Agenda

Tacoma Planning Commission

747 Market Street, Room 1036
Tacoma, WA 98402-3793
253-591-5365 (phone) / 253-591-2002 (fax)
www.cityoftacoma.org/planning

(Agenda also available online at: www.cityoftacoma.org/planning > "Planning Commission" > "Agenda Packets")

MEETING: Regular Meeting

TIME: Wednesday, January 5, 2011, 4:00 p.m.

PLACE: Room 16, Tacoma Municipal Building North
733 Market Street, Tacoma, WA 98402

A. CALL TO ORDER

B. QUORUM CALL

C. APPROVAL OF MINUTES – None

D. GENERAL BUSINESS

(4:05 p.m.) **1. Master Program for Shoreline Development**

Description:	Discuss the existing and proposed public access requirements, including associated public comments received on the initial draft, legal guidance and state guidelines, and potential policy options for inclusion in the public hearing draft of the Shoreline Master Program.
Actions Requested:	Review, Comment, Direction
Support Information:	See "Agenda Item GB-1"
Staff Contact:	Steve Atkinson, 591-5531, satkinson@cityoftacoma.org

(5:00 p.m.) **2. Billboard Regulations**

Description:	Review existing regulations and potential revisions pertaining to billboards, including information relative to City Council direction, the current billboards in the City, new sign technology, planned public outreach, and potential policy considerations.
Actions Requested:	Review, Comment, Direction
Support Information:	See "Agenda Item GB-2"
Staff Contact:	Shirley Schultz, 591-5773, shirley.schultz@cityoftacoma.org

(5:45 p.m.) **3. Annual Amendment #2011-09 SEPA Regulations Amendment**

Description:	Continue the review of the proposed plan and code changes associated with the State Environmental Policy Act (SEPA).
Actions Requested:	Review, Comment, Direction
Support Information:	See "Agenda Item GB-3"
Staff Contact:	Shirley Schultz, 591-5121, shirley.schultz@cityoftacoma.org

(6:00 p.m.) **4. Annual Amendment #2011-06 – Regional Centers & CPTED**

Description:	Review and discuss potential plan changes relative to safety-oriented design, including Crime Prevention Through Environmental Design (CPTED).
Actions Requested:	Review, Comment, Direction
Support Information:	See "Agenda Item GB-4"
Staff Contact:	Donna Stenger, 591-5210, dstenger@cityoftacoma.org

E. COMMUNICATION ITEMS

1. Hearing Examiner's Reports and Decisions – *"Agenda Item C-1"*
2. Memo from Jeff Capell, Assistant City Attorney, December 21, 2010, regarding Appearance of Fairness Doctrine – *"Agenda Item C-2"*
3. Memo from Jennifer Kammerzell, Public Works, December 22, 2010, regarding Arterial designation of E. 34th Street – *"Agenda Item C-3"*

F. COMMENTS BY LONG-RANGE PLANNING DIVISION

G. COMMENTS BY PLANNING COMMISSION

H. ADJOURNMENT

Agenda Item GB-1

City of Tacoma
Community and Economic Development Department

TO: Planning Commission

FROM: Donna Stenger, Acting Manager, Long-Range Planning Division

SUBJECT: Shoreline Master Program Update – Public Access

DATE: December 28, 2010

On January 5th, staff will be seeking direction from the Planning Commission on whether to revise public access policies and requirements as proposed in the preliminary draft Tacoma Shoreline Master Program (TSMP) released in September. The Commission has received many comments on the public access proposals. As discussed with the Commission, the discussion on public access will occur at three meetings. At the January 5 meeting, the discussion will focus on general public access policies and requirements. Subsequent meeting will discuss the public access requirements and related issues they apply specifically to the S-7 Schuster Parkway Shoreline District and to the S-8 Thea Foss Shoreline District.

As part of the discussion, staff will provide an overview of public comments on the proposed TSMP and Draft Public Access Alternatives Plan. Commission members may want to bring their copy of the public comment book to the meeting. Mr. Jeff Capell, Deputy City Attorney, will be present to discuss and respond to any questions regarding legal or constitutional issues raised by public comment. In addition, Kim Van Zwalenburg, Project Officer for the Department of Ecology, will also be present and available to answer questions.

In support of this discussion, staff is providing the following materials as background for the Commission's review:

1. A memo from Jeff Capell, Deputy City Attorney, responding to questions raised about requiring public access in the shoreline;
2. Shoreline Management Act RCW 90.59.020 Legislative findings – State policy enunciated – Use preference;
3. Washington Administrative Code WAC 173-26-251 Shorelines of statewide significance;
4. *Chapter 9: Public Access* from the Department of Ecology's Shoreline Master Program Handbook *(just released)*;
5. A comparison table of public access policy and requirements from Tacoma's existing Master Program (Tacoma Municipal Code Chapter 13.10) and proposed requirements contained in the preliminary draft TSMP.
6. An excerpt from the draft Public Access Alternatives Plan that discusses the applicable WAC Guidelines and the specific policies and development standards in the Preliminary Draft TSMP that implement them;

Staff is seeking guidance from the Commission on possible revisions to the draft proposals. If you have any questions, please contact Stephen Atkinson at 591-5531 or satkinson@cityoftacoma.org.

DS:sa

Attachments

c. Peter Huffman, Assistant Director

Memo

To: Tacoma Planning Commission

From: Jeff H. Capell, Deputy City Attorney

CC:

Date: December 21, 2010

Re: Shoreline Management Plan Questions

In preparation for the Planning Commission's January 5, 2010 meeting, the Legal Department was asked to respond to the below listed questions to provide basic rules and analysis that will assist the Commission in its role of reviewing the proposed Shoreline Mater Program update and making recommendations to the City Council. It should be noted that full treatises could be (and in some cases have been) written on the below topics. The answers below are intended to provide brief statement of the applicable rules and very concise applicational analysis.

1) What is the Public Trust Doctrine?

For a concise statement of what the Public Trust Doctrine ("PTD") is, please see the statement from the State Department of Ecology attached hereto as Exhibit A.

2) What is the PTD's relationship to the Shoreline Management Act and the WAC Guidelines?

Beyond the information presented in Exhibit A, the PTD essentially becomes a Common Law based policy underlying the SMA and accompanying WAC regulations and thereby the goals and objectives of the PTD inform local jurisdictions in their planning efforts. That said, the PTD does not grant authority so much as it provides objectives. These objectives and any local authority's ability to lawfully reach them are still in a very formative stage.

3) Is there a basis in the Shoreline Management Act ("SMA") for requiring private development to provide or enhance public access to the shoreline, in other words, can the City reasonably require that private development provide or enhance public access to the shoreline?

There are certainly policy objectives present in the SMA that encourage efforts to increase the amount of public access to the State's shorelines. In the case of publicly owned property, there are even provisions that appear to mandate increasing such access, where possible.[1] Corresponding regulations in the Washington Administrative Code ("WAC") can be interpreted to go beyond the mere policy level and encourage more vigorous approaches regarding requiring public access, across both public, and in some cases, privately held property.

Requiring public access over private property, however, is a more complex question and it does not appear to be directly addressed in the body of the SMA.

4) What are Nollan and Dolan and how might they apply in the context of the Shoreline Master Program update?

[1] *See for example* RCW 90.58.020 *and* 90.58.100(2)(b).

Nollan and Dolan, as they are referred to, are two U.S. Supreme Court cases that have a bearing on the issues and questions presented herein.[2] Put into the present context, the Nollan case appears to stand for the proposition that conditioning Tacoma landowners' permits on their granting some form of public access to shorelines would be lawful land use regulation if such requirement substantially furthered governmental purposes that would otherwise justify denial of the permit. It is possible that protection of the State's shorelines and or the PTD could give rise to such a governmental purpose, but it is unclear as to whether there would be a valid ground for denial in the absence of the public access requirement. As stated in the Exhibit B case summary the condition (for public access) must furthers the same governmental purpose advanced as justification for prohibiting the use. The Nollan case actually dealt with public access to shorelines in California. The end result in Nollan was that the U.S. Supreme Court found that the public access condition did not serve any public purposes related to the permit requirement.

The Dolan case takes the "nexus requirement" of Nollan, as it is referred to[3] and adds to it an additional requirement of proportionality. In other words, even if the nexus relationship between the governmental interest and the permit requirement exists, that requirement must not be disproportionate to the actions applied for under the permit. So, in this setting, any requirements for public access (assuming the required nexus exists), must not be disproportionate to the work being permitted.

5) Is there a nexus for requiring private shoreline development to provide or enhance the public's ability to access the shoreline and the water's of the state?

This is a somewhat difficult question. It is easier to answer in a specific context in which to place the Nolan question, but that may not be possible in the process of updating the SMP. What the Commission must consider in forming its recommendations is that, in any given situation, the SMP that gets enacted must have a governmental interest that would justify denying the permit, and if such exists, that ability to deny the permit would have to be become properly and proportionately offset by the public access requirement.

6) How might we consider proportionality in this circumstance? Does 2% of the project cost seem reasonably within the realm of proportionality?

To date, it does not appear that the state legislature or the state courts have provided any bright line rules for determining proportionality. In that absence, the standard of reasonableness must become the Commission and the City's guide. In the abstract, 2% seems to be a reasonable starting guidepost.

7) We have received comments on the Draft Public Access Alternatives Plan expressing concern that requiring a fee "in-lieu" of developing public access violates RCW 82.02.020. Can you respond to these concerns?

Given the elective nature of the proposed "fee in lieu," it would seem the difficult fee versus tax debate that arises in the RCW 82.02.020 context is less applicable here than determining whether the access can be required in the first place. If access can be required, the payment of a fee in lieu of complying with that requirement may not fall into the purview of RCW 82.02 at all.

---

[2] Proper citations for these cases are as follows: Nollan v. Cal. Coastal Com, 483 U.S. 825 (U.S. 1987), and Dolan v. City of Tigard, 512 U.S. 374 (U.S. 1994). Brief summaries of both cases are attached hereto for your reference in Exhibit B.

[3] Sometimes stated as "there must be an 'essential nexus' between a legitimate government interest and the permit requirement(s).

EXHIBIT A—Public Trust Doctrine

The below is found at:

http://www.ecy.wa.gov/programs/sea/sma/laws_rules/public_trust.html

The Public Trust Doctrine

The Public Trust Doctrine is a legal principle derived from English Common Law. The essence of the doctrine is that the waters of the state are a public resource owned by and available to all citizens equally for the purposes of navigation, conducting commerce, fishing, recreation and similar uses and that this trust is not invalidated by private ownership of the underlying land. The doctrine limits public and private use of tidelands and other shorelands to protect the public's right to use the waters of the state. (Visit the *MSRC Web site* and search for the State Supreme Court case *Caminiti v. Boyle*, 107 Wn. 2d 662, 732 P.2d 989)

The Public Trust Doctrine does not allow the public to trespass over privately owned uplands to access the tidelands. It does, however, protect public use of navigable water bodies below the ordinary high water mark.

Protection of the trust is a duty of the State, and the Shoreline Management Act is one of the primary means by which that duty is carried out. The doctrine requires a careful evaluation of the public interest served by any action proposed. This requirement is fulfilled in major part by the planning and permitting requirements of the Shoreline Management Act. *(Court case: MSRC Web site and search for Portage Bay v. Shorelines Hearings Bd., 92 Wn.2d 1, 593 P.2d 151)*

Local governments should consider public trust doctrine concepts when developing comprehensive plans, development regulations and shoreline master programs. There are few "bright lines," however, as the Public Trust Doctrine is common law, not statutory law. The extent of its applicability can only be determined by state court decisions. The document below is a good introduction to the case law in Washington State.

- The **Public Trust Doctrine and Coastal Zone Management in Washington State**, Johnson, Ralph W., Craighton Goepple, David Jansen and Rachel Pascal, 1991.

EXHIBIT B—Case Summaries

The below summary of the Nollan case can be found at:

http://www.law.cornell.edu/supct/html/historics/USSC_CR_0483_0825_ZS.html

SUPREME COURT OF THE UNITED STATES

---

483 U.S. 825

Nollan v. California Coastal Commission
APPEAL FROM THE COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT

No. 86-133 Argued: March 30, 1987 --- Decided: June 26, 1987

The California Coastal Commission granted a permit to appellants to replace a small bungalow on their beachfront lot with a larger house upon the condition that they allow the public an easement to pass across their beach, which was located between two public beaches. The County Superior Court granted appellants a writ of administrative mandamus and directed that the permit condition be struck. However, the State Court of Appeal reversed, ruling that imposition of the condition did not violate the Takings Clause of the Fifth Amendment, as incorporated against the States by the Fourteenth Amendment.

Held:

1. Although the outright taking of an uncompensated, permanent, public access easement would violate the Takings Clause, conditioning appellants' rebuilding permit on their granting such an easement would be lawful land use regulation if it substantially furthered governmental purposes that would justify denial of the permit. The government's power to forbid particular land uses in order to advance some legitimate police power purpose includes the power to condition such use upon some concession by the owner, even a concession of property rights, so long as the condition furthers the same governmental purpose advanced as justification for prohibiting the use. Pp. 831-837.

2. Here, the Commission's imposition of the access easement condition cannot be treated as an exercise of land use regulation power, since the condition does not serve public purposes related to the permit requirement. Of those put forth to justify it -- protecting the public's ability to see the beach, assisting the public in overcoming a perceived "psychological" barrier to using the beach, and preventing beach congestion -- none is plausible. Moreover, the Commission's justification for the access requirement unrelated to land use regulation -- that it is part of a comprehensive program to provide beach access

arising from prior coastal permit decisions -- is simply an expression of the belief that the public interest will be served by a continuous strip of publicly accessible beach. Although the State is free to advance its "comprehensive program" by exercising its eminent domain power and paying for access easements, it [p826] cannot compel coastal residents alone to contribute to the realization of that goal. Pp. 838-842.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and WHITE, POWELL, and O'CONNOR, JJ., joined. BRENNAN, J., filed a dissenting opinion, in which MARSHALL, J., joined, *post* p. 842. BLACKMUN, J., filed a dissenting opinion, *post* p. 865. STEVENS, J., filed a dissenting opinion, in which BLACKMUN, J., joined, *post* p. 866. [p827]

The below summary of the Dolan case can be found at:

http://www.ecasebriefs.com/blog/law/property/property-law-keyed-to-singer/regulatory-takings-law/dolan-v-city-of-tigard-3/

Brief Fact Summary. A condition of a permit stated that the landowner had to convey property to the government.

Synopsis of Rule of Law. When a city requires a landowner to convey some property to the city as a condition to obtaining a permit, there must be a rough proportionality between the burdens on the public that would result form [sic] granting the permit and the benefit to the public from the conveyance of land.

Facts. Florence Dolan (Petitioner) owned a plumbing and electric supply store and wanted to redevelop the site. The City of Tigard (Respondent) issued her a permit to expand, but it was subject to the condition that Petitioner dedicate a part of her property to the city to be used as a pedestrian/bicycle pathway. The city justified their request because the pathway would help prevent some flooding that would occur from a nearby creek with the expansion and it would also offset some traffic demands. Petitioner says the dedication is a taking of her property.

Issue. Does an impermissible taking of property occur when a city requires a landowner to convey property to the city in order to get a permit to redevelop property?

Held. Yes.
One purpose of the takings clause is to bar the government from forcing some people to bear public burdens, which should be borne by the public as a whole. Had the city simply required Petitioner to

dedicate a strip of land along the creek for public use, rather than conditioning the grant of her permit to redevelop her property on such a dedication, a taking would have occurred. Such public access would deprive Petitioner the right to exclude others.
However, a land use regulation does not constitute a taking if it substantially advances legitimate state interests and does not economically viable use of his land.
A determination must be made as to whether the essential nexus exists between the legitimate state interest and the permit condition exacted by the city. If the nexus exists, then a determination must be made as to the required degree of connection between the exactions and the projected impact of the proposed development. There must be a rough proportionality between the demands of the city and the impact of the proposed development.
Here, the prevention of flooding and reduction of traffic are legitimate public purposes, and a nexus exists between preventing flooding and limiting development.
But as for the rough proportionality test, the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development. Here, the city has never explained why a public greenway, as opposed to a private one, was required in the interest of flood control. Petitioner has lost her ability to exclude others, which is one of the most essential sticks in the bundle of property rights. It is difficult to see why recreational visitors walking on the land is sufficiently related o the city's legitimate interest in reducing flooding problems along the creek, and the city has not attempted to make any individualized determination to support this request.

Dissent.
(Justice John Paul Stevens) The rough proportionality test runs contrary to the traditional treatment of these cases and breaks considerable and unpropitious new ground. Petitioner's acceptance of the permit, with its attached conditions, would provide her with benefits that may go beyond any advantage she gets from expanding her business. The analysis should focus on the impact of the city's action on the entire parcel of private property. The inquiry should instead concentrate on whether the required nexus is present and venture beyond considerations of a condition's nature only if the developer establishes that a concededly germane condition is so grossly disproportionate to the proposed development's adverse effects that it manifests motives other than land use regulation on the part of the city.
(Justice David Souter) The Court has places [sic] the burden of producing evidence of relationship on the city, despite the usual rule in cases involving the police power that the government is presumed to have acted constitutionally.

Discussion. When the government enacts land regulations, there must be a close fit between the land use regulation and the objective sought to be fulfilled by the government.

RCW 90.58.020

Legislative findings — State policy enunciated — Use preference.

The legislature finds that the shorelines of the state are among the most valuable and fragile

of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefor, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

(1) Recognize and protect the statewide interest over local interest;

(2) Preserve the natural character of the shoreline;

(3) Result in long term over short term benefit;

(4) Protect the resources and ecology of the shoreline;

(5) Increase public access to publicly owned areas of the shorelines;

(6) Increase recreational opportunities for the public in the shoreline;

(7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent

feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the department. Shorelines and shorelands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and shorelands of the state no longer meeting the definition of "shorelines of the state" shall not be subject to the provisions of chapter 90.58 RCW.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

[1995 c 347 § 301; 1992 c 105 § 1; 1982 1st ex.s. c 13 § 1; 1971 ex.s. c 286 § 2.]

Notes:

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

Inside the Legislature
* Find Your Legislator
* Visiting the Legislature
* Agendas, Schedules and Calendars
* Bill Information
* Laws and Agency Rules
* Legislative Committees
* Legislative Agencies
* Legislative Information Center
* E-mail Notifications (Listserv)
* Civic Education
* History of the State Legislature

Outside the Legislature
* Congress - the Other Washington
* TVW
* Washington Courts
* OFM Fiscal Note Website

Access Washington®
Official State Government Website

WACs > Title 173 > Chapter 173-26 > Section 173-26-251

Print Version | *[In English]*

173-26-241 << 173-26-251 >> 173-26-360

WAC 173-26-251

Agency filings affecting this section

Shorelines of statewide significance.

(1) ***Applicability*.** The following section applies to local governments preparing master programs that include shorelines of statewide significance as defined in RCW 90.58.030.

(2) ***Principles*.** Chapter 90.58 RCW raises the status of shorelines of statewide significance in two ways. First, the Shoreline Management Act sets specific preferences for uses of shorelines of statewide significance. RCW 90.58.020 states:

"*The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:*

(1) Recognize and protect the statewide interest over local interest;

(2) Preserve the natural character of the shoreline;

(3) Result in long term over short term benefit;

(4) Protect the resources and ecology of the shoreline;

(5) Increase public access to publicly owned areas of the shorelines;

(6) Increase recreational opportunities for the public in the shoreline;

(7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary."

Second, the Shoreline Management Act calls for a higher level of effort in implementing its objectives on shorelines of statewide significance. RCW 90.58.090(5) states:

"*The department shall approve those segments of the master program relating to shorelines of statewide significance only after determining the program provides the optimum implementation of the policy of this chapter to satisfy the statewide interest.*"

Optimum implementation involves special emphasis on statewide objectives and consultation with state agencies. The state's interests may vary, depending upon the geographic region, type of shoreline, and local conditions. Optimum implementation may involve ensuring that other comprehensive planning policies and regulations support Shoreline Management Act objectives.

Because shoreline ecological resources are linked to other environments, implementation of ecological objectives requires effective management of whole ecosystems. Optimum implementation places a greater imperative on identifying, understanding, and managing ecosystem-wide processes and ecological functions that sustain resources of statewide importance.

(3) ***Master program provisions for shorelines of statewide significance*.** Because shorelines of statewide significance are major resources from which all people of the state derive benefit, local governments that are preparing master program provisions for shorelines of statewide significance shall implement the following:

(a) **Statewide interest.** To recognize and protect statewide interest over local interest, consult with applicable state agencies, affected Indian tribes, and statewide interest groups and consider their recommendations in preparing shoreline master program provisions. Recognize and take into account state agencies' policies, programs, and recommendations in developing use regulations. For example, if an anadromous fish species is affected, the Washington state departments of fish and wildlife and ecology and the governor's salmon recovery office, as well as affected Indian tribes, should, at a minimum, be consulted.

(b) **Preserving resources for future generations.** Prepare master program provisions on the basis of preserving the shorelines for future generations. For example, actions that would convert resources into irreversible uses or detrimentally alter natural conditions characteristic of shorelines of statewide significance should be severely limited. Where natural resources of statewide importance are being diminished over time, master programs shall include provisions to contribute to the restoration of those resources.

(c) **Priority uses.** Establish shoreline environment designation policies, boundaries, and use provisions that give preference to those uses described in RCW 90.58.020 (1) through (7). More specifically:

(i) Identify the extent and importance of ecological resources of statewide importance and potential impacts to those resources, both inside and outside the local government's geographic jurisdiction.

(ii) Preserve sufficient shorelands and submerged lands to accommodate current and projected demand for economic resources of statewide importance, such as commercial shellfish beds and navigable harbors. Base projections on statewide or regional analyses, requirements for essential public facilities, and comment from related industry associations, affected Indian tribes, and state agencies.

(iii) Base public access and recreation requirements on demand projections that take into account the activities of state agencies and the interests of the citizens of the state to visit public shorelines with special scenic qualities or cultural or recreational opportunities.

(d) **Resources of statewide importance.** Establish development standards that:

(i) Ensure the long-term protection of ecological resources of statewide importance, such as anadromous fish habitats, forage fish spawning and rearing areas, shellfish beds, and unique environments. Standards shall consider incremental and cumulative impacts of permitted development and include provisions to insure no net loss of shoreline ecosystems and ecosystem-wide processes.

(ii) Provide for the shoreline needs of water-oriented uses and other shoreline economic resources of statewide importance.

(iii) Provide for the right of the public to use, access, and enjoy public shoreline resources of statewide importance.

(e) **Comprehensive plan consistency.** Assure that other local comprehensive plan provisions are consistent with and support as a high priority the policies for shorelines of statewide significance. Specifically, shoreline master programs should include policies that incorporate the priorities and optimum implementation directives of chapter 90.58 RCW into comprehensive plan provisions and implementing development regulations.

[Statutory Authority: RCW 90.58.060 and 90.58.200. 04-01-117 (Order 03-02), § 173-26-251, filed 12/17/03, effective 1/17/04.]

Chapter 9
Shoreline Public Access

Phase 2, Task 2.2 and Phase 3, Task 3.2
Shoreline Master Program Planning Process

Introduction

The tide is out, so it's a good time to walk on the beach. The wind is up, perfect for launching the sailboat from the local dock. On a hot, sunny day, the kids are excited about swimming at the lake. At sunset, the views of the water and the distant shore from the overlook are beautiful.

Figure 9-1: A sign directs walkers to this public access trail on Camano Island in western Washington. Photo by Deborah Purce.

These are all examples of public access to the shoreline. Public access offers the general public the opportunity "to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations" (WAC 173-26-221(4).

Protecting public access to the State's shorelines is one of three major policies of the Shoreline Management Act (SMA).

> "*The public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible…*" (RCW 90.58.020).

The SMA requires Shoreline Master Programs (SMPs) to include a public access element to provide for public access to publicly-owned shorelines and a recreational element to preserve and enlarge recreational opportunities. [RCW 90.58.100(2)(b)(c)]. Public access to publicly

owned shorelines is also a preferred use on shorelines of statewide significance. [RCW 90.58.020(5)(6)].

The most common type of public access to the shoreline is physical access, such as that provided by a trail, floats and docks, promenades, bridges, street ends, and boat ramps. Physical access may be implemented through dedication of land or easements, cooperative agreements, or acquisition of land along the shoreline.

Public access can also be visual, such as viewing towers, views from an overpass, breezeways between buildings or views of prominent shoreline trees. Some jurisdictions also provide "cultural access" to interpretive, educational or historical aspects of the shoreline.

Public access can be formal with paved walkways, identification signs and interpretive displays, or informal, via a small footpath to the beach.

Planning for public access during SMP comprehensive updates often raises several questions that are addressed in this chapter:

- When should public access be required?
- Can public access be a substitute for water-dependent or water-related uses?
- How can public access be achieved while avoiding conflict in industrial areas and critical areas?
- What design standards apply to public access?

> *RCW 90.58.020: In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. … Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.*

Public access is sometimes a controversial topic during the SMP update process and during shoreline permit review. This chapter discusses the legal framework for public access and SMP guidelines requirements, explores various issues related to public access, and discusses comprehensive public access planning.

Public Trust Doctrine

The Public Trust Doctrine is a legal principle derived from English Common Law and is part of the legal framework supporting public access, along with the SMA and the Coastal Zone Management Act. In essence, the doctrine says that:

- The waters of the state are a public resource owned by and available to all citizens equally for the purposes of navigation, conducting commerce, fishing, recreation and similar uses.
- Private ownership of the underlying land that the doctrine applies to does not invalidate this trust.

The Public Trust Doctrine gives individual states the responsibility to hold certain natural resources in trust for the people and is the foundation for a body of court cases defining public access obligations. These cases have affirmed that the State has the right to sell lands beneath the waters, and the new property owners must abide by the dictates of the public trust and allow access to the waters of the state. The doctrine limits private use of tidelands to protect the public's right to use the waters of the state. (Refer to the Municipal Research and Services Center (MRSC) web site and search for the Washington State Supreme Court cases *Caminiti v. Boyle*, 107 Wn. 2d 662, 732 P.2d 989*; and Wilbour v. Gallagher*, 77 Wn.2d 306, 462 P.2d 232 (1969).

Figure 9-2: The Island County Parks Department sign indicates beach public access at Lagoon Point North on Whidbey Island. Photo by Deborah Purce.

The Public Trust Doctrine does not allow the public to trespass over privately owned uplands to access the tidelands or water areas. It does, however, protect public use of navigable water bodies below the ordinary high water mark. This applies to not only navigable waters, but also to certain wetlands subject to the ebb and flow of the tides and certain fresh waters.

Protection of the trust is a duty of the State .The SMA is one of the primary means of carrying out that duty in Washington State. The doctrine requires a careful evaluation of whether any proposed action serves the public interest. This requirement can be fulfilled in major part by the planning and permitting requirements of the SMA. (See the MRSC Web site and search for *Portage Bay v. Shorelines Hearings Bd., 92 Wn.2d 1, 593 P.2d 151.)*

Local governments should consider public trust doctrine concepts when developing shoreline master programs, comprehensive plans, and development regulations. Because the Public Trust Doctrine is common law, not statutory law, there are few "bright lines." The extent of its applicability can only be determined by state court decisions. The documents below provide a good introduction to the case law in Washington State.

- Washington Public Trust Doctrine Symposium (proceedings of a 1993 conference). Available in print from the Department of Ecology. See http://www.ecy.wa.gov/biblio/93053.html for a link to the order form.

  The Public Trust Doctrine and Coastal Zone Management in Washington State, Johnson, Ralph W., Craighton Goepple, David Jansen and Rachel Pascal, 1991.

  Putting the Public Trust Doctrine to Work, Second Edition, *The Application of the Public Trust Doctrine To the Management of Lands, Waters and Living Resources Of the Coastal St*ates, June 1997. Available from th*e* Coastal States Org*anization*.

Coastal Zone Management Act

The Coastal Zone Management Act (CZMA), a federal law approved in 1972, also promotes public access to the shoreline. The national policy approved by Congress encourages and assists the states in developing coastal management programs. These programs are to provide for many values such as protection of natural resources, management of coastal development to restore water quality, and “public access to the coasts for recreation purposes,” among others.

The SMA and local SMPs are components of Washington’s Coastal Zone Management Program. Only the 15 coastal counties are part of the program. Using CZMA funds, Ecology has provided grants to local jurisdictions for SMP work and for developing public access improvements, in keeping with the objectives of the CZMA.

SMP Guidelines

The SMP Guidelines address SMP public access requirements. These include a requirement to identify public access opportunities and comply with specific principles and standards.

Public access opportunities

Figure 9-3: Chelan PUD opens the gorge of the Chelan River to whitewater boaters on four weekends each year. The PUD negotiated this access as part of the relicensing for the Lake Chelan hydroelectric project. Photo by Chelan PUD.

For the shoreline inventory and characterization report (Task 2.3), local governments should identify both existing physical and visual access to a jurisdiction's shorelines, including public rights of way and utility corridors, and potential opportunities for enhancing public access (WAC 173-26-201(3)(c)(vi)). Public access sites should be shown on inventory maps, preferably for each shoreline reach. Existing plans that address public access should be summarized in the report. For example, a parks plan may call for a new trail to the water or kayak launching beach or marina.

As part of public participation activities for SMP updates, citizens can help to identify existing public access sites and potential opportunities and speak to the need for additional access. Members of the public can also help to develop goals for public access.

How can potential sites be identified during the SMP update process?

- Potential public access sites may be identified by shoreline users during public participation activities.
- Publicly owned properties on the shoreline that do not currently provide access could provide public access in the future. These may already be shown in existing recreation or parks plans. Areas that have the potential for providing more than one form of public access, such as an historical site, might be ranked as high priorities for acquisition or protection.

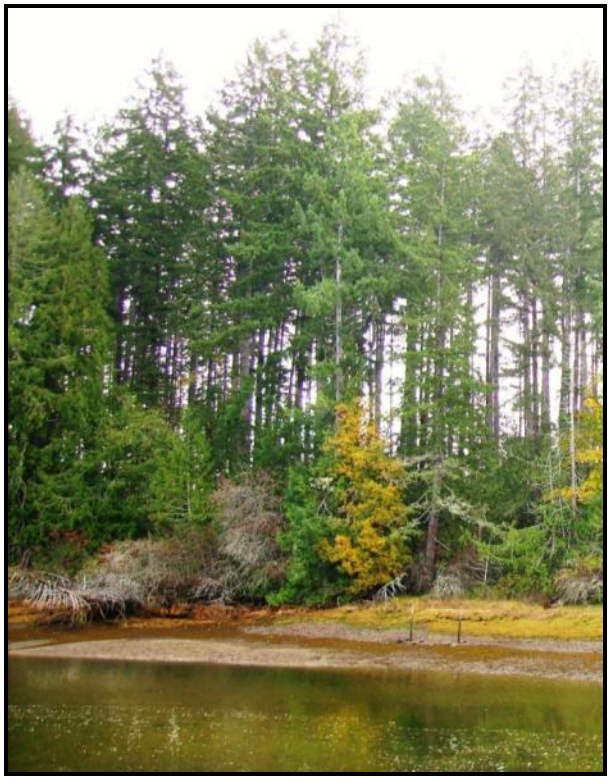


Figure 9-4: Identifying public access sites in the field might involve some help from unexpected sources (above, at Twanoh State Park.) Right, Northwest Case Inlet tidelands, Mason County. Photos by Deborah Purce.

