

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**OFFICE OF THE HEARING EXAMINER**

**CITY OF TUMWATER**

**In The Matter of:** )  
)  
**Cathi and David Read and Erik** )  
**and Marcia Kjesbu,** )  
**Appellants,** )  
**V.** )  
**City of Tumwater and Triway** )  
**Enterprises,** )  
**Respondents.** )

**CASE NO: DSD-09-0001**  
**(TCUA #1-05)**

**FINDINGS OF FACT,**  
**CONCLUSIONS OF LAW**  
**AND DECISION**

**THIS MATTER** came before Rodney M. Kerslake, Hearing Examiner for the City of Tumwater, Washington for hearing on February 11, 2009 in Tumwater.

Appellants Cathi and David Read represented the appellants. Respondent City of Tumwater was represented by Jeffrey S. Myers, Attorney at Law, and Respondent Triway Enterprises was represented by Curtis R. Smelser, Attorney at Law.

The hearing held in the matter was a consolidated hearing that included consideration of a Conditional Use Permit application (TCUA #1-05) submitted by Triway Enterprises.

Witnesses were sworn and testified. Exhibits were admitted and reviewed. Argument was presented by the parties.

1 From the evidence in the hearing record, the Hearing Examiner enters the  
2 following:

3 **FINDINGS OF FACT**

4  
5 1. Triway Enterprises ("Triway) is proposing to develop the westerly  
6 10.81 acres of a 41.2-acre site generally located on the west side of Capitol  
7 Boulevard north of "M" Street, south of "E" Street, and west of Tumwater Valley  
8 Drive in Tumwater. Triway's proposed development would be a mixed-use  
9 project consisting of 335 residential units, 134,900 square feet of office space,  
10 69,900 square feet of retail space, and 8,600 square feet of restaurant space.  
11  
12 Ten buildings are proposed to be constructed in two phases. Proposed Buildings  
13 A through D would be situated within the Phase 2 portion of the development  
14 located on the southerly portion of the project site, would primarily contain  
15 residential units, and would range in heights between six stores (86 feet) and  
16 nine stores (116 feet). Phase 1 of the proposed development would consist of  
17 buildings ranging in height between 50 feet or less (Buildings E, F and G) and  
18 seven stories (94 feet). A 7,000 square foot guest lodge, currently located on the  
19 property, is proposed to be retained as a part of Triway's development plan.  
20

21 2. The property owned by Triway is a portion of the Old  
22 Olympia/Pabst Brewery property which has gone unused for a number of years.  
23 Except for the aforementioned guest lodge, the 41.2-acres owned by Triway is  
24 undeveloped. The 10.81 acres proposed to be developed by Triway is located  
25  
26

1 adjacent to Capitol Boulevard and is situated on a reasonably flat shelf which lies  
2 above the valley floor where the remainder of the property owned by Triway is  
3 located.  
4

5 3. Tumwater's Comprehensive Plan designates the Triway site as  
6 being in an area suitable for mixed-use development and applies a Mixed Use  
7 Land Use Plan designation to the property.

8 4. Further, Tumwater has zoned the property Mixed Use ("MU") which  
9 permits outright the type of mixed-use development proposed by Triway.

10 However, due to seven of the ten buildings proposed by Triway being in excess  
11 of fifty feet in height, a Conditional Use Permit ("CUP") is required to allow those  
12 buildings over fifty feet in height. *Tumwater Municipal Code (TMC) 18.56.280.*

13 5. Triway submitted an application to the City for a CUP to allow the  
14 seven buildings proposed that would have a building height greater than fifty feet.  
15 In addition to the project plans accompanying its application, Triway submitted an  
16 Environmental Checklist as required by WAC 197-11-310 and 315. (Exhibit R-3).  
17 After review of the Checklist, the City required Triway to prepare a number of  
18 environmental and other studies in order to adequately gauge the project  
19 impacts. Included in those studies were two view impact studies (Exhibit R-6); a  
20 Level 2 Traffic Impact Analysis ("TIA") and two subsequent addendums (Exhibit  
21 R-1 at Attachments II, JJ and KK); a geo-technical engineering report (Exhibit R-  
22 1 at Attachment T); preliminary storm drainage basin map and calculations  
23  
24  
25  
26

1 (Exhibit R-1 at Attachment NN); a wetland report (Exhibit R-1 at Attachment U); a  
2 Fish and Wildlife Protection Plan (Exhibit R-1 at Attachment V); and a forester's  
3 report and inventory (Exhibit R-1 at Attachment MM). Some of these reports and  
4 studies were prepared or submitted as a result of agency comments and citizens  
5 comments, including those presented at a public meeting held by the City in  
6 October of 2008.

