Members
Jeremy C. Doty, Chair
Thomas C. O’Connor, Vice-Chair
Peter Elswick
Kimberly Freeman
Sean Gaffney
William Hirsh
Scott Morris
(vacant)
(vacant)

Community and Economic Development Department
Ryan Petty, Director
Peter Huffman, Assistant Director
Charles Solverson, P.E., Building Official

Public Works and Utilities Representatives
Jim Parvey, City Engineer/Assistant Director, Public Works Department
Heather Pennington, Water Distribution Engineering Manager, Tacoma Water
Diane Lachel, Community and Government Relations Manager, Click! Network, Tacoma Power

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

MEETING: Regular Meeting

TIME: Wednesday, June 16, 2010, 4:00 p.m.

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

A. CALL TO ORDER

B. QUORUM CALL

C. APPROVAL OF MINUTES – Regular Meeting and Public Hearing on June 2, 2010

D. GENERAL BUSINESS

(4:05 p.m.) 1. Neighborhood Council and Neighborhood Business District Programs

Description: Review the purposes, organizational structure, activities, budget and resources, and other pertinent information relating to said programs, as well as their roles in implementing the Comprehensive Plan.

Actions Requested: Informational

Support Information: See “Agenda Item GB-1”

Staff Contact: Donna Stenger, 591-5210, dstenger@cityoftacoma.org

(4:45 p.m.) 2. Code Enforcement

Description: Review testimony received at the public hearing on June 2, 2010 and through the comment period ending June 11, 2010, concerning the proposed revisions to Title 13 of the Tacoma Municipal Code pertaining to code enforcement.

Actions Requested: Review, Discussion, Recommendation

Support Information: See “Agenda Item GB-2”

Staff Contact: Dustin Lawrence, 591-5845, dlawrence@cityoftacoma.org

The Community and Economic Development Department does not discriminate on the basis of handicap in any of its programs and services. Upon request, accommodations can be provided within five (5) business days. Contact (253) 591-5365 (voice) or (253) 591-5153 (TTY).
3. Shoreline Master Program Update

Description: Review public comment from the joint meeting of the City Council’s Environment and Public Works Committee and Economic Development Committee and review Council questions and discussion.

Actions Requested: Review, Comment

Support Information: See “Agenda Item GB-3”

Staff Contact: Stephen Atkinson, 591-5531, satkinson@cityoftacoma.org

E. COMMUNICATION ITEMS

1. Land Use Administrator’s Reports and Decisions – “Agenda Item C-1”

2. Announcements:
   a. The City Council is seeking a citizen residing in District No. 4 (South End and Eastside) to serve on the Planning Commission for a 3-year term from July 1, 2010 to June 30, 2013. Applications are due to the Mayor’s Office by Friday, June 18, 2010. (www.cityoftacoma.org/planning > “Planning Commission”)


F. COMMENTS BY LONG-RANGE PLANNING DIVISION

G. COMMENTS BY PLANNING COMMISSION

H. ADJOURNMENT
MEETING: Regular Meeting and Public Hearing

TIME: Wednesday, June 2, 2010, 4:00 p.m.

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

Members
Present: Jeremy Doty (Chair), Thomas O’Connor (Vice-Chair), Peter Elswick, Kimberly Freeman, Sean Gaffney, William Hirsh, Scott Morris

Staff
Present: Donna Stenger, Caroline Haynes-Castro, Jana Magoon, Brian Boudet, Dustin Lawrence, Reuben Mc Knight, Ian Munce, Lisa Spadoni, Lihuang Wung (Building and Land Use Services); Jim Parvey (Public Works); Diane Lachel (Tacoma Power)

Chair Jeremy Doty called the meeting to order at 4:04 p.m. The minutes of the regular meetings on May 19, 2010 were approved as submitted.

GENERAL BUSINESS

1. Wedge Neighborhood Historic Special Review Overlay District

Mr. Reuben McKnight, Historic Preservation Officer, presented the draft Findings and Recommendations Report and the draft Letter of Recommendation to be transmitted to the City Council as part of the Planning Commission's recommendation concerning the proposed boundaries for the Wedge Neighborhood Historic Special Review District and the Conservation Districts and regulatory changes including design guidelines for the proposed overlay historic and conservation districts. The Commission approved both documents unanimously.