- Informal trails or footpaths may indicate a demand for access to a particular shoreline area.
- Some public access sites are accessible only from the water. Public access sites on the marine shore that are accessible only by personal watercraft will be identified on Ecology's Washington Coastal Atlas in late 2010. Also, check with the boaters in your community and the Washington Water Trails Association at Washington Water Trails Association (http://www.wwta.org/index2.asp).
- Undeveloped or partially developed parcels should be identified as potential public access sites with development.
- Work with regional, state and federal agencies that have developed or undeveloped property within your city, town or county. State Parks, the Department of Fish and Wildlife, Department of Natural Resources, public utility districts, and National Park Service all provide public access to shorelines.
- Private property owners may be willing to provide easements or sell property to a public entity. Private resorts may open some facilities such as boat launches or beaches to the general public for a fee.

Public road ends provide opportunities to reach or see the water. Under state law, public access is a preferred use for a road that abuts a body of water.

> *No county shall vacate a county road or part thereof which abuts on a body of salt or fresh water unless the purpose of the vacation is to enable any public authority to acquire the vacated property for port purposes, boat moorage or launching sites, or for park, viewpoint, recreational, educational or other public purposes, or unless the property is zoned for industrial uses (RCW 36.87.130).*

RCW 35.79.035 regulates street vacations in a similar manner for cities and towns.

The City of Bainbridge Island's *Shoreline Access Guidebook* provides information about public access in parks, road ends, view roads, and other areas such as conservation easements. The *Guidebook* includes maps that show public access locations at road ends. The City has developed rules regarding road ends that address hours, pets, fires, parking and camping.

The Guidebook describes road ends as "typically narrow rights-of-way that are owned and managed by the City of Bainbridge Island while in some cases road-ends are easements across private property that provide public access. These narrow rights-of-way and easements extend across the tidelands down to the water - users should be aware and respect that most tidelands on either side of these sites are privately owned. Since road-ends are small, narrow sites surrounded by private residential properties, users should conduct their activities respectful of the constraints inherent to that setting."

Figure 9-5: Map of Dock Street road-end from Bainbridge Island's *Shoreline Access Guidebook*.

Public access needs

SMPS should also "identify public access needs and opportunities within the jurisdiction and explore actions to enhance shoreline recreation facilities… *(WAC 173-26-201(3)(d)(v)*. Public access needs will depend on the type and amount of public access currently available, population growth, and desires expressed by shoreline users from the local area and from visitors.

As part of its public access planning, Chelan County and its cities held two shoreline public access workshops each in April and June of 2010. At the April workshops, staff provided information about current public access facilities and identified gaps. Small group discussions focused on whether there was enough shoreline access, the types of facilities needed, areas well served with public access, public access level of service standards, gap areas and opportunities to fill gaps, and priority locations for public access. Questionnaires were distributed to participants as well as to those on a stakeholder database.

Public access gaps and opportunities were presented to participants at the June workshops. Participants discussed potential shoreline level of service standards, public access proposals for several areas, policies and implementation.

The County and cities analyzed existing and planned public access facilities for the existing and projected 2030 population. The analysis looked at trails, boat launches, shoreline parks and protected lands per 1,000 population. It also considered tourists, estimating the number of tourists within 15 miles of boating facilities, fishing, trails, parks and other open space. These data informed the staff whether existing and planned facilities were adequate to meet the chosen level of service. In determining adequate level of service, the County and cities looked at their own parks plans, studies for small communities, the National Recreation and Park Association standards, and the Washington State Recreation and Conservation Office standards.

Principles and standards for public access

Public access principles and standards that shall be addressed in SMPs are included in WAC 173-26-221(4)(b). Basic principles address:

- Promoting the right to access waters held in public trust while protecting property rights and public safety.
- Protecting the rights of navigation and space needed for water-dependent uses.
- Protecting the public's opportunity to enjoy physical and aesthetic qualities of shorelines.
- Regulating design, construction and operation of permitted uses to minimize interference with and enhance the public's use of the water.

SMPs must be consistent with the standards established in the Guidelines and address public access on public lands. Standards for requiring public access are listed below. (These standards may not apply for new development or re-development if an adopted public access plan [WAC 173-26-221(4)(c)] states that public access is not required for the subject shoreline area.) View corridors and dimensional standards such as height limits and setbacks also should be addressed in the SMP.

When to require public access

The SMA emphasizes "the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state" and directs that SMPs include public access elements. Public access is not required on every inch of shoreline, so where is it required? The SMA and the SMP Guidelines do not require local governments to provide access to the shoreline for the general

public on all private property. Public access is not required of individual single family residences, but may be required of larger residential subdivisions or commercial and industrial development. In such cases, requirements for public access may be satisfied by conveyance to a local government or through dedicated public access easements, recorded with approval of a new subdivision of land.

Figure 9-6: The community trail on Lake Osoyoos north of Oroville was built as part of the Veranda Beach resort development. (Photo by Department of Ecology.)

Local government should require public access for the following scenarios:

- The proposed development or use will create demand for or increase demand for public access.
- The proposed development is for water-enjoyment, water-related and/or nonwater-dependent uses or for the subdivision of land into more than four parcels.
- The development or use is proposed by a public entity, unless public access would be incompatible for safety, security or ecological impact reasons.
- The development or use is proposed on public lands.
- The proposed development or use will interfere with existing access by blocking access or discouraging use of existing access.
- The proposed development or use will interfere with public use of waters subject to the Public Trust Doctrine.

Public access may not be required under the circumstances listed below. SMPs should include regulations that require applicants to demonstrate that one or more of the following circumstances exist.

- Health or safety hazards exist that cannot be prevented by practical measures.
- Security requirements necessary to the project cannot be satisfied if public access of any type is provided.
- Significant ecological impacts that cannot be mitigated would occur if public access is provided. Public access improvements should not result in a net loss of shoreline ecological functions.
- The cost of providing public access is unreasonably disproportionate to the long-term cost of the proposed development.
- Significant unavoidable conflict between public access and the proposed use or adjacent uses cannot be mitigated.
- Constitutional or legal limitations make public access infeasible.

When considering whether the circumstances listed above apply to a particular site, local governments should consider alternate methods of providing public access. These might include view platforms, off-site public access improvements, restricted hours of public access and separation of uses through site planning and design.

Some local governments are setting up fee-in-lieu programs for development sites where public access cannot be provided due to health, safety or security programs. The proponent of the proposed development would pay a fee that would be used to provide public access elsewhere. The city of Tacoma is proposing such a fee-in-lieu program as part of its comprehensive SMP update. The city of Everett allows projects that meet specific criteria to construct off-site public access improvements, or, if approved by the planning director, contribute to a city public access fund for construction of off-site public access improvements.

Public access signs

Figure 9-7: Signs help us identify public access sites. The Port of Seattle's sign (left photo) tells what facilities are available at the public access site on the Duwamish Waterway. The Department of Ecology's blue signs (center photo) are seen around the state. On Bainbridge Island, the sign with the hikers (right photo) points the way to the trail at Waterfront Park. Photos by Deborah Purce.

Signs point the way to public access sites. Local governments, parks departments and ports often design signs that reflect local character. Some use Ecology's "Shore View" and "Public Shore" signs to identify routes to the public shoreline. Design specifications for these signs are available at the end of this chapter.

Public access issues

Public access on single family residential property

Some home owners oppose public access provisions because they believe they will be required to provide access to the water for the general public. Generally, public access is not required at privately owned and developed single family residences. However, SMP regulations should require public access for new residential subdivisions of more than four lots, unless the SMP has a public access plan that will provide more effective public access when implemented.

View protection

View corridors to and from the water and adjacent shoreland features provide visual rather than physical public access. View corridors offer unobstructed or significant views of the shoreline or shore resources. They may be long and narrow, such as between a major transportation corridor and the shore, or long and

RCW 90.58.320: No permit shall be issued pursuant to this chapter for any new or expanded building or structure of more than 35 feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

perpendicular to the shore, such as from a public viewpoint.

View protection can include preventing view blockage through height limitations or requiring aesthetic enhancement with landscaping. However, view protection does not allow for excessive vegetation removal to create views or enhance existing views. Local governments sometimes require project applicants to provide a visual analysis for projects that appear to obstruct residential views.

Views to the water from nearby residences are addressed in the SMA. The Shorelines Hearings Board has held that local governments must address how approval of a project over 35 feet that block views of a substantial number of residences is justified by overriding considerations of public interest (SHB NO. 02-001, *Grill and Tamm v. Baraka LLC and City of Anacortes*.) The Board also said that the five residences that would have views blocked constituted a "substantial number of residences" and cited *Ecology v. Pacesetter Construction* (89 Wn.2d 203, 297-08, 571 P.2d 196 (1977).

Public access for water-enjoyment and nonwater-oriented uses

Public access should be a component of all "water-enjoyment" uses. The definition of water-enjoyment use focuses on public access (WAC 173-26-020(37). Water-enjoyment uses are generally of two types. For example, a park is a recreational use that offers public water-enjoyment. A private development such as a restaurant with public access is another use that facilitates access to the shoreline.

> *WAC 173-26-020(37): Water-enjoyment use means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use…*

The master program should set definite access design standards that should cover:

- Connection to public right-of-way.
- Hours and restrictions to access.
- Legal mechanism for insuring that access will be established permanently (easement dedicated specifically for public access, etc.) and maintained.
- Signage.
- Connection to pedestrian or bike trail.
- Requirements for site enhancements such as seating, landscaping, viewing platforms, opportunity to reach the water's edge, lighting, interpretive displays, etc.

If local governments will permit non water-oriented uses on the shoreline, the SMP should include regulations that require public access. However, provision of public access alone should not be considered a substitute for a water-oriented use. For example, a proposed office building would not become a shoreline preferred water-oriented use because it has a trail to the beach or a view platform open to the public.

Public access at commercial and industrial sites

Figure 9-8: Fishermen's Terminal in Seattle harbors the Seattle fishing fleet and offers restaurants and other amenities for visitors. (Washington Coastal Atlas photo.)

Industrial waterfronts, especially those with a variety of human activities and historical or cultural associations, have value as important public amenities as well as critical economic resources. But industrial activities and recreational visitors can conflict for several reasons. Many ports and maritime industries fear that public access improvements such as pathways, piers, viewpoints, boat moorage or parks will interfere with work activities, compromise security or threaten individual safety. Often, industrial activities produce noise, glare, fumes, or other conditions that make them incompatible with waterfront attractions such as parks, restaurants and retail shops.

Commercial and industrial developers are sometimes concerned that public access will be required at any development, even if public safety or security is at risk. This is not the case. The SMP Guidelines specifically note that public access is not required "where it is demonstrated to be infeasible due to reasons of incompatible uses, safety, security or impact to the shoreline environment or due to constitutional or other legal limitations that may be applicable" [WAC 173-26-221(4)(d)(iii)(B)].

Local governments that determine that public access should not be provided in a specific location should consider alternate methods of access such as off-site improvements, view platforms,

restricted public access hours or separation of uses. Some local governments are considering fee-in-lieu programs so that public access can be provided at locations away from the industrial site.

The apparent conflicts between public access and working waterfronts challenge the planning and design of public access elements and mixed-use projects and pose the following design questions:

- What are some ways visitors' safety can be assured in active industrial areas?
- How can public access be added to industrial sites without interfering with work or compromising security?
- How can the working waterfront's visual character be maintained while providing attractive amenities for visitors?

Several projects in Washington State incorporate observation points such as view towers, periscopes and elevated platforms that provide views of both industrial activities and the shoreline. Such view features have proven successful at Percival Landing in Olympia and the Port Angeles waterfront. Interpretive displays are also an attractive feature. Observation points are viable alternatives to trails or paths into dangerous industrial sites. Observation points may be used more heavily when close to other public attractions or located on pedestrian and bicycle trails.

Designing public access improvements at commercial and industrial sites

Careful site design is the key to promoting public access on commercial and industrial sites. The Port of Seattle's Fishermen's Terminal complex is a good example, as it includes a range of industrial activities and serves as a popular visitors' destination. Successful design aspects include:

- Separating visitor vehicle circulation and parking from industrial traffic.
- Concentrating visitor attractions in one part of the site.
- Providing a strong attraction that focuses visitors' attention. The restaurants and central plaza with the Fishermen’s Memorial serve this purpose.
- Reinforcing safety signage with design cues such as paving, crosswalks, lighting and site amenities to indicate where visitors are welcome.
- Designing architectural and site elements to reinforce the activity's utilitarian character. For example, the building design at Seattle’s Fishermen's Terminal incorporates metal siding and simple forms in response to the architecture of the warehouses and net sheds. The terminal was successful in meeting both its industrial and public access goals.

Fishermen’s Terminal illustrates that industrial waterfronts can have exciting recreational opportunities and important civic attractions. If properly planned, such projects can combine recreational and commercial uses along a harbor to enhance economic viability of all uses and maximize the use of shoreline resources. Visitor safety, impacts on industrial work and compatibility of shoreline uses must be addressed when developing such public access sites.

Fishermen's Terminal also illustrates several elements in the design process that are key to successfully integrating public access with industrial activities. They include:

- Working directly with industrial businesses to lower apprehensions regarding increased public access and seeking solutions that benefit both visitors and workers.
- Considering public access and use compatibility issues throughout the master planning and design process. Continuity within the design team through these work phases is recommended.
- Separating incompatible uses and providing adequate circulation. Separate vehicle access and parking for visitors reduces impact to work activities.
- Including elements in the project that benefit workers and industrial activities as well as the visiting public including better circulation and parking, convenient commercial services, improved lighting and new site amenities.
- Using signing and visual cues to orient and direct visitors such as pavement markings, lighting and site furniture.
- Respecting the work-a-day qualities of the industrial setting. The low-key design helps preserve the working waterfront's character and indicates that visitors should respect the workers' needs.

Most industrial developments require on-site environmental improvements such as the creation or enhancement of wetlands, beaches, lagoons, dune environments or other biological resources. In some cases, environmental enhancement measures can incorporate public access improvements such as nature trails, canoe launches, observation decks or fishing piers. The combination of environmental and public access improvements can, if done well, save money and utilize shorelines more efficiently.

Public access in critical areas

Where public access conflicts with environmental protection of wetlands and critical wildlife habitats, protection of the resource has priority. Although project proponents may cite damage to critical areas as a reason for not providing public access, careful design can often accomplish both objectives. For example, a wetland protection buffer may incorporate public access through passive measures with limited impact such as observation decks, boardwalks and viewing platforms. Impacts to the environment must be mitigated.

Public access is not absolutely required where environmental harm will occur. However, all reasonable alternatives to avoid and mitigate the impacts should be explored.

Figure 9-9: Viewing towers can provide visual public access at critical areas, industrial areas, and locations like this one on the Twisp River. Photo by Department of Ecology.

Local governments should not consider an apparent conflict between public access and environmental protection a necessarily irreconcilable conflict.

Off-site public access

As a matter of policy, on-site public access mitigation is preferred over off-site public access improvements. Unless it is carefully planned, off-site mitigation does not truly compensate for the loss of the public's right to access the shoreline. However, there are cases where safety, security, compatibility or site planning reasons preclude on-site public access. Most exceptions to on-site public access requirements apply to water-dependent industries.

Figure 9-10: Diagonal Ave South public access site owned by the Port of Seattle includes an area for launching small boats. Photo by Deborah Purce.

A public access plan that indicates key public access locations, pedestrian/bike routes and special features is necessary to insure successful off-site access.

- A plan addresses the broad spectrum of shoreline access resources and allows evaluation of each site's relative importance.
- A plan identifies potential public access features to consider as part of off-site compensation.

The Port of Seattle's *1985 Comprehensive Public Access Plan for the Duwamish Waterway* linked Port development with a comprehensive series of projects to improve access throughout the waterway. Public access sites were developed based on this plan. Existing and potential public shoreline access for the Duwamish River, Elliott Bay, Shilshole Bay and Fishermen's Terminal are mapped in the Port's *Seaport Shoreline Plan*, published in 2007. Public access improvements continue to be based on this plan.

Public access design standards

The SMA addresses both visual and physical access. SMP design standards can be used to preserve views, provide sunlight and air, control height and building density, regulate signage and enhance urban design character.

To address view protection, master programs should regulate height and side yard (or view corridor) dimensions. Besides maintaining views of the water, height and bulk provisions (bulk means the size of building as determined by side yard setbacks) regulate the scale of shoreline developments and prevent undesirable shade and shadow patterns.

Basic standards for public access signs should be included in the SMP. SMP standards for signs, other than signs for public access elements, do not need to address color, materials or graphic designs. These types of controls, if desired, should be included in the local jurisdiction's signage, zoning or design review ordinance. Likewise, design standards for building materials and architectural design elements standards do not need to be included in master programs except for public access improvements. Some SMPs include design standards to preserve historic character or preservation of cultural sites.

Design standards must be specific enough to facilitate project review with predictable results. At the same time, design standard flexibility is desirable to take into account unique site conditions or to allow deviations or variables that would result in development more favorable to the public.

Parallel shoreline environments (e.g. aquatic, shoreline lots and upland lots) can be used to develop more effective design standards. For example, in a given shoreline area, the height limits might be 15 feet for aquatic areas, 35 feet for shoreline lots and 55 feet for lots further landward. This type of refinement can help prevent view obstruction and maintain smaller-scale development at the shoreline. Greater heights can be allowed in areas designated for water-dependent uses. Local governments should include specific limits and conditions when using additional height as an incentive for encouraging water-dependent uses.

Legal issues related to public access

Nexus and proportionality

Requiring public access should take into account the legal standards of "nexus and proportionality." Is a proposed public access requirement related to the impacts of and demand for public access created by the proposed project, and is it related to the size or impacts of the project? A major U.S. Supreme Court ruling (*Nollan v. Coastal Commission*, 1987) deals directly with placing conditions on permits and illustrates the need for comprehensive planning. The Nollan case points out that permit administrators should make decisions on a consistent and sound legal basis. When a public agency requires public access as a permit condition, there must be a rational connection between the project's impact on public access and the public access required.

Local governments should periodically review their public access provisions to ensure they comply with current legal standards. While this chapter suggests public access provisions for SMPs, responsibility for legal review rests with the local government and its legal counsel.

Liability concerns

Liability of property owners is limited by state law. RCW 4.24.210 states that public and private land owners that allow members of the public to use the land for outdoor recreation and do not charge fees are not liable for unintentional injuries to users.

Suggested SMP policies and regulations

The suggested language for general public access provisions presented below is a good starting point for a city or county SMP. You can add provisions to provide greater specificity in terms of required public access improvements for different shoreline areas or additional design standards for public access areas, including view corridors and open space.

Policies

1. Physical or visual access to shorelines should be incorporated in all new developments when the development would either generate a demand for one or more forms of access or would impair existing legal access opportunities or rights.

2. Public access facilities should be designed to address public health and safety..

3. Public access improvements should be mitigated in order to avoid a net loss of shoreline ecological processes and functions.

4. Public access requirements should be consistent with all relevant constitutional and other legal limitations on regulation of private property.

5. Public access facilities should be designed with provisions for persons with disabilities, where appropriate.

6. Public access should be designed to minimize potential impacts to private property and individual privacy. Physical separation or other means should clearly delineate public and private space in order to avoid user conflict.

7. Views from public shoreline upland areas should be enhanced and preserved.

8. Development, uses and activities on or near the shoreline should not unreasonably impair or detract from the public's legal access to the water.

9. Non-water-oriented uses located on the shoreline should provide public access as a public benefit.

10. Public access area and facility requirements should be commensurate with the scale and character of the development.

11. Shoreline development by public entities such as local governments, port districts, state agencies and public utility districts should provide public access unless such access is shown to be incompatible due to reasons of safety, security or impact to the shoreline.

12. Public access to the shoreline afforded by existing shoreline street ends and rights-of-way should be identified and mapped in the shoreline inventory process and maintained as public access.

13. Designated view corridors should be preserved, maintained and enhanced. In _____ (City/County), designated view corridors include _____, _____ and _____.

14. Enhancement of views does not justify excessive removal of vegetation. Clearing, thinning and/or limbing should be allowed only where it does not adversely impact ecological and aesthetic values or slope stability.

15. Public use and access to the water should be a priority in recreational development.

16. Private views of the shoreline, although considered during the shoreline permit review process, are not expressly protected. Property owners concerned with the protection of views from private property are encouraged to obtain view easements, purchase intervening property or seek other means of minimizing view obstruction.

17. Public access should connect to public areas, undeveloped right-of-way, and other pedestrian or public thoroughfares.

18. Hiking paths, bicycle paths, easements and scenic drives should link shoreline parks, recreation areas and public access points.

19. Incentives such as density or bulk and dimensional bonuses should be considered if development proposals include additional public access beyond that required by this SMP.

Regulations

1. Public access improvements shall be constructed and maintained in a manner that does not result in a net loss of shoreline ecological functions.

2. Except as provided in Regulations 5 and 6, below, shoreline substantial developments or conditional uses shall provide public access where any of the following conditions are present:

    a. A development or use will create increased demand for public access to the shoreline. A development or use will interfere with an existing public access way. Such interference may be caused by blocking access or by discouraging use of existing on-site or nearby accesses.
    b. New non-water-oriented uses are proposed.
    c. A use or activity will interfere with public use of lands or waters subject to the public trust doctrine.

3. Shoreline development by public entities, port districts, state agencies, and public utility districts shall include public access measures as part of each shoreline development project, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline environment.

4. Public access shall not be required for single-family residential development of four (4) or fewer lots. (Note: Local governments that conduct a comprehensive public planning process for public access may determine that public access should be required for small subdivisions.)

5. Public access shall not be required where one or more of the following conditions apply.

    a. Unavoidable health or safety hazards to the public exist which cannot be prevented by any practical means.
    b. Constitutional or other legal limitations may apply.
    c. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions.
    d. The cost of providing the access, easement or an alternative amenity is unreasonably disproportionate to the total long-term cost of the proposed development.
    e. Adverse impacts to shoreline ecological processes and functions that cannot be mitigated will result from the public access.
    f. Significant unavoidable conflict between any access provisions and the proposed use and adjacent uses would occur and cannot be mitigated.

6. To meet any of the conditions in Regulation 5 above, the applicant must first demonstrate and the City/County determine in its findings that all reasonable alternatives to provide public access have been exhausted, including but not limited to:

    a. Regulating access by such means as maintaining a gate and/or limiting hours of use.
    b. Separating uses and activities (e.g. fences, terracing, use of one-way glazings, hedges, landscaping, etc.).
    c. Developing access at a site geographically separated from the proposal such as a street end, vista or trail system.
    d. Sharing the cost of providing and maintaining public access between public and private entities.

7. Projects that meet the criteria of Regulation No. 5 shall either build off-site public access facilities or, if approved by the shoreline administrator, contribute to the local public access fund.

8. When provisions for public access are required as a condition of project approval, the Administrator shall prepare written findings demonstrating consistency with

constitutional and legal practices regarding private property and the principles of nexus and proportionality.

9. Public access provided by existing shoreline street ends and public rights-of-way shall be preserved, maintained and enhanced consistent with *RCW 35.79.035* and *RCW 36.87.130*.

10. Required public access sites shall be fully developed and available for public use at the time of occupancy of the shoreline development.

11. Public access shall consist of a dedication of land or a physical improvement in the form of a walkway, trail, bikeway, corridor, viewpoint, park, deck, observation tower, pier, boat launching ramp, dock or pier area or other area serving as a means of view and/or physical approach to public waters. It may include interpretive centers and displays.

12. Public access provisions shall run with the land and be recorded via a legal instrument such as an easement, or as a dedication on the face of a plat or short plat. Such legal instruments shall be recorded with the County Auditor's Office prior to the time of building permit approval, occupancy or plat approval, whichever comes first (*RCW 58.17.110*). Future actions by the applicant's successors in interest or other parties shall not diminish the usefulness or value of required public access areas and associated improvements.

13. Maintenance of the public access facility over the life of the use or development shall be the responsibility of the owner unless otherwise accepted by a public or non-profit agency through a formal agreement recorded with the County Auditor's Office.

14. Minimum width of public access easements shall be at least 12 feet, unless the administrator determines that undue hardship to the proponent would result. In such cases, easement width may be reduced only to the minimum extent necessary to relieve the hardship.

15. Public access sites shall be made barrier-free for the physically disabled where feasible, and in accordance with the Americans with Disabilities Act (ADA).

16. The standard state approved logo or other locally approved signs that indicate the public's right of access and hours of access shall be constructed, installed and maintained by the applicant or owner in conspicuous locations at public access sites.

17. Public access shall incorporate the following location and design criteria:

    a. A public pedestrian access walkway is required where open space is provided along the shoreline, and public access can be provided in a manner that will not adversely impact shoreline ecological processes and functions. The walkway shall be buffered from sensitive ecological features and provide limited and controlled access to the water's edge where appropriate. Fencing may be used to control damage to plants and other sensitive ecological features. Trails shall be

constructed of permeable materials and limited to 5 feet in width to reduce impacts to ecologically sensitive resources.

b. Public access shall be located adjacent to other public areas, access points and connecting trails and connected to the nearest public street.

c. Where views of the water or shoreline are available and physical access to the water's edge is not present or appropriate, a public viewing area shall be provided.

d. Intrusions on privacy shall be minimized by avoiding locations adjacent to windows and outdoor private open spaces or by screening or other separation techniques.

18. Public access design shall provide for the safety of users to the extent feasible. Appropriate amenities such as benches, picnic tables and public parking sufficient to serve the users shall be provided.

19. Public restrooms, facilities for disposal of animal waste and other appropriate public facilities shall be required at developments that attract a substantial number of persons.

20. Development over the water shall be constructed as far landward as possible to reduce interference with views to the shoreline from surrounding properties. ..

21. New development shall be located and designed to avoid or minimize adverse impacts to views from public property.

Comprehensive Public Access Planning

As an alternative to a site-by-site approach to providing public access, local governments can strategically integrate public access improvements and master program requirements through a comprehensive public access plan. The goal of public access planning is to develop a coordinated plan to help residents and visitors connect with local public access sites.

Local governments with an up-to-date comprehensive public access plan that effectively addresses shoreline management objectives for public access may not need to require specific prescriptive public access standards in the SMP. The Guidelines allow local governments to prepare a comprehensive public access plan as an alternative to requiring public access on a project by project basis.

Such a plan organizes public planning and capital improvement efforts and provides a rationale for private development access requirements on a community-wide scale. For example, a comprehensive shoreline access plan that identifies where access will be most useful can demonstrate how private efforts will tie into public projects. A comprehensive strategy provides a strong legal basis for enhancing public use of the shoreline.

Public access plans have been useful in revitalizing urban waterfronts, garnering public support and furthering urban design goals. This is because they are visual in presentation and positive in direction rather than solely regulatory. They also complement the regulatory aspects of master programs and can provide a better basis for applying master program standards where they are needed.

*WAC 173-26-221 (4)(c): Planning process to address public access:. **Local governments should plan for an integrated shoreline area public access system that identifies specific public needs and opportunities to provide public access**. Such a system can often be more effective and economical than applying uniform public access requirements to all development. This planning should be integrated with other relevant comprehensive plan elements, especially transportation and recreation. The planning process shall also comply with all relevant constitutional and other legal limitations that protect private property rights…Public participation requirements in WAC 173-26-201 (3)(b)(i) apply to public access planning.*

At a minimum, the public access planning should result in public access requirements for shoreline permits, recommended projects, port master plans, and/or actions to be taken to develop public shoreline access to shorelines on public property. The planning should identify a variety of shoreline access opportunities and circulation for pedestrians (including disabled persons), bicycles, and vehicles between shoreline access points, consistent with other comprehensive plan elements.

Elements of a Comprehensive Public Access Plan

In general, a comprehensive public access plan should include the following elements:

Public Participation

- Identify community priorities and goals through workshops, visioning sessions, questionnaires, solicitation of written comments.

Integration with other community plans

- Parks and Recreation.
- Port District.
- Transportation.
- Comprehensive land use plan.

Inventory and Gap Analysis

- Inventory and map current visual and physical public access (baseline); analyze the type, size and location of access sites.
- Assess current visual and physical access relative to population density, demographics and community values (tourism, recreation, aesthetics, etc.).
- Identify and map existing view corridors for protection and potential view point development.
- Identify gaps in amounts and types (physical and visual) of public access.
- Identify and map potential public access (physical and visual) on public lands.
- Identify private lands for potential easements, acquisitions and development.

Identification of Priority Areas and Special Opportunities

- Use gap analysis to identify priority areas for public access.
- Prepare to identify special opportunities as they arise (development, unique shoreline features or aesthetics, natural, historic or cultural heritage sites, availability of property).
- Identify potential public/public or public/private partnerships to leverage acquisitions through local, state, and federal funding, and land trusts.

Implementation Strategy

- Timelines and funding.
- Project database and tracking matrices.
- Responsibilities of involved parties.

Standards

- Goals and policies.
- Minimum requirements for public access.
- Design and sign standards.
- Fee-in-lieu or offsite mitigation.
- Identified areas where access is required.
- Setback, landscaping, dedication and other standards.

A comprehensive public access plan can be a part of the SMP or a separate document referred to in the SMP. A separate document (not considered part of the SMP) can be more easily modified. If a separate public access plan document is developed, the SMP also must include public access policies, regulations, and minimum design standards and indicate where and when access is required**.** Some jurisdictions have included abbreviated portions of the public access plan as an

appendix to the SMP. The plan should include both a map and language that establishes the criteria and standards.

Highlights from public access plans

Several jurisdictions have developed comprehensive public access plans for a portion or all of their shorelines. Several jurisdictions have also initiated successful public access and recreation projects resulting from or in addition to such planning efforts. The following examples include highlights from some of these public access plans.

King County Public Access Plan

- Includes draft priorities for providing new public access to major shorelines.
- Identifies gaps where public access is limited.
- Identifies ten priority shoreline areas for new public access.

King County identified a subset of the gap areas as priority areas for providing new public access or improved public access where informal access already exists. Remaining gap areas are considered areas where additional future opportunities for public access may be pursued. The results of the gaps and priorities analysis resulted in the identification of ten priority shoreline areas where the County can focus efforts to provide new formal public access on existing County ownerships or pursue new voluntary acquisitions for public recreation.

Details are available in the following documents, which are part of the King County Shorelines *Technical Appendix:*

- King County Shorelines Public Access Plan. (Scroll down the page for the link to the plan.)
- Existing Shoreline Public Access Inventory Map.
- Shoreline Public Access Gaps & Opportunities Map.

City of Enumclaw Public Access Plan

- Structured with Introduction, Methods and Results sections.
- "Methods" section is clear and provides potential guidance for other jurisdictions.

Some excerpts from the Public Access Plan follow:

> ***Introduction (excerpts)***
> *"This document describes opportunities for improvements to existing publicly-owned land (within the City or its Urban Growth Area) that will increase public access to Boise and Newaukum creeks, and the White River, while also providing increased connectivity across the City…Existing and potential future shoreline public access areas have been selected that meet the following criteria: establish connectivity among existing public access areas; allow for shoreline public access points, including view points to shoreline*

areas; minimize impacts to ecologically critical areas; and provide access to historical resources."