7  
8 6. On December 4, 2008, after review of the Environmental Study and  
9 reports, after receiving comments from reviewing agencies and citizen  
10 comments, the City issued a *Mitigated Determination of Nonsignificance (MDNS)*  
11 for Triway's proposed project. The *MDNS* issued by the City sets forth 15  
12 mitigating measures concerning traffic improvements and payment of traffic  
13 mitigation fees. (Exhibit R-1 at Attachment Y). Subsequently, on December 16,  
14 2008 the City issued a Modified *MDNS* which primarily included revised language  
15 for some of the mitigation measures contained in the *MDNS* issued on December  
16 4, 2008. (Exhibit R-1 at Attachment Z).

17  
18  
19 7. Appellants Cathi and David Read and Erik and Marcia Kjesbu  
20 (hereinafter jointly referred to as "appellants") duly and timely filed an appeal of  
21 the *MDNS* issued by the City and urged that the City be ordered to issue a  
22 *Determination of Significance (DS)* and prepare an Environmental Impact  
23 Statement (EIS) for the proposed development. The appeal of the *MDNS* and  
24 Triway's application for a CUP was consolidated for hearing in accordance with  
25  
26

1 RCW 43.21C.075.

2 8. In their appeal, appellants raised the following issues:

- 3
- 4 A. Whether the City erred in issuing the *MDNS* for the  
5 Bellatorre proposal because it failed to consider and/or  
6 mitigate traffic impacts at the intersection of Capitol  
7 Boulevard and "M" Street?
- 8 B. Whether the City erred in issuing the *MDNS* for the  
9 Bellatorre proposal, and allowed the development to  
10 avoid Shoreline Master Program requirements because  
11 it failed to address a future roadway connecting through  
12 the proposed development from Capitol Boulevard to  
13 Tumwater Valley Drive?
- 14 C. Whether the City erred in issuing the *MDNS* for the  
15 Bellatorre proposal because information provided by  
16 the developer regarding the increase in traffic volume  
17 on Capitol Boulevard was incorrectly interpreted by the  
18 City?
- 19 D. Whether the City erred in issuing the *MDNS* for the  
20 Bellatorre proposal because it relied on outdated  
21 inaccurate FEMA floodplain maps and did not consider  
22 more current information showing that flooding on  
23 property adjacent to the development may result from  
24 the proposal?
- 25 E. Whether the city erred in issuing the *MDNS* for the  
26 Bellatorre proposal because it failed to adequately  
mitigate impacts resulting from multi-day storm events  
that may contribute to flooding on property adjacent to  
the development?
- F. Whether the City erred in issuing the *MDNS* for the  
Bellatorre proposal because it failed to adequately  
mitigate impacts to water quality in the Deschutes River  
that will result from increased runoff from the proposal?

- 1 G. Whether the City erred in issuing the *MDNS* for the  
2 Bellatorre proposal because it failed to consider and/or  
3 mitigate impacts to groundwater quality that will result  
4 from increased runoff from the proposal and impacts to  
5 the flow of groundwater from stormwater infiltration  
6 planned for the development?
- 7 H. Whether the City erred in issuing the *MDNS* for the  
8 Bellatorre proposal because it failed to consider and/or  
9 mitigate impacts to the Deschutes River Riparian Area  
10 arising from lost vegetation caused by the proposal, in  
11 particular related to guidelines from the Deschutes River  
12 Special Area Management Plan?
- 13 I. Whether the City erred in issuing the *MDNS* for the  
14 Bellatorre proposal because it failed to adequately  
15 mitigate impacts to wetlands along the base of the slope  
16 below the project site, consistent with the City's  
17 Conservation Plan?
- 18 J. Whether the City erred in issuing the *MDNS* for the  
19 Bellatorre proposal because it failed to adequately  
20 mitigate impacts to views that existing residents have of  
21 Mount Rainier and the Deschutes Valley?
- 22 K. Whether the City erred in issuing the *MDNS* for the  
23 Bellatorre proposal because it made a procedural error in  
24 not notifying citizens who requested notification?
- 25 L. Whether the City erred in issuing the *MDNS* for the  
26 Bellatorre proposal because the errors shown in this  
appeal show that an *EIS* is needed to gather additional  
information as required under *SEPA*?

