traffic-oriented layout instead of a design and site plan that conformed to the community's legal goals and objectives for development of the site. CP 740-782. The store was proposed to be approximately 151,719 square feet with associated seasonal and outdoor garden centers of approximately 13,000 square feet. *Id.* It would be surrounded by an enormous parking lot that would consume whatever portion of the site that remained beyond the building itself. *Id.* The proposal included development roadways, stormwater detention facilities, utility systems, and other improvements as shown in the conceptual and binding site plan submitted by PacLand. *Id.*

Around that same time (or before that time), the City of Monroe and North Kelsey, LLC began negotiating a Development Agreement under the authority of RCW 36.70B.170 to establish terms of development of the site by Wal-Mart. CP 685.² PacLand submitted a conceptual site plan and

² State law allows a local government to enter into a development agreement with a person having ownership or control of real property within its jurisdiction. RCW 36.70B.170. A development agreement sets forth the development standards and other provisions that will apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. *Id.*

conceptual building elevations for the proposed Wal-Mart retail store in support of the Development Agreement. *Id.*; CP 776-782.

On March 15, 2011, the Monroe City Council opened a public hearing on the Development Agreement and consolidated applications. CP 685. The City Council heard opening statements from City of Monroe staff and Wal-Mart as well as several hours of citizen testimony on the proposal. CP 388-517.

The public hearing was continued to March 29, 2011 wherein no further public testimony was allowed, but the City staff and applicant were allowed to rebut the citizen testimony that had been submitted at the previous hearing. CP 525. The City staff and applicant presented considerable rebuttal argument as well as some “refinements” to the site plan in response to the citizen testimony. CP 525-584; *see also* CP 2609-2671. At the end of that meeting, the Council voted by motion to approve the conceptual site plan, development agreement, binding site plan, and grading permit. CP 586.

At its regular meeting on April 12, 2011, the Monroe City Council approved Resolution No. 2011/009, approving the Development Agreement, the preliminary binding site plan, the conceptual plan, and the grading permit application for the Wal-Mart proposal. CP 2698-2702 (Appendix C). The

City Council also determined that the Wal-Mart proposal qualified as a planned action under City of Monroe Ordinance 003/2004 and WAC 197-11-172.

Several citizens submitted requests for reconsideration of the Council's decision. CP 2806-2906. After accepting and considering those requests, the City Council rejected the requests to reverse its previous decision approving Resolution 2011/009. CP 2909-2912.

IV. ARGUMENT

The Monroe City Council erred when it approved the Wal-Mart proposal because the Wal-Mart proposal is inconsistent with the requirements of the North Kelsey Development Plan and Design Regulations.

A. Standard of Review Under the Land Use Petition Act

The Land Use Petition Act (LUPA), ch. 36.70C RCW, dictates the process for judicial review of most local land use decisions. While there are some exceptions (not applicable here), LUPA is the exclusive means of judicial review of land use decisions as defined by the Act. RCW 36.70C.030; RCW 36.70C.020(1).

LUPA sets forth the standard of review that this Court must apply in its review of the City of Monroe's decision to approve the Wal-Mart

proposal. Review is appellate review on the administrative record created before the City of Monroe. *HJS Dev., Inc. v. Pierce County*, 148 Wn.2d 451, 467, 61 P.3d 1141 (2003). Under LUPA, the appellate court stands in the shoes of the Superior Court and reviews the local jurisdiction's decision *de novo*. *Sylvester v. Pierce County*, 148 Wn. App. 813, 201 P.3d 381 (2009).

The City's decision must be reversed if:

- (a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow prescribed process, unless the error was harmless;
- (b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;
- (c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;
- (d) The land use decision is a clearly erroneous application of the law to the facts; . . .

RCW 36.70C.130(1).

When the Court is reviewing a question of law, the standard is *de novo* review. RCW 36.70C.130(1)(b). For example, the City Council's interpretation of provisions in the design guidelines or other code provisions, being a question of law, would be reviewed under the *de novo* standard.

Milestone Homes, Inc. v. City of Bonney Lake, 145 Wn. App. 118, 126, 186 P.3d 357 (2008).

Under this error of law standard, a court may substitute its interpretation of the law for the agencies. *Green v. State Dept. of Social and Health Services*, 163 Wn. App. 494, 508, 260 P.3d 254 (2011). If a regulation's meaning is plain and unambiguous on its face, the court will give effect to that plain meaning. *Id.*, citing *Overlake Hosp. Ass'n v. Dept. of Health*, 170 Wn.2d 43, 52, 239 P.3d 1095 (2010). An ambiguity exists if there is more than one reasonable interpretation of the regulation. *Id.* The Court will accord deference to an agency's interpretation of its own regulations only when the regulation is ambiguous. *Id.*

When the Court is reviewing an application of facts to the law, the "clearly erroneous" standard applies. RCW 36.70C.130(1)(c); *Cingular Wireless, LLC v. Thurston County*, 131 Wn. App. 756, 768, 129 P.3d 300 (2006). Even if some evidence supports the City Council's decision, a decision is clearly erroneous when the reviewing Court is left with a definite and firm conviction that a mistake has been committed. *Norway Hill Preservation and Protection Ass'n v. King County Council*, 87 Wn.2d 267,

274, 552 P.2d 674 (1976). The “clearly erroneous” standard allows the Court broader discretion than the often used “arbitrary and capricious” standard. *Id.*

Where the Court reviews findings of fact only, the standard of review is “substantial evidence.” RCW 36.70C.130(1)(c); *Thornton Creek Legal Defense Fund v. City of Seattle*, 113 Wn. App. 34, 61, 52 P.3d 522 (2002). “Substantial evidence” is a sufficient quantity of evidence to persuade a fair minded person of the truth or correctness of the determination of fact. *Id.*

B. A Summary of the North Kelsey Development Plan

The North Kelsey Development Plan establishes the requirements for development in the North Kelsey Planned Development Area. *See* CP 305-375; MMC 18.10.135. The Plan provides goals and objectives for the area, a development concept, and design guidelines, which are the regulatory tool for purposes of implementing the design related goals and objectives for the Planned Development Area. *Id.*

1. The development concept for the North Kelsey Area

Figure 4 at CP 314 provides a visual definition of what the North Kelsey Development Plan prescribes for development in the North Kelsey Development Area. That Figure illustrates the concept that the guidelines are meant to implement in order to meet the goals of the North Kelsey

Development Plan. The development concept for the North Kelsey Planned

Development Area is described in the accompanying text as follows:

The planning objectives for the North Kelsey Planned Development Area calls for the creation of a pedestrian-friendly center that serves as a community focus, provides public open space and amenities, and accommodates a broad range of commercial and civic activities. The development should build a unique, high-quality identity that compliments – but does not duplicate – downtown Main Street. The planning concept outlined in this section translates these objectives into the physical design principles described and illustrated below.

CP 314.

2. The design guidelines for the North Kelsey Area

In addition to providing a development concept and goals and objectives, the North Kelsey Development Plan also contains design guidelines, which are codified in MMC 18.10.135. The design guidelines address, among other things, site configuration, site planning, and architectural/building design as set forth below. The guidelines state:

The application of these design guidelines will be a critical regulatory tool in implementing the community's design-related goals and objectives for the North Kelsey Planning Area and the North Kelsey Planned Development Area.

CP 323. The guidelines also state:

Within the guidelines, certain words are used to indicate the relative importance and priority the City places upon the

particular guideline. The words “shall,” “must,” and “is/are required” mean that the development proposal must comply with the guideline unless the City finds that:

- The guideline or requirement is not applicable or appropriate in the particular instance, or
- The development proposal meets the intent of the guidelines in some other manner.

The word “should” means that the development proposal will comply with the guideline unless the City finds that:

- The guideline or requirement is not applicable or appropriate in the particular instance, or
- The development proposal meets the intent of the guidelines in some other manner, or
- There is a compelling reason to the contrary.

CP 324-325. This language makes it clear that the City Council does not have unlimited discretion to disregard the guidelines of the Plan. There is a specific legal framework set forth by the Plan within which the Council must conduct itself in its quasi-judicial duty to apply the law as written.

Although the word “should” usually implies some degree of discretion, this common sense principle of statutory construction can be defeated by obvious inferences from the structure and purpose of the statute. *Johnson v. Wells Fargo Home Mortgage*, 635 F.3d 401, 412 (9th Cir. 2011), quoting *United States v. Rogers*, 461 U.S. 677, 706, 103 S. Ct. 2132, 76

L.Ed.2d 236 (1983). *See also Cortez Byrd Chips v. Bill Harbert Constr. Co.*, 529 U.S. 193, 198, 120 S. Ct. 1331, 146 L.Ed.2d 171 (2000).

Here, the plain language of the design guidelines defeats the notion that “should” means that a requirement is optional. The Development Plan defines specifically how the word “should” is to be interpreted and applied by the City Council. The word “should” means that the guideline is mandatory with limited exceptions.³ CP 324-325. The word “should” means that the development proposal “will” comply with the guideline *unless* the City finds that the limited exceptions have been met. *Id.* The City Council’s discretion in approving the proposal, therefore, is limited as defined by this codified language.

The City Council erred repeatedly (as will be shown below) when it interpreted “should” throughout its decision as completely discretionary despite the code language saying otherwise. The Council approved the proposal despite numerous violations of the guidelines without making

³ The issue of how much discretion the City Council has and how the word “should” is to be interpreted is a question of law that is reviewed *de novo* by this Court under RCW 36.70C.130(1)(b).

findings that one of the exceptions above had been met and/or without evidence in the record to support applying any of the exceptions.⁴

C. Wal-Mart's Proposal is Inconsistent with the North Kelsey Development Plan

Approving Wal-Mart's proposal, as the City did, was not merely erroneous because of the inconsistencies of the proposal with the Plan -- it constituted an abandonment of the North Kelsey Development Plan. Wal-Mart's plan is so utterly at odds with the goals, objectives, and regulatory design guidelines and the vision for development in the North Kelsey Area that the only way a court can uphold the decision would be to turn its head entirely from it.

Because the issues presented are inherently visual, petitioner requests that the Court refer to the North Kelsey Development Plan at CP 305-375 (Appendix A) and Wal-Mart's preliminary site plan, landscape plan, and elevations, which are at CP 63-67 (Appendix B), while reviewing the argument below.

⁴ In Resolution No. 2011/009, the City Council made a sweeping statement that if the applicant's proposal did not satisfy any of the guidelines or requirements, then application of those guidelines was inappropriate or the applicant's proposal met the intent of the design guidelines in some other manner. CP 2700. The Council cannot simply make this blanket statement with no indication of which specific guidelines they are referring to, and with no identification of evidence in the record to support the conclusion. This is a blatant attempt to disregard the requirements of the Plan without any analysis or evidence to support that decision.

Wal-Mart's preliminary site plan, engineering plans, and building elevations constitute the central evidence that speaks to the issues presented. *See also* CP 2600-2602; CP 2726-2731.⁵ There also are some site plans that provide a close up of the crosswalk across North Kelsey Street, the pedestrian corner feature, and other "pedestrian pathways" on the site. CP 2741. The landscaping plan is shown at CP 2746.⁶

1. Goal 2 of the Development Plan

Goal 2 of the North Kelsey Development Plan is to create a focal point or "town square" as a community gathering spot. CP 312. The objective is to:

Create a plaza open space to accommodate at least 1,000 people for special community events; design the plaza open space to be adaptable to a variety of events and uses; design the plaza open space to be safe and welcoming, casual and comfortable, include a modest water feature within the plaza open space.

⁵ The record contains multiple copies of the Wal-Mart preliminary site plans, engineering plans, and elevations that are the same plans and elevations as those in Appendix B but with different Bates stamp numbers.

⁶ Monroe Preservation Action Committee (MPAC) also submitted a table showing a summary of compliance/non-compliance with the City of Monroe North Kelsey Development Plan and Design Guidelines, CP 2318-2323, and a PowerPoint presentation on the issues presented (presented on behalf of MPAC by Deborah Chase during her testimony). CP 452-454.

Id. The Plan envisions a Focal Plaza, a Village Green, a Shopping Corridor, and Pedestrian-Oriented Spaces that all combine to serve as a focal point for pedestrian activity in the Planned Development Area. CP 326-335. The concept calls for a focus of activities and structures “around an internally connected set of open spaces, including a focal plaza or “town square,” a park-like open space or “green,” and other smaller open spaces fostering activities associated with businesses or other facilities.” CP 315.

While the “Village Green” and “Focal Plaza” are slated for the site south of North Kelsey Road, the north site, where the Wal-Mart is proposed, also plays a key role in furthering this goal as the implementing guidelines make clear. The concept is to “[o]rganize new development north of North Kelsey Street around a central open space or, according to another spatially unifying concept that connects it to the south lot and creates a campus-like character.” CP 314, CP 316. A central principle of the Plan is to “connect the center’s uses and activities with a network of pedestrian connections and extend those connections to the north to the site on the north and North Kelsey Street . . .” CP 315. The design is meant to “provide main entrances facing [these] primary pedestrian connections or open spaces.” CP 316. The north site is to be configured and laid out in such a way that the pedestrian-

oriented space and key pedestrian connection is oriented towards the internally connected set of open spaces to the south in a spatially unifying manner. CP 315; CP 326-327; CP 335; CP 342-344.

The configuration of the Wal-Mart proposal conflicts with Goal 2. The Wal-Mart site is not configured with an open campus-like connection between the Wal-Mart site and the Village Green and Focal Plaza. One look at the site plan reveals that the Wal-Mart is not oriented towards the center open space, there is no spatially unifying concept between the Wal-Mart site and the site south of North Kelsey Road. CP 63. The main entrance is oriented towards the west and facing an enormous parking lot. *Id.*

The City Council's findings with respect to the proposal's consistency with Goal 2 are as follows:

Findings: The Development Plan indicates that the "Village Green" and "Focus [sic] Plaza" areas will be located on the southern site of North Kelsey. As part of the binding site plan, the project proponent intends to dedicate a corner pedestrian feature to the city of Monroe for public use (Exhibits 2a, 2b, 3, and 4a).

CP 725. By focusing only on the Village Green and Focal Plaza, the City Council completely disregarded the key role that the north site must play to further Goal 2. The "corner pedestrian feature" referred to in the findings is a small feature that is entirely isolated from the rest of the development at the

corner of Galaxy Way and North Kelsey Road– that feature does not further Goal 2. *See* CP 63.

2. Goal 4 of the Development Plan

Goal 4 of the North Kelsey Development Plan is to create a strong identity for the development. CP 312. The objective is to encourage site and architectural design that is unique and appropriate for Monroe. *Id.* This goal is implemented by numerous guidelines that are addressed below, such as those addressing the architectural elements of design in the area. *See* CP 350-356.

The Plan concept is to create an assemblage of buildings with an intimately scaled and informal architectural character. CP 316. The Plan instructs that developers locate, cluster, and architecturally treat large buildings to ensure that they do not dominate the area’s identity. *Id.* Through the architectural, landscape, open space, and gateway elements, developers will create an identity unique within the region that reflects Monroe’s small town character. *Id.*

The Wal-Mart proposal is inconsistent with Goal 4. The Wal-Mart will dominate the area’s identity with a formulaic, typical superstore Wal-

Mart aesthetic. *See* CP 63-65. The architecture does not create a unique identity that reflects Monroe’s small town character. *Id.*

The City Council’s finding with respect to Goal 4 being consistent with the Plan is as follows:

Findings: The conceptual elevations emphasize the façade modulation, variation in materials, variation in color, among other desirable architectural design elements. The supporting documents to the binding site plan include detailed landscape drawings that show landscaping along the site’s perimeter, throughout the parking area, and around the stormwater detention area.

CP 726. The City Council refers only to textures, elements, materials, and earth tone colors painted on the building’s façade, while ignoring the massing and orientation of the building. The Council turns a blind eye to the reality that the proposal is going to dominate the area with a typical, big box massive building that could be found anywhere in the country. Paint colors and vestibules on top of a massive Wal-Mart structure do not create a strong identity for this area.

3. Goal 5 of the Development Plan

Goal 5 of the North Kelsey Development Plan is “to encourage pedestrian friendly development.” CP 313. The objective is to provide safe, efficient, and attractive pedestrian connections between uses throughout the

development area and to uses surrounding the site. In addition, the objective is to:

Encourage small scale businesses such as cafes and specialty shops; encourage building design that orients to public open space, pathways, and streets; develop streets with pedestrian amenities such as wide sidewalks, awnings, street trees and landscaping, and buildings with display windows; provide separation of vehicles and pedestrians, where possible along arterials; . . . provide pedestrian-oriented plazas and open spaces throughout the development.

Id. The concept of the Plan design is to ensure that the activities and buildings are pedestrian-friendly by providing amenities and landscaping, weather protection, “transparent facades,” and human-scaled building elements. CP 316. The developers should provide main entrances facing primary pedestrian connections or open spaces. *Id.*

Wal-Mart’s proposal encourages driving to the site and parking to get to the store. *See* CP 63. The building is oriented to an enormous asphalt parking lot. *Id.* The pedestrian pathways are after thoughts wherein pedestrians make their way around a stormwater management area, through parking lots, and adjacent to incoming traffic at the driveway off North Kelsey Street to get to the store. *Id.* They are secondary to the primary car-focused site configuration and plan. *Id.*

With respect to this goal, the City Council’s findings were as follows:

Findings: The binding site plan includes pedestrian connections throughout the site as well as connections to the southern site. Stamped and colored concrete, common to the greater development, define entry ways and connections to the site. Perimeter landscaping screens the parking areas along Galaxy Way and North Kelsey Street. The site will include paths, sidewalks, and bike racks to accommodate pedestrian and bicycle access. The conceptualizations include two pedestrian entries into the development (Exhibits 2a, 2b, 3, and 4a).

Findings: As noted in the findings to Goal 4, the proponent has included a variety of design elements including multiple features along the front and right elevation facades. The binding site plan and supporting documents include informal open spaces between North Kelsey Street and Lot 1 of the proposed development; a plaza area adjacent to the main entrance that will include specialty paving, public seating, and landscaping; and a corner pedestrian feature at Galaxy Way and North Kelsey Street for public use (Exhibits 2a, 2b, 3, and 4a).

CP 726. The City Council misses the point entirely with respect to Goal 5. The Council focuses on pathways that are added as afterthoughts and that are secondary to the primary car-focused site configuration. The issue is the layout and design as a whole. The findings ignore that the central method of transportation that is encouraged by this design is cars, not pedestrians.

4. Site configuration

The City Council erred when it concluded that the Wal-Mart proposal is consistent with the site configuration guidelines in Chapter 2 of the North

Kelsey Development Plan. According to these guidelines, “[t]he development *must* be based on one or more City-approved binding site plans that address the following principles.” CP 326 (emphasis supplied). One of the listed principles is:

Provides a set of open spaces along the pedestrian network that include a civic plaza, a village green, and other smaller open spaces to enhance the retail environment. (See Public Open Space guidelines, Chapter 3.) *Uses north of North Kelsey Street should be configured around a central open space or plaza to create a campus-like setting.*

CP 327 (emphasis supplied).⁷ The site north of North Kelsey Street is the Wal-Mart proposal site. Development on that site must, therefore, be configured around a central open space to the south that is spatially unified with the north to “create a campus-like setting.” CP 314; CP 316.

One look at the site plan reveals that this guideline has not been met by the proposal. See CP 63. The Wal-Mart store is not configured around a central open space or plaza to create a campus-like setting. “Spatial” means “relating to, occupying, or having the character of space.” Miriam Webster’s Collegiate Dictionary (10th ed. at 1127). “Unify” means “to make into a unit

⁷ The interpretation of the word “should” in each guideline is a question of law reviewed by this Court *de novo*. The issue of whether the Wal-Mart proposal is consistent with each specific design guideline is reviewed under the clearly erroneous standard.

or coherent whole.” *Id.* at 1292. The configuration for the proposed Wal-Mart does not create a coherent whole connection to the south lot to create a campus-like character. Indeed, it is quite the opposite – the southern portion of the Wal-Mart site is primarily a parking lot with landscaping that acts as a barrier to pedestrians and there is no central open space. CP 63.

Apparently, the City recognized that this design guideline had not been met but they approved the project anyway on the mistaken grounds that the requirement was entirely discretionary. The City Council’s findings on this issue state:

Findings: The Development Plan indicates that the “Village Green” and “Focus [sic] Plaza” areas will be located on the southern site of North Kelsey. The suggestion of a campus-like setting on the northern portion of the property is a discretionary and not mandatory element of the North Kelsey design guidelines not applicable to this proposed use.

Findings: The binding site plan, supporting documents, and conceptual site plan include significant landscaping around the site’s perimeter and adjacent to North Kelsey Street, a plaza area adjacent to the main entrance to the retail store, and a corner pedestrian feature. Pathways connect the internal features and public sidewalks on North Kelsey Street and the Galaxy Way corner feature to the future development. (Exhibits 2a, 2b, 3, and 4a.)

Findings: The binding site plan, supporting documents, and conceptual site plan illustrate that the northern site is organized around a large anchor retail store with two smaller “out lots” that will provide compatible uses to the proposed

anchor, consistent with Chapter 3, Concept 8. The drawings also show that the main entrance to the northern site aligns with the southern site to support automobile and pedestrian access. Internally, the northern site includes pedestrian paths and walkways to and from the retail store (Exhibits 2a, 2b, 3, and 4a).

CP 729-730.

The City Council's conclusion that the guideline is discretionary is legal error because it misinterprets the meaning of "should" in this design guideline. As explained above, the word "should" is mandatory and it means that the development proposal must comply with the guideline *unless* the City finds that (1) the guideline or requirement is not applicable or appropriate in the particular instance, (2) the development proposal meets the intent of the guidelines in some other manner, or (3) there is a compelling reason to the contrary. CP 324-325.⁸

In addition to claiming that the guideline was discretionary, the Council concluded that the guideline was "not applicable." CP 729. That conclusion is not supported by substantial evidence in the record and is clearly erroneous. A requirement would be "inapplicable" if it did not apply to the site. For example, the guidelines that are specific to the Focal Plaza, Village Green, and Shopping Corridor set forth at CP 330-332 are

inapplicable because those guidelines apply only to the south site. The guideline at issue here is clearly applicable to the Wal-Mart site because it refers specifically to the north site. There is no evidence whatsoever to support a conclusion that this guideline is “inapplicable” to the Wal-Mart site.

The City Council’s findings also mention the existence of trails, pedestrian amenities, and open spaces, including the landscaped-border along the southern property line of the Wal-Mart site. The “pedestrian pathways” are placed along Galaxy Way, North Kelsey Street, and along the public sidewalk to the east of Chain Lake Road as afterthoughts to the main traffic focused layout. CP 63. The pedestrians must walk around the stormwater detention system and parking lot to make their way to past parked cars to the store. *Id.* The pedestrians must cross a small cross-walk across traffic intense North Kelsey Street to make their way to the south site. *Id.* These “pedestrian pathways” by no means create a central open space or plaza to create a spatially unified concept or campus-like setting between the north and south site.

Another of the listed principles is:

⁸ The Council’s conclusion that the guideline is discretionary is reviewed *de novo* because it is based on an improper interpretation of the code language.

. . . Parking for the facility should be accessed from [the] loop system *and not intrude into the center of the site or detract from the activities or qualities of the development.*

CP 327 (emphasis supplied). The requirement in the text is also illustrated in Figure 5 at CP 327. This guideline calls for a focus of pedestrians in a community gathering area that is not impacted by cars or parking areas.

It is plainly evident from looking at Wal-Mart's site plan that the parking areas are intruding into the center of the site and they detract from the pedestrian activities and qualities of the development. CP 63. In addition, the pedestrian crosswalk on North Kelsey Street is poorly located for pedestrian purposes since people who might cross the street must cross against all Wal-Mart traffic headed to and from the east. *Id.* In contrast, the Plan intended parking access to occur at both the east and west portions of the area, leaving less traffic in the middle where pedestrians could cross. CP 327.

The City's findings do not mention this requirement at all – they simply ignored this requirement as if it did not exist. As mentioned above, the “should” language in this provision means that this guideline is mandatory unless one of the three exceptions have been met. The City Council did not even purport to conclude that any of the exceptions applied

specifically to this guideline, much less even discuss whether this guideline had been met.

A final principle requires that the binding site plan:

Locates and treats large buildings to reduce their perceived scale to fit with neighboring structures and present an inviting, human scaled, pedestrian oriented character to the public. (See Architectural/Building Design guidelines, Chapter 5.)

CP 327. The Wal-Mart proposal does not locate or treat large buildings to reduce their perceived scale to fit with neighboring structures and does not present an inviting, human scaled, pedestrian oriented character to the public. See CP 63-65. Rather, the building is a typical, formulaic Wal-Mart that will appear enormous and not present an inviting human scaled, pedestrian oriented character to the public. *Id.*

To support its conclusion that the Wal-Mart proposal is consistent with this guideline, the Council entered the following findings:

Findings: As noted in findings for Chapter 1, Goal 4 and Chapter 3, Goals 5 and 6, the conceptual drawings emphasize façade modulation, variation in materials, and variation in color, among other architectural design elements. The supporting documents to the binding site plan and conceptual site plan include detailed landscape drawings that show landscaping along the site's perimeter, throughout the parking area, and around the stormwater detention area. (Exhibits 2a, 2b, 3, and 4a.)

CP 730. The City Council's conclusion that the Wal-Mart proposal is consistent with this guideline is clearly erroneous. The addition of awnings, canopies, and entry vestibules of lowered height do not address the massing of the building. Nor do they address the orientation of the building. Wal-Mart has proposed one single 151,719 square foot building that is oriented east towards an enormous parking lot and towards Galaxy Way, not towards the key pedestrian crossing at North Kelsey Street. CP 63-65. It has not been combined in any way with smaller buildings, nor has it been oriented in such a way that it would present an inviting, human-scaled, pedestrian-oriented character to the public. *Id.* It is surrounded by a parking lot and oriented in such a way that the store invites cars, not pedestrians in a campus-like setting. *Id.*

Again, the "should" language in this provision means that this guideline is mandatory unless one of the three exceptions has been met. As occurred over and over again, there is no evidence in the record that any of the three exceptions were met, nor did the City Council even purport to conclude that any of the exceptions apply specifically to this guideline.

5. Site planning

Under the heading of “site planning” in Chapter 3, the design regulations address public open space, parking areas, street corner/highly visible locations, and building orientation. CP 328.

a. Public open space

The first section of Chapter 3 focuses on public open space. *See* CP 328. There are two sections in the public open space discussion that are applicable to the Wal-Mart site: the guidelines for “pedestrian-oriented spaces” and the guidelines for the “north building site.” CP 334-335.

With respect to public open space, the intent is:

- *To provide a variety of open spaces that attract people to the area;*
- *To provide a focal open space that functions as a community gathering space;*
- *To provide a “park-like” character within the Planned Development Area of the North Kelsey Planning Area;*
- *To provide an attractive pedestrian environment;*
- *To provide outdoor spaces for relaxing, eating, socializing, and recreating.*

CP 328. (*See* diagram associated with the guidelines). The north site is identified in the diagram associated with these guidelines as being the

location for a “Pedestrian-Oriented Space” that connects to and is part of the central open space or plaza on the south site. *Id.*

The Pedestrian-Oriented Space guidelines state: “Lighting fixtures should be approximately 10-15 feet above the surface and may be building mounted.” CP 334. There is no evidence in the record to support a conclusion that the lighting fixtures at the Pedestrian Open Space location on the site will be approximately 10-15 feet above the surface. *See* CP 63-65. The specific requirement is not mentioned in the City Council’s decision and the Council made no findings on this issue. The City Council’s approval of the proposal despite the complete lack of evidence to support it was clearly erroneous.

The guidelines also state: “The overall lighting in the plaza should be at least 2-foot candles, without any “dark spots” that could cause security problems.” CP 334. Again, there is no evidence in the record to show that this had been met, nor did the City Council make any findings on this issue.

The conceptual site plan and elevation drawings do not show lighting details, much less specifics concerning the height of the lighting fixtures in the Pedestrian Oriented Spaces or whether the overall lighting in the plaza is at least two foot candles without dark spots. *See* CP 2726-2731. CP 2731,

which is a very basic depiction of the entrance to the Wal-Mart shows a total of eight illuminated bollards. There are no details as to height of these lights or impact in this area. Moreover, this is not at the Pedestrian-Oriented Space – it is simply eight lights located at the primary entrance of the store. *See* CP 2822.

The guidelines also state: “At least one linear foot of seating area (at least 16 inches deep) or one individual seat per 60 square feet of plaza area or open space should be included (seating can include benches, low walls, stairs, or ledges).” CP 335. Yet again, there is no evidence in the record to support a conclusion that this guideline has been met, nor is there any finding by the City Council related to this guideline. The guideline is very specific – it requires at least one linear foot of seating or one individual seat per 60 per square feet of plaza area or open space. *Id.* There is no evidence whatsoever in the record on this specific requirement, nor any findings or evidence to support granting an exception to this requirement.

The Wal-Mart proposal also violates the north building site guidelines. Those guidelines state:

North building site guidelines:

(1) Development of the site north of North Kelsey Street should be organized around an interconnected set of heavily landscaped open spaces.

(2) The north site should include a focal open space that fronts on North Kelsey Street and is aligned with the Village Green. This open space must be developed consistent with the Pedestrian- Oriented spaces guidelines. . .

CP 335. Development of the Wal-Mart site has not been organized around an interconnected set of heavily landscaped open spaces, nor does the site include an open space that fronts on North Kelsey Street or aligns with the Focal Plaza and Village Green. *See* CP 63. Instead, there is an enormous parking lot and a barrier of trees to hide the parking lot from the south site. *Id.* Even if it were developed according to the guidelines, the area nowhere has been developed consistent with the Pedestrian Oriented Spaces guideline which requires the specific lighting and seating delineated above.

The City Council erred when it concluded that the proposal was consistent with these guidelines. The relevant City Council findings on this issue were:

Findings: The supporting documents to the binding site and conceptual site plan and conceptual elevations include detailed landscape drawings that show different types of open space associated with the retail development of the northern site that includes landscaping along the site's perimeter, throughout the parking area, and around the stormwater detention area; a plaza area adjacent to the main entrance to

the retail store with pedestrian seating, landscaping, and an enhanced “hardscape;” and a corner pedestrian feature at Galaxy Way and North Kelsey Street (Exhibits 2b, 4a, and 4b).

Findings: Chapter 3 of the North Kelsey design guidelines proposes development of the Focal Plaza, Village Green, and Shopping Corridor and pedestrian-oriented spaces on the southern site.

Findings: As noted above, the proposed development for the northern site includes pedestrian amenities, pathways, landscaped areas, public seating, lighting, focal points, as well as textured and colored concrete in different areas (Exhibits 2b, 4a, and 4b).

Findings: The supporting documents to the binding site and conceptual site plan show interconnected landscaped open spaces along North Kelsey Street (Exhibits 2b and 4a).

Findings: The supporting documents to the binding site and conceptual site plan show a pedestrian corner feature and focal open space along North Kelsey Street. A large landscaped open space buffers the proposed retail store on Lot 1 and aligns with the Village Green area across the textured and colored walkway. The sidewalk along North Kelsey Street connects the pedestrian corner features. Design review of the pedestrian corner feature will be under separate review (Exhibits 2b, 4a, and 4b).

Findings: The stormwater detention facility at the intersection of North Kelsey Street and Chain Lake Road for the northern site is buffered and heavily landscaped (Exhibits 2b, 4a, and 4b).

Conclusions: The proposed development of the northern site provides varied open spaces, attractive pedestrian-oriented spaces, and pedestrian amenities.

CP 730-731. The City Council’s conclusion that the Wal-Mart proposal was consistent with the north building site guidelines in the North Kelsey Development Plan is clearly erroneous. Furthermore, the above finding that the supporting documents to the binding site and conceptual site plan show a focal open space along North Kelsey Street is not supported by substantial evidence and is error.

The so-called “open space” on the project site consists of landscaping along the perimeter, in the parking lot, and around the stormwater detention area. CP 731, CP 63; CP 66. The pedestrian feature at the corner of North Kelsey Street and Galaxy Way and the “plaza area,” (which is just the store entrance) are both isolated entirely from the Key Pedestrian Connection and are not aligned with the Village Green. CP 63.

Yet again, the Council made no findings or conclusion that exceptions to the mandatory “should” in these specific guidelines had been met. Even if the Council had concluded that exceptions apply to these specific guidelines, such a conclusion would not be supported by any evidence in the record.

b. Parking areas

The Wal-Mart proposal is also inconsistent with the parking areas guidelines. With respect to parking areas, the intent of the guidelines include:

- *To provide convenient parking areas that encourage people to leave their cars and walk throughout the North Kelsey Planning Area . . .*
- *To provide parking areas that do not diminish pedestrian and visual qualities of the site. . .*

CP 341. The guidelines state:

Parking Areas Guidelines:

. . . While parking areas should be accessible and convenient, their design and layout should minimize negative impacts on the pedestrian environment and visual quality of the development. (see Figure 16) . . .

. . .(4) Pathways through parking lots should be provided. Pathways and crosswalks should be provided along every fourth parking aisle or at intervals of less than 150 feet. Pathways through parking areas should be separated from vehicle parking and travel lines by use of contrasting surface materials, which may be raised above the level of the vehicular surface. Parking area pathways should be at least four feet in width.

S1. Pedestrian-scale lighting shall be used to define pedestrian walkways through parking areas. Weather protection features over such walkways are also highly desirable (U. Village example) – particularly when such walkway connects uses within the site.

CP 341-342; CP 365.

In stark contrast with these guidelines, the parking area design and layout for the Wal-Mart proposal maximizes negative impacts on the pedestrian environment and the visual quality of development. CP 63. The

parking is the central focus of the site (aside from the building itself). *Id.* It is a traffic-oriented plan and configuration, not a pedestrian-oriented plan. *Id.* Part of the parking lot is in the location that was required by the Plan to be open space that is spatially unified and aligned with the south site Village Green and Focal Plaza. *Id.* The Plan allows Wal-Mart to minimize its parking under a relaxed standard, yet Wal-Mart has proposed 28 spaces above the requirement. CP 732.

Pathways and crosswalks are not provided along every fourth parking aisle, nor are they provided at intervals of less than 150 feet. CP 63. Pathways through the parking areas are not being separated from vehicle parking and travel lanes by use of contrasting surface materials. *Id.* There is no evidence in the record to show the precise width of the pathways through the parking areas.

The City Council erred when it concluded that the proposal was consistent with these guidelines. The relevant City Council findings on this issue were:

Findings: The supporting documents to the binding site plan (Exhibit 2b) indicate that the proponent will construct 687 parking spaces (659 are required for the total retail area of 164,781 including garden centers based on a ratio of 1 space per 250 square feet of gross floor area).

Findings: The proposed parking area includes one main driveway off North Kelsey Street that aligns with the entrance to the southern site and three driveways off Galaxy Way. The applicant proposes to include pathways through the main parking lot in three areas connecting to Galaxy Way to the main entrance and an additional pathway from North Kelsey Street to the main entrance. The perimeter of all the parking areas as landscaped (Exhibits 2a, 2b, 3, and 4a).

Conclusions: The proposed development and preliminary design concept for the northern site are consistent with the Plan's parking strategy for the Planned Development Area.

CP 732. The "should" language in the provision requires that this guideline be met unless one of the exceptions applies. There is no evidence in the record to show that one of the three exceptions apply, nor did the Council even purport to conclude that they did.

c. Street corners/highly visible locations

With respect to street corners/highly visible locations, the intent of the Plan is to enhance the appearance of highly visible locations, to enhance the pedestrian environment, and to establish a design identity for the North Kelsey planning area. CP 342. The guidelines state:

Street corners/highly visible location guidelines:

The guidelines below highlight desirable design treatments (options noted below) for six specific street corners and/or highly visible locations as noted in the site development concept. All proposals for sites should include at least one of the design treatments described below. EXCEPTION:

Applicants may propose other design treatments for these sites if they can demonstrate successfully that the proposed treatment meets the intent of the guidelines.

1. Street Corner/Highly Visible Location Design Treatment Methods (also refer to Pedestrian Orientation guidelines, Chapter 3):

(a) Locate a building towards the street corner (within 15 feet of corner property line). Building facades located here are encouraged to include a special element such as a raised roofline, towers, or an extended parapet, along the most visible views of the structure.

(b) Provide a pedestrian walkway and/or plaza space at the corner leading directly to a building entry or shopping plaza space...

(c) Install substantial landscaping (at least 200 square feet of ground surface area with trees, shrubs, and/or ground cover...)

2. Specific Sites:

... (e) North Kelsey Street (at key pedestrian crossing): Method "a" is preferred for all four corners. [see Figure 19 for location of this key pedestrian crossing]

CP 342-344.

The Wal-Mart proposal is inconsistent with the street corners/highly visible location guidelines. This guideline sets forth three specific design treatment methods to be adopted at the highly visible locations. CP 342-343. The guidelines specifically say that at the Key Pedestrian Crossing of North

Kelsey Street, which is Location E on Figure 19, method “a” is preferred for all four corners. CP 344. The preference of the design guidelines is, therefore, that the building be oriented towards this Key Pedestrian Crossing (within 15 feet of corner property line).

Wal-Mart is not treating Location E as a highly visible location. CP 63. The Wal-Mart building is not oriented towards the Key Pedestrian Crossing at Location E. In fact, none of the design treatments have been adopted by the Wal-Mart proposal for this Key Pedestrian Crossing. The landscaping at Location E is not consistent with the intent of this guideline because it acts as a barrier to the pedestrian environment, not an enhancement. CP 63; CP 66. The landscaping proposed by Wal-Mart is meant to hide a parking lot that should not be there in the first place and it cuts off open space and pedestrian flow from the south to the north site. *Id.*

The City Council erred when it concluded that the proposal was consistent with these guidelines. The Council’s findings with respect to these guidelines state:

Findings: Chapter 3, Section E identifies six highly visible areas and encourages design treatments at these locations. Two highly visible areas abut the northern site: Location D and E.

Findings: Lot 1 is adjacent to Location B. Lot 1 includes a large landscaped area at Location B.

Findings: Lot 4 and 3 are adjacent to Location E. Lot 1 includes landscaped area and pedestrian path at Location E. Lot 3 will include a retail store or restaurant adjacent to Location E. Design review for future development of Lot 3 will be under a separate permit (Exhibits 2a, 2b, 3, and 4a).

Conclusions: The proposed development and preliminary design concept for the northern site includes some desirable design elements encouraged for highly visible locations within the planned development area.

CP 732. The City Council obviously missed the point entirely and disregarded the complete lack of proper design treatment methods at Location E. The City's decision to approve the proposal despite its inconsistencies with the design guideline for this highly visible location was clearly erroneous.

Yet again, the "should" language made this requirement mandatory and the City Council made no finding that the exceptions had been met for this specific guideline, nor is there any evidence in the record to support such a finding.

6. Architectural/building design

Under the heading of Architectural/Building Design in Chapter 5, the guidelines address the architectural concept, human/pedestrian scale, and architectural elements of development.

a. Architectural concept

The intent of the architectural concept guidelines include:

- *To create an assemblage of buildings within the planned development area with an intimately scaled (i.e., the buildings appear to be smaller in size, generally less than 150 feet in length along a façade, even though the building footprint may be larger) and informal architectural character.*
- *To create a varied, non-homogeneous set of buildings within the planned development area that gives a sense of natural evolution over time rather than a result of a single one-step development – and to emphasize the fact that the building elements can naturally evolve and change over time without disrupting a constricting design theme.*
- *To encourage architecture that evokes a “Northwest” architectural theme based upon its use of natural local materials and northwest architectural heritage.*

CP 349; CP 366.

Architectural concept guidelines:

1. *The buildings proposed for the North Kelsey Planned Development Area should be based on a comprehensive architectural concept that achieves the intent statements above. Specifically, the design of the specific buildings should address:*

- *Pedestrian interest and comfort along the perimeter of open spaces and pedestrian connections.*
- *The size of building massing and elements relative to a human body.*
- *The perceived massing of the building relative to nearby structures, open spaces, and landscape elements.*
- *Monroe's architectural and cultural setting.*
- *The variety of sequential experiences and design characters within the site.*

SI. While a variety of building materials, colors, finishes, and textures are encouraged, all structures should employ exposed timber elements or similar feature approved by the City as a unifying architectural feature of the development. The exposed timber element should be used as a functional element of the structure to the extent possible.

CP 350; CP 366-367.