2. 2011-2012 Work Program

Ms. Donna Stenger presented an overview of planning activities that the Planning Commission will be considering in 2011-2012. Ms. Stenger's presentation covered a discussion of work items for the remainder of this year and looking ahead to the years 2011 and 2012. She reviewed a draft matrix of planning projects that are underway and/or committed at this time and the
approximate timelines associated with the projects. The draft matrix included priorities established by the City Council, City Manager, and the Department director and in consideration of available resources.

Ms. Stenger noted the discussion at the Commission’s workshop held on March 12, 2010, that although staff attempts to plan out and schedule work items, adjustments are always a possibility due to emerging issues, resource additions or reductions, and changing priorities. She further explained that the City Council is in the midst of discussing strategic priorities to help inform the development of the biennial budget for 2011-2012. Many of their priorities have a planning focus or component that could modify the work program in the next two years. She commented that some emerging issues could result in additions to the work program including recommendations from a recently formed affordable housing task force, master planning for mixed-use centers and a request from the West Slope area to create a neighborhood conservation district for the purpose of preserving its character.

Ms. Stenger also noted that the draft work program only includes those activities that fall under the direct review of the Commission; however, planning staff also are responsible for a wide range of planning activities that do not involve Commission oversight. These other activities considerably reduce staff hours available to work on changes to the Comprehensive Plan or development regulations.

The Commission discussed the work program. The Commission accepted the work program as presented but noted the need to continue to improve the Comprehensive Plan to provide clear direction, remove conflicts and incorporate the concept of economic and environmental sustainability. Members also noted the need to examine policy and code changes to address compatibility of new development with neighborhood character.

**PUBLIC HEARING**

1. **Code Enforcement**

Chair Doty called the public hearing to order at 5:00 p.m., stated that the subject of the hearing was the Proposed Land Use Code Enforcement Amendments, described the procedures for receiving oral testimony and written comments, and called on Mr. Dustin Lawrence to provide a staff presentation. Mr. Lawrence provided a summary report that included the purpose the amendment, the different components of the amendment, the responsible City agencies, and the public notification process for the public hearing. He also stated that the written comment would be accepted until June 11, 2010.

Chairman Doty called for testimony.

(1) **Marshall McClintock:**

Mr. McClintock, 701 South “J” Street, representing the North Slope Historic District, brought their enthusiastic support of the Land Use Code Amendment and feels that it is a very good tool with one exception. The exception is that property owners will sometimes sell their property without letting the new owner have a complete picture of what enforcement issues may be still attached to the property, i.e., “flipping”. He feels that a lien should be a part of the new amendment to cover this eventuality. He also commented that certain contractors have consistently performed work in the District without seeking permits and in violation for
the design and development standards for the historic district. He asked that the City explore ways that these contractors be held liable for the violations in addition to the homeowner.

(2) Bob Olson:
Mr. Olson, property owner at 4922 North Pearl Street, spoke from personal experience in that he had been cited and fined for having large containers on his property by the City’s Community Based Services (Code Enforcement). He felt that since the containers had been on his property for quite some time (“10 years”), that the new code amendments should have a “grandfather” clause that allows property owners not to be cited and fined when circumstances were such that the City had at one time approved of what was being done on their property.

Chair Doty called for any further oral testimony. Seeing none, he reiterated that written comments may be submitted by Friday, June 11, 2010, 5:00 p.m. and closed the public hearing.