Methods

"In order to identify potential for public access improvements, we reviewed existing park and trail information both within the City and in nearby rural King County areas. The City is providing information to citizens through its website and open houses, in order to collect information for future public access and land use policies for shoreline areas. As part of the process for creating the City's Parks, Recreation, and Cultural Services Master Plan, the City held public meetings to solicit input from citizens on their vision of park improvements needed in the City (City of Enumclaw 2006), some of which are relevant to shoreline areas. Property owners of land within the shoreline jurisdiction will also be contacted on an individual basis by the City to solicit comments. All of this information will be analyzed to identify projects for public access improvement. For descriptive purposes, the shoreline jurisdiction has been divided into four shoreline management zones (SMZs) as shown on Figure C-1."

City of Everett Shoreline Public Access Plan

- Outlines plan implementation strategy including timing, funding, plan elements and inter-agency coordination.
- Focuses on strategy to establish a system of trails, parks and attractions with connections to city neighborhoods and regional trails.

Excerpts from the plan state:

"During that [SMP update] process, it was clear the citizen participants placed a high emphasis on improving public access to Everett's shoreline. In response…the City initiated a follow-up plan for significantly upgrading the city's shoreline access in 2002.

The Mayor and City Council appoint a volunteer committee to guide the project…the committee first held a public workshop to obtain citizens' ideas on the type and location of desired public access features. From this input and inventory information, committee members identified public access needs and opportunities.

Cities of Lacey, Olympia, Tumwater Regional Public Access Plan

- Highlights opportunities for future public access along SMA shorelines.
- Builds upon existing parks and recreation plans and the inventory of existing public access sites.

This plan incorporates shoreline public access inventories, plans and opportunities from the Olympia Parks, Arts, and Recreation Plan; Lacey Comprehensive Plan for Outdoor Recreation; and Tumwater Parks, Recreation and Open Space Plan.

Chelan County Shoreline Public Access Plan (draft)

- Incorporates shoreline recreation goal for the county, cities, public utilities district and land trusts.
- Incorporates public outreach process from individual sectors planning processes and additional public review process.
- Conducted a study of the proximity of shoreline recreation facilities to residents and tourists using census data.

1985 Duwamish Waterway Plan

The Port of Seattle developed the Duwamish Waterway Plan for the location, schematic design and phasing of public access development along the Duwamish Industrial Waterway in Seattle.

- Plan was prepared with extensive consultation between Port and City staff and active citizen involvement.
- Development timing for the eight identified public access sites was determined by associated marine terminal development projects. In each case, when the Port obtained all of the required development permits for the associated marine terminal projects, construction began on both the marine terminal and the public access site.
- Includes specific design schematics for each of the eight proposed access sites.

Examples of public access partnerships

City of Olympia – West Bay Park

This 17-acre park on the west side of West Bay in Olympia opened in July 2010. Funding from Washington Wildlife and Recreation Program Water Access and Aquatic Lands Enhancement grants helped cover the cost of acquisition, development and shoreline enhancement. The City has partnered with local Rotary Clubs to develop an overlook, launch for hand held boats and other improvements. Phase I work covers four acres and includes trails and interpretive signs.

http://www.ci.olympia.wa.us/city-services/parks/parks-and-trails/west-bay-park.aspx

Whatcom County – Lily Point

The Lily Point Marine Reserve, a 130 acre property at Point Roberts at the tip of Northwest Washington, once included a salmon cannery. Development pressures in 2008 prompted local residents, the Whatcom Land Trust, Washington Departments of Fish & Wildlife and Ecology, and Whatcom County to secure funding to purchase the property. (The Nature Conservancy also

acquired 146 adjacent acres in 2009 for transfer to Whatcom County.) Trails lead to the beach and bluffs and provide views of Boundary Bay, the Strait of Juan de Fuca and the San Juan Islands.

http://www.co.whatcom.wa.us/parks/pdf/LilyPointverticaltrifold.pdf

http://www.whatcom-mrc.whatcomcounty.org/documents/LilyPointprojectcouldbelastingcountylegacy.pdf

Pierce County – Devil's Head

Devil's Head is a 94-acre property with about a mile of Puget Sound shoreline, at the south end of Key Peninsula. Pierce County acquired the property in July 2010 after years of cooperation among public and private partners, including county officials, Washington State Recreation and Conservation Office, Nisqually Tribe, Greater Peninsula Conservancy, Key Peninsula Parks District, the Nature Conservancy, and Washington Water Trails Association. A majority of funding came from the Washington Wildlife and Recreation Program and Salmon Recovery Funding Board, with funding also from the Pierce County Conservation Futures Program.

Direct shoreline access, parking or facilities currently do not exist. A regional park with passive recreational use is planned and would include trails, hiking, beach walking, access for non-motorized boats, and protection of wildlife and habitat.

http://www.piercecountywa.org/cfapps/internet/news.cfm?node_id=104092

Public Access Links:

Washington Coastal Atlas will provide locations and descriptions of all public access sites along marine waters beginning in December 2010.

Department of Ecology Puget Sound Shoreline Public Access Web Page

Shoreline Master Program Guidelines for public access policies and regulations: WAC 173-26-221 (4)

Department of Ecology Shoreline Public Access Handbook (James Scott, 1990)

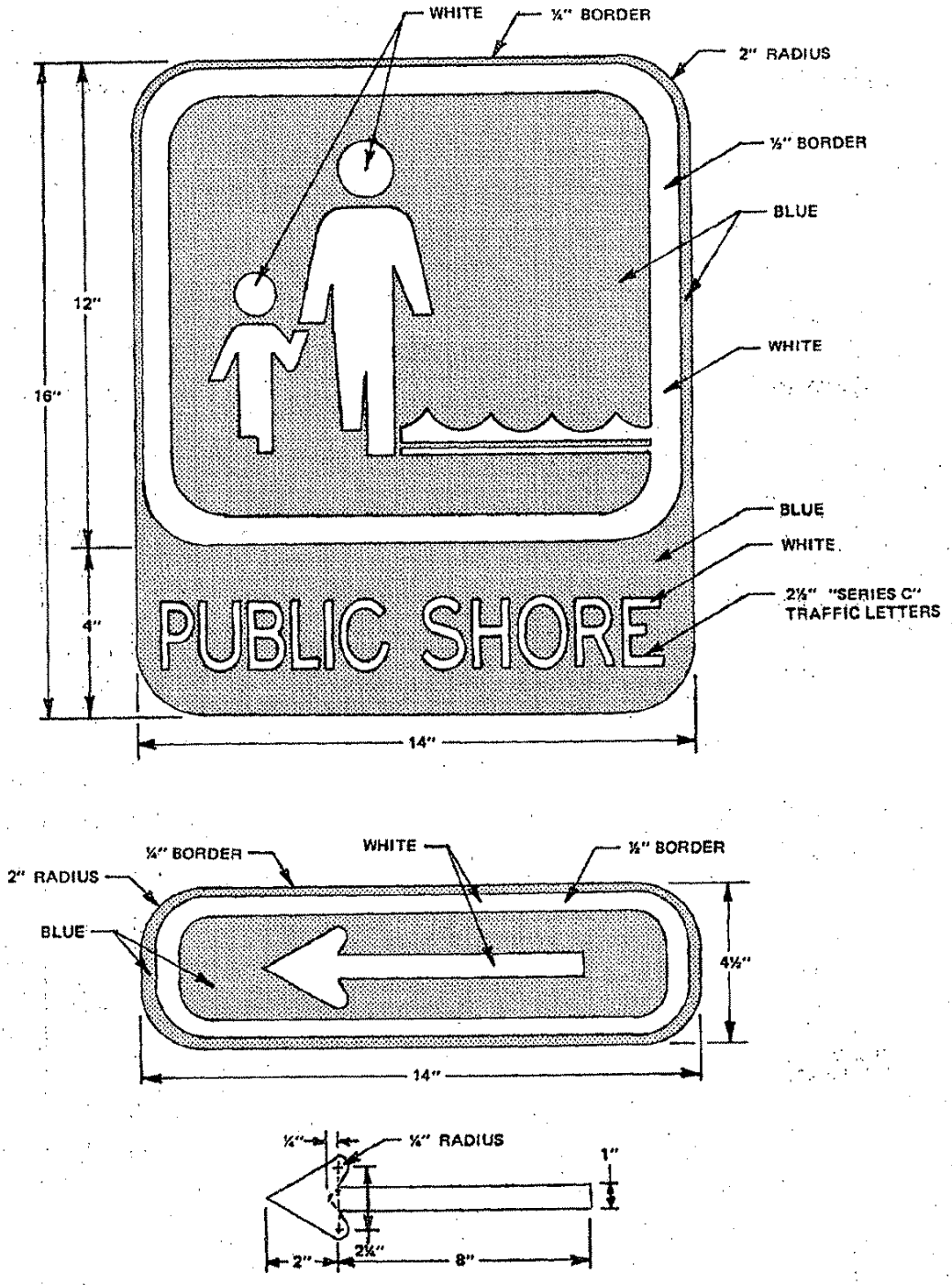
Department of Ecology Shoreline Public Access Sign Manual (James Scott, 1985)

Public Access Signage Guidelines (San Francisco Bay Example)

Figure 9-11: Kayakers on the Duwamish River in the South Park area launched their boats from one of the public access sites. (Hugh Shipman, Ecology, photo.)

Figure 1.

SHORELINE PUBLIC ACCESS LOGO AND DIRECTIONAL ARROW SPECIFICATIONS



Public Access Requirements Comparison Table			
	Existing TMC 13.10	**Preliminary Draft (09.15.10)**	**Key Distinctions**
Applicability	Applies to ALL uses and development in the shoreline, except single-family residential development. From TMC 13.10.174.A.1.a: All proposed developments shall be designed to maximize the public view and public access to and along the shoreline where appropriate. Public access shall be required for all shoreline development and uses, except for single-family residences or residential projects containing fewer than four dwelling units.	Applies to ALL uses and development in the shoreline except single-family residential development and exempt activities. From Draft TSMP 6.5.2.1.b: Public access shall be required to the extent allowed by law in the review of all shoreline substantial development permits and conditional use permits except for projects which meet one of the following criteria: i. Environmental remediation projects involving no proposed use of the property; ii. Projects involving only ecological enhancement and restoration; iii. Projects in shoreline jurisdiction with no waterfront and no possible trail connections to existing or potential public access sites; iv. A subdivision of land into four or fewer parcels for future single-family development, or development of individual single-family residences; v. A development that consists solely of maintenance dredging, the construction of a private dock serving four or fewer dwelling units, flood control measures, stabilization measures, signage, or lighting, except where specifically required in this Program.	The preliminary draft provides more specificity with regard to uses and development that are not required to provide public access. The draft specifically exempts activities that are not considered substantial developments per the WAC Guidelines.
Vision	The vision for public access to the shoreline is currently expressed in multiple documents, including the TSMP, Shoreline Trails Plan, Ruston Way Design and Development Concept Plan, Thea Foss	The Public Access Alternatives Plan provides a comprehensive vision for an integrated public access system, including the types of projects, possible locations, and lead agencies responsible	The information incorporated into the draft vision is primarily derived from the existing planning documents as well as elements of the Comprehensive Plan, including the

Public Access Requirements Comparison Table			
	Existing TMC 13.10	**Preliminary Draft (09.15.10)**	**Key Distinctions**
	Waterway Plan, as well as the Open Space Habitat and Recreation Plan and Mobility Master Plan elements of the Comprehensive Plan. The vision includes a natural trail along the Western Slope, from Day Island connecting to Point Defiance; a hard surface promenade/esplanade connecting the Tacoma Dome and the east side of the Foss Waterway to the Point Defiance promenade; a series of natural trails in the gulches along Ruston Way, and a natural trail along the Northeast Tacoma bluffs.	for their development. The vision is similar to that expressed in existing plans but is expanded somewhat and includes a natural trail along the Western Slope, from Day Island connecting to Point Defiance; a hard surface promenade/esplanade connecting the Tacoma Dome and the east side of the Foss Waterway to the Point Defiance promenade; a series of natural trails in the gulches along Ruston Way, and a natural trail along the Northeast Tacoma bluffs. In addition, specific opportunities for small boating facilities, viewpoints, and habitat observation areas have been identified.	Mobility Master Plan and the Open Space Habitat and Recreation element, as well as from public comments submitted as part of the Shoreline Master Program update process. The draft carries forward the trail system as described in the Shoreline Trails Plan and the OSHRP/Mobility Master Plan, but also identifies other recreational opportunities, such as boating facilities.
Waiver Criteria	From TMC 13.10.175.A.1.a: A shoreline development or use that does not provide public access may be authorized; provided, that it is demonstrated by the applicant and determined that one or more of the following circumstances apply: (1) Unavoidable health or safety hazards to the public exist, which cannot be prevented by any practical means; (2) Inherent security requirements of the use cannot be satisfied through the application of alternative design features; (3) Unacceptable environmental harm will result from the public access which cannot be mitigated; or (4) Significant undue and unavoidable conflict between the proposed access and adjacent uses would occur and cannot be mitigated; and provided, further, that the	Preliminary Draft TSMP 6.5.2(1)(c): Public access shall be provided on-site, except for projects which meet one of the following criteria as determined by the Land Use Administrator: i. It is demonstrated to be infeasible due to unavoidable reasons of incompatibility of uses, public health and safety, security or where significant harm to the ecological function of the shoreline environment cannot be mitigated. In determining the infeasibility or incompatibility of public access in a given situation, the City shall consider alternate methods of providing public access, such as off-site improvements, viewing platforms, separation of uses through site planning and design, and restricting hours of public access. ii. More meaningful access that is better than that provided by the application of the goals, objectives, and policies of this plan can be	The Preliminary Draft contains the same waiver options with some differences. First, additional options (ii and iii) have been added. Second, the draft provides a waiver for on-site access but not an altogether exemption from requirements to provide or enhance public access to the shoreline. Lastly, in determining the infeasibility or incompatibility of access on site, the City shall consider alternate methods for providing access either on-site or off-site. The existing code contains similar language but only as a sub-bullet of waiver option (4). The preliminary draft applies this review to all waiver criteria.

Public Access Requirements Comparison Table			
	Existing TMC 13.10	**Preliminary Draft (09.15.10)**	**Key Distinctions**
	applicant has first demonstrated and it has been determined that all reasonable alternatives have been exhausted, including but not limited to: (a) Regulating access by such means as limiting hours of use to daylight hours. (b) Designing separation of uses and activities; i.e., fences, terracing, hedges, landscaping, etc. (c) Providing access at a site physically separated from the proposal, such as a nearby street end, an off-site viewpoint, or a trail system.	provided off-site. iii. The project is located in the S-10 shoreline district or is associated with a water-oriented Port, Terminal and Industrial use in the S-7 or S-8 shoreline districts.	
Public access preferences	Generally, access is preferred on site, but specific preferences are not identified.	Public Access Policy 6.5.1(11): "Preference should be given to provision of on-site public access. Off-site public access is appropriate where it would provide more meaningful public access, prevent or minimize safety or security conflicts, or where off-site public access is consistent with an approved public access plan." Preference for water-oriented Port, Terminal and Industrial uses to provide access off-site or through a contribution to public access fund. Preference for water-enjoyment uses to provide access on-site, between the development and the shoreline.	The draft maintains the general preference for access on-site that enables the public to reach or touch the water. However, the draft also provides for other preferences, recognizing that different shoreline areas and different uses provide different opportunities and constraints for providing access. For example, it may be possible through design considerations for an industrial site to provide access, but it may not be a desirable project for the community. Rather than achieving a sub-optimal or undesirable access site, the preliminary draft attempts to direct those access improvements where they would be most beneficial.
Options for Meetings Access	Access requirements are "on-site." Under the waiver criteria, off-site access is provided as an option in circumstances	The Preliminary Draft provides four primary options for implementing public access	The Preliminary Draft TSMP provides more options for meeting

Public Access Requirements Comparison Table			
	Existing TMC 13.10	**Preliminary Draft (09.15.10)**	**Key Distinctions**
Requirements	where on-site access would cause unavoidable harm to adjacent uses.	objectives in the shoreline: 1. On-site 2. Off-site 3. 2% project cost contribution 4. Inter-local agreement or public access master plan (for public agencies only)	public access requirements.
Protection of Private Property Rights	Public access policies and development regulations do not specifically cite private property rights, nexus and proportionality tests or other Constitutional limitations in the application of public access requirements.	The draft contains the following public access policies that recognize and protect private property rights: Draft TSMP 6.5.1: 5. Public access provisions should be consistent with all relevant constitutional and other limitations that apply to public requirements that are placed on private property, including the nexus and proportionality requirements. 6. Public access requirements on privately owned lands should be commensurate with the scale of the development and should be reasonable, effective, and fair to all affected parties including but not limited to the landowner and the public. 7. Public access should not compromise, in any significant manner, the rights of navigation and space necessary for water-dependent uses. 8. New public access should be sited and appropriately designed to avoid causing detrimental impacts to the operations of existing water-dependent and water-related uses.	Consistent with the Washington Administrative Code, the Draft TSMP includes policies that recognize and support private property rights within shoreline jurisdiction. While these legal and Constitutional rights apply to the existing TSMP, the draft gives explicit reference.
"Dome to Defiance" – S-6 Ruston Way, S-7 Schuster	TMC.13.10.175.A.1.b: b. Except as indicated in Subparagraph a,	Draft TSMP 6.5.2(2): **"S-15" Point Ruston/Slag Peninsula Shoreline**	The Draft TSMP carries forward the basic requirements for a 15' waterfront walkway but with several

Public Access Requirements Comparison Table			
	Existing TMC 13.10	**Preliminary Draft (09.15.10)**	**Key Distinctions**
Parkway and S-8 Thea Foss Waterway Shoreline Districts	above, and except for existing industrial developments, all proposed developments within the "S-6," "S-7," and "S-8" Shoreline Districts shall incorporate public access to and along the water's edge as follows. For the purposes of determining whether these requirements apply, "existing industrial development" shall include any expansion, adaptation, repair, replacement, or other modification, including changes necessitated by technological advances, of any industrial uses which existed on January 1, 1996, on the east side of the Waterway. The requirements of Section 13.10.110 for the "S-8" Shoreline District provide more detailed public access requirements on the western side of Thea Foss Waterway, and shall be the controlling requirements for that area: (1) A continuous, unobstructed, publicly accessible esplanade or boardwalk fronting directly on the shoreline edge. The esplanade or boardwalk will be a minimum of 15 feet wide, except on the western side of the Thea Foss Waterway, where the minimum improved surface shall be 20 feet wide. Site amenities, such as benches, lights, and landscaping, will be included as part of the esplanade or boardwalk construction. (2) A pedestrian circulation link from the street right-of-way to the public esplanade or boardwalk shall be provided for each development, and shall be a minimum of 10 feet wide and ADA accessible. The required pedestrian circulation link shall be located	**District, "S-6" Ruston Way Shoreline District:** a. All new development that fronts on the shoreline shall provide a continuous public access walkway along the entire site's shoreline, improved to a minimum average width of 15 feet and ADA accessible. A public access/view corridor from the street right-of-way to the public walkway shall be provided for each development and shall be a minimum of 10 feet wide and ADA accessible. The required pedestrian circulation link shall be located within the required side yard/view corridor and be counted toward said side yard/view corridor requirement. Provision shall be made to provide access from the parking lot to the main building entrance. **"S-7" Schuster Parkway Shoreline District:** a. All new development that fronts on the shoreline, except water-oriented Port, Terminal and Industrial use, shall provide a continuous public access walkway along the entire site's shoreline, improved to a minimum average width of 15 feet and ADA accessible. b. When public access requirements cannot be met or are not required on-site, off-site improvements shall occur in the following order of preference: i. Completion of the multimodal Schuster Parkway Trail, as identified in the Public Access Plan, including site amenities; ii. Completion of the Bayside Trail, including site amenities;	key differences. First, in the draft TSMP water-oriented Port, Terminal and Industrial uses in the S-7 would not be required to provide access on-site. The S-7 has been modified to include multiple options for meeting public access requirements off site. Other uses would still be required to provide a waterfront walkway. Second, waterfront walkway requirements would not apply to new water-oriented Port, Terminal and Industrial uses on the east side of the Foss Waterway. Rather, those uses would be required to provide or enhance access off-site access. Other uses would still be required to provide a waterfront walkway. Lastly, the walkway requirement has been modified on the east side of the Foss Waterway so that it would end at the present Conoco-Philips site and connect to Urban Waters via the existing East D Street right-of-way.

Public Access Requirements Comparison Table			
	Existing TMC 13.10	**Preliminary Draft (09.15.10)**	**Key Distinctions**
	within the required side yard/view corridor and be counted toward said side yard/view corridor requirement. Provision shall be made to provide access from the parking lot to the main building entrance."	iii. Improving connections between Schuster Parkway and the Bayside Trail; iv. Provide access directly along the water when the protection of private property rights, public safety, and the environment can be ensured. This access may require connections to existing points of public access through creative means such as flyovers. **"S-8" Thea Foss Waterway Shoreline District** a. On the west side of the Thea Foss Waterway, new development shall provide a continuous, unobstructed, publicly accessible esplanade or boardwalk fronting on the shoreline edge where the minimum improved surface shall be 20 feet wide. Connections between Dock Street and the esplanade or boardwalk shall be provided through designated public access/view corridors, and possibly additional public access corridors. b. On the east side of the Thea Foss Waterway, new development, with the exception of new and existing water-oriented Port, Terminal and Industrial development, shall provide a continuous, unobstructed, publicly accessible walkway or boardwalk fronting on the shoreline edge where the improved surface shall be a minimum of 15 feet wide, except that the walkway shall end at the southern boundary of parcel number 8950000720, 526 East D Street. Connections between the walkway and East D Street shall be provided through public access/view corridors as required in regulation 6.5.2. Existing industrial uses, at the time of the adoption of this Program, are not subject to the	

Public Access Requirements Comparison Table			
	Existing TMC 13.10	**Preliminary Draft (09.15.10)**	**Key Distinctions**
		public access requirements. c. A public access/view corridor from the street right-of-way to the public esplanade, walkway or boardwalk shall be provided for each development, and shall be a minimum of 10 feet wide and ADA accessible. The required pedestrian circulation link shall be located within the required side yard/view corridor and be counted toward said side yard/view corridor requirement. Provision shall be made to provide access from the parking lot to the main building entrance.	
Public Access Fund	Not applicable.	Draft TSMP 6.5.2(1)(d): Projects which meet the criteria in Regulation 6.5.2(1)(c) above must either construct off-site improvements or, if approved by the Land Use Administrator, contribute to a public access fund established by the City to construct off-site public access improvements of comparable value. The Public Access Fund contribution is one option for meeting public access requirements. The contribution would be based upon the cost of the project minus costs associated with land acquisition, environmental remediation costs, and other costs associated with the project that are not subject to access requirements. The cost would be determined only for that portion of the project that is within shoreline jurisdiction. The funds would be managed by City staff for expenditures on projects listed in the Public Access Alternatives Plan that increase public access capacity in the City's shorelines. This option shifts the burden for planning,	The Public Access Fund is a proposed option. It is not currently available to permit applicants within the City's shorelines.

Public Access Requirements Comparison Table			
	Existing TMC 13.10	**Preliminary Draft (09.15.10)**	**Key Distinctions**
		constructing, and maintaining access to the City rather than the applicant.	

3.0 STATE REGULATORY FRAMEWORK

The Washington Administrative Code (WAC) identifies four primary principles that shall be implemented as part of each local jurisdiction's shoreline master program. These principles include:

(i) Promote and enhance the public interest with regard to rights to access waters held in public trust by the state while protecting private property rights and public safety.

(ii) Protect the rights of navigation and space necessary for water-dependent uses.

(iii) To the greatest extent feasible consistent with the overall best interest of the state and the people generally, protect the public's opportunity to enjoy the physical and aesthetic qualities of shorelines of the state, including views of the water.

(iv) Regulate the design, construction, and operation of permitted uses in the shorelines of the state to minimize, insofar as practical, interference with the public's use of the water.

In addition, the WAC suggests that:

"Local governments should plan for an integrated shoreline area public access system that identifies specific public needs and opportunities to provide public access. Such a system can often be more effective and economical than applying uniform public access requirements to all development. This planning should be integrated with other relevant comprehensive plan elements, especially transportation and recreation. The planning process shall also comply with all relevant constitutional and other legal limitations that protect private property rights."

What uses are allowed in the shoreline?

The Shoreline Management Act establishes three primary goals:

1) to promote uses that protect and enhance the ecology of the shoreline,
2) to promote uses that enhance public access to and enjoyment of the shoreline, and
3) to promote uses that are dependent upon a shoreline location.

Soft shore armoring and habitat improvement at Chinese Reconciliation Park

The SMA prioritizes uses that are unique to or dependant on the use of the state's shorelines. Water-dependant uses, such as marinas, shipyard dry docks, or ferry terminals take priority. Second are water-related uses, such as vessel parts fabrication or container ship yards. These uses do not require a waterfront location, but are economically dependant on one. Lastly, water-enjoyment uses that promote access and draw large numbers of the general public to the shoreline, such as restaurants or retail use are prioritized.

As part of the Shoreline Master Program update, the City of Tacoma has undertaken a planning effort to develop a Public Access Alternatives Plan that, in conjunction with the permit requirements in TSMP 6.5, fulfills the principles and standards of the WAC. The WAC provides additional flexibility for

local jurisdictions when a comprehensive and integrated public access plan is developed. For instance, the WAC states that: "The planning may also justify more flexible off-site or special area public access provisions in the master program." In addition, ports and other public entities are eligible to develop their own public access plans as a means of meeting the State's access requirements while achieving a greater degree of flexibility as to where and how those requirements are met, as opposed to a uniform permit-by-permit requirement.

In addition, the WAC requires that:

"At a minimum, the public access planning should result in public access requirements for shoreline permits, recommended projects, port master plans, and/or actions to be taken to develop public shoreline access to shorelines on public property. The planning should identify a variety of shoreline access opportunities and circulation for pedestrians (including disabled persons), bicycles, and vehicles between shoreline access points, consistent with other comprehensive plan elements."

This Public Access Alternatives Plan has been developed to satisfy the WAC requirements for shoreline public access for the City of Tacoma, to provide additional flexibility for permit applicants and public agencies to meet their obligations to the general public to provide access to the Shorelines of the State, and to do so in a way that is consistent with the Comprehensive Plan and private property rights.

Lastly, the WAC provides standards for local jurisdictions to incorporate into their master programs. These include:

> *(i) Based on the public access planning described in (c) of this subsection, establish policies and regulations that protect and enhance both physical and visual public access. The master program shall address public access on public lands. The master program should seek to increase the amount and diversity of public access to the state's shorelines consistent with the natural shoreline character, property rights, public rights under the Public Trust Doctrine, and public safety.*
>
> This standard is implemented in the TSMP by the following policies and development regulations:
>
> TSMP 6.5.1(5) provides protection for property rights in the provision of public access.
> TSMP 6.5.1(2) seeks to increase the amount and diversity of public access.
> TSMP 6.7.1(A) (1) advances the public's interest in the aesthetic qualities of shorelines of the state, including views of the water.
> TSMP 6.5.1(6) requires that public access on private properties be commensurate with the scale of development and to be reasonable, effective, and fair for all parties.
> TSMP 6.5.1(7) protects the rights of navigation and the space necessary for water-dependent uses.
>
> *(ii) Require that shoreline development by public entities, including local governments, port districts, state agencies, and public utility districts, include public access measures as part of each development project, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline environment. Where public access planning as described in WAC 173-26-221(4)(c) demonstrates that a more effective public access system can be achieved through alternate means, such as focusing public access at the most desirable locations, local*

governments may institute master program provisions for public access based on that approach in lieu of uniform site-by-site public access requirements.

This standard is implemented in the TSMP by the following policies and development regulations:

TSMP 6.5.1(3) requires that any project that receives public funds provide access to the water to the general public.
TSMP 6.5.1(4) provides for innovative means for achieving access when there is a conflict or incompatibility on site.

(iii) Provide standards for the dedication and improvement of public access in developments for water-enjoyment, water-related, and non-water-dependent uses and for the subdivision of land into more than four parcels. In these cases, public access should be required except:

> *(A) Where the local government provides more effective public access through a public access planning process described in WAC 173-26-221 (4)(c).*
>
> *(B) Where it is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline environment or due to constitutional or other legal limitations that may be applicable.*
>
> *In determining the infeasibility, undesirability, or incompatibility of public access in a given situation, local governments shall consider alternate methods of providing public access, such as off-site improvements, viewing platforms, separation of uses through site planning and design, and restricting hours of public access.*
>
> *(C) For individual single-family residences not part of a development planned for more than four parcels.*

This standard is implemented in the TSMP by the following policies and development regulations:

TSMP 6.5.1(2) seeks to increase the amount and diversity of public access.
TSMP 6.5.2(1)(b) requires that all developments, except single family, provide public access.
TSMP 6.5.2(1)(c) provides for situations where access is incompatible on site due to public safety concerns, security requirements, operational conflicts, or due to environmental harm.

(iv) Adopt provisions, such as maximum height limits, setbacks, and view corridors, to minimize the impacts to existing views from public property or substantial numbers of residences. Where there is an irreconcilable conflict between water-dependent shoreline uses or physical public access and maintenance of views from adjacent properties, the water-dependent uses and physical public access shall have priority, unless there is a compelling reason to the contrary.

This standard is implemented in the TSMP by the following policies and development regulations:

Table 9.2 establishes height, setback, and view corridor standards for all uses in the shoreline.
TSMP 6.2.1(6) directs all uses and development to manage their impacts to other shoreline and upland uses.
TSMP 6.7.1(A) (7) requires that all shoreline uses be designed and operated to minimize obstructions to views and access.
TSMP 7.4.1(A) (9) requires that commercial structures incorporate and protect views and aesthetics.
TSMP 6.7.1(A) (1) protects the public's opportunity to enjoy the aesthetic qualities of shorelines, including views of the water.
TSMP 6.7.1(A) (2) encourages shoreline use and development to take the greatest advantage of shoreline views in their design and location.
TSMP 6.7.2(2) places priority on public access and water-dependent uses when they conflict with views from adjacent properties.

(v) Assure that public access improvements do not result in a net loss of shoreline ecological functions.

This standard is implemented in the TSMP by the following policies and development regulations:

TSMP 6.5.1(1) provides protection for the ecology of the shoreline by requiring all public access to achieve no net loss of ecological functions.
TSMP 6.4 provides protection for shoreline critical areas and mitigation standards for all impacts to the shoreline.

Agenda Item GB-2

City of Tacoma
Community and Economic Development Department

TO: Planning Commission

FROM: Shirley Schultz, Principal Planner, Current Planning Division

SUBJECT: Billboard Regulations

DATE: December 28, 2010

As discussed at the last meeting, the Planning Commission will be considering potential revisions to the *Tacoma Municipal Code* as it relates to billboards. The revisions will include consideration of an agreement that has been developed between the City Council and Clear Channel Outdoor (the owner of the majority of billboards within the City) to settle a pending lawsuit against the City.

At the January 5 meeting, staff will provide further information on existing billboard regulations and potential revisions emanating from the settlement agreement. Attached are two documents to aid the discussion. The first is a set of maps showing the proposed "digital receiving areas" outlined in the settlement agreement along with information on how or if digital billboards would be allowed in these locations under the City's current regulations pertaining to "receiving areas" for billboards. Second is a document describing selected existing billboards in the city with information concerning their size, location and why they are nonconforming to the current regulations. These billboards also are located within the digital receiving areas in the settlement agreement, and thus could potentially be converted to digital billboards under the provisions of the settlement.