Wal-Mart has not met the guidelines with respect to architectural concept in the Plan. The design of the Wal-Mart building does not address the size of the building massing elements relative to a human body to the degree required by this Plan. Wal-Mart has one single enormous box-like structure, all generally at the same height, that is surrounded by a parking lot and oriented away from the south lot towards an enormous asphalt parking lot. CP 63-65. The other parking lot cuts it off to the south. *Id.* The attempt

to paint squares of alternating “rock rook wood clay” colored paint with “row house tan” colored paint does not address the perceived massing of the building.

Figure 6 at CP 327 illustrates how Wal-Mart’s proposal is inconsistent with the Plan. The building in Figure 6 is oriented towards a spatially unifying connection between the north and south site for encouraging pedestrian use. CP 327. The diagram shows a treatment of a large building that reduces its perceived scale to fit within the neighboring structures and presents an inviting human-scaled, pedestrian-oriented character to the area. *Id.* Not only is the building oriented towards a large open space for pedestrians, but there are smaller buildings broken down on either side of the large building, thereby creating a varied, non-homogeneous set of buildings within the development area that gives a sense of natural evolution over time rather than a result of a single one-step development.

The City’s conclusion that the Wal-Mart proposal is consistent with these guidelines was clearly erroneous. The City Council findings related to these guidelines state:

Findings: As previously noted, the conceptual site elevations for the northern site emphasize façade modulation, variation in materials, and variation in color, among other desirable architectural design elements and treatments along the

primary, secondary, side, and rear facades. Complete building design review will be under a separate permit (Exhibit 4b).

CP 734. Yet again, the City Council sidesteps the main issue ignoring the fact that the massing is not addressed by the paint colors and vestibules. Again, the mandatory “should” language requires that this guideline be met and, in this case, it was not. Nor did the City Council purport to conclude that any of the exceptions were met and the evidence does not support applying any of the exceptions.

b. Human pedestrian scale

Human/pedestrian scale guidelines:

. . . Vertical Articulation. In order to prevent long stretches of monotonous façade, buildings with visible facades over 100 feet in length as measured parallel to a roadway, parking area, pedestrian connection, or public open space should be vertically articulated into sections averaging not more than 50 feet along the façade at regular intervals. . . .

CP 352. The Wal-Mart building is not vertically articulated into sections averaging not more than 50 feet along the façade at regular intervals. CP 64-65. There is some articulation, but it has not been articulated into sections averaging not more than 50 feet along the façade at regular intervals. *Id.*

The City Council's conclusion that the proposal is consistent with this guideline was clearly erroneous. The City Council findings with respect to this section state:

Findings: The conceptual site elevations show vertical articulation along the primary, secondary, side, and rear facades including stepping back portions of the façade including distinctive features, and changing materials. Complete building design review will be under a separate permit (Exhibit 4b).

CP 734. The City Council simply ignored the fact that the building is not vertically articulated into sections averaging not more than 50 feet along the façade at regular intervals as is required by this guideline. Apparently believing that the "should" was discretionary, the City Council approved the proposal despite an obvious inconsistency with this requirement and no evidence in the record to support applying any of the exceptions.

D. The Wal-Mart Proposal Does Not Qualify as a Planned Action

In this case, the City of Monroe erred when it determined that impacts of the Wal-Mart proposal had been adequately addressed in previous "planned action" environmental review.

The State Environmental Policy Act (SEPA), ch. 43.21C RCW, requires that government agencies prepare a detailed statement on the

environmental impacts of major actions that significantly affect the quality of the environment. RCW 43.21C.030(2)(c). The detailed statement, referred to as an “environmental impact statement” (EIS), must summarize probable significant adverse environmental impacts, adverse environmental effects that cannot be avoided, and alternatives to the proposed action. *Id.*

A local government may designate a certain decision as a “planned action.” WAC 197-11-164; CP 2177. A “planned action” typically refers to a land use plan for a large general area, such as a subarea plan or other type of master plan. The jurisdiction will prepare an EIS analyzing the environmental impacts of the plan prior to adopting that subarea or master plan. The characterization of the action as a “planned action” may allow the local government to avoid the need for further environmental review in the future when specific development projects are proposed within the area covered by the subarea plan or master plan. In other words, if a local government conducts environmental review of the impacts of a “planned action,” future specific projects proposed within that subarea or pursuant to that plan may not need additional environmental review if they are properly within the scope of the original action.

A planned action project must meet the description, and implement any applicable conditions or mitigation measures identified in the designating planned action ordinance. WAC 197-11-172(1)(a). In addition, the probable significant adverse environmental impacts of the project must have been adequately addressed in the former EIS.

In this case, the City of Monroe adopted a North Kelsey “planned action” ordinance on April 7, 2004. CP 382-384. The planned action ordinance, Ordinance 003/2004, adopted the Final Supplemental Environmental Impact Statement (SEIS) that had been prepared for the North Kelsey Planning Area. *See* CP 1468-CP 1643. In that SEIS, the City of Monroe conducted review of the environmental impacts of the North Kelsey Development Plan. CP 1471.

The planned action ordinance indicated that the planned action was for development, uses, and buildings that “are consistent with and implement” the North Kelsey Development Plan, the North Kelsey Design Guidelines, and the North Kelsey Planned Action FSEIS. The Ordinance also stated that if the project does not meet the description of the North Kelsey Planned Development Plan, then the project is not a planned action and

additional environmental review shall be required as provided in WAC 197-11-172.

Therefore, in order to qualify as a planned action, the Wal-Mart proposal must be “consistent with and implement” the North Kelsey Development Plan, the North Kelsey Design Guidelines, and the North Kelsey Planned Action SEIS. For the reasons explained above, the Wal-Mart proposal does not meet the description as set forth in the original North Kelsey Planned Action SEIS and is inconsistent with the North Kelsey Development Plan and Design Guidelines. The proposal is, therefore, not properly characterized as a planned action for the North Kelsey planned action.

V. CONCLUSION

For the reasons explained above, petitioner Friends of North Kelsey respectfully request that the Court reverse the decision of the Monroe City Council to approve the Development Agreement, binding site plan, and conceptual site plan on the grounds that the proposal is inconsistent with the North Kelsey Development Plan goals, objectives, development concept, and design guidelines.

Dated this 26th day of June, 2012.

Respectfully submitted,

BRICKLIN & NEWMAN, LLP

By:

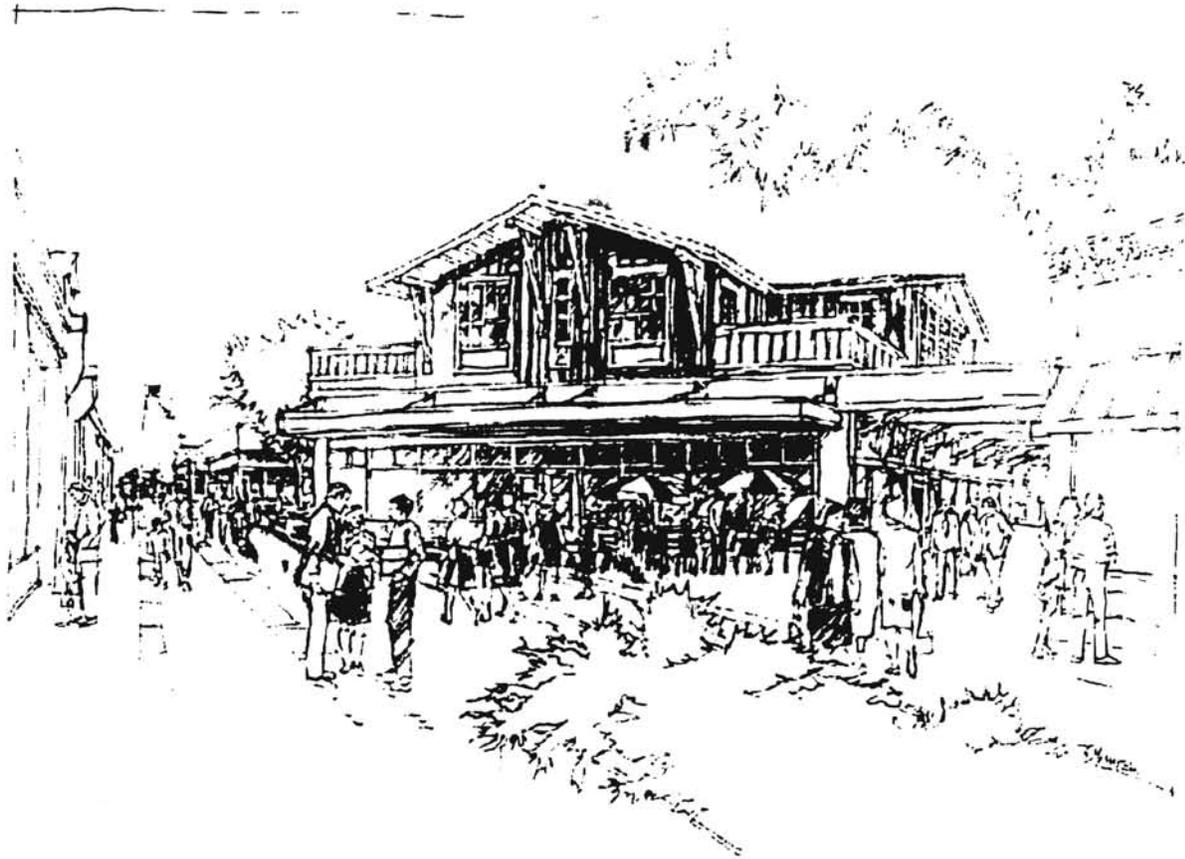


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FONK\Appeals\Opening Brief-FINAL

APPENDIX A

City of Monroe



North Kelsey Development Plan

Adopted by Ordinance 015/2003

Amended by Ordinance 024/2007

Effective 12/02/2007



CP 305

North Kelsey Development Plan

Approved Ord. 015-2003

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CHAPTER 1: Introduction and Purpose

A. Introduction

In April 1925 the City of Monroe entered into a Contract of Sale with the State of Washington to purchase 80 acres of land for \$1,101. The Contract was fulfilled in 1934, with the State of Washington deeding the subject land to the City of Monroe. The City then acquired the north twelve acres in 1974 through a Governor's Deed for mutual benefit between the State of Washington and the City of Monroe.

Over the years, the North Kelsey planning area has been home to the city dump, a racetrack operated by the Sky Valley Racing Association, burial grounds and the Snohomish County Public Works Yard.

In 1958 the City entered into a lease agreement with Charles Beavers for the extraction, processing and distribution of commercial gravel. The city has leased the land for commercial gravel operations to various companies over the years. After Charles Beaver, the Valley Concrete Company attained a lease agreement with the City, which was later taken over by the Joplin Paving Company and eventually shared by Cadman and Lakeside Industries. The city still retains a contract with Landside Industries for the processing and extraction of gravel on a portion of the site.

The city hired Lyons & Strutz Associates to complete a long-range feasibility study for the North Kelsey planning area in 1992. The study included three alternatives: the preferred alternative recommended a mix of commercial and heavy and light industrial uses. The preferred alternative also recommended the construction of a boulevard connecting SR-2 with Chain Lake Road; N. Kelsey Street was constructed as a result of this plan. No further action was taken to implement the recommended alternative.

In 2001 the City of Monroe hired Makers Architecture and Urban Design firm to continue the planning process for this area.



Figure 1: Looking west at the North Kelsey planning area across Chain Lake Road.

Site Description

The entire North Kelsey planning area contains of approximately 100 acres of land, with approximately 55 acres of land within the area subject to this development plan (planned development area). The planned development area has two primary property owners, the City of Monroe and Snohomish County. Snohomish County's twenty-three (23) acre parcel is still an island of un-incorporated Snohomish County, completely surrounded by the City of Monroe. It is anticipated that the County will surplus the site after the reclamation is completed by the current contractor.

The site is located north of SR-2, south of the proposed SR-2 By-pass, east of the 522 overpass and west of Chain Lake Road. The only development completed within the North Kelsey planning area is the Galaxy Theaters, which was completed in the fall of 2000.

The entire site is currently zoned General Industrial and has a Comprehensive Plan designation of Industrial. In 2003, comprehensive plan/rezone application was approved for review to change the designation to Commercial, with a mixed-use overlay for the Planned Development Area. It is also anticipated that the unincorporated island will be annexed into the City of Monroe prior to development.

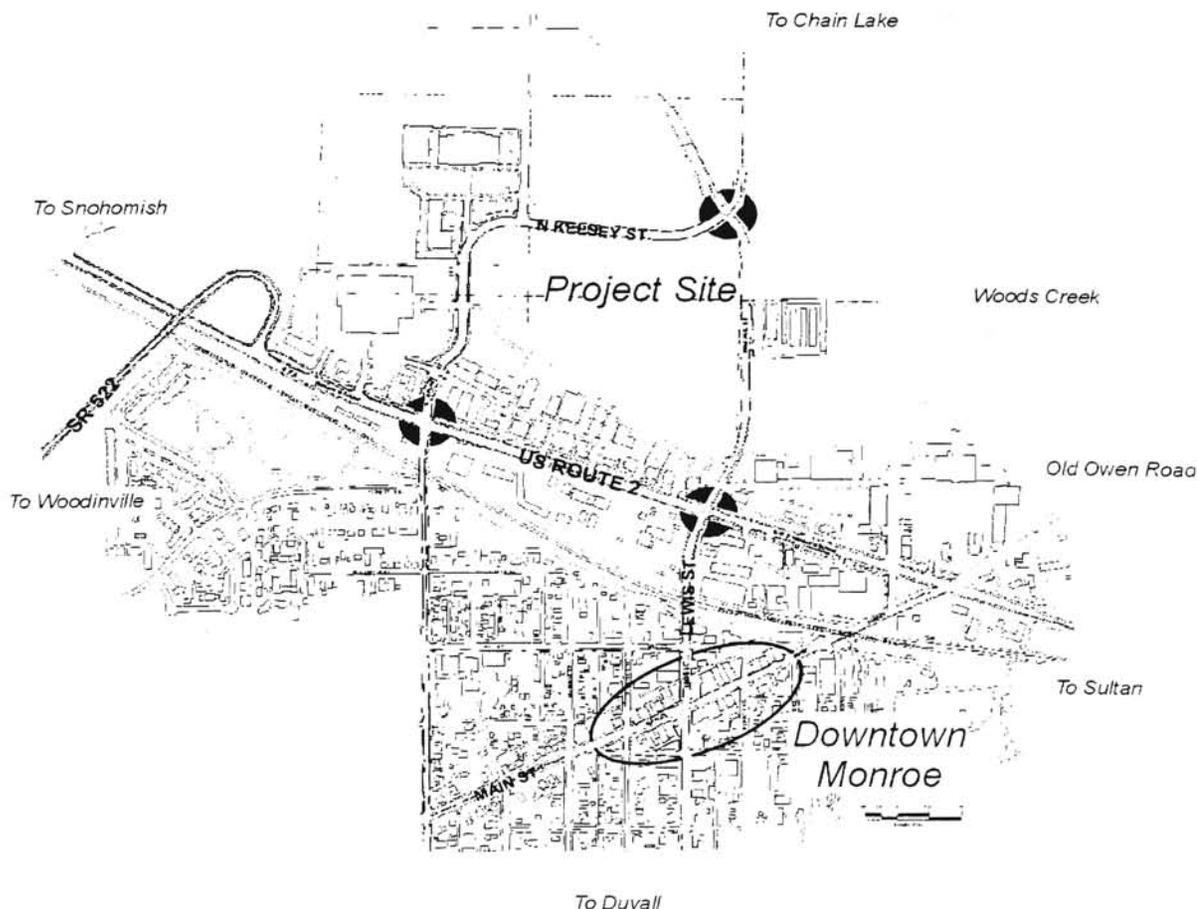


Figure 2. Vicinity map.

B. Planning Process

The Planning Commission studies the general goals of the plan as well as the more detailed implications of the mission statement



What is Downtown Monroe's Current Image?

A Development Market study shows retail trade areas and projects growth

What Does "commercial Aesthetics" Mean?

At the end of the design charrette everyone assigns his preference with a colored dot



What Does "Civic Vitality" Mean?

Some examples of the design charrette drawing showing highest preferences for "pod-oriented plazas" and the presence of a community center.



Planning Commission studying the capacity and demand for development



Model	Score	Model Points	What Works & Why?
A. Plaza with parking	3	Plaza area, walkable, pedestrian friendly, open space, green space, community center, etc.	Plaza area, walkable, pedestrian friendly, open space, green space, community center, etc.
B. Urban neighborhood	2	Walkable, pedestrian friendly, open space, green space, community center, etc.	Walkable, pedestrian friendly, open space, green space, community center, etc.
C. Park with walkway	2.4	Walkable, pedestrian friendly, open space, green space, community center, etc.	Walkable, pedestrian friendly, open space, green space, community center, etc.
D. Small town mixed use	1.1	Walkable, pedestrian friendly, open space, green space, community center, etc.	Walkable, pedestrian friendly, open space, green space, community center, etc.
E. Pedestrian plaza	4.8	Walkable, pedestrian friendly, open space, green space, community center, etc.	Walkable, pedestrian friendly, open space, green space, community center, etc.
F. Small town mixed use	1.5	Walkable, pedestrian friendly, open space, green space, community center, etc.	Walkable, pedestrian friendly, open space, green space, community center, etc.
G. Informal commercial village	3.2	Walkable, pedestrian friendly, open space, green space, community center, etc.	Walkable, pedestrian friendly, open space, green space, community center, etc.
H. Small town mixed use	2.6	Walkable, pedestrian friendly, open space, green space, community center, etc.	Walkable, pedestrian friendly, open space, green space, community center, etc.

One of the groups at the open house identifying visual preferences

The visual preference survey helps visualize preferred character of the new development will be. Most positive values are attributed to Pedestrian plaza features and green spaces. "Informal Commercial Village" and "Small town mixed use"



Work group sketches challenges and opportunities on maps at workshop

Aug. 21 Planning Commission Work Session to go over project scope and goals, public outreach, current planning activities, relationship with downtown, desired development character, and amenities

Sept. 18 Planning Commission Work Session to present findings of market study, review goals and discussion from previous meeting, conduct visual preference survey, conduct map exercise and discuss upcoming public workshop

Oct. 2 Open House Public workshop to describe notification efforts, present findings of market study, conduct brainstorming design Charrette to cite goals, objectives, concerns and opportunities, conduct visual preference survey, conduct map exercise and discuss results

Keeping in mind the open house, the design team sketches 5 alternative scenarios.



The Planning Commission reviews the sketches alternatives and identify 3 for refinement

NORTH KELSEY SUB-AREA PLAN
Alternative 1: Central Park



NORTH KELSEY SUB-AREA PLAN
Alternative 2: Walking Street



NORTH KELSEY SUB-AREA PLAN
Alternative 3: Village Green/Pedestrian Mall

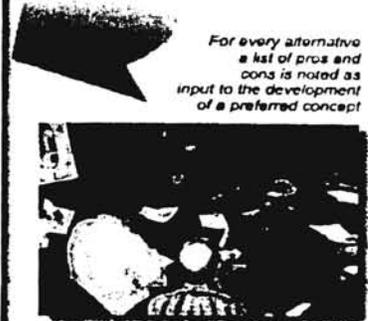
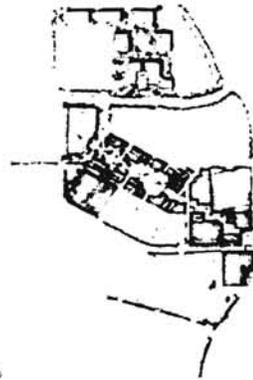


These three alternatives are evaluated during the 2nd open house

NORTH KELSEY SUB-AREA PLAN
Alternative 3: Village Green/Pedestrian Mall



The Planning Commission reviews open house results and assembles a preferred concept from positive ideas of each alternative



For every alternative a list of pros and cons is noted as input to the development of a preferred concept

A final alternative is defined during a joint City Council and Planning Commission

Oct. 16 Planning Commission
Work session to present results of 1st workshop, present and refine preliminary alternative scenarios.

Dec. 4 Open House
Public Workshop to present results of 1st workshop, present alternative development scenarios, break into groups to discuss of alternatives and summarize results of group discussions.

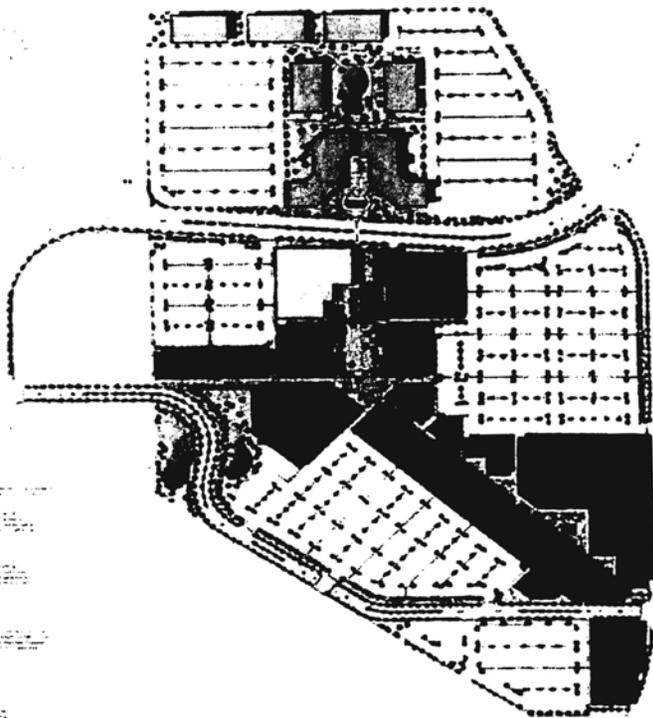
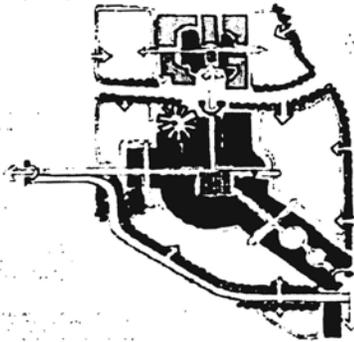
Dec. 12 Joint City Council/Planning Commission
Workshop to review results of 2nd public workshop and choose preferred alternative.

Design guidelines direct the development toward the preferred concept



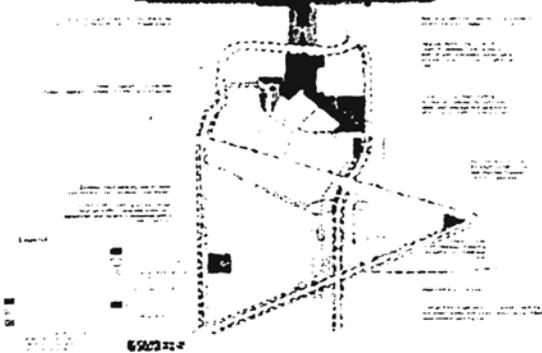
Perspectives illustrates the guideline concepts

An illustrative siteplan is prepared to work out details and text for feasibility



A cross section of the connection road with the 12' ped-bike path

The impact of the new development is studied in a specific downtown improvement plan



Jan. 15 Planning Commission
Workshop with planning commission to refine preferred plan and discuss design guidelines and final report.

Feb. 19 Planning Commission
Workshop with planning commission to review draft plan and design guidelines

Apr. 2 Open House
Public Workshop to review and refine the development concepts for the North Kelsey Plan and to evaluate possible improvements for the downtown area

C. Goals and Objectives

The following goals and objectives for the North Kelsey Development Plan were developed from the public workshop held on October 2, 2001 and refined through the planning process.

Goal 1: Increase the City's economic vitality.

Objectives: Allow for a variety of commercial uses, including "big-box" retail stores, as long as they are sited and designed to meet other plan objectives; Encourage uses for the north-site that support the City's tax base.

Goal 2: Create a focal point as a community gathering spot.

Objectives: Create a plaza open space to accommodate at least 1,000 people for special community events; Design the plaza open space to be adoptable to a variety of events and uses; Design the plaza open space to be safe and welcoming, casual and comfortable; Include a modest water feature within the plaza open space.



Goal 3: Provide for uses and services that meet the needs of Monroe's diverse population.

Objectives: Encourage a variety of commercial uses which serve both local and regional needs; Encourage the development of a community center to serve local recreational, social, cultural, and/or educational needs; Encourage housing on upper floors, close to uses and amenities; Provide youth-oriented activities and uses; Provide senior-friendly activities and uses;



Goal 4: Create a strong identity for the development.

Objectives: Encourage site and architectural design that is unique and appropriate for Monroe; Encourage architectural design that combines traditional and modern elements; Emphasize landscaping and greenery throughout the development to create a park-like setting;



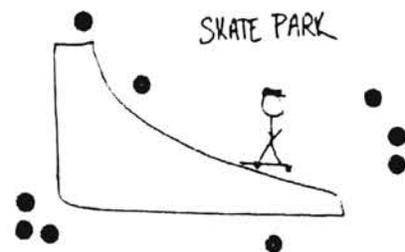
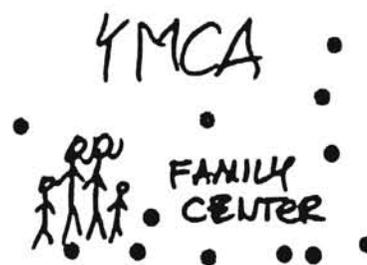
Encourage architectural design that is understated and subtle; Employ local artists, where possible, in the design of public spaces and the streetscape.

**Goal 5:
Encourage pedestrian-friendly development.**

Objectives: Provide safe, efficient, and attractive pedestrian connections between uses throughout the development area and to uses surrounding the site; Encourage small-scale businesses such as cafés and specialty shops; Encourage building design that orients to public open space, pathways, and streets; Develop streets with pedestrian amenities such as wide sidewalks, awnings, street trees and landscaping, and buildings with display windows; Provide separation of vehicles and pedestrians, where possible, along arterials; Hide and screen parking areas; Incorporate safe bicycle access to and throughout site; Encourage large-scale retail uses to provide multiple entries and minimize blank walls; Provide pedestrian-oriented plazas and open spaces throughout the development..

**Goal 6:
Create a place that complements, but does not reproduce the aesthetics of the Downtown Commercial corridor.**

Objectives: Enhance connections between the site and downtown; Provide uses and activities that are not and/or cannot be accommodated downtown; Encourage site design and development character that contrasts rather than copies downtown.



CHAPTER 3: Development Concept

The planning objectives for the North Kelsey Planned Development Area calls for the creation of a pedestrian-friendly center that serves as a community focus, provides public open space and amenities, and accommodates a broad range of commercial and civic activities. The development should build a unique, high-quality identity that complements—but does not duplicate—downtown Main Street. The planning concept outlined in this section translates these objectives into the physical design principles described and illustrated below.

Organize new development north of N. Kelsey Street around a central open space or according to another spatially unifying concept that connects it to the south lot and creates a campus-like character.

Provide residential uses on upper stories near the village green in order to increase housing choices in Monroe, to enhance safety and security of open spaces, and to provide day-to-day patrons for businesses.

Connect the center's uses and activities with a network of pedestrian connections and extend those connections to the north.

Use naturalized greenbelts around project perimeter to screen parking and treat stormwater

Allow for small and large retail businesses and a community center or similar public and recreational facility.

Treat storm water at South-West of site

Focus activities and structures around an internally connected set of open spaces, including a "town square," a park-like opens pace or "green," and other, smaller open spaces.

Construct an east/west connector street roughly along the site's southern perimeter. Construct sidewalks and bicycle paths along the site's perimeter and install heavy landscaping to create attractive streetscapes.

Ensure that the activities and buildings are pedestrian-friendly.



Create an assemblage of buildings with an intimately scaled and informal architectural character. Create an identity unique within the region and that reflects Monroe's small town character.

Figure 4: Development concept.

1. Focus activities and structures around an internally connected set of open spaces, including a focal plaza or “town square,” a park-like open space or “green,” and other smaller open spaces fostering activities associated with businesses or other facilities (such as outdoor dining areas connected to restaurants or a children’s play area next to the community center).

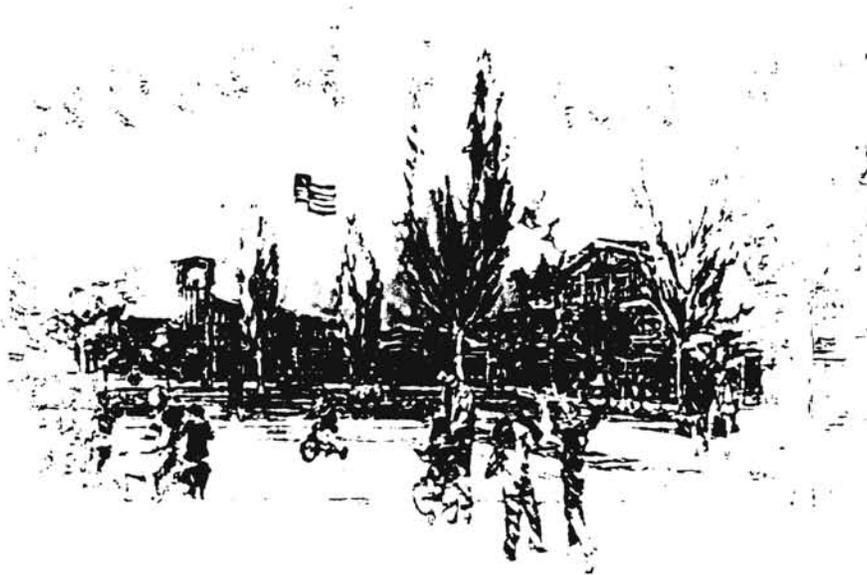
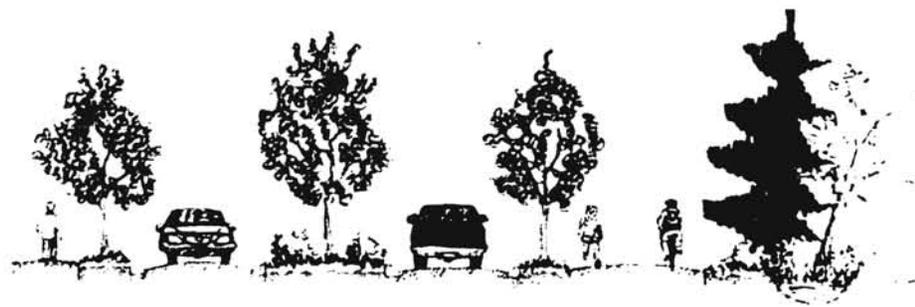


Figure 5: Focus activities around an internally connected set of open spaces.

2. Connect the center’s uses and activities with a network of pedestrian connections and extend those connections to the north to the site on the north of North Kelsey Street, to the west toward the Fred Meyer site; to the southeast toward a connection to Main Street, and southward along Chain Lake Road. Provide convenient access from parking to building entries, open spaces, and primary pedestrian connections.
3. Provide vehicular, bicycle, and pedestrian access around the site by constructing an east/west connector street running roughly along the site’s southern perimeter. Provide parking access where convenient and safe along perimeter streets. Construct sidewalks and bicycle paths along the site’s perimeter and install heavy landscaping to create attractive streetscapes.

*Figure 6:
Proposed cross-section of the east/west connector road.*



4. Identify a development configuration that allows for small and large retail businesses, a community center or similar public and recreational facility, and some upper-story residences. Provide adequate service access for large businesses and minimize their impact on visual qualities and pedestrians.
5. Ensure that the activities and buildings are pedestrian-friendly by providing amenities and landscaping, weather protection, “transparent facades,” and human-scaled building elements. Provide main entrances facing primary pedestrian connections or open spaces.

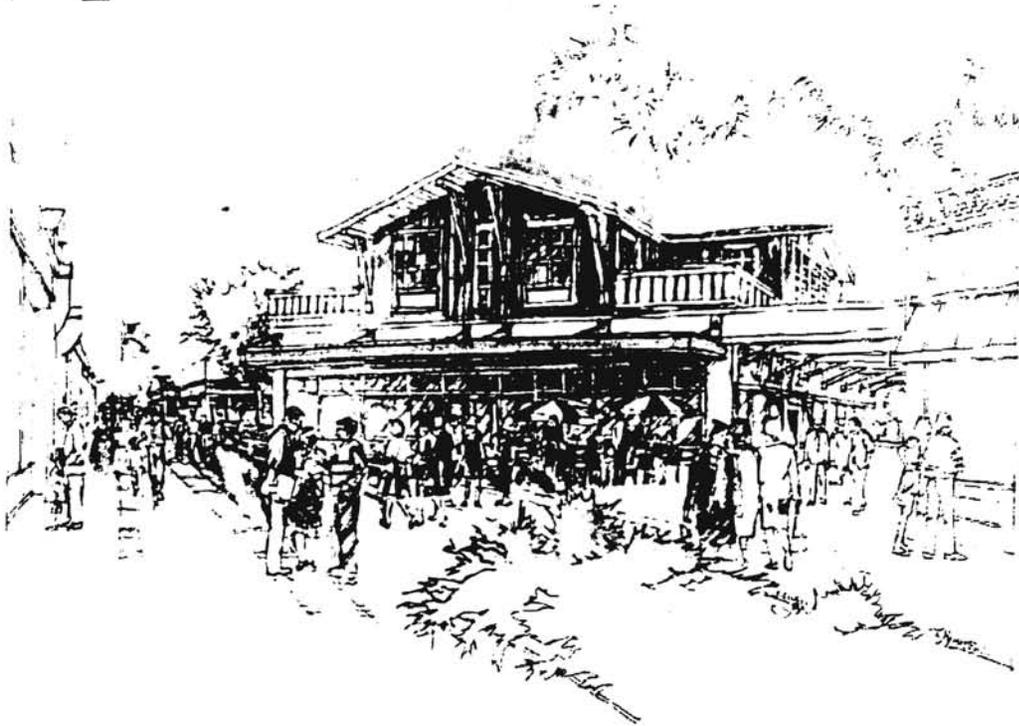
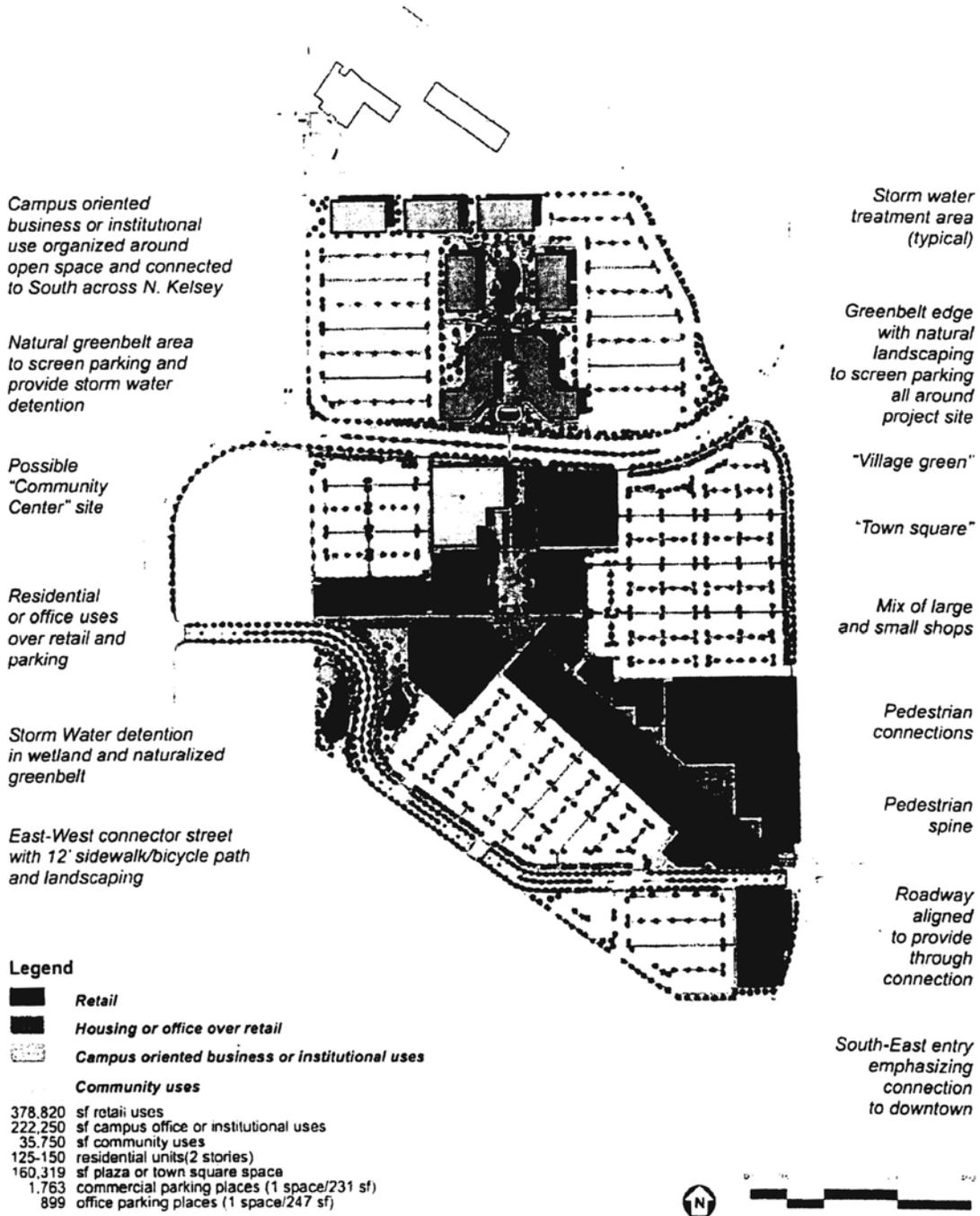


Figure 7: Activities and buildings should be pedestrian friendly.

6. Create an assemblage of buildings with an intimately scaled and informal architectural character. Locate, cluster, and architecturally treat large buildings to ensure that they do not dominate the area’s identity. Through the architectural, landscape, open space, and gateway elements, create an identity unique within the region that reflects Monroe’s small town character.
7. Provide residential uses on upper stories near the village green in order to increase housing choices in Monroe, to enhance safety and security of open spaces, and to provide day-to-day patrons for businesses.
8. Organize new development north of North Kelsey Street around a central open space or according to another spatially unifying concept that connects it to the south lot and creates a campus-like character.

Figure 4 diagrams these ideas, and Figure 8 below illustrates a hypothetical plan that meets their underlying objectives.



NORTH KELSEY SUB-AREA PLAN
CITY OF MONROE
 Draft: 2 May, 2002

Figure 8: Hypothetical development plan.

The illustrated configuration in many ways reflects a time-tested shopping center model in order to ensure the site's desirability to major retail tenants. However, there are several features that make it a potentially ground-breaking development in the state and responsive to the City's goals. These include:

- Focusing development on a town square and green open space.
- Making pedestrian connections to neighboring areas.
- Including residences on upper stories.
- Creating a small-scale, informal architectural character and minimizing the impacts of large-scale businesses.

These, then, are the elements that will distinguish the development from others in the region, while increasing a sense of community, attracting visitors, and enhancing the viability of other businesses in the downtown. The design guidelines in this report codify these concepts and enable the City to work with potential developers to make sure the principles are achieved.

Relationship to the Surrounding Community

In order to meet the project's goals, the North Kelsey development must reach out to the rest of the downtown, providing pedestrian connections, integrating access with the downtown's larger circulation network and establishing a top quality design character. At the same time the City and other downtown stakeholders should work together to take advantage of the project's benefits and to increase redevelopment and human activity throughout the city center.

Key actions in this effort are:

- Improving local and regional pedestrian and bicycle connections,
- Upgrading the most visible streetscapes,
- Continuing Main Street revitalization efforts, and
- Enhancing businesses between the North Kelsey Site and the Old Main Street Core.

The map diagram on the following page illustrates some preliminary ideas for accomplishing these goals. The noted elements are not necessarily firm recommendations of this plan. They are intended to stimulate thought and to demonstrate that through strategic planning, the North Kelsey development can serve as an integral part of the surrounding downtown.