COMMUNICATION ITEMS

Chair Doty acknowledged receipt of the following:
1. Land Use Administrator’s Reports and Decisions
2. Announcements:
   a. Applications for the Planning Commission’s vacant position representing District 4 are due to the Mayor’s Office by June 18, 2010.
   b. The City Council’s schedule for the adoption of the proposed 2010 Annual Amendments is as follows:
      • June 8, 2010 – First reading of ordinances
      • June 15, 2010 – Final reading of ordinances and adoption of a resolution for design guidelines

COMMENTS BY LONG-RANGE PLANNING DIVISION

Ms. Stenger informed the Commission of three upcoming City Council meetings: (1) Neighborhoods & Housing Committee meeting on Mixed-Use Center Master Planning, June 7, 2010, 4:30 p.m., Room 248; (2) Environment & Public Works and Economic Development Committees joint meeting on Shoreline Master Program Update, June 9, 2010, 4:30 p.m., Room 248; and (3) Neighborhoods & Housing Committee meeting on the Wedge Historic District, June 21, 2010, 4:30 p.m., Room 248.

COMMENTS BY PLANNING COMMISSION

Commissioner Morris encouraged the Commissioners’ participation in the last two rounds of public meetings sponsored by Pierce Transit on the transit system redesign: (1) Open Houses highlighting two alternative plans for the future transit system based on funding and enhanced funding – the open house in Tacoma is on June 9, 2010, 4:30-6:30 p.m., at the Evergreen College; and (2) Public Hearing on System Redesign Alternatives, June 14, 2010, 4:00 p.m., at Pierce Transit Headquarters.

ADJOURNMENT

The meeting adjourned at 5:35 p.m.
TO: Planning Commission

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

SUBJECT: Neighborhood Councils and Neighborhood Business Districts Programs

DATE: June 10, 2010

At the Planning Commission’s meeting on June 16, 2010, staff will provide an informational presentation on the City’s Neighborhood Councils and Neighborhood Business Districts Programs. In response to the Commissioners’ request made at the workshop on March 12, 2010, the presentation is intended to increase the Commissioners’ understanding of said programs and their roles in implementing the Comprehensive Plan.

Attached are chapters 1.45 and 1.47 of the Tacoma Municipal Code pertaining to the respective programs. If you have any questions, please contact Donna Stenger at 591-5210 or dstenger@cityoftacoma.org.

DS

c. Peter Huffman, Assistant Director

Attachment
Chapter 1.45
NEIGHBORHOOD COUNCILS

Sections:
1.45.010 Purpose.
1.45.020 Intent.
1.45.030 Creation of Neighborhood Council Program.
1.45.040 Administrative provisions.
1.45.050 Minimum standards for recognition as a Neighborhood Council.
1.45.060 Community Council.
1.45.070 Neighborhood Council functions and responsibilities.
1.45.080 City responsibilities.
1.45.090 Neighborhood Council and Community Council funding.
1.45.100 Review and revision.

1.45.010 Purpose.
The purpose of this chapter is to set forth the responsibilities and procedures relating to the Community Council and Neighborhood Councils. This chapter establishes Neighborhood Councils and the Community Council as a coalition of the Neighborhood Councils. This chapter assigns functions and responsibilities to the Neighborhood Councils, the Community Council, and the City to support and promote the Neighborhood Council program. (Ord. 25188 § 1; passed Sept. 22, 1992)

1.45.020 Intent.
It is the intent of the City, through the creation of Neighborhood Councils and the Community Council, to foster a partnership of open communication between the City and its neighborhoods; to enhance the environment in which citizens are afforded an opportunity to participate in government decisions in an advisory role; to foster cooperation and consensus among diverse interests; to assist the City and neighborhoods in developing solutions to mutual problems; and to develop in the citizens a sense of personal pride and responsibility for their neighborhood.

With the creation of Neighborhood Councils, the City does not intend to limit the activities, role or importance of existing neighborhood organizations such as neighborhood improvement organizations, block watch groups, safe street groups, and advisory boards. While it is expected that these groups will take an active part in the Neighborhood Council program, it is intended that they remain independent. (Ord. 25188 § 1; passed Sept. 22, 1992)

1.45.030 Creation of Neighborhood Council Program.
A. Establishment. Eight Neighborhood Councils will be established. The eight Neighborhood Councils will correspond to the City’s nine planning areas with minor adjustments to coincide with historic community ties or boundaries. The Central Business District and the Port Industrial planning areas will be combined as one Neighborhood Council, and in conjunction with the seven other planning areas, total the eight Neighborhood Councils. The City of Tacoma, through the Neighborhood Council Office of the Community and Economic Development Department, will work with existing neighborhood organizations to organize and establish the eight Neighborhood Councils. The Neighborhood Council Office will provide technical assistance on a variety of issues, including recruiting skills, organizational methods, rules and procedures, and conducting forums. After each Neighborhood Council is established, it will be recognized by the City Council.