Additionally, as noted at the last meeting, if the Commissioners are interested in seeing real-life examples of the type of digital billboards being proposed by Clear Channel, the nearest ones are located in Kent. Clear Channel has constructed two of the smaller-sized billboards – one located at approximately 514 Central Avenue South, and the other at about 816 East Valley Highway. Both are on them are along the east side of the road.

At the meeting, staff will also provide a large-scale map of billboards proposed for removal, and locations for potential new digital billboards as proposed in the terms of the settlement agreement. In addition, Clear Channel has provided a video that compares digital billboards with traditional static billboards.

Staff plans to return to the Planning Commission on January 19 for continued discussion and direction about possible revisions to existing billboard regulations.

If you have any questions, please contact Shirley Schultz at (253) 591-5121 or shirley.schultz@cityoftacoma.org.

Attachments

c: Peter Huffman, Assistant Director

Following are orthophotos showing the proposed "digital receiving areas" – areas mentioned in the settlement agreement between the City Council and Clear Channel Outdoor. Eighteen areas are shown, allowing for leasing and property procurement flexibility in placement of the first ten proposed digital billboards:

1) *Portland Avenue and Puyallup Avenue*: 200 Yards to the North, South, East and West of the center point of the intersection of Portland and Puyallup Avenues.

2) *Puyallup Avenue*: Along Puyallup Avenue from the midpoint of the intersection of Puyallup Avenue and D Street to the midpoint of the intersection of Puyallup Avenue and L Street.

3) *Pacific Avenue*: Pacific Avenue from the midpoint of the intersection of Pacific Avenue and S. 23rd Street to the midpoint of Pacific Avenue and S. 30th Street.

4) *6th Avenue and Division Avenue*: From the midpoint of the intersection of 6th Avenue and Division 200 yards NE on Division Avenue, 175 Yards to the West on 6th Avenue East on 6th Avenue to N. Grant Street and 100 yards North and South on S. Sprague Avenue.

5) *6th Avenue and Junett Street*: 50 yards to the East and West of the midpoint of the intersection of 6th Avenue and Junett Street.

6) *6th Avenue and Union Avenue*: 50 yards in all directions from the midpoint of the intersection of 6th Avenue and Union Avenue.

7) *6th Avenue between S. Pearl Street to the East and S. Mildred Street to the West*: From the midpoint of the intersection of 6th Avenue and S. Pearl Street to the midpoint of 6th Avenue and S. Mildred Street.

8) *S. Union Avenue and S. 23rd Street*: S. Union Avenue 50 yards north and 300 yards to the South of the midpoint of the intersection of S. Union and S. 23rd Street.

9) *S. Union Avenue and Center Street*: 50 yards to the North, East and West of the midpoint of the intersection of S. Union and Center Street and 200 Yards South of said intersection on S. Union Avenue.

10) *S. Union Avenue:* 100 yards in all directions from the midpoint of the intersection of S. Pine Street and Center Street.

11) *S. 38th Street and S. Pine Street:* 150 Yards East and West from the midpoint of the intersection of S. 38th Street and S. Pine Street and 100 Yards North and South from the midpoint of said intersection.

12) *S. Tacoma Way and S. Pine Street:* 150 Yards in all directions from the midpoint of the intersection of S. Tacoma Way and S. Pine Street.

13) *Steele Street and S. 38th Street:* 50 yards from the midpoint of the intersection of Steele Street and N. 38th, to the North on S. Idaho Street, 150 yards from said midpoint to the East and West on S. 38th Street, all of S. Steele Street and the North portion of Tacoma Mall Boulevard from Steele Street on the West and 125 yards East of S. State Street.

14) *West End of S. 56th Street:* South 56th Street between the midpoint of the intersection of S. 56th and S. Tyler to the midpoint of the intersection of S. 56th and Burlington Way to the East.

15) *S. 56th Street and S. Tacoma Way :* 100 yards in all directions from the midpoint of the intersection of S. 56th Street and S. Tacoma Way.

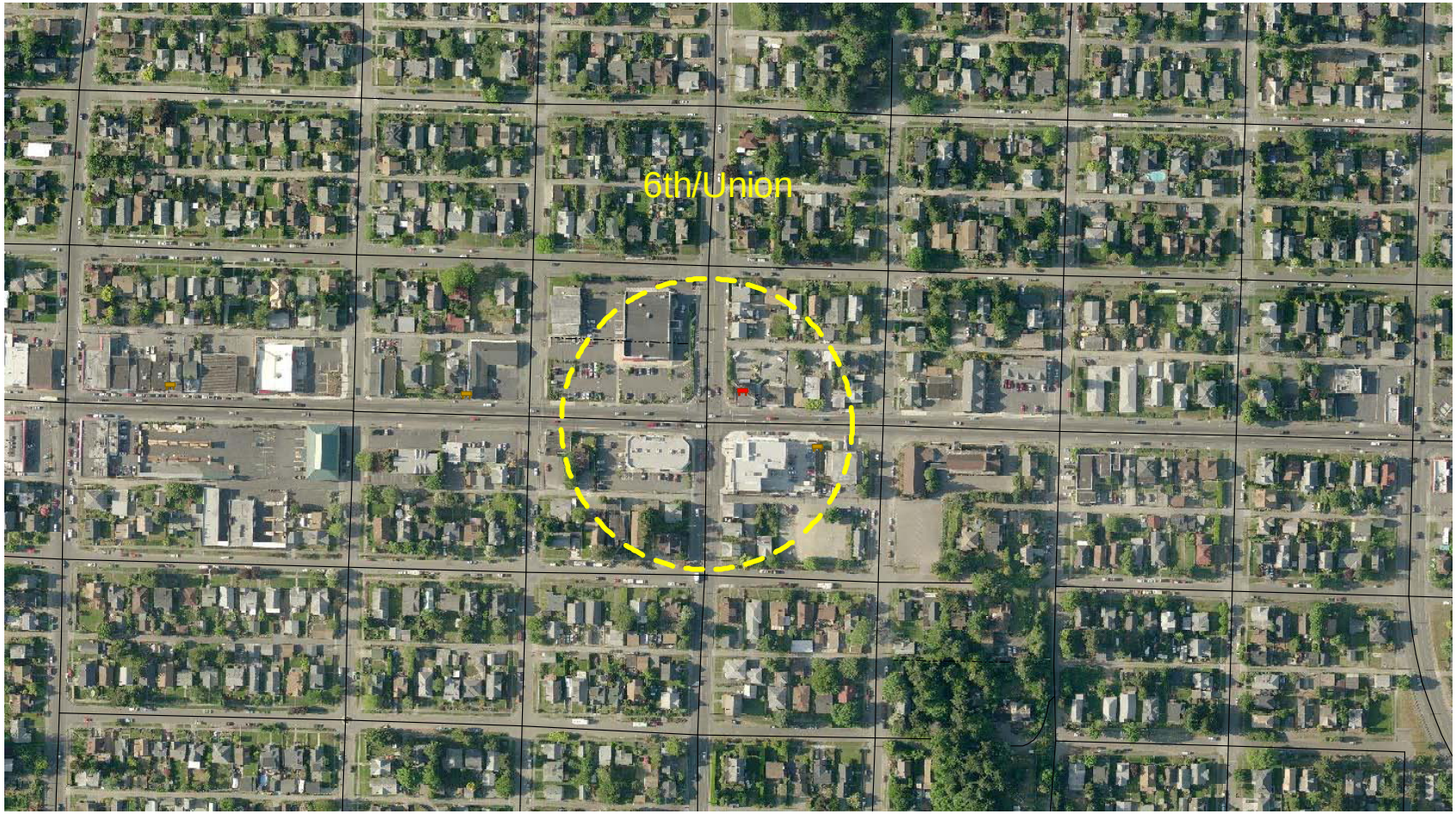
16) *S. 74th Street and S. Tacoma Way:* 150 yards in all directions from the midpoint of the intersection of S. 74th Street and S. Tacoma Way.

17) S. 74th Street and S. Tacoma Mall Boulevard: S. 74th Street between the midpoint of the intersection of S. 74th and S .Wapato Street, and the midpoint of the intersection of S. 74th and S. Tacoma Mall Boulevard.

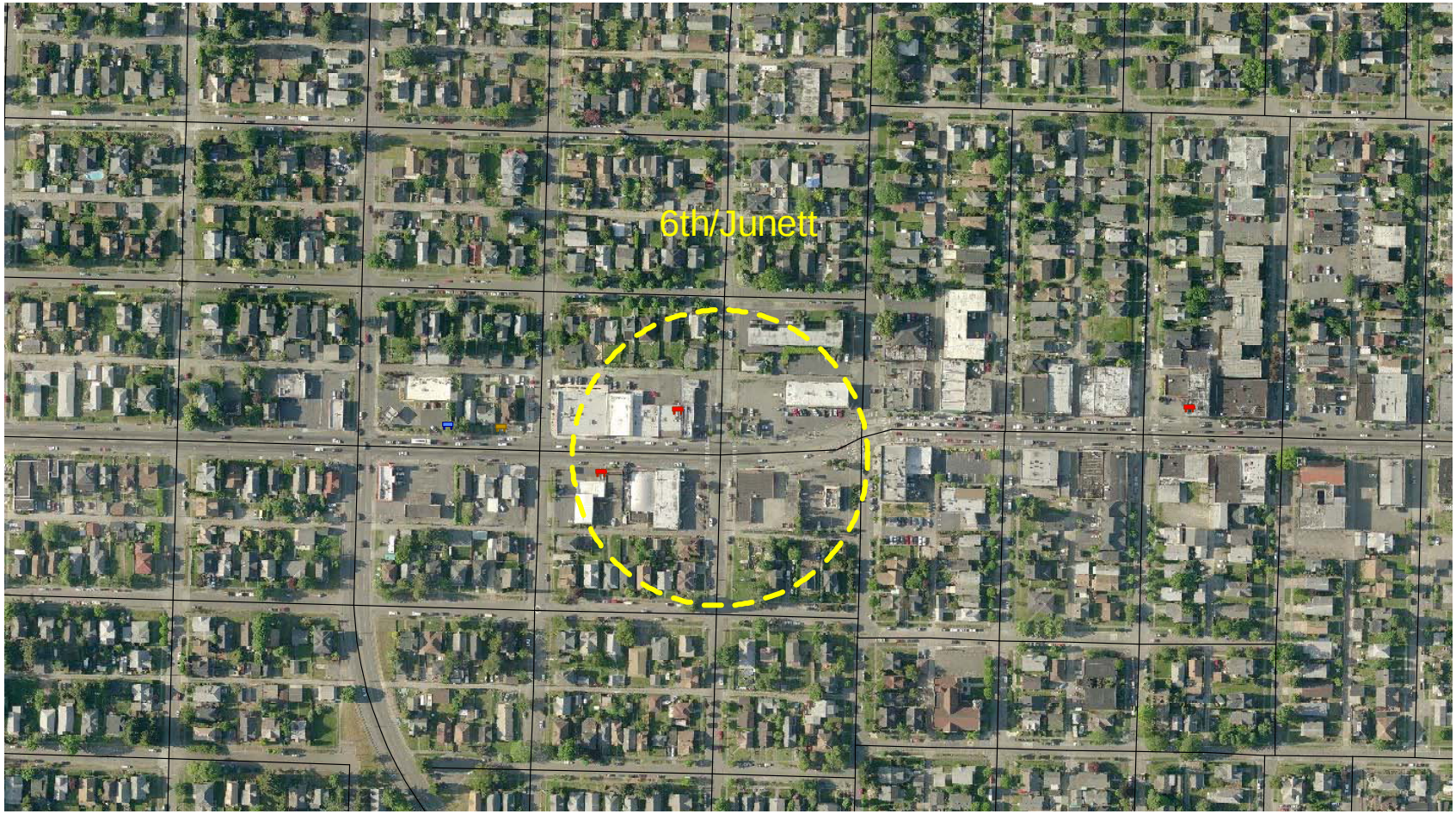
18) S. 72nd Street and S. Hosmer Street: That portion of S. 72nd Street between I-5 and the midpoint of the intersection of S. 72nd and S. Alaska Street and S. Hosmer Street 100 yards South of S. 72nd Street and the midpoint of the intersection of S. Hosmer and S. 72nd.

On each orthophoto, a dotted yellow outline depicts the receiving area – a place where a new digital billboard could be located. Also, billboard-shaped icons (very, very small) in multiple colors depict existing billboards. The only color to take note of is the blue icons – these are billboards proposed for removal. At the Planning Commission meeting, a citywide map of proposed locations and signs proposed to be removed will be shown. This is a large-scale map best viewed on a screen.

Where a proposed receiving area is currently void of billboards, this is noted on the legend to the orthophoto. Currently those areas are South Union Avenue and South 23rd (8), Tacoma Mall Area along Tacoma Mall Boulevard (13), South 56th and South Tacoma Way (15), and South 72nd and Hosmer (18).

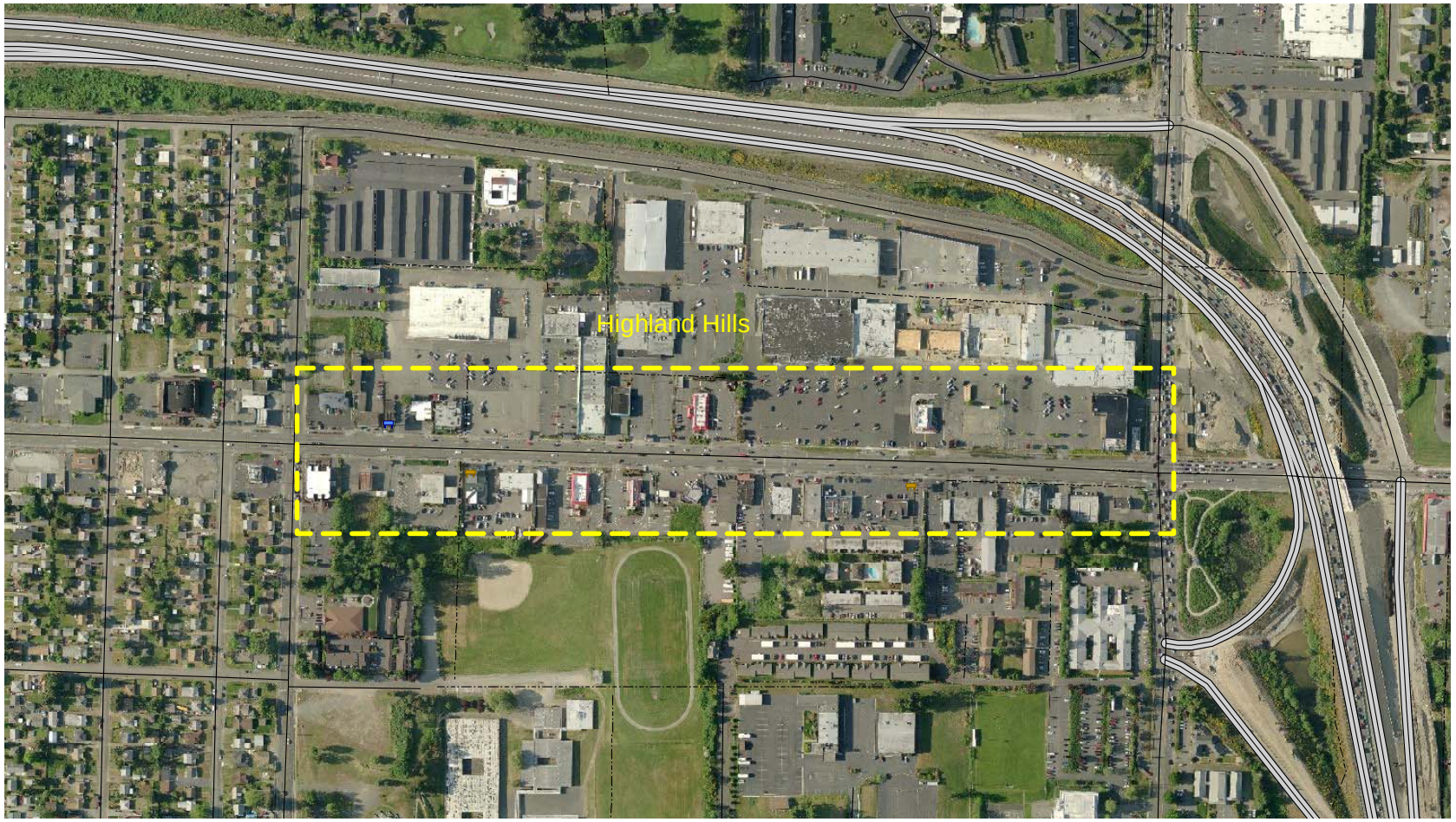


Proposed Location:	6th & Union
Zoning:	C-2 - General Community Commercial
Allowed under current code:	No
Reason(s):	Too Close to Residential Zone
	Too many billboards in the area



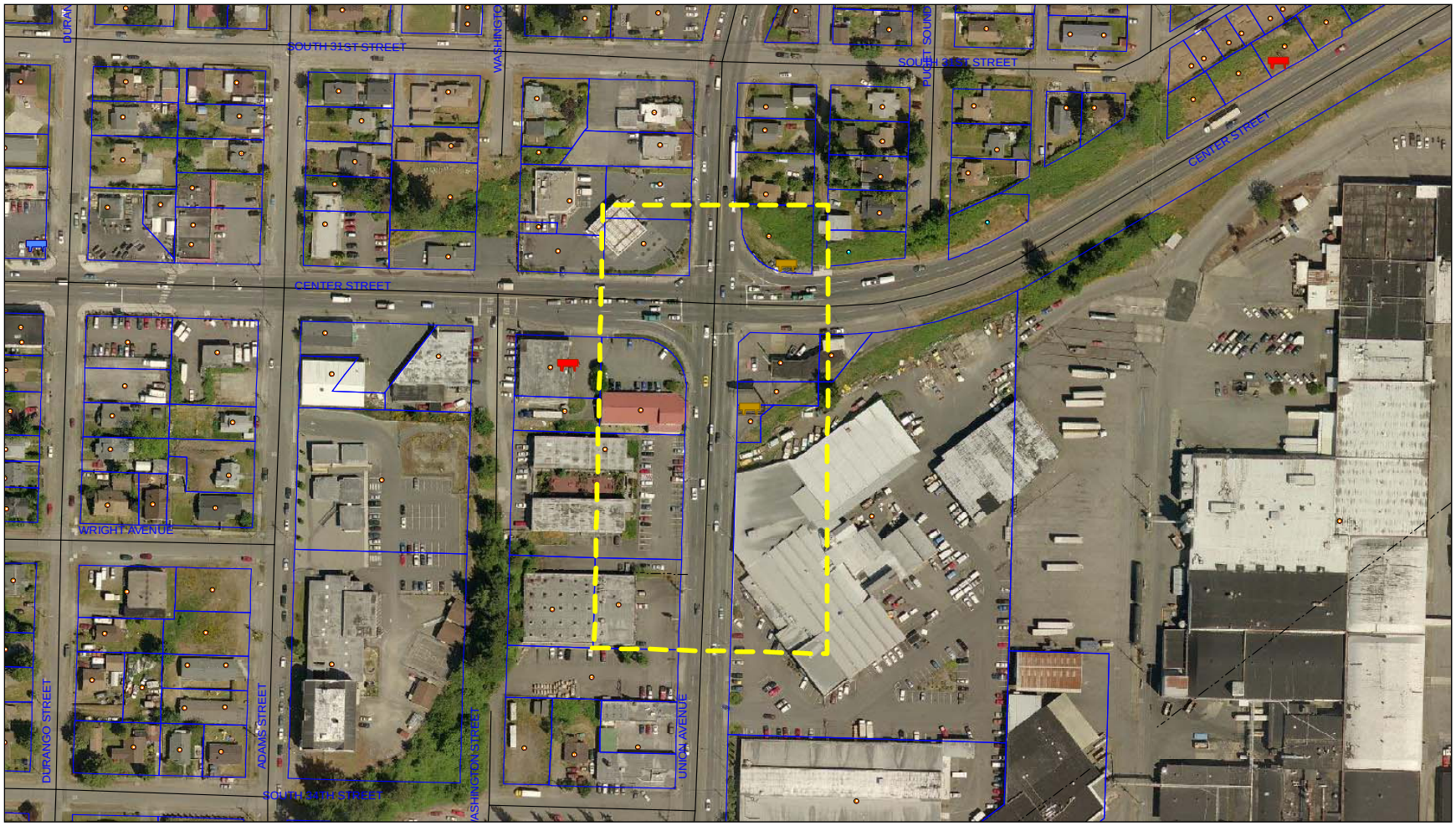
Proposed Location:	6th & Junett
Zoning:	NCX – Neighborhood Commercial Mixed-Use
Allowed under current code:	No
Reason(s):	Located in a zone which does not allow billboards
	Too close to Residential Zone
	Too many billboards in the area

Proposed Location:	6th & Sprague
Zoning:	NCX – Neighborhood Commercial Mixed-Use RCX – Residential-Commercial Mixed-Use C-2 – General Community Commercial
Allowed under current code:	No
Reason(s):	Too close to School and Church Too close to Residential Zone Too many billboards in the area



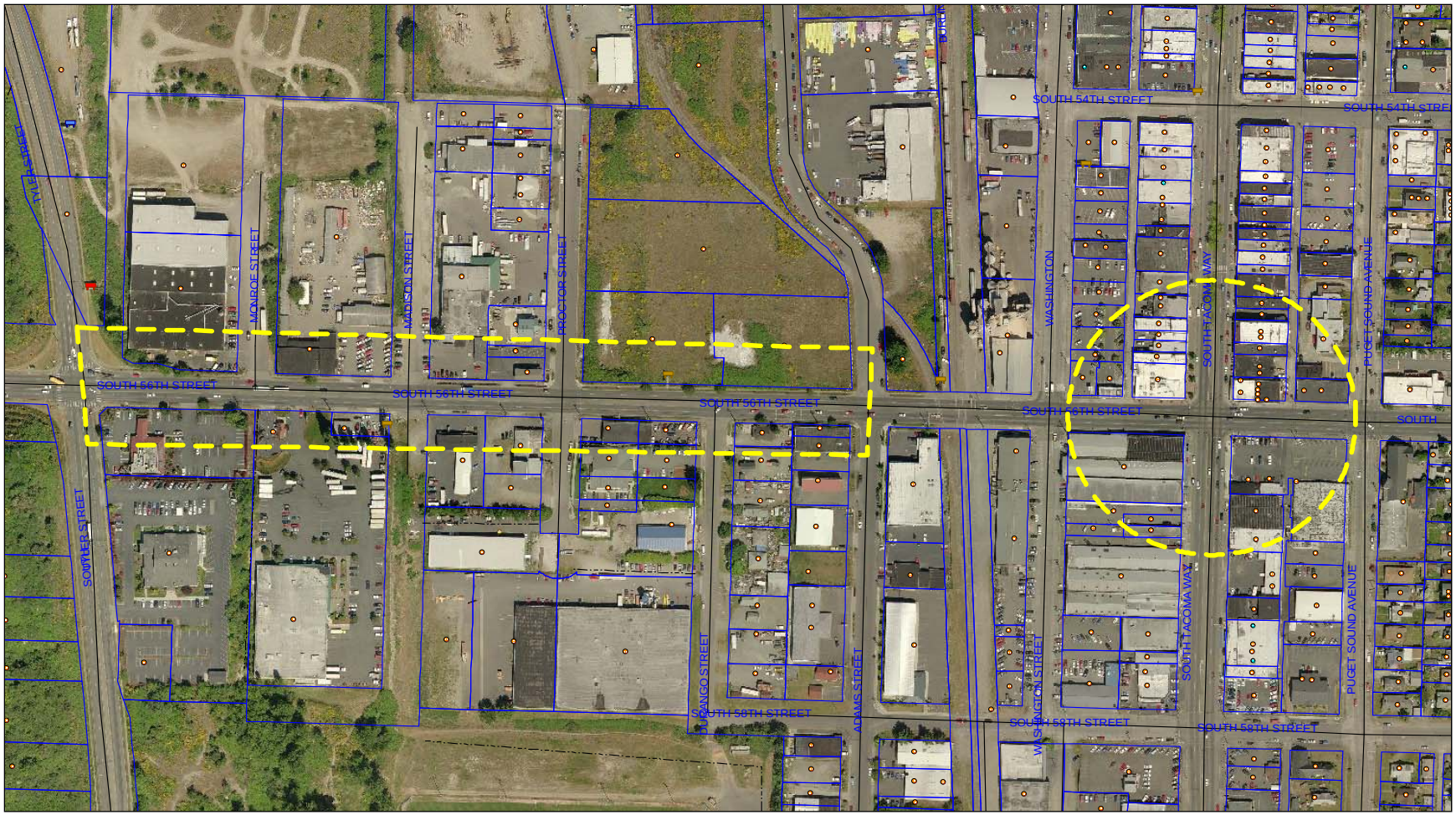
Proposed Location:	Highland Hills area
Zoning	C-2 – General Community Commercial
Allowed under current code:	Maybe – Existing could most likely be replaced
Reason(s):	North Side of Street Only (South is too close to residential zone) Must meet dispersal criterion

Proposed Location:	Tacoma Central
Zoning:	CCX – Community Commercial Mixed-Use R4L-PRD – Planned Residential Development
Allowed under current code:	No
Reason(s):	Located in a zone which does not allow billboards Part of area is too close to a residential zone *There are currently no billboards in the area*

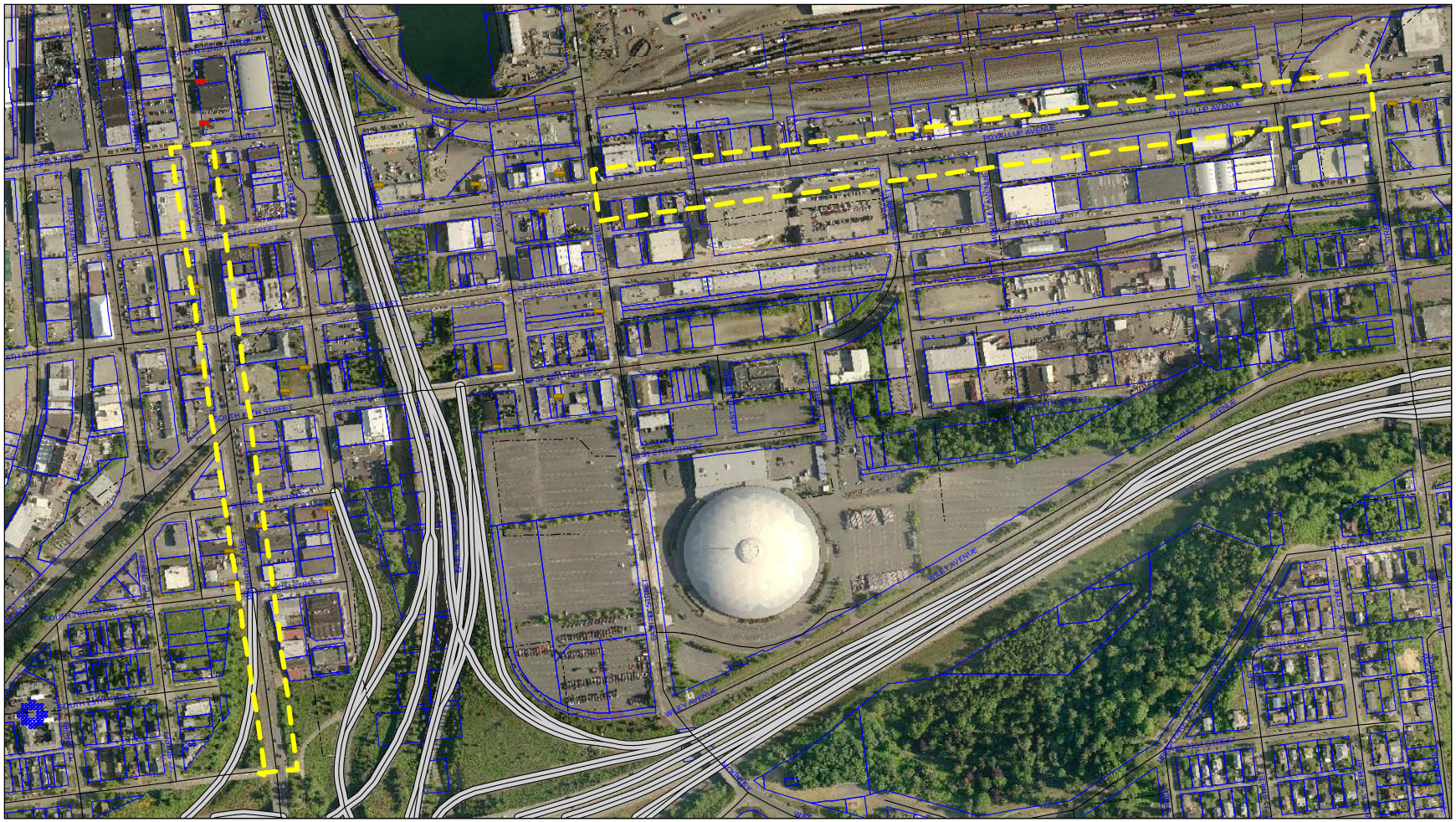


Proposed Location:	Union at Center
Zoning:	C-2 – General Community Commercial M-1 – Light Industrial M-2 – Heavy Industrial
Allowed under current code:	No
Reason(s):	Too close to Residential Zone Too many billboards in the area

Proposed Location:	Pine at Center and South Tacoma Way M-2 – Heavy Industrial M-1 – Light Industrial
Allowed under current code:	No (Maybe, if other billboards were demolished)
Reason(s):	Part of the area at Center & Pine is too close to a Residential Zone Too many billboards in the area