Downtown Monroe Urban Design Concept

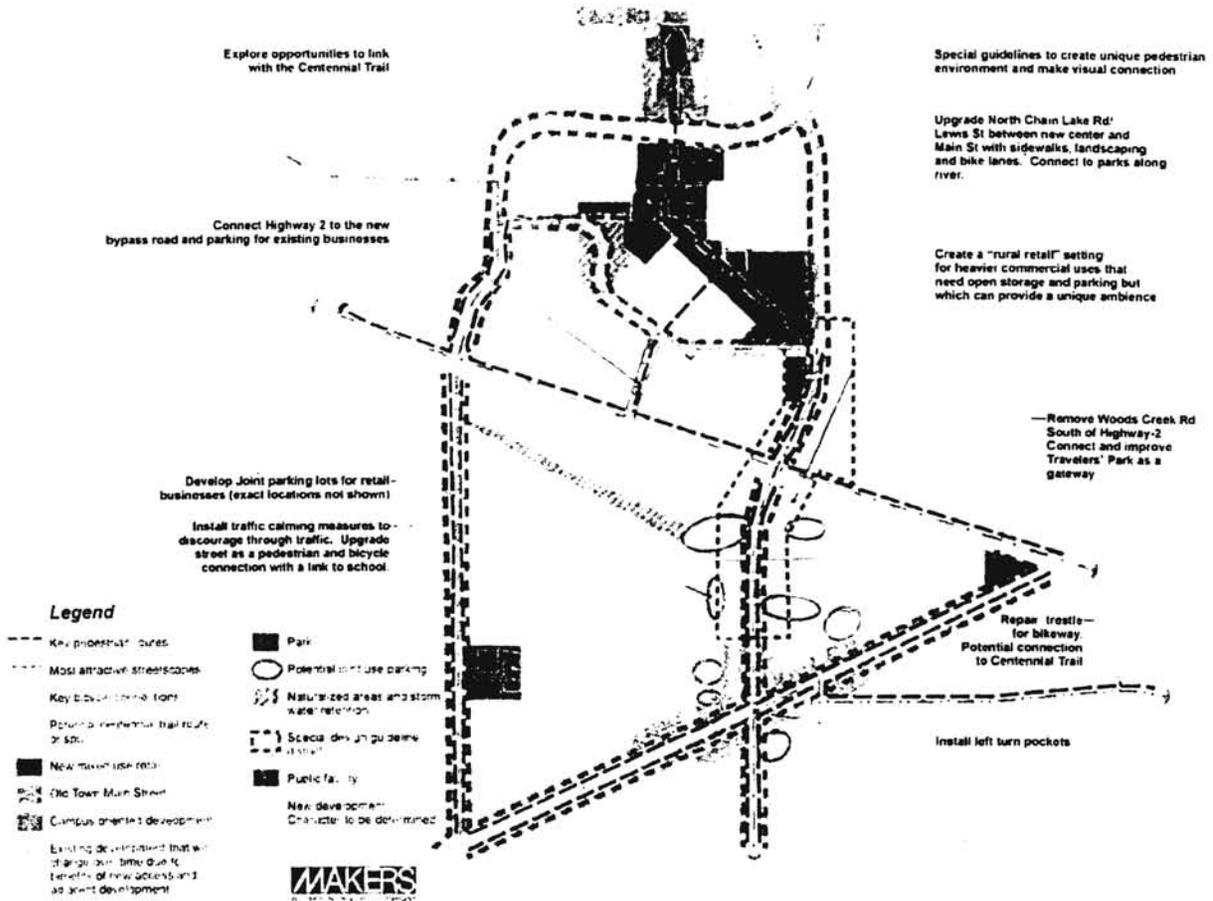


Figure 9: Preliminary ideas for integrating the North Kelsey development with downtown and the city.

When the proposals were presented at the public workshops, most participants found the suggestions generally favorable. However, more study and citizen input is necessary to identify key community design actions and refine such proposals. Implementation action #7 of this plan (see Chapter 4) recommends that a downtown plan/improvement program be undertaken to insure that the North Kelsey development and the surrounding downtown evolve together for mutual benefit.

APPENDIX 1: Design Guidelines

North Kelsey Design Guidelines

Approved Ord. 008/2003

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CHAPTER 1: Introduction

A. Purpose

The application of these design guidelines will be a critical regulatory tool in implementing the community's design-related goals and objectives for the North Kelsey Planning Area and the North Kelsey Planned Development Area.

B. Intent

These guidelines are directed to creating a development within the North Kelsey planning area that:

- Provides a visible and accessible commercial and civic town focus for the City of Monroe.
- Enhances downtown circulation for pedestrians and vehicles.
- Connects and integrates other downtown activities.
- Features a spectrum of public open spaces and amenities.
- Includes a mix of commercial, civic, recreational and residential activities
- Retains opportunities north of North Kelsey Street for a larger activity in a master-planned setting such as an educational or medical facility or a corporate campus.
- Accommodates retail development of various size and character as long as the development's perceived scale is appropriate for Monroe's small town character and the design quality is of the highest caliber.
- Enhances the town's identity as a regional attraction.

C. Application of Design Guidelines

The design guidelines apply to all new construction in the North Kelsey Planning Area (MAP). The sole exception involves interior remodels. The guidelines are intended to supplement the other standards in the Monroe Municipal Code. Where the guidelines and zoning ordinance standards conflict, the City shall determine which regulation applies.

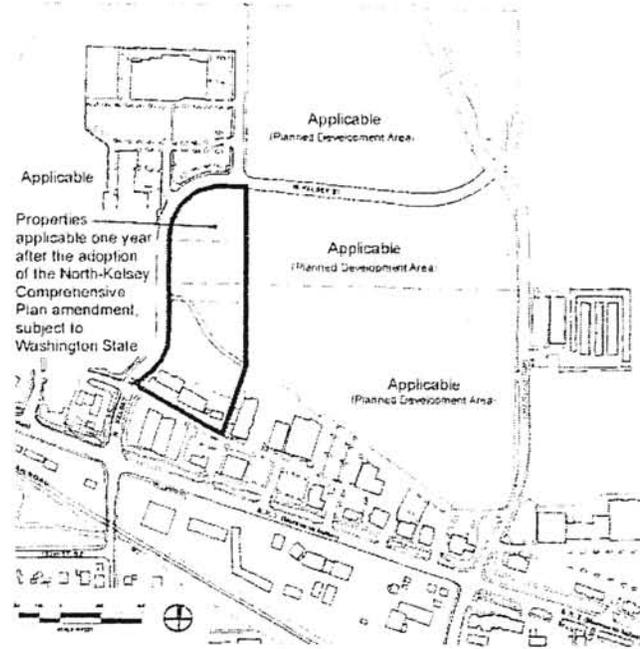


Figure 1: Applicable properties.

All properties that are outside the planned development area, but within the North Kelsey Planning Area are subject to Chapters 5 through 7 of these design guidelines. This includes the privately owned parcels within the outlined area: the guidelines will become affective one year after the adoption of the North Kelsey Comprehensive Plan amendments, subject to Washington State vesting laws.

The specific planned development area is comprised of three properties along Chain Lake Road, currently owned by Snohomish County and the City of Monroe.

D. Interpreting the Design Guidelines

The City retains full authority to determine whether or not a proposal meets these guidelines. Within the guidelines, certain words are used to indicate the relative importance and priority the City places upon the particular guideline. The words “shall,” “must,” and “is/are required” mean that the development proposal must comply with the guideline unless the City finds that:

- The guideline or requirement is not applicable or appropriate in the particular instance, or
- The development proposal meets the intent of the guidelines in some other manner.

The word “should” means that the development proposal will comply with the guideline unless the City finds that:

- The guideline or requirement is not applicable or appropriate in the particular instance,

- The development proposal meets the intent of the guidelines in some other manner, or
- There is a compelling reason to the contrary.

The words “is/are encouraged” mean that the action or characteristic is allowed and will usually be viewed as a positive element in the City’s review.

The project proponent may submit proposals that he/she feels meet the intent of the guidelines but not necessarily the specifics of one or more guidelines. In this case, the City will determine if the intent of the guideline has been met.

E. Review Process

The following guidelines will be used, along with other City ordinances and regulations, for the City’s review of one or more proposed binding site plans and subsequent development proposals on the site.

If more than one binding site plan is submitted (or if the site plan only applies to part of the development area south of North Kelsey Street), then the site plan shall indicate how the proposal will connect to adjacent properties/parcels to be developed later. The means of pedestrian and vehicular circulation, as well as building and entry orientation, must be as approved by the City in accordance with the design guidelines as applied to the entire area of applicability as stated in Chapter 1C of the guidelines.

CHAPTER 2: Site Configuration

The development must be based on one or more City-approved binding site plans that address the following principles. If more than one binding site plan is submitted (or if the site plan only applies to part of the development area south of North Kelsey Street), then the site plan shall indicate how the proposal will connect to adjacent properties/parcels to be developed later. The means of pedestrian and vehicular circulation, as well as building and entry orientation, must be as approved by the City in accordance with the design guidelines as applied to the entire area of applicability as stated in Chapter 1C of the guidelines.

1. Connects the following activities with an integrated pedestrian network:

- To the Southeast: Chain Lake Road sidewalk.
- To the North: future development on City Public Works land north of North Kelsey Street.
- To the West: North Kelsey Street near the entry to the Fred Meyer store.

Gateway features and safe walking connections must be provided at these points.

The City will pursue potential roadway connections directly south to SR-2 in order to provide better access to the site and neighboring properties and to reduce congestion on the highway. If such an access is identified prior to development, an internal pedestrian connection must be provided to the south as well.

2. Creates a focus of retail, recreational and civic uses at the core of the south lot. (See Public Open Space and Land Use guidelines, Chapter 3). Uses North of North Kelsey Street should be compatible and mutually supportive

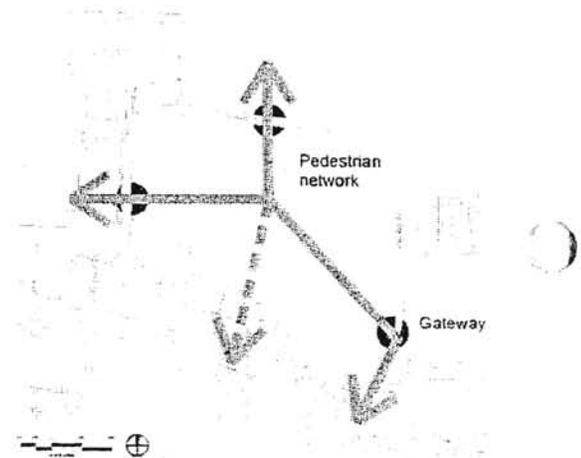


Figure 2: Key pedestrian connections.

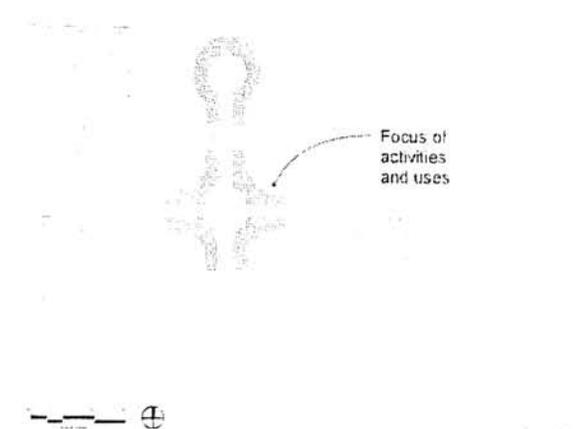


Figure 3: Site Activity focus.

- Provides a set of open spaces along the pedestrian network that include a civic plaza, a village green and other smaller open spaces to enhance the retail environment. (See Public Open Space guidelines, Chapter 3) Uses north of North Kelsey Street should be configured around a central open space or plaza to create a campus-like setting.

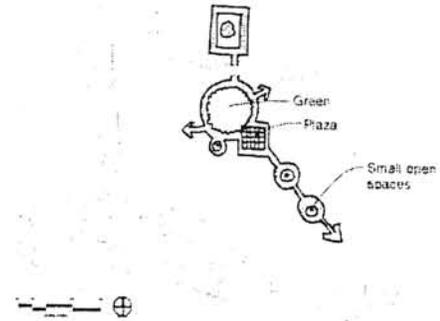


Figure 4: Open space concept.

- Includes a public road to the south of the lot that, along with North Kelsey Street and Chain Lake Road, creates a loop system around the south parcel. (Note: The City is currently studying the traffic and engineering considerations in the road's alignment and design. The City may find that an alternate alignment is acceptable.) Parking for the facility should be accessed from this loop system and not intrude into the center of the site or detract from the activities or qualities of the development. (See Parking Area guidelines in Chapter 3 and Circulation Guidelines, Chapter 4). Opportunities for sharing access and parking between new uses and the theater complex and public works department should be explored.

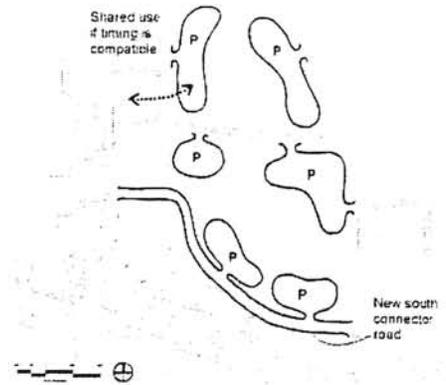


Figure 5: Vehicle access and parking concept.

- Locates and treats large buildings to reduce their perceived scale to fit with neighboring structures and present an inviting, human scaled, pedestrian oriented character to the public. (See Architectural/Building Design guidelines, Chapter 5.)

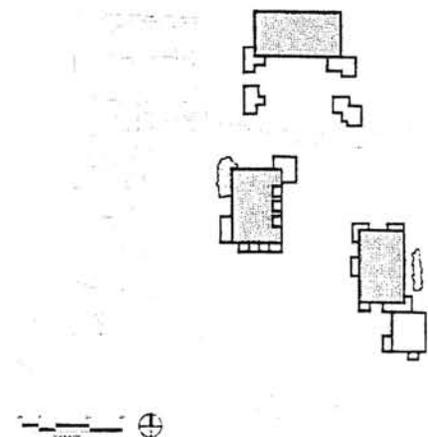


Figure 6: Ways of reducing the scale of large buildings.

The project proponent must demonstrate that the overall site layout and circulation system accomplishes these goals to the City's satisfaction.

CHAPTER 3: Site Planning

A. Public Open Space

Intent:

- To provide a variety of open spaces that attract people to the area;
- To provide a focal open space that functions as a community gathering space;
- To provide a “park-like” character within the Planned Development Area of the North Kelsey Planning Area;
- To provide an attractive pedestrian environment;
- To provide outdoor spaces for relaxing, eating, socializing, and recreating.

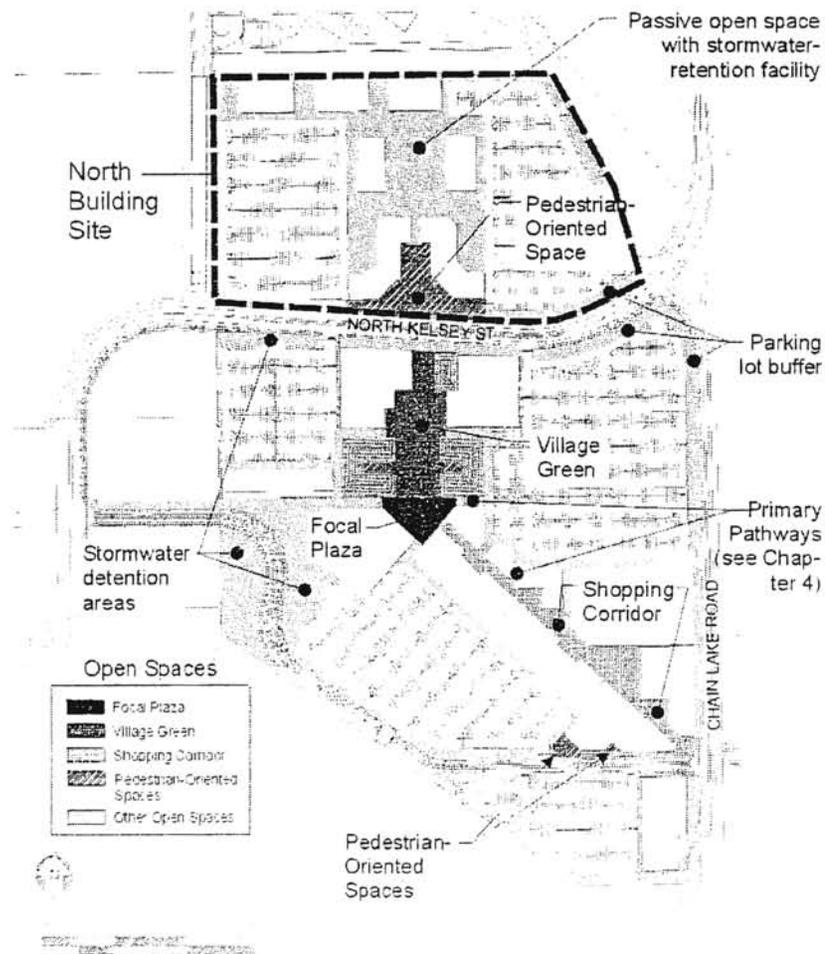


Figure 7: Site development example illustrating the required open spaces.

1. Focal Plaza

Guidelines:

1. Area should be sized between 10,000 and 15,000 square feet (generally large enough for a gathering of at least 1,000 people).
2. The plaza should be able to serve as a center for daily activity – the most significant space and emphasis as the heart of the development.
3. The plaza should include an area or platform that can be utilized as a stage for concerts, celebrations, or other public activities.
4. Paving should be unit-pavers or concrete with special texture, pattern, and/or decorative features.
5. Pedestrian amenities shall be provided such as seating, plants, drinking fountains, artwork, and such focal points as sculpture or water feature.
6. Lighting fixtures should be approximately 10-15 feet above the surface. The overall lighting in the plaza should average at least 2 foot-candles.

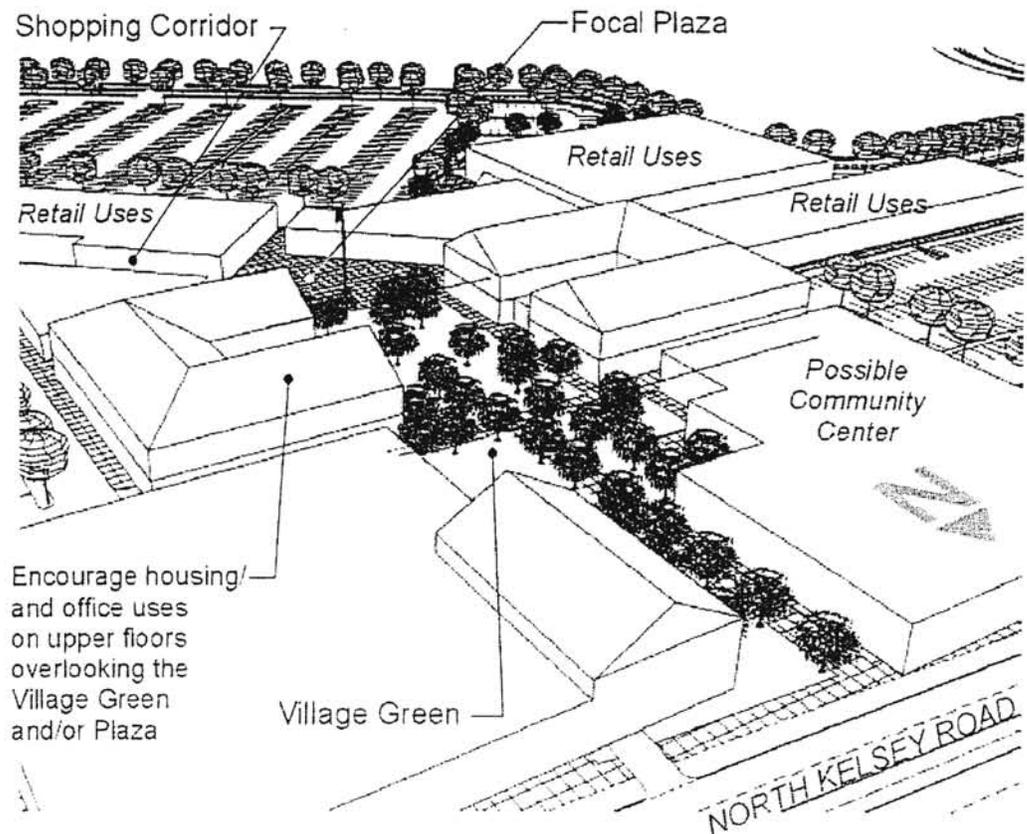


Figure 8: Example Focal Plaza and Village Green configuration.

7. The plaza should be connected to the Village Green towards the north/west, the Shopping Corridor to the east/south, and accessible from parking areas and other uses to the north and south.
8. At least one-half the plaza perimeter should abut buildings with pedestrian-oriented facades. These buildings should be 20 to 35 feet in height. Building at the southern edge of the plaza or structures within the plaza should be limited to one story to avoid excessive shadows. One of the buildings adjacent to the plaza should feature a tall landmark element (30-50 feet in height) such as a tower, prominent flagpole, or other structure.
9. Parking areas must not abut the Focal Plaza area.
10. See Chapter 6 for applicable landscaping guidelines.

2. Village Green

Guidelines:

1. The Village Green should extend north/west from the Focal Plaza; Area should be sized between 40,000 and 80,000 square feet.
2. The Village Green space should feature lawn and other soft landscaped surfaces with concrete or brick walkways traversing it and along it.
3. Landscaping can be formal or informal in style; however, plantings should frame vistas and emphasize views, where applicable.
4. Ground floor uses at the edge of the green space should feature retail, civic/community, recreational, and/or office uses. Pedestrian-oriented facades are required for abutting building facades unless the building and/or park are planned so that the wall without a pedestrian-oriented facade is used for park activity (e.g., brick wall for a performance area backdrop or basketball/ active sports area).
5. Buildings with upper floors containing windows and/or balconies overlooking the Village Green are strongly encouraged. Upper story uses may be residential, community/civic, recreational, commercial, and/or office.
6. Pedestrian amenities shall be provided such as seating, plants, drinking fountains, distinctive paving, artwork, and such focal points as sculpture or water feature.
7. Lighting fixtures should be approximately 10-15 feet above the surface. Pathways should average between 1 and 2 foot-candles of light – with major pathways averaging 4 foot-candles. Hard-surfaced plaza/court areas within the Village Green should average at least 2 foot-candles. Lawn areas should average at least .5 foot-candle.
8. Parking areas must not abut the Village Green unless the City determines that there is a public benefit to such an orientation and the parking is screened from the green. The intent is to surround the green with active storefronts or supporting uses. Exception: Temporary parking that will later be developed may

be adjacent to the Village Green provided they are screened consistent with Type III Landscaping standards (MMC, Section 18.78.030).

9. A pedestrian transition zone of approximately 10 feet is encouraged along the building edge to provide an outdoor area for café seating, display area, and/or landscaping.
10. The plaza should have an articulated edge (buildings and/or landscaping) where feasible to provide visual interest.
11. Provisions may be made for active sports that take up less than ¼ of the Village Green area (such as a volleyball, tennis, or basketball court and/or children's play lot).
12. See Chapter 6 for applicable landscaping guidelines.

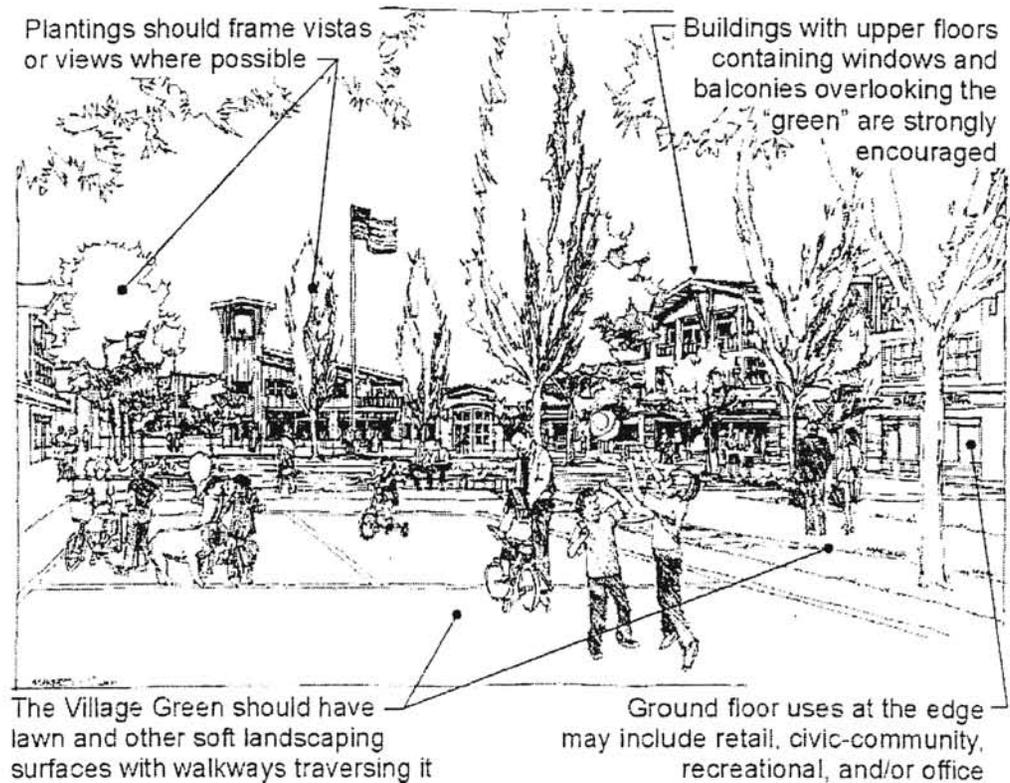


Figure 9: Village Green example.

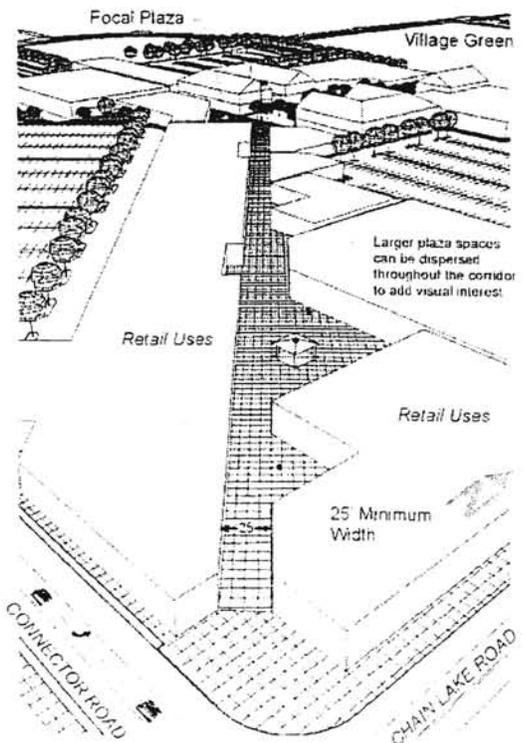
3. Shopping Corridor

Guidelines:

1. The Shopping Corridor should be a series of connected pedestrian spaces surrounded by retail shops.
2. The corridor should extend from the corner of Chain Lake Road and the east-west connector road to the Focal Plaza.

3. The width of the corridor should be not less than 25 feet in any place and average at least 50 feet counting plaza spaces. Pedestrian-oriented spaces (at least 2,000 square feet) should interrupt the corridor to provide visual interest and activities.
4. Paving should be unit-pavers or concrete with special texture, pattern, and/or decorative features.
5. Pedestrian amenities shall be provided such as seating, plants, drinking fountains, distinctive paving, artwork, and such focal points as sculpture or water feature.
6. Lighting fixtures should be approximately 10-15 feet above the surface and may be building mounted. The overall lighting in the plaza should be at least 2 foot-candles, without “dark spots” that could cause security problems. Ambient light from under canopies or storefronts may be included in the lighting calculations.
7. The plaza should have an articulated edge (buildings, benches, and/or landscaping) where feasible or desirable to provide visual interest and additional seating along the edges of the plaza where people may linger out of the traffic flow.
8. Buildings adjacent to the Shopping Corridor must have pedestrian-oriented facades (see Building Orientation guidelines below).
9. See Chapter 6 for applicable landscaping guidelines.

Figure 10: Example Shopping corridor configuration.



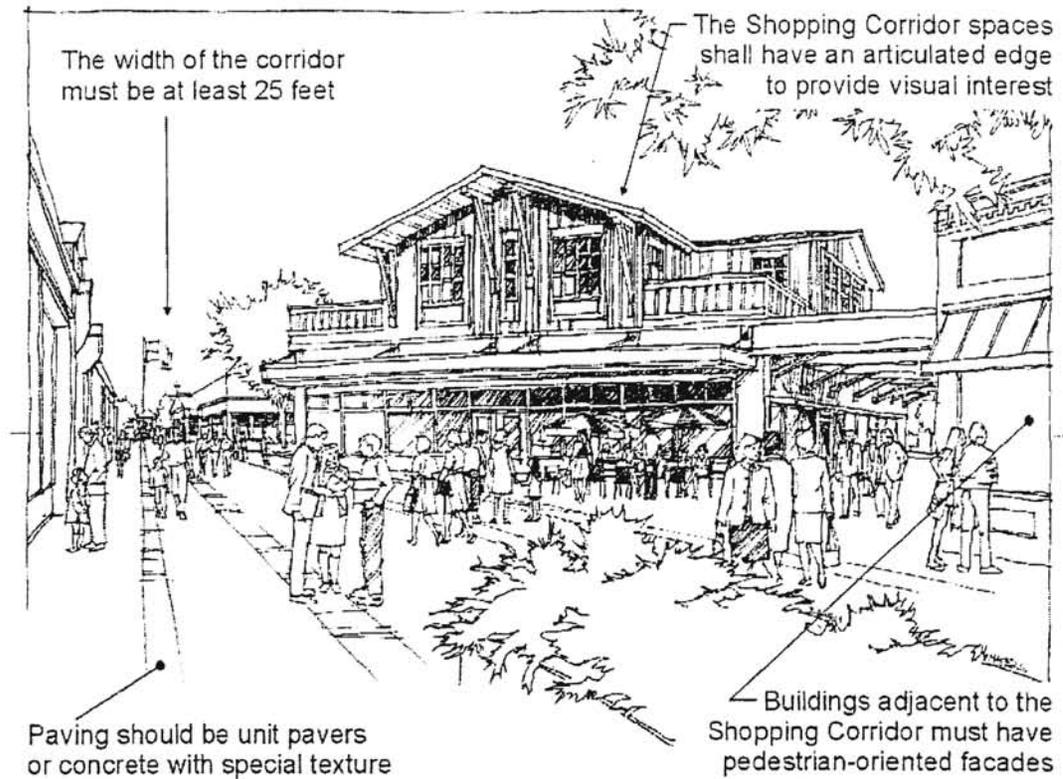


Figure 11: Example shopping corridor design.

4. Pedestrian-Oriented Spaces

Guidelines:

1. Pedestrian-oriented spaces are encouraged along the pedestrian connections and near key building entries. They can be small to large widening of walking space, landscaped areas, areas for outdoor dining, or small play areas.
2. Pedestrian amenities shall be provided such as seating, plants, drinking fountains, distinctive paving, artwork, and such focal points as sculpture or water feature, should be provided.
3. Lighting fixtures should be approximately 10-15 feet above the surface and may be building mounted. The overall lighting in the plaza should be at least 2 foot-candles, without any "dark spots" that could cause security problems. Ambient light from under canopies or storefronts may be included in the lighting calculations.
4. The spaces must have visual and pedestrian access (including barrier-free access) to abutting structures and public streets or pathways.
5. Walking surfaces should be either approved unit pavers or colored and textured concrete.

6. At least one linear foot of seating area (at least 16 inches deep) or one individual seat per 60 square feet of plaza area or open space should be included (seating can include benches, low walls, stairs, or ledges).
7. Landscaping that does not act as a visual barrier is encouraged (also see Plaza/Pedestrian Area Landscaping guidelines, Chapter 7).
8. Buildings abutting pedestrian-oriented space must have pedestrian-oriented facades (see Building Orientation guidelines below).
9. See Chapter 6 for applicable landscaping guidelines.

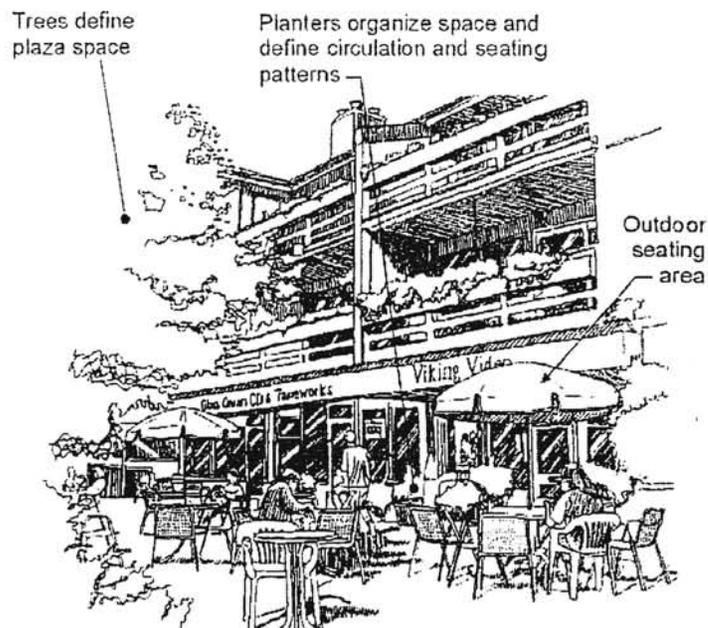


Figure 12: Pedestrian-oriented space.

5. North Building Site

Guidelines:

1. Development of the site north of North Kelsey Street should be organized around an interconnected set of heavily landscaped open spaces.
2. The north site should include a focal open space that fronts on North Kelsey Street and is aligned with the Village Green. This open space must be developed consistent with the Pedestrian-Oriented Spaces guidelines.
3. Integrate stormwater detention facilities into the design of the landscape where possible and appropriate.
4. Landscape the north site open space per Chapter 6 guidelines.

B. Building Orientation

Intent:

- To provide an attractive pedestrian environment.
- To enhance the character of the streetscapes within and surrounding the area.
- To enhance the use and safety of open spaces by encouraging buildings to front onto them.
- To provide attractive building facades adjacent to parking lots.

General:

The Focal Plaza, Village Green, Shopping Corridor, and other Pedestrian-Oriented Spaces serve as the focal points for pedestrian activity in the Planned Development Area. Therefore, buildings and ground floor businesses fronting on the spaces should be oriented towards these spaces. For the purpose of these guidelines, these building facades are termed “Primary Pedestrian Facades.” Since these and other buildings also front onto parking lots or streets, buildings and businesses are strongly encouraged to provide secondary building entrances. These are referred to as “Secondary Pedestrian Facades.” Due to the design of the site, side and rear walls of new buildings in the planning area will also be visible and therefore must be designed and/or screened to provide an attractive streetscape. These are referred to as “Side or Rear Facades.” Locations, guidelines and standards for Primary Pedestrian Facades, Secondary Pedestrian Facades, and Side or Rear Facades are detailed below.

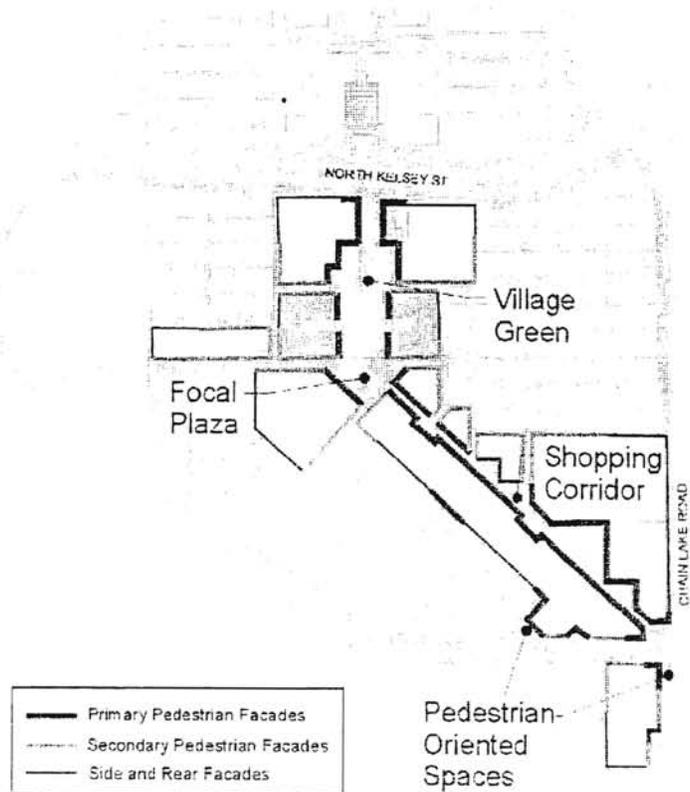


Figure 13: Building orientation

Guidelines

1. Primary Pedestrian Façade:

- a. Where: Building facades adjacent to the Shopping Corridor, Focal Plaza, Village Green, and at pedestrian-oriented spaces. (See Figure 13)
- b. What: Primary building/business entries must be located here. Weather protection (height, width) along at least 75 percent of the façade width is required. Storefront windows over at least 75 percent of the facades on the ground floor between the height of 2 feet to 8 feet above the ground are required; Multi-story structures with windows or balconies overlooking the plaza/open spaces are encouraged to provide a sense of visual interest and neighborhood security. Pedestrian-oriented lighting and/or decorative façade details (see Building Elements and Details, Chapter 5) should be provided.

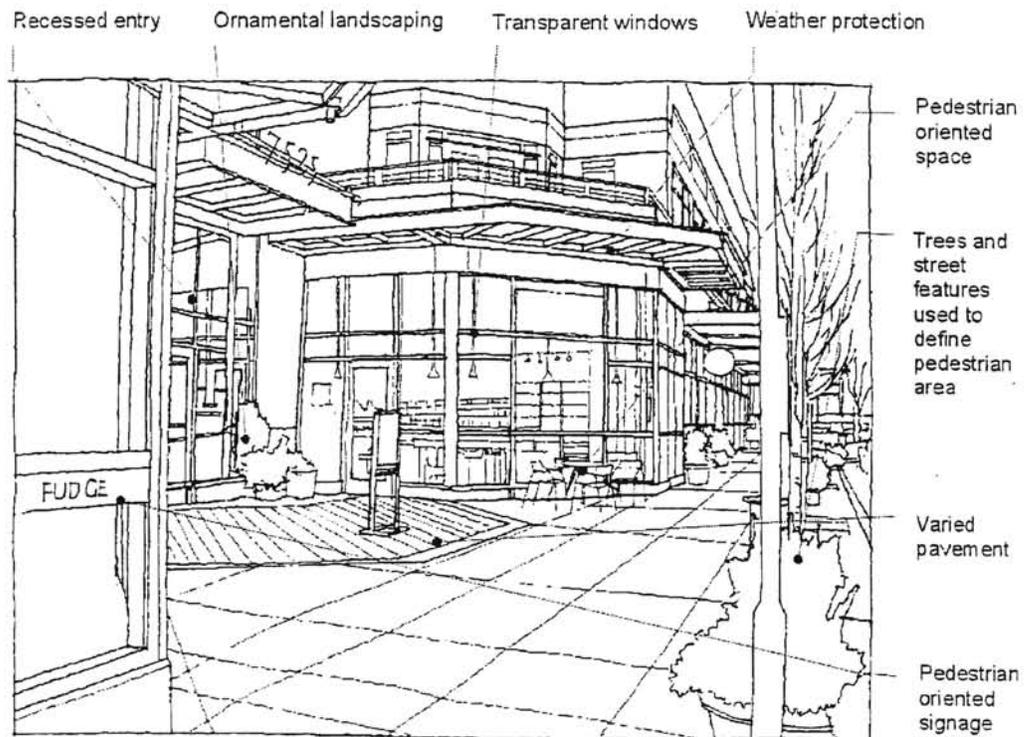


Figure 14: Primary pedestrian entry example.

2. Secondary Pedestrian Façade:

- a. Where: Building facades adjacent to parking lots, pedestrian pathways, or streets, as designated by the City. (See Figure 13)
- b. What: If the building/business is not adjacent to the Shopping Corridor, Focal Plaza, or Village Green, the primary entrance may be located adjacent to either an adjacent parking lot, pedestrian pathway, or street (subject to City approval). Building/businesses facing either Shopping Corridor, Focal Plaza, or Village Green on one side and parking lot, pedestrian pathway, and/or street on other sides, are strongly encouraged to provide a secondary

building/business entry from either the parking lot, pedestrian pathway, or street (siting subject to City approval).