B. Notification. The Neighborhood Council Office shall notify all neighborhood and community organizations and groups known to and recognized by the City of the adoption of Resolution No. 31888 and this chapter within 30 days of adoption.

C. Rules and Procedures. The Neighborhood Council Office shall solicit volunteers from existing neighborhood and community organizations to serve on a committee with City staff to develop rules and procedures for the operation of Neighborhood Councils. These rules and procedures shall be developed before the eight Neighborhood Councils are established, and shall not violate any provision of this chapter or other City regulation. The rules and procedures may be amended by a majority vote of any Neighborhood Council, provided they are not inconsistent with this chapter or other City regulation.

D. Neighborhood Council Boundaries. The City Council shall determine the boundaries of the Neighborhood Councils, and shall set those boundaries by resolution. The boundaries of any Neighborhood Council may be amended. Such amendment must be proposed by the involved Neighborhood Councils and reviewed and approved by the City Council. No amendments shall be considered within the first year following the establishment of the Neighborhood Council boundaries. (Ord. 27466 § 17; passed Jan. 17, 2006: Ord. 26386 § 12; passed Mar. 23, 1999: Ord. 25966 § 1; passed Oct. 8, 1996: Ord. 25188 § 1; passed Sept. 22, 1992)

1.45.040 Administrative provisions.
A. This chapter does not limit the right of any person or group to participate directly in the decision-making process of the City Council or any City department.
B. Compliance with the Neighborhood Council program is not jurisdictional. Failure of the City or any City department to comply with any provision of this chapter will not invalidate any later action taken by any officer of the City; any City commission, committee or board or the City Council.

C. It is not the intent of this chapter to provide for new procedures or processes for legislative enactment, policy formulation, quasi-judicial decision-making or administrative practices.

D. It is not the intent of the City to delegate any portion of its authority to the Neighborhood Councils or Community Council.

E. Citizens retain all duties and obligations to participate in existing processes for legislative enactment, policy formulation, quasi-judicial decision-making or administrative practices. Participation in the Neighborhood Council program does not limit such duties and obligations. (Ord. 25188 § 1; passed Sept. 22, 1992)

1.45.050 Minimum standards for recognition as a Neighborhood Council.

A Neighborhood Council shall meet and continue to maintain conformity with the following minimum standards:

A. One or more well-publicized general neighborhood meetings have been held for the purpose of information and approval of organizational objectives and bylaws.

B. Neighborhood Councils shall be independent nonprofit corporations which are nonpartisan and self-governing. Each Neighborhood Council shall establish a democratic decision-making process through an elected board which shall be responsible for directing the business of the organization.

C. Membership. All residents, property owners, business owners and employees within the Neighborhood Council boundaries are members of the Neighborhood Council. All members of the Neighborhood Council may actively participate in its activities. However, members must be 16 years of age to vote.

D. Board Members and Officers.

1. Board Members. Each Neighborhood Council board shall be comprised of at least seven members elected by majority vote. Boards shall have an uneven number of members at least 18 years of age. Neighborhood residents shall be encouraged to take a leadership role in serving as board members and officers of the Neighborhood Council. A majority of the board members shall be neighborhood residents. Specific provisions for nonresident board members may be included in Neighborhood Council bylaws. In no case shall any person serve on more than one Neighborhood Council board at any one time.

2. Officers. The board shall elect, at a minimum, a chair, vice chair and secretary/treasurer. Additional officers may be elected. If a Neighborhood Council board member or officer is elected to any City political office, he or she must immediately resign from the Neighborhood Council board or office.