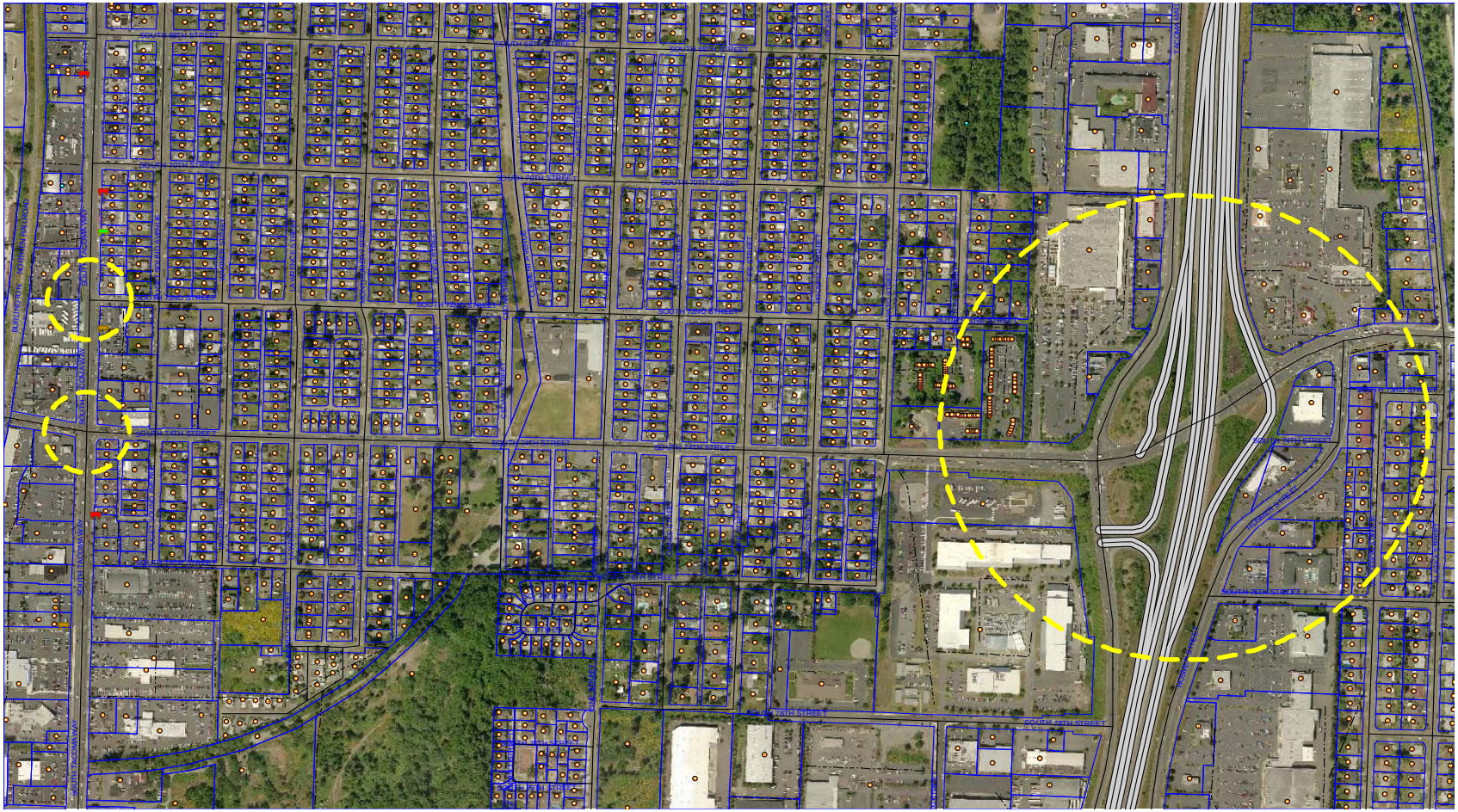


Proposed Location:	S 56th at Tyler and South Tacoma Way
Zoning:	NCX – Neighborhood Commercial Mixed-Use (56th & South Tacoma Way) M-2 – Heavy Industrial M-1 – Light Industrial
Allowed under current code:	No
Reason(s):	South Tacoma Way is located in a zone which does not allow billboards (NCX) *There are no existing billboards near the intersection of 56th & South Tacoma Way* South 56th is too close to a Residential Zone Too many billboards in the area of 56th & Tyler

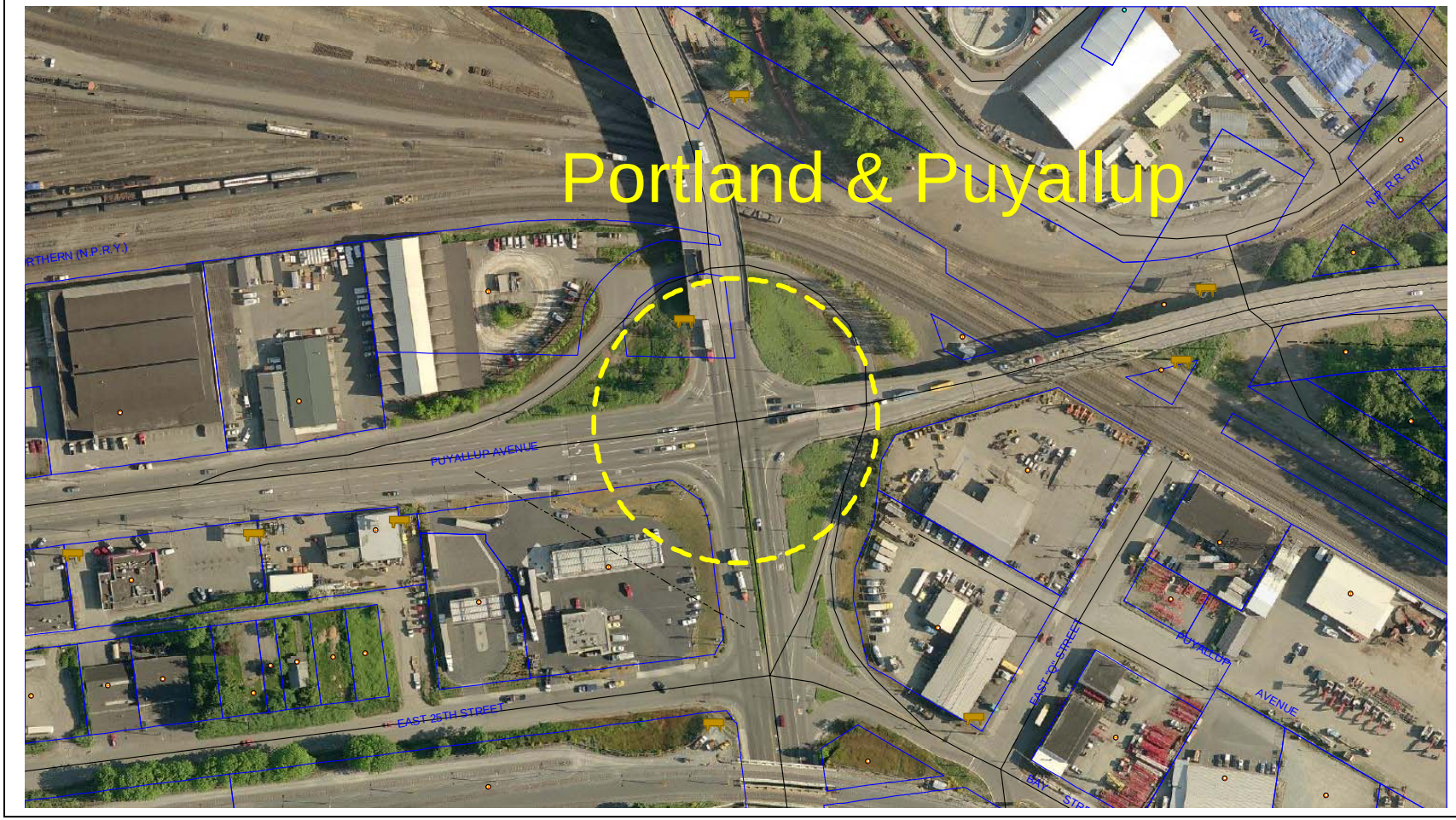


Proposed Location:	26th/Puyallup at Pacific, G
Zoning:	WR – Warehouse Residential (along Pacific Ave.) UCX-TD – Urban Center Mixed-Use/Tacoma Dome (along portion of Puyallup Ave.) M-1 – Light Industrial (along portion of Puyallup Ave.)
Allowed under current code:	Maybe – at most easterly end in the M-1 zone, if dispersal criterion is met
Reason(s):	Most of area is located in a zone which does not allow billboards (UCX-TD and WR) Too many billboards in the area Any proposed billboards would need a 250' buffer distance from Historic properties/districts

Proposed Location:	S 38th at Steele and Pine
Zoning:	UCX – Urban Center Mixed-Use
Allowed under current code:	No
Reason(s):	Located in a zone which does not allow billboards (UCX) *Ther are currently no billboards along Tacoma Mall Boulevard*



Proposed Location:	S 72nd/74th at South Tacoma Way and I-5
Zoning:	C-2 – General Community Commercial (along South Tacoma Way and portion of 72nd/74th & I-5)
	C-1 – General Neighborhood Commercial (portion of 72nd/74th & I-5)
	R-2 – Single-Family Dwelling (portion of 72nd/74th & I-5)
Allowed under current code:	Maybe – would need to buffer from Residential Zone and meet dispersal
Reason(s):	Need to meet distance from Residential Zone
	There are currently no billboards along 72nd & Hosmer



Proposed Location:	Portland at Puyallup
Zoning:	M-1 – Light Industrial
Allowed under current code:	No
Reason(s):	Too many billboards in the area

Billboard Tour

Introduction

Following are photographs and information regarding several existing billboards in the City of Tacoma. These billboards are included for two reasons:

1. All of these billboards are in "receiving areas" as outlined in the settlement agreement between the City Council and Clear Channel Outdoor; and
2. These billboards represent a cross-section of sizes, heights, and locations – they are illustrative of billboards throughout the city.

Very few of these billboards appear on the "removal" list as set forth in the settlement agreement. Because they are located within the designated "receiving areas," many of these could potentially be converted to digital billboards, depending ultimately on how the draft code is developed.

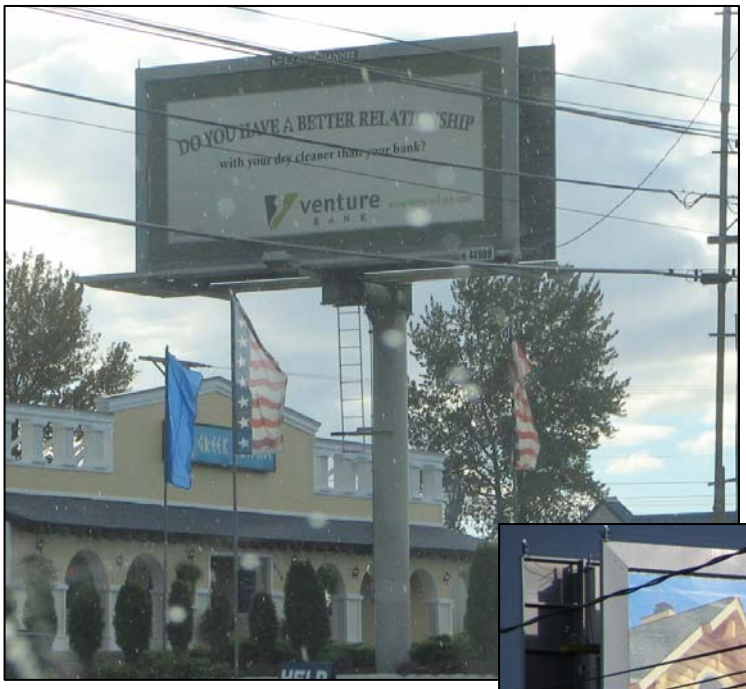
The billboards are organized roughly by neighborhood. Each page represents a single billboard structure, and the address, size, and reasons for nonconforming status are given. Where known, the height of the billboard is listed.

Not all potential "receiving areas" are represented. A separate handout has been provided which shows the "receiving areas" outlined in the settlement agreement, and which ones currently have billboards located within them.

Billboard Tour

Highland Hills / West 6th Avenue

Address	6102 6th Ave (across from Panda Express)
Size	288 square feet per face
Why is this billboard nonconforming?	☐ Zone does not allow billboards ☐ Too big ☐ Too tall ☒ Too close to residential or shoreline district ☐ Too close to church, school, park or open space ☒ Too close to other billboards



Highland Hills / West 6th Avenue

Address	6434 6th Ave (near Cloverleaf Pizza)
Size	288 square feet per face
Why is this billboard nonconforming?	☐ Zone does not allow billboards ☐ Too big ☐ Too tall ☒ Too close to residential or shoreline district ☒ Too close to church, school, park or open space ☒ Too close to other billboards

Highland Hills / West 6th Avenue

Address	6517 6th Ave (near Grocery Outlet)
Size	576 square feet per face
Why is this billboard nonconforming?	☐ Zone does not allow billboards ☒ Too big ☐ Too tall ☒ Too close to residential or shoreline district ☐ Too close to church, school, park or open space ☒ Too close to other billboards

This billboard was designated in the settlement agreement for possible removal.

Billboard Tour

6th Ave Business District

Address	1502/1512 6th Ave (6th and Cushman)
Size	288 square feet per face
Why is this billboard nonconforming?	☐ Zone does not allow billboards ☐ Too big ☐ Too tall ☒ Too close to residential or shoreline district ☐ Too close to church, school, park or open space ☒ Too close to other billboards

6th Ave Business District

Address	1610 6th Ave
Size	72 square feet per face
Why is this billboard nonconforming?	☐ Zone does not allow billboards ☐ Too big ☐ Too tall ☒ Too close to residential or shoreline district ☒ Too close to church, school, park or open space ☒ Too close to other billboards

6th Ave Business District

Address	1703 6th Ave (6th & Sprague/It's Greek to Me)
Size	672 square feet per face
Why is this billboard nonconforming?	☐ Zone does not allow billboards ☒ Too big ☐ Too tall ☒ Too close to residential or shoreline district ☒ Too close to church, school, park or open space ☒ Too close to other billboards

Billboard Tour

6th Ave Business District

Address	3022 6th Ave (6th & Cedar)
Size	288 square feet per face
Why is this billboard nonconforming?	☒ Zone does not allow billboards ☐ Too big ☒ Too tall ☒ Too close to residential or shoreline district ☐ Too close to church, school, park or open space ☒ Too close to other billboards

Billboard Tour

6th Ave Business District

Address	3519 6th Ave (6th & Union)
Size	672 square feet, one face
Why is this billboard nonconforming?	☐ Zone does not allow billboards ☒ Too big ☐ Too tall ☒ Too close to residential or shoreline district ☒ Too close to church, school, park or open space ☐ Too close to other billboards

Billboard Tour

6th Ave Business District

Address	3519 6th Ave (6th & Washington)
Size	288 square feet per face
Why is this billboard nonconforming?	☐ Zone does not allow billboards ☐ Too big ☐ Too tall ☒ Too close to residential or shoreline district ☐ Too close to church, school, park or open space ☐ Too close to other billboards

Oakland/Madrona @ Center and Union Ave

Address	3121 South Union Avenue (Center & Union)
Size	600 square feet, one face
Why is this billboard nonconforming?	☐ Zone does not allow billboards ☒ Too big ☐ Too tall ☒ Too close to residential or shoreline district ☐ Too close to church, school, park or open space ☒ Too close to other billboards

Oakland/Madrona @ Center and Union Ave

Address	3518 Center Street (Union & Center)
Size	672 square feet per face
Why is this billboard nonconforming?	☐ Zone does not allow billboards ☒ Too big ☒ Too tall ☒ Too close to residential or shoreline district ☐ Too close to church, school, park or open space ☒ Too close to other billboards

Nalley Valley/Pine/Mall

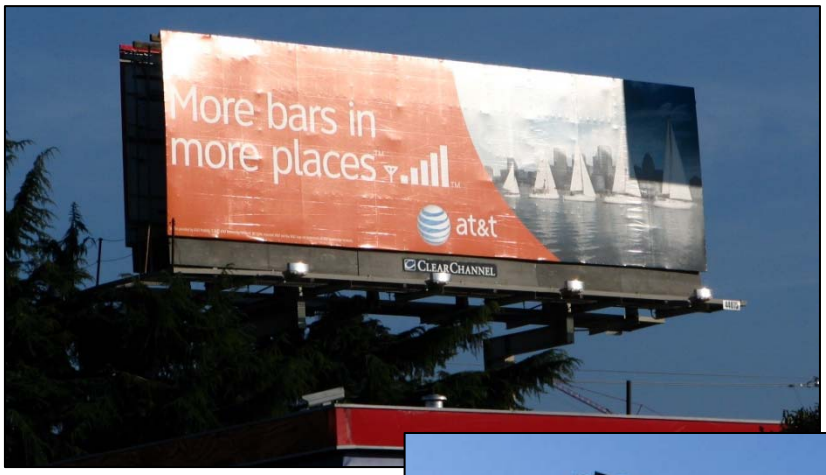
Address	3425 South Pine Street
Size	288 square feet per face
Why is this billboard nonconforming?	☐ Zone does not allow billboards ☐ Too big ☐ Too tall ☐ Too close to residential or shoreline district ☐ Too close to church, school, park or open space ☒ Too close to other billboards

Nalley Valley/Pine/Mall

Address	3002 South Pine Street
Size	288 square feet per face
Why is this billboard nonconforming?	☐ Zone does not allow billboards ☐ Too big ☐ Too tall ☐ Too close to residential or shoreline district ☐ Too close to church, school, park or open space ☒ Too close to other billboards

Nalley Valley/Pine/Mall

Address	2901 South 38th Street (near Michael's Plaza)
Size	672 square feet per face
Why is this billboard nonconforming?	☒ Zone does not allow billboards ☒ Too big ☐ Too tall ☐ Too close to residential or shoreline district ☐ Too close to church, school, park or open space ☐ Too close to other billboards



Tacoma Dome

Address	217 East 26th Street (vacant lot opposite Fire Station #4)
Size	288 square feet per face
Why is this billboard nonconforming?	☒ Zone does not allow billboards ☐ Too big ☐ Too tall ☐ Too close to residential or shoreline district ☐ Too close to church, school, park or open space ☒ Too close to other billboards

Downtown

Address	1440 Puyallup Avenue (near Arco)
Size	288 square feet per face
Why is this billboard nonconforming?	☐ Zone does not allow billboards ☐ Too big ☐ Too tall ☐ Too close to residential or shoreline district ☐ Too close to church, school, park or open space ☒ Too close to other billboards

Downtown

Address	2223 Pacific Ave (Chin's Teriyaki)
Size	72 square feet, one face
Why is this billboard nonconforming?	☒ Zone does not allow billboards ☐ Too big ☐ Too tall ☐ Too close to residential or shoreline district ☐ Too close to church, school, park or open space ☒ Too close to other billboards

Downtown

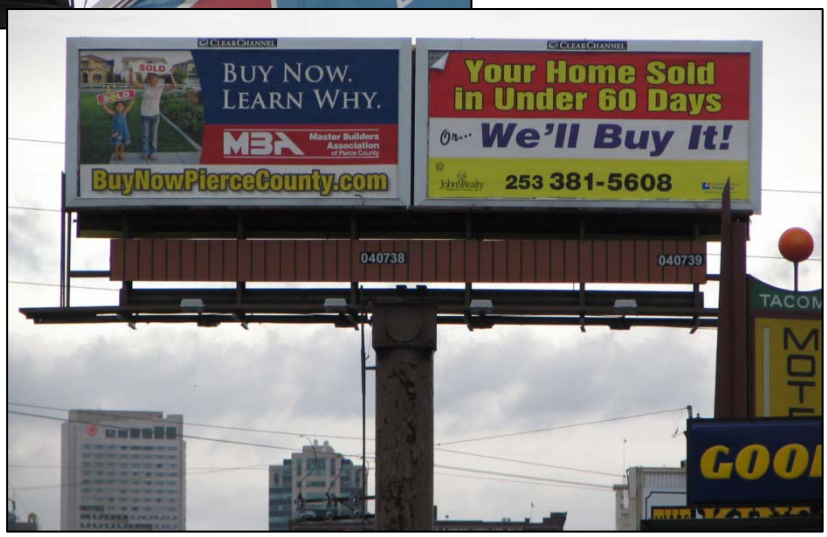
Address	2301 Pacific Ave (Mary's Burger Bistro)
Size	288 square feet per face
Why is this billboard nonconforming?	☒ Zone does not allow billboards ☐ Too big ☐ Too tall ☐ Too close to residential or shoreline district ☐ Too close to church, school, park or open space ☒ Too close to other billboards

Downtown

Address	2418 Pacific Ave
Size	288 square feet per face
Why is this billboard nonconforming?	☒ Zone does not allow billboards ☐ Too big ☐ Too tall ☐ Too close to residential or shoreline district ☐ Too close to church, school, park or open space ☒ Too close to other billboards

Downtown

Address	2510 Pacific Ave (across from Pink Elephant Car Wash)
Size	672 square feet per face
Why is this billboard nonconforming?	☒ Zone does not allow billboards ☒ Too big ☐ Too tall ☐ Too close to residential or shoreline district ☐ Too close to church, school, park or open space ☒ Too close to other billboards



Downtown

Address	2701 Pacific Ave
Size	288 square feet, one face
Why is this billboard nonconforming?	☒ Zone does not allow billboards ☐ Too big ☐ Too tall ☐ Too close to residential or shoreline district ☐ Too close to church, school, park or open space ☒ Too close to other billboards

Downtown

Address	2712 Pacific Ave
Size	288 square feet per face
Why is this billboard nonconforming?	☒ Zone does not allow billboards ☐ Too big ☐ Too tall ☐ Too close to residential or shoreline district ☐ Too close to church, school, park or open space ☒ Too close to other billboards

South Tacoma Way

Address	2921 South Tacoma Way (near Parker Paint)
Size	72 and 288 square feet
Why is this billboard nonconforming?	☐ Zone does not allow billboards ☐ Too big ☐ Too tall ☐ Too close to residential or shoreline district ☐ Too close to church, school, park or open space ☒ Too close to other billboards

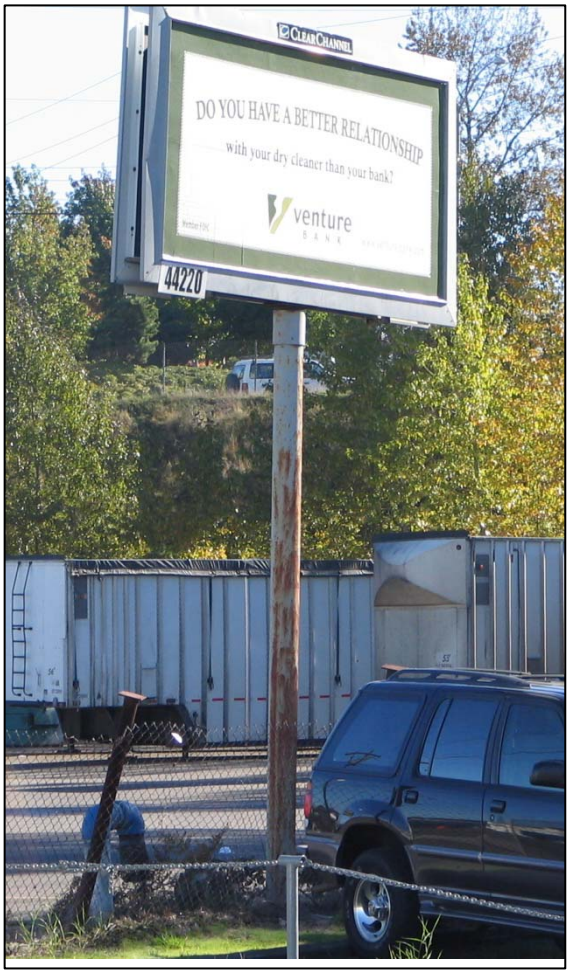
South Tacoma Way

Address	2930 South Tacoma Way
Size	288 square feet per face
Why is this billboard nonconforming?	☐ Zone does not allow billboards ☐ Too big ☐ Too tall ☐ Too close to residential or shoreline district ☐ Too close to church, school, park or open space ☒ Too close to other billboards

This billboard was designated in the settlement agreement for possible removal.

South Tacoma Way

Address	3004 South Tacoma Way
Size	72 square feet per face
Why is this billboard nonconforming?	☐ Zone does not allow billboards ☐ Too big ☐ Too tall ☐ Too close to residential or shoreline district ☐ Too close to church, school, park or open space ☒ Too close to other billboards

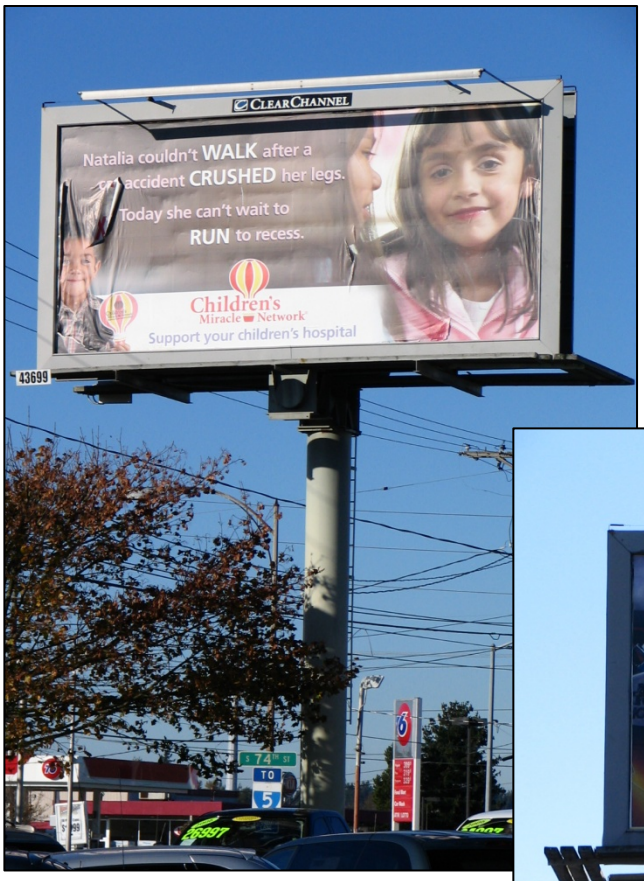


South Tacoma Way

Address	3118 South Tacoma Way
Size	288 square feet, one face
Why is this billboard nonconforming?	☐ Zone does not allow billboards ☐ Too big ☐ Too tall ☐ Too close to residential or shoreline district ☐ Too close to church, school, park or open space ☒ Too close to other billboards

South Tacoma Way

Address	7431 South Tacoma Way
Size	288 square feet per face
Why is this billboard nonconforming?	☐ Zone does not allow billboards ☐ Too big ☐ Too tall ☒ Too close to residential or shoreline district ☐ Too close to church, school, park or open space ☒ Too close to other billboards



South Tacoma Way

Address	7610 South Tacoma Way
Size	288 square feet per face
Why is this billboard nonconforming?	☐ Zone does not allow billboards ☐ Too big ☐ Too tall ☒ Too close to residential or shoreline district ☐ Too close to church, school, park or open space ☒ Too close to other billboards

Agenda Item GB-3

City of Tacoma
Community and Economic Development Department

TO: Planning Commission

FROM: Shirley Schultz, Principal Planner, Current Planning Division

SUBJECT: Annual Amendment #2011-09 – SEPA Regulations Amendment

DATE: December 28, 2010

The Community and Economic Development Department is responsible for administering the State Environmental Policy Act (SEPA) per the requirements of the *Washington Administrative Code* and *Tacoma Municipal Code* Chapter 13.12. At the meeting of October 20, 2010, staff provided an overview of and response to questions regarding proposed changes to the *Tacoma Municipal Code* and the *Comprehensive Plan* text and regulations regarding SEPA.

Attached is a copy of the staff report, which includes the draft regulatory and plan amendments as exhibits. At the meeting staff will provide an overview of the report and proposed changes. Staff is seeking concurrence from the Commission to forward the amendment and staff report for public review and comment.

If you have any questions, please contact Shirley Schultz at (253) 591-5121 or shirley.schultz@cityoftacoma.org.

Attachments

c: Peter Huffman, Assistant Director

2011 Annual Amendment Application No. 2011-09
SEPA Code Changes

STAFF REPORT

Application #:	2011-09
Applicant:	City of Tacoma, Community & Economic Development Dept.
Contact:	Shirley Schultz and Ian Munce
Type of Amendment:	Comprehensive Plan Text Amendments Regulatory Code Text Changes
Current Land Use Intensity:	City-Wide
Current Area Zoning:	N/A
Size of Area:	N/A
Location:	N/A
Neighborhood Council area:	All
Proposed Amendment:	The proposed amendment would update and simplify existing regulatory procedures used to administer the State Environmental Policy Act (SEPA), ensure consistency with other codes, including the Critical Areas Protection Ordinance, and with current statutes and the State administrative code. The amendment also includes changes to the *Comprehensive Plan* to clarify the City's "substantive authority" under SEPA to condition, modify, or deny a permit based on environmental impacts.

General Description of the Proposed Amendment:

The Environmental Code (*Tacoma Municipal Code* Chapter 13.12) contains the City's procedures for implementing the State Environmental Policy Act (SEPA). SEPA requires local jurisdictions to adopt procedures to integrate environmental review with project and non-project review and approval. Many of the City's procedures simply follow the procedures set out in State law or the Washington Administrative Code and are adopted by reference.

The proposed amendments to the City's Environmental Code would update and simplify the existing procedures and ensure consistency with other codes, including the Critical Areas Protection Ordinance. The proposed amendments include reorganization and reformatting to simplify and assist in the use and administration of the code requirements by staff and the public. In addition, the proposed amendments will clarify the application of SEPA requirements when a project is otherwise exempt from review for a Critical Areas permit. New sections are proposed to address recent State legislation regarding infill development and environmental review in conjunction with planning activities.

The amendments also include changes to the *Comprehensive Plan* to clarify the City's "substantive authority" under SEPA to condition, modify, or deny permits based on environmental impacts. The proposed Plan amendments are intended to clarify the City's authority to require studies and review of

environmental impacts related to contaminated soils (specifically, to projects taking place within ASARCO plume areas that are identified as having a high probability of contamination), air quality, and the use of *Comprehensive Plan* policies as support for use of the City's authority under SEPA to require mitigation or modification of projects.

The proposed *Comprehensive Plan* changes are included as Exhibit "A" to this staff report; the proposed changes to the *Tacoma Municipal Code* (TMC) are included as Exhibit "B".

Additional Information:

The Regulatory Code provides thresholds for exemptions from the permitting requirements under the Critical Areas section of the code (*TMC* Chapter 13.11). These exemptions are not aligned with the Environmental Code so that in some instances SEPA review is required when no other permit review is required. That was not the intent in adopting exemptions and the Environmental Code needs to be revised to remove this extra step for applicants.

Public Outreach:

The proposed changes are generally technical in nature and primarily include housekeeping items and incorporation of existing State law and authority into City documents. The opportunity for public input will be through the Planning Commission public hearing process.

Applicable Provisions of the Growth Management Act (and other state laws):

The Washington Administrative Code (WAC) requires that local jurisdictions adopt environmental review policies, certain appeal procedures, public notice procedures, and to authorize non-project environmental review. Both the WAC for SEPA and the Growth Management Act (GMA) allow cities the "substantive authority" to use their adopted policies as their environmental policies for the purposes of project review and approval.

The GMA requires that City regulations are consistent with its *Comprehensive Plan* and its elements. In addition, GMA sets forth primary goals for planning. Among them are economic development, efficient permitting processes, environmental protection, and opportunities for public participation.

The proposed amendments to the *Comprehensive Plan* are intended to clarify and strengthen the relationship between Comprehensive Plan goals and policies and the implementing SEPA regulations. The new section regarding SEPA Planned Action is intended to emphasize early public participation during environmental review of future projects.

In addition, in 2010, the state legislature adopted ESHB 2538, which allows jurisdictions to adopt subarea elements to its *Comprehensive Plan* and development regulations. The subarea must be located in either: (1) a mixed-use or urban center designated in a land use or transportation plan adopted by a regional transportation planning organization; or (2) within one-half mile of a major transit stop that is zoned to have an average minimum density of 15 dwelling units or more per acre. A city that elects to include subarea elements must prepare a non-project Environmental Impact Statement (EIS) specifically for the subarea. Until July 1, 2018, project-specific development proposals located within the designated area may not be appealed on SEPA grounds as long as the project's impacts are within the scope of the EIS and the development application is vested within a timeframe established by the city, but not to exceed 10-years from the adoption of the final EIS.

Because Tacoma has several areas that are eligible to take advantage of this legislation, which promotes higher density development in areas well-served by transit by promoting environmental review on an area-wide basis, the proposed Environmental Code amendments will establish procedures for implementing the new legislative requirements.

Applicable Provisions of the *Comprehensive Plan*:

The *Comprehensive Plan* contains discussions of environmental quality in several elements and subsections. Among them are statements for aquifer protection, promotion of sustainable design techniques, sound practices for industrial development, and protection of public health in capital facilities projects.