- c. Weather protection over the building entry and covering at least 50 percent of the overall façade is required (80 percent weather protection coverage is required for facades along interior pedestrian corridors).
- d. Storefront windows over at least 50 percent of the facades on the ground floor between the height of 2 to 8 feet above the ground are required.
- e. Building entries along secondary pedestrian facades should utilize pedestrian-oriented lighting and/or decorative façade details. (See Building Elements and Details, Chapter 5.)
- f. Blank walls must be treated in one or more of the following ways:
 - Planters or trellises with vines.
 - Landscaping that covers 30 percent of wall area within three years of planting.
 - Special materials (e.g., decorative patterned masonry).
 - Display windows.
 - Other treatment approved by the City.

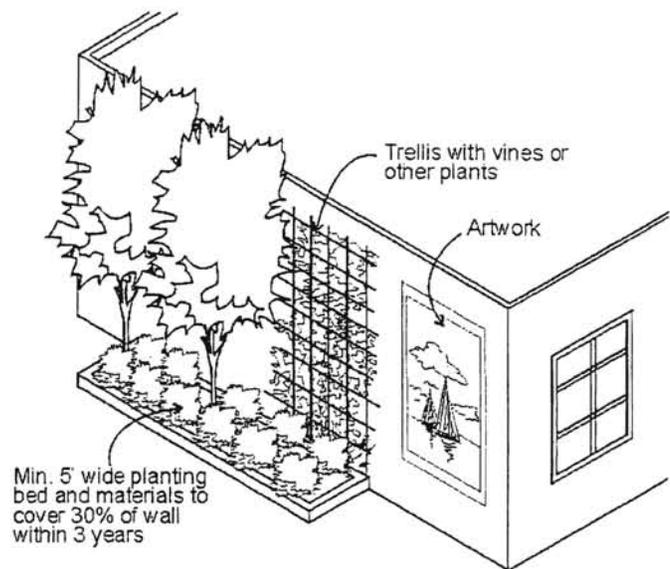


Figure 15: Blank wall treatments.

3. Side And Rear Facades:

- a. Where: Building facades not adjacent the Focal Plaza, Village Green, Shopping Corridor, building/business entries, or highly visible locations. (See Figure 13)
- b. What: While pedestrian building/business entries are not required here, they may be encouraged depending on specific site characteristics. Service elements may be located here (see Building Equipment and Service Area guidelines, Chapter 5). Facades shall be treated in two or more of the following ways:
 - Planters or trellises with vines.
 - Landscaping that covers 30 percent of wall area within three years of planting.
 - Special materials (e.g., decorative patterned masonry).
 - Display windows.
 - Other treatment approved by the City.

- c. Designated side and rear facades located along public streets should be set back at least 20 feet from the sidewalk to accommodate stormwater treatment methods and heavy landscaping.
- d. Visible building façades should be articulated per “Vertical Articulation” guidelines in Chapter 5 under Human/Pedestrian Scale.
- e. Creative use of building materials such as concrete and concrete masonry units is encouraged.

C. Land Uses

Intent:

- To provide a variety of uses that serve the diverse needs and interests of Monroe’s residents and residents within the site’s defined market area.
- To provide for uses that facilitate a pedestrian-friendly environment.
- To provide for uses that support an expanded tax base for the City of Monroe.

Guidelines:

The table below summarizes preferred, acceptable, and prohibited land uses in the planning area’s south site and north site. Guidelines/standards for each of land uses are noted below the table.

Table 2: North Kelsey Planned Development Area Land Use Matrix

Land Use	South Site	North Site
1. Retail Trade	Preferred Use	Acceptable Use
2. Commercial Services	Preferred Use	Acceptable Use
3. Office	Acceptable Use	Preferred Use
4. Public, Cultural, and Recreational	Preferred Use	Preferred Use
5. Educational	Acceptable Use*	Preferred Use
6. Residential	Preferred Use	Prohibited Use
7. Industrial, Warehousing, Distribution	Prohibited Use	Acceptable Use

* Acceptable as part of a mixed-use development.

1. Retail Trade Uses:

Retail uses should be the predominate uses in the south site. This includes both small and large scale uses, as long as they are designed consistent with the plan and guidelines. Smaller scale retail uses are encouraged in the areas surrounding the Focal Plaza and Shopping Plaza Corridor. Retail trade uses may include general merchandise stores, food stores, apparel and accessory stores, home furniture, furnishings, and equipment stores, eating and drinking places, miscellaneous retail, and other retail uses.

2. Commercial Service Uses:

Commercial service uses, including lodging establishments, limited personal services, limited business services, and limited amusement/recreational service uses are encouraged on the southern site and may be acceptable for the northern site.

3. Office Uses:

Office-related uses are acceptable on the southern site as long as they are located above the first floor. Office-related uses, particularly designed as part of a campus, are encouraged in the northern site.

4. Public, Cultural, and Recreational Uses:

Public, cultural, and recreational uses, such as a community center, are encouraged on properties adjacent to the Village Green or Focal Plaza in the southern site. This area shall also include a public restroom. These uses may be acceptable in other areas of the southern site and in the northern site.

5. Educational Facilities:

Educational facilities, including a branch college campus or technical college campus, are acceptable uses for the northern site or as part of a mixed-use project.

6. Residential Uses:

Multi-family residential uses on upper floors near the Focal Plaza and Village Green in the southern site are strongly encouraged.

7. Industrial, Warehousing, and Distribution Uses:

Industrial, warehousing, and distribution uses are permitted by the zoning code.

8. Drive-Through Uses:

Drive-through uses are prohibited.

9. Other Uses:

Other uses may be considered by the City.

D. Parking Areas

Intent:

- To provide convenient parking areas that encourage people to leave their cars and walk throughout the North Kelsey Planning Area.
- To provide more flexibility in the design of the development by relaxing existing City parking standards.
- To provide parking areas that do not diminish pedestrian and visual qualities of the site.
- To maintain the built street edge through effective screening of all parking lots.
- To minimize the impacts of driveways.

Guidelines:

1. Parking areas shall conform to the requirement of MMC, Chapter 18.86 unless otherwise noted in these guidelines. This encompasses dimensional requirements, design, access, loading areas, number of parking spaces, parking area landscaping, and other parking-related requirements.

2. Parking requirements for retail uses shall be relaxed to 1 space per 250 square feet of gross floor area. The City may consider special provisions for joint use of parking when two activities are less likely to occur simultaneously (e.g. office uses and entertainment facilities).

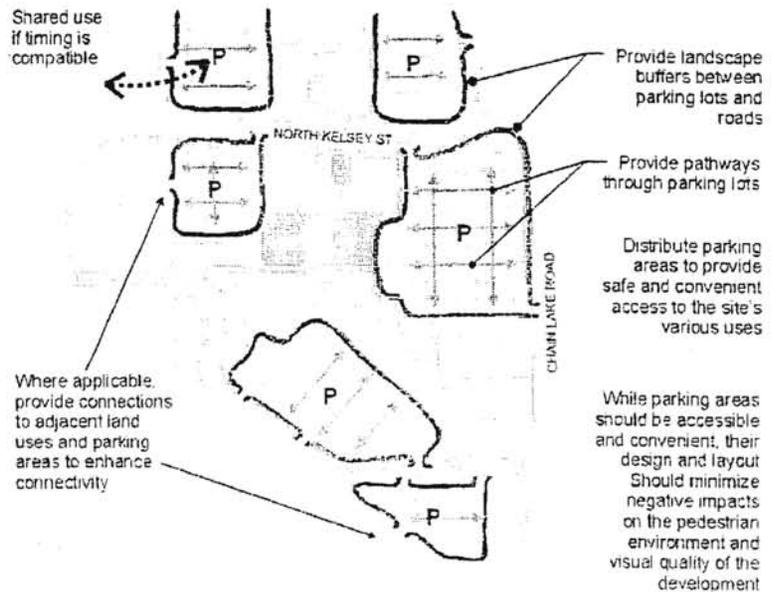


Figure 16: Parking lot layout and design guidelines.

3. The landscaped buffer between the sidewalk and the parking area along Chain Lake Road must be expanded to at least 10 feet in width using either Type II or Type III Landscaping standards (MMC, Section 18.78.030) subject to City approval.

4. Pathways through parking lots should be provided. Pathways and crosswalks should be provided along every fourth parking isle or at intervals of less than 150 feet. Pathways through parking areas should be separated from vehicle parking and travel lanes by use of contrasting surface materials, which may be raised above the level of the vehicular surface. Parking area pathways should be at least 4 feet in width.
5. Structured parking is encouraged provided the building meets the guidelines of Chapter 5.

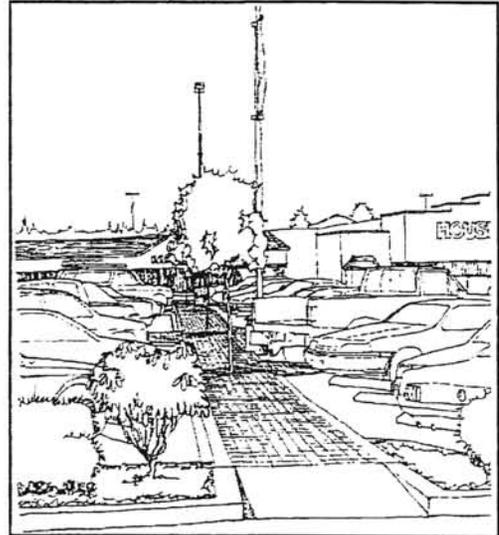


Figure 17: Parking pathway example.

E. Street Corners/Highly Visible Locations

Intent:

- To enhance the appearance of highly visible locations.
- To enhance the pedestrian environment.
- To establish a design identity for the North Kelsey Planning Area.

Guidelines:

The guidelines below highlight desirable design treatments (options noted below) for six specific street corners and/or highly visible locations as noted in the Site Development Concept. All proposals for sites should include at least one of the design treatments described below. **EXCEPTION:** Applicants may propose other design treatments for these sites if they can demonstrate successfully that the proposed treatment meets the intent of the guidelines.

1. Street Corner/Highly Visible Location Design Treatment Methods (also refer to Pedestrian Orientation guidelines, Chapter 3):
 - a. Locate a building towards the street corner (within 15 feet of corner property line). Building facades located here are encouraged to include a special element, such as a raised roofline, towers, or an extended parapet, along the most visible views of the structure.
 - b. Provide a pedestrian walkway and/or plaza space at the corner leading directly to a building entry or shopping plaza space. May be appropriate in conjunction with a Monument Site Entry Sign (see Signage guidelines, Chapter 7).

- c. Install substantial landscaping (at least 200 square feet of ground surface area with trees, shrubs, and or ground cover. May be appropriate in conjunction with a Monument Site Entry Sign (see Signage guidelines, Chapter 7).

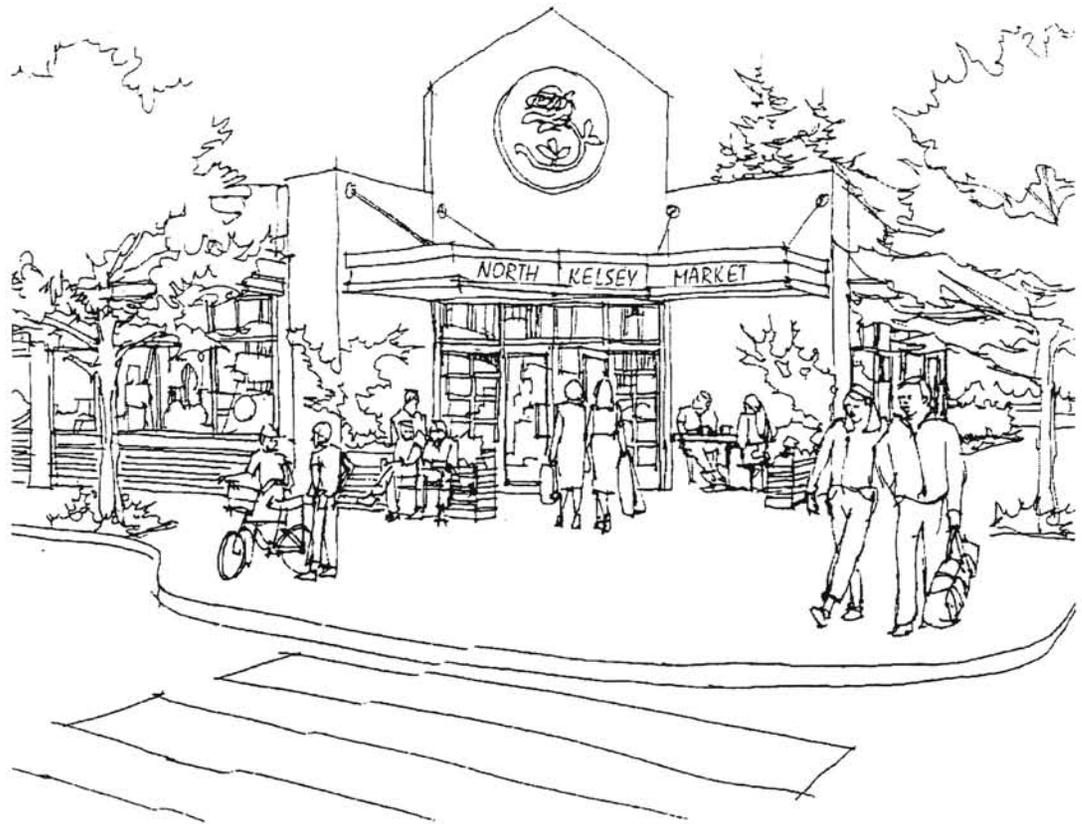


Figure 18: Street corner example: This building celebrates its corner location by including a corner entry, pedestrian space, weather protection, parapet, and special signage.

2. Specific Sites:

- a. SR-2/Chain Lake Road (northwest corner): Method “c” is the first preference. High priority site for a Monument Site Entry Sign (see Signage guidelines, Chapter 7).
- b. Chain Lake Road/connector road (both westerly corners): Method “a” or “b” is preferred for the northwest corner; Method “a” is preferred for the southwest corner, with Method “c” as a second preference.
- c. Chain Lake Road (at mid-block entry between North Kelsey Street and Chain Lake Road): Any of the three street corner treatment methods described below are acceptable. Method “c” is the first preference.

- d. Chain Lake Road/North Kelsey Street (both westerly corners): Method “c” is preferred for both the northwest and southwest corners. High priority site for a Monument Site Entry Sign (see Signage guidelines, Chapter 7).
- e. North Kelsey Street (at key pedestrian crossing): Method “a” is preferred for all four corners.
- f. North Kelsey Street/connector road (easterly corners): Method “a” is the preferred treatment of both corners; Methods “b” and “c” are acceptable.

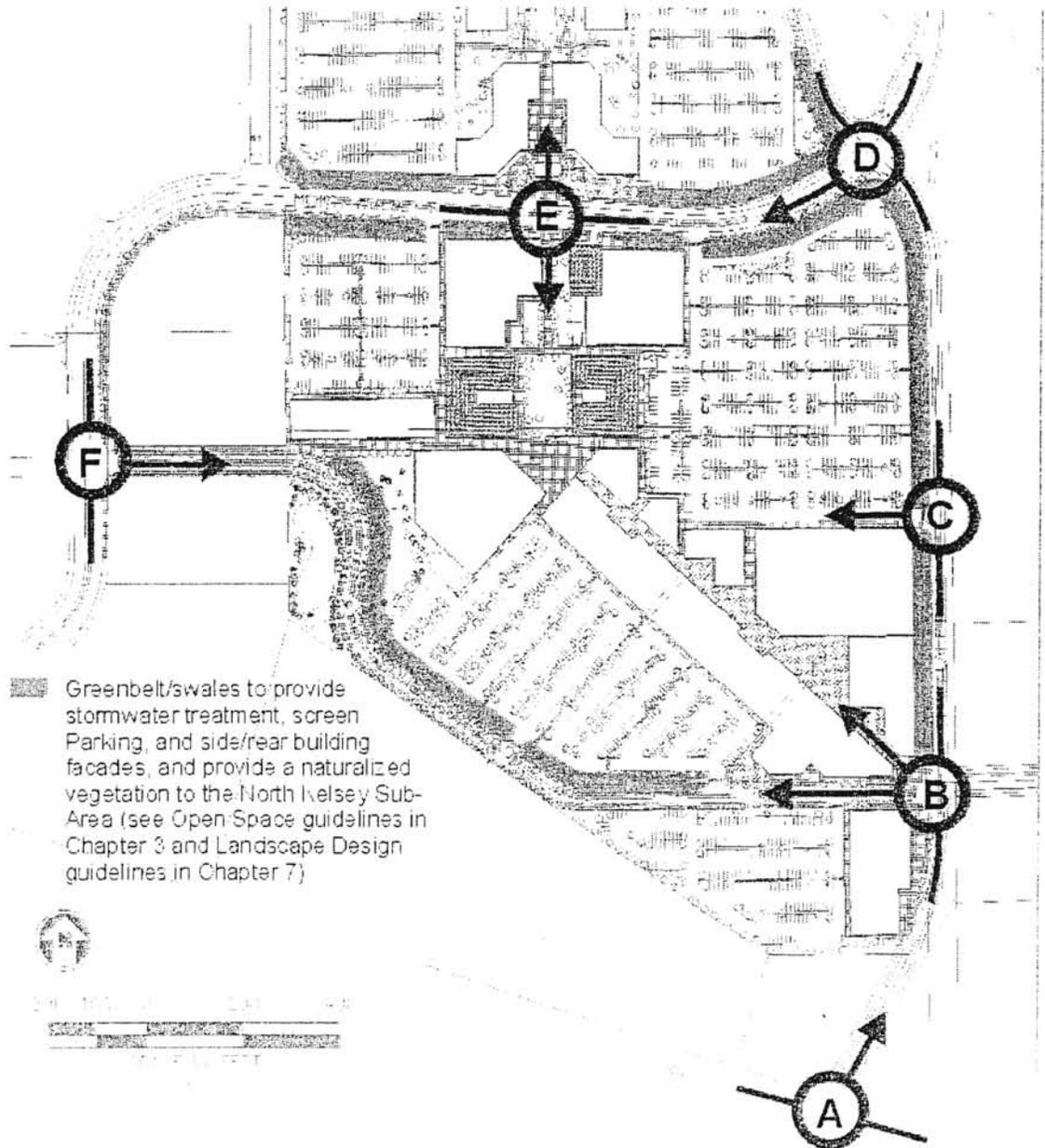


Figure 19: Highly visible locations.

CHAPTER 4:

Circulation

A. East-West Connector Road

Intent:

- To provide safe and efficient circulation to, and through, the North Kelsey planning area.
- To enhance access and visibility to North Kelsey planning area uses and amenities.
- To relieve vehicle congestion on SR-2 south of the North Kelsey planning area.
- To provide bicycle and pedestrian access.
- To provide a “green band” around the North Kelsey planned development area and screen parking.

The City has secured a 60-foot right-of-way adjacent to private property on the west side of the site toward North Kelsey Street. Ultimately, this new roadway will connect North Kelsey Street with Chain Lake Road and points east. The guidelines below direct the design of this planned roadway through the North Kelsey planned development area. The exact alignment and configuration of the road is subject to further traffic and engineering analysis. While these guidelines specify an alignment and configuration along the southern project boundary, project proponents may propose an alternate alignment and configuration. The City may allow an alternate alignment and configuration if they meet these guidelines, do not conflict with pedestrian circulation, and otherwise meet the City’s Transportation and Public Works criteria. Also note that the southern alignment was favored by project participants for several reasons, including:

1. It minimizes conflict with pedestrian circulation.
2. It does not divide the site.
3. It appears to contribute to stormwater management.
4. It provides for effective through traffic and access to parking.

Guidelines:

1. Alignment: The planned east-west connector road should be aligned consistent with the Site Development Concept; Generally towards the southern end of the site and intersecting with Chain Lake Road approximately 600 feet from the SR-2 intersection and compatible with the planned Woods Creek Road connection. (See Figure 20). (Note: This alignment is subject to further analysis.)

2. Configuration: The roadway should include one travel lane in each direction, a landscaped median/center turning lane, landscaped planter strips with street trees, and provisions for both cyclists and pedestrians (see Figure 21 below and Sidewalk and Pathway and Bicycle Circulation and Amenities guidelines on the following pages).

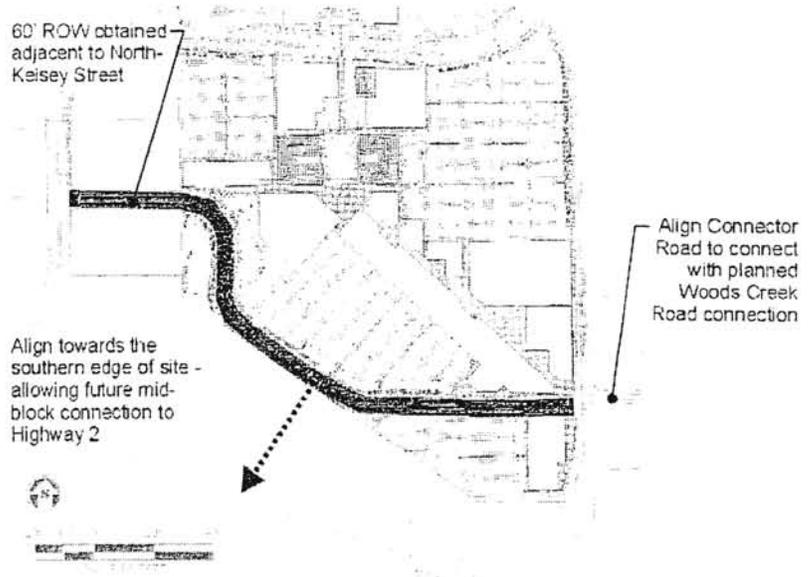


Figure 20: Connector road alignment.

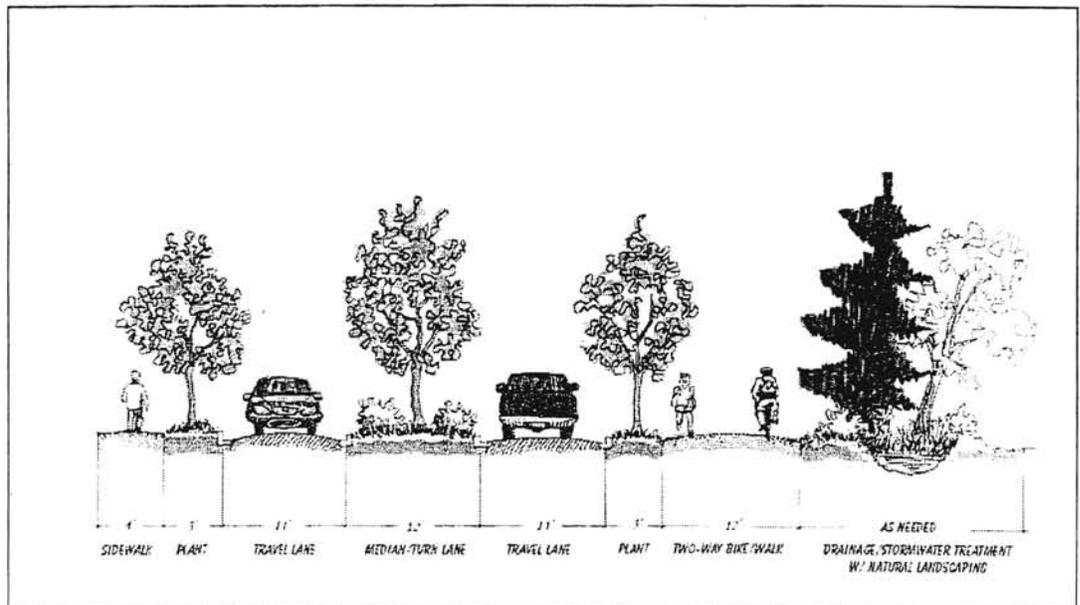


Figure 21: Connector road design cross-section.

3. Travel Lanes/Center Turn Lane: The travel lanes and the center turn lane/median should be designed per the City's Engineering Standards and subject to Bicycle Circulation and Amenities guidelines on the following pages.
4. Landscaped Median: Where the center turn lane is not necessary for turning movements, a landscaped median should be installed. Landscaping should include canopy-type broadleaf trees placed an average of 25 on center; Evergreen

shrubs no more than 4 feet in height; and Ground cover in accordance with the City of Monroe Landscape Standards (MMC Chapter 18.78).

5. Sidewalk/Trail: A 4-foot sidewalk with a 5-foot planting strip should be provided on the south side of the road and a 12-foot wide bicycle/pedestrian pathway with a 5-foot planting strip on the north side.
6. Landscaped Stormwater Detention Swale: These facilities shall meet stormwater requirements and to be landscaped with dense native trees and shrubs.

For other landscaping standards, see Street Landscaping guidelines, Chapter 6.

B. Sidewalks and Pathways

NOTE: Sidewalks refer to concrete pedestrian routes adjacent to public right-of-ways. Pathways refer to all other pedestrian routes.

Intent:

- To provide a safe environment for pedestrians to move throughout the North Kelsey planning area and separation of pedestrian and vehicular traffic.
- To create a varied and rich environment to encourage people to explore the area on foot.

Guidelines:

1. All public open spaces, walkways, and sidewalks shall meet ADA standards.
2. Sidewalks should be separated from the roadway by planting strips with street trees wherever possible. Planting strips should generally be at least 5 feet in width and include evergreen shrubs no more than 4 feet in height and/or ground cover in accordance with the City of Monroe Landscape Standards (MMC Chapter 18.78), and canopy-type broadleaf trees placed an average of 25 feet on center. **EXCEPTIONS:** Where space is limited, planting strips less than 5 feet in width may be permitted by the City; Street trees placed in tree grates may be more desirable than planting strips in key pedestrian areas.
3. Acceptable sidewalk widths may range from 4 to 12 feet depending on adjacent uses and anticipated pedestrian activity. Refer to Figure 21 for appropriate sidewalk widths on the connector road. Sidewalks along major connector routes such as North Kelsey Street or Chain Lake Road should be at least 8 feet in width to accommodate two couples passing each other.
4. Pedestrian crosswalks shall be provided at all intersections. These shall be indicated with distinctive paving.
5. The addition of texture to the ground plane of key sidewalks and pathways with unit pavers, bricks, tiles, or public artwork is encouraged.

6. Pathways that provide key access to the Focal Plaza, Shopping Corridor, Village Green, or other key sites (see Figure 22) are termed “Primary Pathways.” Primary pathway surfaces should be at least 15 feet in width (to accommodate fire apparatus access and groups of people).
7. Other pathways are termed “Secondary Pathways.” Secondary Pathways may vary in width according to intended function and expected use (subject to City approval). Where secondary pathways are located within corridors between structures, such corridors should be at least 12 feet in width.
10. Pedestrian amenities, including landscaping and seasonal flowers, benches, lighting, and/or artwork, shall be provided along Primary and Secondary Pathways to create visual interest (see Plaza Landscaping guidelines in Chapter 6).

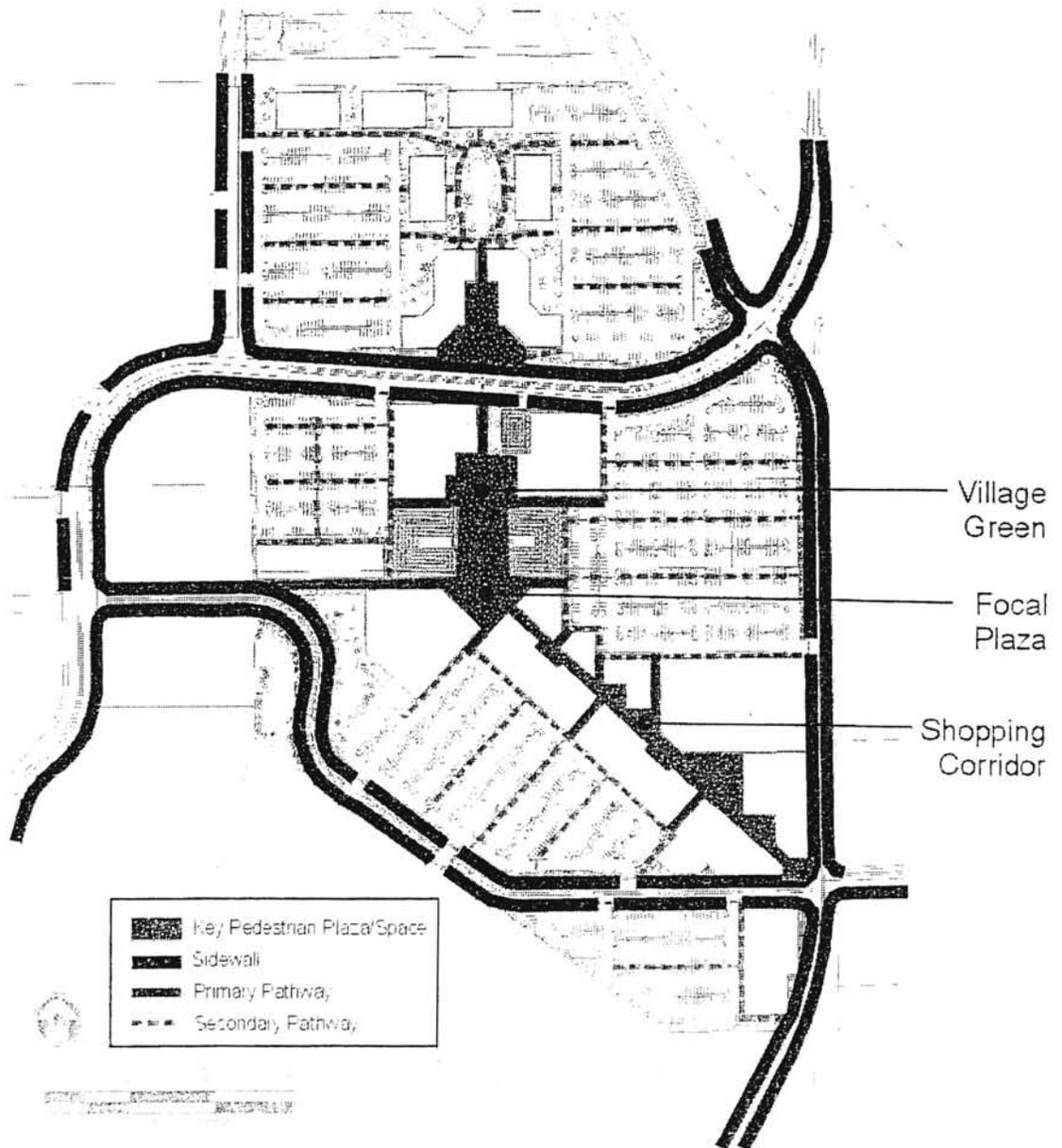


Figure 22: Example pedestrian network for the North Kelsey Planned Development Area.

11. Safe pathways to all uses and buildings and around and through parking areas are required (see Parking Area guidelines, Chapter 3).

C. Bicycle Circulation and Amenities

Intent:

- To provide safe and efficient bicycle access to and within the North Kelsey Planning Area.
- To promote bicycling as an alternative method of transportation.

Guidelines:

1. Safe bicycle access should be provided within each public right-of-way developed within the North Kelsey planning area. The City will consider the following options:
 - a. Bike Lanes. Standard bike lanes are 5 feet in width. This is the preferred option for Chain Lake Road (where there is sufficient right-of-way width) since bicycle lanes would connect with planned bicycle lanes north of the site.
 - b. Wide Curb Lanes. This involves 14-foot travel lanes rather than the standard 11- or 12-foot lanes so cyclists can safely share the road with vehicles. Although such wide curb lanes are often striped, they are not signed or officially designated as bike lanes. With limited space, this is often the most effective way to provide safe bicycle access.
 - c. Multi-Use Pathway. This combines bicycle and pedestrian access on an asphalt pathway separated from the roadway. Ideally, such a multi-purpose pathway should be 12 to 14 feet in width (see Figure 21 for connector road pathway). Where space and use are expected to be limited, an 8-foot wide pathway (with center striping) may be acceptable. Pathway design should ensure adequate site distance.
2. Special care should be exercised on how either of these bicycle facilities transition to existing and planned off-site roadways – particularly Chain Lake Road and North Kelsey Street towards SR-2. Where necessary, provide signage to note safest bicycle access routes.

Yet again, the “should” language made this requirement mandatory and the City Council made no finding that the exceptions had been met for this specific guideline, nor is there any evidence in the record to support such a finding.

6. Architectural/building design

Under the heading of Architectural/Building Design in Chapter 5, the guidelines address the architectural concept, human/pedestrian scale, and architectural elements of development.

a. Architectural concept

The intent of the architectural concept guidelines include:

- *To create an assemblage of buildings within the planned development area with an intimately scaled (i.e., the buildings appear to be smaller in size, generally less than 150 feet in length along a façade, even though the building footprint may be larger) and informal architectural character.*
- *To create a varied, non-homogeneous set of buildings within the planned development area that gives a sense of natural evolution over time rather than a result of a single one-step development – and to emphasize the fact that the building elements can naturally evolve and change over time without disrupting a constricting design theme.*
- *To encourage architecture that evokes a “Northwest” architectural theme based upon its use of natural local materials and northwest architectural heritage.*

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CP 2016; CP 2004. 366

CHAPTER 5:

Architectural/Building Design

A. Architectural Concept

Intent:

- To create, through the architectural, landscape, open space, and gateway elements, an identity unique within the region and that reflects Monroe's small town character.
- To reflect Monroe's vernacular architectural character (excluding the post-War highway strip development).
- To provide a high-quality image with well-designed and detailed buildings, minimization of corporate identity elements (stock buildings and signs), and an emphasis on subtlety and refinement rather than on flashy or trendy design themes.
- To create an assemblage of buildings within the planned development area with an intimately scaled (i.e., the buildings appear to be smaller in size, generally less than 150 feet in length along a façade, even though the building footprint may be larger) and informal architectural character.
- To create a varied, non-homogenous set of buildings within the planned development area that give the sense of natural evolution over time rather than a result of a single, one-step development—and to emphasize the fact that the building elements can naturally evolve and change over time without disrupting a constricting design theme.

Guidelines:

1. The buildings proposed for the North Kelsey planned development area should be based on a comprehensive architectural concept that achieves the intent statements above. Specifically, the design of the specific buildings should address:
 - Pedestrian interest and comfort along the perimeter of open spaces and pedestrian connections.
 - The size of building massing and elements relative a human body.
 - The perceived massing of the building relative to nearby structures, open spaces, and landscape elements.
 - Monroe's architectural and cultural setting.
 - The variety of sequential experiences and design characters within the site.

While the individual design guidelines in this section address some of these issues specifically, the intent of this guideline is to encourage the designers to consider how the various aspects of the design work together. Applicants should be

prepared to demonstrate how the proposed buildings respond to the intent statements. The City will review applicants' proposals and determine whether or not they meet the intent.

B. Human/Pedestrian Scale

Intent:

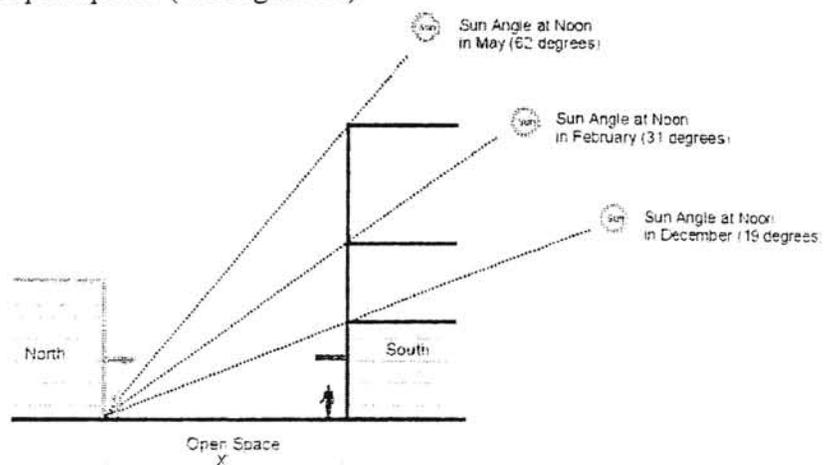
- To create an assemblage of buildings with an intimately scaled appearance and informal architectural character.
- To architecturally treat large buildings to ensure that they do not dominate the area's identity.
- To provide interesting and sheltering pedestrian-oriented facades.

Guidelines

1. **Building Height:** Commercial/office buildings should be 1 to 3 stories high, with a maximum height of 35 feet. The City will consider higher building heights if the applicant can demonstrate consistency with overall design guidelines intent. Special features such as towers or clerestories may be taller, if approved by the City.

Sunlight should be considered within the planned development area with regard to the height of buildings adjacent to open spaces such as the Shopping Corridor, Focal Plaza, and Village Green. Generally, buildings on the south side of these open spaces should be sized to allow direct year-round sunlight on south-facing structures (see Figure 23). Specifically, building heights on the south side of the Shopping Corridor, Focal Plaza, and Village Green should not exceed a 1:1 ratio with the width of such open spaces (see Figure 24).

Figure 23: Sunlight should be considered in the height and design of structures adjacent to major open spaces.



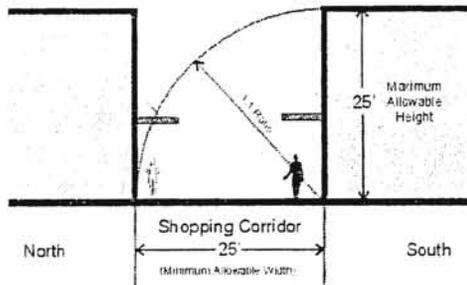


Figure 24: Building heights on the south side of major open spaces, such as the Shopping Corridor, shall not exceed to 1:1 ratio with the width of the open space.

2. Vertical Articulation: In order to prevent long stretches of monotonous façade, buildings with visible facades over 100 feet in length as measured parallel to a roadway, parking area, pedestrian connection, or public open space should be vertically articulated into sections averaging not more than 50 feet along the façade at regular intervals. Articulation may be accomplished in several ways, including:
 - Modulation—the stepping back or projection of a portion of the façade.
 - Including significant building elements such as balconies, porches, canopies, towers, or entry areas that visually break up the façade.
 - Building focal points that include, for example, distinctive entry features.
 - Changing the roofline.
 - Changing materials.
 - Landscaping.
 - Using other methods acceptable to the City.

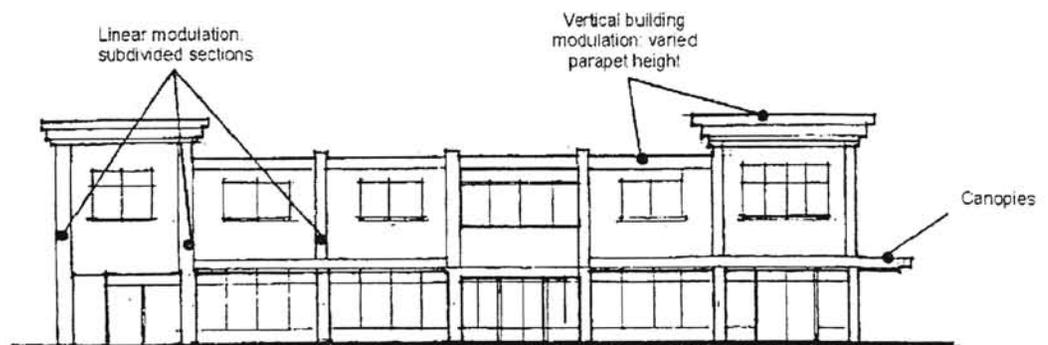


Figure 25: Building articulation: Varied parapet and recessed entries.