Pre-Hearing Order entered on February 2, 2009.

9. A TIA for the project was prepared by the Transportation Planning and Engineering firm of Shea Carr Jewel who used the accepted methodology in the transportation planning and engineering field for the preparation of the

1 TIA which, in this case, included use of the computer traffic model for the South  
2 Sound Region which is the preferred traffic model. (Exhibit R-1 at Attachment 11  
3 and testimony of Perry Shea, PE.) The TIA identified sixteen intersections within  
4 the study area which potentially could be impacted by the Triway development.  
5  
6 The intersection of South "M" Street was not one of the intersections identified  
7 due to it being a low volume minor intersection and due to the predicted increase  
8 in PM peak hour traffic south of the project site on Capitol Boulevard resulting  
9 from the proposed project of only four percent, which is only slightly above  
10 background growth traffic increases. However, subsequently Shea Carr Jewel,  
11 in response to public concerns, investigated the South "M"/Capitol Boulevard  
12 intersection and determined that the existing intersection configuration, the steep  
13 gradient of "M" Street as it approaches Capitol Boulevard, and the intersection's  
14 location near a curve on Capitol Boulevard, a short distance south of the  
15 intersection, could, at times, make turning movements out onto Capitol Boulevard  
16 from "M" Street, particularly left-turn movements, challenging. *Id.* However,  
17 Shea concluded that the problems identified by appellants were the result of  
18 existing condition which were neither created nor exacerbated by Triway's  
19 proposed development. The TIA concluded that, with the extensive traffic  
20 mitigation improvements recommended, amounting to approximately \$2,000,000  
21 for local and system-wide improvements, traffic from Triway's development would  
22 be adequately accommodated on existing roadways  
23  
24  
25  
26

1 and at the intersections in the area. (Exhibit R-1 at Attachment 11 at 43) No  
2 credible evidence was presented by appellants rebutting this evidence.

3           10. As a part of the transportation mitigation imposed by the City,  
4 Triway would be required to dedicate and improve a public street corridor from  
5 Capitol Boulevard east to a portion of its property it now proposes to develop.  
6 This new public street would conform to the alignment the City is planning for its  
7 cross-valley arterial. The need for this arterial improvement is not created by  
8 Triway's development proposal, but is an entirely independent transportation  
9 improvement that has been contemplated by the City for some time.  
10  
11

12           11. The Federal Emergency Management Agency (FEMA) has  
13 developed floodplain maps for the Deschutes River Basin, including the flood  
14 plain which occupies substantial portions of the valley floor lying below the  
15 project site (10.18 acres). FEMA is currently updating its flood plain maps and to  
16 accommodate that task is collecting recent data on flooding. The new FEMA  
17 flood plain maps have not been completed and no substantive information is  
18 available from FEMA in regard to these new maps. It is highly improbable that  
19 any change in FEMA flood plain maps would affect the project site due to its  
20 substantial elevation above the valley floor. (Testimony of Steve Hatton, project  
21 engineer, and Chris Carlson, Tumwater Planning Manager.) No credible  
22 evidence was presented by appellants rebutting this evidence.  
23  
24  
25  
26

1           12.     The preliminary stormwater drainage calculations from the project  
2 prepared in accordance with the *Thurston Region Drainage Design and Erosion*  
3 *Control Manual (Manual)*, which has been adopted by the City, established that  
4 properly sized on-site stormwater facilities can be readily provided for the project.  
5 (Exhibit R-1 at Attachment NN). The Manual requires stormwater facilities to be  
6 designed to prescribed single event storms and to insure that surface water  
7 runoff from the development site not exceed the natural runoff from the property  
8 in its undeveloped state. (Testimony of John Norman, City Stormwater Engineer,  
9 and Steve Hatton, project engineer.) The Washington State Department of  
10 Ecology's (DOE) recommendations for Best Management Practices (BMP's) for  
11 stormwater management (Exhibit A-7) call for use of multi storm events for sizing  
12 stormwater facilities. The City's Manual allows its Stormwater Engineer to  
13 require additional stormwater management measures if deemed necessary, such  
14 as use of multi-day storm events (Testimony of John Norman.) However, in this  
15 case, given the soil types found on the development site, the use of the single  
16 event storm to calculate the sizing of the project's stormwater facilities results in  
17 larger facility size requirements than use of the multi-day storm events method.  
18 Drainage system overflows would direct stormwater flows to either Capitol  
19 Boulevard or the north drainage basin in the valley and would not be allowed to  
20 flow over the hillside running along the east side of the project site. (Testimony  
21 of John Norman and Steve Hatton.) Appellants have failed to show that  
22  
23  
24  
25  
26