The Transportation Element of the *Comprehensive Plan* has an extensive discussion of environmental review under its "Environmental Stewardship" subsection. This portion of the plan sets forth policies for noise and air pollution, stormwater management, critical areas protection, nonmotorized transportation, and sustainable transportation choices.

The City's Environmental Policy Element is "intended [to]… be a comprehensive, single source of the City's environmental policies." The element sets forth policies and goals for critical areas, recreation and open space, air quality, water quality, scenic areas, waste, and environmental remediation.

All of the *Comprehensive Plan* language attests to the importance of consideration of the environment as the City accommodates development. However, there is little to no mention of the SEPA process within the *Comprehensive Plan*. While it's set forth in both State law and the *Tacoma Municipal Code*, there is no discussion of the City's authority to use the Comprehensive Plan's policies during environmental review. The *TMC*, in fact, adopts all policies and goals of the *Comprehensive Plan* and the Shoreline Master Program as "environmental policies" for the purposes of SEPA review. All project review must take into consideration a proposal's consistency with the adopted planning documents.

Therefore, the proposed additions to the *Comprehensive Plan* as shown in Exhibit "A" will supplement existing policies as follows:

- A paragraph is proposed for the Plan's Introduction chapter to establish the relationship between the *Comprehensive Plan* and Zoning – with SEPA being discussed as a section within the zoning code.
- Additional text is proposed in the Introduction section about the Growth Management Act, showing that the Plan must also be consistent with SEPA regulations. This revised section also demonstrates that in addition to the Plan, the City has adopted environmental review procedures in *TMC* 13.12 and they are used in conjunction with the Plan to ensure a proposal's consistency with the Plan.
- Revision to the Introduction chapter also adds a statement that all policies contained within the Plan are adopted as environmental policies for the purposes of SEPA review. The proposed amendment also notes that all policies are given equal weight in considering substantive authority under SEPA to assess a project's impacts and consistency with the Plan. The language proposed here is very similar to the Washington Administrative Code and the Department of Ecology guidance documents regarding substantive authority. It does not represent a change in the City's authority; it merely articulates it in a clearer and more direct manner.
- Several additions are proposed for the Environmental Policy Element. One proposed policy (E-P-3) is, again, to reiterate the City's substantive authority in the prevention and mitigation of environmental impacts.

- Another proposed policy (E-AQ-2) is to clarify an applicant's responsibility to describe air quality impacts of a proposal and to provide, where possible, additional studies or assessments related to air quality impacts. These responses are already required by SEPA, but given the recent designation of Tacoma and a large portion of Pierce County as "non-attainment" areas for airborne particulate matter, language in the Comprehensive Plan should be strengthened.
- A third addition is proposed under the environmental remediation section to establish a clearer relationship between the City's environmental review and clean-up efforts which might be required by other authorities. For instance, the City does not have contaminated soil clean-up requirements, but the State does and works with the City (through SEPA) to require soil remediation where necessary. Proposed policy E-ER-5 reiterates that coordination.

Applicable Provisions of the Land Use Regulatory Code:

SEPA regulations are set forth in *TMC* Chapter 13.12. Several amendments are proposed to this section of the code in order to enable SEPA review in certain planning processes (e.g., for "Planned Actions"), to correct outdated references, to clarify appeals, and to clarify the projects which are exempt from SEPA. Because of the significant amount of reorganization, the proposed code amendments attached as Exhibit "B" are not presented in the typical strike-through/underline format. Sections where wording has been changed are highlighted in yellow with the previous reference in {brackets}, and new language is underlined.

Overall, the chapter has been reorganized for ease of use. Instead of adoption of the Washington Administrative Code (WAC) in one large section at the beginning of the chapter, the chapter is now divided into Parts. Each Part has a purpose statement, and adopts the relevant sections of the WAC by reference. The intent is that if a reader is working within a particular subsection of the chapter, it's easier to find the corresponding section in the WAC. In addition, the "purpose" statement describes in general terms when the subsection is applicable.

TMC 13.12 applies to all environmental review conducted by the City; currently, much of the language is in reference to Building and Land Use (BLUS) and its procedures, when in fact the environmental regulations would apply the same way to SEPA review conducted by other departments and divisions of the City, including Tacoma Public Utilities. Many of the minor language changes are intended to broaden these references in *TMC* Chapter 13.12.

Further, the following specific changes are proposed:

- Code sections regarding "lead agency" and "SEPA responsible official" have been relocated to the beginning of the chapter. This is a more logical location for what tends to be the very first step in SEPA review – determining who is responsible.
- The language regarding determination of exempt actions has been consolidated and clarified to state that the responsible official may determine what a primary action is and then determine if associated actions are therefore also exempt.
- Language regarding mitigation has been clarified to state that conditions placed during SEPA review must be carried forward into land use or development permits.
- New sections have been added in the "Environmental Impact Statement" section to address state enabling legislation for Planned Action EIS's and for Optional Plan element EIS's. They are located in this section because they are types of EIS's with specific requirements.
- A section has been added to clarify the timing and appeals process for non-land-use actions

(appeals that are not heard by the Hearing Examiner) and to establish the timelines for appeals of planning actions. Additional language may be added (see highlighted section) to clarify appeals of decisions that are made outside the GMA process.

- Two new definitions are proposed to clarify that the "applicant," for the purposes of SEPA, is the party requesting a SEPA determination. Likewise, an "application" is the completed checklist and any other required information in pursuit of a SEPA determination.
- "Major Transit Stop" is added as a definition, since it is referenced in the Optional Plan element EIS process.
- "City" is clarified to refer to any department or division that is acting in a lead agency capacity.

Amendment Criteria:

Applications for amendments to the Comprehensive Plan and Land Use Regulatory Code are subject to review based on the adoption and amendment procedures and the review criteria contained in TMC 13.02.045.G. Proposed amendments are required to meet at least one of the eleven review criteria to be considered by the Planning Commission. The following section provides a review of each of these criteria with respect to this proposal. Each of the criteria is provided, followed by staff analysis of the criterion as it relates to this proposal.

1. **There exists an obvious technical error in the pertinent *Comprehensive Plan* or regulatory code provisions.**

   Staff Analysis: There is no obvious technical error in the *Comprehensive Plan* provisions; however, there is very little reference in the Plan to the City's responsibilities and authority under environmental review. The proposed amendment attempts to correct that.

   There are technical problems with the SEPA code language. Included in these are the outdated references to sections of the State administrative code, use of definitions that no longer are applicable, inconsistencies in appeal periods, and inclusion of projects under SEPA that should be exempted.

2. **Circumstances related to the proposed amendment have significantly changed, or a lack of change in circumstances has occurred since the area or issue was last considered by the Planning Commission.**

   Staff Analysis: The State laws have changed since the SEPA code was last considered by the Planning Commission, resulting in outdated references and inconsistent appeal times. In addition, new legislation has been adopted which the City may wish to utilize.

3. **The needs of the City have changed, which support an amendment.**

   Staff Analysis: City planning efforts have been directed toward sub-area planning and intensification of development within designated mixed-use districts. Adoption of the new sections regarding SEPA Planned Actions and Optional Plan elements will enable the City to further pursue additional tools to facilitate area-wide environmental review during planning activities rather than at the individual project level.

4. **The amendment is compatible with existing or planned land uses and the surrounding development pattern.**

   Staff Analysis: This is an amendment that will apply city-wide and this criterion is not applicable.

5. **Growth and development, as envisioned in the Plan, is occurring faster, slower, or is failing to materialize.**

   Staff Analysis: While this criterion is not technically applicable, it is hoped that the use of Planned Action and/or the Optional Plan element SEPA procedures will create additional incentives for development in desired areas.

6. **The capacity to provide adequate services is diminished or increased.**

   Staff Analysis: This criterion is not applicable.

7. **Plan objectives are not being met as specified, and/or the assumptions upon which the plan is based are found to be invalid.**

   Staff Analysis: This criterion is not applicable. The proposed additions to the *Comprehensive Plan* are intended to clarify and strengthen existing authority.

8. **Transportation and and/or other capital improvements are not being made as expected.**

   Staff Analysis: This criterion is not applicable.

9. **For proposed amendments to land use intensity or zoning classification, substantial similarities of conditions and characteristics can be demonstrated on abutting properties that warrant a change in land use intensity or zoning classification.**

   Staff Analysis: This criterion is not applicable. The amendments will apply city-wide.

10. **A question of consistency exists between the *Comprehensive Plan* and its elements and RCW 36.70A, the County-wide Planning Policies for Pierce County, Multi-County Planning Policies, or development regulations.**

    Staff Analysis: This criterion does not apply.

Economic Impact Assessment:

The economic impacts of the proposed changes are difficult to assess. The proposed change to clarify exempt activities under the Critical Area regulations and the SEPA review requirements may reduce the time and review required of applicants. It is hoped that by adopting procedures that will enable SEPA review at the planning stage rather than at the project level will create additional incentives for growth within desired areas. However, it is likely that the economic effects of the proposed changes will be largely neutral.

Staff Recommendation:

Staff recommends that the proposed amendments be released for public review as part of the 2011 amendment package.

Exhibits:

A. Proposed additions to the *Comprehensive Plan*
B. Proposed changes to *Tacoma Municipal Code*, Chapters 13.12 and 13.11

EXHIBIT A
PROPOSED TEXT CHANGES TO THE COMPREHENSIVE PLAN

*Note – These amendments show all of the changes to the *existing* text of the Comprehensive Plan. The sections included are only those portions of the plan that are associated with these amendments. New text is underlined and text that is deleted is shown in ~~strikethrough~~.

INTRODUCTION CHAPTER
(one change proposed)

1. Add a new section, as follows, to be inserted between the sections of "What Is the Growth Management Act?" and "What Is Vision 2020?":

In addition to the Growth Management Act, the City of Tacoma must also comply with the State Environmental Policy Act (SEPA) and the State Shoreline Management Act (SMA),

What is the State Environmental Policy Act?

The State Environmental Policy Act (SEPA) was adopted in 1971 as a basic environmental charter. It gives cities and other agencies the tools that allow them to both consider and mitigate for environmental impacts of proposals. Provisions are included to involve the public, tribes, and other interested governmental agencies in review of proposed actions before a decision on a proposal is made. Using SEPA requirements, applicants are required to answer questions about how their proposal will affect elements of the environment: earth, air, water, plants and animals, energy and natural resources, environmental health, land use, transportation, and public services and utilities.

SEPA requires that the City adopt environmental review procedures and appeal provisions, which are contained in the *Tacoma Municipal Code*. It also directs the City to adopt environmental policies. All of the policies set forth in the *Comprehensive Plan* and its elements as well as the policies contained in the *Shoreline Master Program* are the City's policies to be used in the review of projects and non-project proposals. These policies may be used to modify proposals to mitigate identified impacts.

In addition, all policies contained in the Comprehensive Plan carry equal weight in the consideration of "substantive authority." "Substantive Authority" is the regulatory authority granted to the City to condition or deny a proposal to mitigate environmental impacts identified during the SEPA review. In order to use this authority, the City must have adopted SEPA regulations and required conditions or mitigation must be set forth in adopted SEPA policy. Since the Municipal Code adopts all policies in this Plan, as well as all policies within the *Tacoma Shoreline Master Program* as the City's environmental policies all Plan policies may be utilized to effect changes in project proposals when they have a probable significant adverse impact on one or more elements of the environment.

ENVIRONMENTAL POLICY ELEMENT

(6 changes proposed)

1. Add a new policy, E-P-3, to the "Pollution" policy category in Section II – General Goal and Policies, as follows:

> **E-P-3 Prevention and Mitigation**
> Prioritize prevention and avoidance of pollution when possible. Use SEPA Substantive Authority, where warranted, in conjunction with adopted policies to provide mitigation for unavoidable impacts to environmental quality.

2. Add a new policy, E-AQ-2, to the "Air Quality" policy category in Section II – General Goal and Policies, as follows:

> **E-AQ-2 Air Quality Studies**
> All developments subject to SEPA environmental review procedures should address air quality impacts resulting from the development and its operation. In order to adequately assess impacts, any development proposal that requires state or federal air permits or reporting shall provide a quantitative study as part of their environmental analysis.

3. Add a statement to the "Environmental Remediation" policy category in Section II – General Goal and Policies, as follows (and relocate the existing statement to Section III – Critical Areas):

> Prevention of contamination and clean-up of identified contaminated sites will improve the quality of Tacoma's environment. ~~The City has designated certain lands as environmentally sensitive or critical areas. These areas include aquifer recharge areas, fish and wildlife habitat conservation areas, flood hazard areas, geologically hazardous areas, natural resource areas, stream corridors, and wetlands. Because of the growing pressures and the increased understanding of the value of critical areas, the City has drafted standards to manage development for their protection and preservation. Critical areas warrant protection because they maintain and protect surface and ground water quality, provide erosion and storm water control, and serve as an essential habitat for fish and wildlife.~~

4. Modify Policy E-ER-2 in the "Environmental Remediation" policy category in Section II – General Goal and Policies, as follows:

> **E-ER-2 Contaminated Sites**
> Encourage the identification and characterization of all contaminated sites which adversely affect the City's shoreline areas, surface waters, ~~and~~ groundwater, and soils.

5. Add a new policy, E-ER-7, to the "Environmental Remediation" policy category in Section II – General Goal and Policies, as follows:

> **E-ER-7 Intergovernmental Partnerships**
> Coordinate and cooperate with State and Federal programs (e.g., Department of Ecology, Environmental Protection Agency) in encouraging and monitoring the remediation of contaminated sites.

6. Add a statement to Section III – Critical Areas, as follows (relocated from the "Environmental Remediation" policy category in Section II – General Goal and Policies):

> The City has designated certain lands as environmentally sensitive or critical areas. These areas include aquifer recharge areas, fish and wildlife habitat conservation areas, flood hazard areas, geologically hazardous areas, natural resource areas, stream corridors, and wetlands. Because of the growing pressures and the increased understanding of the value of critical areas, the City has drafted standards to manage development for their protection and

preservation. Critical areas warrant protection because they maintain and protect surface and ground water quality, provide erosion and storm water control, and serve as an essential habitat for fish and wildlife.

EXHIBIT B
PROPOSED LAND USE REGULATORY CODE CHANGES

*Note – Because of the significant amount of reorganization associated with these amendments, the proposed code language below is not presented in the typical strike-through/underline format. Sections where wording has been changed are highlighted in yellow with the previous reference in {brackets}, and new language is underlined.

Chapter 13.12
ENVIRONMENTAL CODE

Part One: Purpose and Authority

13.12.100 Purpose of this part and adoption by reference. The purpose of this section is to set forth the purpose of this Chapter, the authority under which the City has adopted this Chapter, and to adopt the following section of the *Washington Administrative Code* by reference.

197-11-030 Policy.

13.12.120 Authority.

The following regulations concerning environmental policies and procedures are hereby established and adopted pursuant to Washington State law, Chapter 109, Laws of 1971, Extraordinary Session (Chapter 43.21C RCW) as amended, entitled the “State Environmental Policy Act of 1971,” (SEPA), and Washington State Administrative Code regulations, Chapter 197-11, entitled “SEPA Rules.”

13.12.130 Purpose, applicability, and intent.

(1) The purpose of this chapter is to provide City regulations implementing the State Environmental Policy Act of 1971 (SEPA).

(2) This chapter is applicable to all City departments/divisions, commissions, boards, committees, and City Council.

(3) The intent of this chapter is to govern compliance by all City departments/divisions, commissions, boards, committees, and City Council with the procedural requirements of the State Environmental Policy Act of 1971.

(4) This chapter is not intended to govern compliance by the City with respect to the National Environmental Policy Act of 1969 (NEPA). In those situations in which the City is required by Federal law or regulations to perform some element of compliance with NEPA, such compliance will be governed by the applicable Federal statute and regulations and not by this chapter.

13.12.140 Environmental policy.

The environmental policies of the City of Tacoma are the policies set forth in the following documents and statute: the "comprehensive plan," including all of its elements, the "Master Program for Shoreline Development," and Chapter 43.21C RCW.

13.12.150 Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter or the application of the provision to other persons or circumstances shall not be affected.

Part Two - General Requirements

13.12.200 Purpose of this part and adoption by reference. The purpose of this part is to set forth general requirements that apply to all environmental determinations and all environmental review responsibilities on the part of the City. The following sections apply to environmental review in general, and to specific regulations for cities planning under the Growth Management Act. They also describe the procedures when environmental review is applied in conjunction with other state environmental laws. It also incorporates the following sections of the *Washington Administrative Code* by reference:

197-11-050	Lead agency.
197-11-060	Content of environmental review.
197-11-070	Limitations on actions during SEPA process.
197-11-080	Incomplete or unavailable information.
197-11-090	Supporting documents.
197-11-100	Information required of applicants.
197-11-158	GMA project review. Reliance on existing plans, laws, and regulations.
197-11-164	Planned actions. Definition and criteria.
197-11-168	Ordinance or resolution designating planned actions. Procedures for adoption.
197-11-172	Planned actions. Project review.
197-11-210	SEPA/GMA integration.

197-11-220 SEPA/GMA definitions.
197-11-228 Overall SEPA/GMA integration procedures.
197-11-230 Timing of an integrated SEPA/GMA process.
197-11-232 SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping.
197-11-235 Documents.
197-11-238 Monitoring.
197-11-250 SEPA/Model Toxics Control Act integration.
197-11-253 SEPA lead agency for MCTA actions.
197-11-256 Preliminary evaluation.
197-11-259 Determination of non-significance for MCTA remedial action.
197-11-262 Determination of significance and EIS for MCTA remedial actions.
197-11-265 Early scoping for MCTA remedial actions.
197-11-268 MCTA interim actions.

13.12.210 Lead agency – Responsibilities.

The City, when acting in the capacity of the lead agency, shall be the only agency responsible for complying with the threshold determination procedures of SEPA; and the responsible official of the City, as designated pursuant to Section 13.12.xxx of this chapter, shall be responsible for the supervision, or actual preparation, of any draft EIS pursuant to this chapter, including the circulation of such statements and the conduct of any public hearings required by this chapter. The responsible official of the City shall also prepare or supervise preparation of any required final EIS pursuant to WAC 197-11 and this chapter. {13.12.923}

13.12.220 Designation of responsible official.

(1) In instances in which the City is the lead agency, the responsible official as designated by subsections (2), (3), (4) and (5) of this section shall carry out such duties and functions assigned the City as a lead agency.

(2) The responsible official for General Government shall be the department director for projects initiated by that department or processed by that department. However, a department director may designate an environmental officer to carry out the duties and responsibilities mandated by this chapter, except that all threshold determinations shall only be made with the express consent and approval of the director.

(3) The responsible official for the Department of Public Utilities shall be the Director of Utilities or his or her designee for projects initiated or processed by the Department of Public Utilities.

(4) For proposals initiated jointly by several departments within General Government, designation of the responsible official shall be by common agreement among the directors of the involved departments. In the event such department directors are unable to agree on who shall be the responsible official for such matter, determination of the responsible official shall be made by the City Manager.

(5) For proposals initiated jointly by General Government and Public Utilities, designation of the responsible official shall be by common agreement between the City Manager and the Director of Utilities.

(6) <u>City staff carrying out the SEPA procedures shall be different from the staff making the proposal. That is, the responsible official shall not be the staff person responsible for filling out and signing the environmental checklist.</u>

(7) The director of the department with appropriate expertise shall be responsible for preparation of written comments responding to a consultation request from another lead agency prior to a threshold determination, participation in scoping, and reviewing a DEIS.

(8) The director shall be responsible for the City's compliance with WAC 197-11-550 whenever such department is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the City.

13.12.230 Designation and responsibility of the City's SEPA public information center (SEPA PIC).

(1) The SEPA PIC shall maintain a DNS register.

(2) The SEPA PIC shall maintain an EIS register including for each proposal the location, a brief description of the nature of the proposal, the date first listed on the register, and a contact person or office from which further information may be obtained.

(3) The documents are required to be maintained at the information center for seven years, and shall be available for public inspection, and copies thereof shall be provided upon request. The City may charge for copies in the manner provided by Chapter 42.17 RCW (Public Disclosure and Public Records Law) and for the cost of mailing.

(4) The SEPA PIC shall be the contact listed on the Department of Ecology's list of SEPA authorities. It shall receive and route consultation requests, information requests, checklists, threshold determinations, and all other SEPA materials to appropriate departments or divisions of the City.

(5) The SEPA PIC shall maintain a listing of recommended Federal, State, regional, local and private agencies/organizations and their addresses for use by responsible officials of the City in making scoping requests and circulating draft EISs.

(6) The SEPA PIC shall review all threshold determinations and final environmental impact statements submitted to the Information Center by departments of General Government and Tacoma Public Utilities and approve such determinations of nonsignificance as to form at the time of filing.

(7) The SEPA PIC shall maintain a general mailing list for the threshold determination distribution.

(8) The following location constitutes the SEPA public information center:

Building and Land Use Services
Tacoma Municipal Building
747 Market Street
Tacoma, Washington 98402

13.12.240 Timing of the SEPA process.

(1) The SEPA process shall be integrated with City activities to ensure that planning and decisions reflect environmental values, avoid delays later in the process, and seek to resolve potential problems.

(2) The responsible official shall prepare the threshold determination and environmental impact statement (EIS), if required, at the earliest possible point in the planning and decision making process, once the principal features of a proposal and its environmental impacts can be reasonably identified.

(a) A proposal exists when:

1. The responsible official is presented with an application; or
2. The responsible official has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal; and
3. The proposal is not otherwise exempt; and
4. The environmental effects can be meaningfully evaluated.

The fact that proposals may require future City approvals or environmental review shall not preclude current consideration, as long as proposed future activities are specific enough to allow some evaluation of their probable environmental impacts.

(b) The environmental process shall commence when the responsible official receives an environmental document and request for a determination.

(c) Appropriate consideration of environmental information shall be completed before the responsible official commits to a particular course of action.

(3) At the latest, the responsible official shall begin environmental review, if required, when the application for both SEPA and the underlying action is determined to be complete. The responsible official may initiate review earlier and may have informal conferences with applicants. A final threshold determination or Final Environmental Impact Statement (FEIS) shall precede or accompany the staff report, if any, in a public hearing on an application.

(4) When the environmental effects can be meaningfully evaluated on a proposal, the responsible official shall begin the preparation of EIS on private proposals at the conceptual stage rather than the final detailed design stage.

(a) If the responsible official's only action is a decision on a building permit or other license that requires detailed project plans and specifications, the responsible official shall provide applicants with the opportunity for environmental review under SEPA prior to requiring applicants to submit such detailed project plans and specifications.

(b) The responsible official may specify the amount of detail needed from applicants for such early environmental review, consistent with WAC 197-11-100 and 197-11-335.

(c) This subsection does not preclude the responsible official or applicants from preliminary discussions or exploration of ideas and options prior to commencing formal environmental review.

(5) An overall decision to proceed with a course of action may involve a series of actions or decisions by one or more agencies. If several agencies have jurisdiction over a proposal, they should coordinate their SEPA processes wherever possible. The responsible official shall comply with lead agency determination requirements in WAC 197-11 and this chapter.

(6) To meet the requirement to ensure that environmental values and amenities are given appropriate consideration along with economic and technical considerations, environmental documents and analyses shall be circulated and reviewed with other planning documents to the fullest extent possible.

(7) For their own public proposals, lead agencies may extend the time limits prescribed in these rules.

Part Three - Categorical Exemptions

13.12.300 Purpose of this part and adoption by reference. This section sets forth the proposed actions which are exempt from SEPA threshold determination and EIS requirements. Certain exemptions apply only to certain state agencies. In addition, the City has the authority to adopt certain flexible thresholds for proposals. This section describes those thresholds. It also incorporates the following sections of the *Washington Administrative Code* by reference:

197-11-800 Categorical exemptions.
197-11-810 Exemptions and none-exemptions applicable to specific state agencies.
197-11-820 Department of licensing.
197-11-825 Department of labor and industries.
197-11-830 Department of natural resources.
197-11-835 Department of fisheries.
197-11-840 Department of game.
197-11-845 Department of social and health services.
197-11-850 Department of agriculture.
197-11-855 Department of ecology.
197-11-860 Department of transportation.
197-11-865 Utilities and transportation commission.
197-11-870 Department of commerce and economic development.
197-11-875 Other agencies.
197-11-890 Petitioning DOE to change exemptions.

13.12.310 Flexible thresholds for categorical exemptions.

The City of Tacoma establishes the following exempt levels for minor new construction as allowed under WAC 197-11-800(1)(c), and RCW 43.21C.410 except when the action is undertaken wholly or partly on lands covered by water and the action requires a development permit under Chapter 13.11 of this title.

(1) The construction or location of any residential structure of four or less dwelling units;

(2) The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering 10,000 square feet or less, and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots;

(3) The construction of an office, school, commercial, recreational, service, or storage building with 12,000 square feet or less of gross floor area, and with associated parking facilities designed for no more than 20 automobiles;

(4) The demolition of an office, school, commercial, recreational, service, or storage building with 12,000 square feet or less of gross floor area;

(5) The construction of a parking lot designed for no more than 20 automobiles;

(6) Any landfill or excavation of 500 cubic yards or less throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder.

(7) The construction of an individual battery charging station or an individual battery exchange station, that is otherwise categorically exempt shall continue to be categorically exempt even if part of a larger proposal that includes other battery charging stations, other battery exchange stations, or other related utility networks.

13.12.320 Emergencies.

Actions which must be undertaken immediately, or within a time too short to allow full compliance with this chapter, to avoid an imminent threat to public health and safety, to prevent an imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation, shall be exempt from the procedural requirements of this chapter. The responsible official shall determine on a case-by-case basis emergency actions which satisfy the general requirements of this section.

Part Four - Categorical Exemptions And Threshold Determination

13.12.400 Purpose of this part and adoption by reference. This part provides the rules for administering categorical exemptions, deciding on probable significant impacts on the environment, determining if mitigation is available, and integrating SEPA into the project review process. It also incorporates the following sections of the *Washington Administrative Code* by reference:

197-11-300 Purpose of this part.
197-11-310 Threshold determination required.
197-11-330 Threshold determination process.
197-11-335 Additional information.
197-11-360 Determination of significance (DS)/initiation of scoping.
197-11-390 Effect of threshold determination.

13.12.410 Categorical exemptions.

(1) Those activities excluded from the definition of "action" in WAC 197-11-704, or categorically exempted by WAC 197-11-800, are exempt from the threshold determination. No exemption is allowed for the sole reason that actions are considered to be of a "ministerial" nature or of an environmentally regulatory or beneficial nature.

(2) The applicability of the exemptions shall be determined by the responsible official.

(3) The responsible official who is determining whether or not a proposal is exempt shall ascertain the total scope of the proposal and the governmental licenses, permits, or approvals required:

(a) If a proposal includes a series of actions, physically or functionally related to each other, some of which are exempt and some of which are not, the responsible official shall determine the primary action.

(b) If a proposal includes a series of actions, physically or functionally related to each other, some of which are exempt and some of which are not, the proposal is exempt if the action determined to be the primary action by the responsible official is exempt.

(c) If the proposal includes a series of exempt actions which are physically or functionally related to each other, but which together may have a significant environmental impact, the proposal is not exempt. {13.12.305(2)-(6)}

(4) Pursuant to RCW 36.70B.140(2) Local Project Review, categorically exempt proposals shall be exempt from the procedural requirements for complete application and public notice under SEPA. {13.12.305(7)}

13.12.420 Environmental checklist.

Any action or proposal which is not determined to be exempt shall require environmental review under SEPA, which shall commence with the filing of a SEPA checklist. However, a checklist is not needed if the responsible official has decided to prepare an EIS, or the responsible official and applicant agree an EIS is required; see section 13.12.400 for the requirements for an EIS.

(1) The Environmental checklist form shall be the same as that on file with the SEPA Public Information Center, titled "Environmental Checklist," which is incorporated by reference in this chapter.

(2) The checklist shall be filed no later than the time an application is filed for a permit, license, certificate, or other approval. {13.12.315(1)}

(3) For private proposals, the responsible official shall require the applicant to complete the environmental checklist, providing assistance as necessary. For public proposals, the department initiating the proposal shall complete the environmental checklist for that proposal.

(4) The items in the environmental checklist are not weighted. The mention of one or many adverse environmental impacts does not necessarily mean that the impacts are significant or that the impacts cannot be mitigated. Conversely, a probable significant adverse impact on the environment identified in the checklist may result in the need for an EIS.

13.12.430 Determination of non-significance (DNS).

(1) If the responsible official determines there will be no probable significant adverse environmental impacts from a proposal, the responsible official shall prepare and issue a determination of non-significance (DNS). If the City adopts another environmental document in support of a threshold determination as set forth in Part Six of this chapter, the City shall issue a notice of adoption and/or combine the documents.

(2) A DNS issued under the provisions of this section shall not become effective until the expiration of the appeal period. The filing of an appeal shall stay the effect of the DNS and no major action in regard to a proposal may be taken during the pendency of an appeal and until all action regarding the appeal is final. A decision to reverse the determination of the responsible official and uphold the appeal shall further stay any decision, proceedings, or actions in regard to the proposal.

(3) When a DNS is issued for any of the proposals listed below, the requirements in this subsection shall be met. The requirements of this subsection do not apply to a DNS issued when the optional DNS process (Section 13.12.xxx) is used.

(a) The City shall not act upon a proposal for 14 days after the date of issuance of a DNS if the proposal involves:

(i) Another agency with jurisdiction;

(ii) Non-exempt demolition of any structure or facility;

(iii) Issuance of clearing or grading permits not otherwise exempted; or

(iv) A DNS when the applicant has changed the project in response to early review by the responsible official in order to avoid or withdraw a Determination of Significance; or

(v) A mitigated DNS.

(b) The responsible official shall send the DNS and environmental checklist to agencies with jurisdiction, the Department of Ecology, and affected tribes, and each local agency or

political subdivision whose public services would be changed as a result of implementation of the proposal, and shall give notice as set forth in this chapter.

(c) Any person, affected tribe, or agency may submit comments to the City within 14 days of the date of issuance of the DNS, or as may be extended by the planning and/or public hearing process for non-project actions.

(d) The date of issuance for the DNS is the date the DNS is sent to the Department of Ecology and agencies with jurisdiction and is made publicly available.

(e) An agency with jurisdiction may assume lead agency status only within this comment period.

(f) The responsible official shall reconsider the DNS based on timely comments and may retain or modify the DNS or, if the responsible official determines that significant adverse impacts are likely, withdraw the DNS. When a DNS is modified, the responsible official shall send the modified DNS to agencies with jurisdiction.

(4)(a) The responsible official shall withdraw a DNS if:

(i) There are substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts;

(ii) There is significant new information regarding a proposal's probable significant adverse environmental impacts (this section shall not apply when a nonexempt license has been issued on a project); or

(iii) The DNS was procured by misrepresentation or lack of material disclosure; if the DNS resulted from such actions by an applicant, any subsequent environmental checklist on the proposal shall be prepared directly by the responsible official or his or her consultants at the expense of the applicant.

(b) If the responsible official withdraws a DNS, a new threshold determination shall be made and other agencies with jurisdiction shall be notified of the withdrawal and new threshold determination.

13.12.440 Mitigated DNS.

(1) The responsible official may issue a determination of nonsignificance based upon conditions attached to the proposal by the responsible official or upon changes to, or clarifications of, the proposal made by the applicant.

(2) If an applicant requests early notice of whether a Mitigated Determination of Nonsignificance (MDNS) or a Determination of Significance (DS) is likely, the request must:

(a) Be written;

(b) Follow submission of a completed environmental checklist for a nonexempt proposal for which the department is lead agency; and

(c) Precede the department's actual threshold determination for the proposal.

(d) The responsible official shall respond to the request in writing and shall state whether the responsible official is considering issuance of an MDNS or a DS and, if so, indicate the general or specific area(s) of concern that are leading to consideration of an MDNS or DS;

(e) The response must also state that the applicant may change or clarify the proposal to mitigate the impacts indicated in the letter, revising the environmental checklist as necessary to reflect the changes or clarifications. {13.12.350.2 and 3}

(3) As much as possible, the responsible official should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

(4) If the applicant submits a changed or clarified proposal, along with a revised environmental checklist, the responsible official will make a threshold determination based on the changed or clarified proposal:

(a) If the responsible official indicated specific mitigation measures in a response to the request for early notice that would allow him or her to issue a DNS, and the applicant changed or clarified the proposal to include those specific mitigation measures, the responsible official shall issue a determination of nonsignificance.

(b) If the responsible official indicated general or specific areas of concern, but did not indicate specific mitigation measures that would allow a DNS to be issued, the responsible official shall make the threshold determination, issuing a DNS or DS as appropriate.

(c) The applicant's proposed mitigation measures (clarifications, changes, or conditions) must be in writing and must be specific.

(d) Mitigation measures which justify issuance of a DNS shall be incorporated in the DNS by inclusion in the determination, or by reference to staff reports, studies or other documents.

(5) Mitigation measures incorporated in the DNS or MDNS shall be deemed conditions of approval of the associated building, work order, land use, or other development permit or license, unless revised or changed by the decision maker, and shall be placed as conditions directly upon the permit decision. The conditions shall be incorporated into the permit and shall be enforced in the same manner as any term or condition of the permit. {13.12.350(7) }

(6) If the tentative decision for an approval of a permit does not include mitigation measures that were incorporated in the SEPA determination for the proposal, the threshold determination should be evaluated to assure consistency with Section 13.12.xxx of this chapter (withdrawal of DNS).

(7) The responsible official's written response under subsection (2) of this section shall not be construed as a determination of significance. In addition, preliminary discussions of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the responsible official to a mitigated DNS.

13.12.450 Optional DNS process.

(1) The responsible official may use the optional DNS process if they have determined that significant adverse environmental impacts are unlikely, and a single integrated comment period is desired to obtain comments for the application and the likely threshold determination for the proposal. If this process is used, a second comment period will typically not be required when the DNS is issued.

(2) If the optional DNS process is used, the following shall apply:

(b) The notice shall state on the first page that the City expects to issue a DNS for the proposal, and that:

(i) The optional DNS process is being used;

(ii) This may be the only opportunity to comment on the environmental impacts of the proposal;

(iii) The proposal may include mitigation measures under applicable codes, and the project review process may incorporate or require mitigation measures regardless of whether an EIS is prepared; and

(iv) A copy of the subsequent threshold determination for the specific proposal may be obtained upon request.

(c) The notice shall list the conditions being considered to mitigate environmental impacts, if a mitigated DNS is expected.

(d) The City shall comply with the requirements for a notice of application and public notice in RCW 36.70B.110; and

(e) The City shall send the notice and environmental checklist to:

(i) Agencies with jurisdiction, the Department of Ecology, affected tribes, and each local agency or political subdivision whose public services would be changed as a result of implementation of the proposal; and

(ii) Anyone requesting a copy of the environmental checklist for the specific proposal.

(3) If the City indicates on the notice of application that a DNS is likely, an agency with jurisdiction may assume lead agency status during the comment period on the notice.

(4) The responsible official shall consider timely comments on the notice and either:

(a) Issue a DNS or mitigated DNS with no comment period using the procedures in subsection (5) of this section;

(b) Issue a DNS, or mitigated DNS with a comment period using the procedures in subsection (5) of this section, if the City determines a comment period is necessary;

(c) Issue a DS, or

(d) Require additional information or studies prior to making a threshold determination.

(5) If a DNS or mitigated DNS is issued under subsection (4)(a) of this section, the City shall send a copy of the DNS or mitigated DNS to the Department of Ecology, agencies with jurisdiction, those who commented, and anyone requesting a copy. A copy of the environmental checklist need not be re-circulated.

Part Five - Environmental Impact Statement (EIS)

13.12.500 Purpose of this part and adoption by reference. The purpose of this part is to describe the process, content, and format of an EIS, and to set forth the procedures for two specific kinds of non-project EIS reviews. It also incorporates the following sections of the *Washington Administrative Code* by reference:

197-11-400 Purpose of EIS.
197-11-402 General requirements.
197-11-405 EIS types.
197-11-406 EIS timing.
197-11-425 Style and size.
197-11-430 Format.
197-11-435 Cover letter or memo.
197-11-440 EIS contents.
197-11-442 Contents of EIS on nonprofit proposals.

197-11-443 EIS contents when prior non-project EIS.
197-11-444 Elements of the environment.
197-11-448 Relationship of EIS to other considerations.
197-11-450 Cost-benefit analysis.
197-11-455 Issuance of DEIS.

13.12.510 Scoping.

(1) The responsible official shall narrow the scope of every EIS to the probable significant adverse impacts and reasonable alternatives, including mitigation measures. For example, if there are only two or three significant impacts or reasonable alternatives, the EIS shall be focused on those.

(2) To ensure that every EIS is concise and addresses the significant environmental issues, the responsible official shall:

(a) Invite agencies with jurisdiction, if any, affected tribes, and the public to comment on the DS (WAC 197-11-360). The responsible official shall require comments in writing. Agencies with jurisdiction, affected tribes, and the public shall be allowed 21 days from the date of issuance of the DS in which to comment, unless expanded scoping is used. The date of issuance for a DS is the date it is sent to the Department of Ecology and other agencies with jurisdiction, and is publicly available;

(b) Identify reasonable alternatives and probable significant adverse environmental impacts;

(c) Eliminate from detailed study those impacts that are not significant;

(d) Work with other agencies to identify and integrate environmental studies required for other government approvals with the EIS, where feasible.

(3) Meetings or scoping documents, including notices that the scope has been revised, may be used but are not required. The responsible official shall integrate the scoping process with the existing planning and decision making process in order to avoid duplication and delay.

(4) The responsible official shall revise the scope of an EIS if substantial changes are made later in the proposal, or if significant new circumstances or information arise that bear on the proposal and its significant impacts.

(5) DEISs shall be prepared according to the scope decided upon by the responsible official in the scoping process.

(6) EIS preparation may begin during scoping.

13.12.520 Expanded scoping (optional).

The responsible official may expand the scoping process to include any or all of the provisions found in WAC 197-11-410, which may be applied on a proposal-by-proposal basis.

13.12.530 EIS preparation.

For draft, final, and supplemental EISs:

(1) Preparation of the EIS is the responsibility of the City, by or under the direction of its responsible official, as specified by Section 13.12.xxx of this chapter. Regardless of who participates in the preparation of the EIS, it is the EIS of the responsible official. The responsible official, prior to distributing an EIS, shall be satisfied that it complies with these rules and the procedures of the City of Tacoma.

(2) The responsible official may have an EIS prepared by City staff, an applicant or its agents, or by an outside consultant retained by either an applicant or the responsible official. The responsible official shall assure that the EIS is prepared in a professional manner and with appropriate interdisciplinary methodology. The responsible official shall direct the areas of research and examination to be undertaken as a result of the scoping process, as well as the organization of the resulting document.

(3) If a person other than the responsible official is preparing the EIS, the responsible official or designee shall:

(a) Coordinate any scoping procedures so that the individual preparing the EIS receives all substantive information submitted by any agency or person;

(b) Assist in obtaining any information on file with another agency that is needed by the person preparing the EIS;

(c) Allow any party preparing an EIS access to all public records of the City that relate to the subject of the EIS, under Chapter 42.17 RCW (Public Disclosure and Public Records Law);

(d) Review and examine pertinent sections of the EIS to assure the completeness, accuracy, and objectivity of the EIS.

(4) Any outside person, firm, or corporation assisting in the preparation of an EIS shall have expertise and experience in preparing environmental impact statements and shall be approved by the responsible official prior to participation in the EIS development process.

(5) Field investigation or research by the applicant, reasonably related to determining the environmental impacts associated with the proposal, may be required, with the cost of such field investigation or research to be borne by the applicant.

13.12.540 Issuance of final environmental impact statement (FEIS).

(1) A FEIS shall be issued by the responsible official and sent to the Department of Ecology (two copies), to all agencies with jurisdiction, to all agencies who commented on the DEIS, and to anyone requesting a copy of the FEIS. (Fees may be charged for the FEIS, see WAC 197-11-504.)

(2) The responsible official shall send the FEIS, or a notice that the FEIS is available, to anyone who commented on the DEIS or scoping notice and to those who received but did not comment on the DEIS. If the responsible official receives petitions from a specific group or organization, a notice or EIS may be sent to the group and not to each petitioner. Failure to notify any individual under this subsection shall not affect the legal validity of the City's SEPA compliance.

(3) The responsible official shall make additional copies available for review in his or her office and in the SEPA Public Information Center.

(4) The date of issue is the date the FEIS, or notice of availability, is sent to the persons and agencies specified in the preceding subsections and the FEIS is publicly available. Copies sent to the Department of Ecology shall satisfy the statutory requirement of availability to the governor.

(5) The City shall not act on a proposal for which an EIS has been required prior to 15 days after issuance of the FEIS. Further, filing of an appeal of the adequacy of a FEIS pursuant to Section 13.12.xxx of this chapter shall stay the effect of such FEIS and no major action in regard to a proposal may be taken during the pendency of an appeal and until the appeal is finally disposed of by the Hearing Examiner. A decision that the FEIS is inadequate and

upholding the appeal shall further stay any decision, proceedings, or actions in regard to the proposal.

(6) The responsible official shall issue the FEIS within 60 days of the end of the comment period for the DEIS, unless the proposal is unusually large in scope, the environmental impact associated with the proposal is unusually complex, or extensive modifications are required to respond to public comments.

(7) The form and content of the FEIS shall be as specified in WAC 197-11-400-460.

13.12.550 SEPA Planned Action EIS

(1) The Responsible Official may authorize preparation of a Planned Action for a specific type of development, other than for an essential public facility or facilities as defined in RCW 36.70A.200, or for a specific geographical area that is less extensive than the jurisdictional boundaries of the City. The Planned Action must have the significant impacts adequately addressed in an environmental impact statement prepared in conjunction with a comprehensive plan, a comprehensive plan amendment, a subarea plan or for the phased project.

(2) Ordinance. A Planned Action must be designated by ordinance of the City Council. The adopting ordinance must describe the planned action projects and may establish a time period for completion of the planned action projects. .

(3) Project actions must be included in the designated ordinance and impacts addressed in an EIS prepared in conjunction with a comprehensive plan, amendment thereto, a subarea plan or a phased project.

(4) Planned action project review. Projects developed within a planned action area shall be exempted from further environmental review. However, the project proponent shall describe the environmental mitigation to be provided by subsequent or implementing projects, and must include a checklist (not a SEPA Checklist, but as set forth in the planned action EIS) that is to be filed with the project application and used to verify that:

   (a) the project meets the description in, and will implement, any such mitigation and

   (b) the probable significant adverse environmental impacts of the project have been adequately addressed in the EIS.

(5) The adopting ordinance will state that if notice is otherwise required for the underlying permit the notice shall state that the project has qualified as a planned action and that if notice is not otherwise required for the underlying permit no special notice is required. The adopting ordinance may limit a planned action to a time period identified in the ordinance.

13.12.560 Optional Plan Elements and Development Regulations

(1) The City may adopt optional comprehensive plan elements and optional development regulations that apply within designated centers or for subareas within one-half mile of a major transit stop zoned for higher density housing consistent with RCW 43.21C.240.

(2) Designation of areas: The centers must be designated by the Puget Sound Regional Council as a Regional Growth Center or a Manufacturing-Industrial Center .or be an area within one-half mile of a major transit stop that is zoned to have an average minimum density of fifteen dwelling units or more per gross acre.

(3) The City shall prepare a non-project (as defined in WAC 197-11-774) environmental impact statement.

(a) The EIS must assess and disclose probable adverse impacts of the optional comprehensive plan element and development regulations and of future development consistent with the plan and regulations.

(b) The EIS may have appended to it an analysis of the extent to which the proposed plan may result in the displacement or fragmentation of existing businesses, existing residents, including people living with poverty, families with children, and intergenerational households, or cultural groups; the results of the analysis must be discussed at a community meeting that is separate from the EIS/plan public hearings.

(4) Community Meeting.

(a) At least one community meeting must be held on the proposed optional plan and development regulations before the scoping notice is issued. Notice of scoping and notice of the community meeting must be mailed to all taxpayers of record within the sub-area to be studied, and within four hundred feet of the boundaries of the subarea, to affected Tribes and to agencies with jurisdiction over the future development within the subarea. See Part Five for notice requirements.

(b) Notice must also be mailed to all small businesses as defined in RCW 19.85.020 and to all community preservation and development authorities established under chapter 43.167 RCW. The process for community involvement must have the goal of fair treatment and meaningful involvement of all people with respect to the development and implementation of the subarea plan.

(c) The notice of the community meeting must include general illustrations and descriptions of buildings generally representative of the maximum building envelope that will be allowed under the proposed plan and indicate that future appeals of proposed developments that are consistent with the plan will be limited. Notice of the community meeting must include signs located on major travel routes in the sub-area posted within 7 days of the mailing of the meeting notice. If the building envelope increases during the process, another notice complying with the requirements of this section must be issued before the next public involvement opportunity.

(5) Appeal. Any person that has standing to appeal the adoption of the sub-area plan or the implementing regulations under RCW .70A.280 has standing to bring an appeal of the non-project EIS as set forth in this chapter.

(6) Transfer of Development Rights. As an integral part of preparing a sub-area plan/non-project EIS the City shall consider establishing a transfer of development rights program in consultation with Pierce County, a program that that conserves county-designated agricultural and forest land of long-term commercial significance. If the city decides not to establish a transfer of development rights program, the city must state in the record the reasons for not adopting the program. The city's decision not to establish a transfer of development rights program is not subject to appeal. Nothing in this sub-section may be used as a basis to challenge the sub-area plan.

(7) Fees for Environmental Review. The City may recover its reasonable expenses of preparation of a non-project EIS prepared under this section through access to financial assistance under RCW 36.70A.490 or funding from private sources. In addition, the City is authorized to recover a portion of its reasonable expenses of preparation of such a non-project EIS by the assessment of reasonable and proportionate fees upon subsequent development that is consistent with the plan and development regulations adopted under this section as long as the development makes use of and benefits from the non-project EIS prepared by the City. Any assessment fees collected from subsequent development may be used to reimburse funding received from private sources. In order to collect such fees, the

city must enact an ordinance that sets forth objective standards for determining how the fees to be imposed upon each development will be proportionate to the impacts of each development and to the benefits accruing to each development from the non-project EIS. Any disagreement about the reasonableness or amount of the fees imposed upon a development may not be the basis for delay in issuance of a project permit for that development. The fee assessed by the city may be paid with the written stipulation "paid under protest" and if the city provides for an administrative appeal of its decision on the project for which the fees are imposed, any dispute about the amount of the fees must be resolved in the same administrative appeal process.

(8) Additional Environmental Review. If a proposed development is inconsistent with the subarea plan policies and development regulations, the City shall require additional environmental review in accordance with this chapter.

(9) Effective Dates.

(a) Until July 1, 2018, a proposed development that is consistent with the sub-area plan policies and development regulations adopted under this section and that is environmentally reviewed under this section may not be challenged in administrative or judicial appeals for noncompliance with this chapter as long as a complete application for such a development that vests the application or would later lead to vested status under city or state law is submitted to the City within a time frame established by the City, but not to exceed ten years from the date of issuance of the final EIS.

(b) After July 1, 2018, the immunity from appeals under this section of any application that vests or will vest under this subsection or the ability to vest under this subsection is still valid, provided that the final subarea EIS is issued by July 1, 2018. After July 1, 2018, a city may continue to collect reimbursement fees under this section for the proportionate share of a subarea EIS issued prior to July 1, 2018.

Part Six - Commenting

13.12.600 Purpose of this part and adoption by reference. The purpose of this part of the Chapter is to provide the regulations for public notice and public availability of environmental documents, for circulation of environmental decisions to agencies and members of the public, public hearings and meetings, and response to comments received during the process. This section should be read in conjunction with the applicable administrative provisions in *TMC* 13.05 as they apply to land use permitting decisions. It also incorporates the following sections of the *Washington Administrative Code* by reference:

197-11-500 Purpose of this part.
197-11-502 Inviting comment.
197-11-504 Availability and cost of environmental documents.
197-11-508 SEPA Register.
197-11-535 Public hearings and meetings.
197-11-545 Effect of no comment.
197-11-550 Specificity of comments.
197-11-560 FEIS response to comments.
197-11-570 Consulted agency costs to assist lead agency.

13.12.610 Public notice.

(1) When notice is required, the responsible official must use reasonable methods to inform the public and other agencies that an environmental document is being prepared or is available and that public hearing(s), if any, will be held.

(2) Notice Requirements, DNS

(a) When a land use decision is required for a proposal, notice of the SEPA pre-threshold determination or the availability of the final environmental impact statement shall be provided in conjunction with notification of the proposed land use action. The notice shall inform recipients where the SEPA records are located and that a final environmental determination shall be made following a comment period.

(b) Notice of the SEPA pre-threshold environmental determination for projects which do not require a land use decision shall be published in a newspaper of general circulation within the area in which the project is located, and shall include information as stated above.

(c) Notice of the SEPA pre-threshold environmental determination for non-project actions shall be provided in conjunction with notification of the earliest hearing (e.g., Planning Commission). Such notice shall be published in a newspaper of general circulation within the area in which the project is located, and shall include information as stated above.

(d) If an appeal is filed, notification of hearing such appeal shall be mailed to parties of record and to all parties who have indicated in writing an interest in the proposed land use action.

(3) Notice Requirements, EIS

(a) Notice of determination of significance, scoping, and availability of draft and final EISs shall be published in a newspaper of general circulation within the area in which the project is located.

(b) The determination of significance and scoping notice shall be mailed by first class mail to the applicant; property owner (if different from applicant); Neighborhood Councils, and qualified neighborhood or community organizations in the vicinity where the proposal is located; the Puyallup Tribal Nation for substantial actions defined in the “Agreement Between the Puyallup Tribe of Indians, Local Governments in Pierce County, the State of Washington, the United States of America, and Certain Property Owners,” dated August 27, 1988; and to taxpayers as indicated by the records of the Pierce County Assessor, within 400 feet of the proposed action. Those parties who comment on the project shall receive notice of the draft and final EISs.

(c) A public information sign shall be erected on the site by the applicant, in a location determined by the staff responsible for carrying out the SEPA responsibilities, within seven calendar days of the date of issuance of the determination of significance. The sign shall contain, at a minimum, the following information: type of application, name of applicant, description and location of proposal, and where additional information can be obtained. The sign shall remain on the site until a final decision on the project is made.

(4) Documents which are required to be sent to the Department of Ecology will be published in the SEPA register, which will also constitute a form of public notice. However, publication in the SEPA register shall not, in itself, meet the notice requirements.

13.12.620 Responding to SEPA Requests for Comment from Other Lead Agencies

A. The director of the department with appropriate expertise shall be responsible for preparation of written comments responding to a consultation request from another lead agency prior to a threshold determination, participation in scoping, and reviewing a DEIS.

B. The director shall be responsible for the City's compliance with WAC 197-11-550 whenever such department is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the City.

Part Seven - Using Existing Environmental Documents

13.12.700 Purpose of this part and adoption by reference. This part of the Chapter sets forth the rules for using existing environmental documents. It describes the process, noticing procedures, and appeal provisions when existing environmental review is used to fulfill all or part of the City's SEPA responsibilities. It also incorporates the following sections of the *Washington Administrative Code* by reference:

197-11-600 When to use existing environmental documents.
197-11-610 Use of NEPA documents.
197-11-620 Supplemental environmental impact statement – Procedures.
197-11-625 Addenda – Procedures.
197-11-630 Adoption – Procedures.
197-11-635 Incorporation by reference – Procedures.
197-11-640 Combining documents.

Part Eight - SEPA and Agency Decisions

13.12.800 Purpose of this part and adoption by reference. This section of the Chapter is intended to ensure that complete, quality information is used in the SEPA process, that SEPA is incorporated with other laws and decisions, and provide a clear, concise, description of the City's substantive authority under SEPA. The section includes appeal provisions for SEPA determinations. It also incorporates the following sections of the *Washington Administrative Code* by reference:

197-11-650 Purpose of this part.
197-11-655 Implementation.

13.12.810 Substantive authority and mitigation.

(1) Any action by the City of Tacoma on public or private proposals that is not exempt may be conditioned or denied under SEPA to mitigate the environmental impact subject to the following limitations:

(a) Mitigation measures or denials shall be based on the policies, plans, rules, or regulations formally designated by the City as a basis for the exercise of substantive authority and in effect when a complete SEPA checklist is submitted.

(b) Mitigation measures shall be related to specific, adverse environmental impacts clearly identified in an environmental document on the proposal and shall be stated in writing by the responsible official. The responsible official shall cite the City's SEPA policy that is the basis of any condition or denial under this chapter. The responsible official shall make available to the public, in his or her office, a document that states the decision. The document shall state the mitigation measures, if any, that will be implemented as part of the decision, including any monitoring of environmental impacts. Such a document may be the permit itself, or may be combined with other City documents, or may reference relevant portions of environmental documents.

(c) Mitigation measures shall be reasonable and capable of being accomplished.

(d) Responsibility for implementing mitigation measures may be imposed upon an applicant only to the extent attributable to the identified adverse impacts of its proposal. Voluntary additional mitigation may occur.

(e) Before requiring mitigation measures, the responsible official shall consider whether local, State, or Federal requirements and enforcement would mitigate an identified significant impact.

(f) To deny a proposal under SEPA, the decision maker must cause an EIS to be prepared and subsequently find that:

(i) The proposal would be likely to result in significant adverse environmental impacts identified in a final or supplemental environmental impact statement prepared under this chapter; and

(ii) Reasonable mitigation measures are insufficient to mitigate the identified impact.

(g) If, during project review, the responsible official determines that the requirements for environmental analysis, protection, and mitigation in the City's development regulations, or comprehensive plan, or in other applicable local, state, federal laws, or rules, provide adequate analysis of, and mitigation for the specific adverse environmental impacts of the project action, the responsible official shall not impose additional mitigation under this chapter.

(2) The decision maker should judge whether possible mitigation measures are likely to protect or enhance environmental quality. The EIS should briefly indicate the intended environmental benefits of mitigation measures for significant impacts. An EIS is not required to analyze in detail the environmental impacts of mitigation measures, unless the mitigation measures:

(a) Represent substantial changes in the proposal so that the proposal is likely to have significant adverse environmental impacts, or involve significant new information indicating, or on, a proposal's probable significant adverse environmental impacts; and

(b) Will not be analyzed in a subsequent environmental document prior to their implementation.

(3) The City has prepared the comprehensive plan, which contains agency SEPA policies and has further set them forth in this chapter for the information of the public and of other agencies. This document includes by reference the regulations, plans, or codes formally designated under this section and RCW 43.21C.060 as possible bases for conditioning or denying proposals. This document is available to the public in the SEPA PIC and shall be available to applicants prior to preparing a draft EIS.

13.12.820 Appeals of SEPA threshold determination and adequacy of final environmental impact statement.

A. All appeals under this chapter shall be conducted in accordance with RCW 43.21C.075 concerning appeals of Environmental Determinations. Except in the following cases, appeals on Environmental Determinations shall be heard at the same time as appeals on the underlying governmental action:

(a) An appeal of a determination of significance;

(b) An appeal of a procedural determination made by an agency when the agency is a project proponent, or is funding a project, and chooses to conduct its review under this chapter, including any appeals of its procedural determinations, prior to submitting an application for a project permit;

(c) An appeal of a procedural determination made by an agency on a nonproject action; or

(d) An appeal to the local legislative authority under RCW 43.21C.060 or other applicable state statutes.

B. Appeal to the Hearing Examiner.

(1) Initiating an Appeal

(a) Threshold determination or adequacy of a final environmental impact statement for a proposed land use action shall be appealable to the Hearing Examiner. All other appeals under this chapter shall be made as set forth in 13.12.820.B, below.

(b) Appeal Procedure/Fee. A notice of appeal, together with a filing fee as set forth in Section 2.09 of the Tacoma Municipal Code, shall be filed with Building and Land Use Services. Building and Land Use Services shall process the appeal in accordance with Chapter 13.05 of this title.

(c) Time Requirement. An appeal shall be filed within 14 calendar days after issuance of the determination by the responsible official. If the last day for filing an appeal falls on a weekend day or holiday, the last day for filing shall be the next working day.

(d) Content of the Appeal. Appeals shall contain:

(i) The name and mailing address of the appellant and the name and address of his/her representative, if any;

(ii) The appellant's legal residence or principal place of business;

(iii) A copy of the decision which is appealed;

(iv) The grounds upon which the appellant relies;

(v) A concise statement of the factual and legal reasons for the appeal;

(vi) The specific nature and intent of the relief sought;

(vii) A statement that the appellant has read the appeal and believes the contents to be true, followed by his/her signature and the signature of his/her representative, if any. If the appealing party is unavailable to sign the appeal, it may be signed by his/her representative.

(e) Dismissal of Appeal. The Hearing Examiner may summarily dismiss an appeal without hearing when such appeal is determined by the Examiner to be without merit on its face, frivolous, or brought merely to secure a delay, or that the appellant lacks legal standing to appeal.

(f) Effect of Appeal. The filing of an appeal of a threshold determination or adequacy of a final environmental impact statement (FEIS) shall stay the effect of such determination or adequacy of the FEIS and no major action in regard to a proposal may be taken during the pendency of an appeal and until the appeal is finally disposed of by the Hearing Examiner. A decision to reverse the determination of the responsible official and uphold the appeal shall further stay any decision, proceedings, or actions in regard to the proposal.

(2) Withdrawal of Appeal. An appeal may be withdrawn, only by the appellant, by written request filed with Building and Land Use Services. Building and Land Use Services shall inform the Hearing Examiner and responsible official of the withdrawal request. If the withdrawal is requested before the response of the responsible official, or before serving notice of the appeal, such request shall be permitted and the appeal shall be dismissed without prejudice by the Hearing Examiner, and the filing fee shall be refunded.

(3) Response of responsible official. The responsible official shall respond in writing to the appellant's objections. Such response shall be transmitted to Building and Land Use Services. Building and Land Use Services shall forward all pertinent information to the Hearing Examiner, appellant, and responsible official no later than seven days prior to hearing. The official's response shall contain, when applicable, a description of the property and the nature of the proposed action. Response shall be made to each specific and explicit objection set forth in the appeal, but no response need be made to vague or ambiguous allegations. The response shall be limited to facts available when the threshold determination was made. In the case of a response to an appeal of the adequacy of a final environmental impact statement, the response shall be limited to facts available when the final environmental impact statement is issued. No additional environmental studies or other information shall be allowed.

(4) Hearing.

(a) The hearing of an appeal of a determination of nonsignificance or adequacy of an environmental impact statement on a proposed land use action which requires a hearing shall be held concurrently with the hearing on the application request.

(b) The hearing of an appeal of a determination of nonsignificance or adequacy of the final environmental impact statement for a proposal which requires an administrative land use decision shall be expeditiously scheduled upon receipt of a valid appeal. If the SEPA determination and land use decision are appealed, the SEPA appeal and the land use hearing shall be held concurrently.

(c) The hearing of an appeal by a project sponsor of a determination of significance issued by the responsible official shall be expeditiously scheduled upon receipt of a valid appeal.

(d) The public hearing shall be conducted in accordance with the provisions of Chapter 1.23 of the Tacoma Municipal Code.

(e) The Hearing Examiner may affirm the decision of the responsible official or the adequacy of the environmental impact statement, or remand the case for further information; or the Examiner may reverse the decision if the administrative findings, inferences, conclusions, or decisions are:

(i) In violation of constitutional provisions as applied; or

(ii) The decision is outside the statutory authority or jurisdiction of the City; or

(iii) The responsible official has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure; or

(iv) In regard to challenges to the appropriateness of the issuance of a DNS clearly erroneous in view of the public policy of SEPA; or

(v) In regard to challenges to the adequacy of an EIS shown to be inadequate employing the "rule of reason."

(f) Evidence – Burden of Proof. In each particular proceeding, the appellant shall have the burden of proof, and the determination of the responsible official shall be presumed prima facie correct and shall be afforded substantial weight. Appeals shall be limited to the records of the responsible official.

(g) Continuation of Hearing.

(i) Cause. A hearing may be continued by the Hearing Examiner with the concurrence of the applicant for the purpose of obtaining specific pertinent information relating to the project which was unavailable at the time of the original hearing.

(ii) Notification. The Hearing Examiner shall announce the time and place of a continued hearing at the time of the initial hearing or by written notice to all parties of record.

(5) The Examiner's decision for an appeal shall be made in accordance with Chapter 1.23 of the Tacoma Municipal Code.

C. Appeals of non-land use actions.

(1) Appeals for environmental determinations which are not related to land use actions (i.e., permits issued pursuant to TMC 13.05), including building permits, shall be made to Superior Court.

(a) The SEPA appeal period commences upon issuance of the underlying permit, not with the issuance of the SEPA determination.

(b) Appeals shall be made to Superior Court within 21 days of the action.

(2) Appeals of non-project actions (e.g., decisions made in the course of planning under the Growth Management Act/GMA or the Shoreline Management Act/SMA) shall be appealable to the Growth Management Hearings Board.

(a) Appeals of GMA actions shall be made within 60 days of the City's publication of the adopting ordinance;

(b) Appeals of SMA actions shall be made within 60 days of the City's publication of the Department of Ecology's approval of the adopted document.

(c) Appeals of other actions… ***(Additional information regarding potential changes on appeals of other actions will be provided at the Commission meeting)***

C. Notice of Action

Pursuant to RCW 43.21C.080, notice of any action taken by a governmental agency may be publicized by the applicant for, or proponent of, such action in the form as provided by Building and Land Use Services and WAC 197-11-990.

The publication establishes a time period wherein any action to set aside, enjoin, review, or otherwise challenge any such governmental action on grounds of noncompliance with the provisions of SEPA must be commenced, or be barred. Any subsequent action of the City for which the regulations of the City permit use of the same detailed statement to be utilized and as long as there is not substantial change in the project between the time of the action and any such subsequent action, shall not be set aside, enjoined, reviewed, or thereafter challenged on grounds of noncompliance with RCW 43.21C.030(2)(c).