3. Terms of Office. The term of office for board members shall be two years and shall be staggered such that no more than 60 percent of the board is elected in any one year. The term of office for officers shall be one year. Individual Councils are encouraged to develop and implement policies to provide for Board officer rotations.

4. Board Vacancies. If a board member is appointed or elected to the City Council, or is convicted of a felony as defined by law, or moves out of his or her area of representation, the board position becomes vacant.

E. Meetings and Notification. All meetings of the Neighborhood Council or its board shall be open to the public. The Neighborhood Council or its board may hold as many meetings as desired, but the Neighborhood Council shall hold at least four meetings each year for which it gives adequate written notice to all residents, property owners, and business owners. Mail, delivered handbills or posting of a number of prominent signs are examples of adequate notice. Such notice is also required for any meeting at which an election is held.

F. Quorum and Voting. Board meetings shall require a quorum to act. A quorum requires the presence of a majority of the total number of Board members to which the board is entitled. A majority vote of the board members present is required to take any action or as defined by an individual Council’s Bylaws.

G. Bylaws. The Neighborhood Council shall adopt bylaws for the conduct of business which provide for full participation, democratic decision-making, and open meetings. Such bylaws shall be filed with the Neighborhood Council Office.

H. Reports. The Neighborhood Council shall prepare a written report of its activities annually based on the contract Scope of Work. Such report shall be filed with the Neighborhood Council Office with copies forwarded to the City Council. Additional periodic reports regarding issues concerning the Neighborhood Council's purpose and responsibilities may be filed with the Neighborhood Council Office with copies forwarded to the City Council. Annual Reports must be current and on file with the City before additional funding is disbursed.

I. The Neighborhood Council shall provide the Neighborhood Council Office with the names and addresses of the officers of each Neighborhood Council.
who will receive all notices and other mailings from the City. The Neighborhood Council shall notify the Neighborhood Council Office of any change.

(Ord. 27627 Exhibit A; passed Jun. 19, 2007: Ord. 25966 § 2; passed Oct. 8, 1996: Ord. 25188 § 1; passed Sept. 22, 1992)

**1.45.060 Community Council.**

The Community Council is a coalition of the independent Neighborhood Councils and serves as a forum for discussion of issues of broad interest. The Community Council shall be an independent nonprofit corporation. Each Neighborhood Council shall select three representatives to serve on the Community Council. The responsibilities of the Community Council include:

A. Support and promote citizen participation and neighborhood enhancement.

B. Promote and facilitate open communication between the City and Neighborhood Councils and provide the primary means of communication between individual Neighborhood Councils.

C. Support and assist, as requested, individual Neighborhood Councils in performing their functions and responsibilities.

D. Serve as an information resource to Neighborhood Councils. (Ord. 25188 § 1; passed Sept. 22, 1992)

**1.45.070 Neighborhood Council functions and responsibilities.**

Neighborhood Councils will directly advise City government on matters concerning the general health, safety and welfare of their neighborhoods. Their actions should reflect the needs and wants of the neighborhood. The responsibilities of Neighborhood Councils include:

A. Develop an organization that will maintain itself, further the purpose and intent of this chapter, and meet the minimum standards set forth in Section 1.45.050.

B. Make a good faith effort to recruit a diverse and representative group of residents, property owners, business owners, and employees to participate in the Neighborhood Council program.

C. Take the initiative in selecting their activities and establishing priorities among them.

D. Set goals and objectives which reflect the growth needs of the neighborhood and state its priorities.

E. Provide effective citizen participation in government by articulating, defining, and addressing neighborhood problems; by advising, consulting with, and cooperating with the various offices, departments, commissions, boards, committees, and council on local matters affecting their respective neighborhoods, and by notifying and relaying information to residents, property owners, business owners, and employees.

F. Provide citizen input on the efficiency and effectiveness of the government's delivery of services.

G. Make recommendations concerning particular actions, policies, plans, programs, projects, and other matters affecting the quality of life to the various offices, departments, commissions, boards, committees and council. Matters affecting the quality of life include, but are not limited to, land use, housing, community facilities, human resources, social and recreational programs, traffic and transportation, environmental quality, and public safety. The Neighborhood Council should be encouraged to review and make recommendations on changes occurring City-wide which may affect the quality of life within its area.