C. Architectural Elements

Intent:

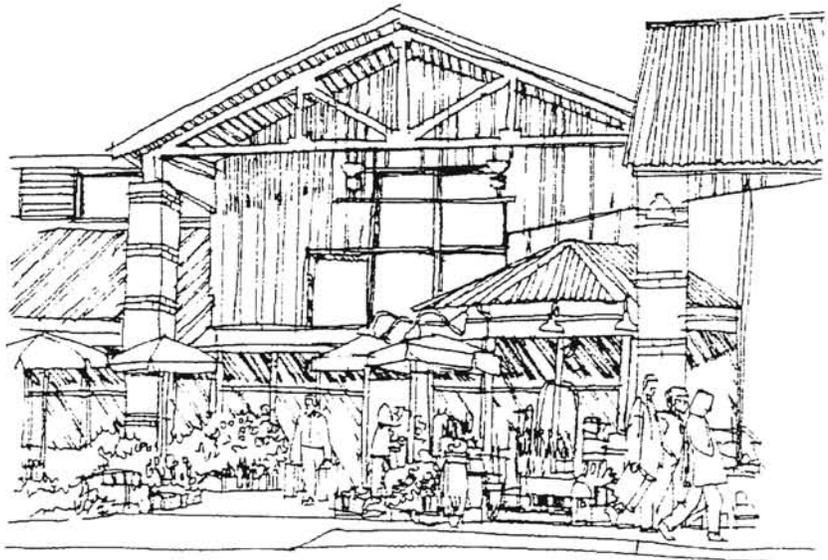
- To create an intimately scaled, pedestrian friendly, and informal architectural character.
- To reflect Monroe's vernacular architectural character (excluding the post-War highway strip development).
- To enhance the quality of both individual buildings and the North Kelsey Planning Area streetscape as a whole.
- To encourage use of quality building materials with a low life cycle cost.
- To create design unity, a sense of place, and community identity.
- To reduce the visibility of unsightly service and utility elements from view while providing efficient service and equipment areas.

1. Roofs

Guidelines:

1. Roof designs should provide scale-reducing elements within the North Kelsey planned development area. It is recommended that buildings have a variety of roof slopes, details, materials, and configurations.
2. All flat roofs shall be architecturally treated or articulated with a parapet wall combined with ornamental molding, entablature, frieze, cornice, or other architectural roofline detail visible from the ground level. Parapets and articulated cornice lines should not appear as applied elements.
3. Roof-mounted mechanical equipment (HVAC) must be screened from view.

Figure 26: The gabled roof over the building entry together with pedestrian-scaled elements and a variety of building materials provides visual interest to this largely square, flat-roofed building.



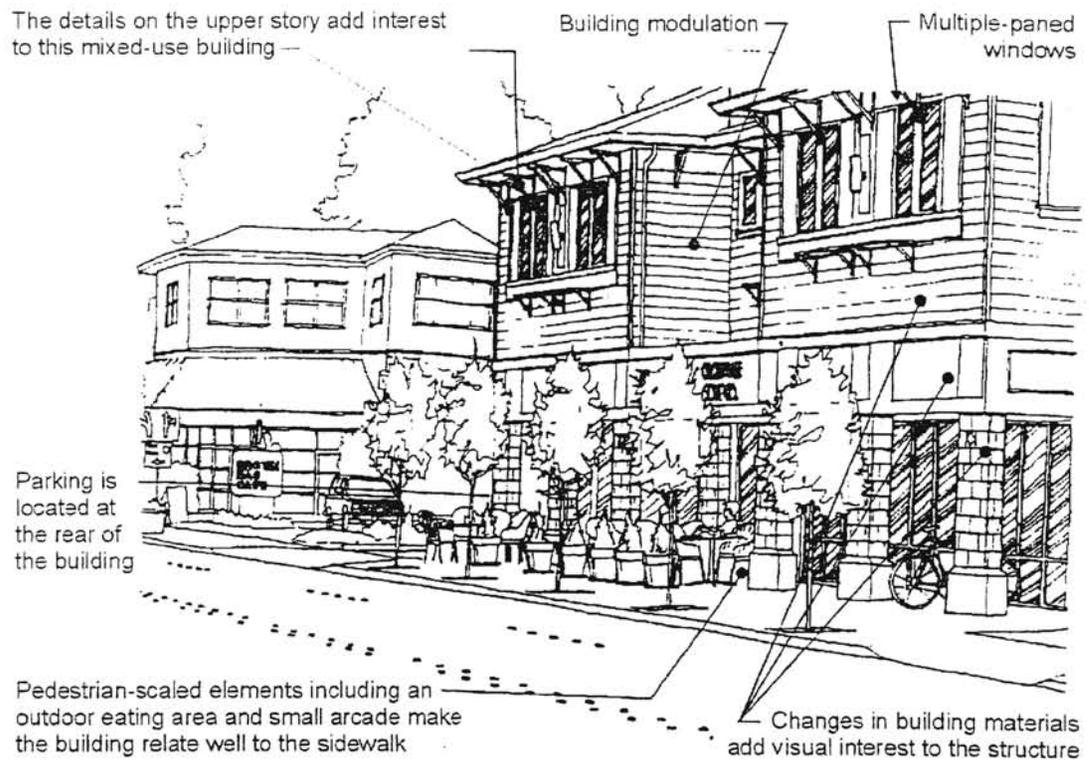


Figure 27: Examples of building details.

2. Building Elements and Details

Guideline:

All building facades shall incorporate a substantive use of building elements, such as those from the list that follows, as approved by the City, to achieve a pedestrian scale. “Substantive” in this case means a significant contribution to the form and character of the building. Note that “decorative” means that the feature exhibits special craftsmanship or distinctive design that adds visual interest and/or unique character. Suggested building elements include:

- Articulated building elements through treatment of windows, doors, entries, and corners with special trim, molding, or glazing.
- Permanent pedestrian weather protection (building canopy).
- Decorative building materials, such as tile and metal work.
- Enhanced or articulated building entrances (recessed or covered).
- Pergolas, arcades, porches, decks, or bay windows.
- Balconies in upper stories.
- Address numbers legible to the public from the street or pathway fronting the property or building.

- Multiple-paned window fenestration (windows with several panes separated by mullions).
- Windows. All windows should either have a vertical orientation (e.g., be longer in the vertical dimension than in the width) or be square in order to qualify as special elements.

3. Exterior Materials

Guidelines:

1. Use durable and high-quality materials. Shiny or highly reflective materials are not allowed. Materials should be those of typical use in the Northwest, including:
 - Bevel or lap siding.
 - Rock, stone, and brick material.
 - Architectural shake-style roofing.
 - Metal roofs with standing seams.
2. If sheet materials, such as composite fiber products or metal siding, are used as a siding material over more than 25 percent of a building's façade, use material with a matted finish in a muted color as specified in Color guidelines below. Include the following elements:
 - Visible window and door trim painted or finished in a complementary color.
 - Corner and edge trim that covers exposed edges of the siding material.
3. If concrete blocks (concrete masonry units or "cinder blocks") are used for walls that are visible from a public street or park, use one or more of the following architectural treatments:
 - Use of textured blocks with surfaces such as split-face or grooved.
 - Use of colored mortar.
 - Use of other masonry types, such as brick, glass block, or tile, in conjunction with concrete blocks.
 - Other treatment methods approved by the City.

The applicant shall provide the City with samples of the material, proposed detail connections and a list of other project examples in the Puget Sound region that have used this application.
4. Do not use the following materials in visible locations unless an exception is granted by the City:
 - Mirrored glass.
 - Corrugated fiberglass.
 - Chain-link fencing (with or without slats).
 - Synthetic materials with reflective surfaces, including galvanized steel and glossy vinyl siding.

- Other treatment methods approved by the City.
5. Paint all vents, gutters, downspouts, flashing, and electrical conduits to match the color of the adjacent surface unless they are being used expressly as a trim or accent element, or if the surface is made of an unpainted material such as brick.
 6. Provide approved address numbers so that they are legible to the public from the street fronting the property.

4. Colors

Guidelines:

1. Submit a color palette.
2. Muted colors are encouraged for the background color of most buildings. A darker background color will allow the effective use of lighter colors for trim – where the highlights will show up better.
3. Bright colors should generally be reserved for accents. Doors or special features may be painted a bright accent color.
4. Bright luminescent or day-glow color are not allowed.

5. Building Equipment and Service Areas

Guidelines:

1. Building service elements and utility equipment should be contained within the building envelope, screened from public view, or on roofs where not visible to the public.
2. All on-site service areas, loading zones, outdoor storage areas (except outdoor retail sales areas under 100 square feet in occupied area), waste storage, disposal facilities, transformer and utility vaults, and similar activities shall be located in an area not visible from a public street, pedestrian connection, or open space. If this is not possible, then the service area, loading zone, storage area, or utility area must be screened from public view. Acceptable screening includes:
 - A masonry or wood enclosure incorporated into a building wall.
 - A solid hedge or other screening as approved by the City.
 (Note: Visible chain link fencing with or without slats is not permitted.)
3. Service or utility areas or enclosures shall not be located in or be visible from public open space, including the Village Green and Focal Plaza.

CHAPTER 6:

Landscape Design

Intent:

- To achieve a high quality landscape that features a variety of plant materials.
- To utilize landscape materials to strengthen and unify the planning area's design identity.
- To select plant materials that are relatively hardy and require minimal maintenance.
- To add color, texture, and interest to the center.
- To screen high-impact uses.

A. Landscape Plan Concept

Intent:

- To provide visual relief from large expanses of parking areas and integrate new construction into the natural environment.
- To provide some physical separation between vehicular and pedestrian traffic.
- To provide decorative landscaping as a focal setting for signs, special site elements, and/or pedestrian areas.
- To provide increased areas of permeable surfaces to allow for infiltration of surface water into groundwater resources, reduce the quantity of stormwater discharge, and improve the quality of stormwater discharge.

Requirements:

1. Submit a landscape design plan and be prepared to demonstrate that the plan addresses the following considerations:
 - A unified pedestrian circulation system with amenities and plantings.
 - A coordinated system of open spaces and/or planted areas that provide the required pedestrian areas. The plan should indicate how the various spaces and plantings relate to the project's site design objectives of continuity, variety, activity, etc. The applicant should demonstrate that the landscaping treatment has a "concept" such as the example in Figure 28.
 - Screening of service or unsightly areas.
 - Plantings and/or site features that enhance the building's architectural qualities.
2. In addition, the design should consider the following landscape design objectives where appropriate:

- Where feasible, coordinate the selection of plant material to provide a succession of blooms, seasonal color, and a variety of textures.
- Provide a transition in landscaping design between adjacent sites, within a site, and from native vegetation areas in order to achieve greater continuity.
- Design landscaping to create definition between public and private spaces.
- Design landscaping to provide a transition between built structures (vertical planes) and the site (horizontal planes).
- Use plantings to highlight significant site features and to define the function of the site, including parking, circulation, entries, and open space.

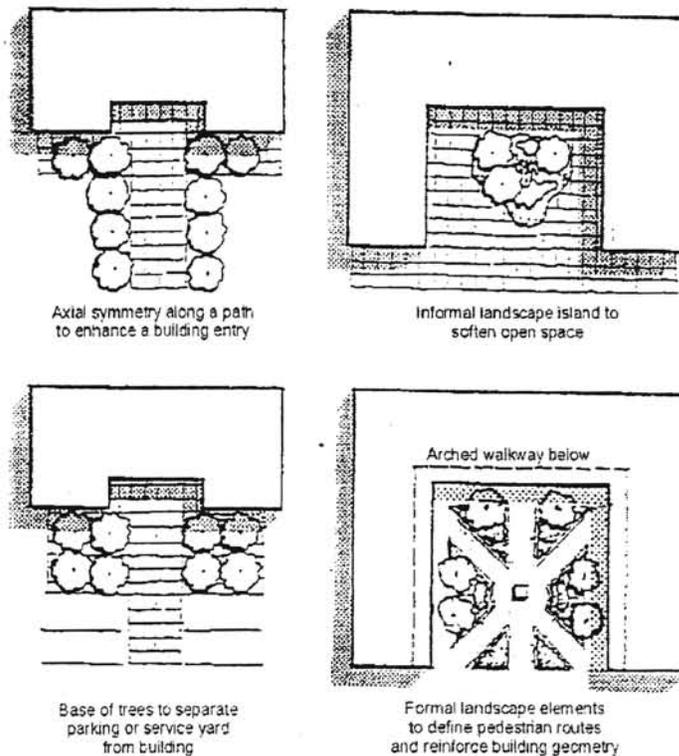


Figure 28:
Examples of
landscape
designs
associated
with buildings.

B. Street Landscaping

Guidelines:

1. Sidewalks and pathways should be separated from the roadway by planting strips with street trees wherever possible.
2. Planting strips should generally be at least 5 feet in width (see Figure 21, Connector Road cross-section). They should include evergreen shrubs no more than 4 feet in height and/or ground cover in accordance with the City of Monroe Landscape Standards (MMC Chapter 18.78), and canopy-type broadleaf trees placed an average of 25 feet on center. EXCEPTIONS: Where space is limited, planting strips less than 5 feet in width may be permitted by the City.

3. Street trees placed in tree grates may be more desirable than planting strips in key pedestrian areas.
4. Use of trees and other plantings with special qualities (e.g., spring flowers and/or good fall color) are strongly encouraged to unify development in the North Kelsey planning area.
5. Also see Building Orientation guidelines in Chapter 3 and Parking Lot Screening below for areas within the planned development area.

C. Parking Lot Screening

Guidelines:

1. Provide a landscaped drainage/stormwater treatment buffer between the sidewalk/street and parking area where possible. Size the buffer as necessary to perform required stormwater treatment function for a minimum of 20 feet is suggested. (See Figure 21.) Otherwise, a 5-foot wide landscaping buffer consistent with Type III landscaping as specified in MMC, Chapter 18.78, to provide a see-through buffer between public streets and parking lots is required; EXCEPTION: The landscape buffer must be 10 feet between parking areas and sidewalks along Chain Lake Road.

D. Parking Lot Interior

Guidelines:

1. Type IV landscaping as specified in MMC, Chapter 18.78, is required to provide shade and visual relief while maintaining clear site lines within parking areas.

E. Plaza/Pedestrian Area Landscaping within the Planned Development Area

These guidelines involve all other pedestrian-oriented spaces and open spaces.

Guidelines:

1. A range of landscape materials—trees, evergreen shrubs, ground covers, and seasonal flowers—shall be provided for color and visual interest.
2. Planters or large pots with small shrubs and seasonal flowers may also be used to separate café seating from traffic flow and create protected areas within the plaza for sitting and people watching.
3. Creative use of plant materials, such as climbing vines or trellises, and use of sculpture groupings or similar treatments are also encouraged.
4. All landscaping shall be as approved by the City.

5. Sun angle at noon and wind pattern should be considered in the landscaping design of the plaza to maximize sunlight areas.

F. Screening High-Impact Uses

Guidelines:

1. High impact uses such as sand and gravel mining operations, manufacturing, or public works facilities should be screened with a landscape berm per Figure 29 below.

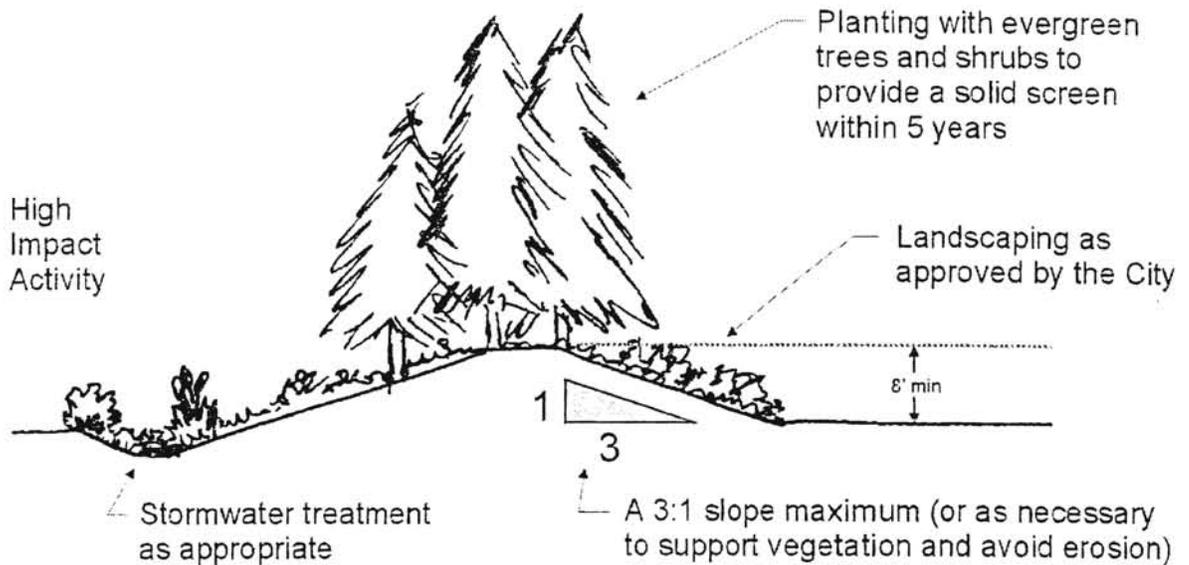


Figure 29: Screening high impact uses.

Supplemental Development Agreement Provisions

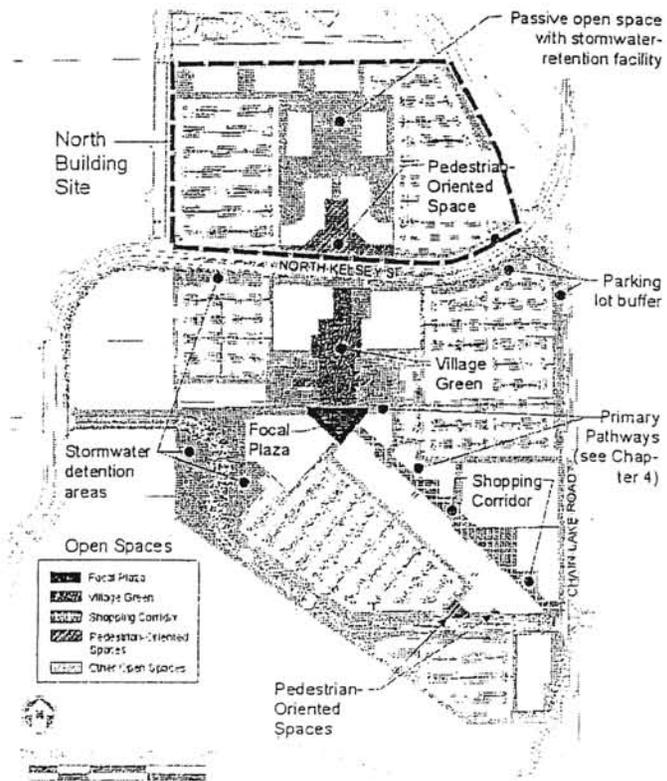
The following is an updated draft of supplemental development agreement provisions that address design goals and issues identified by the City Council at the February 23 and March 16 meetings. Since these provisions are intended to “supplement” the adopted guidelines, we are restating the guidelines that are applicable to the discussion for context. All proposed supplemental provisions are written in *italics*. Consultant notes and rationale comments are listed in CAPS.

A. Public Open Space

Existing Intent:

- To provide a variety of open spaces that attract people to the area;
- To provide a focal open space that functions as a community gathering space;
- To provide a “park-like” character within the Planned Development Area of the North Kelsey Planning Area;
- To provide an attractive pedestrian environment;
- To provide outdoor spaces for relaxing, eating, socializing, and recreating.

Site development example illustrating the required open spaces.



4. Pedestrian-Oriented Spaces

Existing Guidelines:

1. Pedestrian-oriented spaces are encouraged along the pedestrian connections and near key building entries. They can be small to large widening of walking space, landscaped areas, areas for outdoor dining, or small play areas.
2. Pedestrian amenities shall be provided such as seating, plants, drinking fountains, distinctive paving, artwork, and such focal points as sculpture or water feature, should be provided.
3. Lighting fixtures should be approximately 10-15 feet above the surface and may be building mounted. The overall lighting in the plaza should be at least 2 foot-candles, without any "dark spots" that could cause security problems. Ambient light from under canopies or storefronts may be included in the lighting calculations.
4. The spaces must have visual and pedestrian access (including barrier-free access) to abutting structures and public streets or pathways.
5. Walking surfaces should be either approved unit pavers or colored and textured concrete.
6. At least one linear foot of seating area (at least 16 inches deep) or one individual seat per 60 square feet of plaza area or open space should be included (seating can include benches, low walls, stairs, or ledges).
7. Landscaping that does not act as a visual barrier is encouraged (also see Plaza/Pedestrian Area Landscaping guidelines, Chapter 7).
8. Buildings abutting pedestrian-oriented space must have pedestrian-oriented facades.
9. See Chapter 6 for applicable landscaping guidelines.



Pedestrian-oriented space.

5. Supplemental Provisions: Public Atrium

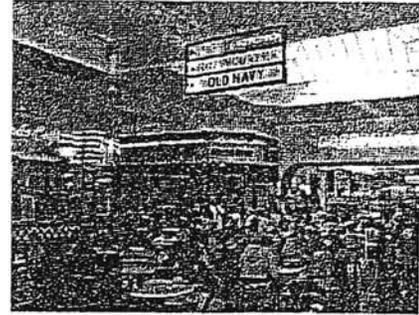
As part of the required open space, there shall be a public atrium or indoor open space subject to the provisions below. The indoor space may be in lieu of required shopping corridor.

Intent

- To provide enclosed, weather protected public spaces that increase and enhance shopping activity while maintaining the continuity of retail activity and visual interest within the focal plaza, shopping corridor, and village green.
- To provide amenities that enhance the user experience.
- To provide a sense of openness and natural light within the space...

Provisions

- S1. Minimum size – 4,000 square feet (for example, 50'x80').
- S2. Minimum horizontal width (without physical obstructions) – 30 feet.
- S3. The entrance(s) of the atrium must be at sidewalk grade. It shall have a minimum clear width of 15' and minimum clear height of 15'. The entrance may be completely open or completely closed with clear transparent doors or glazing.
- S4. Floor level must be no more than 4 feet above or below grade.
- S5. Location of the atrium shall be highly apparent from a public street, Focal Plaza, Shopping Corridor, and/or Village Green and easily accessible and inviting to pedestrians.
- S6. No less than 75 percent of the perimeter shall be occupied by retail uses featuring transparent windows and doors between 2 and 8 feet above the walking surface. All such uses shall have direct access to the atrium.
- S7. Blank walls visible from the atrium are prohibited.
- S8. The atrium must conform to seating standards of Pedestrian-Oriented Spaces above – except that up to 100 percent of the seating can be moveable.



Atrium examples – note skylights, stage, activities, moveable seating, and other amenities.

- S9. *The landscaping and furnishings of the shopping atrium should provide amenities for shoppers and add interest and activity to the space while allowing for flexibility in how the space is used, especially for public gatherings and events. Landscaping shall be provided within the principal space of the shopping atrium. Landscaping features shall occupy a minimum of approximately ten percent to a maximum of approximately twenty percent of the total area of the principal space.*
- S10. *Seating areas, including ledges, benches, low walls, and moveable seating, must be integrated in the design of an atrium provided they don't impede pedestrian traffic flow.*
- S11. *Natural light and visibility: A minimum of 25 percent of the roof area above the principal space shall have skylights.*
- S12. *Where the an atrium is used as an alternative to some or all of the Shopping Corridor, the atrium design will be subject to the respective design standards and guidelines of those spaces.*
- S13. *The atrium must provide spaces and functions other than for restaurant seating. It should be more than just a "food court" in character and function with space available for informal activities and organized events.*

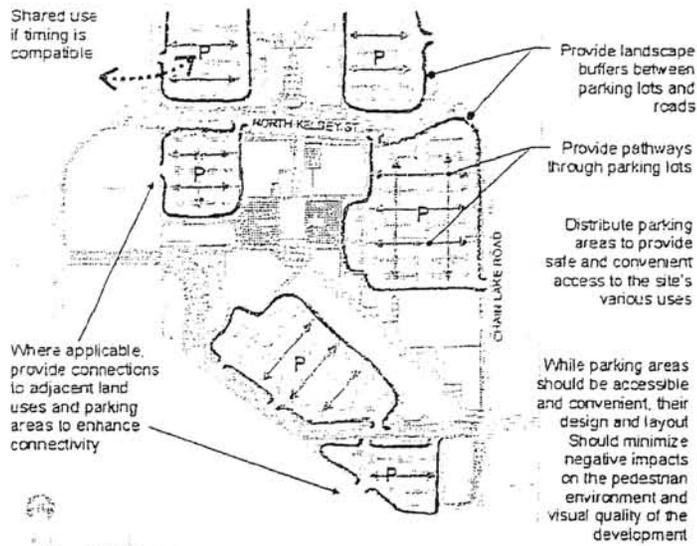
D. Parking Areas

Existing Intent:

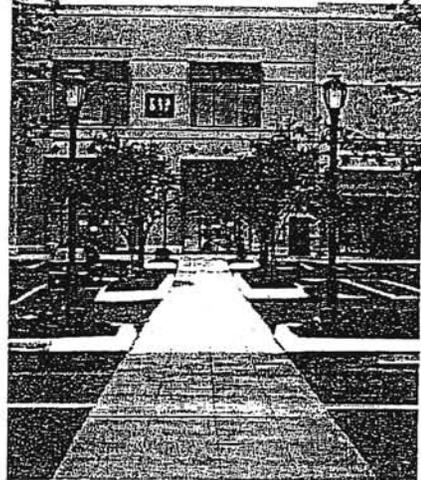
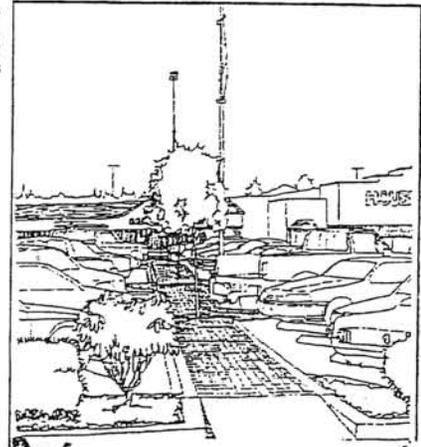
- To provide convenient parking areas that encourage people to leave their cars and walk throughout the North Kelsey Planning Area.
- To provide more flexibility in the design of the development by relaxing existing City parking standards.
- To provide parking areas that do not diminish pedestrian and visual qualities of the site.
- To maintain the built street edge through effective screening of all parking lots.
- To minimize the impacts of driveways.

Existing Guidelines with Suggested Revisions:

1. Parking areas shall conform to the requirement of MMC, Chapter 18.86 unless otherwise noted in these guidelines. This encompasses dimensional requirements, design, access, loading areas, number of parking spaces, parking area landscaping, and other parking-related requirements.
2. Parking requirements for retail uses shall be relaxed to 1 space per 250 square feet of gross floor area. The City may consider special provisions for joint use of parking when two activities are less likely to occur simultaneously (e.g. office uses and entertainment facilities).
3. The landscaped buffer between the sidewalk and the parking area along Chain Lake Road must be expanded to at least 10 feet in width using either Type II or Type III Landscaping standards (MMC, Section 18.78.030) subject to City approval.



Parking lot layout and design guidelines.



Use pedestrian-scaled lighting to define parking lot pathways.

4. Pathways through parking lots should be provided. Pathways and crosswalks should be provided along every fourth parking isle or at intervals of less than 150 feet. Pathways through parking areas should be separated from vehicle parking and travel lanes by use of contrasting surface materials (*brick or unit paving is encouraged*), which may be raised above the level of the vehicular surface. Parking area pathways should be at least 4 feet in width.
5. Structured parking is encouraged provided the building meets the guidelines of Chapter 5.

Supplemental Parking Provisions

- S1. *Pedestrian-scale lighting shall be used to define pedestrian walkways through parking areas. Weather protection features over such walkways are also highly desirable (U-Village example) – particularly when such walkway connects uses within the site.*
- S2. *Parking lot layout, design, and materials should complement the development's buildings and open spaces. This may be accomplished through the use of landscaping, surface materials, lighting, signage, and/or other design elements.*

A. Architectural Concept

Existing Intent:

- To create, through the architectural, landscape, open space, and gateway elements, an identity unique within the region and that reflects Monroe's small town character.
- To reflect Monroe's vernacular architectural character (excluding the post-War highway strip development).
- To provide a high-quality image with well-designed and detailed buildings, minimization of corporate identity elements (stock buildings and signs), and an emphasis on subtlety and refinement rather than on flashy or trendy design themes.
- To create an assemblage of buildings within the planned development area with an intimately scaled (i.e., the buildings appear to be smaller in size, generally less than 150 feet in length along a façade, even though the building footprint may be larger) and informal architectural character.
- To create a varied, non-homogenous set of buildings within the planned development area that give the sense of natural evolution over time rather than a result of a single, one-step development—and to emphasize the fact that the building elements can naturally evolve and change over time without disrupting a constricting design theme.

Supplemental Intent Statement:

- *To encourage architecture that evokes a "Northwest" architectural theme based upon its use of natural local materials and northwest architectural heritage.*

Existing Guidelines:

1. The buildings proposed for the North Kelsey planned development area should be based on a comprehensive architectural concept that achieves the intent statements above. Specifically, the design of the specific buildings should address:
 - Pedestrian interest and comfort along the perimeter of open spaces and pedestrian connections.
 - The size of building massing and elements relative a human body.
 - The perceived massing of the building relative to nearby structures, open spaces, and landscape elements.
 - Monroe's architectural and cultural setting.
 - The variety of sequential experiences and design characters within the site.

While the individual design guidelines in this section address some of these issues specifically, the intent of this guideline is to encourage the designers to consider how the various aspects of the design work together. Applicants should be prepared to demonstrate how the proposed buildings respond to the intent statements. The City will review applicants' proposals and determine whether or not they meet the intent.

Supplemental Provisions:

1. *While a variety of building materials, colors, finishes, and textures are encouraged, all structures should employ exposed timber elements or similar feature approved by the City as a unifying architectural feature of the development. The exposed timber*

elements should be used as a functional element of the structure to the extent possible.

- S2. Flashy or unusual design themes that have no history with Monroe or the Pacific Northwest such as art deco, Southwest or International style, are not acceptable. Log cabins or "eclectic alpine" themes are not acceptable.*
- S3. The concept should address all facades visible by the public (from adjacent properties, public rights-of-way, etc.). Such facades should be treated in a manner that is consistent in form and character with the rest of the building.*

The images below illustrate architecture that utilizes exposed timber elements.



B. Human/Pedestrian Scale

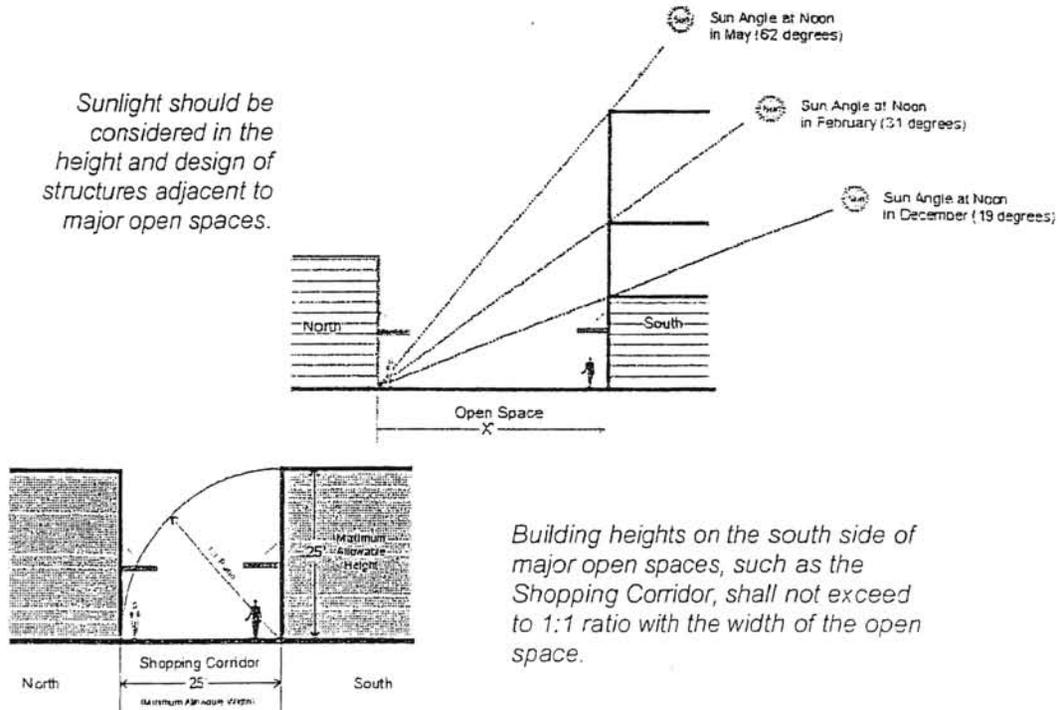
Existing Intent:

- To create an assemblage of buildings with an intimately scaled appearance and informal architectural character.
- To architecturally treat large buildings to ensure that they do not dominate the area's identity.
- To provide interesting and sheltering pedestrian-oriented facades.

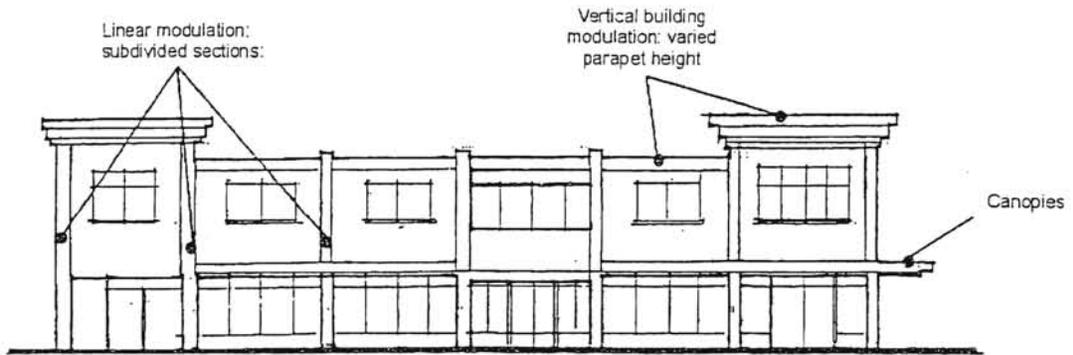
Existing Guidelines

1. Building Height: Commercial/office buildings should be 1 to 3 stories high, with a maximum height of 35 feet. The City will consider higher building heights if the applicant can demonstrate consistency with overall design guidelines intent. Special features such as towers or clerestories may be taller, if approved by the City.

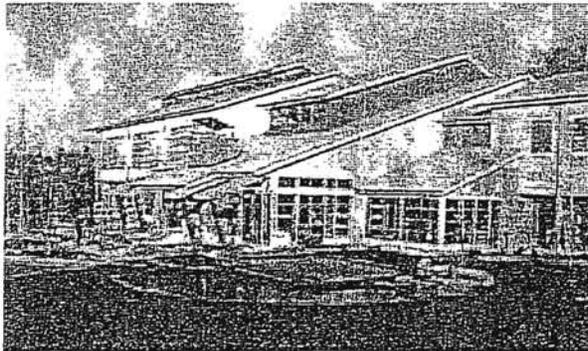
Sunlight should be considered within the planned development area with regard to the height of buildings adjacent to open spaces such as the Shopping Corridor, Focal Plaza, and Village Green. Generally, buildings on the south side of these open spaces should be sized to allow direct year-round sunlight on south-facing structures (see Figure 23). Specifically, building heights on the south side of the Shopping Corridor, Focal Plaza, and Village Green should not exceed a 1:1 ratio with the width of such open spaces (see Figure 24).



2. Vertical Articulation: In order to prevent long stretches of monotonous façade, buildings with visible facades over 100 feet in length as measured parallel to a roadway, parking area, pedestrian connection, or public open space should be vertically articulated into sections averaging not more than 50 feet along the façade at regular intervals. Articulation may be accomplished in several ways, including:
- Modulation—the stepping back or projection of a portion of the façade.
 - Including significant building elements such as balconies, porches, canopies, towers, or entry areas that visually break up the façade.
 - Building focal points that include, for example, distinctive entry features.
 - Changing the roofline.
 - Changing materials.
 - Landscaping.
 - Using other methods acceptable to the City.



Building articulation: Varied parapet and recessed entries.



This building uses horizontal modulation, roofline modulation, repeating window patterns, changing building materials and details, and a change in building color to maintain a human scale.

C. Architectural Elements

Existing Intent:

- To create an intimately scaled, pedestrian friendly, and informal architectural character.
- To reflect Monroe's vernacular architectural character (excluding the post-War highway strip development).
- To enhance the quality of both individual buildings and the North Kelsey Planning Area streetscape as a whole.
- To encourage use of quality building materials with a low life cycle cost.
- To create design unity, a sense of place, and community identity.
- To reduce the visibility of unsightly service and utility elements from view while providing efficient service and equipment areas.

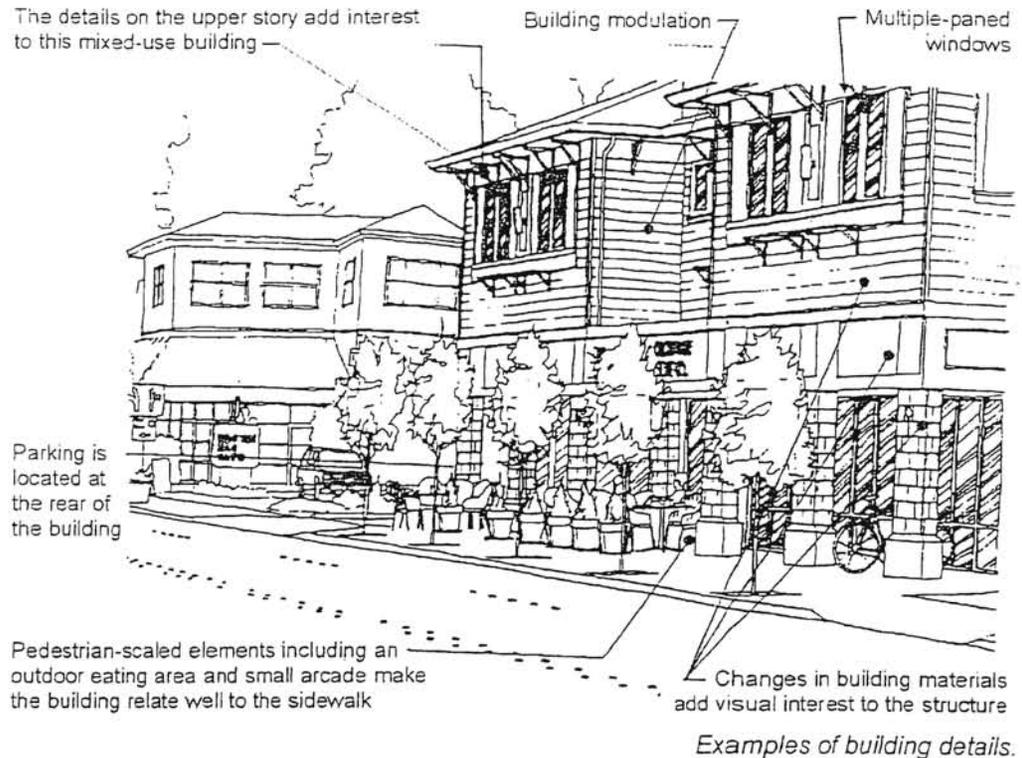
1. Roofs

Existing Guidelines:

1. Roof designs should provide scale-reducing elements within the North Kelsey planned development area. It is recommended that buildings have a variety of roof slopes, details, materials, and configurations.
2. All flat roofs shall be architecturally treated or articulated with a parapet wall combined with ornamental molding, entablature, frieze, cornice, or other architectural roofline detail visible from the ground level. Parapets and articulated cornice lines should not appear as applied elements.
3. Roof-mounted mechanical equipment (HVAC) must be screened from view.

The gabled roof over the building entry together with pedestrian-scaled elements and a variety of building materials provides visual interest to this largely square, flat-roofed building.





2. Building Elements and Details

Existing Guideline:

All building facades shall incorporate a substantive use of building elements, such as those from the list that follows, as approved by the City, to achieve a pedestrian scale. “Substantive” in this case means a significant contribution to the form and character of the building. Note that “decorative” means that the feature exhibits special craftsmanship or distinctive design that adds visual interest and/or unique character. Suggested building elements include:

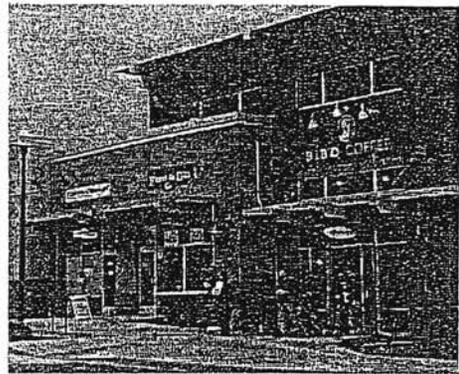
- Articulated building elements through treatment of windows, doors, entries, and corners with special trim, molding, or glazing.
- Permanent pedestrian weather protection (building canopy).
- Decorative building materials, such as tile and metal work.
- Enhanced or articulated building entrances (recessed or covered).
- Pergolas, arcades, porches, decks, or bay windows.
- Balconies in upper stories.
- Address numbers legible to the public from the street or pathway fronting the property or building.
- Multiple-paned window fenestration (windows with several panes separated by mullions).
- Windows. All windows should either have a vertical orientation (e.g., be longer in the vertical dimension than in the width) or be square in order to qualify as special elements.