Part Nine - Definitions

13.12.900 Purpose of this part and adoption by reference. The terms in this Chapter are primarily adopted from those set forth in WAC 197-11-700 to -700. Except for the definitions below, this terminology is uniform throughout the state as applied to SEPA. These definitions are specific to this Chapter and are meant to clarify the specific terms used in SEPA review in the City. It also incorporates the following sections of the *Washington Administrative Code* by reference:

197-11-040	Definitions.	197-11-752	Impacts.
197-11-700	Definitions.	197-11-754	Incorporation by reference.
197-11-702	Act.		
197-11-704	Action.	197-11-756	Lands covered by water.
197-11-706	Addendum.	197-11-758	Lead agency.
197-11-708	Adoption.	197-11-760	License.
197-11-710	Affected tribe.	197-11-762	Local agency.
197-11-712	Affecting.	197-11-764	Major action.
197-11-714	Agency.	197-11-766	Mitigated DNS.
197-11-716	Applicant.	197-11-768	Mitigation.
197-11-718	Built environment.	197-11-770	Natural environment.
197-11-720	Categorical exemption.	197-11-772	NEPA.
197-11-721	Closed record appeal.	197-11-774	Non-project.
197-11-722	Consolidated appeal.	197-11-775	Open record hearing.
197-11-724	Consulted agency.	197-11-776	Phased review.
197-11-726	Cost-benefit analysis.	197-11-778	Preparation.
197-11-728	County-city.	197-11-780	Private project.
197-11-730	Decision-maker.	197-11-782	Probable.
197-11-732	Department.	197-11-784	Proposal.
197-11-734	Determination of non-significance (DNS).	197-11-786	Reasonable alternative.
		197-11-788	Responsible official.
197-11-736	Determination of significance (DS).	197-11-790	SEPA.
		197-11-792	Scope.
197-11-738	EIS.	197-11-793	Scoping.
197-11-740	Environment.	197-11-794	Significant.
197-11-742	Environmental checklist.	197-11-796	State agency.
197-11-744	Environmental document.	197-11-797	Threshold determination.
197-11-746	Environmental review.	197-11-799	Underlying governmental action.
197-11-750	Expanded scoping.		

13.12.910 Additional definitions.

In addition to those definitions contained within WAC 197-11-700 to 197-11-799, the following terms shall have the following meanings, and shall be applicable only to this chapter:

(1) "Applicant" means the party responsible for completing the environmental checklist and requesting the environmental determination, regardless of the nature of the proposal (i.e., project or non-project action).

(2) "Application" means the request for an environmental determination, done in the form of the submission of an environmental checklist.

(3) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meets or

exceeds any standards, codes, and regulations set forth by Chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(4) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540

(5) "The City" means the City of Tacoma, or any department or division thereof acting in a SEPA lead agency capacity. This includes, but is not limited to, Tacoma Public Utilities and the Departments of Public Works and Community & Economic Development.

(6) "Department" means any division, subdivision, or organizational unit of the City established by ordinance.

(7) "Major Transit Stop" means (a) a stop on a high capacity transportation service funded or expanded under the provisions of chapter 81.104 RCW; (b) commuter rail stops; (c) stops on rail or fixed guide-way systems, including transit-ways; (d) stops on bus rapid transit routes or routes that run on high occupancy vehicle lanes; or, (e) stops for a bus or other transit mode providing fixed route service at intervals of at least thirty minutes during the peak hours of operation.

(8) "SEPA Rules" means WAC Chapter 197-11 adopted and as may be amended by the Department of Ecology.

(9) "Responsible Official" for City Government means the Department Director for projects initiated or processed by that department, and for the Department of Public Utilities means the Superintendent or Division Head of the respective division for projects initiated or processed by that division. Responsible official duties may be delegated to appropriate staff persons, but the respective Director or Superintendent shall approve and is responsible for the determination of Environmental Significance and the adequacy of an Environmental Impact Statement. See additional information in Section 13.12.xxx.

(10) "SEPA Public Information Center" means the section within the Community & Economic Development Department that performs the functions and duties as described in Section 13.12.905 of this chapter.

Part Ten - Agency Compliance

13.12.920 Purpose of this part and adoption by reference. This section responds to the state's requirement that the City adopt its own SEPA rules and procedures to carry out its environmental responsibilities. It sets forth the responsibilities of staff and officials within the City in fulfilling SEPA duties, identifies agencies with expertise, provides for public availability of SEPA documents, and provides rules for determination of lead agency. It also incorporates the following sections of the *Washington Administrative Code* by reference:

197-11-900	Purpose of this part.
197-11-902	Agency SEPA policies.
197-11-904	Agency SEPA procedures.
197-11-906	Content and consistency of agency procedures.
197-11-912	Procedures on consulted agencies.
197-11-914	SEPA fees and costs.
197-11-916	Application to ongoing actions.

197-11-917 Relationship to Chapter 197-10 WAC.
197-11-918 Lack of agency procedures.
197-11-920 Agencies with environmental expertise.
197-11-922 Lead agency rules.
197-11-924 Determination of lead agency – Procedures.
197-11-926 Lead agency for governmental proposals.
197-11-928 Lead agency for public and private proposals.
197-11-930 Lead agency for private projects with one agency with jurisdiction.
197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
197-11-934 Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
197-11-936 Lead agency for private projects requiring licenses for more than one state agency.
197-11-938 Lead agencies for specific proposals.
197-11-940 Transfer of lead agency status to a state agency.
197-11-942 Agreements on lead agency status.
197-11-944 Agreements on division of lead agency duties.
197-11-946 DOE resolution of lead agency disputes.
197-11-948 Assumption of lead agency status.
197-11-955 Effective date.

13.12.930 Critical areas.

(1) The City may, at its option, designate areas within its jurisdiction which are environmentally sensitive areas pursuant to WAC 197-11-908.

(2) The South Tacoma Groundwater Protection District, as described in Chapter 13.09 of this title, is hereby designated a critical area, subject to the requirements set forth in Chapter 13.09 of this title.

(3) Fish and wildlife habitat conservation areas, erosion hazard areas, landslide hazard areas, steep slopes, wetlands and streams, as described in Chapter 13.11 of this title, are hereby designated critical areas, subject to the requirements set forth in Chapter 13.11 of this title.

(4) The scope of environmental review of actions within these areas shall be limited to:

(a) Documenting whether the proposal is consistent with the requirements of the critical areas ordinance; and

(b) Evaluating potentially significant impacts on the critical area resources not adequately addressed by GMA planning documents and development regulations, if any, including any additional mitigation measures needed to protect the critical areas in order to achieve consistency with SEPA and other applicable environmental review laws.

Part Eleven - Forms

13.12.940 Purpose of this part and adoption by reference. This section adopts the following forms, unchanged except as to formatting, and sets forth the official forms for use with SEPA.

197-11-960 Environmental checklist.
197-11-965 Adoption notice.
197-11-970 Determination of non-significance (DNS).
197-11-980 Determination of significance and scoping notice (DS).
197-11-985 Notice of assumption of lead agency status.
197-11-990 Notice of action.

Chapter 13.11

CRITICAL AREAS PRESERVATION

* * *

13.11.170 Critical Area Designation and SEPA.

A. Pursuant to WAC 197-11-908 and Section 13.12.908 of the TMC, aquifer recharge areas, fish and wildlife habitat conservation areas (FWHCAs), flood hazard areas, geologically hazard areas, wetlands, and streams are hereby designated as critical areas. These areas are mapped on Tacoma's Generalized Critical Areas Maps available in the ~~Tacoma~~ Community and Economic Development Department or as defined by this chapter. The following SEPA categorical exemptions shall not apply within these areas, unless the changes or alterations are confined to the interior of an existing structure or unless the project does not require a permit under this chapter: Section 13.12.801 of the TMC and the following subsections of WAC 197-11-800(1)(b); (2)(d) excluding landscaping, (e), (f), and (g); (3); 24(a), (b), (c), and (d).

B. The scope of environmental review of actions within critical areas shall be limited to: (a) documenting whether the proposal is consistent with the requirements of this chapter; and (b) evaluating potentially significant impacts on the critical area resources not adequately addressed by development regulations, if any, including any additional mitigation measures needed to protect the critical areas in order to achieve consistency with SEPA and other applicable environmental review laws.

Agenda Item GB-4

City of Tacoma
Community and Economic Development Department

TO: Planning Commission

FROM: Donna Stenger, Acting Manager, Long-Range Planning Division

SUBJECT: Annual Amendment #2011-06 – Safety-Oriented Design

DATE: December 28, 2010

This amendment proposes three primary actions: (1) update text to reflect changed circumstances; (2) revise map boundaries for consistency with regional plan documents; and, (3) add new and revised guidance on incorporating public safety into site and building design. The discussion at the next Commission meeting will focus on the third of these three primary actions.

The proposed modifications are intended to provide discussion and guidance on the importance of including personal safety considerations when designing buildings and sites, especially those that are publicly owned or are intended for use by large numbers of the general public.

Staff will discuss proposed text and policy additions to address the use of Crime Prevention Through Environmental Design (CPTED) and its principles. Previously, many of the City's development standards were revised for consistency with CPTED principles. Additional changes could be considered in the future if the City moves toward design review of proposed development projects. The City has also established an internal staff team to apply CPTED principals when designing new or substantial renovations to public facilities and roadway projects. The proposed Plan revisions support these actions and provide authority for further actions.

Attached is a copy of the proposed revisions to the Generalized Land Use element for the Commission's consideration.

If you have any questions, please contact Donna Stenger at 591-5210 or dstenger@cityoftacoma.org.

DS

c: Peter Huffman, Assistant Director

Attachment

*Note – These amendments show all of the changes to the *existing* text of the Comprehensive Plan. The sections included are only those portions of the plan that are associated with these amendments. New text is underlined and text that is deleted is shown in ~~strikethrough~~.

Generalized Land Use Element

Section I – General Growth and Development

* * *

Urban Aesthetics and Design

Urban aesthetics and design encompasses all aspects of the physical built environment. Quality design can provide a sense of place and instill pride in the community.

Intent

The built environment defines the habitability and the well being of community. It is therefore the intent of the City to promote and inspire design excellence. New development that is well designed and redevelopment which emphasizes the importance of aesthetics in design with respect to scale, proportion, orientation and the use of materials, will further enhance Tacoma's built environment.

Positive urban design and architecture can enhance Tacoma's livability, the health of its residents, the natural and built environment, and encourage a sustainable and economically vibrant city. Tacoma's historic neighborhoods and business districts are also a vital character defining element within the city. Tacoma aspires to be:

- Pedestrian-oriented. The City understands the importance of human scale, pedestrian access and non-motorized circulation to the livability of the city.
- A desirable and inviting place to live, work and play. Public squares and assembly points provide areas for community activities and serve as focal points. Street furniture, landscaping, lighting and artworks are elements of the pedestrian environment and define the character of the streetscape. Rehabilitation of older buildings and contemporary infill creates visual interest and complexity.
- A safe place to live, work and play. Safety and security are major considerations. Functional urban design can increase the perception of safety by creating spaces that encourage positive human interaction, discourage criminal activities, and contribute to the appearance of a clean, well maintained built environment.
- A distinctive place. Tacoma's current and future character is and will be based on a combination of its unique physical setting (waterfront setting, marine views, topography and geology, flora and fauna, rivers and streams, mountain views, and climate), its history (historic structures, economies, activities and events), and its people (past and present, property owners, residents, public officials and employees, workers, developers, architects, etc.). The built environment is and should continue to be reflected by its setting and its people.

In addition, positive design is essential to Tacoma's strategic positioning as a vibrant, active place. The image of Tacoma as perceived by residents and visitors is in part based upon public and private development, the natural environment and the variety of activities and attractions available in which people can participate and enjoy. Contrast and harmony are qualities that provide interest to the design of public and private buildings. Tacoma's distinct character is a strategic asset that can be leveraged through compatible, high quality, new urban development.

Policies

LU-UAD-1 Development Standards
Craft development standards that are easy to use and administer and encourage quality site and building design consistent with the goals and policies herein. Refine development standards as needed to accomplish design goals per changing demographics, development conditions, and community interests.

LU-UAD-2 Design Review
Explore the development and use of a design review program that accomplishes the following objectives:

- Encourages desired types of development.
- Creates a review process that is predictable for all participants.
- Allows for the opportunity for public input.
- Provides flexibility in how developments can meet objectives.
- Focuses heightened levels of review on significant or key projects and/or locations
- Optimizes public safety by reducing opportunities for crimes against persons and property

LU-UAD-3 Distinct Character and Identity of the City
Enhance the distinct character and identity of Tacoma by:

- Emphasizing pedestrian-oriented design at all levels of design (city, neighborhood, site, and building).
- Recognizing and retaining existing scale, proportion and rhythm and using compatible materials in new development and redevelopment.
- Embracing the natural setting and encouraging regional character in new development.
- Balancing the historic, working-class character of the community and its physical development with the community's desire to be progressive, innovative and accepting of new ideas and methods.

LU-UAD-4 Public Projects
The City should lead by example, ensuring that public and publicly-funded projects exhibit a commitment to high-quality design and aesthetics, environmental sustainability, development compatibility and sensitivity, pedestrian-orientation and preservation of important cultural and historic resources.

Recent development along the Foss Waterway is a good example of enhancing the unique character of the City.

LU-UAD-5 Design Quality
Promote design quality by creating clear and detailed standards that are crafted to encourage desired types of development. Standards should include guidance for:

- Compatible site design.
- Attractive pedestrian pathways and spaces.
- Safe and connected vehicular access.
- Compatible and attractive building massing and design.
- Integration of building details.
- Use of durable, high quality materials.
- Landscape design
- Signage design
- Safety and security

LU-UAD-6 Design Awards
Consider the creation of a design awards program that recognizes quality design.

LU-UAD-7 Design Competitions
Consider design competitions to seek design innovation for common and/or desired types of development.

LU-UAD-8 Viewpoints, Gateways, and Focal Points
Designate key viewpoints, gateways, and focal points in the city. Create policies, standards, and guidelines that address the design and treatment of viewpoints, gateways and focal points to reinforce and/or enhance the unique character of neighborhoods and the city.

Encourage sustainable design techniques in new construction.

LU-UAD-9 Environmental Quality and Sustainable Design

Reduce the impact of new development on the environment and promote sustainable design within the city. Specifically:

- Promote the use of sustainable design techniques in the design of public (streets, parks, and buildings) and private development. Encourage sustainable design in buildings, including energy efficiency, water quality and efficiency, use of sustainable materials, etc. Promote certification programs such as Leadership in Energy and Environmental Design (LEED) and Built Green.
- Encourage the use of vegetation for landscaping for buffer, screening, environmental and beautification purposes. Encourage the use of drought tolerant species to conserve water and ensure plant survival.
- Encourage reuse of existing buildings and new development that minimizes waste-stream production.

LU-UAD-10 Streetscape Design

Create streetscape design standards that will provide safety and accessibility for all modes. The standards should promote pedestrian activity by ensuring wide sidewalks, street trees, landscaping, crosswalks, and other pedestrian amenities. Emphasize/encourage individualized streetscape design to reinforce/enhance the character of individual neighborhoods within the city.

LU-UAD-11 Pedestrian Access and Orientation

Improve the pedestrian environment by making it easier, safer, and more comfortable to walk in Tacoma. Provide convenient and attractive pedestrian, bicycle, and transit linkages. Create standards for:

- Sidewalk/pathway widths and design.
- Weather protection.
- Building location and orientation.
- Pedestrian-oriented space.
- Pedestrian-oriented façades.
- Internal pedestrian circulation.

Design streets to balance the needs of all users and reinforce/enhance the character of the neighborhood and city.

Design to promote pedestrian activity.

LU-UAD-12 Open Space and Amenities
Provide a diverse array of vibrant and usable open spaces including large and small parks, plazas, playgrounds, green spaces, and gathering spaces. Specifically:

- Enhance existing open space in the City by improving the function, amenities, maintenance, landscaping, programming, etc.
- Continue to add additional open space and other public amenities throughout the city.
- Create detailed design guidelines for open space to ensure that new open space is safe, accessible, appealing, and contributes to environmental quality.
- Create design standards that encourage the development of plazas, public atriums and other pedestrian-oriented spaces in conjunction with new development.
- Create design standards that provide for usable and attractive on-site open space for residential uses. This includes private yards for lower intensity residential uses and a variety of spaces for higher intensity multifamily uses (including common areas, private balconies).
- Encourage the use of artwork and detailed design elements within and adjacent to public spaces.
- Encourage pedestrian amenities such as hillside assist features (escalators) and street furniture to provide pedestrian convenience and comfort.

LU-UAD-13 Internal Vehicular Access and Parking
Promote site design techniques that provide for motorist safety and convenience while minimizing vehicular access and parking area impacts on the pedestrian environment. Ensure that parking does not dominate the urban realm by creating standards to locate parking to the side and rear of buildings and to screen with landscaping. Developments should provide a safe and convenient network of vehicular circulation that connects to the surrounding road/access network and provides opportunities for future connections to adjacent parcels. For large developments, encourage site design that breaks down large parking areas into smaller units to promote pedestrian activity.

LU-UAD-14 Beautification Efforts
Encourage the enhancement of residential, commercial and industrial areas through tree planting, underground wiring programs, clean up, maintenance improvements and other methods.

LU-UAD-15 Neighborhood Design
Aid neighborhoods in preserving and enhancing their individual identity.

Safer By Design

Crime prevention and ensuring public safety are two important design objectives. Crime and the fear of crime have a serious impact on the quality of life of residents, employees, and visitors. Creating an environment in which people feel safe and opportunities for crime are reduced can be achieved through the application of safety-oriented design principles. One such program is Crime Prevention Through Environmental Design (CPTED) which promotes the use of four fundamental strategies: natural surveillance, natural access control, territorial reinforcement and maintenance. These principles are intended to work in concert with each other and be balanced against other equally important design objectives. For example, a site that is built with a tall fence to enhance territoriality could undermine the ability for natural surveillance.

CPTED is different from community policing in that it encourages the *prevention* of crime through proper design while policing is the response to incidents and results in identification of criminals and arrests. CPTED is based on the idea that if an area is designed well and used appropriately, the likelihood of the area being targeted for crime may be reduced.

One of the key constraints of CPTED may be the cost of implementation. Although many CPTED strategies are relatively cost-free and easy to accomplish in a short time frame, other aspects may require significant investments of capital and phased implementation over several years. CPTED requires trained staff and an educated public to realize its full potential as a crime prevention methodology. Implementation priority should be first placed on public spaces, particularly on the design and construction of major public improvements. Properly implemented safer-by-design practices can yield long term cost savings for the City by reduced management and maintenance costs as well as reduced calls for service.

Natural Surveillance

The fundamental premise is that people feel safe in public areas when they can see what others are doing and others can see what they are doing. Simple ways to achieve this strategy include using windows along a street frontage and providing unobstructed sight lines by properly controlling landscaping.

Natural Access Control

Physical and symbolic barriers can be used to channel the movement of people to appropriate areas and discourage them from entering and using areas where they aren't intended to be. Access control tends to rely on doors, shrubs, fences, topography, lighting, and other physical improvements.

Territorial Reinforcement

Clear definition of what is public space and what is private space is a way of expressing ownership and the respect of the territory of others. People feel comfortable in and are more likely to visit places that feel owned and cared for.

Maintenance

The more dilapidated and deteriorated an area, the more likely the area is to attract unwanted activities. Maintenance also needs to be considered at the design stage, as the choice of materials and finishes will impact the ability to maintain the site over time.

LU-UAD-16 Enhance Public Safety
Seek to reduce opportunities for crime by considering CPTED principles and strategies in the planning, design, development, and maintenance of public spaces.

LU-UAD-17 Lead By Example
Demonstrate best practices on existing City owned facilities by undertaking CPTED site assessments and safety audits and scheduling necessary improvements to improve community safety.

LU-UAD-18 Public Spaces
Apply safety-oriented design principles to new public spaces or major improvements to existing spaces to foster positive social interaction among users of the space.

LU-UAD-19 Community Safety
Ensure that issues of community safety and crime prevention are adequately considered in land use, development, and redevelopment activities.

LU-UAD-~~16~~20 Design for Safety
Design buildings and sites to promote safety of residents, workers, shoppers and other visitors. Integrate ~~Crime Prevention Through Environmental Design (~~CPTED~~)~~ principles as appropriate into the City's design and development standards~~. for new development~~.

LU-UAD-21 Development Thresholds
Establish thresholds for using CPTED strategies in development review and approval. Focus should be given to projects located in areas where community safety is an issue and on spaces associated with private development that are intended for use by the general public.

LUA-UAD-22 Advocacy and Education
Promote an understanding of the benefits of CPTED among design, development, and investment interests.

LUA-UAD-22 Safer Development
Work with the development industry to utilize the voluntary integration of CPTED design principles for new development and substantial improvements to existing projects, particularly for multifamily housing and projects that attract large numbers of people.

LUA-UAD-23 Surveillance
Promote natural surveillance through the design and placement of features on sites in ways that provide opportunities for people to observe the space, uses, activities, and people around them. Areas can be designed to foster observation through building orientation, the placement of windows, entrances and exits, the design of parking areas, the location of utility and refuse containers, and the use of low and non-opaque landscaping screening and fencing.

Provide for a diverse array of public and private open spaces to enhance the livability and character of the city.

LUA-UAD-24 Access Control
Guide the movement of people to and from buildings and spaces by placement of real or perceived barriers to discourage access to dark and unmonitored areas and to encourage access at designated entrances and exits. Use features such as gates, fencing, walls, landscaping, pavement treatment, and lighting.

LUA-UAD-25 Territoriality
Clearly delineate private spaces from public and semipublic spaces using techniques such as paving treatments, landscaping, art, signage, screening, and fencing.

LUA-UAD-26 Maintenance
Maintain landscaping, lighting and other features in public spaces to ensure the continued effectiveness of safety-oriented design components.

LU-UAD-~~17~~27 Service and Utility Elements
Locate and design service and utility elements to minimize negative impacts on the pedestrian environment, visual character, and overall livability of developments. Create design standards that address the design and location of service delivery areas, trash and recycling areas, utility meters, electrical conduit, rooftop mechanical equipment, and other similar elements.

LU-UAD-~~18~~28 Utility Lines
Encourage the agencies responsible for utility lines to work together to achieve the long-range goal of undergrounding all utility lines.

LU-UAD-19 Historic Preservation
Protect, preserve, and enhance historic resources throughout the city. Encourage appropriate design for contemporary infill in historic and established areas of the city by use of development standards regarding scale, rhythm, compatible materials, and streetscape. (Also see CH-HP policies in the Culture and History Element.)

Protect and build upon Tacoma's unique historic resources.

Agenda Item
C-1

OFFICE OF THE HEARING EXAMINER

CITY OF TACOMA

In the Matter of:

HIGHLANDS TWENTY, LLC (BASELINE ENGINEERING) REZONE, SITE PLAN, AND PRELIMINARY PLAT/RE-PLAT APPLICATIONS.

FILE NOS.: REZ2010-40000143220, SIT2010-40000149450, AND PLT2010-40000142992

ORDER GRANTING MOTION FOR RECONSIDERATION AND AMENDING CONDITION

THIS MATTER came before the undersigned Hearing Examiner for the City of Tacoma, Washington, on a motion brought by Highlands Twenty, LLC (Highlands) seeking amendment to the language of Condition 9 as set forth in the Hearing Examiner's Decision/Recommendation entered in the captioned matter on November 10, 2010.[1] Highlands, in its motion to amend condition language, sought to re-identify the times for completing soil testing and for completion of site remediation.

Both the Washington State Department of Ecology and Tacoma Building and Land Use Services have responded to Highlands' motion and agree that, under the facts of the case, the

[1] The referred-to condition was one of the mitigating measures set forth in the Mitigated Determination of Non-significance (MDNS) issued for the project by the Director of the Community and Economic Development Department.

City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3768
(253)591-5195 FAX (253)591-2003

proper time to present soil testing data would be prior to final plat approval and in regard to completion of the site remediation, such should occur prior to issuance of a final certificate of occupancy for each home. Accordingly, Condition 9 should be amended to read as follows:

9. SEPA

a. According to the Ecology facility/Site Atlas, the site is located within the Tacoma Smelter Plume with an area that exceeds 20.0 ppm for arsenic levels. Prior to issuance of final plat approval, the applicant shall demonstrate to the City of Tacoma, Building and Land Use Service (BLUS) Division that they have conducted soil testing for potential lead and arsenic contamination at the site. It must be demonstrated that the soils meet the Model Toxic Control Act (MTCA) standards for residential uses, or that they have successfully entered into the MTCA Voluntary Clean-up Program with Ecology. Proof of entering into the Voluntary Cleanup Program shall include a written opinion letter from Ecology identifying that in the opinion of the agency, the proposed cleanup action will be sufficient to meet the requirements of MATCA. The plan for the development permit shall be consistent and integrated with the plan reviewed and deemed consistent with MTCA by Ecology.

b. Upon completion of the activities covered by the approved cleanup action and development permit, the applicant shall provide to BLUS Division, a "No Further Action Determination" from Ecology indicating that the cleanup meets the requirement of MTCA for characterizing and remediating the contamination on the developed portions of the site, and that no further remedial actions are required. Final certificate of occupancy for the development of the proposed sites shall not be issued for the project until the "No Further Action Determination" from Ecology has been provided to the City of Tacoma.

c. The applicant shall comply with the regulation regarding worker protection for contaminants. The applicant shall contact the

City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3768
(253)591-5195 FAX (253)591-2003

Washington State Department of Labor and Industries for minimum standards and requirements.

d. The proposal shall comply with all applicable requirements contained in the City of Tacoma Surface Water Management Manu, *Tacoma Municipal Code* 12.08 and the Public Works Design Manual in effect at the time of vesting land use actions, building or construction permitting.

SO ORDERED this 22nd day of December, 2010.

RODNEY M. KERSLAKE, Hearing Examiner

City of Tacoma
Office of the Hearing Examiner
Tacoma Municipal Building
747 Market Street, Room 720
Tacoma, WA 98402-3768
(253)591-5195 FAX (253)591-2003

Agenda Item C-2

City of Tacoma

Memorandum

TO: Tacoma Planning Commission

FROM: Jeff H. Capell, Deputy City Attorney

SUBJECT: **Appearance of Fairness Doctrine Follow Up**

DATE: December 21, 2010

As stated at the Planning Commission meeting on December 15, 2010, the Planning Commission is usually not in the role of decision maker, but rather fills a vital role in making recommendations to the City Council so that it can make informed decisions. As a result, the Appearance of Fairness Doctrine does not apply to the Planning Commission in the traditionally applied sense.[1] As a result, this Memo is intended to simply provide the Commission with a summary of the doctrine itself for informational purposes.

Any examination of the Appearance of Fairness Doctrine easily begins with the underlying policy, as stated by the U.S. Supreme Court, that "An impartial and disinterested decision maker is a basic requirement of due process and the appearance of fairness doctrine." Republican Party of Minnesota v. White, 536 U.S. 765, 813, 122 S.Ct. 2528, 153 L.Ed.2d 694 (2002); Tumey v. Ohio, 273 U.S. 510, 532, 47 S.Ct. 437 (1927).

In Washington State, however, courts have somewhat limited the doctrine by saying that "The appearance of fairness doctrine [as applied in Washington] does not protect constitutional rights" such as the right to due process. Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation Council, 165 Wn.2d 275, 313-317 (2008) *citing* City of Bellevue v. King County Boundary Review Bd., 90 Wn.2d 856, 863, 586 P.2d 470 (1978) ("Our appearance of fairness doctrine, though related to concerns dealing with due process considerations, is not constitutionally based.").

That leaves the doctrine, in Washington, to focus strictly on the impartiality of the decision maker. The test for determining the required impartiality is to examine whether a disinterested person, having been apprised of the totality of the personal interest on the decision maker's part, would be reasonably justified in thinking that partiality may exist. Swift v. Island County, 87 Wn.2d 348, 361, 552 P.2d 175 (1976).

The party challenging a decision maker in a quasi-judicial proceeding "[m]ust present evidence of actual or potential bias to support an appearance of fairness claim." Opal v. Adams County, 128 Wn.2d 869, 890, 913 P.2d 793 (1996) *citing* State v. Post, 118 Wn.2d 596, 619, 826 P.2d 172, *amended*, 837 P.2d 599 (1992). If a violation of the doctrine is found, the decision made may be overturned.

---

[1] One exception would be as mentioned on Dec. 15th where the Commission has authority to deny designation on the Tacoma Register of Historic Places under TMC 13.07.060 C.5. In this role, my advice would be for Commissioners to follow the structures of the appearance of fairness doctrine and avoid *ex parte* contacts having to do with the decision.

The recent case of State v. Gamble, 168 Wn.2d 161, 225 P.3d 973 (2010), has expounded on the rule from the Opal and Post cases above with the following:

> Under the appearance of fairness doctrine, a judicial[2] proceeding is valid only if a reasonably prudent, disinterested observer would conclude that the parties received a fair, impartial and neutral hearing. The law goes farther than requiring an impartial judge; it also requires that the judge ***appear*** to be impartial. Evidence of a judge's actual or potential bias must be shown before an appearance of fairness claim will succeed. Under the Code of Judicial Conduct, designed to provide guidance for judges, judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned. [emphasis added]

As a final addition to the rule and to what was conveyed to the Commission on December 15, you should be aware that the State Supreme Court, in the Residents Opposed to Kittitas Turbines case cited above, has opined on the role of the Appearance of Fairness Doctrine as it relates to "[m]embers of commissions" with the role of conducting fair and impartial fact-finding hearings…," as opposed to a strict decision making function, by stating that commission members:

> "[m]ust, as far as practical, be open-minded, objective, impartial, free of entangling influences, capable of hearing the weak voices as well as the strong and must also give the appearance of impartiality." Narrowsview Pres. Ass'n v. City of Tacoma, 84 Wn.2d 416, 420, 526 P.2d 897 (1974). The doctrine applies only "as far as practical" to ensure fair and objective decision making by administrative bodies. Id. The practicality of the appearance of fairness will largely be determined by the procedures being applied.

Based on the above, my recommendation would be that if Planning Commission members are going to entertain contacts[3] outside of the public hearing arena, even regarding their role as a fact-finder and recommendation-maker, that such contacts, "as far as practical" be conducted in a manner that is, and appears to be, fair, objective and impartial in all respects.

---

[2] And this should apply to a quasi-judicial decision rendering process as well.
[3] And again, nothing that I know of requires you to do so.

Agenda Item C-3

City of Tacoma
Public Works Department

Memorandum

TO: Tacoma Planning Commission

FROM: Jennifer Kammerzell, Engineer

SUBJECT: Request for Proposed Arterial Reclassification – 34th Street between Pacific and McKinley

DATE: December 22, 2010

At the December 14, 2010 Planning Commission meeting,Commissioner Nutsch asked staff to analyze the feasibility of reclassifying East 34th Street between Pacific and McKinley Avenue as a residential street. This portion of East 34th Street is currently classified as a Collector Arterial. Collector arterials are generally low to moderate-capacity roads which collect and lead traffic from lower capacity residenital streets to activity areas and larger arterials. Public Works Engineering has analyzed East 34th Street in the past. Due to the volume of traffic, need as a primary emergency response route, and limited east-west connections between South G Street and McKinley Avenue, East 34th Street meets the characteristics of an arterial and currently serves an important function in the City's arterial network. The City understands that speeding and restricted parking are a concern for the neighborhood, specifically between Pacific and McKinley Avenue. The City is looking for funding opportunities to make improvements to East 34th and has spoken with several neighbors regarding phasing improvements, such as bulbouts or pedestrian crossings.

At this time, staff does not recommend reclassifying East 34th Street. If you have any questions, please feel free to contact me at 591-5511.