H. Make recommendations through the process of budget development and adoption which reflect the needs of the neighborhood, and state the priorities thereof.

I. Advocate members' interests to all departments of City government.

J. Make every effort to communicate with diverse groups of people.

K. Sponsor studies, hold informational meetings, and conduct public forums and educational programs.

L. Provide a forum for consideration of the conservation, improvement or development of property within the Neighborhood Council area.

M. Conduct educational programs for the general public regarding the aspect of government's decision-making processes important to Neighborhood Council activities and functions.

N. Undertake projects to benefit their neighborhood as may be deemed appropriate by the Neighborhood Council. (Ord. 25966 § 3; passed Oct. 8, 1996: Ord. 25188 § 1; passed Sept. 22, 1992)

**1.45.080 City responsibilities.**

A. Responsibilities of Neighborhood Council Office. To further the neighborhood enhancement partnership between the City and its citizens, the Neighborhood Council Office shall be responsible for the support of the Neighborhood Councils and Community Council and shall coordinate assistance and support from other departments as necessary. The Neighborhood Council Office, as the main contact and support for the Neighborhood Councils and Community Council, shall have the following responsibilities:

1. Support and promote citizen participation within the Neighborhood Council program.
2. Promote and facilitate open communication between the City and the Neighborhood Councils and Community Council.

3. Act as an information clearinghouse and resource to the Neighborhood Councils and Community Council.

4. Notify the Neighborhood Councils, the Community Council, and other interested persons of meetings and hearings of citizen participation events.

5. Assist the Neighborhood Councils and the Community Council in planning and developing programs for citizen participation.

6. Receive and file Neighborhood Council bylaws and annual reports, review the bylaws and annual reports, and submit them to the Neighborhood Council Office.

7. Maintain a current name and address list of all Neighborhood Council board members, officers, representatives to the Community Council, and individuals designated to receive all notices and other mailings.

8. Provide the names and addresses of individuals designated to receive all notices and other mailings to all City departments, and notify the departments of any changes.

9. Maintain a current map of all Neighborhood Council boundaries.

10. Maintain a directory of City services, including department names, phone numbers, and functions, and provide such directory to each Neighborhood Council.

11. Conduct an annual review of each Neighborhood Council to determine whether the minimum standards for recognition in Section 1.45.050 are met, and notify a Neighborhood Council of any deficiency.

12. Where possible and appropriate, arrange the use of City or special district facilities within the neighborhood areas for meeting sites.

B. Responsibilities of Other City Departments. All City departments shall:

1. Make a good faith effort to notify affected Neighborhood Councils of any significant policy matter which requires the exercise of discretion and directly impacts the neighborhood. Notice should be provided as early in the planning or review process as possible. In no case shall notice be provided later than at the time required by established notification procedures. Notice of City-wide matters shall be provided to all the Neighborhood Councils, and notice of matters affecting a specific locale of the City shall be forwarded only to the affected Neighborhood Council(s). Notice shall be mailed to the officers of each Neighborhood Council. This shall include, but not be limited to, the following:

   a. Notice of pending land use/environmental cases and decisions shall be provided to the affected Neighborhood Council(s).

   b. Notice of threshold determinations under the State Environmental Policy Act shall be provided to the affected Neighborhood Council(s).

   c. Notice of all public hearings shall be provided to the Neighborhood Councils as requested by each individual council.

   d. Copies of agendas for all citizen commissions, boards, and committees and the City Council shall be provided to the Neighborhood Councils as requested by each individual council.

   e. Copies of City newsletters, as requested by each individual Council.

2. Make a good faith effort to solicit the position and reasoning of affected Neighborhood Councils on any significant policy matter which requires the exercise of discretion.

3. Provide a list of the Neighborhood Councils and their contacts to the proponents of development and encourage the proponents to discuss their proposal with the affected Neighborhood Council(s).

4. Share information with the Neighborhood Councils and Community Council to assist them in performing their functions and responsibilities. (Ord. 25966 § 4; passed Oct. 8, 1996: Ord. 25188 § 1; passed Sept. 22, 1992)

1.45.090 Neighborhood Council and Community Council funding.

A. Each Neighborhood Council and the Community Council shall develop and submit to the City, a biennial plan and supporting budget. The plan and budget shall describe how the Council intends to support training and capacity building for Councils and Board Members, promote citizen participation, develop consensus among diverse interests, and promote pride and responsibility in their neighborhood, which covers their services provided to the City of Tacoma. Each Neighborhood Council and the Community Council shall enter into an agreement with the City of proposed services, in appropriate form.

B. The Neighborhood Councils and Community Council shall maintain all records for funding and shall review each disbursement of funds to assure the expenditures are consistent with requirements of law and any guidelines set forth by the City Council. The Neighborhood Councils and Community Council shall submit to the City annual reports on the disbursement of City funds.

C. The books and financial records of the Neighborhood Councils and Community Council shall be open for
inspection, subject to audit by the Director of Finance and the State Auditor, and maintained in such a fashion that they can be audited. (Ord. 27627 Exhibit A; passed Jun. 19, 2007: Ord. 25966 § 5; passed Oct. 8, 1996: Ord. 25188 § 1; passed Sept. 22, 1992)

1.45.100 Review and revision.
One year after creation of the Community Council and Neighborhood Councils, a comprehensive review of the Neighborhood Council program shall be conducted by the Community Council. This review shall cover the boundaries of the Neighborhood Councils; the organization of the Neighborhood Councils and Community Council; the function and responsibilities of the Neighborhood Councils, Community Council, and the City; and the types of matters which the Neighborhood Councils received notification of to determine whether the notification is sufficient or whether the Councils are being notified of matters which are not relevant to their interests. This review shall be provided to the City Council. Additional reviews shall be conducted at least every five years thereafter. After each review, any needed revisions will be made. (Ord. 25966 § 6; passed Oct. 8, 1996: Ord. 25188 § 1; passed Sept. 22, 1992)
Chapter 1.47

NEIGHBORHOOD BUSINESS DISTRICT PROGRAM

1.47.010 Purpose.
1.47.020 Intent.
1.47.030 Creation and Recognition of Neighborhood Business Districts.
1.47.040 Cross District Association of Tacoma and City Relationship.
1.47.050 Neighborhood Business District Program Services.
1.47.060 Capital Improvement Services.
1.47.070 Application Process.
1.47.080 Appeal Process.
1.47.090 Revocation of Recognition of Supporting Organization.

1.47.010 Purpose.
The purpose of this chapter is to set forth the responsibilities and procedures relating to Neighborhood Business District Associations and the Cross District Association. This chapter establishes Neighborhood Business Districts and their supporting organizations (“Neighborhood Business District Associations”) and their relationship to the Cross District Association. This chapter assigns functions and responsibilities to the Neighborhood Business District Associations, the Cross District Association, and the City to support and promote the Neighborhood Business District Program. (Ord. 27737 Ex. A; passed Aug. 19, 2008)

1.47.020 Intent.
The intent of the City is to build and maintain healthy Neighborhood Business Districts in the City of Tacoma through partnership with the Cross District Association in the areas of organization, design, promotion, and economic restructuring. The program seeks to improve economic growth and redevelopment within Tacoma’s oldest neighborhood business areas—those which have traditionally supported surrounding residential neighborhoods—by assisting independent, local small businesses to organize into viable professional organizations, and by improving the physical attributes of the commercial core with place-making design elements.

The City accomplishes this through alignment with other City policies, including, but not limited to, the strategic plan and the comprehensive plan and by building the capacity of and coordinating with Neighborhood Business District Associations; by providing customer-oriented market research services to individual entrepreneurs and small businesses; by working with individual property and business owners on their development and marketing efforts; by improving the livability of surrounding neighborhoods; by fostering open communication and partnerships; and by creating mutual understanding among businesses, neighborhoods, and the City. (Ord. 27737 Ex. A; passed Aug. 19, 2008)

1.47.030 Creation and Recognition of Neighborhood Business Districts.
The City shall establish Neighborhood Business Districts and their supporting organizations (“Neighborhood Business District Associations”). It shall also establish one Cross District Association acting as a peer coalition of the independent Neighborhood Business District Associations.