Supplemental Building Elements and Details Provision

S1. All new buildings and individual businesses on the ground floor shall include at least four of the following elements on their primary facades subject to City approval:

- *Decorative pedestrian-oriented signage. This may include small signs under marquees or awnings, small hanging or projecting signs, and/or window signage scaled to the pedestrian.*
- *Artwork incorporated into the building façade or entry area.*
- *Recessed entry.*
- *Decorative door.*
- *Pergolas, arcades, porches, decks, or bay windows.*
- *Balconies in upper stories.*
- *Multiple-paned window fenestration (windows with several panes separated by mullions). This includes transom windows that allow additional light into the building.*
- *Decorative weather protection feature(s) – including translucent awnings or marquees.*
- *Landscaped trellises or other decorative element that incorporates landscaping near the building entry (element must be integrated into the building and not a simple potted plant).*
- *Decorative light fixtures.*
- *Decorative building materials and/or trim work. This could include decorative stone, tile, or wood-work, decorative kick plates, or other methods that meet the Intent statement above.*
- *Other building elements and details as approved by the City.*

S2. Architecture that is identified predominantly by corporate identity features (e.g.: KFC red roofs, McDonald's yellow roof ribs, Rite Aid's diamond windows, etc.) is prohibited. Besides diluting the town center's identity with corporate (and therefore generic) identities these buildings are undesirable because they are not adaptable to other uses when the corporate franchises leave.



These storefronts include details such as pedestrian-oriented signage, decorative use of masonry, landscaping elements, and decorative weather protection features to add interest to the buildings from the sidewalk.

3. Exterior Materials

Existing Guidelines:

1. Use durable and high-quality materials. Shiny or highly reflective materials are not allowed. Materials should be those of typical use in the Northwest, including:
 - Bevel or lap siding.
 - Rock, stone, and brick material.
 - Architectural shake-style roofing.
 - Metal roofs with standing seams.
2. If sheet materials, such as composite fiber products or metal siding, are used as a siding material over more than 25 percent of a building's façade, use material with a matted finish in a muted color as specified in Color guidelines below. Include the following elements:
 - Visible window and door trim painted or finished in a complementary color.
 - Corner and edge trim that covers exposed edges of the siding material.
3. If concrete blocks (concrete masonry units or "cinder blocks") are used for walls that are visible from a public street or park, use one or more of the following architectural treatments:
 - Use of textured blocks with surfaces such as split-face or grooved.
 - Use of colored mortar.
 - Use of other masonry types, such as brick, glass block, or tile, in conjunction with concrete blocks.
 - Other treatment methods approved by the City.

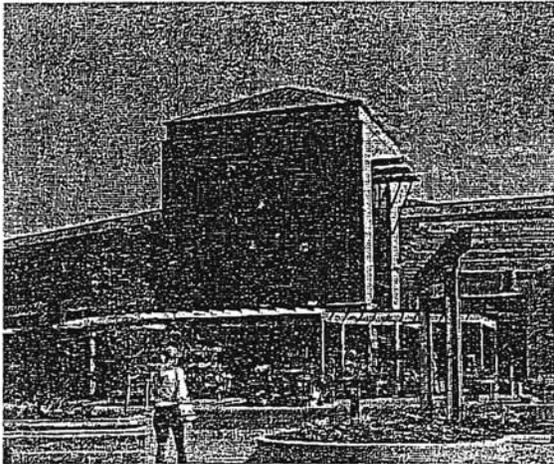
The applicant shall provide the City with samples of the material, proposed detail connections and a list of other project examples in the Puget Sound region that have used this application.

4. Do not use the following materials in visible locations unless an exception is granted by the City:
 - Mirrored glass.
 - Corrugated fiberglass.
 - Chain-link fencing (with or without slats).
 - Synthetic materials with reflective surfaces, including galvanized steel and glossy vinyl siding.
 - Other treatment methods approved by the City.
5. Paint all vents, gutters, downspouts, flashing, and electrical conduits to match the color of the adjacent surface unless they are being used expressly as a trim or accent element, or if the surface is made of an unpainted material such as brick.
6. Provide approved address numbers so that they are legible to the public from the street fronting the property.

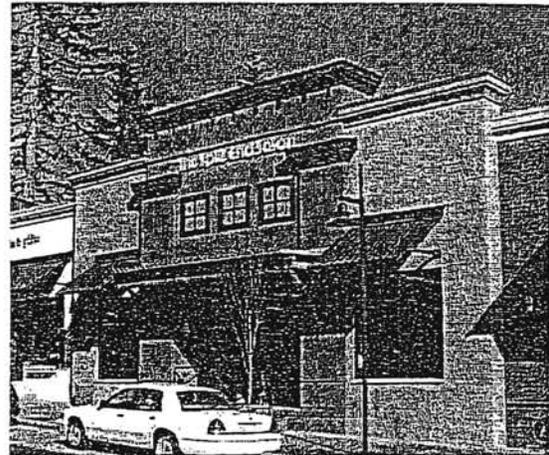
Supplemental Exterior Materials Provisions

- S1. Use of metal siding shall be limited to 25 percent of a structure's primary building façade and 75 percent of other facades visible from a public street, parking area, open space, or walkway.
- S2. Use of stucco or similar surface materials shall be limited to 25 percent of a structure's primary building façade and 50 percent of other facades visible from a public street, parking area, open space, or walkway.
- S3. Use of concrete block shall be limited to 25 percent of a structure's primary building façade and 75 percent of other facades visible from a public street, parking area, open space, or walkway.
- S4. Use of stucco or similar surface materials or wood or metal siding within 3 feet of a walkway surface, pavement, or bare ground is prohibited; stone, masonry, cement, or other durable materials must be used in these vulnerable areas.

The following pictures illustrate desirable ways to use a variety of materials



Wood and stucco with metal trim and large windows

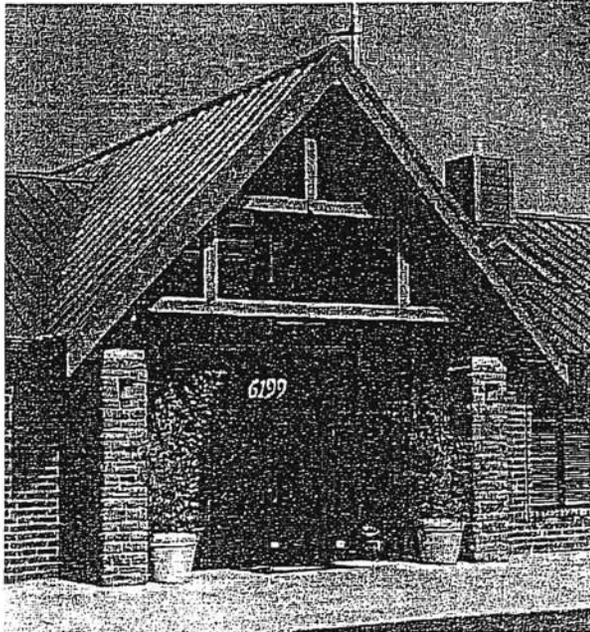
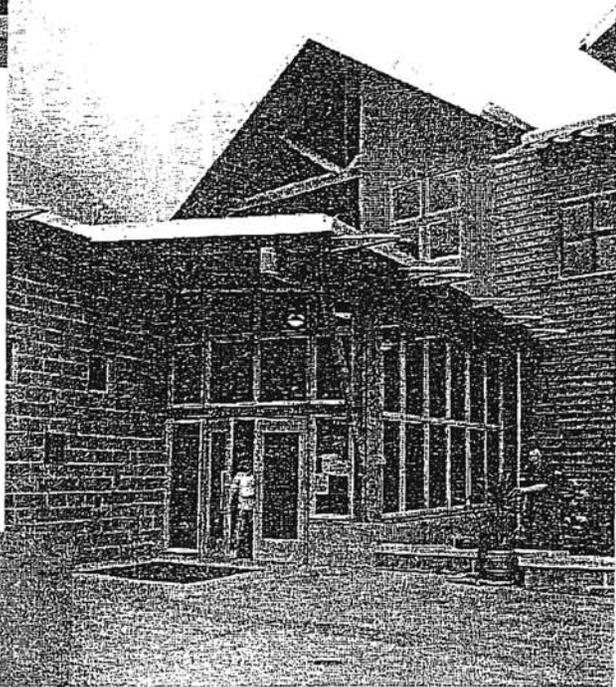


Concrete block and stucco with metal awnings and wood trim and cornice.



Stucco with wood trim and detailing, plus stonework and plenty of windows.

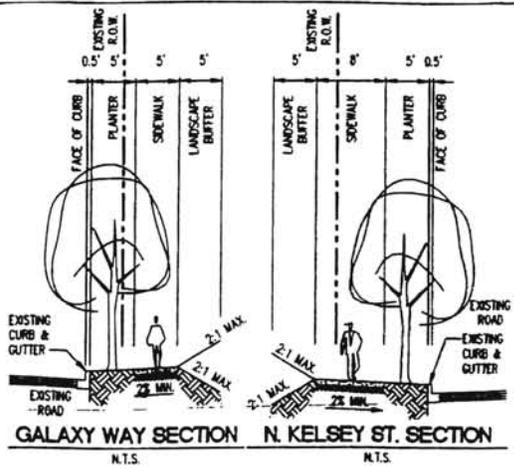
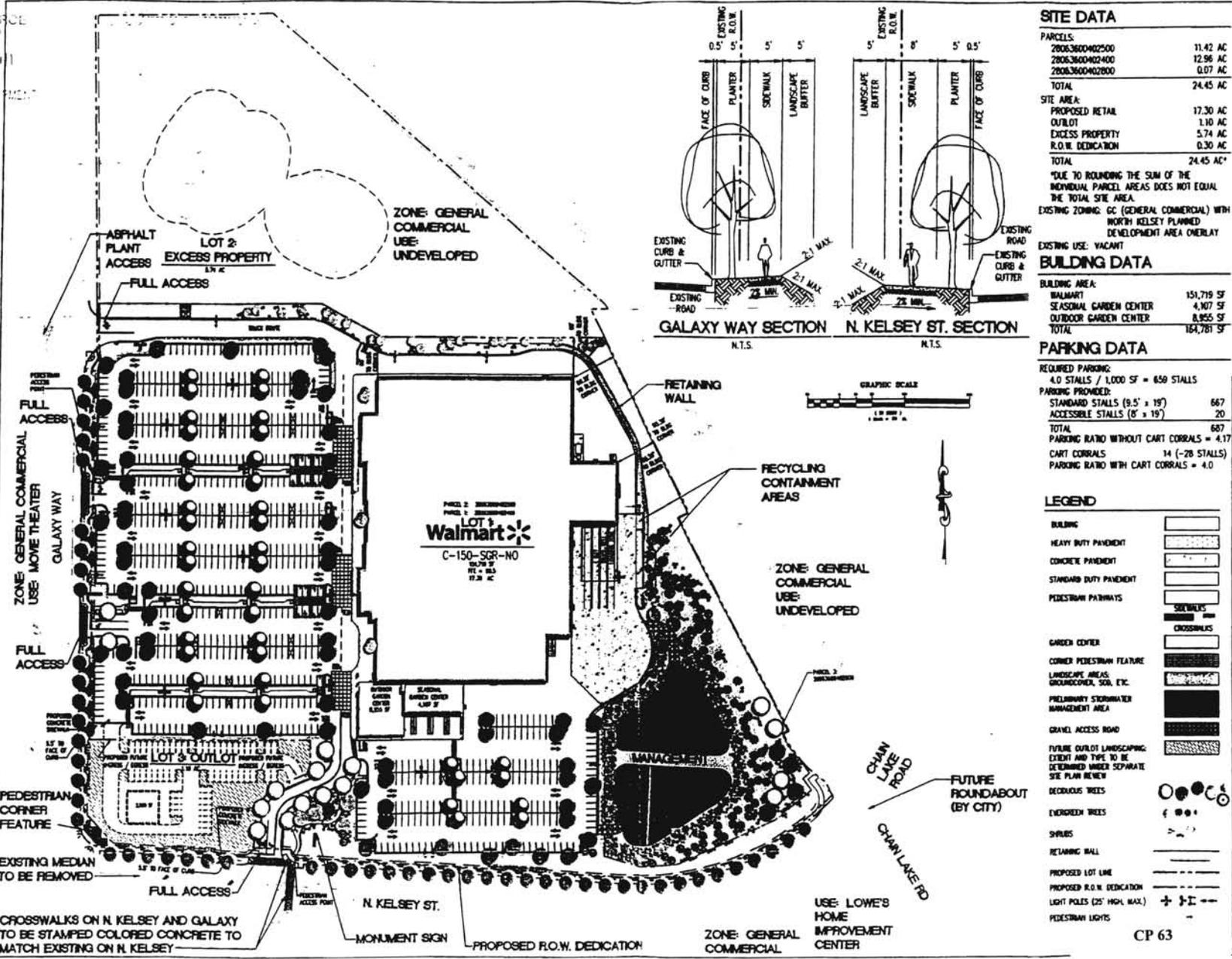
Decorative use of concrete block with stucco, wood siding, metal roof and window trim, and timber posts and beams.



Brick with metal roof and wood detailing.

APPENDIX B

DATE: 03/20/2011
 TIME: 10:00 AM



SITE DATA

PARCELS:	
28063600402500	11.42 AC
28063600402400	12.96 AC
28063600402800	0.07 AC
TOTAL	24.45 AC
SITE AREA:	
PROPOSED RETAIL	17.30 AC
OUTLOT	1.10 AC
EXCESS PROPERTY	5.74 AC
R.O.W. DEDICATION	0.30 AC
TOTAL	24.45 AC*

*DUE TO ROUNDING THE SUM OF THE INDIVIDUAL PARCEL AREAS DOES NOT EQUAL THE TOTAL SITE AREA.

EXISTING ZONING: GC (GENERAL COMMERCIAL) WITH NORTH KELSEY PLANNED DEVELOPMENT AREA OVERLAY
 EXISTING USE: VACANT

BUILDING DATA

BUILDING AREA:	
WALMART	151,719 SF
SEASONAL GARDEN CENTER	4,167 SF
OUTDOOR GARDEN CENTER	8,955 SF
TOTAL	164,781 SF

PARKING DATA

REQUIRED PARKING:
 4.0 STALLS / 1,000 SF = 659 STALLS

PARKING PROVIDED:
 STANDARD STALLS (9.5' x 19') 667
 ACCESSIBLE STALLS (8' x 19') 20
 TOTAL 687
 PARKING RATIO WITHOUT CART CORRALS = 4.17
 CART CORRALS 14 (-28 STALLS)
 PARKING RATIO WITH CART CORRALS = 4.0

LEGEND

BUILDING	[Symbol]
HEAVY DUTY PAVEMENT	[Symbol]
CONCRETE PAVEMENT	[Symbol]
STANDARD DUTY PAVEMENT	[Symbol]
PEDESTRIAN PATHWAYS	[Symbol]
GARDEN CENTER	[Symbol]
CORNER PEDESTRIAN FEATURE	[Symbol]
LANDSCAPE AREAS, GROUNDCOVER, SOIL, ETC.	[Symbol]
PRELIMINARY STORMWATER MANAGEMENT AREA	[Symbol]
GRAVEL ACCESS ROAD	[Symbol]
FUTURE OUTLOT LANDSCAPING: EXTENT AND TYPE TO BE DETERMINED UNDER SEPARATE SITE PLAN REVIEW	[Symbol]
DECIDUOUS TREES	[Symbol]
EVERGREEN TREES	[Symbol]
SHRUBS	[Symbol]
RETAINING WALL	[Symbol]
PROPOSED LOT LINE	[Symbol]
PROPOSED R.O.W. DEDICATION	[Symbol]
LIGHT POLES (25' HIGH, MAX.)	[Symbol]
PEDESTRIAN LIGHTS	[Symbol]

CP 63

Prepared by: [Blank]
 Checked by: [Blank]
 Date: [Blank]

RACLAND
 1000 1st St. N.E.
 Grand Rapids, MI 49503
 Phone: (616) 233-1111
 Fax: (616) 233-1112

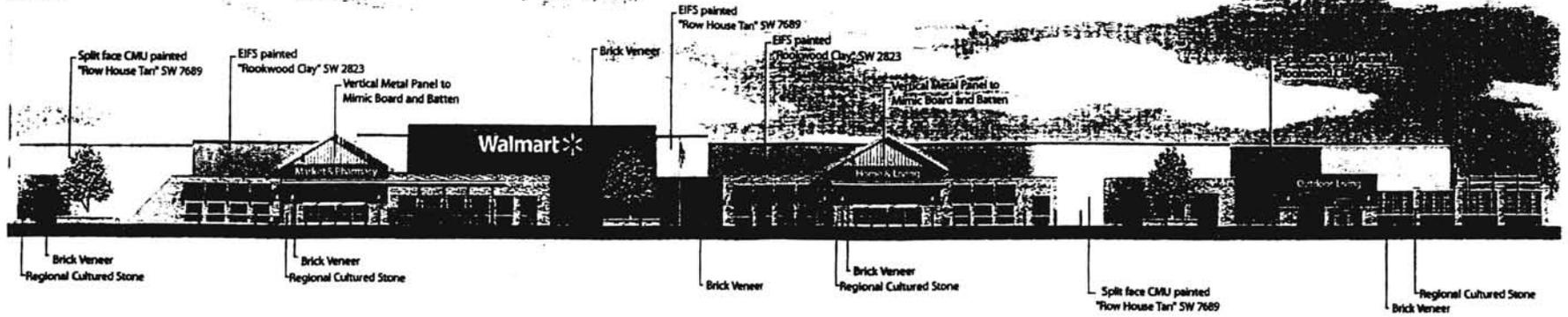
Walmart
 STORE ADDRESS:
 NORTH KELSEY STREET
 MCANOE, WASHINGTON

REVISED PRELIMINARY SITE PLAN

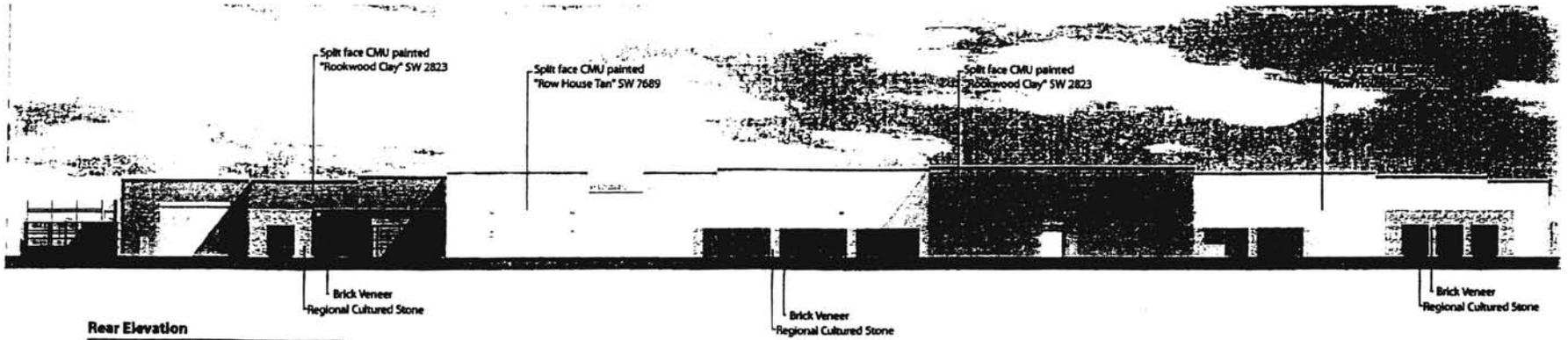
PC-10

March 2011

DEVELOPMENT



Front Elevation



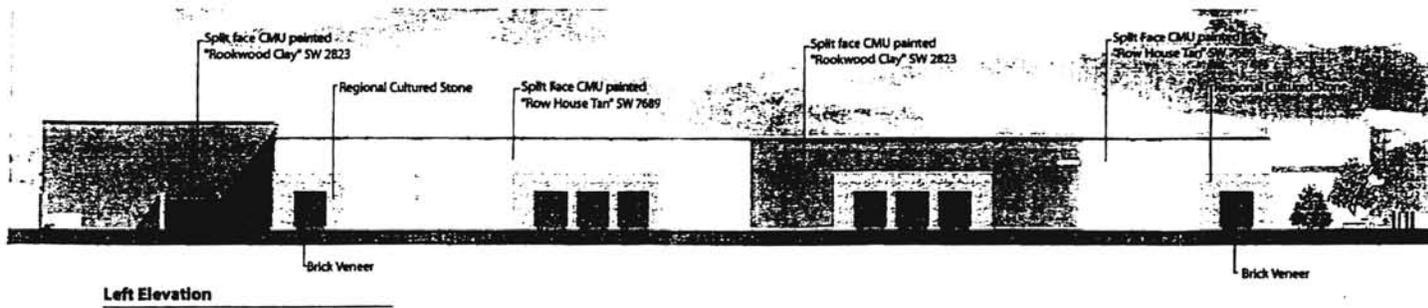
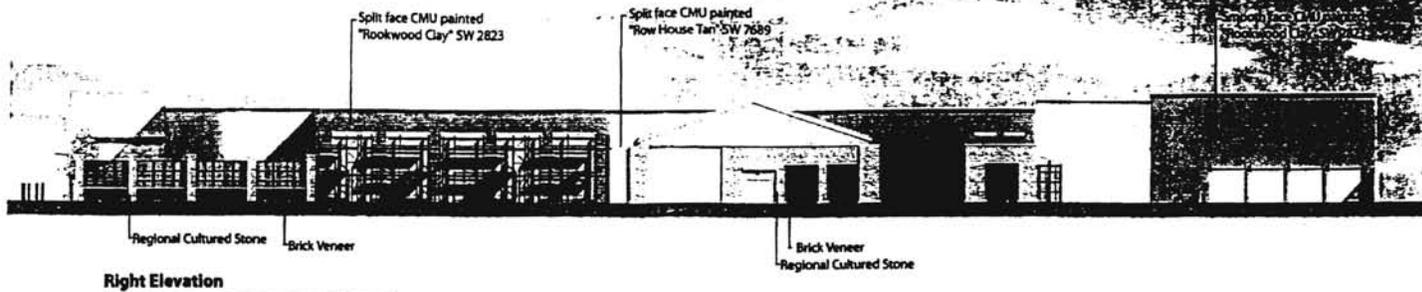
Rear Elevation

	March 25, 2011	5628-00 Monroe, WA	"Option II" Elevations	1
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REPRESENTATION ONLY, NOT FOR CONSTRUCTION: All images shown are a representation of the design intent and may not portray the exact scale, colors, materials, or construction that could occur due to material availability and final architectural modifications.
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CP 64

01888



March 25, 2011

5628-00 Monroe, WA

"Option II" Elevations

2

REPRESENTATION ONLY, NOT FOR CONSTRUCTION: All images shown are a representation of the design intent and may not portray the exact scale, colors, materials, or construction that could occur due to material availability and final architectural modifications.
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CP 65

01889

LEGAL DESCRIPTION

SEE SHEET PC-11

NOTES

- FOR TRAFFIC VOLUMES AND FLOW ESTIMATES SEE THE TRAFFIC REPORT SUBMITTED WITH THE SEPA DOCUMENTS.
- THERE ARE NO EXISTING TREES ON SITE WITH 4" OR LARGER CALIPER
- FOR EXISTING AND PROPOSED CONTOURS SEE THE GRADING PLAN SHEETS PC-2.0 AND PC-2.1
- FOR EXISTING AND PROPOSED EASEMENTS AND EXISTING FIRE HYDRANTS SEE THE COMPOSITE UTILITY PLAN PC-3.0

SETBACK MATRIX

LOT 1	GENERAL COMMERCIAL
ZONING DISTRICT	GC
DISTRICT SYMBOL	GC
MINIMUM LOT AREA	NONE
MAXIMUM LOT COVERAGE	NONE (EXCEPT AS REQUIRED BY THE LANDSCAPE AND PARKING DISTRICT REQUIREMENTS)
MAXIMUM BUILDING HEIGHT	35'
FRONT YARD SETBACK	25' FROM ARTERIAL, 20' FROM ALL OTHER STREETS
SIDE YARD SETBACK	PER IRC & IFC
REAR YARD SETBACK	PER IRC & IFC
OTHER	25' LANDSCAPE SETBACK FROM A SHARED RESIDENCE

SITE COVERAGE

LOT 1	AREA	PERCENT
IMPERVIOUS SURFACE	13.32 AC	76.82%
PERVIOUS SURFACE	3.99 AC	23.07%
TOTAL	17.31 AC	100.00%

- NOTES:
- LANDSCAPE BUFFER AREA (0.11 AC = 0.64%) IS INCLUDED IN PERVIOUS AREA
 - SEE LANDSCAPE PLANS FOR TYPE OF LANDSCAPING
 - LOT 2, LOT 3, AND THE R.O.W. DEDICATION ARE NOT INCLUDED IN THE SITE COVERAGE TABLE UNDER SEPARATE SUBMITTAL.

SITE DATA

ACCRESSION	AREA
PARCEL 1 28063600402400	= 12.96 AC
PARCEL 2 28063600402500	= 11.42 AC
PARCEL 3 28063600402800	= 0.07 AC
TOTAL	= 24.45 AC

USE:

LOT 1 WALMART	= 17.30 AC
LOT 2 EXCESS PROPERTY	= 5.74 AC
LOT 3 OUTLOT	= 1.10 AC
R.O.W. DEDICATION	= 0.30 AC
TOTAL	= 24.45 AC

BUILDING DATA

WALMART	= 151,719 SF
SEASONAL GARDEN CENTER	= 4,107 SF
OUTDOOR GARDEN CENTER	= 8,955 SF
TOTAL	= 164,781 SF

PARKING DATA

PARKING REQUIRED:

4.0 STALLS / 1,000 S.F. = 658 STALLS

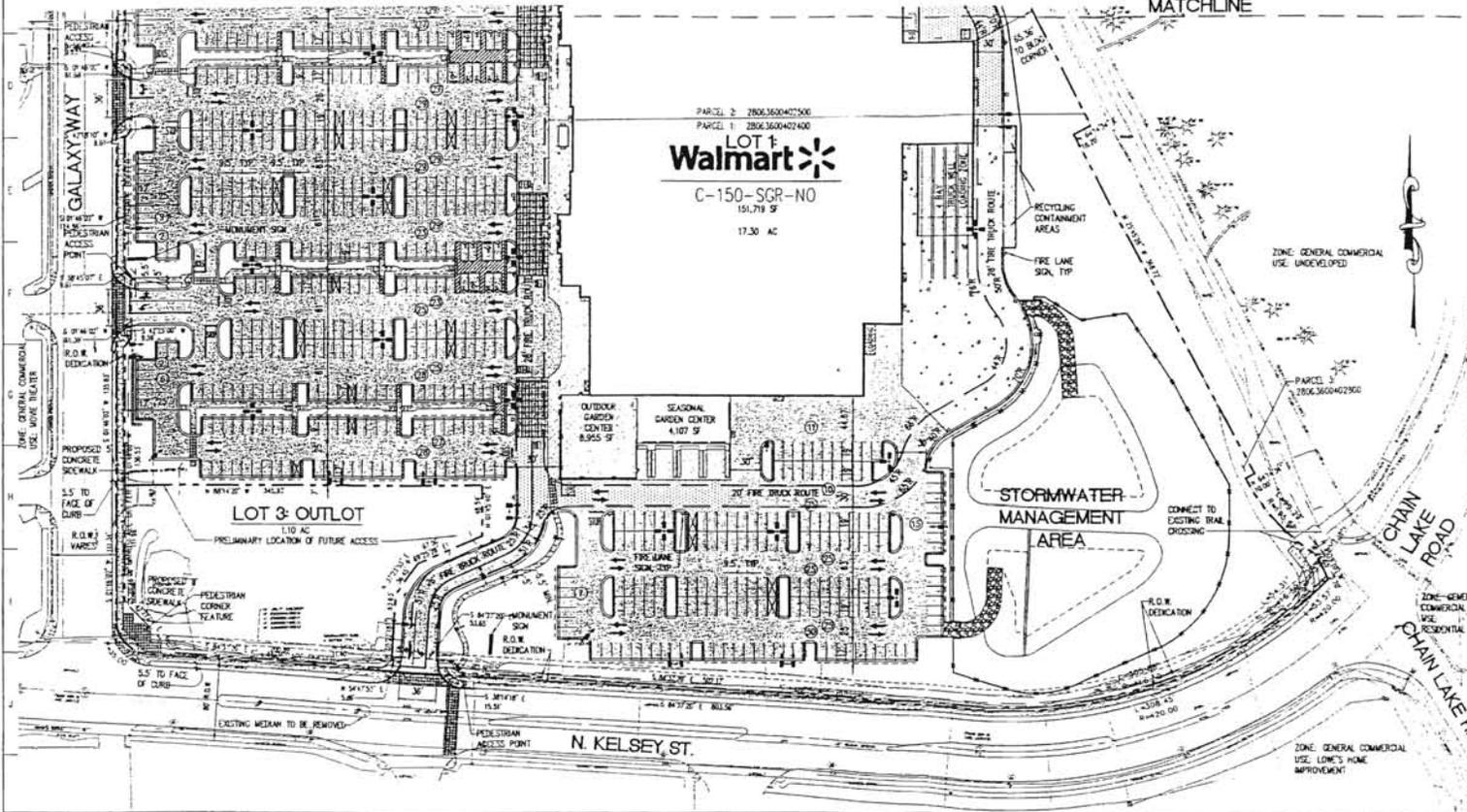
PARKING PROVIDED:

STANDARD STALLS (9.5' x 19')	= 667 STALLS
ACCESSIBLE STALLS	= 26 STALLS
TOTAL STALLS	= 693 STALLS
PARKING RATIO WITHOUT CART CORRALS	= 4.17
CART CORRALS = 14 (-28 STALLS)	
PARKING RATIO WITH CART CORRALS	= 4.0

LEGEND

HEAVY DUTY PAVEMENT	
HEAVY DUTY CONCRETE PAVEMENT	
STANDARD DUTY PAVEMENT	
PAVEMENT PER ARCH PLANS	
CONCRETE SIDEWALK	
CONCRETE CROSSWALKS	
CORNER PEDESTRIAN FEATURE	
GRAVEL ACCESS	
RETAINING WALLS	
PROPERTY LINE	
PROPOSED LOT LINE	
FENCE	
CART CORRAL	
NUMBER OF PARKING STALLS PER ROW	
LIGHT POLES (25' HOOP MAX.)	
PEDESTRIAN LIGHTS	
FIRE TRUCK ROUTE	
GRAPHIC SCALE	

NOT FOR CONSTRUCTION



No.	Date	By	Revision Description

Designed By:	PK	Issue Date:	1-5-2011
Drawn By:	DC	Project No.:	PC10
Checked By:			



PACLAND

1000 Providence Ave., Suite 305
 Seattle, WA 98108
 Tel: (206) 522-8818
 Fax: (206) 522-8244
 www.Pacland.com

WALMART STORE #5628-00
 1919 NORTH KELSEY STREET
 MONROE, WASHINGTON

PRELIMINARY SITE PLAN

PC-10

APPENDIX C

RESOLUTION NO. 2011/009

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONROE, WASHINGTON, APPROVING A DEVELOPMENT AGREEMENT WITH NORTH KELSEY LLC PURSUANT TO RCW 36.70B.170 - .200; AUTHORIZING THE MAYOR TO EXECUTE THE DEVELOPMENT AGREEMENT ON BEHALF OF THE CITY; ENTERING SUPPORTIVE FINDINGS AND CONCLUSIONS; AND PROVIDING DIRECTION TO STAFF.

WHEREAS, the Monroe City Council has considered the approval of a proposed Development Agreement with North Kelsey LLC with respect to the use and development of certain real property located in the North Kelsey Planning Area; and

WHEREAS, following a public hearing and upon careful consideration of all testimony and evidence submitted, the Monroe City Council desires to approve the Development Agreement and authorize the Mayor's execution thereof; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF MONROE, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. Findings and Conclusions. As its findings and conclusions in support of its approval decision herein, the City Council hereby adopts and incorporates by reference the Staff Report & Recommendation prepared for the March 15, 2011 public hearing, the Addendum to Staff Report & Recommendation prepared for the March 29, 2011 continued public hearing, and the March 29, 2011 Staff memorandum regarding "Staff Responses (Exhibit 20)," collectively appended to the Development Agreement as Exhibit D, together with the findings and conclusions set forth in the Development Agreement itself. Anything contained in the above-referenced staff report, addendum and memorandum that could be construed as a finding is expressly adopted as such. Anything contained in the above-referenced staff report, addendum and memorandum that could be construed as a conclusion is expressly adopted as such. The City Council further enters the following findings and conclusions:

A. Findings

1. In accordance with RCW 36.70B.200, the City Council conducted a duly noticed public hearing regarding the Development Agreement on March 15, 2011. The City Council heard presentations by City staff and the applicant and then accepted oral testimony from the public. The public testimony portion of the hearing was closed on March 15. The hearing was continued to March 29, 2011, and the record was kept open for the public to submit written comment until 5:00 p.m. on March 18, 2011. The hearing was reconvened on March 29, 2011. After rebuttal presentations by City staff and the applicant, the

City Council closed the evidentiary portion of the hearing and entered the deliberative phase.

2. During its rebuttal presentation, the applicant submitted a revised conceptual site plan in response to concerns raised by the public regarding the applicant's original conceptual site plan proposal. The revised conceptual site plan provides for additional pedestrian amenities and landscaping features, as well as numerous enhancements to the structural materials, roof configurations, signage, and other aesthetic and architectural components of the proposed building.

3. At the conclusion of the deliberative phase of the public hearing, the City Council voted 6-1 to approve the Development Agreement inclusive of the revised conceptual site plan. The City Council's approval motion was amended to provide for the following additional conditions:

- Incorporation of a pedestrian path from the northwest corner of North Kelsey Street/Chain Lake Road (the southeast corner of the project site) around the storm detention area to the south parking area.
- Utilization of an off-set crosswalk design for the North Kelsey Street crosswalk incorporated into the existing landscaping median, with additional safety amenities such as lighting or flagging, subject to review and approval by City staff.
- Addition of a 12-foot mixed-use (bicycle and pedestrian) path from North Kelsey Street to the Garden Center.
- Installation of a 10-foot landscape buffer at the southwest corner of Lot 3 between the corner feature and any future building on Lot 3, and orientation of the garbage-handling operations associated with the future Lot 3 building away from the corner feature.
- Enhancement of the plaza area between the two main store entrances with the following amenities: three planters, three tables, eight benches, and four hanging baskets.
- Imposition of a permanent covenant prohibiting a fueling station on Lot 3 of the subject property.

4. The proposed Development Agreement, inclusive of the associated Binding Site Plan application (BSP 2011-01) and Grading Permit application (M2011-0004/1), were reviewed and processed as a Planned Action pursuant to WAC 197-11-164 through WAC 197-11-172 and the March 10, 2004 North Kelsey Sub Area Plan Supplemental Environmental Impact Statement (SEIS). The City Council concurs in the determination of the City's SEPA Responsible Official that the proposal qualifies as a planned action and that the significant

environmental impacts of the proposal, as conditioned, have been adequately addressed by the SEIS.

5. The City Council specifically finds that the anticipated traffic impacts of the proposal are within the scope and levels contemplated by the SEIS and comply with applicable local regulatory standards. Substantial evidence in the administrative record supports this determination, including without limitation the expert testimony of and reports submitted by the applicant's traffic engineer. The administrative record contains no expert testimony or persuasive evidence that contravenes this finding.

6. All external impacts of the development proposal authorized by the Development Agreement, including without limitation transportation, storm water, noise, geotechnical, air quality, land use, truck traffic and visual characteristics impacts, will be adequately mitigated by applicable project conditions, development standards and/or permitting processes.

B. Conclusions

1. The proposed Development Agreement, as conditioned and inclusive of the associated Binding Site Plan application (BSP 2011-01) and Grading Permit application (M2011-0004/1), is consistent with the City's development regulations and satisfies all applicable criteria for approval.

2. Without prejudice to the foregoing, the City Council concludes that the applicant's development proposal, including the revised conceptual site plan submitted by the applicant, as conditioned by the Development Agreement, complies with all applicable provisions of the North Kelsey Development Plan, the North Kelsey Design Guidelines, and the Supplemental Development Agreement Provisions previously adopted by the City. The City Council concludes that the original conceptual site plan submitted by the applicant also complies with the above-referenced standards and that the applicant's revised conceptual site plan further enhances and elevates the proposal's compliance with these standards.

3. The City Council specifically notes that the North Kelsey Design Guidelines were intended to be interpreted and applied with flexibility. Where the term "should" is used in the Design Guidelines as a compliance standard with respect to particular guidelines or requirements, the City Council concludes that the applicant's proposal satisfies these guidelines and requirements. The City Council further concludes that even if the applicant's proposal did not satisfy these guidelines and requirements, application of these guidelines and requirements is either inapplicable or inappropriate in this instance or on this portion of the North Kelsey Planning Area and/or that the applicant's proposal meets the intent of the Design Guidelines in some other manner.

4. The City Council concurs in the manner in which the Development Agreement, inclusive of the associated Binding Site Plan and Grading Permit applications, was reviewed and processed by the City. The City Council

concludes that MMC 17.34.030(C) and MMC 21.50.130, construed in harmony with RCW 36.70B.200, authorize the City Council to act as the final decision-maker for the Development Agreement, Binding Site Plan, and Grading Permit under these circumstances.

Section 2. Approval of Development Agreement. Based upon the preceding findings and conclusions, the City Council APPROVES the proposed Development Agreement with North Kelsey LLC, inclusive of the revised conceptual site plan submitted by the applicant and the associated Binding Site Plan application (BSP 2011-01) and Grading Permit application (M2011-0004/1). The Mayor is authorized to sign the Development Agreement on behalf of the City.

Section 3. Notice of Decision. The Community Development Director is hereby authorized and directed to prepare and issue a Notice of Decision for this approval in accordance with applicable state law and local regulations.

Section 4. Appeal; Reconsideration. The City Council's approval decision is appealable to the Snohomish County Superior Court in accordance with MMC 21.060.030 and Chapter 36.70C RCW. The City Council's decision is also subject to reconsideration pursuant to MMC 21.50.080, which provides as follows:

21.50.080 Reconsideration.

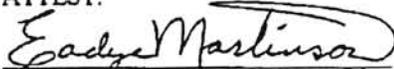
A party to a public hearing or closed record appeal may seek reconsideration only of a recommendation or a decision by the hearing examiner or hearing body by filing a written request for reconsideration with the community development department within ten calendar days following issuance of the written final decision. All motions for reconsideration shall state specific errors of facts or law. Failure to do so will be grounds for nonconsideration. The hearing examiner or hearing body shall consider the request, without any public comment or argument. Reconsideration will be granted only when an obvious legal error has occurred or a material factual issue has been overlooked that would change the previous decision. If a request for reconsideration is accepted, a decision or recommendation is not final until after a decision on the reconsideration request has been issued.

PASSED by the City Council and APPROVED by the Mayor of the City of Monroe, Washington, at a regular meeting held this 12th day of April, 2011.