1 application of the City Manual to the proposed development does not adequately  
2 mitigate stormwater impacts associated with Triway's proposed development.

3           13. The City utilizes both its Manual and DOE's manual for design  
4 requirements for treating stormwater runoff. (Testimony of John Norman.)  
5 Triway would be required to utilize the accepted or preferred method for  
6 removing pollutants from stormwater flows prior to infiltration into the subsurface  
7 soils on the site. The only concern regarding on-site infiltration is the exact  
8 location of such systems to insure that they do not compromise slope stability  
9 along the easterly portion of the property. The geotechnical engineering report  
10 (Exhibit R-1 at Attachment T) recognizes this concern and the City, as a part of  
11 its review of the final drainage plan, would require a geotechnical review prior to  
12 approval of the plan. (Testimony of John Norman.) Appellants have failed to  
13 demonstrate that the City failed to consider or mitigate water quality concerns  
14 associated with the proposed development.  
15  
16  
17

18           14. Triway's project site (10.18 acres) is not located within the shoreline  
19 or associated uplands of the Deschutes River. Thus, the project is not subject to  
20 shoreline jurisdiction under *RCW 90.58, Shoreline Management Act (SMA)* or the  
21 *City's Shoreline Master Program (SMA)*. Accordingly, the Deschutes River  
22 Riparian Area regulations are not applicable to the project.  
23

24           15. Two regulated wetlands are located on the property at the toe of  
25 the slopes along the easterly edge of the project site (10.18 acres) and both are  
26

1 Type3 Wetlands requiring 100-foot buffers under applicable City Critical Areas  
2 regulations. Also, a Type 3 stream is located within the northerly wetland. All  
3 requirements of the City's Critical Areas regulations, including buffer averaging  
4 requirements, would be met. Appellants have failed to show that application of  
5 the City's Critical Areas regulations would not adequately protect the on-site  
6 wetlands and stream and adequately mitigate any adverse impacts.  
7

8 16. Triway, at the direction of the City, has undertaken several view  
9 studies to assess the view impacts of the buildings within its projects that would  
10 be more than 50 feet in height. One study involved the use of large balloons  
11 placed at the corners of the proposed buildings, that were raised to the height of  
12 each building, and then photographs were taken from various locations of  
13 Tumwater Hill across Interstate 5 (I-5) from the project. It was determined that  
14 the area potentially most affected by the taller buildings on the project site would  
15 be along Second Street on lower Tumwater Hill. (Exhibit R-6). A more detailed  
16 view study was ordered by the City in order to more precisely determine the  
17 potential view impacts on the identified residences along the portion of Second  
18 Street. This latter study determined that the identified homes do not have views  
19 over the southerly portion of the project site where the tallest buildings (Buildings  
20 B and C proposed at a height of 116 feet) would be located and that the territorial  
21 views across the valley of the Cleveland Avenue area and of Mount Rainer would  
22 not be significantly affected as the proposed buildings on the northerly portion of  
23  
24  
25  
26

1 the project site, when viewed from the distance which separates the homes from  
2 the project, would be at or below the easterly horizon. (Exhibit R-6). Appellants  
3 presented photographic evidence depicting views of Mount Rainier and sunrises  
4 from homes along Second Street over the project site and also presented  
5 evidence comparing ground elevations at various locations on Tumwater Hill with  
6 expected elevations of buildings on the project site. (Exhibits A-3, A-4 and A-5).  
7 Appellants' evidence did not take into account the substantial horizontal distance  
8 separating the homes on Second Street and the project site; thus, leaving the  
9 Hearing Examiner to speculate as to the project's likely effects on views, if any,  
10 on the project site. Appellants have failed to establish that the project would  
11 have more than a moderate effect on views, and, further, did not show what  
12 additional view information would be expected from preparation of an *EIS* for the  
13 project.  
14  
15  
16

17 17. In accordance with *TMC* 14.06.030(A), which provides:

18 The notice of application shall be posted on the subject  
19 property, published once in a newspaper of general  
20 circulation in the City, and mailed to all owners of property  
21 within 300 feet of the boundaries of the subject property.  
22 The Director may extend notice beyond 300 feet in cases  
23 where the area notified does not provide adequate notice  
24 to neighbors affected by the proposed project action.