In order for the City to approve establishment of a Neighborhood Business District, the area must meet the criteria laid out in sections 1.47.030.A. and 1.47.030.B.

A. Criteria for Neighborhood Business Districts.

Neighborhood Business Districts shall:
1. Be located within a designated Neighborhood Commercial Mixed-Use District within the City limits of Tacoma, as set forth in The Comprehensive Plan; OR
2. Meet all of the following criteria:
a. Be physically located within the City limits of Tacoma;
b. Contain at least the physical locations of greater than 20 independent, locally owned businesses licensed by the City of Tacoma, each of which is routinely open to the general public;
c. Contain at least five different commercial property ownership interests;
d. At least 75 percent of buildings within its boundaries must front on or be adjacent to the sidewalk;
e. Be properly zoned for commercial development with such zoning being contiguous;
f. Include at least one principle, minor or collector arterial street;
g. Have passenger rail, streetcar, or bus access to public transit services, or the prospect of such services in the future, as identified in an adopted City or Pierce Transit policy;
h. Be contiguous and compact—be an easily walkable area of not more than 3/8 mile in length, containing pedestrian-oriented amenities.

Neighborhood Business Districts shall not be created within designated Regional Growth Centers, as defined in Vision 2040 adopted by the Puget Sound Regional Council.
B. Standards for Recognition of a Neighborhood Business District Supporting Organization ("Neighborhood Business District Associations").

There shall be one City-recognized organization at any one time in each Neighborhood Business District. In order to be recognized as a Neighborhood Business District Association, it must be organized as follows:

1. Be a not-for-profit organization registered with the state of Washington;
2. Be open to participation by all business owners, property owners, and entrepreneurs located within the Neighborhood Business District core area and include in its membership at least six businesses or commercial property owners within the Neighborhood Business District core area, as designated by the City;
3. Have a board of directors including at least five members elected by majority vote of the membership. Boards shall have an uneven number of members at least 18 years of age. A majority of the board members shall own commercial property or businesses within the Neighborhood Business District core area. In no case shall any person serve on more than one Neighborhood Business District board at any one time unless the person is a business or property owner within more than one district;
4. Have met regularly for a full calendar year;
5. Approve and maintain a set of bylaws, which includes a mission statement supportive of the Neighborhood Business District Program and the goals of the Cross District Association. (Ord. 27737 Ex. A; passed Aug. 19, 2008)

1.47.040 Cross District Association of Tacoma and City Relationship.

The Cross District Association is a peer coalition ("Board of Directors") of all independent Neighborhood Business District Associations recognized by the City, which serves as a forum for issues of interest related to the Neighborhood Business District Program. Each Neighborhood Business District Association shall select two representatives to serve on the Cross District Association Board of Directors and one alternate.

The primary responsibilities of the Cross District Association Board of Directors include:

A. Support and promote business and commercial property owner participation and neighborhood enhancement.
B. Collaborate with all existing Neighborhood Business District Associations to promote, market and advertise the districts as destination shopping and commercial centers through regional and local media, including, but not limited to, tourism brochures, print advertising, and websites, with economic development as the primary goal.
C. Promote and facilitate open communication between the City and Neighborhood Business District Associations and provide a stakeholder-based means of communication among individual Neighborhood Business District Associations and other business associations.
D. Support and assist individual Neighborhood Business District Associations in performing their functions and responsibilities.
E. Serve as an information source to Neighborhood Business District Associations.
F. Provide to the City a unique communitywide business perspective and source of advice on the needs and aspirations of the Neighborhood Business District Program participants.
G. Further relationships among the Cross District Association, the Neighborhood Business District Associations, the Neighborhood Councils, and the Community Council.
H. