



**Development Regulation Agreements Pursuant to the Growth Management Act
(RCW 36.70B.170-210)**

STAFF REPORT (DRAFT)
For Planning Commission’s Hearing, October 21, 2009

Applicant:	City of Tacoma, Community & Economic Development Dept.
Type of Amendment:	Regulatory Code Text Changes
Current Land Use Intensity:	All
Current Area Zoning:	City-wide
Size of Area:	City-wide
Location:	City-wide
Neighborhood Council area:	All
Proposed Amendment:	The proposed amendment will modify Chapters 13.05, 13.06, 13.06A, and 13.11 to authorize the use of Development Regulation Agreements pursuant to RCW 36.70B. 170-210

Description of the Proposed Amendment:

The proposed amendment would: (1) add provisions in 13.05.095 that will control the use of Development Regulation Agreements (DRAs), (2) add an authorization in 13.06.601 for the use of DRAs for public facility sites at least five acres in size anywhere within the City of Tacoma, (3) add an authorization in 13.06A.020 for the use of DRAs in Downtown areas, and (4) amend 13.11.130 to make it clear that critical area issues are to be addressed within the DRA review process and that a separate critical areas permit is not required.

In the Downtown areas, the proposal first requires that the project include a building footprint of at least 15,000 square feet and a proposed height of at least 75 feet. Then, the proposal uses a rating system based on Comprehensive Plan objectives to determine which projects qualify to be considered for a DRA. Finally, the proposal establishes that all projects within the International Financial Services Area (IFSA) that meet the rating threshold are eligible for consideration, but that only those projects located within the “Working Definition of Downtown,” but outside the IFSA area where the real property involved is subject to some measure of public ownership or control are eligible for consideration.

First and foremost, a DRA involves a process that is entirely optional for both a developer and the City. Next, it should be pointed out that if the DRA option is selected by both the developer and the City it results in a binding contract between both parties, a contact that typically covers larger projects that have the potential to command extensive public interest and benefits. The developer is able to negotiate for some flexibility in regulatory standards, other than life-safety standards, and to secure a commitment that the regulatory standards set forth in the contract will not change for a certain period of years.

The City for its part is able to negotiate for firm commitments to public benefits and amenities that go beyond the standard requirements associated with a particular project and to provide a permit review option that should be attractive to those looking to invest here in Tacoma and should provide Tacoma with a competitive advantage when site selections are being made. Procedurally, the City Council is the

final decision maker, after extensive public participation is sought and a formal public hearing held before the City Council.

Project History:

The State Legislature amended the Growth Management Act in 1995 to specifically authorize Development Agreements. These Agreements are referred to in this Staff Report as Development Regulation Agreements (DRAs) to distinguish them from the City's public/private joint ventures that are memorialized in documents that have long been referred to as Development Agreements (even though they lack the regulatory components described in the State Growth Management Act).

Specifically, the State Legislature found that "... the lack of certainty in the approval of development projects can result in a waste of public and private resources, escalate housing costs for consumers, and discourage the commitment to comprehensive planning which would make maximum efficient use of resources at the least economic cost to the public. Assurance to a development project applicant that upon government approval the project may proceed in accordance with existing policies and regulations, and subject to conditions of approval, all as set forth in a development agreement, will strengthen the public planning process, encourage private participation and comprehensive planning, and reduce the economic costs of development. 1995 c 347 § 501.

City Comprehensive Plan policies address a number of subject areas and locations where DRAs could be particularly useful. Two are addressed in this staff report.

(A) Public Facilities. The City Comprehensive Plan highlights the importance of working cooperatively with other public agencies to address land use development and service issues of mutual concern (Policy LU-GGD-7). It then proceeds to specifically urge that review programs be explored that encourage desired types of development, allow opportunity for public comment, provide flexibility in how developments meet objectives, and focus heightened levels of review on significant or key projects and/or locations (Policy LU-UAD-2). Such review programs need to address the unique needs of large institutions such as colleges and hospitals and the development details that these institutions put forward in their own facility master programs, as well as the need for approved projects to be constructed over an extended period of time.

(B) Downtown. The "Downtown Tacoma Economic Development Strategy, July 2008 Draft (Strategic Plan), prepared by Angelou Economics, first highlights that "Downtown Tacoma is the city's economic and historic core, with 39,300 employees and over 15,000 residents generating a new vibrancy that Tacoma hasn't seen in many years." It then identifies the best target sectors for the City's economic development efforts and sets forth "... a practical, implementable roadmap to increase private investment in Downtown Tacoma."

This roadmap focuses on seven strategic nodes within downtown, places a short-term priority emphasis on visioning/planning and public policy work that can aid employer recruitment and expansion, and calls for supporting investor interests by providing additional incentives and flexibility. In this latter regard, the Strategic Plan emphasizes that: "Development in downtown areas is almost universally more difficult than it is in suburban locations, due to less availability of land, stringent development restrictions, inadequate or deteriorating infrastructure, and limited parking options. In order to make a downtown location as appealing as a suburban location for developers, cities must often support investor interests by providing additional incentives...."

This roadmap and this incentive approach are consistent with the climate recommendations of the City's Green Ribbon Climate Action Task Force, recommendations that are "...a selection of calculated decisions that represent a blueprint for Tacoma to reduce its greenhouse gas emissions..." Page 4. This 'blueprint' includes a major focus on transit-oriented development, zoning standards that support increased use of public transit, and recommendations for additional flexibility and incentives.

Applicable Provisions of the Comprehensive Plan:

The range of potential incentives, together with the need for flexibility, is thoroughly discussed in the 2008 Update to the Downtown Element of the City's Comprehensive Plan, an update based on the Downtown Strategic Plan and the design work conducted by VIA Architects. More specifically, this Element calls for the development of "...a process for private development agreements pursuant to Growth Management Act provisions (RCW 36.70B.170-210)". Catalyst Projects: Connecting the Gaps, Actions, Near Term (1-3 Years), 2.1C.1b.

Public Outreach:

This proposal will be the subject of extensive outreach. The draft ordinance will be presented to key stakeholders prior to the required public hearings. It is anticipated that there will be interest in this proposal from a diverse range of business, environmental, and neighborhood groups.

Applicable Provisions of the Growth Management Act:

The Growth Management Act (GMA) requires that development regulations shall be consistent with and implement the Comprehensive Plan. Development regulations include, **but are not limited to**, zoning controls, critical area ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances. The GMA also incorporates the 14 primary goals, many of which either directly or indirectly relate to the proposed code amendment:

- (1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.
- (3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.
- (5) Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.
- (6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.
- (7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.
- (10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.
- (11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

(13) Historic preservation. Identify and encourage the preservation of lands, sites, and structures that have historical or archaeological significance.

These goals encourage growth in urban areas, encourage the provision of a variety of housing styles, types and densities, support protection of the environment, and encourage public involvement in the planning process. GMA also includes specific guidance indicating that local jurisdictions should provide for innovative land use management techniques, including, **but not limited to**, density bonuses, cluster housing, planned unit developments, and the transfer of development rights. (RCW 36.70A.090) The proposed amendments are designed to provide additional incentives in the City’s regulatory code and to allow for additional flexibility directed at promoting urban growth, infill development, and reinvestment.

Amendment Criteria:

Applications for amendments to the Comprehensive Plan and Land Use Regulatory Code are subject to review based on the adoption and amendment procedures and the review criteria contained in TMC 13.02.045.G. Proposed amendments are required to meet at least one of the eleven review criteria to be considered by the Planning Commission. The following section provides a review of each of these criteria with respect to 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: The proposed amendment does not seek to correct any error in the Comprehensive Plan or the Land Use Regulatory Code. However, the proposal does seek to add an optional new development review process that has a reasonable possibility of improving consistency between the Comprehensive Plan goals and policies and project design and construction.

2. The amendment is consistent with the Comprehensive Plan goals or policies or will achieve consistency.

Staff Analysis: As authorized by the State Growth Management Act, the proposed amendment will allow Comprehensive Plan goals and policies to be directly applied to project review, mitigation, and conditions in such a way as to ensure consistency with these goals and policies. The 2008 Update to the Downtown Element of the City’s Comprehensive Plan calls for development standards to be developed in concert with market realities. Encourage Revitalization: Tie Land Use Regulations to Construction Realities, Downtown Plan, DT-19. More specifically, this Element calls for the development of “...a process for private development agreements pursuant to Growth Management Act provisions (RCW 36.70B.170-210)”. Catalyst Projects: Connecting the Gaps, Actions, Near Term (1-3 Years), 2.1C.1b.

- 3. 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: This optional development review process is a new proposal for the Planning Commission to consider, but one that is being widely used elsewhere in the State and nation.

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

Staff Analysis: The needs of the City have changed as described in the responses to Criteria #1 and #2.

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

Staff Analysis: Rather than being tightly constrained by a standard set of development regulations, a DRA will allow the City and a developer to ensure that the proposed project is compatible with existing and planned land uses and the surrounding development pattern by adjusting development standards in a manner that is appropriate for a particular site.

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

Staff Analysis: Growth and development in downtown, as envisioned in the Plan, is occurring slower than the desirable rate.

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

Staff Analysis: The flexibility provided by a DRA will allow the City to negotiate for increased capacity to provide adequate services. In particular, the DRA can set forth a schedule for the necessary service improvements to be phased in over time.

- 8. 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: Growth and development objectives for downtown, as envisioned in the Plan, are being achieved at a slower rate than that desired, an issue that is addressed in the response to Criterion #6.

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

Staff Analysis: This proposed amendment is designed to enhance transportation and other capital improvements by facilitating public/private partnerships that address infrastructure needs as well as public enhancements

- 10. 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 proposal does not involve a change in land use intensity or zoning classification.

11. 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: While this proposed amendment is not based on any specific inconsistencies between the City’s planning documents and County-wide, regional or state policies, it has the potential if the optional review procedure is utilized to improve consistency in multiple ways. The Pierce County Buildable Lands Program 2008 Consistency Evaluation, Draft Report 11/20/08 (Report), concludes that the City has sufficient land to accommodate its regional allocation of commercial and industrial development. However, based on recent trends the City’s employment target of 39,000 new jobs by 2022 is projected to fall short by 7,000 jobs. Accordingly, the Report concludes that “...reasonable measures may be appropriate to increase employment capacity...” Report, page 71. Action on ‘reasonable measures’ is mandated by the Growth Management Act (RCW 36.70A.215) and Vision 2040 and the City is taking concerted action to comply, with a focus on employment retention and recruitment through new policies and development regulations for the Downtown area,

Economic Impact Assessment:

The Comprehensive Plan, Economic Element, sets out to reinforce the City’s role as an “internationally competitive business center” and places a major focus on further Downtown revitalization. It first identifies among the strengths of the Tacoma economy “...the culture of growth, the favorable regulatory environment”. It then establishes policies designed to foster entrepreneurial development and business to business expansions and to make efficient use of land through use of regulatory, pricing, taxing, and expenditure practices that encourage concentrated development.

Adding an optional development review process for downtown redevelopment should be attractive to those looking to invest here in Tacoma and should provide Tacoma with a competitive advantage when site selections are being made. It should also address the unique needs of large institutions such as colleges and hospitals and the development details that these institutions put forward in their own facility master programs, as well as the need for approved projects to be constructed over an extended period of time.

Staff Recommendation:

Staff recommends forwarding the draft proposal to add an optional procedure for the use of Development Regulation Agreements for public facility sites at least five acres in size and for complex projects in Downtown areas go forward for public review and comment.

Exhibits:

- A. Proposed Code language authorizing the use of DRAs
- B. Map of Downtown and IFSA

Development Regulation Agreements
Proposed Revisions to Tacoma Municipal Code
September 22, 2009

CHAPTER 13.05 – LAND USE PERMIT PROCEDURES

13.05.095 Development Regulation Agreements

A. Purpose. Pursuant to RCW 36.70B.170-210, the purpose of this section is to create an optional application procedure that could authorize certain major projects in key locations to be reviewed, rated, approved, and conditioned according to the extent to which they advance the Comprehensive Plan's goals and policies. In addition to demonstrating precisely how it significantly advances the goals and policies of the Comprehensive Plan by achieving the threshold set forth in 13.05.095(D), a threshold established based on the Comprehensive Plan's goals and policies, a project located within the areas described in B(1) or B(2) must document specific compliance with the policies and standards set forth in the Downtown Element of the Comprehensive Plan.

It is anticipated that there will be a degree of flexibility in the application of the City's development regulations so that any conditions are tailored to the specifics of the proposed project and community vision in such a manner as to ensure that significant public benefits are secured. Project approval is embodied in a contract designed to assure that anticipated public benefits are realized according to agreed upon terms and conditions, conditions that may include but are not limited to project vesting, timing, and funding of on- and off-site improvements.

The City is authorized, but not required, to accept, review and/or approve proposed Development Regulation Agreements. This process is voluntary, both on the part of the applicant and the City.

B. Applicability. Development Regulation Agreements shall only be allowed for one of the following project types:

1. Proposed projects located within the International Financial Services Area (IFSA), as defined in City Ordinance No. 27825, with a building footprint of at least 15,000 square feet and a proposed height of at least 75 feet;
2. Proposed projects located within the "Working Definition of Downtown," as set forth in Figure 1 in the Downtown Element of the City Comprehensive Plan, provided that the real property involved is subject to a significant measure of public ownership or control, and provided that the project includes a building footprint of at least 15,000 square feet and a proposed height of at least 75 feet;
3. Proposed projects located within the IFSA or the Working Definition of Downtown where the City Landmarks Preservation Commission formally certifies that the proposed project is either a historic structure or is directly associated with, and supports the preservation of, an adjacent historic structure; or

4. Proposed projects located on a public facility site, as defined in Section 13.06.700.P, that is at least five acres in size and is not a public utility site.

C. Application process. An application for a Development Regulation Agreement may only be made by a person or entity having ownership or control of real property within one of the qualifying areas identified in subsection B, above. Applications for a Development Regulation Agreement shall be made with the Department of Community and Economic Development, solely and exclusively on the current form approved by the said Department, together with the filing fee set forth in the current edition of the City's Fee Schedule as adopted by resolution of the City Council.

D. Review criteria. The City Manager, and such designee or designees as may be appointed for the purpose, shall negotiate acceptable terms and conditions of the proposed Development Regulation Agreement based on the following criteria:

1. The Development Regulation Agreement conforms to the existing Comprehensive Plan. Except for projects on a public facility site of at least five acres in size, conformance must be demonstrated by the project, as described in the Development Regulation Agreement, scoring 800 points out of a possible 1,000 points according to the following scoring system (based on the Downtown Element of the City's Comprehensive Plan):

a. Balanced healthy economy. In any project where more than 60% of the floorspace is Class A office space, one point shall be awarded for every 200 square feet of gross floorspace (excluding parking) up to a maximum of 290 points.

b. Achieving vitality downtown. Up to 40 points shall be awarded for each of the following categories: (i) CPTED design ("Crime Prevention Through Environmental Design"), (ii) sunlight access to priority public use areas, (iii) view maximization, (iv) connectivity, (v) quality materials and design, (vi) remarkable features, (vii) access to open space, and, (viii) street edge activation and building ground orientation.

c. Sustainability. Up to 50 points shall be awarded for each of the following categories: (i) complete streets, (ii) transit connections, and (iii) energy conservation design to a L.E.E.D. (Leadership in Energy and Environmental Design) certification to a gold level or certified under another well recognized rating system to a level equivalent to certification to a gold level.

d. Quality Urban Design. Up to 60 points shall be awarded for each of the following categories: (i) walkability, (ii) public environment, (iii) neighborly outlook, and, (iv) support for public art.

2. Appropriate project or proposal elements such as permitted uses, residential densities, and nonresidential densities and intensities or structure sizes are adequately provided, to include evidence that the site is adequate in size and

shape for the proposed project or use, conforms to the general character of the neighborhood, and would be compatible with adjacent land uses.

3. Appropriate provisions are made for the amount and payment of fees imposed or agreed to in accordance with any applicable provisions of State law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications.

4. Adequate mitigation measures including development conditions under Chapter 43.21C RCW are provided.

5. Adequate and appropriate development standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features are provided.

6. If applicable, targets and requirements regarding affordable housing are addressed.

7. Provisions are sufficient to assure requirements of parks and open space preservation.

8. Best available science and best management practices shall be used to address critical areas within the property covered by a Development Regulation Agreement adopted pursuant to this section. Review of a development activity's critical area impacts that go beyond those exempted activities identified in TMC 13.11.140 shall occur during the Development Regulation Agreement review process and a separate critical areas permit is not required. Any Development Regulation Agreement approval(s) shall to, the maximum extent feasible, avoid potential impacts to critical areas and any unavoidable impacts to critical areas shall be fully mitigated, either on or off-site.

9. Interim uses and phasing of development and construction is appropriately provided. In the case of an interim use of a property or portion of a property, deferments or departures from development regulations may be allowed without providing a demonstrated benefit to the City; provided, that any departures or deferments to the Code requested for a final use of the property shall comply with criterion No. 10 below. The agreement shall clearly state the conditions under which the interim use shall be converted to a permanent use within a stated time period and the penalties for noncompliance if the interim use is not converted to the permanent use in the stated period of time.

10. Where a phased Development Regulation Agreement is proposed, a site plan shall be provided and shall clearly show the proposed interim and final use subject to the agreement.

11. In the case of a Development Regulation Agreement where the proposed use would be the final use of the property, it shall be clearly documented that any departures from the standards of the Code, requested by the applicant, are in the judgment of the City, off-set by providing a benefit to the City of equal or greater value relative to the departure requested. In no case shall a departure from the Code, be granted if no benefit to the City is proposed in turn by the applicant.

12. Conditions are set forth providing for review procedures and standards for implementing decisions, together with conditions explicitly addressing enforceability of Development Regulation Agreement terms and conditions and applicable remedies.

13. Thresholds and procedures for modifications to the provisions of the Development Regulation Agreement are provided.

14. A build-out or vesting period for applicable standards is provided.

15. Any other appropriate development requirements or procedures necessary to the specific project or proposal are adequately addressed.

16. If appropriate, and if the applicant is to fund or provide public facilities, the Development Regulation Agreement shall contain appropriate provisions for reimbursement over time to the applicant.

17. Appropriate statutory authority exists for any involuntary obligation of the applicant to fund or provide services, infrastructure, impact fees, inspection fees, dedications, or other service or financial contributions.

18. Penalties for non-compliance with the terms of the Development Regulation Agreement are provided.

19. The building(s) shall be L.E.E.D. certified to a silver level or certified under another well recognized rating system to be comparable to a building that is L.E.E.D. certified to a silver level.

E. Other standards and requirements.

1. Compliance with the provisions of subsection D, above, will ensure that the terms of the Development Regulation Agreement are consistent with the development regulations of the City then in effect, except that, in the case of Shoreline Management Districts (TMC 13.10) and Landmarks and Historic Special Review Districts (TMC 13.07), specific compliance with the regulations and procedures of these codes is required.

2. The Development Regulation Agreement shall specify any and all development standards to which its terms and provisions apply. All other applicable standards and requirements of the City or other agencies shall remain in effect for the project.

F. Public hearing and approval process.

1. If the City Manager deems that an acceptable Development Regulation Agreement has been negotiated and recommends the same for consideration, the City Council shall hold a public hearing and then may take final action, by resolution, to authorize entry into the Development Regulation Agreement. In addition, the Council may continue the hearing for the purpose of clarifying issues, or obtaining additional information, facts, or documentary evidence; advice also may be sought from the Planning Commission.

2. Because a Development Regulation Agreement is not necessary to any given project or use of real property under the existing Comprehensive Plan and

development regulations in effect at the time of making application, approval of a Development Regulation Agreement is wholly discretionary and any action taken by the City Council is legislative only, and not quasi-judicial.

3. The decision of the Council shall be final immediately upon adoption of a resolution authorizing or rejecting the Development Regulation Agreement.

4. Following approval of a Development Regulation Agreement by the Council, and execution of the same, the Development Regulation Agreement shall be recorded with the Pierce County Auditor.

G. Modifications. Once a Development Regulation Agreement is approved, no variances or discretionary permits may be applied for. Changes to standards may only be secured by amendment to the Development Regulation Agreement pursuant to amendment thresholds and process set forth in the Development Regulation Agreement.

H. Enforcement. Unless amended pursuant to this Section and the terms of the agreement, or terminated, a Development Regulation Agreement is enforceable during its term by a party to the Agreement. A Development Regulation Agreement and the development standards in the Agreement govern during the term of the agreement, or for all or that part of the specified build-out period. The Agreement will not be subject to a new or amended zoning ordinance or development standard adopted after the effective date of the Agreement, unless otherwise provided in the Agreement or unless amended pursuant to this Section. Any permit or approval issued by the City after the execution of the Agreement must be consistent with the Development Regulation Agreement.

CHAPTER 13.06 – ZONING

13.06.601 Public Facility Sites – Development Regulation Agreements Authorized.

For a Public Facility Site, as defined in Section 13.06.700.P, that is at least five acres in size, the regulations set forth in Chapter 13.06 shall not apply if a Development Regulation Agreement, pursuant to the provisions of Section 13.05.095, has been approved for the site and is complied with.

CHAPTER 13.06A – DOWNTOWN TACOMA

13.06A.020 Applicability.

The provisions of this chapter shall apply to all uses and development in those areas in Downtown Tacoma classified in the districts described in Section 13.06A.040 and shall modify the regulations and other provisions of

Chapter 13.06 of the Tacoma Municipal Code (“TMC”); provided, that the regulations and provisions of Chapter 13.06 shall apply when not specifically covered by this chapter; and, further, provided that where Chapter 13.06 and this chapter are found to be in conflict, the provisions of this chapter shall apply; and, further provided that neither the regulations set forth in Chapters 13.06 nor 13.06A shall apply if a Development Regulation Agreement, pursuant to the provisions of Section 13.05.095, has been approved for the site and is complied with.

CHAPTER 13.11 – CRITICAL AREAS PRESERVATION

13.11.130 Scope and Applicability.

D. Critical areas outside a shoreline district that involve a development activity that is reviewed pursuant to 13.05.095 (Development Regulation Agreements) shall be considered during the Development Regulation Agreement review process; a separate critical areas permit is not required. Any approval(s) pursuant to 13.05.095 shall, to the maximum extent feasible, avoid potential impacts to critical areas and any unavoidable impacts to critical areas shall be fully mitigated, either on or off-site.