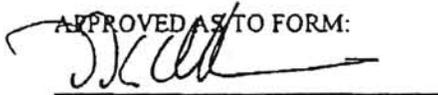
CITY OF MONROE, WASHINGTON


Robert G. Zimmerman, Mayor

ATTEST:


Eadye Martinson, Deputy City Clerk

APPROVED AS TO FORM:


Zach Litt, City Attorney
DwA Ellenhan

APPENDIX D

[EXHIBIT D TO DEVELOPMENT AGREEMENT]

**STAFF REPORT & RECOMMENDATION
BINDING SITE PLAN (BSP 2011-01), GRADING PERMIT (M2011-0004/1),
AND NORTH KELSEY CONCEPTUAL MATERIALS**

[NOTE: Exhibits 1a, 2a, 2b, 3, 4a and 4b are omitted as attachments to this report and can otherwise be found as separate attachments to the Development Agreement]

TO: Mayor Zimmerman, and the Monroe City Council
FROM: Brad Feilberg, P.E., Public Works and Community Development Director
Russell E. Wright, MES, Acting SEPA Official
SUBJECT: Staff Report & Recommendation for Binding Site Plan (BSP 2011-01), Grading Permit (M2011-0004/1), and North Kelsey Conceptual Materials

HEARING DATE: March 15, 2011

A. PROJECT DESCRIPTION:

PACLAND, on behalf of North Kelsey, LLC (an affiliate of the Sabey Corporation) and Walmart, submitted an application (Exhibit 1a) for a Binding Site Plan (BSP2011-01) (Exhibit 2a) with supporting documents (Exhibit 2b) and a Grading Permit (M2011-0004/1) (Exhibit 3) to develop approximately 17 acres in the northern site of the North Kelsey subarea. The city has also received a conceptual site plan (Exhibit 4a) and conceptual building elevations (Exhibit 4b) in support of the binding site plan and a development agreement as negotiated between the city of Monroe and North Kelsey LLC. Staff deemed the application complete as of January 05, 2011 (Exhibit 1b). The binding site plan proposes to revise existing property lines for three commercial lots and identifies the location of future phased building sites, parking areas, and stormwater detention. The binding site plan also provides for the dedication of new public rights-of-way and describes the new lot configuration and proposed easements. Finally, the binding site plan includes a proposed site layout for a Walmart retail store of approximately 151,719 square feet with associated seasonal and outdoor garden centers of approximately 13,000 square feet. The remaining lots include an approximate one-acre site intended for future retail or service uses in the southwestern corner of the site (Lot 3) and an approximate six-acre lot in the northern part (Lot 2). The applicant, North Kelsey, LLC has control of the property for purposes of this development proposal pursuant to the terms to that Purchase agreement between the City of Monroe and North Kelsey, LLC dated December 17, 2011.

The supporting documents include site information, preliminary grading and drainage plans, preliminary utility plans, preliminary landscape plans, and preliminary irrigation plans. The city will review the retail store and final supporting documents under separate permit applications.

The grading permit application materials identify proposed grading improvements and include preliminary utility and infrastructure plans to support the binding site plan.

The project is located in the North Kelsey Planned Development Area and is subject to the North Kelsey Development Plan and North Kelsey Design Guidelines adopted by Ordinance No. 015/2003 and amended under Ordinance No. 024/2007. The city has confirmed that the project conforms to the North Kelsey Development Plan and Design Guidelines. The city has

verified that the project is a Planned Action under the Final Supplemental Environmental Impact Statement (FSEIS) for the North Kelsey Planning Area under Ordinance No. 003/2004.

Subsequent to staff's recommendation, the City Council will act on a consolidated application including a development agreement pursuant to RCW 36.70B.170, the binding site plan, grading permit, supporting documents, and a conceptual site plan and conceptual building elevations. The consolidated application materials will establish the development conditions for the northern site of the North Kelsey Planned Development Area including the proposed Walmart retail store.

B. INFORMATION:

OWNER

City of Monroe
806 West Main Street
Monroe, WA 98272

APPLICANT

PACLAND (on behalf of North Kelsey, LLC)
1505 Westlake Ave. North, Suite 305
Seattle, WA 98109

APPLICATION:

Application January 05, 2011 (Exhibit 1a)
Application Complete January 05, 2011 (Exhibit 1b)

LOCATION:

The property address is 19191 North Kelsey Street; the project area is located directly north of North Kelsey Street and east of Galaxy Way (Exhibit 5).

ZONING ON SITE:

General Commercial

COMPREHENSIVE PLAN DESIGNATION:

General Commercial

ZONING OF SURROUNDING PROPERTIES:

East – (PS) – Public Open Space
West – General Commercial / General Industrial
North – (PS) – Public Open Space
South – General Commercial

USES ON SURROUNDING PROPERTIES:

East – public right-of-way for future US-2 bypass / Chain Lake Road
West – commercial and industrial
North – public right-of-way for future US-2 bypass
South – commercial

AIRPORT COMPATIBILITY:

The site is located inside Zone 6A of the Airport Compatibility Overlay.

NOTICE AND PUBLICATION

- The city caused written notification of the Land Use Application to be distributed to all property owners within 500 feet of the project site on January 25, 2011 (Exhibit 6a).
- The city sent written notification to the Monroe Monitor of the Land Use Application on January 18, 2011 for publication on January 25, 2008 (Exhibit 6b).
- The city posted the Notice of the Land Use Application on-site January 28, 2011 (Exhibit 6c).
- The Monroe Monitor published written notification of the Public Hearing for the Development Agreement on February 22, 2011 and March 8, 2011 (Exhibit 6d & 6e).
- The city mailed written notification of the Planned Action and Public Hearing to all property owners within 500 feet of the project site and interested parties on March 8, 2011 (Exhibit 6f).
- The city posted the Notice of Planned Action and Public Hearing on-site March 8, 2011 (Exhibit 6g).

SEPA COMPLIANCE (Chapter 20.04 MMC):

- The applicant prepared a revised environmental checklist, dated and received February 24, 2011 (Exhibit 7).
- In accordance with WAC 197-11-172, the city has verified that the proposed development is a Planned Action and conforms to the Final Supplemental Environmental Impact Statement (FSEIS) prepared for the North Kelsey area under city of Monroe Ordinance 003/2004 (Exhibit 8). As such, the project will implement any applicable conditions or mitigation measures identified in Ordinance No. 003/2004. The FSEIS for North Kelsey has addressed probable significant impacts related to future development.
- No further SEPA review is required.

ENVIRONMENTAL/SITE CONDITIONS:

The majority of the site is generally flat with an approximate grade of two to three percent. There are steep slopes along the northern and eastern boundaries of the site created by previous mining activities on the site. Soils consist primarily of gravelly sandy loam or pit run. The site is located outside of the 100-year flood zone. The northern portion of the site on Lot 2 includes four potential Category IV wetlands (Exhibit 9). Potential wetlands will be set aside in a Native Growth Protection Easement, subject to MMC 20.05.070 – Protection and Mitigation Measures. No priority habitats or species have been observed on-site.

C. FINDINGS AND CONCLUSIONS¹:

1. Compliance with Chapter 17.34 MMC – Binding Site Plans

- Following MMC 17.34.020, the purpose of a Binding Site Plan is to divide land, for sale or lease, into lots or tracts zoned for commercial or industrial uses and allows for

¹ The city developed the Goals Objectives to the North Kelsey Development throughout the planning process for the subarea. The findings and conclusions include paraphrased regulations, development concepts, and review criteria. Within the plan, some of the elements are discretionary and others are mandatory. Specific elements within the Goals and Objectives may be applicable to the northern site, southern site, or both – the findings and conclusion herein primarily consider discretionary and mandatory elements applicable to the northern site and/or the entire subarea.

concurrent or phased development.

Findings: The proposed binding site plan proposes to reconfigure Parcels 1, 2, and 3 (otherwise known as Parcels B, C, and K of the City of Monroe Record of Survey, recording number 200504075335) into three commercial lots and identifies the location of future phased building sites.

Findings: The proponent submitted an application for a Binding Site Plan (BSP2011-01) and a Grading Permit (M2011-004/1) along with supporting documents. The proponent intends to develop a large retail store on Lot 1. The proponent or successor will likely develop Lots 2 and 3 in future phases.

- Following MMC 17.34.030(A), binding site plans require public notice per MMC 21.50.020 and require a notice of development application and notice of decision as defined in Chapter 21.40 MMC.

Findings: Section B above includes documentation of noticing for the development agreement, binding site plan, grading permit, and planned action.

- Following MMC 17.34.030(B), the Community Development Director will issue written findings that approve, approve with conditions, or deny binding site plans and concurrent development permits when the proposed binding site plan meets all requirements and standards. Under MMC 17.34.030(C), when an applicant seeks a concurrent land use approval for a quasi-judicial or legislative action per MMC 21.50.130, the highest decision-maker will issue written findings that approve, approve with conditions, or deny the preliminary binding site plans and concurrent development permits.

Findings: The Community Development Director will issue written findings in support of the binding site plan, supporting documents, and grading permit. Under a consolidated action, pursuant to MMC 21.50.130, as the highest decision-making body, the Monroe City Council will act on the same, concurrent with its action on a development agreement per RCW 36.70B.170 and a conceptual site plan, and conceptual elevations for the northern site.

- Following MMC 17.34.040(A), binding site plan applications must conform to the submittal, review, and processing standards set forth in Chapter 17.32 MMC (Short Subdivisions).
- *Findings:* As submitted, the form and content of the proposed binding site plan conforms to the applicable standards set forth in Chapter 17.32 MMC (Short Subdivisions), including but not limited to the application requirements, survey requirements, utility information, dedication or right-of-way, lot design, and review and processing criteria.
- Under MMC 17.34.040(B), binding site plans and concurrent building permits or other land use/development permits must comply with applicable municipal code provisions, public works standards, building codes, and performance standards in effect at the time of application, including but not limited to building setbacks, critical areas, easements, landscaping, lighting, lot coverage, parking, stormwater drainage, streets, and utilities. Proposed binding site plans must clearly depict all planned improvements.

Findings: City staff has reviewed the binding site plan for consistency with applicable municipal code provisions, public works standards, building codes, and performance standards and has determined that the Binding Site Plan satisfies all such requirements.

- Under MMC 17.34.040(C), binding site plans are required to undergo environmental review in accordance with Chapter 20.04 MMC – SEPA.

Findings: The applicant submitted an environmental checklist for review as part of the combined application packet (Exhibit 7).

Findings: The city's SEPA official determined that the proposed development of the northern site is a Planned Action and conforms to the Final Supplemental Environmental Impact Statement (FSEIS) prepared for the North Kelsey Planning Area under city of Monroe Ordinance 003/2004 (Exhibit 8). No further SEPA review is required.

- Under MMC 17.34.040(D), aggregate lots within a binding site plan must function internally as a whole and may share common features such as access points, open spaces, parking, stormwater systems, and other proposed improvements.

Findings: Sheet 1 of 5 of the binding site plan (Exhibit 2a) includes Declarations and Dedications that identify the conditions of use, maintenance, and restrictions for the three parcels.

Findings: Sheet 5 of 5 (Exhibit 2a) illustrates common driveways, access points, parking areas, and stormwater area.

Findings: The supporting documents (Exhibit 2b) include site information (coversheet), preliminary site plans (Sheets PC-1.0 and PC-1.1), preliminary grading and drainage plans (Sheets PC-2.0 and PC-2.1), a preliminary utility plan (Sheet PC-3.0), preliminary landscape plans (Sheets PL-1.0 and PL-1.1), and preliminary Irrigation plans and details (Sheets PL-2.0, PL-2.1, and PL-3.0).

- Under MMC 17.34.040(E), binding site plans shall clearly identify the conditions of use, maintenance, and restrictions on redevelopment for all shared features by covenant, easement, or other similar mechanism.

Findings: Sheet 1 of 5 (Exhibit 2a) contains Declarations and Dedications that identify the conditions of use, maintenance, and restrictions on redevelopment for all shared features by covenant, easement, or other similar mechanism.

- Under MMC 17.34.040(F), binding site plans shall include the following note: Subsequent development of the site shall be in conformance with the recorded binding site plan. All provisions, conditions, and requirements of the binding site plan shall be legally enforceable on the purchaser or any other person acquiring a lease or other ownership interest of any lot or tract created and/or developed pursuant to the binding site plan.

Findings: Sheet 1 of 5 (Exhibit 2a) contains this note.

- Under MMC 17.34.040(G), a binding site plan defines the location and size of future buildings, setbacks, parking areas, roads, stormwater detention, and other proposed site improvements. Properties subject to a binding site plan may propose phased development for portions of the project, when the proposed phasing will not adversely affect the public health, safety, or welfare.

Findings: As noted in response to Section MMC 17.34.040(D), the applicant has submitted documents that show the location of site elements and features.

Findings: As noted in the project description and elsewhere, the proponent proposes plans to develop a large retail store on Lot 1. The proponent or successor will develop Lots 2 and 3 in future phases. (Exhibits 2a, 2b, 3, and 4a)

Conclusions: Sections MMC 17.34.020 through .040 establish the preliminary approval criteria for binding site plans. As submitted, the binding site plan, supporting documents, and conceptual site plan are consistent with the underlying approval criteria.

2. Compliance with MMC 15.04.070 International Building Code

- The MMC 15.04.070 adopts the International Building Code (IBC), 2009 Edition including Appendix J (Grading) by reference.

Findings: The proponent submitted a grading permit application under MMC 15.04.070 that included a temporary erosion control plan, grading plan, and a geotechnical report.

Findings: Section 6 of the staff report evaluates the grading permit application for consistency with North Kelsey Final Supplemental Environmental Impact Statement.

Findings: The city's SEPA official determined that the proposed development of the northern site is a Planned Action and conforms to the Final Supplemental Environmental Impact Statement (FSEIS) prepared for the North Kelsey Planning Area under city of Monroe Ordinance 003/2004 (Exhibit 8). No further SEPA review is required.

Conclusions: The proposed grading permit application is consistent with the application requirements found in MMC 15.04.070 (Section J of the 2009 International Building Code) and has addressed impacts related to future development under the Planned Action FSEIS for the North Kelsey Planning Area.

3. Compliance with MMC 21.50.130 Consolidation

- Following MMC 21.50.120, when an applicant seeks a concurrent land use approval for a quasi-judicial or legislative action, the highest decision-maker will issue written findings that approve, approve with conditions, or deny land use applications.

Findings: The proponent seeks a consolidated permit review under MMC 17.34.030(C) and MMC 21.50.120.

Findings: The Community Development Director will issue written findings in support of the binding site plan, supporting documents, and grading permit. Under a consolidated action, pursuant to MMC 21.50.130, as the highest decision-making body, the Monroe City Council will act on the same, concurrent with its action on a development agreement per RCW 36.70B.170 and a conceptual site plan, and conceptual elevations for the northern site.

Conclusions: The requested consolidated permit review process meets the intent of MMC 21.50.130 and 17.34.030(C). RCW 36.70B.200 requires that a development agreement be approved by the City's legislative body. The City Council is therefore the highest decision-making body with authority to grant one of the requested land use approvals. In accordance with the

above-referenced code provisions and RCW 36.70B.170-.210, the Community Development Director interprets and harmonizes these provisions in a manner that provides for final City Council approval of the proposed development agreement concurrently with the associated binding site plan and grading permit following a public hearing. The Director acknowledges that the normal review process for the binding site plan and grading permit would not ordinarily involve a pre-decisional public hearing, and that the consolidated review approach potentially allows a greater opportunity for public participation and comment than would otherwise occur. However, the applicant has expressly requested consolidation in this manner and has not objected on this basis.

4. Compliance with the North Kelsey Development Plan

- Preliminary Comments: The Community Development Director notes that the North Kelsey Development Plan contains both mandatory and discretionary elements. Even where particular standards are mandatory, the North Kelsey Development Plan provides that some required elements apply only to specific areas within the larger North Kelsey Planning Area. The development plan also provides flexibility and allows alternative locations within the larger planning area for other plan elements. The Director acknowledges that the design guidelines contained within the North Kelsey Development Plan are intended to be applied flexibly rather than rigidly. The following analysis of the proposed development agreement's compliance with the North Kelsey Development Plan reflects these principles.

- Chapter 1 of the North Kelsey Development Plan contains the following broad Goals and Objectives:

Goal 1. Increase the city's economic vitality.

Objectives: Allow for a variety of commercial use, including "big-box" retail stores, as long as they are sited and designed to meet other plan objectives; encourage uses for the north site that support the City's tax base.

Findings: The proposed binding site plan includes a site layout for a large retail store. The proposed retail store is located toward the eastern edge of Lot 1 adjacent to the toe-of-slope. The proposal also includes two "out lots" for future development. The proposed retail store includes parking and traffic circulation areas, pedestrian connections, stormwater detention, and landscaping. The proposed retail store will generate sales tax revenue in the future. (Exhibits 2a, 2b, 3, and 4a)

Goal 2. Create a community gathering spot.

Objectives: Create a plaza open space to accommodate at least 1,000 people for special community events..

Findings: The Development Plan indicates that the "Village Green" and "Focus Plaza" areas will be located on the southern site of North Kelsey. As part of the binding site plan, the project proponent intends to dedicate a corner pedestrian feature to the city of Monroe for public use. (Exhibits 2a, 2b, 3, and 4a)

Goal 3. Provide uses and services that meet the needs of Monroe's diverse population.

Objectives: Encourage a variety of commercial uses, which serve both local and regional needs...

Findings: The proposed retail store depicted in the binding site plan will provide a variety of goods and services available to local residents and those in surrounding communities. Chapter 2, Section B concludes, "The Primary Retail Market consists of an estimated 25,000 people for whom Monroe is likely the most convenient place to shop for most goods and services..." The proposed development is likely to draw consumers to Monroe.

Goal 4. Create a strong development identity.

Objectives: Encourage site and architectural design that is unique and appropriate for Monroe; encourage architectural design that combines traditional and modern elements; emphasize landscaping and greenery throughout the development to create a park-like setting; encourage architectural design that is understated and subtle ...

Findings: The conceptual elevations (Exhibit 4b) emphasize façade modulation, variation in materials, and variation in color, among other desirable architectural design elements. The supporting documents to the binding site plan (Exhibit 2b) and conceptual site plan (Exhibit 4a) include detailed landscape drawings that show landscaping along the site's perimeter, throughout the parking area, and around the stormwater detention area.

Goal 5. Encourage pedestrian-friendly development.

Objectives: Provide safe, efficient, and attractive pedestrian connections between uses throughout the development area and to uses surrounding the site... Hide and screen parking areas; incorporate safe bicycle access to and throughout [the] site; encourage large-scale retail uses to provide multiple entries and minimize blank walls; provide pedestrian-oriented plazas and open spaces throughout the development.

Findings: The binding site plan includes pedestrian connections throughout the site as well as connections to the southern site. Stamped and colored concrete, common to the greater development, define entryways and connections to the site. Perimeter landscaping screens the parking areas along Galaxy Way and North Kelsey Street. The site will include paths, sidewalks, and bike racks to accommodate pedestrian and bicycle access. The conceptual elevations include two pedestrian entries into the development. (Exhibits 2a, 2b, 3, and 4a)

Findings: As noted in the findings to Goal 4, the proponent has included a variety of design elements including multiple features along the front and right elevation facades. The binding site plan and supporting documents include informal open spaces between North Kelsey Street and Lot 1 of the proposed development; a plaza area adjacent to the main entrance that will include specialty paving, public seating, and landscaping; and a corner pedestrian feature at Galaxy Way and North Kelsey Street for public use. (Exhibits 2a, 2b, 3, and 4a)

Goal 6. Create a place that complements the Downtown Commercial corridor.

Objectives: Enhance connections between the site and downtown; provide uses and activities that are not and/or cannot be accommodated downtown; encourage site design and development character that contrasts rather than copies downtown.

Findings: The proposed use is for a large-scale retail store that is complementary to smaller downtown retail establishments.

Conclusions: *The proposed binding site plan, supporting documents, and conceptual site plan meet the Goals and Objectives of the North Kelsey Development Plan.*

- Chapter 2 of the North Kelsey Development Plan is a Market Analysis Summary.

Findings: Section B of the Market Analysis Summary predicts that Monroe will be the Primary Retail Market for 25,000 people including the city and adjacent unincorporated areas for convenience shopping and services. It also predicts that Monroe will be the Secondary Retail Market for an even larger geographic area and population.

Findings: Section D concludes based on an analysis of projected population growth, geographic location, income growth, and retail needs, that the city will require an additional 940,000 square feet of retail space by 2020.

Conclusions: *The proposed binding site plan, supporting documents, and conceptual site plan are consistent with the projected population growth, income growth, and retail needs for the city and surrounding area.*

- Chapter 3 of the North Kelsey Development Plan contains the following Development Concepts:

Concept 1 – Focus development around internally connected open spaces.

Findings: The binding site plan, supporting documents, and conceptual site plan include significant landscaping around the site's perimeter and adjacent to North Kelsey Street, a plaza area adjacent to the main entrance to the retail store, and a corner pedestrian feature. Pathways connect the internal features and public sidewalks on North Kelsey Street and the Galaxy Way corner feature to the future development. (Exhibits 2a, 2b, and 4a)

Concept 2 – Unite the development with a series of pedestrian connections to the north, west, Chain Lake Road and Main Street.

Findings: The binding site plan, supporting documents, and conceptual site plan show pedestrian connections between the proposed development along Galaxy Way to the west, North Kelsey Street to the south, and along the public sidewalk to the east up to Chain Lake Road. The main entrance to the northern site aligns with the southern site to support automobile and pedestrian access. Internally, the northern site shows pedestrian paths and walkways to and from the retail store. (Exhibits 2a, 2b, and 4a)

Concept 3 – Provide multimodal access around the site by constructing an east/west connector. Provide convenient and safe parking access along perimeter streets. Construct sidewalks and bicycle paths along the site's perimeter and install heavy landscaping.

Findings: Tjerne Place was constructed with the Lowe's development and US2 / Chain Lake Road intersection improvements. The binding site plan, supporting documents, and conceptual site plan include public sidewalks with landscaping along Galaxy Way and North Kelsey Street. Access to the northern site is off Galaxy Way and North Kelsey Street. Community Transit provides bus service to the planning area. Additional bicycle paths planned for the southern site will provide off-street bicycle access to the northern site.

Concept 4 – Allow for small and large retail businesses and a community center or similar public facility. Provide adequate service access for large businesses and

minimize their impact on visual qualities and pedestrians.

Findings: The binding site plan, supporting documents, and conceptual site plan provide for the future development of three lots. Lot 1 will include a large-scale retail business, while Lot 3 will include a smaller retail or service use of approximately 2500 square feet. The proponent did not model future development of Lot 2 at this time. The submitted documents identify proposed ingress and egress routes that are consistent with city standards. Proposed service areas for Lot 1 are between the building's east elevation and the toe-of-slope, and behind the parking and stormwater areas. (Exhibits 2a, 2b, and 4a)

Concept 5 – Pedestrian-friendly development that provides amenities, landscaping, and human-scale elements.

Findings: The conceptual elevations emphasize façade modulation, variation in materials, and variation in color, among other desirable architectural design elements. The supporting documents to the binding site plan and conceptual site plan include detailed landscape drawings that show landscaping along the site's perimeter, throughout the parking area, and around the stormwater detention area. The binding site plan, supporting documents, and conceptual site plan also include a plaza area adjacent to the main entrance to the retail store, and a corner pedestrian feature. Internal and external pathways to pedestrian features are proposed. (Exhibits 2a, 2b, 3, and 4a)

Concept 6 – Intimately scaled / informal architecture; ensure that large buildings do not dominate the area's identity.

Findings: The proposed retail store is located toward the eastern edge of Lot 1 adjacent to the toe-of-slope. The conceptual elevations emphasize façade modulation, variation in materials, and variation in color, among other architectural design elements. The supporting documents to the binding site plan and conceptual site plan include detailed landscape drawings that show landscaping along the site's perimeter, throughout the parking area, and around the stormwater detention area. (Exhibits 2a, 2b, 3, and 4a)

Concept 7 – Provide residential uses on upper stories.

Findings: This concept applies to the southern site. The Zoning Code (Chapter 18.10 of the Monroe Municipal Code) does not allow residential uses in the General Commercial zone.

Concept 8 – Organize development on the north parcel around a central open space or another unifying concept that connects it to the south and creates a campus-like character.

Findings: The binding site plan, supporting documents, and conceptual site plan illustrate that the northern site is organized around a large anchor retail store with two smaller "out lots" that will provide compatible uses to the proposed anchor. The drawings also show that the main entrance to the northern site aligns with the southern site to support automobile and pedestrian access. Internally, the northern site includes pedestrian paths and walkways to and from the retail store. (Exhibits 2a, 2b, 3, and 4a)

Findings: The suggestion of a campus-like setting on the northern portion of the property is a discretionary and not mandatory element of the North Kelsey Design Guidelines not applicable to this proposed use.

Conclusions: *The proposed binding site plan, supporting documents, and conceptual site plan meet the North Kelsey Development Plan Development Concept.*

- Chapter 4 of the North Kelsey Development Plan relates to the implementation strategy.

Finding: *The city has taken action to implement the measures described in Chapter 4.*

Conclusions: *As the implementation measures are policy strategies, they do not affect project level applications.*

5. Compliance with the North Kelsey Design Guidelines

- Chapter 1 of the North Kelsey Design Guidelines provides a basic introduction and overview of the application and review process of the planning area design guidelines. It also defines how the city will consider mandatory and encouraged design elements.
- Chapter 2 of the North Kelsey Design Guidelines relates to the site configuration and requires review of a binding site plan with the following elements:

Configuration Principle 1 – Connect individual areas within the Planned Development area with an integrated pedestrian network.

Findings: *The binding site plan, supporting documents, and conceptual site plan show pedestrian connections between the proposed development along Galaxy Way to the west, North Kelsey Street to the south, and along the public sidewalk to the east to Chain Lake Road. The main entrance to the northern site aligns with the southern site to support automobile and pedestrian access. Internally, the northern site shows pedestrian paths and walkways to and from the retail store. (Exhibits 2a, 2b, 3, and 4a)*

Configuration Principle 2 – Focus retail, recreational, and civic uses on the southern site. Uses on the northern site should be compatible and supportive.

Findings: *The binding site plan, supporting documents, and conceptual site plan provide for the future development of three lots on the northern site. Lot 1 includes a large-scale retail store, while Lot 3 includes a smaller retail or service use of approximately 2500 square feet. The proponent did not model future development of Lot 2. (Exhibits 2a, 2b, 3, and 4a)*

Findings: *To date, there is only one business on the southern site: Lowe's Hardware. The proposed retail store on the northern site will carry some overlapping products, but in general is a variety store that stocks groceries, clothing, household items, and other retail goods not available at Lowe's.*

Findings: *Table 2 (Chapter 3, Section C) defines retail uses as acceptable uses on the northern site.*

Configuration Principle 3 – Provide a set of open spaces along the pedestrian network that include a civic plaza, village green and smaller open spaces to enhance the retail environment. Uses on the northern portion should be configured around a central open space or plaza to create a campus-like setting.

Findings: *The Development Plan indicates that the "Village Green" and "Focus Plaza" areas will be located on the southern site of North Kelsey. The suggestion of a campus-like setting on the northern portion of the property is a discretionary and not mandatory element of the North Kelsey Design Guidelines not applicable to this proposed use.*

Findings: The binding site plan, supporting documents, and conceptual site plan include significant landscaping around the site's perimeter and adjacent to North Kelsey Street, a plaza area adjacent to the main entrance to the retail store, and a corner pedestrian feature. Pathways connect the internal features and public sidewalks on North Kelsey Street and the Galaxy Way corner feature to the future development. (Exhibits 2a, 2b, 3, and 4a)

Findings: The binding site plan, supporting documents, and conceptual site plan illustrate that the northern site is organized around a large anchor retail store with two smaller "out lots" that will provide compatible uses to the proposed anchor, consistent with Chapter 3, Concept 8. The drawings also show that the main entrance to the northern site aligns with the southern site to support automobile and pedestrian access. Internally, the northern site includes pedestrian paths and walkways to and from the retail store. (Exhibits 2a, 2b, 3, and 4a)

Configuration Principle 4 – Include a looped road system for traffic circulation that includes North Kelsey Street, Chain Lake Road, and Tjeme Place.

Findings: The binding site plan, supporting documents, and conceptual site plan show pedestrian connections between the proposed development along Galaxy Way to the west, North Kelsey Street to the south, and along the public sidewalk to the east up to Chain Lake Road. The main entrance to the northern site aligns with the southern site to support automobile and pedestrian access. Internally, the northern site shows pedestrian paths and walkways to and from the retail store. (Exhibits 2a, 2b, 3, and 4a)

Configuration Principle 5 – Provide architectural features that comply with Chapter 5 of the Design Guidelines.

Findings: As noted in findings for Chapter 1, Goal 4 and Chapter 3, Goals 5 and 6, the conceptual drawings emphasize façade modulation, variation in materials, and variation in color, among other architectural design elements. The supporting documents to the binding site plan and conceptual site plan include detailed landscape drawings that show landscaping along the site's perimeter, throughout the parking area, and around the stormwater detention area. (Exhibits 2a, 2b, 3, and 4a)

Conclusions: The proposed binding site plan, supporting documents, and conceptual site plan meet the Site Configuration Principles of the North Kelsey Development Guidelines by providing interconnectivity, compatible land uses, public open spaces, and desirable architectural features and site design elements. Even where the proposal does not strictly satisfy the specifics of a particular design guideline, the proposal as a whole complies with the North Kelsey Design Guidelines when the totality of all proposed features are considered.

- Chapter 3 of the North Kelsey Design Guidelines relates to the site planning:

Section A – Public Open Space includes the following statements of intent for the North Kelsey Development Area: provide a variety of open spaces, provide a focal open space that functions as community gathering space, provide a park-like character within the Planned Development Area, provide an attractive pedestrian environment, and provide outdoor spaces for relaxing, eating, socializing, and recreating.

Findings: The supporting documents to the binding site and conceptual site plan and conceptual elevations include detailed landscape drawings that show different types of open space associated with the retail development of the northern site that includes

landscaping along the site's perimeter, throughout the parking area, and around the stormwater detention area; a plaza area adjacent to the main entrance to the retail store with pedestrian seating, landscaping, and an enhanced "hardscape"; and a corner pedestrian feature at Galaxy Way and North Kelsey Street. (Exhibits 2b, 4a, and 4 b)

Findings: Chapter 3 of the North Kelsey Design Guidelines proposes development of the Focal Plaza, Village Green, and Shopping Corridor, and pedestrian-oriented spaces on the southern site.

Findings: As noted above, the proposed development for the northern site includes pedestrian amenities, pathways, landscaped areas, public seating, lighting, focal points, as well as textured and colored concrete in different areas. (Exhibits 2b, 4a, and 4 b)

Findings: The supporting documents to the binding site and conceptual site plan show interconnected landscaped open spaces along North Kelsey Street. (Exhibits 2b, and 4a)

Findings: The supporting documents to the binding site and conceptual site plan show a pedestrian corner feature and focal open space along North Kelsey Street. A large landscaped open space buffers the proposed retail store on Lot 1 and aligns with the Village Green area across a textured and colored walkway. The sidewalk along North Kelsey Street connects the pedestrian corner features. Design review of the pedestrian corner feature will be under separate review. (Exhibits 2b, 4a, and 4 b)

Findings: The stormwater detention facility at the intersection of North Kelsey Street and Chain Lake Road for the northern site is buffered and heavily landscaped. (Exhibits 2b, 4a, and 4 b)

Conclusions: *The proposed development of the northern site provides varied open spaces, attractive pedestrian-oriented spaces, and pedestrian amenities.*

Section B – Building orientation includes the following statements of intent for the North Kelsey Development Area: provide an attractive pedestrian environment, enhance the character of the streetscape, enhance the use and safety of open spaces, and provide attractive building facades adjacent to parking lots.

Findings: The primary façade of the proposed retail store on Lot 1 faces west toward the parking area. The secondary façade faces North Kelsey Street across a landscaped buffer and parking area. (Exhibits 2a, 2b, 3, and 4a)

Findings: The conceptual elevations include desirable architectural elements and treatments along the primary, secondary, side, and rear elevations. Complete building design review will be under a separate permit. (Exhibit 4a)

Conclusions: *The proposed development and preliminary design concept for Lots 1 and 2 of the northern site are consistent with the plan's goal to provide an attractive pedestrian environment, enhance the streetscape, and to provide attractive building facades adjacent to parking lots.*

Section C – Land Uses includes the following statements of intent for the North Kelsey Development Area: to provide a variety of uses that serve the diverse needs and interest of Monroe's residents and residents of the defined market area; to provide for uses that facilitate a pedestrian-friendly environment; and to support an expanded tax-base for the city of Monroe.

Findings: Under Chapter 3, Section C, Table 2 of the North Kelsey Design Guidelines retail use is an acceptable use on the northern site.

Conclusions: The proposed development and preliminary design concept for the northern site are consistent with the plan's allowed uses, as noted in Section C(3) of the staff report. The proposed development is consistent with the projected population growth, income growth, and retail needs for the city and surrounding area, as detailed in the Market Analysis.

Section D – Parking areas include the concepts for the North Kelsey Development Area: to provide convenient parking areas, provide flexibility in parking design, not to diminish pedestrian and visual qualities, maintain the street edge through screening, and minimize impacts of driveways.

Findings: The proposed parking areas as shown in the binding site plan, supporting documents, and conceptual site plan conform to the requirements of Chapter 18.86 MMC. (Exhibits 2a, 2b, 3, and 4a)

Findings: The supporting documents to the binding site plan (Exhibit 2b) indicate that the proponent will construct 687 parking spaces (659 are required for the total retail area of 164,781 including garden centers based on a ratio of 1 space per 250 square feet of gross floor area).

Findings: The proposed parking area includes one main driveway off North Kelsey Street that aligns with the entrance to the southern site and three driveways off Galaxy Way. The applicant proposes to include pathways through the main parking lot in three areas connecting to Galaxy Way to the main entrance and an additional pathway from North Kelsey Street to the main entrance. The perimeter of all parking areas are landscaped (Exhibits 2a, 2b, 3, and 4a)

Conclusions: The proposed development and preliminary design concept for the northern site are consistent with the plan's parking strategy for the Planned Development Area.

Section E – Street Corners/Highly Visible Locations includes the concepts for the North Kelsey Development Area: to enhance the appearance of highly visible locations, to enhance the pedestrian environment, and to establish a design identity for the North Kelsey Planning Area.

Findings: Chapter 3, Section E identifies six highly visible areas and encourages design treatments at these locations. Two highly visible areas about the northern site: Location D and E.

Findings: Lots 1 is adjacent to Location D. Lot 1 includes a large landscaped area at Location D.

Findings: Lots 1 and 3 are adjacent to Location E. Lot 1 includes a landscaped area and pedestrian path at Location E. Lot 3 will include a retail store or restaurant adjacent to Location E. Design review for future development of Lot 3 will be under a separate permit. (Exhibits 2a, 2b, 3, and 4a)

Conclusions: The proposed development and preliminary design concept for the northern site include some desirable design elements encouraged for Highly Visible Locations within the Planned Development Area.

- Chapter 4 of the North Kelsey Design Guidelines relates to the circulation:

Section A relates to the construction of an east-west connector.

Findings: As previously noted, Tjerne Place was constructed as the development's east-west connector with the Lowe's development and US-2 / Chain Lake Rd intersection improvements.

Section B relates to the construction of sidewalks and paths.

Findings: As previously noted, the binding site plan, supporting documents, and conceptual site plan show pedestrian connections between the proposed development along Galaxy Way to the west, North Kelsey Street to the south, and along the public sidewalk to the east up to Chain Lake Road. (Exhibits 2b and 4a)

Findings: Proposed sidewalks will be ADA compliant and include landscaped planting strips. (Exhibits 2b and 4a)

~~*Findings:* Proposed sidewalks along North Kelsey Street are eight feet in width and five feet in width along Galaxy Way. (Exhibits 2a and 2b)~~

Findings: Pedestrian crosswalks are provided at North Kelsey and Galaxy Way and where the main entrance to the northern site aligns with the southern site (Exhibits 2a, 2b, and 4a).

Findings: The crosswalks on North Kelsey Street, Galaxy Way, and where the main entrance to the northern site aligns with the southern site will be stamped colored concrete to match existing crosswalks in the North Kelsey Planned Development Area. (Exhibit 4a)

Findings: A secondary pathway, adjacent to the northern site's main entrance, from North Kelsey Street to the proposed retail store on Lot 1, will be five feet in width and include street trees. (Exhibits 2b and 4a)

Findings: Internally, the northern site includes pedestrian paths and walkways to and from the retail store, and throughout the main parking area. (Exhibits 2a, 2b, and 4a)

Conclusions: The proposed development plans and preliminary design concept for the northern site meet the sidewalk and pathway requirements for the Planned Development Area.

Section C relates to the bicycle circulation and amenities.

Findings: As previously noted, the binding site plan includes supporting documents, and conceptual site plan shows pedestrian connections throughout the site as well as connections to the southern site. (Exhibits 2a, 2b, 3, and 4a)

Findings: The proposed sidewalk on the northern side of North Kelsey will be eight feet in width and support multimodal use. (Exhibits 2a, 2b, 3, and 4a)

Findings: The site will include paths, sidewalks, and bike racks to accommodate pedestrian and bicycle access. (Exhibits 2a, 2b, 3, 4a, and 4b)

Conclusions: The proposed development plans and preliminary design concept for the northern site provide safe and efficient bicycle access within the Planned Development Area.

- Chapter 5 of the North Kelsey Design Guidelines relates to the architectural and building design:

Section A relates to the architectural concept encouraged for the North Kelsey Planning Area.

Findings: As previously noted, the conceptual site elevations for the northern site emphasize façade modulation, variation in materials, and variation in color, among other desirable architectural design elements and treatments along the primary, secondary, side, and rear facades. Complete building design review will be under a separate permit. (Exhibit 4b)

Section B relates to the architectural scale of buildings encouraged for the North Kelsey Planning Area.

Findings: From the conceptual site elevations, it appears that the proposed building is under the maximum allowed height of 35 feet. Complete building design review will be under a separate permit. (Exhibit 4b)

Findings: The conceptual site elevations show vertical articulation along the primary, secondary, side, and rear facades including stepping back portions of the façade including distinctive features, and changing materials. Complete building design review will be under a separate permit. (Exhibit 4b)

Section C relates to the architectural elements encouraged for the North Kelsey Planning Area.

Findings: The conceptual site elevations show roofline variations along the primary, secondary, side, and rear facades. Complete building design review will be under a separate permit. (Exhibit 4b)

Findings: The conceptual site elevations show desirable building elements and details along the primary, secondary, side, and rear facades including articulated building elements, weather protection at building entrances, and decorative building materials. Complete building design review will be under a separate permit. (Exhibit 4b)

Findings: The conceptual site elevations show durable, high-quality materials along the primary, secondary, side, and rear facades including architectural block, stone, and brick. Complete building design review will be under a separate permit. (Exhibit 4b)

Findings: The conceptual site elevations include a color palette that includes a variety of muted earth-tone colors. The majority of the building proposes to use a darker background color with lighter colors for accent along the primary, secondary, side, and rear facades. Complete building design review will be under a separate permit. (Exhibit 4b)

Findings: Service areas are screened from public view. Complete building design review will be under a separate permit. (Exhibits 2b and 4a)

Conclusions: The preliminary design concept for the northern site is consistent with the Architectural and Design concept for the Planned Development Area.

- Chapter 6 of the North Kelsey Design Guidelines relates to landscape design:

Findings: The proponent submitted preliminary landscape plans as supporting documents to the binding site plan. The conceptual site plan also shows landscaping areas. (Exhibits 2b and 4a)

Findings: As previously noted, the supporting documents to the binding site and conceptual site plan include detailed landscape drawings that show different types of open space associated with the retail development of the northern site that includes landscaping along the site's perimeter, throughout the parking area, and around the stormwater detention area; a plaza area adjacent to the main entrance to the retail store with pedestrian seating, landscaping, and an enhanced "hardscape;" and a corner pedestrian feature at Galaxy Way and North Kelsey Street. (Exhibits 2b and 4a)

Findings: As previously noted, proposed sidewalks and pathways include landscaped planting strips. (Exhibits 2b and 4a)

Findings: As previously noted, landscaped areas screen high-intensity areas including parking areas, the stormwater detention area, and service areas in the northern site. (Exhibits 2b and 4a)

Conclusions: The preliminary design concept for the northern site is generally consistent with the Landscape Design concept for the Planned Development Area. The city will address final design modifications at the time of building permit application.

- Chapter 7 of the North Kelsey Design Guidelines relates to signage and lighting:

Findings: The proponent submitted conceptual sign drawings for Lot 1 on the northern site that include wall signs, secondary signs, and monument signs. Complete design review will be under a separate permit. (Exhibit 4b)

Findings: The monument signs are proposed to be located at the main entrance along North Kelsey Street and between the secondary entrances on Galaxy Way. Complete design review will be under a separate permit. (Exhibits 4a and 4b)

Findings: The secondary signage includes market and pharmacy, home and living, and outdoor living signs along the primary façade. Secondary signage is located above on focal points, centered between architectural elements, and integrated into the building's architecture. Complete design review will be under a separate permit. (Exhibit 4b)

Findings: The conceptual wall sign, located at the main entrance within an architectural focal point, exceeds the allowed square footage by approximately 98 square feet. Complete design review will be under a separate permit. (Exhibit 4b)

Findings: The binding site plan, supporting documents, conceptual site plan, and conceptual elevations include conceptual lighting details. Complete review of lighting standards will be under a separate permit. (Exhibits 2a, 2b, 4a, and 4b)

Conclusions: The preliminary sign and lighting concept for the northern site is generally consistent with the sign and lighting criteria for the Planned Development Area. The city will address final design modifications at the time of sign permit and building permit application.

