

March 26, 2024

MEMORANDUM

To: Transportation Committee
From: Lish Whitson, Analyst
Subject: Clerk File 314512: 1305 Stewart Street Alley Vacation

On April 2, 2024, the Transportation Committee will hold a public hearing and may vote on a petition for the vacation of the alley on the block surrounded by Stewart Street, Denny Way, and Eastlake Avenue East in the South Lake Union neighborhood (Council District 7). The petition, contained in [Clerk File \(CF\) 314512](#), was filed by Denny & Eastlake Limited Partnership and Denny & Stuart Limited Partnership, the owners of the property abutting the alley (Petitioners). The vacation would facilitate the development of a 15-story research facility with ground floor retail uses. The site is located on the north side of Denny Way, across Eastlake Avenue E from Interstate 5.

An early [briefing](#) on the petition was provided in March 2023 to the Transportation Committee. At the April 2 meeting, the Committee will hold a public hearing and may vote on the petition.

Public benefits proposed as part of the vacation include:

- Improved pedestrian crossings of Stewart Street at lower Denny Way and Eastlake Avenue E;
- Eastlake Avenue E improvements, including new bike lanes, wider sidewalks, street trees and lighting;
- Improvements to lower Denny Way as a pedestrian street with plantings, street trees, lighting, and seating;
- Publicly accessible infrastructure, including a bottle fill station, electricity, water, a bike fix-it station and a bicycle storage room for public use along lower Denny Way;
- Artwork on the north side of the Denny Way overpass; and
- Wayfinding improvements.

The Seattle Department of Transportation and the Seattle Design commission have reviewed the vacation petition in CF 314512 and recommend granting the vacation with conditions.

This memorandum describes:

1. The street vacation policies that guide the Council's decision;
2. The proposed development and alley vacation;
3. The proposed public benefits associated with the proposal; and
4. The conditions proposed to be placed on the vacation.

Street Vacation Policies

From time to time, property owners seek to permanently acquire the street or alley next to their property from the City. The process to do so is laid out in the Revised Code of Washington [Chapter 35.79](#), Seattle Municipal Code, [Chapter 15.62](#), and the City Council's [Street Vacation Policies](#). In 2018, the City Council updated its street vacation policies to provide greater clarity for petitioners, members of the public and decision-makers in proposing and reviewing street vacation petitions. The policies identify two related but independent questions that the Council must consider in reviewing a street vacation petition:

1. are the “public trust functions” of the right-of-way maintained? and
2. will the public receive a benefit from the vacation?

Public trust functions are the uses of right-of-way. The policies describe the public trust functions as follows:

Streets are dedicated in perpetuity for use by the public for travel, transportation of goods, and locating utilities. The dedication carries with it public rights to circulation, access, utilities, light, air, open space, views, free speech, and assembly, and contributes significantly to the form and function of the city. The primary concern of the City in vacation decisions is to safeguard the public's present and future needs and to act in the public's best interest. (p. 7)

Public benefits are a required component of street vacations to offset loss of public space. The policies describe public benefits as follows:

The City acts as a trustee for the public in its administration of rights-of-way. Courts have required that in each vacation there shall be an element of public use or benefit, and a vacation cannot be granted solely for a private use or benefit. Therefore, before this public asset can be vacated to a private party, there shall be a permanent or long-term benefit to the public.

The fact that these benefits are provided equally to all members of the public may be most important to those who have the least. To best address the needs of the community, a strong focus on race and social equity is important in assessing the public benefits included as part of a street vacation petition.

Proposed vacations may be approved only when they provide a permanent or long-term public benefit. Because the public permanently loses the street, short-term public benefits or public benefits that solely benefit individuals will not be considered. The following are not considered public benefits:

- Mitigating the vacation's adverse effects;
- Meeting code requirements for development;
- Paying the required vacation fee;
- Facilitating economic activity; or
- Providing a public, governmental, or educational service.

While the nature of the project is a factor in deciding the adequacy of a public benefit proposal, it is not itself a public benefit. (p. 22)

After a petitioner files a complete vacation petition with the City Council, it is sent to SDOT and the SDC for review. SDOT collects comments from City Departments, private utilities, transit agencies, and others with an interest in the City's rights-of-way. After review and recommendation by these parties, SDOT returns the petition, and the City Council considers the petition. The Council is required to hold a public hearing on the petition, and then must act on the petition. State law states that approval of vacations is solely a legislative act.