25 the City mailed a revised Notice of Land Use Application (NOA) with a 17-day  
26 comment period to property owners within 300 feet of the subject property,  
posted notice on the site, and published notice in the *Olympian* newspaper.  
Subsequently, notice of a public meeting in regard to the Triway development

1  
2 proposal was sent to all property owners within 1,320 feet, which was extended  
3 to all owners of property within the Palermo Neighborhood (located southeast of  
4 Triway's project site) and posted notice on the project site.  
5

6 The original *MDNS* issued on December 4, 2008 and the Modified *MDNS*  
7 issued on December 16, 2008 were posted on the project site and mailed to all  
8 owners of property within 1,320 feet and the Palermo Neighborhood.  
9

10 Notice of the public hearing before the Hearing Examiner was posted on  
11 the project site, published in the *Olympian* newspaper, and mailed to all owners  
12 of property within 1,320 feet and the Palermo Neighborhood on January 29,  
13 2009.

14 *WAC 197-11-510* requires reasonable methods for informing the public  
15 (and other agencies) that an environmental document is being prepared or is  
16 available and in regard to meetings, if any, that will be held. Agencies are  
17 authorized to use their existing notice procedures, including posting on site and  
18 publishing notice (required per procedures if not otherwise provided by agency  
19 *SEPA* rules – *WAC 197-11-510(2)*).  
20

21 Appellants Cathi and David Read apparently contend that they did not  
22 receive the initial NOA, but acknowledge that they received all subsequent  
23 notices after the notice area was extended by the City, that they attended the  
24 public meeting held in regard to Triway's proposed development, provided  
25 comments thereon, and filed an appeal, along with others, challenging the City's  
26

1  
2 Issuance of a *MDNS*. Appellants Cathi and David Read have not established  
3 that they did not receive notice that was required to be provided them under City  
4 notice requirements or the State *SEPA* rules, and do not contend that they were  
5 denied an opportunity to fully participate in the City's environmental and permit  
6 review process or were otherwise prejudiced.  
7

8 18. While appellants have indicated, during these proceedings  
9 challenging of the City's issuance of a *MDNS* for Triway's development proposal,  
10 that they dispute some of the environmental studies done and disagree with a  
11 number of conclusions reached, they have not shown exactly what additional  
12 relevant information would result from the preparation of an *EIS*.  
13

14 19. Any conclusion hereinafter stated which might be deemed to be a  
15 finding herein is hereby adopted as such.  
16

17 From these Findings of Fact come the following:

18 **CONCLUSIONS OF LAW**

19 1. The Hearing Examiner has jurisdiction in regard to appeals of the  
20 City's responsible official to issue an *MDNS* rather than a *DS* requiring  
21 preparation of an *EIS*. *TMC* 16.04.160.  
22

23 2. In these proceedings, appellants have the burden of proof and the  
24 determination of the City's responsible official shall be presumed *prima facie*  
25 correct and afforded substantial weight. *RCW* 43.21C.075(2)(d); *WAC* 197-11-  
26 680(3)(a)(viii), *TMC* 16.04.160. The decision by an agency to issue a *MDNS*

1  
2 instead of requiring an *EIS* is left to the sound discretion of the agency and will  
3 not be disturbed unless it is found to be unsupported by the evidence and the  
4 Hearing Examiner is left with a definite and firm conviction that a mistake has  
5 been made. *Anderson v. Pierce County*, 86.Wn.App 290, 302, 936 P.2d 432. To  
6 survive scrutiny, the record must show (a) that environmental factors were  
7 considered in a manner sufficient to amount to prima facie compliance with the  
8 procedural requirements of *SEPA*, (b) that the information relied on to issue a  
9 *MDNS* was based on information sufficient to evaluate the proposal's  
10 environmental impacts, and (c) mitigating measures are reasonable and capable  
11 of being accomplished. *Anderson, supra (citations omitted)*.

12  
13  
14 3. Here, the City required Triway to prepare numerous studies,  
15 including view impact analyses, a Level 2 TIA and addenda, a geotechnical  
16 engineering study, a preliminary storm drainage plan and calculations, a wetland  
17 report, a Fish and Wildlife protection plan, and a forester's report and tree  
18 inventory. The City, using its own experts in the fields of transportation  
19 engineering and stormwater management and taking into account both agency  
20 and citizen comments, issued the *MDNS*, which is challenged in these  
21 proceedings, including 15 mitigating measurements which represent  
22 approximately \$2,000,000 in transportation improvements and transportation  
23 mitigation fees. The amount of detail in the environmental studies relied on by  
24 the City in issuing its *MDNS* and the extent of the mitigating measures  
25  
26

1  
2 demonstrates prima facie compliance with *SEPA*. Appellants have not shown  
3 otherwise.

4  
5 4. Moreover, major developments within urban growth areas such as  
6 Tumwater do not require preparation of an *EIS* if application of local planning and  
7 zoning laws and local, state, and federal development environmental laws would  
8 adequately mitigate the significant adverse impacts of the development. *RCW*  
9 *43.21C.240*; *Moss v. City of Bellingham*, 109 Wn.App 6, 15, 31 P.3d 703 (2001).  
10 Also, *WAC 197-11-158* expressly authorizes the use of existing plans,  
11 regulations and laws in considering the environmental effects of a proposed  
12 development and, if those laws adequately address the impacts anticipated,  
13 additional mitigation may not be imposed. *Moss* at 22. In this case, Triway's  
14 proposed mixed use development is located within an area of the City that is  
15 designated by the City's Comprehensive Plan as appropriate for mixed use  
16 development, the property is zoned MU which allows Triway's proposed use, and  
17 the City's zoning regulations expressly allow building heights in MU zones over  
18 50 feet upon a showing of compliance with specified standards. Finally, the City  
19 has properly relied upon compliance with its Manual for controlling and mitigating  
20 stormwater issues, its wetlands/stream and tree protection ordinances, and its  
21 habitat protection ordinances. Appellants have not demonstrated that the City's  
22 reliance on these plans, regulations, and laws in the issuance of the *MDNS* for  
23 Triway's project was error.  
24  
25  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

5. Appellants urge that the City erred in not considering the impacts (and permitting the requirements) associated with a planned arterial connection between Capitol Boulevard and the Cleveland Avenue area across the valley and the Deschutes River. An analyses of cumulative impacts of actions other than the project being considered is not required under *SEPA* unless (a) there is some evidence that the street project will facilitate the future action that will result in additional impacts or (b) the project is dependent on subsequent proposed development. *Boehm v. City of Vancouver*, 111 Wn.App 711, 720, 47 P.3d 137 (2002). The development of an arterial connection across the Deschutes River valley has for sometime been a part of the City's transportation plan and prior to the genesis of Triway's proposed development project. While Triway has made accommodation for the future arterial corridor connection through its project site (10.18 acres), it has not facilitated development of the connection nor has it been shown that Triway's development project is dependent, in any way, on this arterial connection. No error has been established by appellants in regard to the City not evaluating any cumulative impacts associated with this arterial connection.

6. In summary, the Hearing Examiner concludes that the appellants have failed to meet their burden of showing that the City erred in the issuance of a *MDNS* for Triway's proposed development rather than issuing a *DS* requiring preparation of an *EIS*.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

7. Accordingly, appellants' challenge to the City's issuance of a *MDNS* for Triway's proposed mixed use project should be denied and the City's determination to issue the *MDNS* should be affirmed.

8. Any finding hereinbefore stated which might be deemed a conclusion herein is hereby adopted as such.

From these Conclusions of Law comes the following:

**DECISION**

Appellants' challenge to the City's issuance of a *MDNS* for Triway's proposed mixed use project is hereby denied, and the City's determination to issue the *MDNS* is hereby affirmed.

**SO ORDERED** this 25<sup>TH</sup> day of February 2009.



**RODNEY M. KERSLAKE**  
Hearing Examiner