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 and Public Hearing

TIME: Wednesday, March 16, 2011, 4:00 p.m.
(Public Hearing begins at approximately 5:00 p.m.)

PLACE: Council Chambers, Tacoma Municipal Building, 1st FL
747 Market Street, Tacoma, WA 98402

Change of Location
(NOT in Room 16)

A. CALL TO ORDER

B. QUORUM CALL

C. APPROVAL OF MINUTES – N/A

D. GENERAL BUSINESS

(4:05 p.m.) 1. 2011 Annual Amendment – Review of Testimony

Description:	Overview of testimony received at the March 2, 2011 public hearing and through the comment period ending on March 11, concerning proposed amendments to the Comprehensive Plan and Land Use Regulatory Code for 2011
Actions Requested:	Discussion, Direction
Support Information:	To be distributed at meeting
Staff Contact:	Donna Stenger, 591-5210, dstenger@cityoftacoma.org

(4:20 p.m.) 2. Master Program for Shoreline Development

Description:	Review of proposed approach to non-conforming uses and structures in the shoreline, proposed development regulations for log rafting and storage, and the wetland buffer requirements for Wapato Lake, which is designated as a Wetland of Local Significance.
Actions Requested:	Review, Comment, Direction
Support Information:	See "Agenda Item GB-2"
Staff Contact:	Steve Atkinson, 591-5531, satkinson@cityoftacoma.org

E. PUBLIC HEARING

(5:00 p.m.) **1. Billboard Regulations**

Description:	Conduct public hearing on the proposed code revisions pertaining to billboards
Actions Requested:	Receive testimony; Keep record open through March 25, 2011
Support Information:	See "Agenda Item PH-1"
Staff Contact:	Shirley Schultz, 591-5121, shirley.schultz@cityoftacoma.org

F. COMMUNICATION ITEMS

1. E-mail from Maryanne Bell, March 3, 2011, regarding Proposed Old Town Historic Overlay – *"Agenda Item C-1"*

G. COMMENTS BY LONG-RANGE PLANNING DIVISION

H. COMMENTS BY PLANNING COMMISSION

I. ADJOURNMENT

Agenda Item GB-2

City of Tacoma
Community and Economic Development Department

TO: Planning Commission

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

SUBJECT: Shoreline Master Program Update

DATE: March 9, 2011

On March 16th, staff will be presenting a draft approach to addressing non-conforming uses and structures in the shoreline. A non-conforming use is a use or development that was lawfully constructed or established but does not conform to present Shoreline Master Program (SMP) requirements. A non-conforming use may be a use that was previously permitted in a shoreline district that would no longer be allowed. A non-conforming structure is one that does not meet development standards such as height or setback requirements. According to the Washington Administrative Code Guidelines, State rules for non-conforming uses (WAC 173-27-080) apply *unless* local governments have adopted different master program provisions.

In addition, staff will present draft development standards for log rafting and storage and a discussion of potential wetland buffer changes for Wapato Lake. Wapato Lake is currently designated as a Wetland of Local Significance with a 300' wetland buffer. Due to requirements that local jurisdictions incorporate all associated wetlands and their buffers into shoreline jurisdiction, a 300' buffer would expand shoreline review and permitting beyond the standard 200' jurisdiction area, which would bring additional developed properties under the purview of the Shoreline Management Act and the Master Program. Staff will be seeking direction from the Planning Commission on these issues.

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

- Draft provisions pertaining to non-conforming uses, structures and lots;
- Department of Ecology summary of State rules for non-conforming uses per WAC 173-27-080;
- Department of Ecology's *Shoreline Master Program Handbook* section addressing existing development; and
- Draft Development Regulations for Log Rafting and Storage.

If you have any questions on any of the attached materials, please contact Stephen Atkinson at 591-5531 or satkinson@cityoftacoma.org.

DS:sa

Attachments

c. Peter Huffman, Assistant Director

1.1 Non-Conforming Uses and Development

A. Nonconforming Uses

1. Nonconforming uses include shoreline uses which were lawfully established prior to the effective date of the Act or this Master Program, or amendments thereto, but which do not conform to the present regulations or standards of this Program. The continuance of a nonconforming use is subject to the following standards:

a. Change of ownership, tenancy, or management of a nonconforming use shall not affect its nonconforming status, provided that the use does not change or intensify;

b. Additional development of any property on which a nonconforming use exists shall require that all new uses conform to this Master Program and the Act;

c. If a nonconforming use is converted to a conforming use, no nonconforming use may be resumed;

d. A nonconforming use which is moved any distance must be brought into conformance with the Master Program and the Act;

e. A nonconforming use may convert to another nonconforming use of a similar intensity, provided the conversion does not increase any detrimental impact to the shoreline environment;

f. When the operation of a nonconforming use is vacated or abandoned for a period of 12 consecutive months or for 18 months of any 3-year period, the nonconforming use rights shall be deemed extinguished and the future use of such property shall be in accordance with the permitted and conditional use regulations of the Shoreline District in which it is located;

g. If a nonconforming use is damaged by fire, flood, explosion, or other natural disaster and the damage is less than seventy-five percent (75%) of the replacement cost of the structure or development, such use may be resumed at the time the building is repaired; Provided, such restoration shall be undertaken within 18 months following said damage;

h. If a non-conforming use is damaged by fire, flood, explosions, or other natural disaster and the damage exceeds seventy-five percent (75%) of the replacement cost of the original structure or development, all reconstructed or restored structures shall conform to the provisions of this Program and all applicable City codes. However, any residential uses, including multifamily, may be reconstructed up to the size, placement and density that existed prior to the catastrophe.

i. Normal maintenance and repair of a nonconforming use or structure may be permitted provided all work is consistent with the provisions of this Program.

B. Nonconforming Structures

1. Nonconforming structures includes shoreline structures which were lawfully constructed or placed prior to the effective date of the Act or the Master Program, or amendments thereto, but which do not conform to present bulk, height, dimensional, setback, or density requirements. Nonconforming structures may continue even though the structures fail to conform to the present requirements of the district in which they are located. A nonconforming structure may be maintained as follows:

    a. If a nonconforming structure or development is damaged by fire, flood, explosion, or other natural disaster and the damage is less than seventy-five percent (75%) of the replacement cost of the structure or development, it may be restored or reconstructed to those configurations existing at the time of such damage, provided:

        i. The reconstructed or restored structure will not cause additional adverse effects to adjacent properties or to the shoreline environment; and

        ii. The rebuilt structure shall not expand the footprint or height of the damaged structure;

        iii. No degree of relocation shall occur, except to increase conformity or to increase ecological function, in which case the structure shall be located in the least environmentally damaging location possible;

        iv. The submittal of applications for permits necessary to restore the development is begun within eighteen (18) months of the damage. The Land Use Administrator may waive this requirement in situations with extenuating circumstances; and

        v. The reconstruction is commenced within one (1) year of the issuance of permits. The Land Use Administrator may allow a one (1) year extension.

    b. Except where otherwise specified in this Program, if a non-conforming structure or development is damaged by fire, flood, explosions, or other natural disaster and the damage exceeds seventy-five percent (75%) of the replacement cost of the original structure or development, all reconstructed or restored structures shall conform to the provisions of this Program and all applicable City codes. However, any residential structures, including multifamily structures, may be reconstructed up to the size, placement and density that existed prior to the catastrophe, so long as the conditions in 2.5.B(1)(a) are met.

    c. A nonconforming building or structure may be repaired and maintained as provided in and as limited by this section. The maintenance of such building or structure shall include only necessary repairs and incidental alterations, which alterations, however, shall not extend the nonconformity of such building or structure; provided that necessary alterations may be made as required by other law or ordinance.

d. Changes to interior partitions or other nonstructural improvements and repairs may be made to a nonconforming structure; provided that the cost of the desired improvement or repair does not exceed one-half of the replacement cost of the nonconforming structure over any consecutive five-year period, with replacement cost determined according to the Building Code.

2. A building or structure, nonconforming as to the bulk, dimensional and density requirements of this title, with a conforming use, may be added to or enlarged if such addition or enlargement conforms to the regulations of the shoreline environment and district in which it is located. In such case, such addition or enlargement shall be treated as a separate building or structure in determining conformity to all of the requirements of this Program.

3. The Administrator may allow a one time expansion of nonconforming overwater structures up to ten (10) percent of the total square footage of the structure, provided there is no increase in overwater area or shading, or overall height of the structure and the expansion is consistent with all other provisions of this Program. The applicant shall record notice on Title.

C. Nonconforming Lots

1. Undeveloped lots, tracts, parcels, or sites located landward of the ordinary high water mark that were established prior to the effective date of the Act and the Master Program, or amendments thereto, but that do not conform to the present lot size or density standards are considered nonconforming lots of record and are legally buildable subject to the following conditions:

a. All new structures or additions to structures on any nonconforming lot must meet all setback, height and other construction requirements of the Master Program and the Act.

b. Parcel modifications, such as a boundary line adjustment, property combinations, segregations, and short and long plats shall be allowed, without need for a variance, to modify existing parcels that are nonconforming to minimum lot size requirements, such as minimum area, width or frontage, as long as such actions would make the nonconforming parcel(s) more conforming to the minimum lot size requirements and would not create any new or make greater any existing nonconformities.

From Shoreline Use Standards, 6.1.2(5)

2. At the time of adoption of this Program, legally established uses and/or structures located outside a critical area or buffer and upland of the OHWM, shall be considered conforming. Expansion, modification, or change of said use or structure shall be permitted in accordance with the requirements of this Program.

From Marine Buffer Standards, 6.4.3.B (4)

3. At the time of adoption of this Program, existing uses that were legally established and do not conform to the marine buffer standards, shall be considered conforming for the purposes of this Master Program. Expansion or modification of said use/structure shall be permitted in accordance with the requirements of this Program. In addition, non-water-oriented uses that do not conform to the marine buffer standards shall be subject to the restrictions below:

    a. If the non-water-oriented use is converted to a water-oriented use, then all future uses shall be in accordance with the permitted and conditional use regulations of the Shoreline Environment and District in which it is located;

    b. The non-water-oriented use may convert to another non-water-oriented use of a similar intensity, provided the conversion does not increase any detrimental impact to the shoreline environment;

    c. When the operation of the non-water-oriented use is vacated or abandoned for a period of 12 consecutive months or for 18 months of any 3-year period, the future use of such property shall be in accordance with the permitted and conditional use regulations of the Shoreline District in which it is located;

    d. If the use or structure is damaged by fire, flood, explosion, or other natural disaster and the damage is less than seventy-five percent (75%) of the replacement cost of the structure or development, such use may be resumed at the time the building is repaired; Provided, such restoration shall be undertaken within 18 months following said damage;

    e. If the use or structure is damaged by fire, flood, explosion, or other natural disaster and the damage is more than seventy-five percent (75%) of the replacement cost of the structure or development, the replacement structure and use shall be in accordance with the use and development provisions of this Master Program;

    f. The Administrator may allow a one time expansion landward of the OHWM, or laterally along the shoreline parallel to the OHWM, of up to ten (10) percent of the total square footage of the primary structure, provided the expansion is consistent with all other provisions of this Program and the expansion does not encroach any further on a critical area or marine shoreline. The applicant shall record notice on Title and re-vegetate an equivalent area of marine or critical area buffer in accordance with the landscaping requirements of Chapter 6.7.2.

    g. Normal maintenance and repair may be allowed provided all work is consistent with the provisions of this Program.

From Boating Facilities, 7.3.2.D

4. Legally permitted covered moorage and boathouses that were in lawful existence at the time of passage of this Program, or subsequent amendment to this program, may continue as permitted/conforming structures subject to the requirements of this Master Program and the following restrictions:

    a. Existing covered moorage and boathouses shall not increase overwater coverage;

b. All work and materials shall be performed using Best Management Practices (BMPs);

c. Existing structures may be repaired and maintained provided the amount of cover does not increase and light transmission is improved to meet state and federal standards;

d. Walls and fences for covered moorage shall be prohibited above deck or float level, except that handrails which are open in nature and not higher than 42 inches above the deck or float may be permitted;

e. Existing covered moorage and boathouses may be relocated and reconfigured within an approved marina if the relocation and reconfiguration does not result in an increase in overwater coverage and the new location results in an improvement to shoreline ecological functions.

DEPARTMENT OF ECOLOGY
State of Washington

http://www.ecy.wa.gov

Shoreline Master Programs (SMPs)

Non-conforming uses

A non-conforming use is a use or development that was **lawfully** constructed or established but does not conform to present SMP requirements. These "grandfathered" developments may continue as long as they are not enlarged, intensified, increased, or altered in a way that increases the nonconformity.

State rules for non-conforming uses (WAC 173-27-080) apply *unless* local governments have adopted different master program provisions.

Enlarging uses | Abandoned uses | Repairs | Substandard lots | Variances | Changing uses | Moving structures | Determining age of uses | Other pre-existing uses | Uses built before 1969

Enlarging or expanding a nonconforming use

A non-conforming uses may be **enlarged or expanded** under very limited circumstances. Nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances upon approval of a conditional use permit.

It is sometimes important to distinguish between a nonconforming structure with a conforming use and a nonconforming use. If a house is located in an environment that allows residential use but is closer to the water than the environment designation allows, it may be expanded as long as the expansion does not further intrude on the setback. (A further intrusion may be authorized by a variance if the criteria can be met.) Expansion of a structure that houses a nonconforming use cannot be authorized by these provisions or by variance.

If an existing use conforms with SMP use regulations but does not conform with SMP setback, height, or density requirements the use may be enlarged or expanded *if* the extent of non-conformity is not increased.

Abandoned uses

Nonconforming uses are considered **abandoned** if they are discontinued for more than twelve consecutive months or for twelve months during any two year period. The "grandfathered" rights expire regardless of the owner's intent to abandon or not.

Any subsequent use must conform to the requirements of the SMA and SMP. Similarly, a nonconforming use may not be changed to another nonconforming use or moved any distance within the shorelines of the state.

Repairing damaged nonconforming uses

If a nonconforming use is damaged to an extent not exceeding 75% replacement cost of the original structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, so long as:

- the applicant applies for permits needed to restore the development within six months of the date the damage occurred;
- all permits are obtained; and
- the restoration is completed within two years of permit issuance.

Substandard lots

A pre-existing lot or parcel that is substandard with respect to lot size or density requirements may be developed providing it meets the other requirements of the SMA and SMP. A reasonable use of the property should be allowed based on the characteristics of the site. Easing of standards other than lot size or density, for example building setbacks, would require a variance permit. Typical situations of nonconforming developments are an old boat repair yard or industrial warehouse located in a conservancy environment; or a residence encroaching within established SMP setbacks.

Approved variances

A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.

Changing uses of nonconforming structures requires a CUP

A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:

- No reasonable alternative conforming use is practical; and
- The proposed use will be at least as consistent with the policies and provisions of the act and the master program and as compatible with the uses in the area as the preexisting use.

In addition conditions may be attached to the permit to assure compliance with the master program and to assure that the use will not become a nuisance or a hazard.

Moving a nonconforming structure

A nonconforming structure which is moved any distance must be brought into conformance with the applicable master program and the act.

Determining the age of a development

Determining exactly when a development, such as a bulkhead, was initially built, can be a difficult task. While technically it is the applicant which must prove compliance with the regulation, the practical situation is that usually the local government must look into this to be sure of the situation. Evidence such as assessor's records, recorded deeds or other documents, historical photos, other permit records *(e.g. building, HPA, short or long plat, etc.)* or testimony from contractors, neighbors, officials, etc.) can be crucial in proving the date of construction or initial use.

Noncomforming uses and CUPs

The criteria for allowing a Conditional Use Permit (CUP) in 173-27-150(4) prohibits prohibited uses through a CUP. However, the SMA section on nonconforming development in 173-27-080(6) allows it. At first blush, this appears to be a conflict. However, the purpose of the nonconforming use rule is to provide reasonable use of a legally existing non-conforming building when no more conforming use can be practically expected to make use of the structure. This is a very limited exception under very limited circumstances but is necessary to assure that regulations do not either overly compromise policy in order to accommodate some particular situation or overregulate and result in a "taking" of private property.

Pre-existing uses

If a shoreline development predates the SMA or a local SMP *("pre-existing uses")* is consistent with the SMP, permits are only required if new substantial development is proposed.

When the use consists of ongoing development activities, such as a gravel mine, the project requires an "active" (unexpired) shoreline substantial development permit throughout the life of the project. If the use of a pre-existing development is proposed to be changed the new use must be consistent with the SMP. If the proposed use is a conditional use in the master program then a conditional use permit is required whether or not new development is required to establish the use.

Structures placed in navigable waters before 1969

In RCW 90.58.270, the SMA specifically recognizes one class of pre-existing use, in declaring that "Nothing in this statute shall constitute authority for requiring or ordering the removal of any structures, improvements, docks, fills, or developments placed in navigable waters prior to December 4, 1969." This language was a response to the State Supreme Court's decision in Wilbour v. Gallagher, in which the court held that fill placed in Lake Chelan violated the public's right of navigation under the public trust doctrine.

For more information

Law: RCW 90.58.270
Rule: WAC 173-27-080

For specific information about a city or county permit process, visit the Status of Local Shoreline Master Programs (SMPs) web page, or contact a shoreline specialist at the appropriate Ecology regional office.

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Shoreline Master Program Updates

Existing development

Introduction

Many of Washington's 28,000 miles of shorelines are developed. Freight containers dock and unload at port facilities. Marinas provide in-water and dry storage for recreational and commercial boats. Public parks offer swimming beaches and boat docks. Single family homes and multifamily buildings offer their residents sunset views and quick access to the water. Commercial buildings feature retail shops and restaurants.

Development that's within shoreline jurisdiction (see SMP Handbook Chapter 5) falls under the authority of the Shoreline Management Act (SMA), which is enacted through local Shoreline Master Programs (SMP). As local governments update their SMPs and approve new regulations, questions arise about what will happen to existing structures and uses along shorelines.

Existing development is "grandfathered"

Existing legally established structures and uses are typically "grandfathered" with the approval of updated SMPs. That means they can continue to exist, be used, and be maintained and repaired. That's the case even if the updated SMPs include regulations that would not allow new development to be built exactly as existing development. For example, new buildings may need to be further away from the water, or new development projects may need to retain some vegetation onsite.

Existing development will remain in place and continue to be used. Homeowners can continue to live in their houses and grow vegetables in their gardens. Local governments sometimes allow existing "grandfathered" buildings to be expanded, although there may be limits to the size of the addition, the total square footage, new stories, or new impervious surfaces.

Ecology and local governments do not expect most existing development to be eliminated from the shoreline after new SMP regulations are adopted. Local governments may determine that certain development should be eliminated – for example, dilapidated buildings in hazard areas such as steep eroding slopes, older uses that are not compatible with surrounding uses, or abandoned structures.

There are different ways to address continuance and expansion of buildings, structures and uses that don't quite meet the new SMP regulations. This guidance discusses ways local SMPs can address existing development.

No net loss starts with existing development

The updated SMPs must include policies and regulations to achieve "no net loss" of shoreline ecological functions. The current conditions of the shorelines, including existing development, are the starting point or baseline for determining no net loss. It will be important to know what shoreline development looks like when options for managing existing development are considered. Are shoreline lots big or small? Are lots mostly covered by impervious surfaces? Are there big lawns? Is native vegetation present? Is the shoreline armored with bulkheads?

The no net loss goal needs to be part of the decision-making process regarding future development – both new development and expansion or renovation of existing development. Local governments need to consider how the impacts of future development will be mitigated.

Cities with densely developed shorelines may have fewer opportunities for achieving no net loss than cities or counties with less developed shorelines. With a densely developed shoreline, large buffers or setbacks may not be appropriate or feasible for various reasons -- small lots cannot accommodate them; large buffers would include many structures and impervious surfaces that interfere with buffer functions; regulations regarding structures within buffers could be complicated.

If the SMP allows existing structures to expand, how will the impacts of the expansion be mitigated?

- Is there room on the lots to plant native vegetation?
- Are rain gardens and other low impact development techniques feasible to mitigate stormwater impacts?
- Do wind and wave conditions allow for removal of bulkheads?
- Are there sites within the city for off-site mitigation if no space is available onsite? In some small cities, there are limited opportunities for off-site mitigation.

If new impacts cannot be avoided or mitigated, the no net loss standard may be difficult to achieve. Ecology cannot approve draft SMPs unless policies and regulations are designed to achieve no net loss.

Traditional approach

Traditionally, uses and structures that are not consistent with the new regulations have been categorized as "nonconforming" development. Nonconforming uses and development were lawfully constructed or established, but do not conform to current land use regulations or standards. The creation and regulation of nonconforming uses and development are old issues, beginning early in the 20th century, when municipalities started enacting zoning regulations.

After the SMA became law and SMPs were developed, the concept of nonconforming uses and development carried over to shorelines regulations. Not all of the SMPs adopted in the 1970s and early 1980s included clear provisions for nonconforming development. To ensure clarity, Ecology adopted nonconforming development regulations in 1986 in the former WAC 173-14. The regulations were revised and then incorporated in the updated WAC 173-27-080 in 1996. These regulations apply at the local level only if the local SMP does not address nonconforming development.

The term, "nonconforming use" is often used to mean both uses and development or structures. This guidance refers to use, development or structures, and lots.

- A **use** is nonconforming if it would not be approved under the current regulations. An example is a commercial use within an area designated for residential uses.
- A **development or structure** is nonconforming if it is located or configured in ways that do not meet current standards. A common example along shorelines is a single-family residence that does not meet current setback standards. In these cases, the **use** is consistent with the shoreline regulations, but the **structure** does not meet one or more standards in the existing regulations. Piers and docks that are larger than the current regulations allow also are examples of nonconforming structures.
- **Lots** that were legally established prior to the effective date of the current SMP and do not conform to the current lot size standards also are nonconforming.

Many SMPs define nonconforming structures, uses and lots; address expansion, changes in use, and rebuilding after fire or natural disaster; and set timelines for permitting, reconstruction and abandonment.

The regulation of nonconforming development sometimes is a contentious issue during SMP updates. The word "nonconforming" has raised concerns and confusion among property owners. Home owners seem to be the most worried about having a "nonconforming" label on their property. Their concerns and questions include:

- Can they repair and maintain their house?
- Will homeowners insurance cost more?
- Will they be able to get a loan for house repairs or improvements?
- Will potential buyers be able to get a mortgage?

Other property or business owners wonder if they can they continue the existing use, such as a retail shop, or will they need to close and move?

Nonconforming development is discussed in more detail later in this document.

Optional approaches

Some local governments are proposing different approaches as they update their SMPs. They would allow existing structures, particularly single family residences, to continue as conforming structures even though new shoreline setbacks, buffers, and other regulations in their Shoreline Master Programs would typically create nonconforming structures.

Non-traditional approaches to existing structures include:

- Excluding the footprint of the existing structures from the buffer or setback. Depending on the size of the buffer, it may wrap around the sides and rear of the structure but will not include the structure. On some urban shorelines, significant amounts of trees and vegetation exist behind houses, away from the water. Larger buffers may be appropriate in these areas.

- Stating in the SMP that all legally-established existing structures are conforming structures.

These approaches have not been tested before the hearings boards and the courts. Nonconforming development, however, has been the subject of many Shorelines Hearings Board and court cases, as discussed later in this document.

Local governments that use a nontraditional approach should keep a record of their decisions, including why they decided to use this approach, and how the impacts on the shoreline environment compare with the expected impacts from an SMP that creates nonconforming development through use of shoreline buffers or setbacks. Though there may be little or no differences in impacts, it's important to be able to show how you arrived at your decision, per the "show your work" mandate from the Growth Management Hearings Board.

Local governments using these approaches will need to provide a detailed inventory and assessment of buffer functions as a baseline to compare how the optional approach would affect the natural shoreline resources. For example, if along a specific shoreline reach, water quality filtration functions are determined to occur within 100 feet of the OHWM, future development impacts due to increased impervious surfaces must be related to specific water quality treatment measures. For example, low-impact development methods should offset the impact and yield no net loss of function from the current conditions.

Nontraditional approaches for existing development must be:

- Limited to structures only. Uses that would not be allowed under the new SMP should not be included.

- Limited to legally established structures only.

- Not applied to overwater residences. New overwater residences are not allowed under the SMP Guidelines, so existing overwater residences are nonconforming uses and nonconforming structures.

Ecology will require SMP regulatory language that is clear and precise and, at a minimum, include regulations to address the questions listed below. Otherwise, these issues will inevitably arise during implementation of the SMP. Regulations are needed to ensure consistency in treatment of these conforming structures so that the SMP does not default to WAC 173-27-080, Ecology's regulation for nonconforming development.

- Does the approach apply throughout shoreline jurisdiction or in specific environment designations or shoreline reaches only? It may not be appropriate in all shoreline areas.

- Is it limited to single family residences? Are appurtenances such as garages included? Are other residential-related uses such as sheds, driveways, or tennis courts included?

- Are water-related uses and nonwater oriented uses included?

- Are there clear procedures and criteria for considering when expansion of these structures would be allowed? Can the footprint be expanded? Will additional stories be allowed? Are there specific limits to expansion such as percent of existing square footage, maximum impervious surface, maximum square footage, etc.? Expansions toward the water or over the water should not be allowed.

- Will replacement in the event of a disaster such as a fire or earthquake be allowed? Is replacement limited to the footprint prior to the disaster?

- Will replacement for other reasons be allowed?

- Are expansions of structures on old fills that were placed waterward of the OHWM allowed or only allowed upland of the structure?

- How is view blockage from adjacent residences and upland streets and aesthetic consequences along the shoreline reach addressed?

- What mitigation will be required for expansion? This could include removing bulkheads, adding vegetation, improving stormwater facilities, or other measures. Mitigation measures should be carefully reviewed during the permit process to ensure they mitigate the impacts of the development.

- Are there regulations regarding retention and replacement of trees and other vegetation within buffers or elsewhere on the property?

- What setbacks and buffers will be put in place?

- What can be built in the buffer or setback?

- Is a shoreline conditional use permit or variance required for expansion? In what circumstance?

- How will the no net loss standard be met? How will the baseline ecological functions be retained or enhanced?

- How will abandoned structures be addressed?

A generalized statement in the SMP that simply says that all existing structures are conforming, or that simply excludes all existing structures from the buffer, and does not address the issues above, is not likely to be consistent with the no net loss standard.

Other things that local governments should think about:

- How would these alternative approaches within shoreline jurisdiction mesh with the nonconforming standards and other provisions of the zoning code, flood ordinances, building codes, and with the critical areas ordinance?

- Under some circumstances, local governments may determine certain structures to be nonconforming. For example, in some marine reaches, summer vacation cabins have been allowed in the past, but are now determined to be in hazardous slide areas. Local government may decide to designate such structures as non-conforming and not allow further expansion. In hazardous areas such as floodways, replacement of substantially damaged or destroyed structures may be required to be located out of the hazard area or in an area of significantly lower risk.

Nonconforming development

Local governments that choose one of the options discussed above, as well as local governments that will take the traditional approach toward nonconforming development in shoreline areas, both need nonconforming development language in the SMP.

Why would local governments that choose the nontraditional options need language in the SMP about nonconforming development?

- Some nonconforming uses, structures and lots may exist. Overwater residences are nonconforming uses and nonconforming structures. Uses that would not be allowed under the SMP are nonconforming uses; for example, a factory in a shoreline residential environment designation. Lots that do not meet the standards of the SMP are nonconforming lots.

- Variances may create nonconforming structures. The SMP should set the parameters for new development and redevelopment. Local government will need to decide whether any development that is outside those parameters and requires a variance will be nonconforming and will meet the no net loss requirement.

- The nonconforming language in WAC 173-27-080 will apply to any nonconforming uses, structures and lots if the SMP does not include nonconforming language.

The rest of this document provides background information on regulation of nonconforming uses and development in Washington. It includes the Department of Ecology standards for nonconforming uses and development, reviews relevant court and board cases, and provides examples of custom nonconforming provisions in Shoreline Master Programs (SMP) that Ecology has approved.

Washington statutes

Within the general framework of the Constitution and case law, Washington State local governments have significant flexibility for defining and addressing nonconforming uses and development. Historically, nonconforming uses and development have not been addressed by State legislation in Washington.

However, in March 2010, the Governor signed EHB 1653, which adds special provisions to the Growth Management Act (GMA) regarding existing uses in Shoreline areas. First, the bill clarifies that critical areas regulations adopted under the GMA remain in effect within shoreline jurisdiction until Ecology adopts a comprehensive SMP update or SMP amendment specifically related to critical areas.

The bill also provides that *legally existing structures and uses within critical areas buffers in shoreline jurisdiction are considered to be "conforming"* under the GMA, and may continue during the time the critical areas regulations remain in effect. Special provisions are included regarding change or expansion of these existing uses. More information is available at http://www.ecy.wa.gov/programs/sea/sma/news/reconsider.html)

Ecology shoreline regulations

The WAC regulations about nonconforming development apply at the local level only if the local SMP does not address nonconforming development. These standards reflect the basic policy expressed in several Washington court decisions and the policy of the SMA to provide for preferred uses and protect shoreline habitat.

For purposes of shoreline management under the SMA, nonconforming use or development is defined as:

> *" a shoreline use or development which was lawfully constructed or established prior to the effective date of the act or the applicable master program, or amendments thereto, but which does not conform to present regulations or standards of the program (WAC 173-27-080(1).*

The WAC also addresses nonconforming lots:

(10) An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with local and state subdivision requirements prior to the effective date of the act or the applicable master program but which does not conform to the present lot size standards may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of the applicable master program and the act.

The WAC nonconforming regulations are provided below.

WAC 173-27-080
Nonconforming use and development standards

When nonconforming use and development standards do not exist in the applicable master program, the following definitions and standards shall apply:

(1) "Nonconforming use or development" means a shoreline use or development which was lawfully constructed or established prior to the effective date of the act or the applicable master program, or amendments thereto, but which does not conform to present regulations or standards of the program.

(2) Structures that were legally established and are used for a conforming use but which are nonconforming with regard to setbacks, buffers or yards; area; bulk; height or density may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses.

(3) Uses and developments that were legally established and are nonconforming with regard to the use regulations of the master program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded, except that nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC 173-27-040 (2)(g) upon approval of a conditional use permit.

(4) A use which is listed as a conditional use but which existed prior to adoption of the master program or any relevant amendment and for which a conditional use permit has not been obtained shall be considered a nonconforming use. A use which is listed as a conditional use but which existed prior to the applicability of the master program to the site and for which a conditional use permit has not been obtained shall be considered a nonconforming use.

(5) A structure for which a variance has been issued shall be considered a legal

nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.

(6) A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:

(a) No reasonable alternative conforming use is practical; and

(b) The proposed use will be at least as consistent with the policies and provisions of the act and the master program and as compatible with the uses in the area as the preexisting use.

In addition such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the master program and the Shoreline Management Act and to assure that the use will not become a nuisance or a hazard.

(7) A nonconforming structure which is moved any distance must be brought into conformance with the applicable master program and the act.

(8) If a nonconforming development is damaged to an extent not exceeding seventy-five percent of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged, provided that application is made for the permits necessary to restore the development within six months of the date the damage occurred, all permits are obtained and the restoration is completed within two years of permit issuance.

(9) If a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming. A use authorized pursuant to subsection (6) of this section shall be considered a conforming use for purposes of this section.

(10) An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with local and state subdivision requirements prior to the effective date of the act or the applicable master program but which does not conform to the present lot size standards may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of the applicable master program and the act.

Nonconforming uses and development in an SMP

SMPS should include provisions to address local government decisions that determine uses and properties are nonconforming (WAC 173-26-191(2)(a)(iii)(A). Ecology does not expect, nor is it asking, local governments to eliminate nonconforming development from shorelines. Some nonconforming uses and structure within shoreline jurisdiction have existed for many years.

Options for addressing nonconforming situations include:

- Use the tried and tested nonconforming standards in WAC 173-27-080.
- Use some provisions of WAC 173-27-080 and revise others to meet local needs.
- Write new nonconforming provisions.
- Use the same nonconforming provisions that are in the local zoning code. This will provide consistent treatment of nonconforming uses and development within and outside shoreline jurisdiction.

If your SMP does not include regulations regarding nonconforming development, WAC 173-27-080 will apply within your municipality's shoreline jurisdiction.

General "sideboards"

SMP language should be within the parameters of case law on nonconforming development. (For your convenience, some of those cases are discussed below.) The basic general "sideboards" for nonconforming development regulations include:

- "Grandfathered" (nonconforming) existing legal uses and structures may continue.
- Owners of grandfathered structures that wish to expand the structure may be able to do so if they do not increase the nonconformity. For example, a house partially within the buffer could be expanded outside the buffer.
- Local governments should develop use regulations using the information in their shoreline inventory and analysis and should avoid creating nonconforming development as much as possible. Local governments should assign environment designations and develop use regulations with the existing pattern of shoreline uses in mind and may adopt incentives or other programs in such areas to accommodate existing development while still meeting no net loss.
- Local governments have the right to terminate nonconforming development. (On occasion, an existing use may have a high potential for use conflicts, such as a fuel storage facility within a city's wellhead protection zone. In these cases, a specific time

may be set for the use to be amortized and removed.)

- As reflected in case law, local governments may adopt regulations to phase out nonconforming development over time. More commonly, phasing out is accomplished by adopting disincentives such as strict limits on change of use or expansion.

- For updated SMPs, the "no net loss" policy objective should guide review of proposed expansions or other changes to grandfathered uses and new development on substandard vacant lots.

- SMPs need to cover the breadth of the nonconforming provisions that are in WAC 173-27-080 including those listed below. (The questions on pages 4 and 5 for conforming structures should also be considered for nonconforming structures.)
    - Definitions.
    - Structures – maintenance and repair, expansion, moving the structure.
    - Uses – expansion, change in use.
    - Reconstruction after damage, including timelines for permitting and reconstruction. Ecology suggests that SMPs include criteria to avoid reconstruction in hazard areas.
    - Abandonment.
    - Undeveloped lots.

The nonconforming provisions in an SMP should distinguish nonconforming uses from nonconforming structures. A nonconforming structure may contain a conforming use. For example, a single family residence in a Shoreline Residential environment is a conforming use. If it is located within the shoreline buffer, it is a nonconforming structure but still a conforming use.

Benign or detrimental nonconformities

A recent *Zoning Practice* article suggests that local governments consider whether nonconforming developments are "benign" or "detrimental" and develop separate regulations for development falling within these categories. This may help determine whether nonconformities should be terminated over time or allowed to continue. ("Distinguishing Between Detrimental and Benign Nonconformities," V. Gail Easley and David A. Theriaque, *Zoning Practice*, November 2009, Issue No. 11, American Planning Association.) However, in critical area buffers and shorelines, the cumulative impact of numerous minor or lesser impacting "benign" developments should be considered.

No net loss of ecological functions

SMPS must, over time, achieve no net loss of shoreline ecological functions. The SMP update process will include a cumulative impacts analysis and no net loss report that show how the SMP will achieve no net loss.

Nonconforming regulations must be included in those analyses. If the draft SMP would allow single family residences to be built on nonconforming lots, the analyses should reflect how no net loss will be achieved despite such development. The potential expansion of nonconforming development such as residences or other structures such as piers and docks, commercial or industrial buildings also should be included in the no net loss analyses.

Court cases and Shorelines Hearings Board cases

Hearings boards and courts in Washington have dealt with the nonconforming development issue under the Shoreline Management Act (SMA) and other land use statutes for more than three decades.

Some key points from the following Court and Shorelines Hearings Board (SHB) cases:

- Washington state laws do not address the regulation of nonconforming development, and leave this issue primarily to local governments to resolve. (Note the 2010 changes to the GMA mentioned earlier.)

- Nonconforming development (uses and structures) is generally disfavored.

- Nonconforming development is routinely allowed to continue, at least for some time.

- A nonconforming status grants the development the right to continue to exist, but does not assure the right to significantly change, enlarge or alter the development.

- Limited expansion of a nonconforming structure might be permissible because it is tied to other actions to bring the overall use into conformity (e.g., upgrade of nonconforming septic system).

- Local ordinances can terminate nonconforming development that is abandoned or presents a hazard, or provide for it to cease over time.

- The language in the SMP is critical to the resolution of SHB and Court cases.

Some Court and Shorelines Hearings Board cases that are applicable to nonconforming development regulations in an SMP include those shown below.

136 Wn.2d 1, Rhod-A-Zalea v. Snohomish County: In this case, the Washington Supreme Court supported Snohomish County's decision to require a grading permit for an existing nonconforming peat mining operation. The paragraphs below, taken from the case, discuss the theory of zoning in regards to nonconforming use and Washington State laws silence on the regulation of nonconforming use.

> *A nonconforming use is a use which lawfully existed prior to the enactment of a zoning ordinance, and which is maintained after the effective date of the ordinance, although it does not comply with the zoning restrictions applicable to the district in which it is*

situated. See 1 Robert M. Anderson, American Law of Zoning § 6.01 (Kenneth H. Young ed., 4th ed. 1996.)

The theory of the zoning ordinance is that the nonconforming use is detrimental to some of those public interests (health, safety, morals or welfare) which justify the invoking of the police power. Id. at 220. Although found to be detrimental to important public interests, nonconforming uses are allowed to continue based on the belief that it would be unfair and perhaps unconstitutional to require an immediate cessation of a nonconforming use. Id. at 218. A protected nonconforming status generally grants the right to continue the existing use but will not grant the right to significantly change, alter, extend, or enlarge the existing use. Id. Moreover, zoning ordinances may provide for termination of nonconforming uses by abandonment or reasonable amortization provisions. See R. SETTLE, WASHINGTON LAND USE § 2.7(d).

While some states' authority to terminate, alter, or extend nonconforming uses is expressly granted or withheld in zoning enabling acts, Washington's enabling acts are silent regarding the regulation of nonconforming uses. See R. SETTLE, WASHINGTON LAND USE § 2.7(d). Instead, the state Legislature has deferred to local governments to seek solutions to the nonconforming use problem according to local circumstances. In Washington, local governments are free to preserve, limit or terminate nonconforming uses subject only to the broad limits of applicable enabling acts and the constitution. See id.

Meridian Minerals v. King County, 61 Wn. App. 195 (1991): The Washington Supreme Court supported King County's decision to withhold a permit for expansion of a nonconforming rock quarry. Language from the decision discusses nonconforming uses.

The various owners of the Veazie Valley quarry have been allowed to continue a nonconforming use since 1958. That use can continue as long as it remains similar in kind to the use that became vested, the use at the time zoning occurred. Although railroad use of rock may have declined over the years and BNRR may be one of the last to need rock from the quarry, Washington has long adhered to the policy of phasing out nonconforming uses. Anderson; Bartz; Coleman v. Walla Walla, 44 Wn.2d 296, 266 P. 2d 1034 (1954); Cain. The generally accepted method of eliminating nonconforming uses "is to prevent any increase in the nonconformity and, when changes in the premises are contemplated . . . to compel . . . a lessening or complete suppression of the nonconformity". Anderson, at 323 (quoting 147 A.L.R. 167, at 168. The use of the quarry, not its ownership, was at issue when BALD declined to process Meridian's permit application.

Jukanovich v. Ecology, SHB No. 06-013: In this summary judgment, the Shorelines Hearings Board supported Ecology's denial of a variance for reconstruction of a house within the shoreline setback.

While it is true that the house has not been moved closer to the water on the ground level, nor has the footprint changed, the Board concludes that adding nearly sixteen and one-half feet of height to the house, as well as creating additional interior square footage, enlarges,

intensifies, and increases the encroachment of the house within the setback. The Board agrees with Ecology that "the setback does not just define a line that runs along the ground, beyond which development is prohibited. The setback line extends up into the air as well, to include the space above the ground." 11. This interpretation is consistent with the definition of "setback" in the SCSMA which states "A required open space, specified in shoreline master programs, measured horizontally upland from and perpendicular to the ordinary high water mark." SCSMA, p. J-9. See also SCC 30.23.100(2)("every required setback shall be open and unobstructed from the ground to the sky except for trees and other natural vegetation.")

Garlick et.al. v Eiford et.al., SHB No. 95-6: This SHB case is a relevant decision to nonconforming residential structures. The decision states that nonconforming structures and uses are disfavored. The Board approved increasing the size of the home in the setback to allow a two-car garage, although the size increase was less than requested because the Board denied an over-the-garage living space.

While we recognize that the overall policy of the SMA favors single family residences, we believe that the establishment of setback lines which create non-conforming development in existing neighborhoods, are logically intended to phase out the residential use within the setback area. If this is not the ultimate goal, these setback requirements are of little consequence, other than to invite the piecemeal granting of variances, until the setback becomes a nullity. The WCSMP is consistent with the concept of limiting the expansion of non-conforming development. Section 23.50.92, for example, restricts repair of non-conforming developments to work which will not increase the non-conformity. Section 23.50.93 similarly restricts the reconstruction of any pre-existing non-conforming developments. It would be inconsistent with the liberal construction of the SMA to deduce from these sections that proposals to expand non-conforming residential development may be approved, based on the personal desires of the applicant.

73 Wn. App. 576, Jefferson Cy. v. Seattle Yacht Club, 1994: The Court of Appeals remanded to the SHB the Superior Court order affirming the SHB's decision to allow a yacht club outstation at Port Ludlow Bay. The Court directed the SHB to reconsider its decision to "reconsider the proposal's compatibility with the area immediately adjacent to the proposed site without considering any nonconforming use."

Because nonconforming uses are disfavored, and because the public policy of this state is to restrict such uses so that they may ultimately be phased out, see, e.g., Keller v. Bellingham, 20 Wn. App. 1, 9, 578 P.2d 881 (1978), aff'd, 92 Wn.2d 726, 600 P.2d 1276 (1979), we believe that nonconforming uses are not precedent for other uses. That is, a finding of compatibility cannot, in our view, be substantially based on the existence of a nonconforming use in the area in question.

Guy Fox v. Ecology, SHB NO. 00-025: In this case, the SHB overturned Ecology's denial of a conditional use permit to enclose a deck as long as the change was linked to installation of a septic system.

First, it is important to note that the enclosure of the deck will not increase the non-conformity. Accord, Gambriell v. Mason County and Ecology, SHB 91-26 (1992) (enclosure of a deck to add a dining room did not increase the nonconformity as the same area that violated the setback was not increased.) The degree to which the nonconforming structures on the Fox property will be over the water will remain the same.

Second, the area around Mr. Fox's property is highly developed with many residential homes that are either over the water or behind nonconforming bulkheads. Many of these residential developments are much further waterward and are much larger in scale than Mr. Fox's very small 10 feet by 13 feet cabin. Allowing Mr. Fox to enclose an existing deck to add a bathroom and expanded kitchen will not grant him a special privilege but will merely make his home more in conformity with the surrounding area.

Third and most importantly, there has been <u>no</u> evidence of any environmental harm that will result from allowing this very modest request. If there is no environmental harm, allowance of this expansion will foster "all reasonable and appropriate uses" and will recognize the preference given to single-family development. RCW 90.58.020.

Stephen and Beverly Davis v. Pierce County and the Department of Ecology, SHB NO. 03-021: In this case, the board said the increasing the footprint of a small cabin that was a nonconforming use and adding a second story, which more than doubled its size, could not be authorized.

Because the 525 sq. ft. cabin is acknowledged as nonconforming use, the structure on the site today cannot be authorized unless the terms for expanding a nonconforming use are met. Expansion of a nonconforming use is addressed in PCC 20.72.050:

> *Any proposed expansion of a use determined by the Planning Department or the appropriate reviewing authority to be nonconforming shall be permitted provided all of the following criteria are met:*
>
> *A. The proposed change will make the use more compatible with the environment in which it is located.*
> *B. That water, air, noise and other classes of pollution will not exceed the level customarily found in that particular environment.*
> *C. That the public health, safety and welfare will not be adversely affected.*

5.

In this case, doubling the size of the cabin will not make the structure more compatible with the rural residential shoreline environment in which it is located. Allowing expansion of nonconforming structures, without compelling circumstances, would also be adverse to the public welfare (PCC 20.72.050(C)) and the orderly development of shorelines contemplated by the Shoreline Act. (RCW 90.58.020).

Nonconforming language in new SMPs

Local governments that have adopted comprehensive SMP updates since 2004 have addressed nonconforming development in various ways. Below are some examples. Check Ecology's website at http://www.ecy.wa.gov/programs/sea/shorelines/smp/status.html for links to SMPs that are approved by Ecology.

Douglas County: Adopted WAC 173-27-080 into its SMP.

City of Marysville: Incorporated the nonconforming provisions of its zoning code into its SMP. The zoning code allows nonconforming structures and uses "to continue in existence, and to be repaired, maintained, remodeled, expanded and intensified, but only to the extent expressly allowed by the provisions of this chapter. It is the purpose of the city to ultimately have all structures and uses brought into conformity with the land use codes and regulations duly adopted by the city, as the same may be amended from time to time. Nonconforming structures and uses should be phased out or brought into conformity as completely and as speedily as possible with due regard to the special interests and property rights of those concerned." (Ord. 2131, 1997). (MCC 19.44.010)

City of Monroe: Adopted WAC 173-27-080 into its SMP.

City of Port Townsend: Adopted nonconforming provisions that address the local shoreline conditions. The nonconforming chapter has separate sections for uses, standards and lots. Change of ownership, tenancy or management does not affect the use's nonconforming status. Additional development of property that includes a nonconforming use requires new uses to conform to the SMP. Nonconforming status is lost if the use is discontinued for 365 continuous days.

Nonconforming structures except for residences that are damaged one -half or more of replacement cost can be restored only if the restoration conforms to the SMP. Residences destroyed by catastrophe and in a residential zone may be reconstructed to the size, density and location that existed prior to the catastrophe. Additional provisions can be found in Port Townsend's SMP.

Whatcom County: The County's new SMP requires a variance for expansion of nonconforming structures, except for single family residences which meet certain requirements. The SMP establishes shoreline buffers of 100 to 150 feet. A small percentage of shoreline lots that are vacant are too small to meet the buffer requirements for new development. The SMP allows for development on these lots that have a building area not located in a hazard area.

The provisions from Whatcom County's SMP provided below show one approach regarding nonconforming structures and lots. Comments in the following section are from Barry Wenger, Ecology Regional Planner at the Bellingham Field Office.

Whatcom County's Non-conforming Development provisions located at Chapter 23.50.07

*D. Non-conforming **structures** may be maintained, repaired, renovated, or remodeled to the extent that non-conformance with the standards and regulations of this Program is not increased, provided that a non-conforming development that is moved any distance must be brought into conformance with this Program and the Act; provided further, that as a conditional use a non-conforming dock may be modified, reoriented or altered within the same general location to be **more** consistent with the provisions of this SMP.*

Comment - The above provision allows structures to be maintained, and minor location adjustments of dock/float structures, to improve consistency with the SMP without defaulting to the current standards. This approach provides an incentive for non-conforming dock owners to make environmental improvements through an administrative conditional use rather than tearing the entire structure out and applying for a shoreline variance that has little chance of approval. An administrative conditional use is only processed by staff before being sent to Ecology for final determination rather than going through a long and expensive Hearing Examiner process at the local level.

E. Non-conforming structures that are expanded or enlarged must obtain a variance or be brought into conformance with this Program and the Act; provided that, non-conforming single family residences may be expanded without a variance where the provisions of SMP 23.50.07.I apply; and provided further, that non-conforming structures with conforming uses within commercial or mixed-use developments may be expanded or enlarged within the existing building footprint as a conditional use pursuant to Ch 23.100.05.B.1(e).

Comment - Non-conforming residences that are located in the setback/buffer may be expanded landward, laterally or vertically within the side yard/height limits via an administrative conditional use, provided the vegetation buffer is tailored and identified for the lot, a notice recorded with the county auditor, and mitigation provided commensurate for any buffer impacts [SMP 23.50.07.I]. Expansion waterward of the existing foundation walls, into the side yard setbacks, or above the height limit requires a shoreline variance.

Non-conforming structures that are expanded or enlarged must obtain a variance or be brought into conformance with this Program and the Act; provided that, non-conforming single family residences may be expanded without a variance where the provisions of SMP 23.50.07.I apply; and provided further, that non-conforming structures with conforming uses within commercial or mixed-use developments may be expanded or enlarged within the existing building footprint as a conditional use pursuant to Ch 23.100.05.B.1(e).

Comment - The second part of Section E allows by conditional use conforming commercial or mixed use development within a non-conforming structure to modify or alter the shape of the structure within the same footprint to meet development needs i.e. change rooflines, add windows, etc. Section 23.100.05.B.1(e) requires public access and restoration be provided with the additional design flexibility.

Non-conforming lots

Comment - Owners of vacant lots that are too small to meet the new setbacks/buffers and are not located in a hazard area may take advantage of the following provision that allows a "building area" disturbance of 2,500 square feet as far from the water as possible, unless a shoreline variance is authorized. In no case shall the new structure be located closer to the water than the existing common-line setback within 50 feet of and between the two adjacent existing residences. The tailored vegetative buffer is required to be identified and provided, a notice recorded with the county auditor's office, and mitigation provided for buffer impacts [SMP 23.90.06.B.3]

K. *New single family development on non-conforming lots consisting of property under contiguous ownership less than 20,000 square feet in size and not subject to landslide hazard areas, alluvial fan hazard areas, or riverine and coastal erosion hazard areas or associated buffers as provided in WCC 16.16.310 may be allowed without a variance in accordance with the following criteria:*

1. *Non-conforming lots with a building area of 2,500 square feet or more available for a single family residence and normal appurtenances and unrestricted by setbacks or buffers from shorelines or critical areas shall comply with the provisions of this Program. The building area means the entire area that will be disturbed to construct the home, normal appurtenances (except drainfields), and landscaping.*

2. *Non-conforming lots that do not meet the requirement of subsection K.1 above shall provide the maximum setback and buffer dimension feasible while providing for a building area of not more than 2,500 square feet on the portion of the lot farthest from the required setback or buffer; provided that consideration shall be given to view impacts and all single family residences approved under this section shall not extend waterward of the common-line setback as measured in accordance with Appendix F.*

3. *The area between the structure and the shoreline and/or critical area shall comply with the vegetation conservation standards of SMP 23.90.06.B.3.*

4. *Development may not take place waterward of the ordinary high water mark.*

5. *Facilities such as a conventional drainfield system may be allowed within critical areas or their buffers, except wetlands and buffers, outside of the building area specified above, subject to specific criteria in WCC 16.16.*

A. Log Rafting and Storage

1. Log Rafting and storage shall only be allowed in the “S-10” Port/Industrial Shoreline District

2. Restrictions shall be considered in public waters where log storage and handling are a hindrance to other beneficial water uses.

3. Offshore log storage shall only be allowed on a temporary basis, and should be located where natural tidal or current flushing and water circulation are adequate to disperse polluting wastes.

4. Log rafting or storage operations are required to implement the following, whenever applicable:

    a. Logs shall not be dumped, stored, or rafted where grounding will occur.

    b. Easy let-down devices shall be provided for placing logs in water. The freefall dumping of logs into water is prohibited.

    c. Bark and wood debris controls and disposal shall be implemented at log dumps, raft building areas, and mill-side handling zones. Accumulations of bark and wood debris on the land and docks around dump sites and upland storage sites shall be kept out of the water. After cleanup, disposal shall be at an upland site where leachate will not enter surface or ground waters.

    d. Where water depths will permit the floating of bundled logs, they shall be secured in bundles on land before being placed in the water. Bundles shall not be broken again except on land or at mill sites.

5. Stormwater management facilities shall be provided to protect the quality of affected waters.

6. Log storage facilities shall be located upland and properly sited to avoid fish and wildlife habitat conservation areas.

7. Log storage facilities must be sited to avoid and minimize the need for dredging in order to accommodate new barging activities at the site.

8. Log booming shall only be allowed offshore in sub-tidal waters in order to maintain unimpeded nearshore migration corridors for juvenile salmonids and to minimize shading impacts from log rafts. Log booming activities include the placement in or removal of logs and log bundles from the water, and the assembly and disassembly of rafts for waterborne transportation.

9. A Debris Management Plan describing the removal and disposal of wood waste must be developed and submitted to the City. Debris monitoring reports shall be provided, where stipulated.

10. Existing in-water log storage and log booming facilities in critical habitats utilized by threatened or endangered species classified under ESA shall be reevaluated if use is discontinued for two (2) years or more, or if substantial repair or reconstruction is required. The evaluation shall include an alternatives analysis in order to determine if logs can be stored upland and out of the water. The alternatives analysis shall include evaluation of the potential for moving all, or portions of, log storage and booming to uplands.

Agenda Item PH-1

City of Tacoma
Community and Economic Development Department

TO: Planning Commission

FROM: Shirley Schultz, Principal Planner, Current Planning Division

SUBJECT: Public Hearing on Proposed Billboard Regulations

DATE: March 9, 2011

The Planning Commission will conduct a public hearing on March 16, 2011, on the draft Sign Code Revisions for Billboards. These proposed changes are based on a framework outlined in a proposed settlement agreement between Clear Channel Outdoor and the City and include the implementation of an exchange program whereby a limited number of digital billboards would be permitted in exchange for the removal of a substantial number of existing static billboards and relinquishment of outstanding permits for new static billboards.

At your last meeting, there were questions about an e-mail that some of you received from a citizen concerning the proposed billboard regulations. The e-mail noted a discrepancy in the materials provided to the Commission (and posted on the website) with the Clear Channel settlement agreement and its exhibits on file with the City Clerk. The discrepancy relates to the billboard faces that are proposed for removal in exchange for the first 10 digital billboards. The settlement agreement has with it three exhibits: (1) a list of proposed locations for the first 10 digital billboards, (2) a list of billboards and structures to be removed in exchange for the first 10 digital billboards, and (3) a list of billboard relocation permits to be relinquished. For our analysis, staff used the settlement agreement and exhibits that were available in July when the City Council approved the agreement. We have now learned that the July agreement inadvertently included an incorrect exhibit concerning the billboards proposed to be removed in exchange for the first 10 digital billboards. This list was subsequently updated; however, staff was not aware of this change.

The differences between the lists can be summarized as follows: seven billboard faces proposed to be removed will not be removed and eight billboard faces will be removed that were not previously identified. While the differences do not change the conclusions of the analysis nor affect the proposed code revisions, we have re-notified all recipients of the notice for the public hearing of the availability of this new information. The map depicting the locations for billboard removals and the removal list have been updated and posted on the City's website and will be distributed to the public at the public hearing and the Question & Answer session on March 9.

Attached is a public hearing report which summarizes the proposed amendments, the City's adopted review criteria and evaluation process, public participation and the notice provided for the public hearing. The report also provides a more detailed explanation of the differences in the new information discussed above, as well as copies of the revised list of billboards to be removed (in the first phase), a table comparing the original and new lists of billboards to be removed, a revised map of the billboards to be removed, the supplemental public hearing notice

that was issued, the revised staff report, and a frequently asked questions document that has been publicly distributed and available on the website.

Notice of the public hearing, as well the supplemental notice regarding the new information, was widely distributed and posted on the City's website (www.cityoftacoma.org/planning). A public review document has been compiled, containing information and staff analyses associated with the revisions as well as the preliminary environmental determination for the proposed amendments. The public review document has also been disseminated for review, posted on the City's website, and made available at all branches of the Tacoma Public Library. Copies of the public review document were provided to the Commission at your last meeting for your use and reference, along with the new documents provided here, at the public hearing and future meetings concerning the proposed amendments. Please bring your copy with you to next week's meeting.

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

SS:bb

c. Peter Huffman, Assistant Director

Attachment

PUBLIC HEARING REPORT
Tacoma Planning Commission Public Hearing
March 16, 2011

A. SUBJECT:

Revising the regulations which apply to billboards (large off-premises signs) to permit a limited number of digital billboards in exchange for a significant reduction in standard billboards.

B. BACKGROUND:

The proposed amendments apply to the regulation of billboards. Some of the proposed changes apply to all billboards and others are meant to implement an exchange program whereby a limited number of digital billboards would be permitted if existing standard billboards are removed and permits for standards billboards are relinquished. The framework and impetus for the proposal is a negotiated settlement agreement between Clear Channel Outdoor and the City which was by approved by the City Council in 2010. The proposed changes build upon the intent of that Agreement and propose additional performance criteria for both the initial phase of the agreement (the installation of the first 10 digital billboards) and for any future installation of digital billboards.

C. LAND USE REGULATORY CODE AMENDMENT PROCESS:

In accordance with the adoption and amendment procedures in the Tacoma Municipal Code (Chapter 13.02.045), the following criteria are used by the Planning Commission in determining if a change in development regulations is warranted:

1. An obvious technical error exists in the pertinent Comprehensive Plan or regulatory code provisions;
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;
3. The needs of the City have changed which support an amendment;
4. The amendment is compatible with existing or planned land uses and the surrounding development pattern;
5. Growth and development, as envisioned in the Comprehensive Plan, is occurring faster, slower or is failing to materialize;
6. The capacity to provide adequate services is diminished or increased;
7. Plan objectives are not being met as specified, and/or the assumptions upon which the Plan is based are found to be invalid;
8. Transportation and/or other capital improvements are not being made as expected;
9. Substantial similarities of conditions and characteristics can be demonstrated on abutting properties that warrant a change in land use intensity or zoning classification; or
10. A question of consistency exists among the elements of the Comprehensive Plan or between the Comprehensive Plan and RCW 36.70A (Growth Management Act), the *County-wide Planning Policies for Pierce County* or multicounty planning policies, or the development regulations of the City.

The Planning Commission may also consider other factors including if additional information has become available since the development regulation was last adopted or amended.

Proposed amendments to development regulations are developed pursuant to the procedures of Chapter 13.02 of the Tacoma Municipal Code as described above. Staff, under direction of the Commission, conducts needed analysis and prepares the draft amendments for public review and comment.

Proposed amendments are subject to the requirements of the State Environmental Policy Act and the Growth Management Act. The amendments to the Land Use Regulatory Code receive detailed review by the Planning Commission and public hearing(s) are held to receive citizen comment. After further review, the Commission makes a recommendation to the City Council, which may include modifications to the draft amendments in response to public testimony, staff recommendations, and/or further review by the Commission. The Council will review the proposed amendments, as recommended by the Planning Commission, and hold a public hearing. The Council may adopt, decline to adopt, and/or make modifications to the recommended amendments.

D. SUMMARY OF PROPOSED AMENDMENTS:

The proposed changes would modify the Land Use Regulatory Code (Sections 13.06.520 - .522). In addition to adding new provisions for permitting digital billboards, the proposed changes would modify and add definitions, consolidate and relocate sections for retaining or exchanging billboards, and revise provisions for nonconforming off-premises signs. The proposed changes would apply city-wide; however, they would apply especially to the zoning districts where billboards are currently allowed:

- C-2 (General Community Commercial)
- M-1 (Light Industrial)
- M-2 (Heavy Industrial)
- PMI (Port Maritime Industrial)

Following is a more detailed discussion of the proposed amendments.

1. *Changes to Definitions section and general sign regulations.* New definitions are proposed for standard billboard, digital billboard, off-premises sign, and sign. In addition, a stronger reference is made to the applicability of certain state laws to certain signs.
2. *Changes to billboard regulations in general.* References to "structure" have been removed, where possible, so that regulation of billboard "faces" becomes the focus. The section has been re-organized, and explanatory language has been added.
3. *Exchange program for billboard faces.* The existing "relocation certificate" and "banking" program for removed billboards has been deleted, as it is no longer necessary given the new exchange program. An exchange program has been aded for digital billboard faces – roughly 1 digital face per 5 standard faces removed, plus relinquishment of 10 relocation certificates.
4. *Priority for removal*. An attempt has been made to prioritize the removal of billboard faces, after the first 79 (which have already been agreed to). The first to be removed should be those that are too close to residential areas or other sensitive uses.
5. *Performance standards.* Performance standards are added to address digital billboard faces and sign lighting. These lighting standards would apply to all digital billboards constructed in the city. They regulate static image time (the amount of time a single picture is displayed on the screen), the transition time between images (to avoid complicated scrolling or animation on the screens),

the motion on the screen (none is allowed), and the brightness of the screen. Brightness is proposed to be measured in two ways – first, from a light-meter reading taken from a certain distance from the sign to ensure the sign isn't creating an undue increase in the light levels in the area. The second is a measurement at the surface of the sign and the level of light actually emitted from the device. The operating hours of billboards are also limited. The proposed regulations would require the digital image to be turned off between the hours of 10 pm and 5 am.

These regulations are developed from research of other jurisdictions and are also somewhat based upon industry standards. Traffic safety studies also contribute to these standards, showing how quickly a message may change without becoming a distraction and hazard. Brightness regulations are intended to minimize excess lighting in the vicinity of the sign as well as to avoid glare or nuisance to people who are looking at the sign. All digital billboards will have a light sensor integrated into their electronics which will adjust the brightness of the sign based upon the amount of light in the surrounding area. For example, signs will be brighter on a sunny day than they are during the nighttime hours.

6. *Aesthetics.* Regulations are proposed to address maintenance and landscaping.

7. *Height and size.* No changes are proposed to the existing allowable height and size of billboard structures and faces for the new digital billboards; it was determined that these regulations should be the same for both digital billboards and standard billboards. The maximum height is 30 ft except in PMI (Port Maritime Industrial), where the maximum height is 45 ft. The maximum size of a billboard face is 300 square feet. It should be noted that the size limits will not apply to the first 10 permitted billboards installed in the special receiving areas (see below).

8. *Dispersal regulations.* Dispersal regulations – i.e. how far billboards must be from other billboards – has been simplified from the existing code. The existing code measures dispersal in four different ways: it limits the number of faces within a certain distance, it states that structures must be 100 feet apart, it sets out a minimum "appropriate zoning" distance to locate billboards, and it specifies the appropriate zoning across the street from a proposed billboard face. The proposed language limits billboards faces to 500 feet between faces, unless they are on the same structure, and maintains the existing opposite-side of the street zoning requirement. Dispersal will be calculated on a radius.

9. *Buffering Regulations.* Buffering regulations, meaning how far new billboards must be from "sensitive uses," are not proposed to change. Currently, the code says that a new billboard face must be located 250 feet from a residential zoning district, a school, park, church, or other public use, and 375 feet from a shoreline district. (For reference, a typical block is about 330 feet by 240 feet.) Those same buffers would apply to digital billboards, except for the first 10 permitted billboards in the special receiving areas. Therefore, even if a billboard was proposed for an appropriate zoning district, like the C-2 district, it could not go everywhere in that district. It would have to be off-set from sensitive uses by 250 feet.

10. *Special Receiving Areas.* Special receiving areas for the first ten (10) digital billboards were determined in the Settlement Agreement. In these areas – where up to 10 and only 10 digital faces may be located – the standard size regulations do not apply. The agreement states that the first ten digital billboards will be "bulletin" billboards, which are defined as up to 672 square feet. These areas were chosen by both Clear Channel Outdoor and the City Council.

11. *Revisions to non-conforming sign regulations.* Language has been added to allow for repair and maintenance, and modify how other on-premises signs are treated when there is a nonconforming billboard on the site. Regulations regarding allowed changes to structures on the site have been modified.

12. *Sign code tables.* Only minimal changes are proposed to reflect the text changes.

SUPPLEMENTAL (CORRECTED) INFORMATION

When the Settlement Agreement between the City and Clear Channel Outdoor was signed by City officials, it had with it three exhibits: (1) a list of proposed locations for the first 10 digital billboards, (2) a list of billboards and structures to be removed in exchange for allowing the first 10 digital billboards, and (3) a list of billboard relocation permits to be relinquished. The official exhibits are those on file with the City Clerk; however, staff was inadvertently working from a different version of the second exhibit. This different version was used for mapping and analysis which was provided to the Planning Commission and posted on the City's website.

The correct information is in the following documents, which are attached to this staff report:

- Corrected Exhibit 2: Billboards to be Removed (Attachment 2)
- Map of Digital Billboard Receiving Areas (proposed) & Billboard Panels to be Removed - REVISED (Attachment 3)
- Comparison Table: A comparison of the corrected list of billboard faces proposed for removal and the previous list of billboards (Attachment 4)

The staff report was also revised to reflect the new information (Attachment 5), and the Frequently Asked Questions document, which was available on the website, was also updated (Attachment 6).

What is the effect of this new information?

Throughout the analysis and in all presentations, staff have referred to the removal of 53 billboard faces; the correct number is 54. In addition, those removals will now occur at 30 different sites, rather than 33 sites. The corrected list shows the complete removal of more structures – 25 versus 21 – but one less rooftop sign removal (5 instead of 6). In most cases, the changes are to the number of faces removed from a single structure. However, there are four sites where total removal of billboard faces and structure has changed.

- There are two sites where both billboard faces and the structure were proposed to be removed, but the corrected list shows that no changes will be made. Those are at 7017 South Tacoma Way and at 1215 Martin Luther King Way.
- There are two sites where no removals were proposed, but the corrected list shows that both faces and the structure will be removed. Those are at 5441 South Sheridan and 2102 South 12th Street.

Summary of "removed billboards"

	Previous List	Corrected List
Faces Removed	53	54
Sites Impacted	33	30
Full Structures Removed	21	25
Rooftop Faces Removed	6	5
Square footage of faces removed	11,898	12,330

E. GENERAL INFORMATION:

1. Evaluation of Development Regulation Amendments

The proposed changes to the Land Use Regulatory Code were reviewed using factors contained in the Tacoma Municipal Code and as set forth in summary in Section C herein. Other information was also used in the evaluation including state laws, City ordinances, comparison with other cities' plans and ordinances and City Council direction.

2. Environmental Evaluation

Pursuant to WAC 197-11 and Tacoma's SEPA procedures, a Preliminary Determination of Environmental Nonsignificance was issued on February 23, 2011 (SEPA File Number SEP2011-40000158817). This preliminary determination was made based upon a review of a completed environmental checklist. The City will reconsider the preliminary determination based on timely public comments regarding the checklist and determination that are received by March 25, 2011 and unless modified, the preliminary determination will become final on March 28, 2011.

3. Public Review Process

The proposed amendments to the Regulatory Code were presented to and discussed by the Planning Commission at their meetings, which are open to the public. The Commission reviewed the proposed changes and authorized the distribution of the proposed amendments for public review and comment on February 16, 2011. The proposed amendments, including the complete text of proposed changes (in strikeout and underlined format); maps depicting receiving areas, special receiving areas, existing billboards, and billboards proposed for removal; and the staff report which analyzes the proposed amendments for consistency with the amendment criteria, were compiled into a single document (the "Public Review Booklet"). The document also included a copy of the environmental determination and completed checklist. This document was made available for public review at all branches of the public library and at the office of the Community and Economic Development Department. The document was also posted on the City's website and made available on CD-ROM upon request.

A Question & Answer session with staff was held on March 9, 2011. The purpose of this meeting was to provide a more detailed explanation of the proposed amendments and to answer questions about the proposed changes, public review process, and schedule. Notice of this meeting was included in the public hearing notice, the supplemental notice, and advertised in *The News Tribune* on March 11, 2011.

4. Notification

Notice of the Planning Commission's public hearing was distributed to Neighborhood Council board members, other neighborhood groups, business district associations, civic organizations, environmental groups, development interests, adjacent jurisdictions, the Puyallup Tribal Nation, major employers and institutions, City and State departments, and other known interested individuals or groups. In addition, the notice could also be viewed and downloaded at the Planning Division's website (www.cityoftacoma.org/planning). The notice was also posted on the public information bulletin boards on the first and second floors of the Tacoma Municipal Building.

The notice stated the time and place of the hearing, the purpose of the public hearing, information pertaining to the environmental determination, where and how additional information could be obtained and how to provide comments. Advertisement of the public hearing was published in *The News Tribune* on March 11, 2011.

Notice was also provided to taxpayers, as listed in the records of the Pierce County Assessor, for properties where a billboard is located, for properties within 400 feet of each of the boundaries of the special receiving areas, and for properties within 400 feet of each billboard within the C-2, M-1, M-2 and PMI zoning districts.

A supplemental notice regarding the corrected information was mailed on March 8, 2011, noting that additional information about Exhibit 2 was available on the City's website (Attachment 1). That supplemental notice was distributed to the same list as the original public hearing notice.

F. COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT RECOMMENDATION:

Staff recommends that the Planning Commission accept all oral and written testimony and hold the record open until **5:00 p.m. on Friday, March 25, 2011** and that the Commission evaluate all testimony given at the public hearing and any written comments received as part of the record prior to making a recommendation to the City Council.

G. ATTACHMENTS:

The following items are attached for your information.

1. Supplemental Notice
2. Revised Exhibit 2 (from the Settlement Agreement)
3. Revised map of proposed removals
4. Comparison table
5. Revised Staff Report
6. FAQ document

SUPPLEMENTAL PUBLIC HEARING NOTICE

Attachment 1

POTENTIAL REVISIONS TO THE SIGN CODE FOR BILLBOARDS

NEW INFORMATION

The proposed revisions include a program that would allow a limited number of digital billboards in certain areas in exchange for the removal of a substantial number of traditional billboards. *This proposed program is not changing, nor are the potential locations for digital billboards and the draft code revisions.* However, the list of billboards proposed for removal in exchange for the first 10 digital billboards was incorrect – seven of the billboard faces on the removal list were incorrect and eight that will be removed were not included on the list (for a total difference of one additional billboard face to be removed in exchange for the first 10 digital ones). The specific locations are listed below:

Billboard faces will not be removed from the following locations:

- 8040 Pacific Avenue
- 6517 6th Avenue
- 1318 6th Avenue
- 7017 South Tacoma Way
- 1215 Martin Luther King Jr. Way

Billboard faces will be removed from the following locations that were not previously identified:

- 5441 South Sheridan
- 2102 South 12th

Additional billboard faces will be removed from the following locations where faces were already identified for removal

- 5425 South Tyler
- 2040 6th Avenue
- 2002 South 12th

The map showing the billboard faces proposed for removal has been corrected, as has the staff report and related exhibit. These documents, as well as further explanation of the new information are provided on the Planning Division website:

www.cityoftacoma.org/planning (click on "Billboard Regulations")

PLANNING COMMISSION PUBLIC HEARING

Wednesday, March 16, 2011 5:00 pm City Council Chambers
Tacoma Municipal Building, 747 Market Street, 1st Floor

QUESTION AND ANSWER SESSION WITH STAFF

Wednesday, March 9, 2011 6:00 pm City Council Chambers
Tacoma Municipal Building, 747 Market Street, 1st Floor

WHERE CAN I GET ADDITIONAL INFORMATION?

Additional information, including the complete text of the proposed revisions, the staff report, maps showing the areas where new digital billboards would be allowed and the first group of existing billboards that would be removed, and the environmental determination, is available from the Community and Economic Development Department at the address to the right, at all branches of the Tacoma Public Library, and on the Planning Division website:

www.cityoftacoma.org/planning (click on "Billboard Regulations")

HOW DO I PROVIDE COMMENTS TO THE PLANNING COMMISSION?

You can testify at the hearing or provide written comments using the return address on this card no later than 5:00 pm on **Friday, March 25, 2011** or by facsimile at (253) 591-2002 or via e-mail at **planning@cityoftacoma.org.**

If you have additional questions please feel free to contact Shirley Schultz, Principal Planner, at:

(253) 591-5121

ENVIRONMENTAL REVIEW

The City has made a preliminary determination that this proposal will not have a significant adverse impact on the environment and has issued a preliminary Determination of Environmental Non-Significance (DNS) after review of a completed environmental checklist, a copy of which is available upon request. Comments on the preliminary determination must be submitted by 5:00 p.m. on **Friday, March 25, 2011**. The City may reconsider or modify the preliminary determination in light of timely comments. The preliminary determination will become final on April 1, 2011, unless modified.

The City of Tacoma does not discriminate on the basis of handicap in any of its programs or services. Upon request, special accommodations will be provided within five (5) business days by contacting the City Clerk's Office at 591-5171 (voice) or 591-5058 (TDD).

PLANNING COMMISSION
747 MARKET STREET – ROOM 1036
TACOMA WA 98402
(253) 591-5365

Exhibit 2:
Standard Billboard Faces to be Removed

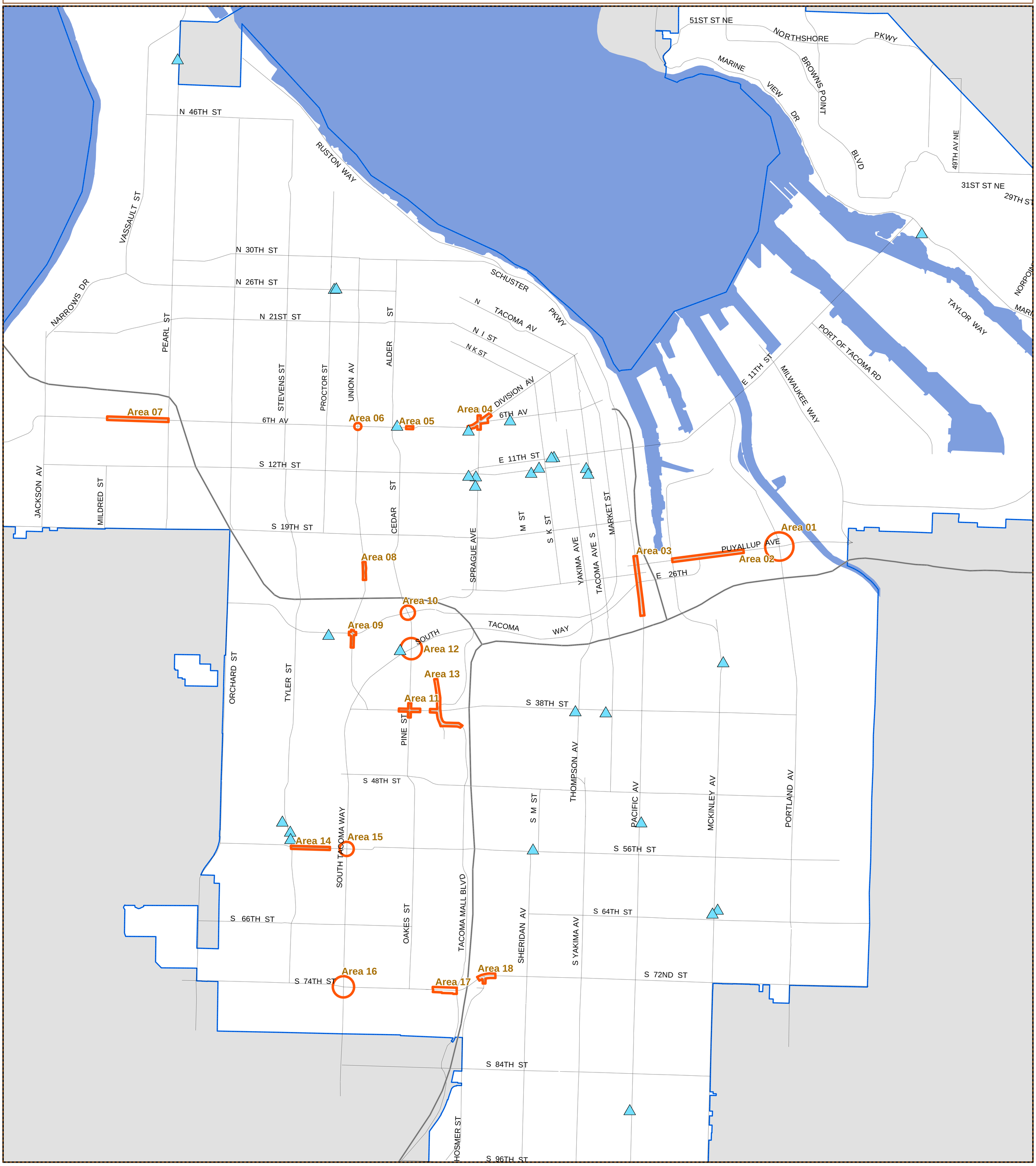
Panel	Real Property Address	Description	Lease
40215	2810 Marine View Dr	MARINE VIEW DR WL 150F *N/O* MCMURRAY RD SF-1	14187
40216	2810 Marine View Dr	MARINE VIEW DR WL 150F *N/O* MCMURRAY RD NF-2	14187
40891	3535 E McKinley Ave #37-39	MCKINLEY AV EL 100F *N/O* MORTON ST NF-1	9067
40892	3535 E McKinley Ave #37-39	MCKINLEY AV EL 100F *N/O* MORTON ST SF-2	9067
40948	858 S 38th	38TH ST S SL 100F *W/O* THOMPSON AV EF-1	14149
40949	858 S 3Bth St	38TH ST S SL 100F *W/O* THOMPSON AV WF-2	14149
40975	614 S 38th St S	S 38TH ST SL 230F *W/O* TACOMA AV EF-1	37743
40976	614 S 38th St	S 38TH ST SL 230F *W/O* TACOMA AV WF-2	37743
41072	5039 Pacific Ave	PACIFIC AV EL 50F *N/O* S 52ND ST NF-1	14069
41073	5039 Pacific Ave	PACIFIC AV EL 50F *N/O* S 52ND ST SF-2	14069
41286	621 2 McKinley Ave	MCKINLEY AV WL 70F *N/O* E 63RD ST NF-2	40261
41287	6212 McKinley Ave	MCKINLEY AV WL 70F *N/O* E 63RD ST SF-1	40261
41290	6302 McKinley Av	MCKINLEY AV WL 200F *N/O* 64TH ST E NF-2	14020
41291	6302 McKinley Av	MCKINLEY AV WL 200F *N/O* 64TH ST E SF-1	14020
41335	5441 South Sheridan	56TH ST S NL 25F *EIO* SHERIDAN AV EF-2	14154
41336	5441 South Sheridan	56TH ST S NL 25F *EIO* SHERIDAN AV WF-1	14154
41495	8805 Pacific Ave	PACIFIC AV EL 10F *S/O* S 88TH ST NF-1	40158
41496	8805 Pacific Ave	PACIFIC AV EL 10F *S/O* S 88TH ST SF-2	40158
44012	5425 S Tyler st	S TYLER ST EL 525F *N/O* S 56TH ST NF-1	12399
44013	5425 S Tyler st	S TYLER ST EL 525F *N/O* S 56TH ST NF-1	12399
44033	5321 S Tyler St	S TYLER ST EL 470F *S/O* S 52ND ST NF-1	12399
44034	5321 S Tyler St	S TYLER ST EL 470F *S/O* S 52ND ST SF-2	12399
44054	5225 S Tyler	S TYLER ST EL 150F *S/O* S 52ND ST NF-1	12399
44055	5225 S Tyler St	S TYLER ST EL 150F *S/O* S 52ND ST SF-2	12399
44219	3004 South Tacoma Way	S TACOMA WY SL 50F *W/O* JUNETT EF-1	40056
44220	3004 South Tacoma Way	S TACOMA WY SL 50F *W/O* JUNETT WF-2	40056
44720	3859 Center St	CENTER ST NL 10F *W/O* DURANGO ST WF-1	40157
44721	3859 Center St	CENTER ST NL 1OF *W/O* DURANGO ST EF-2	40157
44930	5032 No Pearl St	PEARL ST WL 200F *S/O* N 51ST ST SF-1	40060
44931	5032 No Pearl St	PEARL ST WL 200F *S/O* N 51ST ST NF-2	40060
44972	3809 No 26th St	N 26TH ST EL 15F *N/O* PROCTOR ST NWF-1	9141
44973	3809 No 26th St	N 26TH ST EL 15F *N/O* PROCTOR ST EF-1	9141
44993	3817 N 26th St	N 26TH ST NL 100F *E/O* PROCTOR ST WF-1	9141
45013	3809 No 26th St	N 26TH ST NL 100F *W/O* ADAMS ST EF-1	9141
45135	3111 6th Ave	6TH AV NL 50F *E/O* ALDER ST WF-1	40062
45136	3111 6th Ave	6th AV NL 50F *E/O* ALDER ST WF	40062
45239	2040 6th Ave98403	6TH AV SL 304F *E/O* STATE ST WF-2	9873
45240	2040 6th Ave98403	6TH AV SL 304F *E/O* STATE ST WF-2	9873

45303	1407 So 6th Ave	6TH AV NL 100F *W/O* SHERIDAN AV WF-1	9609
45471	919 S 11th St	S "J" ST EL 10F *N/O* S 11TH ST NF-1	40274
45472	919 S 11th St	S 11TH ST NL 10F *E/O* S "J" ST EF-2	40274
45492	1001-1 So 11th St	S 11TH ST NL 20F *W/O* S "J" ST EF-1	12869
45538	2002 S 12th St	SPRAGUE AV WL 10F *S/O* S 12TH ST WF-3	14097
45539	2002 S 12th St	SPRAGUE AV WL 10F *S/O* S 12TH ST WF-3	14097
45540	2002 S 12th St	SPRAGUE AV WL 10F *S/O* S 12TH ST WF-3	14097
45544	1240 Sprague St	SPRAGUE AV WL 175F *S/O* 12TH ST NF-2	14098
45545	1240 Sprague St	SPRAGUE AV WL 175F *S/O* 12TH ST SF-1	14098
45553	2102 S 12th	S 12TH ST SL 65F *W/O* S FERRY ST EF-1	11450
45554	2102 S 12th	S 12TH ST SL 65F *W/O* S FERRY ST WF-2	11450
45574	1212 Earnest S Brazill St	S 12TH ST SL 5F *W/O* S "L" ST WF-1	12934
45594	1115 S 12th St	S 12TH ST NL 100F *E/O* S "L" STWF-1	12999
45614	1210 Tacoma Ave S98402	TACOMA AVWL 50F *N/O* S 13TH ST NF-1	12436
45634	1302 Tacoma Ave98402	TACOMA AV WL 50F *S/O* S 13TH ST SF-1	37797
45635	1302 Tacoma Ave98402	TACOMAAVWL 50F *S/O* S 13TH ST NF-2	37797

Total = 54

Digital Billboard Receiving Areas (Proposed)& Billboard Panels to be Removed (REVISED) 3/4/2011

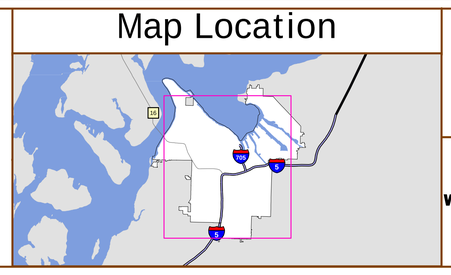
Attachment 3



Legend

- Billboard Panels to be Removed (REVISED)
- Digital Billboards Receiving Areas (Proposedl)

Map Location



City of Tacoma
Community & Economic Development Department
GIS Analysis & Data Services

N W E S

1400 0 1400 2800 4200
Feet

This drawing is neither a legally recorded map nor a survey and is not intended to be used as one. It is to be used for study purposes only.

Tacoma

Plot Date: 3/4/11 File Name: \\geobase-win\ced\gads\r2010\r410\Receive_remove_3_4_11.mxd

COMPARISON TABLE – BILLBOARDS TO BE REMOVED
List used originally compared to corrected list

Faces on previous list, not on corrected exhibit		Faces on corrected exhibit, not on previous list	
Address	**Panel No.**	**Address**	**Panel No.**
8040 Pacific Ave	41371	5441 South Sheridan*	41335
7017 S Tacoma Way*	43761	5441 South Sheridan	41336
7017 S Tacoma Way	43762	5425 S Tyler St*	44013
6517 6th Ave	45040	2040 6th Ave*	45239
1318 6th Ave	45323	2002 S 12th St*	45538
1215 Martin Luther King Way*	45600	2002 S 12th St	45539
1215 Martin Luther King Way	45601	2102 S 12th*	45553
		2102 S 12th	45554

** Denotes an entire structure would be removed*

Billboard faces on both lists			
2810 Marine View Dr	40215	3817 N 26th St	44993
2810 Marine View Dr	40216	3809 No 26th St	45013
3535 E McKinley Ave #37-39	40891	3111 6th Ave	45135
3535 E McKinley Ave #37-39	40892	3111 6th Ave	45136
858 S 38th	40948	2040 6th Ave	45240
858 S 38th St	40949	1407 So 6th Ave	45303
614 S 38th St S	40975	919 S 11th St	45471
614 S 38th St S	40976	919 S 11th St	45472
5039 Pacific Ave	41072	1001-1 So 11th St	45492
5039 Pacific Ave	41073	2002 S 12th St	45540
6212 McKinley Ave	41286	1240 Sprague St	45544
6212 McKinley Ave	41287	1240 Sprague St	45545
6302 McKinley Av	41290	1212 Earnest S Brazill St	45574
6302 McKinley Av	41291	1115 S 12th St	45594
8805 Pacific Ave	41495	1210 Tacoma Ave S	45614
8805 Pacific Ave	41496	1302 Tacoma Ave	45634
5425 S Tyler st	44012	1302 Tacoma Ave	45635
5321 S Tyler St	44033	3859 Center St	44720
5321 S Tyler St	44034	3859 Center St	44721
5225 S Tyler	44054	5032 No Pearl St	44930
5225 S Tyler St	44055	5032 No Pearl St	44931
3004 South Tacoma Way	44219	3809 No 26th St	44972
3004 South Tacoma Way	44220	3809 No 26th St	44973

Tacoma

Billboard Code Revisions

REVISED STAFF REPORT

Applicant:	City of Tacoma, Community & Economic Development Dept
Contact:	Shirley Schultz, 591-5121
Type of Amendment:	Regulatory Code Text Change
Current Land Use Intensity:	City-wide
Current Area Zoning:	City-wide
Size of Area:	City-wide
Location:	City-wide
Neighborhood Council area:	All
Proposed Amendment:	Revising the regulations which apply to billboards (off-premises signs) to permit digital billboards in exchange for a significant reduction in standard billboards.

General Description of the Proposed Amendment:

The proposed amendments apply to the regulation of billboards. Some of the proposed changes apply to all billboards, and others are meant to implement an exchange program whereby digital billboards would be permitted if existing standard billboards are removed and/or permits for standards billboards are relinquished. The framework and impetus for the proposal is a negotiated settlement agreement between Clear Channel Outdoor and the City which was by approved by the City Council in 2010. The proposed changes build upon the intent of that Agreement and propose additional performance criteria for both the initial phase of the agreement (the installation of the first 10 digital billboards) and for any future installation of digital billboards.

Billboards are off-premises signs, which means that they are not located on the premises of the use or activity to which the sign pertains. Digital billboards operate like large digital picture frames – a single image is displayed for a certain amount of time, and is then replaced by a different image. As proposed, digital billboards would not be able to have any animation (moving pictures) or flashing lights, like some other electronic signs might have. A billboard "face" is one side of a billboard sign and consists of one screen. A single billboard structure may have more than one face.

The proposed changes would modify the Land Use Regulatory Code (Sections 13.06.520 - .522). In addition to adding new provisions for permitting digital billboards, the proposed changes would modify and add definitions, consolidate and relocate sections for retaining or exchanging billboards, and revise provisions for non-conforming off-premises signs. The proposed changes would apply city-wide; however, they would apply especially to the zoning districts where billboards are currently allowed:

- C-2 (General Community Commercial)
- M-1 and M-2 (Light and Heavy Industrial)
- PMI (Port Maritime Industrial)

Under the current regulations, existing billboards are allowed to relocate within these four zoning districts, subject to certain restrictions which are further discussed below. The proposed regulations would also allow new *digital* billboards to be erected on properties within these four zoning classifications, again subject to certain restrictions. The overall intent of the proposed changes is a substantial reduction in the number of existing billboards, in exchange for allowing the placement of digital billboards. If the program is continued to its fullest extent, the number of billboards within the city could drop from 253 to 38; all of which would be digital billboards. In addition, the digital technology will allow almost instantaneous communication on multiple signs for Amber Alerts and other emergency announcements.

The major components of the changes are set forth in the next few subsections. The following should be read in conjunction with explanatory notes on the Public Review Draft of the code, which is attached as Exhibit A.

Changes to Definitions section and general sign regulations:

1. Currently the definition of "billboard" is related to its content. That is, a billboard is a billboard because it contains a commercial message for a product or service. Billboards may be regulated based on their size or location – but not based on what they say. A new definition is proposed that doesn't rely on what a billboard says, but more upon where it is and how big it is. The changes to the billboard definition also require changes in several other definitions in the section. Based upon a review of definitions used by other cities, the proposed changes should improve the City of Tacoma regulations, making them more consistent internally and making them more comparable to other cities in the state.

2. Currently, the code only briefly mentions the State regulations regarding signage, in the intent section. The State of Washington has laws and administrative rules related to the federal Scenic Vistas Act, which controls signs that are visible from certain state and federal highways. Off-premises signs and electronic signs require special review and permitting when located in these areas. An additional subsection is proposed that strengthens the reference to State law and notes that, notwithstanding any provision in the City's Code, State laws apply and may supersede local regulations. This is meant as a reminder to any applicant for a sign in Tacoma that other regulations may apply, depending on the type and location of sign.

Changes to Billboards Section:

1. Substantial changes are proposed to the way the City regulates billboards. In general, introductory phrases have been added to the beginning of each section in order to highlight the purpose of that section. Also, throughout the code, text has been modified to emphasize and regulate the number and size of billboard *faces* rather than referring to faces and structures. Use of a consistent reference throughout streamlines the regulations and allows accurate comparisons between removed signage and installed signage. Language within the code has also been rearranged to place "like with like" – for instance, all the regulations about locations where billboards may be constructed have been grouped together, and all the regulations about performance standards (height, size, etc.) have been situated near each other. Some language has been consolidated as well.

2. A great deal of language relating to the former exchange program has been removed. This deletion updates the code in light of the presently proposed changes, and also puts an end to the system of relocation certificates.

3. The existing cap on the number of billboard faces and total square footage for billboard signs is not proposed to change, nor is the existing 1:1 exchange program for standard billboards. A new section

is proposed for the exchange of standard billboard faces for digital faces. The ratio operates as follows:

Digital Billboards	Existing Faces Removed	Relocation Certificates surrendered	Remaining faces/Certificates
Initial 10	~~53~~ **54***	100	**199** ~~200~~/69
Next 7	At least 35	Up to 69	**164**~~165~~/0
Final 21	Up to ~~168~~ **164**	0	0/0

Briefly, for each digital billboard face proposed after the first 10 permitted digital faces, a minimum of 5 standard faces must be removed and relocation certificates surrendered for a total of 15 faces, until all relocation certificates have been remitted. At that point 8 faces must be removed for each digital billboard face constructed. Demolition permits for the faces to be removed must be issued and inspected prior to construction of a new digital billboard face.

4. The first ~~53~~ **54*** billboard faces to be removed are listed in the settlement agreement and are specified in the draft code revisions. The next 25 faces to be removed are at the discretion of Clear Channel Outdoor according to the terms of the settlement agreement. After that, the proposed changes indicate a priority preference for removals to those faces that are close to residentially zoned areas or other sensitive uses, followed by those which are close to the relocated billboard, and then those which are outside the four allowed zoning districts. This means that, after the initial 78 faces are removed, the first billboards to be removed should be those which are 250 feet or less from a residential zone, school, church, park, open space, or historic district. (There are currently about 100 existing billboards that don't meet these buffering standards.)

5. Performance standards are added to address digital billboard faces and sign lighting. These lighting standards would apply to all digital billboards constructed in the city. They regulate static image time (the amount of time a single picture is displayed on the screen), the transition time between images (to avoid complicated scrolling or animation on the screens), the motion on the screen (none is allowed), and the brightness of the screen. Brightness is proposed to be measured in two ways – first, from a light-meter reading taken from a certain distance from the sign to ensure the sign isn't creating an undue increase in the light levels in the area. The second is a measurement at the surface of the sign and the level of light actually emitted from the device. The operating hours of billboards are also limited. The proposed regulations would require the digital image to be turned off between the hours of 10 pm and 5 am.

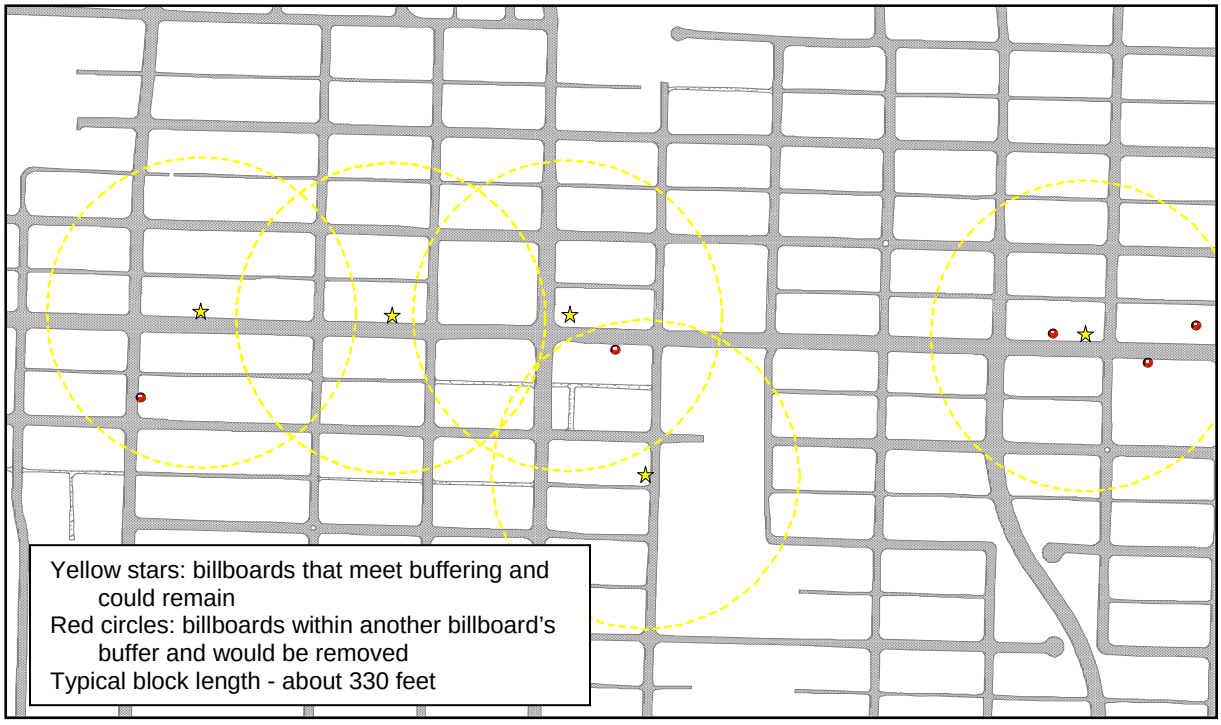
   These regulations are developed from research of other jurisdictions and are also somewhat based upon industry standards. Traffic safety studies also contribute to these standards, showing how quickly a message may change without becoming a distraction and hazard. Brightness regulations are intended to minimize excess lighting in the vicinity of the sign as well as to avoid glare or nuisance to people who are looking at the sign. All digital billboards will have a light sensor integrated into their electronics which will adjust the brightness of the sign based upon the amount of light in the surrounding area. For example, signs will be brighter on a sunny day than they are during the nighttime hours.

* *Note:* the original staff report and analysis were based upon an incorrect copy of Exhibit 2 to the Settlement Agreement. The corrected exhibit resulted in one additional face being removed. In addition, 10 sites would be affected differently – either more faces would be removed at the site than were originally noted, or no faces would be removed from sites where removal had been previously noted.

6. No changes are proposed to the existing allowable height and size of billboard structures and faces for the new digital billboards; it was determined that these regulations should be the same for both digital billboards and standard billboards. The maximum height is 30 ft except in PMI (Port Maritime Industrial), where the maximum height is 45 ft. The maximum size of a billboard face is 300 square feet. It should be noted that the size limits will not apply to the first 10 permitted billboards installed in the special receiving areas (see below).

   These regulations on size and height were instituted in the 1980s and have been in place since then. Many billboards which were constructed prior to that date are larger or taller than currently allowed. While many of the billboards located in the city are 288 square feet per face, the larger billboards are 672 square feet per face. For examples of billboards throughout the city, see the document titled "Billboard Tour" on the Planning Division's website: www.cityoftacoma.org/planning.

7. Dispersal regulations – i.e. how far billboards must be from other billboards – has been simplified from the existing code. The existing code measures dispersal in four different ways: it limits the number of faces within a certain distance, it states that structures must be 100 feet apart, it sets out a minimum "appropriate zoning" distance to locate billboards, and it specifies the appropriate zoning across the street from a proposed billboard face. The proposed language limits billboards faces to 500 feet between faces, unless they are on the same structure, and maintains the existing opposite-side of the street zoning requirement. Dispersal will be calculated on a radius, and might work roughly as shown in the drawing below. The goal of dispersal regulations is to limit the concentration of billboard faces in any one neighborhood. This benefits both the neighborhood (less signage) and also the advertisers and sign company (fewer signs competing for attention).



8. Buffering regulations, meaning how far new billboards must be from "sensitive uses," are not proposed to change. Currently, the code says that a new billboard face must be located 250 feet from a residential zoning district, a school, park, church, or other public use, and 375 feet from a shoreline district. (For reference, a typical block is about 330 feet by 240 feet.) Those same buffers would apply to digital billboards, except for the first 10 permitted billboards in the special receiving areas.

Therefore, even if a billboard was proposed for an appropriate zoning district, like the C-2 district, it could not go everywhere in that district. It would have to be off-set from sensitive uses by 250 feet. The attached map that shows zoning districts (Exhibit C) as dark purple lines also includes the buffers, with the left over area shown as lavender. These are the areas where a new billboard could be located.

9. Special receiving areas for the first ten (10) digital billboards were determined in the Settlement Agreement. These areas are shown on the map attached as Exhibit B. In these areas – where up to 10 and only 10 digital faces may be located – the standard size regulations do not apply. The agreement states that the first ten digital billboards will be "bulletin" billboards, which are defined as up to 672 square feet. These areas were chosen by both Clear Channel Outdoor and the City Council. Most of the locations already have other billboards, and all of them are along arterials.

10. Under the current code a billboard may be nonconforming to buffering (located too close to a sensitive use), dispersal (located too close to other billboards), zoning (located in the wrong zoning district), and/or performance standards (too big or too tall).

11. Revisions to nonconforming sign regulations are proposed to reflect the changes to the billboard exchange program for digital billboards. Currently, changes to off-premises signs are very restricted; language has been added to allow maintenance and repair or replacement, as well as to allow for installation of digital billboards in compliance with the code. Also, the current code prohibits any new signage on a site where a nonconforming billboard is located. This restriction is regardless of ownership of the site or the buildings on the site – meaning, for instance, if a tenant moving into an existing building wanted new signage at the site, they would be denied permits until the billboard was brought into compliance (typically, removed). The other option for someone requesting signage would be to sign a legal agreement with the City that they would terminate their lease with the billboard company as soon as possible.

    The goal of the revised billboard code is to have removal of billboards occur over time and not place the burden of removal on a business owner, who might not have any control over the billboard lease on the property.

    The code also requires that, when a site or structure is being substantially altered, nonconforming billboards are brought into compliance or removed. This language will remain in the code, but will be changed to reflect redevelopment thresholds that are in other parts of the zoning code. Specifically, the amount of work that can be completed within a two-year period has been revised to reflect either a "level II" or a "level III" alteration, similar to that level of work which would require compliance with certain design and landscaping standards. This language is consistent with other sections of the zoning code that talk about nonconforming uses and structures and when they need to be brought into compliance.

12. Only minimal changes would be made to the sign code tables. Digital Billboards (other than the initial 10) would only be allowed in the "C-2" General Community Commercial, "M-1" Light Industrial, "M-2" Heavy Industrial, and "PMI" Port Maritime Industrial districts. A map of these zones – including the remaining areas after the existing buffer requirements are applied – is attached as Exhibit C.

Additional Information:

The City of Tacoma made major amendments to its sign code for billboards in the mid-1980s and the mid-1990s. The number of billboards that can locate in the city and their total square footage has been

capped since 1988. No new billboards are permitted but existing billboards can be relocated. In the 1997 code changes, the City instituted an exchange program by which a nonconforming billboard could be removed and exchanged for a building permit or a "relocation certificate" in a conforming location. Billboards and relocation certificates could be transferred to other owners. This means that if someone wants to install a billboard on their property, they must own or purchase another billboard that they can remove.

The 1997 code also instituted an amortization clause which stated that all nonconforming billboards must be removed by 2007.

Currently, there are 253 billboard faces in the City and relocation certificates for 169 more. Approximately 193 of the existing billboard faces are nonconforming for one reason or another.

The sign code placed strict limitations on nonconforming billboards regarding their maintenance and alteration. On sites where billboards were located, other uses were not allowed to have any new signage unless the billboard was removed or a legal agreement was put into place promising the removal of the billboard.

Enforcement of these regulations resulted in a lawsuit in 2007 from the owner of nearly all the billboards and all the relocation certificates, Clear Channel Outdoor. The suit claimed that the City's code was unconstitutional as it was based on the content of the sign, that the adopted amortization provision was not adequate compensation for their billboard inventory and that the Scenic Vistas Act did not allow amortization in the manner dictated by the City's Code. Following more than two years of negotiation, the City Council determined that a legal settlement, which substantially reduces billboards across the City, was in the best interest of the City. The terms of the agreement provide a framework for the proposed revisions to the sign regulations. This Settlement Agreement is available on the Planning Division's website: www.cityoftacoma.org/planning.

The key terms of the agreement set forth the intent and created a framework for the proposed changes. There are two parts to the exchange program for billboards under the agreement: the first ten digital billboard faces and then subsequent digital billboard faces. Many of the standards for the first ten (10) digital billboard faces were set forth in the settlement agreement. These first ten billboard faces will be 672 square feet in area and the possible locations for them are also determined – these locations are referred to in the draft code as the "special receiving areas." These "special receiving areas" are also shown on the map attached as Exhibit B.

In exchange for permits to install these first ten digital billboard faces, Clear Channel Outdoor will remove ~~53~~ **54**[†] faces throughout the city. These ~~53~~ **54** faces are located on ~~33~~ **30** different ~~structures~~ **sites**. In cases where this represents removal of all the faces on a billboard structure, the structure will be removed to ground level. **The removal list includes approximately 25 full structures to be removed, as well as 5 rooftop billboard faces.** Clear Channel Outdoor will also give up the relocation certificates for 100 billboard faces.

For all billboards which come after the first ten, a permit can be issued for a digital billboard on the condition that at least five faces are removed and enough relocation certificates are given up to total 15 billboard faces surrendered.

[†] *Note:* the original staff report and analysis was based upon an incorrect copy of Exhibit 2 to the Settlement Agreement. The corrected exhibit resulted in one additional face being removed. In addition, 10 sites would be affected differently – either more faces would be removed at the site than were originally noted, or no faces would be removed from sites where removal had been previously noted.

Another 25 standard billboard faces will be removed within 5 years after the agreement is executed, whether or not permits for additional digital billboards beyond the first 10 faces are issued.

Per the Agreement, the City is also considering code revisions to regulate certain aspects of digital billboards, including for the initial ten (10) faces, such as regulations regarding lighting, static image time, and emergency communication. These regulations would also apply to subsequent digital billboards if, and when, they are installed. In addition, the proposed regulations would adopt size, height, and location standards for the additional digital billboards (which can be considered a secondary phase).

If the Agreement is carried out to its fullest extent, the eventual number of billboard faces in Tacoma could be as little as 38. Regardless of future installation of digital billboard faces, there will be a reduction of ~~78~~ **79** standard billboard faces within the first five years.

The draft code amendments were compiled based upon research of other cities in Washington and how they regulate billboards and other signs. Additional information was garnered from court cases regarding billboards, and technical information was received from sign companies, billboard owners, and city engineers. Traffic safety measures have been reviewed and incorporated where appropriate in the draft amendments. This research and information was provided to the Planning Commission in their decision-making process to direct the drafting of the code.

Public Outreach:

City staff have met with representatives from the Cross-District Association (Design Committee) and the Community Council – representatives from all the Neighborhood Councils. A general public meeting was held on January 31. Approximately 35 people attended; the notes from that meeting are attached as Exhibit D.

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

Sign regulation is a typical part of zoning and land use controls authorized under state law. In addition, the State regulates certain signs that are visible from certain highways. These laws are contained in Chapter 47.42 RCW: Highway Advertising Control Act – Scenic Vistas Act and the implementing rules at Chapter 468-66 WAC – Highway Advertising Control Act. These regulations will further restrict billboards visible from Interstates 5 and 705, as well as State Routes 7 and 16. Nothing in the proposed changes conflicts with these State laws and State regulations will supersede City regulations where applicable.

Applicable Provisions of the Comprehensive Plan:

The *Comprehensive Plan* discusses signage in the context of urban design, aesthetics, and pedestrian orientation in several sections of the *Plan*. In most cases it sets forth goals and policies for integrating signage plans into sub-area development plans, ensuring high quality signage, and encouraging pedestrian-scaled signs in mixed-use districts. Commercial district design goals are to integrate signage into the overall design and scale of the district, and ensuring that commercial district development does not act as a detriment to surrounding neighborhoods. The *Plan* states outright that billboards should be prohibited in the Shoreline districts and freestanding signs should be prohibited in the UCX-TD district (Tacoma Dome Urban Center Mixed-Use).

Individual signs proposed for some of the special receiving areas (specifically, those proposed for location in the UCX-TD between "D" and "G" Streets along Puyallup Avenue) could be seen as in conflict with the stated goal of the *Comprehensive Plan* to not allow freestanding signs in these areas. In

addition, to the extent that billboards are considered to be auto-oriented (that is, they are directed toward busy streets and the attention of motorists), it can also be argued that they are not appropriate for location in mixed-use districts generally. Six of the 19 Special Receiving Areas are located in mixed-use districts and one is located in a Downtown district. These proposed locations are along busy arterial streets with high volumes of vehicular traffic. See Exhibit B.

Certain special receiving areas also are located within the required buffer distance from residential districts. Digital billboards placed in these locations may impact the residential area – depending on how the sign is designed and oriented.

In the aggregate, however, the exchange program should result in fewer billboards overall (both digital and traditional) in the city, with fewer billboards located close to residential districts and fewer billboards in all districts – including mixed-use districts. While some areas may be impacted temporarily or permanently by additional billboards, overall the city will see a reduction.

Applicable Provisions of the Land Use Regulatory Code:

The proposed changes to the Land Use Regulatory code are intended to meet the intent of the Settlement Agreement – achieve an overall reduction in the number of billboards in the city by allowing the installation of digital billboards. The proposed changes are limited to Sections 13.06.520-.522, the Sign Code.

The intent of this section of the zoning code is to establish regulations which support land use objectives, to recognize signs as important communication devices, to protect safety and welfare, and to promote an attractive community. The objectives of the section are to provide for uniform and balanced requirements, to ensure compatibility with surroundings, to balance sign users' needs with aesthetics, and to achieve quality design and maintenance for all signs in the city.

The Sign Code is comprised of an intent section, a definitions section, a general regulations section, a section which applies to regulation of signs by type, and a section which applies to signage per district (the tables). Modifications are proposed to each section.

The proposal is intended to better meet the stated intent of the Sign Code by meeting the sign user's need (in this case Clear Channel Outdoor and its clients) and at the same time improving the aesthetics of the community overall. The reduction in the number of billboard faces in the city will benefit neighborhoods throughout the city. In addition, changes proposed to the nonconforming billboards section will remove some of the existing disincentives for sign maintenance and repair. The existing regulations regarding aesthetics are proposed to be somewhat strengthened, as well, and new digital billboards will be controlled for brightness, light pollution, and noise.

The proposal is intended to support the implementation of *Comprehensive Plan* goals for mixed-use centers, as, over time, most the billboards in these areas will be removed in exchange for billboards in other districts. The same can be said for billboards which are located close to residential districts – thus promoting the protection of residential areas as set forth in the *Comprehensive Plan.* Digital billboards will also be regulated so that they do not present a safety hazard – with lighting restrictions, minimum static image times, prohibition of interfering with or imitating a traffic control device, and the like.

Further, the proposed changes to the code should streamline the review of billboards in general. Changes are proposed to simplify the regulations for dispersal (how far billboards have to be from one another), and changes are proposed to the definitions to clarify what a billboard is and remove the focus on content.

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 be consistent with or achieve consistency with the Comprehensive Plan and 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 the 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 are technical errors and inefficiencies in the current code. The definition of "billboard" is defined by its content. Given court cases about commercial free speech under the Constitution, it has been determined to be an inappropriate definition. Further, there is not adequate distinction between off-premises and on-premises signs. Language regarding billboards is organized poorly – for example, subsections regarding location are not placed together, and redundant language is included and can be consolidated.

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: An amortization clause was adopted in 1997 stating that all nonconforming billboards were to be removed by August 1, 2007. That clause was challenged when the deadline passed. Court cases regarding commercial free speech, content-based regulation, and property takings have been adjudicated since that time. Pursuant to the legal challenge, and in light of court cases subsequent to the 1997 ordinance, the City Council determined that a settlement was in the best interest of the City.

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

   Staff Analysis: The amendment is needed to implement a Settlement Agreement, that compromise which is intended to avoid protracted legal issues.

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

   Staff Analysis: In most cases, digital billboards are planned to be located where traditional billboards already exist. In all cases, digital billboards are planned for high-traffic locations, along arterial street routes with a high volume of automobile traffic. The initial 10 billboards are not necessarily compatible with the planned development of the area, as some of them are within mixed-use districts; however, the exchange program as a whole is consistent with the intent of the sign code and with aesthetic improvements city-wide.

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

   Staff Analysis: This criterion is not applicable.

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: The 1997 code changes anticipated exchange of billboards at a 1:1 ratio and the removal of all nonconforming billboards by 2007. Very few billboards have been relocated, and the remaining nonconforming billboards have not been removed.

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.

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 is not applicable.

Economic Impact Assessment:

The economic impacts of the proposed amendment are difficult to anticipate and quantify. Certain land owners will lose income as their leases for standard billboards are terminated. Other landowners may receive new leases for digital billboards. In addition, the City will benefit in that digital billboards will be made available for emergency services alerts. The owners of digital billboards will benefit greatly from the increased advertising revenues on digital billboards, which can support several advertisers at once, compared to a traditional billboard with just one advertiser. At the same time, parties wishing to use billboard advertising will benefit from more opportunities on those digital billboards.

Staff Recommendation:

Staff recommends that the draft amendment (Exhibit A) be released for public review in preparation for a public hearing on March 16, with the recognition that changes may be made to refine the language before a final recommendation is forwarded to the City Council.

Exhibits:

A. Draft Code Amendments, annotated
B. Map of Special Receiving Areas for the first 10 digital billboards
C. Map of allowed zoning districts, with buffers, for subsequent digital billboards
D. Notes from the public meeting on January 31, 2011

FREQUENTLY ASKED QUESTIONS

POTENTIAL REVISIONS TO THE SIGN CODE FOR BILLBOARDS

GENERAL

What are we doing?

The Tacoma Planning Commission is reviewing potential revisions to the City's sign code and how it addresses billboards. The primary change being considered would be to allow for the installation of digital billboards in the city in exchange for the removal of a substantial number of the existing standard billboards.

Why are we doing this?

The goal of the changes being considered is to reduce the overall quantity of billboards in the city. The last major changes to the sign code were made in 1997, when the City adopted new rules for billboards which included a requirement that all nonconforming billboards had to be removed by 2007.

When the City started enforcement of this requirement in 2007, the owner of most of the billboards in the city challenged the City in court claiming that the code was unconstitutional. After more than two years of negotiation, the City Council determined that a legal settlement that brings the lawsuit to an end and substantially reduces the number of billboards across the city may be in the City's best interest. The terms of that agreement provided a framework for the proposed revisions to the sign regulations the Commission is now reviewing.

Why would we allow digital billboards at all?

We do not have to allow digital billboards in the city. However, there are currently 253 standard billboards in the city and, based on the draft code under review by the Commission, allowing the installation of digital billboards would result in a substantial reduction in the overall number of billboards in the city.

Why can't the City just remove all billboards?

When the City capped the number of billboards in 1988 most of the billboards that existed at the time became nonconforming (also commonly known as "grandfathered"). These nonconforming billboards, like any other nonconforming sign in the city, have rights to stay where they are, the way they are. If the City were to force the removal of any nonconforming sign, it's likely we would have to pay the owner for value of the sign.

How many billboards will be removed, and where?

Within the first five years, 78 standard billboard faces will be removed in exchange for allowing 10 new digital billboards. The first 54 billboard faces to be removed have been determined and are located throughout the city. There's a map of the first 54 billboard faces to be removed on the Planning Division website.

Who decides which billboards will be removed?

The first 54 billboards slated for removal were agreed upon by the City Council and the owner of the billboards, Clear Channel Outdoor. The next 25 will be the choice of Clear Channel. The remainder would be prioritized with ones closest to residential areas, churches, schools, shorelines, and parks being removed first.

DIGITAL BILLBOARDS

How is a digital billboard different?

Standard billboards are made from paper or vinyl adhered to a background board or structure. They are changed by hand and usually only change every few weeks (or sometimes the same billboard will stay for months). Digital billboards are like large electronic picture frames. The image changes several times a minute.

Are these like movies or big televisions?

The proposed regulations include restrictions to ensure that nothing on the signs will move. The signs would only be allowed to display static images and then only change them every 8 seconds.

Are these like the billboards I can see from I-5?

No. The digital billboards that are proposed to be allowed in Tacoma are smaller and less bright than the signs visible from I-5 near the Emerald Queen Casino. Those signs are not regulated by the City.

Are they safe for drivers?

There are a lot of studies about billboards in general, as well as about digital billboards, which are inconclusive about the effect these signs have on safety and driver distraction. Limits on brightness, size, location relative to intersections and traffic lights, and image timing are all proposed to help ensure they don't create a safety hazard.

Do digital billboards operate all night long?

The proposed regulations include a restriction that all billboards be turned off from 10:00 p.m. to 5:00 a.m.

Where can a new billboard go?

A billboard can go into a "receiving area" – a location or zone where billboards are allowed. There are four zones where billboards are allowed: "C-2" General Commercial, "M-1" and "M-2" Industrial, and "PMI" Port Maritime Industrial. Also, there are 18 "special receiving areas" defined in the proposed code, which are located throughout the city. You can see maps of the "receiving areas" and "special receiving areas" on the Planning Division website.

Will a new billboard be put into my neighborhood or near my house?

Maybe. It depends on if you live near or within one of the "special receiving areas". Otherwise, the proposed regulations include a restriction that digital billboards will have to be at least 250 feet from any residential zone.

How large can a digital billboard be?

The first 10 digital billboards can be up to 672 square feet, or about 14 feet by 48 feet (for comparison, this is similar to the size of the existing static billboard located at 6th & Sprague near the "It's Greek to Me" restaurant). Under the proposed regulations, any other digital billboard (beyond the first 10) will be limited to 300 square feet.

How tall can a billboard be?

The proposed regulations would limit digital billboards to 30 feet high, except in the "PMI" Port Maritime Industrial zone where the height limit would be 45 feet.

How bright will digital billboards be?

The proposed regulations include specific limitations on how bright digital billboards could be. No digital billboard may increase the amount of light in an area more than a very small amount. Also, digital billboards will be required to be adjusted throughout the day – that is, they'll be brighter in the daytime and dimmer in the nighttime hours.

Where can I find the draft regulations for the billboards?

Additional information, including a project overview, background materials, maps, the settlement agreement, and the project schedule, is available from the Community and Economic Development Department at the address below, and on the City's Planning Division website:

www.cityoftacoma.org/planning then click on "Billboard Regulations"

If you have additional questions, please feel free to contact:

Shirley Schultz, City of Tacoma
747 Market Street, Room 345
Tacoma, WA 98402
shirley.schultz@cityoftacoma.org
(253) 591-5121

How can I comment?

You can comment in writing through the mail, or by electronic mail. You can also attend the Planning Commission public hearing on March 16 at 5:00 p.m. in the City Council Chambers (747 Market Street – first floor). A question and answer session with staff will be held on March 9 at 6:00 p.m., also in the City Council Chambers.

Agenda Item C-1

From: maryanne [mailto:lovesabba@msn.com]
Sent: Thursday, March 03, 2011 9:34 PM
To: Planning
Subject: Re: Proposed Old Town Historic district Boundary Discussion

To the Honorable Members of the Planning Commission, City Council and Staff involved in the subject proposed designation of Old Town Historic Overlay:

Here are some questions I have regarding the proposed Old Town Historic district which I hope to receive comments and responses on. (see below in this email). My home is within the proposed boundaries of this proposed historic overlay.
I hope that when you tour Old Town and my neighborhood that you will carry some of these questions in your heart from the perspective of a homeowner that loves her neighborhood and enjoys the beauty of all kinds of neighboring homes, historic and modern.

Thank you,
Sincerely,
Maryanne Bell
2719 N 29th
Tacoma, WA 98407
(253)219-6654

March 3, 2011
Reference: Proposed Historic Residential Designation in Old Town:

My family home is located at 2719 N 29th, Tacoma WA 98407 and would be affected by any change in zoning or historic designation status.
Any feedback or responses to my questions below would be much appreciated as I am not able to attend the public meetings at this time.

Questions:

A) My understanding is that historic or other architectural designations are primarily intended to maintain the character of a neighborhood by preventing architecturally inconsistent infill development from substantially changing the character of a neighborhood.

   Since there are very few – about 3-5 unimproved lots in the area under consideration – is this measure really necessary for a 99.99% highly built up neighborhood? What would be the purpose or advantage?

B) Why do the boundaries of the proposed designation overlay zone omit:
   i) the childhood home of President Nixon's adviser and counsel during the early Watergate years - John Ehrlichman (3109 N. 29th Street)
   ii) omitted also - both homes of Michael Fast and Caroline Swope who I believe (and I may be wrong) are members of the Architectural review committee. Ms. Swope's ***gorgeous historic residence*** has recently included a very modern chicken wire fence around the back yard which I assume would **not?** be permitted were the home to be included in the

historic overlay? The Fast family home is **impeccable and amazingly beautiful** but not all residents have the funds and resources of both these families. I do understand that some homes may be granted low income exemptions but there is a great swath of incomes in between that would be economically disadvantaged by historic designation which could adversely impact maintenance and upkeep that would normally be more affordable in the preservation of the structures. Additional costs of maintenance and upkeep may in fact result in the opposite effect and make upkeep prohibitively expensive for homeowners.

C) The area under consideration has about as many homes built in the last 40 years as it has historic homes built more than 55 years ago. [*Take a stroll up N 29th Street from Old Town park to Alder. Lanway Construction has some excellent examples of 1990's homes on the entire first block.*] Would these modern homes be grandfathered and unaffected by the historic designation?

Would it not make more sense to identify individual homes for historic designation rather than do a grab bag, hodge podge of homes built between 1900 to 2000's with very modern exteriors to preserve a minority of intact and very architecturally authentic historic homes?

D) Even the homes built with the beauty and grandeur of the turn of the century have been extensively remodeled during the last 50 odd years to where the exteriors as they currently exist would no longer qualify as historic. For e.g. there are prime examples of 70's style add ons, - how would one address those out of character remodels to exterior footprints, sidings and rooflines and very modern garages?

E) My home was originally built in 1950 but currently about a half of the exterior was built in 2008 – how would properties such as mine be affected? Would we have to undertake extensive and expensive retrofits?

F) If a home like mine wanted to add on a second level – would I have to adhere to 1950's style architecture when inside and out combined there is about 25% of the 50's left in the home?

Would I be required to only use outdated roofing styles that no longer meet windspeed construction requirements? And who would make that determination once my construction permits were pulled?

G) Which goes first – the architectural review OR the City planning department construction permits review? And which branch of the City government is the watchdog group to ensure that citizens are not bounced between design review committees and various departments of city government and review committee members who may or may not themselves be subject to the same design review process on their own homes?

H) In implementing architectural design reviews for homes in historic neighborhoods – anecdotes abound about the level of granularity and illogical hurdles that are imposed apparently arbitrarily on homeowners that result in exponential increases in remodeling, updating and/or green energy costs.

Are there no regulations that control these issues or are they left completely up to the subjective opinions of volunteers or even paid staff who may or may not be qualified historic architects and who may or may not be subject to the exact same restrictions on their own properties?
EVEN qualified expert architects are required to function and design construction within the parameters of zoning and construction laws. What legal constraints are operative and imposed upon design review committees ?

What mechanisms are in place to ensure:

i) equality before the law for all homeowners,

ii) impartiality and consistency in the imposition of constraints,

iii) legal documentation and appropriate levels of impartial planning review before decisions of a review committee or demands are imposed upon homeowners in the process of major or even minor repairs such as replacing a broken window pane, **[*How many members of city government can tell a wood from a non-wood window frame if given a drive by test? How many know off hand the difference in price between a TPU approved double pane vinyl window from a wood wrapped double pane window? How competitive is the historic remodel contractors' market compared to generic home remodelers? Are we inadvertently creating or carving out a monopolistic territory for a few select remodel contractors who are capable of handling historic homes renovations, remodels and repairs?]***

iv) documention records of reasoning in the implementation of these design reviews.

v) What due process and levels of appeal are available to cash strapped homeowners who of course **would – if they could** afford to- spare no expense in the preservation of their homes' beauty and integrity?

G. How does the planning department propose to advocate for renewable energy resources, solar panels, exterior technology such as cable tv, phone lines and dishes on rooftops and other exterior surfaces?

H. Can someone articulate clearly and concisely to the owners of properties in the proposed historic designation areas what the clear objectives are, how they will be regulated and implemented fairly and impartially, and how this is effective in an area which is almost 100% already built up?

I. At this time of unprecedented economic challenges, can the members of city government issue a position statement on the justification of utilizing or diverting scarce resources to matters of "aesthetics"?

II. That, at a time when more pressing matters such as education, homelessness, housing, community services, jobs, safe streets, aging sewer lines, aging gas lines, aging water lines and a myriad of other higher priority issues, not to mention the numerous potholes, blocked storm drains, untended sidewalk repairs within the proposed historic overlay district itself, - that at this time while these higher priority safety and maintence items languish due to inadequate budgets, resources and staff – how we can afford to NOT attend to those more pressing needs but spend all this time and effort on matters of aesthetics?

III. Old Town is one of the most highly sought after neighborhoods in the city and the county. As they say***, if it ain't broke, don't fix it***. The beauty of this neighborhood has endured under the current system of zoning and construction laws very well since the day's of the CARR family.

IV. While all the city's efforts and planning and incentives of tax abatements have resulted in bankrupt developments along the waterways of Thea Foss and Ruston, why not redirect resources and focus to preserve and protect our beautiful waterfront public access areas for ALL Tacoma residents and leave homeowners who have taken good care of their properties on the hillsides overlooking Commencement Bay to continue doing the good job that pride of ownership has ensured for generations?

V. The last thing I would like to see is more government interference in the use of my property and a new historic system that encourages nosy neighbors gossiping, tattling and intrusively interfering in their neighbor's legitimate use of their private property. The City currently has a variance process that unfortunately already accomplishes that all too well at great additional cost to individual property owners seeking to improve their homes or seeking to use a few inches of side setbacks. ***It cost my family an extra $12,000 in legal fees, revised construction plans, lost revenues from delayed rental property availability for another home we were occupying, and repeated height elevation surveys etc in order to utilize what turned out to be about 2 inches of side setback for an exterior, uncovered stairwell. One can only imagine what that would have cost my family had there been the additional element of forcing my family to meet some arbitrary, spurious 1950's design element which I assume would have precluded use of clear glass deck railings or even any decking at all.***

This is a beautiful, waterview neighborhood – there were few and very expensive outdoor entertainment decks historically and even fewer garages and carriage houses.
This is a simple matter of economics and burdening citizens with exponential costs in the upkeep and improvement of homes. I urge the City officials to fully understand the economic impact of what seems on the surface like a reasonable idea to preserve historic status ……..long after the horse has left the barn.

Sincerely
Maryanne Bell
2719 N 29th
Tacoma, WA 98407