If the Council decides it is appropriate to vacate the right-of-way, it will typically grant conditional approval. That approval is placed in the CF alongside the vacation petition. That conditional approval allows the petitioner to begin developing in the right-of-way. After the petitioner meets all the conditions and pays all fees, SDOT drafts an ordinance for Council consideration that transfers ownership of the right-of-way to the petitioner.

1305 Stewart Proposal

Petitioners have acquired four out of the five properties on the block bounded by Denny Way, Eastlake Avenue E and Stewart Street for redevelopment. The properties owned by the petitioners include a total of four one- and two-story retail, office and service buildings, and a surface parking lot. Tenants of the buildings have included a tattoo shop, a hookah lounge, the El Corazon and Funhouse music clubs, and an auto repair shop. The remaining building on the block, which does not abut the alley and is not part of the proposed development, is a two-story office building.

Denny Way abutting this block contains two sections: Lower Denny Way is a single eastbound lane at grade abutting the block; the main section of Denny Way consists of four lanes over a bridge structure that connects this portion of South Lake Union and Downtown Seattle with Capitol Hill. The Denny Way bridge lands at the intersection with Stewart Street on the southwest corner of the block. Figure 1 (page 4) shows the location of the proposed vacation and highlights the properties owned by the Petitioners in red.

Figure 1: Location of the Proposed Alley Vacation

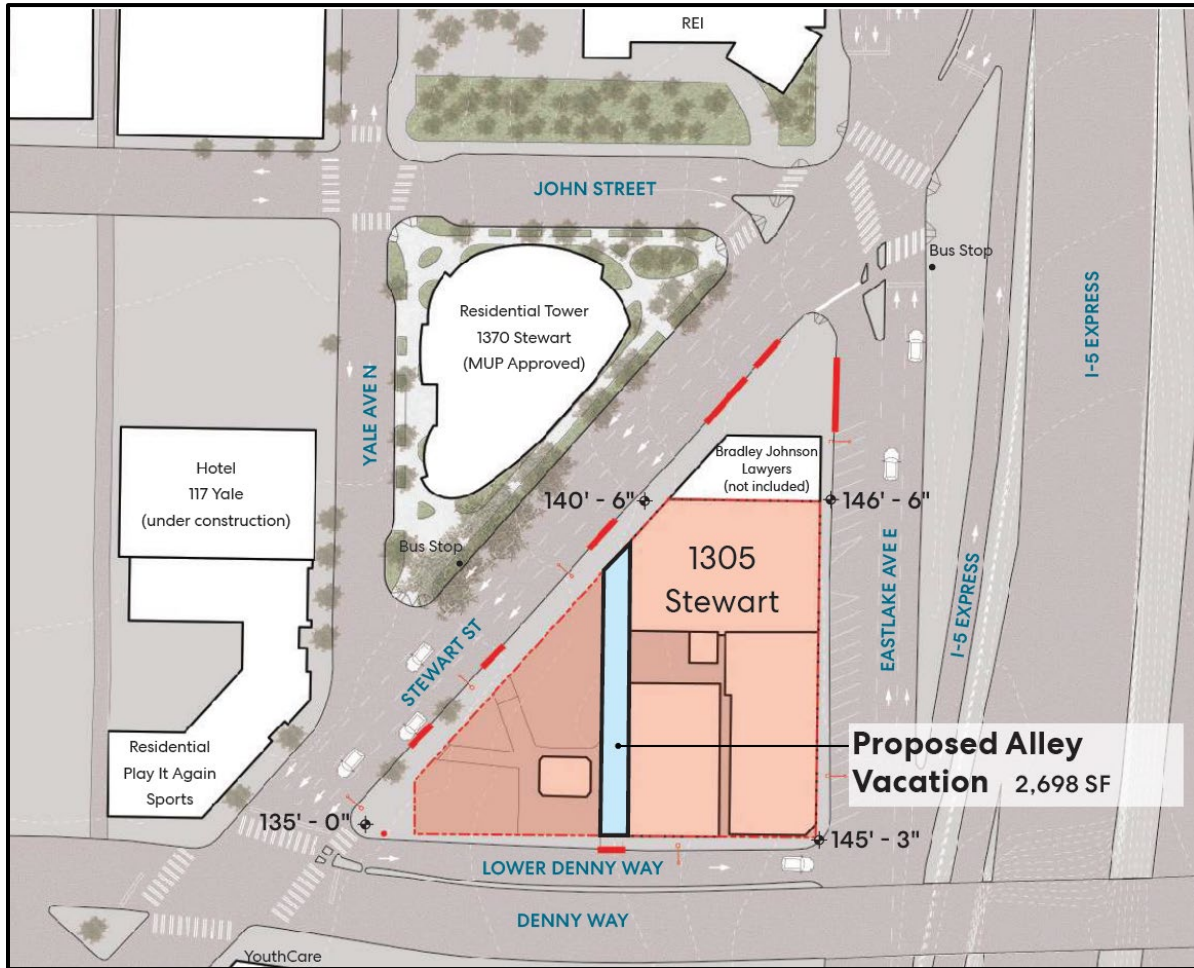


Image courtesy of Perkins & Will, PMB, and SiteWorkshop

Approval of the alley vacation would allow for the development of a 437,374 square foot 15-story laboratory building with ground floor retail spaces and 258 parking spaces below-ground. Entrance to parking and loading would be from Eastlake Avenue E.

As SDOT notes in its recommendation letter, the alley vacation would allow for the development of a single tower, with shared parking, significant open space, a single curb cut off of Eastlake Avenue E, and improved pedestrian and bicycle facilities around the building. No significant impacts to the public trust were identified.

Proposed Public Benefits

The proposed project would provide a number of public benefits, beyond site improvements required under the City's codes and regulations:

1. Improved pedestrian crossings at Stewart Street and lower Denny Way, on the southwest corner of the site, including new curb ramps, crosswalks, and sidewalks at this heavily trafficked intersection.
2. Improved pedestrian crossings at Stewart Street and Eastlake Avenue E, on the northern corner of the site, including new curb ramps, crosswalks, sidewalks, and plantings adjacent to the neighboring property, not part of this project.
3. Improvements to Eastlake Avenue E abutting the site, beyond required improvements, including improved bike lanes, wider sidewalks, planting and street trees, and pedestrian lighting.
4. Contribution toward the installation of three signs under the City's [Seamless Seattle](#) Wayfinding program.
5. Pedestrian improvements to Lower Denny Way, to make it a principally pedestrian curbless street that can be used for public events, including special surfacing, plantings, soil, irrigation, street trees, pedestrian lighting, benches, and removable bollards to limit vehicular access.
6. Infrastructure to support public events along Lower Denny Way, including a storage room, potable water, power for events, and a water bottle filling station.
7. A mural on the north face of the Denny Way overpass, facing the project and Lower Denny Way.

While the specific public benefits required of individual vacations are unique to each project, these proposed benefits are generally consistent with the public benefits provided for comparable projects.

Proposed Conditions

The Director of SDOT has recommended conditional approval of the vacation and has proposed ten conditions. Attachment 1 uses those conditions as the basis for conditional approval of the vacation. Key conditions include (1) development of the project as presented to the Council; and (2) implementation of the public benefit features described above.

If the Council supports the proposed vacation, it should add the conditional approval included as Attachment 1 to this memorandum to CF 314512. The conditions as drafted would indicate the Council's approval of the project as conditioned and would allow development to occur as soon as construction permits are granted by the Seattle Department of Construction and Inspections. The conditions indicate those steps the Petitioners will need to complete prior to the Council granting final approval and transferring ownership of the alley to the Petitioners.

Next Steps

The Transportation Committee will hold a public hearing on CF 314512 at its April 2 meeting. The Council rules indicate that generally, the Council should not hold a vote on legislation at the same meeting as a public hearing. However, Committees have frequently waived those rules when there is broad support for a proposal and no amendments are being considered.

If the Committee is ready to act on the petition on April 2, it should take the following votes:

1. Vote to add the conditions contained in Attachment 1 to this memo to the Clerk File;
2. Waive the Council rules regarding voting on a piece of legislation the same day as a public hearing; and
3. Move to recommend conditional approval of the vacation petition contained in Clerk File 314512.

A Committee vote on April 2 would allow for a City Council vote as early as April 10.

If the Committee needs additional time to consider a vote, the proposal could return to the Transportation Committee as early as April 16.

Attachments:

1. Draft conditions

cc: Ben Noble, Director
Aly Pennucci, Deputy Director

**IN THE MATTER OF THE PETITION OF DENNY & EASTLAKE
LIMITED PARTNERSHIP AND DENNY & STEWART LIMITED
PARTNERSHIP, FOR THE VACATION OF THE ALLEY LYING WITHIN
BLOCK 24, PONTIUS FOURTH ADDITION TO THE CITY OF SEATTLE,
EXTENDING FROM THE NORTHERN MARGIN OF DENNY WAY AND
THE EASTERLY MARGIN OF STEWART STREET**

CLERK FILE 314512

The City Council hereby grants approval of the petition of Denny & Eastlake Limited Partnership and Denny & Stewart Limited Partnership (“Petitioners”), for the vacation of the Alley in Block 24, Pontius Fourth Addition to the City of Seattle, being the alley in the block bounded by Stewart Street to the north, Denny Way to the south, and Eastlake Avenue E to the east, described as:

THE ALLEY LYING WITHIN BLOCK 24, PONTIUS FOURTH ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 7 OF PLATS, PAGE 8, RECORDS OF KING COUNTY, WASHINGTON, LYING BETWEEN FRACTIONAL LOTS SIX THROUGH NINE, INCLUSIVE, AND BETWEEN LOTS 10 THROUGH FRACTIONAL LOT 14, INCLUSIVE, EXTENDING FROM THE NORTH RIGHT OF WAY MARGIN OF DENNY WAY AND THE EASTERLY RIGHT OF WAY MARGIN OF STEWART STREET; CONTAINING AN AREA OF 2,698 SQUARE FEET, OR 0.0619 ACRES MORE OR LESS; SITUATE IN THE CITY OF SEATTLE, KING COUNTY, WASHINGTON.

The vacation is granted upon the Petitioners meeting the following conditions. The petitioners shall demonstrate that all conditions imposed on the vacation by the City Council have been satisfied and all required fees paid before the vacation ordinance is passed.

1. The vacation is granted to allow the Petitioners to build a project substantially in conformity with the project presented to the City Council and for no other purpose. The project must be substantially in conformity with the proposal reviewed by the City Council.
2. All street improvements shall be designed to City standards, as modified by these conditions to implement the Public Benefit requirements, and shall be reviewed and approved by the Seattle Department of Transportation (SDOT) through a Street Improvement Permit (SIP).
3. The utility issues shall be resolved to the full satisfaction of the affected utility prior to the approval of the final vacation ordinance. Prior to commencing any development activity on the site, the Petitioner shall work with the affected utilities and provide for the protection of the utility facilities. This may include easements, restrictive covenants, relocation agreements, or acquisition of the utilities, which shall be at the sole expense of the Petitioners.

4. It is expected that development activity will commence within approximately 2 years of this approval and that development activity will be completed within 7 years. To ensure timely compliance with the conditions imposed by the City Council, the Petitioners shall provide SDOT with Quarterly Reports, following Council approval of the vacation, providing an update on the development activity, schedule, and progress on meeting the conditions. The Petitioner shall not request or be issued a Final Certificate of Occupancy (C of O) until SDOT has determined that all conditions have been satisfied and all fees have been paid as applicable. If development activity has not commenced within 7 years the Petitioner must seek an extension of the approval from the City Council.
5. In addition to the conditions imposed through the vacation process, the project, as it proceeds through the permitting process, is subject to review under the State Environmental Policy Act (SEPA) and to conditioning pursuant to various City codes and through regulatory review processes including SEPA.
6. The Petitioner and/or Development team shall continue to provide the information regarding the review and implementation of the proposed and required regulatory elements such as the Street Improvement Permit (SIP) and Utility Major Permit, the recommendations from the Seattle Design Commission (SDC), and the vacation conditions. It shall be the responsibility of the Petitioner or Development team to provide information to review bodies and make sure that the varying elements can be implemented as required by City Council. If project changes or regulatory provisions substantially impact any vacation conditions, including the public benefit features, SDOT Street Vacations will facilitate a resolution of any conflicts. SDOT may require review by the SDC staff to address substantial changes to public benefits or issues and confirm compliance with these conditions.
7. Public amenities and any nonstandard elements in the right-of-way shall require a binding mechanism to ensure that the features remain open and accessible and to outline future maintenance and insurance provisions. This may, as determined by SDOT, include a public amenity permit, provisions in the SIP, or inclusion of ongoing obligations in the vacation Property Use and Development Agreement (PUDA).
8. Any artistic elements or mural applied to structural walls that support Denny Way at or near lower Denny Way as part of the required public benefits must be maintained by the Petitioner for 50 years from the date of application as allowed by SDOT. At the end of the 50-year term or upon any request by SDOT for removal of the artistic element, the obligation for the Petitioner to provide and maintain the artistic endeavor on the structural walls as a public benefit will cease.

9. Free speech activities such as hand billing, signature gathering, and holding signs, all without obstructing access to the space, the building, or other adjacent amenity features, and without unreasonably interfering with the enjoyment of the space by others, shall be allowed within the public realm. While engaged in allowed activities, members of the public may not be asked to leave public streets for any reason other than conduct that unreasonably interferes with the enjoyment of the space by others. Signage clearly identifying that lower Denny Way is a public street and free speech activities are allowed in the public realm shall be provided. A mockup of the proposed signage and a map of the proposed locations shall be provided to SDOT Street Vacations for review and approval prior to the fabricating and installing the signage. Any violation of these conditions will be enforced through Chapter 15.90 of the Seattle Municipal Code.
10. The Petitioner shall develop and maintain the public benefit elements as defined by the City Council. A PUDA or other binding mechanism shall be required to ensure that the public benefit elements remain open and accessible to the public and to outline future maintenance obligations of the improvements and insurance provisions. The final design of the public benefit elements shall require the review and approval of SDOT Street Vacations. SDOT may engage with the SDC in this review. The public benefit requirements include the following features and corresponding development standards, including approximate square footage dimensions, which shall be outlined in the PUDA:

| Public Benefit Description | Item | Quantity | Estimated Cost |
|---|---|-----------|----------------|
| 1 - Pedestrian Crossing - Stewart and Denny New sidewalk areas, curb ramps, crosswalk striping to facilitate safe crossing of arterial streets. | City of Seattle (COS) standard sidewalk surfacing | 629 SF | \$89,000 |
| | COS standard curb ramp | 4 | |
| | COS standard crosswalk striping | Allowance | |
| 2 - Pedestrian Crossing - Stewart and Eastlake New sidewalk areas, planting, curb ramps, crosswalk striping to facilitate safe crossing of arterial streets. | COS standard sidewalk surfacing and planting | 1,232 SF | \$148,000 |
| | COS standard curb ramp | 6 | |
| | COS standard crosswalk striping | Allowance | |
| 3 - Eastlake Avenue East ROW Enhancements Extension of existing curb to create new space for pedestrians and bikes beyond SIP requirements. Improvements include bike facilities, on-street parking, planting and street trees, street and bike channelization, and pedestrian lighting. | COS vehicular concrete and sidewalk surfacing, planting, soil, and irrigation | 8,509 SF | \$1,579,000 |
| | Street Trees | 9 | |
| | Bike racks | 4 | |
| | Pedestrian light poles | 8 | |
| | Benches | 6 | |

| Public Benefit Description | Item | Quantity | Estimated Cost |
|--|---|-----------------|-----------------------|
| 4 - Wayfinding Signage Monetary contribution to the city's Seamless Seattle Wayfinding program for new signage near project site implemented by SDOT. | COS standard signs and foundations implemented by SDOT | 3 signs | \$75,000 |
| 5 - Lower Denny Way Pedestrian Street Conversion of lower Denny Way to Urban Curbless with restricted access for service and emergency vehicles. Improvements will include new surfacing, drainage, planting and irrigation, lighting, power and site furnishings. | COS vehicular concrete surfacing with specialty scoring, finish and color, planting, soil, and irrigation | 5,874 SF | \$953,000 |
| | Street Trees | 8 | |
| | Pedestrian Light Poles | 7 | |
| | Benches | 18 LF | |
| | Removable Bollards | 6 | |
| 6 - Private Infrastructure for Public Use Publicly-accessible infrastructure for public use including: a storage room, potable water and power for event use and a drinking fountain. Instructions and rules for accessing the publicly accessible infrastructure will be made publicly available prior to final Certificate of Occupancy. | Storage Room - Dedicated storage room with direct access to lower Denny Way | 150 SF | \$80,000 |
| | Power - wall mounted and pylon sources | 2 | |
| | Potable water – wall mounted hydrant | 1 | |
| | Bottle Filling Station | 1 | |
| 7 - Artistic Endeavor (Mural) at Denny Way Overpass Urban Artworks led project to create mural on the northern face of Denny Way bridge structure and maintain for 50 years. | Painted mural surface for 50 years | 3,200 SF | \$225,000 |
| TOTAL ESTIMATED COST FOR PUBLIC BENEFITS | | | \$3,149,000 |

Granted by the City Council the _____ day of _____, 2024,
and signed by me in open session in authentication of its passage this _____ day of
_____, 2021.

President _____ of the City Council