6. Compliance with the Planned Action – Final Supplemental Environmental Impact Statement.

- The North Kelsey Planning Area and Planned Development Area are subject to a Planned Action as allowed under WAC 197-11-168 and a Final Supplemental Environmental Impact Statement, adopted under Ordinance No. 003/2004. At the time of inception, the Planned Action included approximately 68 acres. The preferred alternative for development is Alternative 1, the full build-out option that envisions

approximately 500,000 square feet of retail use in the Planned Development Area. The Planned Action FSEIS has established the terms of development and mitigation for portions of the Planning Area.

Findings: Following Table 5.1 (Chapter 5 of the FSEIS Volume 1), Earth and Soil Element, development shall conform to adopted code standards – Table 5.1 did not identify any mitigation measures

Findings: The proponent submitted a grading plan (Exhibit 3) and geotechnical report (Exhibit 10) detailing issues related to earth and soil issues for the future development of the northern site.

Findings: Following Table 5.1 (Chapter 5 of the FSEIS Volume 1), Surface Water and Quality Element, development shall provide a stormwater plan – Table 5.1 did not identify any mitigation measures.

Findings: The proponent submitted a Temporary Erosion Control and Sedimentation Plan with the grading plan (Sheets PD1.2 – 1.5 and PD2.0 -2.2 of Exhibit 3), supporting documents (Exhibit 2b), and a preliminary stormwater report (Exhibit 11) related to stormwater issues for the future development of the northern site.

Findings: Following Table 5.1 (Chapter 5 of the FSEIS Volume 1), Land Use Element, developments shall provide a site plan based on the North Kelsey Design guidelines and comply with adopted standards – Table 5.1 did not identify any mitigation measures.

Findings: The proponent submitted a binding site plan, supporting documents, and a conceptual site plan based on the North Kelsey Design Guidelines. The future development on the northern site includes the "North Area" and a portion of the former Monroe Public Works site and encompasses approximately 24 acres, excluding right-of-way dedications. (Exhibits 2a, 2b, 3, and 4a)

Findings: The Hypothetical Use Projections (Chapter 2, Section 2.5) estimate approximately 100,000 square feet of retail use on the northern site and 100,000 square feet of office space on the northern site. The proposed development of the northern site totals approximately 167,000 square feet including the retail store and garden centers on Lot 1 and conceptual development of Lot 2. (Exhibits 2a, 2b, and 4a)

Findings: Following Table 5.1 (Chapter 5 of the FSEIS Volume 1), Transportation Element, developments shall provide a site-specific transportation analysis – Table 5.1 mitigation measures require consistency with the Master Plan, careful design for vehicle access, and frontage improvements.

Findings: Following Table 5.3 (Chapter 5 of the FSEIS Volume 1), defined mitigation measures will occur as development meets defined trip thresholds.

Findings: The FSEIS established Transportation Analysis Zones (TAZ) for portions of the Planning Area. The northern site is included in TAZ 106. The FSEIS (Volume 2, Section 4.1.1) estimates that the northern site will generate 835 total PM peak hour trips.

Findings: The proponent submitted a traffic analysis (Exhibit 12), related to traffic issues for the future development of the northern site. The traffic analysis estimates that the retail development will generate 515 total PM peak hour trips and predicts the level of service at affected intersections will range between Level of Service A to B.

Findings: As previously noted, the binding site plan, supporting documents, and conceptual site plan include proposed traffic improvement, driveway cuts, and right-of-

way improvements. (Exhibits 2a, 2b, 3, and 4a)

Findings: Following Table 5.1 (Chapter 5 of the FSEIS Volume 1), Air Quality Element, developments shall meet local and regional code requirements – Table 5.1 included mitigation measures specific to the operation of Lakeside Industries.

Findings: The proposed binding site plan and future development of the northern site will have commensurate effects on air quality associated with retail development.

Findings: Following Table 5.1 (Chapter 5 of the FSEIS Volume 1), Noise Element, developments shall conform to adopted city noise standards – Table 5.1 did not identify any mitigation measures.

Findings: The proposed binding site plan and future development of the northern site will have commensurate effects on noise associated with retail development.

Findings: Following Table 5.1 (Chapter 5 of the FSEIS Volume 1), Visual Element, developments shall meet city standards – Table 5.1 included mitigation measures specific to the operation of Lakeside Industries.

Findings: The proposed binding site plan and future development of the northern site will have commensurate visual effects associated with retail development. As previously noted, the proposed development of the northern site will be screened by perimeter landscaping and the building is sited to fit into the existing topography.

Findings: Following Table 5.1 (Chapter 5 of the FSEIS Volume 1), General Mitigation Element, developments shall conform to the North Kelsey Design Guidelines and city zoning standards.

Findings: Earlier responses detail consistency with the Design Guidelines and zoning code.

RECOMMENDATION²:

Staff recommends that Monroe City Council **APPROVE** Binding Site Plan (BSP 2011-01), Grading Permit (M2011-0004/1), and the North Kelsey Conceptual Materials through a consolidated review of the Development Agreement with North Kelsey LLC subject to the following conditions.

1. Exhibit 2a is the preliminary binding site plan. Final approval will be administrative following completion of required improvement or acceptance of financial securities. The city may approve minor, non-material changes to the plans at the discretion of the Director or designee.
2. Preliminary approval of the binding site is for a period of two years. The director may grant an extension(s) for up to one additional year.

² In accordance with the applicant's request for consolidated review of the proposed binding site plan and grading permit concurrently with the proposed development agreement, the City Council, as the highest body with decision-making authority with respect to the development agreement, is also authorized to issue a final decision on the binding site plan and grading permit pursuant to MMC 17.34.030(C) and MMC 21.50.130. The Director expressly finds and concludes that the binding site plan and grading permit meet all applicable standards for approval. Staff's action is formatted as a recommendation rather than a final approval only because the City Council possesses final decisional authority under these circumstances.

3. Following final approval of the binding site plan, the applicant shall record the approved binding site plan with the Snohomish County auditor within ninety days.
4. Exhibit 2b includes supporting documents to the binding site plan. The final approval of individual elements will be administrative at the time of future permit application. The city may approve minor, non-material changes to the plans at the discretion of the Director or designee.
5. Exhibit 3 is the grading plan. The city may approve minor, non-material changes to the plans at the discretion of the Director or designee.
6. Exhibit 4a is the conceptual site plan for the northern site. The city may approve minor, non-material changes to the plans at the discretion of the Director or designee.
7. Exhibit 4b includes the conceptual building elevations for Lot 1 of the northern site. Final approval of individual elements will be administrative at the time of future permit application.

Brad Feilberg (Signed original in official file)

Brad Feilberg, P.E.,
Public Works and Community Development Director

Russell E. Wright (Signed original in official file)

Russell E. Wright, MES,
Acting SEPA Official

APPENDIX E

Agenda Item
PH #1.1
 Date 3/29/11

AFTER RECORDING RETURN DOCUMENT TO:
 McCullough Hill PS
 701 First Avenue, Suite 7220
 Seattle, Washington 98104
 Attn: John C. McCullough

Document Title(s):	Development Agreement
Reference Number(s) of Related Documents:	N/A
Grantor(s):	CITY OF MONROE and NORTH KELSEY, LLC
Grantee(s):	CITY OF MONROE and NORTH KELSEY, LLC
Abbreviated Legal Description:	<p>Parcels B, C and K City of Monroe. N. Kelsey Street - Record of Survey, recorded under Snohomish County Recording No. 200504075335.</p> <p>Complete legal description shown on Exhibit A</p> <p>Situate in the City of Monroe, County of Snohomish, State of Washington.</p>
Assessor's Property Tax/Parcel Account Number(s):	28063600402400, 28063600402500, and 28063600402800
Reference No. of Documents Released	N/A

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DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT ("Agreement") is entered into this ___ day of March, 2011, by and between the City of Monroe ("City"), a Washington municipal corporation, and North Kelsey LLC ("North Kelsey"), a Washington limited liability company (collectively, the "Parties").

RECITALS

- A. The City has been the owner of that certain real property in the City of Monroe, Snohomish County, Washington, which is legally described in Exhibit A - Legal Description of City Property, attached hereto and incorporated herein by this reference as if set forth in full (the "Property").
- B. Pursuant to that certain Purchase and Sale Agreement, dated December 17, 2010 by and between the City and North Kelsey, as amended by that First Amendment thereto dated March 29, 2011 ("REPSA"), North Kelsey agreed to purchase the Property from the City and controls the rights to the Property pursuant to the REPSA.
- C. The Property is located in the North Kelsey Planning Area, which consists of approximately one hundred acres of land located north of SR 2, south of the proposed SR 2 bypass, east of the SR 522 overpass and west of Chain Lake Road. The Property's current zoning designation is General Commercial and its Comprehensive Plan designation is General Commercial.
- D. In 2003, the City adopted the "North Kelsey Development Plan," which contains standards that govern development in the North Kelsey Planning Area. The City adopted a Planned Action Final Supplemental Impact Statement for the North Kelsey Sub Area Plan in 2004 ("Planned Action FSEIS") and adopted amendments to the North Kelsey Development Plan in 2007.
- E. A portion of the Property is intended by the parties to be developed as a retail shopping center with roadways, stormwater detention facilities, utility systems, and other improvements as shown in certain conceptual and binding site plans referenced herein, and in documents supplementing the binding site plan ("the Project"). North Kelsey has submitted to the City a Conceptual Site Plan, an

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application for preliminary approval of a Binding Site Plan and an application for a Grading Permit (each as defined below) for the Project that will govern such development.

- F. Pursuant to the REPSA, the parties agreed to negotiate a development agreement pursuant to RCW 36.70B.170, which requirement this Agreement is intended to satisfy. North Kelsey has agreed to construct the site improvements in accordance with certain development standards currently required under the North Kelsey Area Development Plan and the Planned Action FSEIS.
- G. The development of the proposed Project is expected to increase tax revenues, which will improve the financial stability and general economic vitality of the City. Furthermore, the creation of new employment opportunities, and construction of public and private amenities will materially assist the City in carrying out the goals and objectives of the North Kelsey Area Development Plan.
- H. By this Agreement, the parties intend to set forth their mutual agreement and understandings as they relate to the development of the Project as shown on the Conceptual Site Plan and the preliminary Binding Site Plan, and the City's acquisition by dedication of certain public improvements to be constructed in conjunction with the Project.
- I. As set forth in these Recitals, the City has determined that the terms and conditions set forth herein will serve a public purpose and will promote the health, safety, prosperity, and general welfare of the citizens of the City.
- J. This Agreement is authorized by applicable state law, specifically including without limitation RCW 36.70B.170 through 36.70B.210. As required by RCW 36.70B.200, the City held a duly noticed public hearing before the City Council on this Agreement on March 15, 2011.
- K. City staff has reviewed the Conceptual Site Plan, preliminary Binding Site Plan, Grading Permit application and State Environmental Policy Act ("SEPA") checklist for the Project and determined that it is consistent with the City's Comprehensive Plan and North Kelsey Development Plan.
- L. The City's SEPA Responsible Official has determined that the Project qualifies as a planned action under the Planned Action FSEIS.

- M. City staff has determined that the Project, as depicted on the Conceptual Site Plan and the preliminary Binding Site Plan and as conditioned herein, is consistent with applicable City development regulations and standards, specifically including without limitation the North Kelsey Design Standards (as defined below). Accordingly, City staff, including the Community Development Director, has recommended approval of the preliminary Binding Site Plan and Grading Permit.
- N. This Agreement specifically incorporates and adopts the approved preliminary Binding Site Plan and Grading Permit, and it approves the Conceptual Site Plan as provided by the REPSA.
- O. This Agreement, together with all documents incorporated herein by reference, has been processed in material compliance with all applicable state and local procedural requirements.
- P. The mitigation measures, dedication requirements, impact fee assessments and other conditions of approval set forth or otherwise referenced in this Agreement are reasonably necessary to mitigate the anticipated impacts of the Project and are roughly proportionate to said impacts.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. PROPERTY USE AND DEVELOPMENT STANDARDS; VESTING

I.1 Conceptual Site Plan. As required by the REPSA North Kelsey has submitted to the City a Conceptual Site Plan in the form attached hereto as Exhibit B (the "Conceptual Site Plan") showing a plan for a Walmart store as part of the Project. Except as otherwise provided in this Agreement, North Kelsey agrees that the Project will be developed in substantial conformance with the Conceptual Site Plan, including all conditions and descriptions of improvements and developments, and their placement on the Property described therein. Plans and specifications submitted in connection with the Project shall be reasonably consistent with the depictions and general aesthetics in the Conceptual Site Plan, unless otherwise approved by the City. The City hereby approves the Conceptual Site Plan.

1.2 Binding Site Plan. North Kelsey has submitted to the City for approval the proposed North Kelsey Retail Binding Site Plan for the Property along with Binding Site Plan Supporting Documents in the form attached hereto as Exhibit C (collectively, the "Binding Site Plan"). Except as otherwise provided in this Agreement, North Kelsey, LLC agrees that the Project will be developed in substantial conformance with the Binding Site Plan, including all conditions and descriptions of improvements and developments described therein. The City's Community Development Director has recommended approval of the preliminary Binding Site Plan, subject to the terms of this Agreement and those written findings, conclusions, and conditions described in the Staff Report attached hereto as Exhibit D ("Staff Report"). The City Council hereby approves the preliminary Binding Site Plan and adopts and incorporates the recommendation of the preliminary Binding Site Plan and the Staff Report in this Agreement as its own approval of the preliminary Binding Site Plan.

1.3 Grading Permit. North Kelsey has submitted to the City for approval a Grading Permit application for the Project (Permit No. M2011-004/1) (the "Grading Permit"). The City's Community Development Director has recommended approval of the Grading Permit, subject to the terms of this Agreement and those written findings, conclusions and conditions described in the Staff Report. The City Council hereby approves the Grading Permit and adopts and incorporates the recommendation of the Grading Permit and the Staff Report in this Agreement as its own approval of the Grading Permit.

1.4 Zoning and Land Use. All development of the Property shall be consistent with (1) the substantive City of Monroe zoning, land use, and construction ordinances in effect at the time this Agreement is executed, subject to Section 1.5 below; (2) the conditions and requirements of any permits, licenses or other regulatory approvals issued or otherwise required for the Project; (3) the North Kelsey Area Development Plan and North Kelsey Area Development Plan Supplemental Development Agreement Provisions adopted by the Monroe City Council (collectively, "North Kelsey Design Standards"), which are incorporated in Monroe Municipal Code ("MMC") 18.10.135; and (4) the provisions of this Agreement (items (1) through (4) are referred to collectively as "Development Standards"). The City has determined that the Project, as defined herein and depicted in the Conceptual Site Plan, the preliminary Binding Site Plan and the Grading Permit, is consistent with the Development Standards. The City will evaluate all development, construction, and other related permit applications for the Project, or modifications thereof, based on consistency with the approved Conceptual Site Plan, Binding Site Plan, Grading Permit and the Development Standards.

1.5 Vested Rights. For a period of two (2) years from the Closing of the Property Transfer under the REPSA (but in no case longer than sixty (60) months from the date of this Agreement), all complete Project applications shall be considered vested to the Development Standards, including without limitation the following development-related codes in effect on the date of execution of this Agreement: (a) Title 15 MMC Buildings and Construction; (b) Title 18 MMC Planning and Zoning, including the North Kelsey Design Standards; (c) Title 19 MMC Shoreline Management; (d) Title 20 MMC Environment, including but limited to impact fees imposed pursuant to that title; and (e) Title 21 MMC Development Review Procedures. The zoning designation of the Property is General Commercial (GC). North Kelsey may develop the Project in accordance with said designation, and any additional limitations imposed by the North Kelsey Development Plan, for the duration of the Term (as defined in Section 8 below). No zoning changes implemented by the Monroe City Council shall affect the zoning designation applicable to this Agreement during the Term. The Project shall not be vested as to any other regulation or requirement of the City except as provided by the vesting statutes and common law of the State of Washington. Specifically, but not by way of limitation, and notwithstanding the remainder of this introduction to Section 1.5 above, the Project is not vested to the following:

(a) Permit Fees. This Development Agreement does not vest the Property or the Project against changes in permit fees, specifically including without limitation application fees imposed pursuant to Chapter 3.34 MMC. All applicable permit fees of the City of Monroe in effect at the time of permit application or at the time the fees are due and owing under the applicable fee resolution or ordinance shall apply. Notwithstanding the above, the Parties agree to share the burden of certain permit fees as described in Section 2.3 below

(b) Building and Fire Codes. This Development Agreement does not vest the Project against the provisions of the International Building Code, the International Fire Code, and other applicable construction codes in effect in the state. Any future use, activity and development on the Property must comply with all locally adopted construction codes in effect when application for such permit is made.

(c) County, State or Federal Mandates. The Project is not vested against any new or different requirements or regulations that are mandated by county, state, or federal statutes, laws, or ordinances that preempt the City's authority to permit vesting.

(d) Threats to Health, Safety, and Environment. The Project is not vested against any new or different officially adopted regulations of general

applicability, to the extent required by a serious threat to the public health, safety, or environmental quality, as determined by the Monroe City Council.

2. FEES.

2.1 SEPA Fees. During the Term of this Agreement, and subject to the limitations in Section 2.2 below, the fees imposed pursuant to or otherwise related to the Planned Action FSEIS shall be based on the estimated construction costs of improvements at eight (8) locations described in the Planned Action FSEIS, multiplied by the percentage of land square footage in the North Kelsey Sub Area to be developed as part of the Project, as reasonably determined by the City.

2.2 Limitation on Mitigation Fees Paid by North Kelsey. Provided that North Kelsey completes the purchase of the Property and submits complete applications for construction permits for the Project during the Term, North Kelsey shall only be responsible for paying SEPA fees, impact fee or other mitigation fees associated with the Project and/or the development of the Property ("Mitigation Fees"), including but not limited to North Kelsey EIS Fees, Traffic Concurrency Fees (City of Monroe, Snohomish County and State of Washington) and City of Monroe Traffic Impact Fees, and any other charges that may be imposed by the City or any other political subdivision relating to the discretionary approvals for the Project as provided in and limited by the REPSA. All impact fees for the City of Monroe imposed pursuant to Title 20 MMC (including but not limited to fees for transportation and fire protection) shall be paid at the time of issuance of building permits for the development of the Project. Notwithstanding the above, North Kelsey shall be responsible for any such Mitigation Fees related to construction of buildings on the Property in excess of one hundred fifty thousand (150,000) square feet, (such calculation of square footage not to include outdoor garden centers or vestibules).

2.3 Review, Permit and Connection Fees. Provided that North Kelsey completes the purchase of the Property and submits complete applications for construction permits for the Project during the Term, North Kelsey shall be responsible for paying application fees, on-site and off-site permit review fees, driveway connection permits, and utility connection or service fees of any kind (including hook-up fees, general facility charges, special facility charges, and utility extension charges) associated with the Project and/or the development of the Property ("Review/Permit/Connection Fees") and similar charges as provided in and limited by the REPSA.

Notwithstanding anything to the contrary that may be implied by the terms of the REPSA, the City's obligation, in its capacity as seller of the Property, to pay fees

described in Section 2.2 and 2.3 above shall only apply to complete applications for permits submitted and received during the Term of this Agreement. Any construction of the Project or on the Property pursuant to permit applications not submitted in complete form until after the Term shall be wholly at expense of the Property owner.

3. IMPROVEMENTS AND DEDICATIONS.

3.1 Binding Site Plan Improvements. The preliminary Binding Site Plan approval is valid for a period of two years. An extension will be granted if North Kelsey or its successors submits an extension request in writing to the City at least thirty days prior to the expiration of the two-year period as provided by MMC 17.34.030.B.3. Exhibit E, attached hereto, describes (a) the specific improvements that must be constructed or for which financial securities must be provided during the original or extended term of the preliminary Binding Site Plan and (b) those additional offsite improvements to be funded by North Kelsey that constitute "Additional Offsite Costs" pursuant to Section 17(c)(i) of the REPSA. Pursuant to MMC 17.324.050(E)(1) and 17.34.040(A) the Community Development Director and City Engineer may allow financial security for certain improvements. The performance financial security shall be in a form acceptable to the City, and represent one hundred fifty percent (150%) of the fair cost estimate of the uncompleted portion of the proposed development or improvements. The parties agree that any estimated costs shown on Exhibit E are not binding on the City for purposes of determining performance financial security or as a limitation on the actual Additional Offsite Costs for those projects listed on Exhibit E.

3.2 Construction of Frontage Improvements. In connection with the development of the Project, North Kelsey shall design, construct and install, at its own expense, all Frontage Improvements on the Property along City rights of way, and to the interior drive aisles and roadways of the Project, in the locations and to the extent depicted on the preliminary Binding Site Plan and as otherwise provided in this Section. For purposes of clarification, "Frontage Improvements" shall include all curbing, sidewalks, necessary water services or main extensions, and sewer mains and service lines to the Property lighting (as required or deemed necessary) and landscaping, as well as those public and pedestrian features depicted on the Binding Site Plan (which shall include cross walk improvements across Galaxy Way and North Kelsey Street and removal of an existing median in North Kelsey Street). The City certifies that water lines of eight inch (8") diameter and sewer lines of twelve inch (12") diameter to serve the Project have been installed in North Kelsey Street and Galaxy Way.

3.3 Dedications. Following completion of the improvements described in Section 3.2, and acceptance by the City of such Frontage Improvements as described in Section 3.5 below, North Kelsey shall transfer to the City by dedication deed that

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property legally described on Exhibit F, any property or improvements otherwise required as a condition of the Binding Site Plan, and all utilities as requested by the City.

3.4 Construction Warranty. North Kelsey hereby warrants and represents to City that all Frontage Improvements that will be dedicated to the City shall be free from defects of every kind and nature for a period of at least two (2) years after substantial completion and acceptance by the City and that North Kelsey shall, at its own expense, cause such defects to be repaired, including the replacement of any Frontage Improvements and the repair and replacement of other property which is required as a result of defects in the Frontage Improvements. Nothing contained herein shall limit any other obligation of North Kelsey to perform the Frontage Improvements in a good and workmanlike manner and in compliance with all applicable laws, rules, regulations, ordinances, and codes nor limit North Kelsey's responsibility to repair latent defects, which obligations and responsibilities shall not be limited by the time periods or notice requirements set forth above.

3.5 Certificate of Occupancy Requirement. Inspection and approval for occupancy of the Frontage Improvements shall be processed in accordance with applicable City processes and standards. Without prejudice to any other remedy, the City may in its discretion withhold any Certificate(s) of Occupancy for any portion of the Project until all of the required site improvements, including the Frontage Improvements and all improvements required under the Binding Site Plan for the Project, have been completed and accepted by the City, or have been bonded (or otherwise financially secured) for completion in a manner acceptable to the City.

4. MITIGATION.

The City has conducted extensive environmental review and prepared the Planned Action FSEIS for the North Kelsey Sub Area Plan, the scope of which includes the proposed Project. The Property is a portion of the North Kelsey Planned Action Area. The anticipated environmental impacts of the Project are documented in the City's SEPA review materials, specifically including the Environmental Checklist dated January 5, 2011. The SEPA Responsible Official has verified that the Project qualifies as a planned action in the North Kelsey Planned Action Area and under the Planned Action FSEIS, and that the Planned Action FSEIS and proposed mitigation measures adequately address any probable significant adverse impacts of the Project as required by WAC 197-11-172. The Project shall comply fully with all conditions of development approval, specifically including without limitation all mitigation measures and requirements set forth in the Planned Action FSEIS as summarized below:

4.1 Geotechnical. Mitigation measures for impacts to earth and soils shall be as set forth in Section 3.1.16 of the Planned Action FSEIS. Best management practices will be evaluated at the time of permit application in accordance with the City's adopted regulations.

4.2 Stormwater. Mitigation measures for stormwater management as set forth in Sections 3.1.2.5 and 3.1.2.7 of the Planned Action FSEIS will be implemented as follows: The Project will be designed to the 2005 Washington State Department of Ecology (DOE) Stormwater Management Manual for Western Washington and as shown on the Binding Site Plan. On-site stormwater quality and quantity controls consisting of a wetpond for water quality treatment and an infiltration pond for quantity control will mitigate the majority of the site. The remainder of the site will utilize a filter system for water quality treatment and an underground infiltration gallery for quantity control. Geotechnical investigations will be performed in the infiltration facility locations to verify groundwater elevations and propose design infiltration rates. The DOE required separation between the bottom of the infiltration facilities and the measured ground water table will be maintained.

4.3 Land Use. Mitigation measures for land use as set forth in Section 3.2.1 of the Planned Action FSEIS will be implemented as follows: The site plan, building designs, lighting and landscaping will meet the intent set forth in the North Kelsey Area Design Guidelines. All improvements shown on the Binding Site Plan for the Property shall be constructed, including enhanced pedestrian access including on-site sidewalks, a new 8-foot sidewalk, landscaping and crosswalks along North Kelsey Street, a new 5-foot sidewalk, landscaping and crosswalks along Galaxy Way, and a new pedestrian feature at the northeast corner of North Kelsey Street and Galaxy Way.

4.4 Transportation. Mitigation measures for transportation as set forth in Section 3.2.2.6 of the Planned Action FSEIS are as follows: traffic impact fees will be paid to support the City's proposed transportation improvement projects identified in the FSEIS as described in Sections 2.1 and 2.2 above.

4.5 Air Quality. Mitigation measures for air quality as set forth in Section 3.2.3.3 of the Planned Action FSEIS are as follows: during construction, water trucks will be used to minimize dust and adjacent streets and internal roadways and drive aisles will be swept or washed down as needed. In addition, the loading docks for the proposed retail are located at the rear of the building, away from community gathering places to reduce air quality impacts.

4.6 Truck Traffic. Mitigation measures for noise as set forth in Section 3.2.4.7 of the Planned Action FSEIS are as follows: The loading docks for the proposed

Project are located at the rear of the building, away from community gathering places, to reduce noise impacts. In addition, the entrance for large truck (WB-50 or larger) deliveries to the site is at the north end of Galaxy Way, near the entrance to the Lakeside Industries Plant, and away from the pedestrian areas. North Kelsey agrees to execute such restrictive covenants and other agreements as the City may request, requiring that all truck traffic within control of the tenants and owners on the Property use the designated truck entrance and exits from the Project and the Property.

4.7 Visual Character. Mitigation measures for visual character as set forth in Section 3.2.5 of the FSEIS will be implemented as follows: The site plan, building designs, lighting and landscaping will meet the intent set forth in the North Kelsey Area Design Guidelines. All improvements shown on the Binding Site Plan for the Property shall be constructed, including landscape buffers along North Kelsey Street and Galaxy Way. The proposed large scale retail building will be set back from the adjacent roads to minimize the visual impact to the surrounding properties.

The parties agree that this list of mitigation measures is not exclusive, and that the Project and the Property shall be subject to further measures as required by the terms and conditions of the Binding Site Plan, and such other mitigation conditions as may be required pursuant to the MMC in connection with other permits and/or approvals that may be applied for in connection with the Project or the development of the remainder of the Property.

5. FUTURE ENVIRONMENTAL REVIEW.

5.1 Generally. In executing this Development Agreement, the Parties acknowledge their good faith belief that all currently required environmental review for the Project has been completed. Subject to Chapters 36.70B and 43.21C RCW, and except as provided herein or otherwise mandated by law, further environmental review by the City shall not be required for individual permits falling within the scope of the Conceptual Site Plan for the Project and the Binding Site Plan for the Property. PROVIDED, that additional environmental review may, in the sole discretion of the SEPA Responsible Official, be required in the event that a proposed action, permit or use would exceed the scope of the Project as defined by this Development Agreement, including but not limited to the development of "Lot 2," "Lot 3," or both as depicted on the Binding Site Plan.

5.2 Changed Circumstance; New Information. Section 5.1 notwithstanding nothing herein shall prevent the SEPA Responsible Official from withdrawing an environmental approval pursuant to Chapter 197-11 WAC in the event that, *inter alia*, new information or changed circumstances indicate that previously unanticipated

environmental impacts will be created by the Project. The City specifically reserves all applicable rights pursuant to Chapter 43.21C RCW and 197-11 WAC.

5.3 Significant Adverse Impacts. The City reserves the right to impose other mitigation conditions as authorized by SEPA and the Monroe Municipal Code necessary to mitigate significant adverse impacts of the Project. The City also reserves the right to change or supplement these mitigation measures based on material changes to the Conceptual Site Plan or any later amendment to the Binding Site Plan.

5.4 Written Notice. If the City determines at any time during the Term that it intends to require additional SEPA review or mitigation for the Project, the City shall give North Kelsey written notice thereof and provide North Kelsey an opportunity to modify the Project so as to render such additional SEPA review or mitigation unnecessary.

6. MODIFICATIONS.

Except as otherwise provided herein, the Parties may mutually agree to modify this Agreement. Any change, modification or amendment hereto (collectively, "modifications"), including modifications to any document incorporated by reference herein, shall comply with the procedures contained in this section.

6.1 Designation of Modifications. Modifications to the Agreement shall be designated as either minor or major modifications. Minor modifications may be administratively approved by the Community Development Director. Major modifications shall require approval of the Monroe City Council. The Community Development Director shall determine whether a proposed modification is major or minor under this section.

6.2 Minor Modifications. Minor modifications are those affecting the precise dimensions or location of buildings, streets, driveways or other site features, but that do not: (1) affect the overall character of the Project as described in the Conceptual Site Plan or the Binding Site Plan, or (2) result in greater environmental impacts. Minor modifications shall be processed as Administrative Approvals Subject to Notice in accordance with MMC 21.50.020.

6.3 Major Modifications. Major modifications are those involving a significant deviation from the original specifications of the Development Agreement and/or its component elements. Major Modifications shall require approval of the City Council following a public hearing.

6.4 Covenant. The City acknowledges that North Kelsey, upon purchase of the Property pursuant to the REPSA, will record against all parcels in the Binding Site Plan a covenant wherein the owner of any such parcel (a) waives any right to object to further subdivisions of lots in the project or reconfiguration of boundary lines of existing lots, and (b) gives North Kelsey or any successor owner of Lot 1 under the Binding Site Plan an irrevocable power of attorney to sign on behalf of such owner all documents required by law to amend the Binding Site Plan, including for purposes of clause (a) above.

6.5 Regulatory Approval Process Preserved. Notwithstanding the designation of a proposed modification as major or minor under this section, nothing herein shall be construed as waiving any regulatory approval process required for a particular modification under applicable MMC provisions.

7. TRANSFER OF PROPERTY; SUCCESSOR OWNERS.

7.1 Authority to Transfer. Pursuant to Chapter 36.70B RCW, North Kelsey's right to sell, transfer, mortgage, hypothecate, convey or take any other similar action regarding the title to or financing for the Property after or in conjunction with purchase of the Property pursuant to the REPSA or thereafter shall not be infringed by this Agreement, provided however that any such transfer, sale, etc. shall be subject to the terms and conditions, rights and obligations of this Development Agreement and all attachments thereto. Within 30 days of the effective date of any such transfer, North Kelsey or any other transferor shall (1) formally notify the transferee of this Development Agreement, and (2) formally notify the City of the intended transfer.

7.2 Binding on Successors. All of the provisions, conditions, regulations, and requirements of this Agreement shall be binding upon the successors and assigns of North Kelsey and the City, as if they were specifically mentioned herein, and shall run with the land to be binding on all future legal owners and occupants of the Property.

7.3 Successor Owners. If North Kelsey or any direct or indirect transferee of North Kelsey transfers or conveys fee simple title to all of the Property, such transferee shall automatically become North Kelsey's successor hereunder and shall succeed to all rights and obligations of the transferor hereunder without the need for further action by the transferor. If North Kelsey, or any successor to North Kelsey described in the previous sentence, transfers a fee simple interest in a portion, but less than all, of the Property, the transferor shall be deemed to remain a party to this Agreement, and to retain all rights and responsibilities of North Kelsey or its successor hereunder, unless such transferor designates, by means of written notice to the City that is also recorded in the title records of Snohomish County, that such transferee shall be the successor to

North Kelsey hereunder and shall exercise the transferor's rights and perform its obligations under the Agreement. Only a single person or entity may be a successor to North Kelsey at any particular point in time (although there may be multiple, sequential successors to North Kelsey hereunder). Following designation of a successor to North Kelsey (whether an automatic designation pursuant to the first sentence of the Section 7.3 or a written designation pursuant to the second sentence of this Section 7.3), the predecessor shall have no further rights or obligation hereunder, but shall not be relieved of any liability, if any, for its actions prior to such designation. For purposes of clarity, this Section 7.3 shall govern decision making for North Kelsey and its successors hereunder, and nothing in this Section 7.3 shall be deemed to relieve any of the Property from the covenants or agreements granted herein, or from the City's rights to enforce such covenants and agreements against any owner or occupier of such Property.

7.4 Agreement to be Recorded. This Agreement or a memorandum thereof shall be recorded against the Property as a covenant with the land which touches and concerns the property and shall be binding upon the City and North Kelsey; their heirs, successors, and assigns; and all future owners of the Property. Consistent with the REPSA and North Kelsey's current control of the Property, the City agrees that this Agreement may be recorded after its execution and approval by the Monroe City Council notwithstanding the City retaining fee ownership of the Property. North Kelsey agrees that should the REPSA terminate without North Kelsey or its successor purchasing the Property pursuant to the REPSA, that the City, acting for itself and as attorney in fact for North Kelsey and any successor to North Kelsey, may execute and record such documents as it deems necessary to release and terminate the Development Agreement and release any encumbrance against the property that may be caused by the recording of this Agreement. North Kelsey shall be responsible for the costs of recording.

8. TERM.

The term of this Agreement ("Term") shall commence upon the effective date of the ordinance approving this Agreement ("Effective Date") and shall continue in force until the earlier of (a) two (2) years from the closing of the Property transfer under the REPSA or (b) sixty (60) months from the Effective Date. If the Project is constructed, the assurances and ongoing obligations of North Kelsey contained herein shall be valid for the life of the Project.

9. MISCELLANEOUS.

9.1 Notices. All notices, demands, and requests required or permitted to be given under this Agreement must be in writing and must be delivered personally or by nationally recognized overnight courier or sent by United States certified mail, return receipt requested, postage prepaid and addressed to the parties at their respective addresses set forth below, and the same shall be effective upon receipt or refusal. The initial addresses of the parties shall be:

If to North Kelsey:	North Kelsey, LLC 12201 Tukwila International Blvd. Fourth Floor Seattle Washington 98168-5121 Attn: Mikel Hansen
If to City:	City of Monroe 806 West Main Monroe, WA 98272 Attn: Tim Quenzer
With a copy to:	Ogden Murphy Wallace P.L.L.C. 1601 Fifth Ave, Suite 2100 Seattle, WA 98101-1686 Attn: David A. Ellenhorn

Upon at least ten (10) days' prior written notice, each party shall have the right to change its address to any other address within the United States of America. Informal communications made between the parties during the completion of construction activities to be performed under this Agreement may be made by their respective project managers as designated from time to time.

9.2 Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed, either by the parties hereto or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture, or other association between the parties.

9.3 Attorneys Fees. In the event either party hereto finds it necessary to bring an action at law or other proceeding against the other party to enforce any of the terms, covenants, or conditions hereof or any instrument executed pursuant to this Agreement, or by reason of any breach or default hereunder, the party prevailing in any such action or proceeding shall be paid all costs and reasonable attorneys' fees by the

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other party and in the event any judgment is secured by such prevailing party, all such costs and attorneys' fees shall be included in any such judgment. The reasonableness of such costs and attorneys' fees shall be determined by the court and not a jury.

9.4 Recitals/Exhibits/Additional Findings. The following exhibits attached to and referred to in this Agreement are hereby incorporated by reference as though set forth in full where referred to herein:

- Exhibit A Description of Property
- Exhibit B Conceptual Site Plan
- Exhibit C Binding Site Plan
- Exhibit D Staff Report/Binding Site Plan Findings, Conclusions and

Conditions

- Exhibit E Improvements to be Constructed
- Exhibit F Legal Description of Dedication Property

The recitals are incorporated herein by reference as matters of contract and not mere recital. The Monroe City Council hereby formally adopts the above recitals as findings in support of the City Council's approval of this Agreement. The City Council further adopts as findings the content of the March __, 2011 staff report and agenda bill accompanying this Agreement.

9.5 Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument.

9.6 Headings. Heading of sections are for convenience only and shall not be considered in construing the meaning of the content or meaning of any section.

9.7 Entire Agreement; Amendments. The REPSA and this Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes and cancel all prior negotiations between the parties with respect to the Property. Any changes, amendments, and/or modifications hereto must be in writing signed by the party against whom enforcement is sought.

9.8 No Waiver. The failure to enforce any particular provision of this Agreement on any particular occasion shall not be deemed a waiver by any party of any of its rights hereunder, nor shall it be deemed to be a waiver of subsequent or continuing breaches of that provision, unless such waiver be expressed in a writing signed by the party to be bound.

9.9 Construction of Document. Since the parties hereto have participated in extensive negotiations in the drafting of the terms and provisions of this Agreement, the parties agree that this Agreement shall be construed without regard to the identity of the person or party who drafted the various provisions, and any rule of construction that a document is to be construed against the drafting party shall not be applicable. In the event of any conflict between the terms of this Agreement and Section 17(c)(iv) of the REPSA, the terms of this Agreement shall prevail. In the event of any conflict between the terms of this Agreement and any conditions on the face of the Binding Site Plan (including the supporting documents thereto), and the Conceptual Site Plan, the terms of this Agreement shall prevail over both and the terms of the Binding Site Plan shall prevail over the Conceptual Site Plan. This Agreement shall be construed consistently and in accordance with the relevant provisions of the Monroe Municipal Code.

9.10 Governing Law; Venue. This Agreement shall be governed by and construed, interpreted, and applied in accordance with the laws of the State of Washington. The exclusive judicial venue for any litigation arising out of this Agreement shall be the Superior Court for Snohomish County, Washington.

9.11 Severability. In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

9.12 Remedies. The parties agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Agreement. The parties are also entitled to seek other remedies, including damages, to the extent otherwise provided for by law.

9.13 No Third-Party Beneficiary. This Agreement is intended for the exclusive benefit of the signatory parties hereto and their designated successors and assigns, and may only be enforced by the same.

9.14 Regulatory Authority Preserved. This Agreement is intended to be consistent with all applicable provisions of the MMC, and shall be reasonably construed and administered in accordance therewith. Nothing herein shall be construed as

waiving, limiting or otherwise abridging the City of Monroe's regulatory power, which the City hereby expressly reserves in full, this Agreement being an exercise of such powers pursuant to RCW 36.70B.170. The parties intend this Agreement to be interpreted to the full extent authorized by law as an exercise of the City's authority to enter into development agreements pursuant to RCW 36.70B.170 *et seq.*, and this Agreement shall be construed to exclude from the scope of this Agreement and to reserve to the City, only that police power authority which is prohibited by law from being subject to a mutual agreement with consideration.

9.15 Consolidated Action; Appeal. North Kelsey has requested consolidated consideration of the Agreement, the preliminary Binding Site Plan and the Grading Permit pursuant to MMC 17.34.030 and 21.50.130. In such consolidated action the City Council is the decision maker with the greatest authority and hereby acts to approve the Agreement, the Binding Site Plan and the Grading Permit. The preliminary Binding Site Plan and the Grading Permit are project permit applications as defined by state law. The Agreement directly relates to such applications. Pursuant to RCW 36.70B.200, any appeal of the approval of this Agreement, the preliminary Binding Site Plan or the Grading Permit shall be governed by the standards and procedures, including applicable deadlines, set forth in Chapter 36.70C RCW.

EXECUTED as of the date first above written.

GRANTOR:

North Kelsey LLC,
a Washington limited liability company

By: _____

GRANTEE:

City of Monroe
a Washington municipal corporation

By: _____

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ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney