

TO	Kara Fioravanti
PROJECT	4310 Macadam - EA 10-127599
PROJ. #	2010.6410
DATE	June 2, 2010
FROM	Keith Skille, AIA

Dear Kara,

The 4310 Macadam project proposes a major renovation and addition to an existing office building located at the southern edge of Portland's South Waterfront Sub-district. The project has been selected by the U.S. Government General Services Administration as a co-location facility for two Department of Homeland Security agencies dedicated to Immigrations and Customs Enforcement.

When completed, the project will include approximately 59,000 (40,000 existing and 19,000 new) square feet of occupied office and 38,000 square feet of at-grade and structured parking. The parking will be secured and dedicated for the exclusive use of the building occupants. Included as part of the office area is a 4,000 SF detainee processing area.

We understand that based on responses to Staff questions submitted for review on May 10, 2010 an initial determination has been made that the project Use be classified as a Detention Facility.

Since learning of Staff's initial findings, we have spent the last two weeks discussing the actual use with the government agencies that will occupy the facility. We have also looked into the question of whether or not the detention of individuals held by the United States Government at this facility is 'judicially required'.

For your consideration, please accept this memorandum as further clarification of intended use for the proposed 4310 Macadam building renovation and addition. This memo will consist of two parts: first, a discussion about whether or not the relative program "fits" as a Detention Facility and second, and our proposed categorization for this unique project type.

MEMO



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DETENTION FACILITIES

Section 33.920.520 defines Detention Facilities as follows:

- A. Characteristics.** Detention Facilities include facilities for the judicially required detention or incarceration of people. Inmates and detainees are under 24 hour supervision by peace officers, except when on an approved leave.
- B. Accessory Uses.** Accessory uses include offices, recreational and health facilities, therapy facilities, maintenance facilities and hobby and manufacturing activities.
- C. Examples.** Examples include prisons, jails, probation centers and juvenile detention homes.
- D. Exceptions.** Programs that provide care and training or treatment for psychiatric, alcohol, or drug programs, where patients are residents of the program, but where patients are not supervised by peace officers are

classified as Group Living. Programs that provide transitional living experience e by former offenders, such as halfway houses, where residents are not supervised by peace officers, are also classified as Group Living.

Based on the Use Characteristics and Examples provided, Detention Facilities are jails and prisons. People held in these facilities are *judicially required* to be present. Simply put, they reside in these facilities due to the simple fact they have committed a crime and are incarcerated 24 hours a day, 7 days a week for a period of time.

That by definition a Detention Facility includes facilities for "judicially required" detention raises some specific questions related to its Use. Does the detention serve a criminal or civil administrative function? We are enclosing a letter from our client's counsel which concludes that the detention use in the proposed development is not "judicially required" due in large part to the fact that it is part of a civil administrative process and not criminal in nature.

The examples of Accessory Uses provided further reinforce the character of Detention Facilities. These additional uses are customarily found in State and County prisons and jails where inmates - do to the nature of their stay - have need for medical, vocational training and recreation facilities.

It is worthwhile to point out that the cited exceptions to Detention Facilities - resident outpatient psychiatric or medical faculties and transitional offender halfway houses - are classified as Group Living uses. As a point of information, exception 3 in Section 33.920.100 Group Living states, "Facilities for people who are under judicial detainment and are under the supervision of sworn officers are included in the Detention Facilities category." The common thread between the Group Living and Detention Facility Uses cited either the presence, or in the case of Group Living, the absence of "judicially required" confinement. If the detention is judicially required, it is a Detention Facility. If it is not judicially required, but is instead more akin to a civil or administrative confinement, it falls into another classification, such as Group Living.

We believe that detainee processing center cannot be put in the same category as a prison.

Generally speaking, in a prison or correctional facility, the building area dedicated to Detention Facility inmate housing is at least equal to the total accessory use spaces such as offices, treatment, and vocational training areas. For the proposed development, the processing area comprises approximately 7% of the total non-parking building area. (4,000 SF Detainee Processing/ 54,000 General Office = 6.9 percent.) Were this truly a Detention Facility, the areas would be reversed with the largest area attributed to the incarcerated living areas.

Detention Facilities are 24/7 operations. They exist as part of the criminal justice system with the purpose of either holding a suspect after arrest or carrying out a punitive sentence determined by the courts and a judge. In contrast, detainees held in this facility are present for not more than 12 hours. (Per an inter-governmental agreement Individuals held longer than 12 hours are housed in a Detention Facility.) Their come and go from the facility as a part of the civil INA mandated process for removing people from the United States and returning them to their native countries.

CLASSIFICATION OF USE

Clearly the proposed facility presents a challenge with respect to categorizing its Use. It is on one hand a straight-forward mixed use office building. It also has an administrative function associated with immigration. Recognizing the unique activities that occur in the detainee processing area we believe it unlikely that any of the Use defined in Chapter 33.920 can be attributed to the project. Part B in Article 33.920.030 allows for developments to be classified with multiple primary uses.

We suggest consideration be given to rightfully classifying the development as having two primary uses: Commercial Traditional Office per 33.920.240.C.1 and Institutional Basic Utilities per 33.920.400.

The 54,000 square feet of development area not associated with the processing area can easily be classified as Commercial Traditional Office. 33.902.240 states, "Traditional Office uses are characterized by activities that generally focus on business, government, professional, medical or financial services." Since the building will house approximately 130 people from two U.S. government agencies, working in enclosed offices and workstations, the use matches those characteristics associated with Office use. The Office use includes accessory areas such as a fitness center and structured parking dedicated to the building occupants. The use fits the role of a Traditional Office since it houses government offices.

The prior discussion outlined several important distinctions between the activities that occur in the processing area and those that occur within the confines of a Detention Facility. Clearly the activities associated with 4,000 square feet of development area cannot be deemed Accessory to a Traditional Office use. As a percentage of the total building area, the space is small - 4,000 square feet - the activities that occur inside the space clearly do not lend them to being deemed Accessory to a Traditional Office Use. The use does share some similar activities in terms of use, size, and "customers" as a police station which is categorized as Institutional Basic Utilities.

The Characteristics of a Basic Utility defined in 33.920.400 include those activities, "which need to be located near the area where the service is provided." As a U.S. Government agency charged with administering the Immigration and Nationality Act it is necessary to have a secure detainee processing area to maintain the safety of the aliens and general public. 33.920.400 states that Basic Utilities include public safety facilities, including police stations.

Accessory uses allowed within Basic Utilities include holding cells within a police station. Generally, a holding cell within a police station is used to temporarily detain people thought to have committed a crime. Even though such detention could be classified as "judicially required", it apparently is not significant enough to cause a police station to be classified as a Detention Facility. The detention of aliens in this proposed development is even further removed from the judicial system.

Categorizing the Processing Center as a Basic Utility is the best application of the considerations for classifying Use. Like a fire or police station it does not fit neatly with the other allowed Basic Utility uses such as electrical substations and water towers

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and reservoirs. It is a public safety facility though; charged with enforcing federal immigration law in an administratively civil, just way.

Sincerely,

GBD ARCHITECTS *Incorporated*

Keith A. Skille, AIA
LEED Accredited Professional
Associate Principal

Encl/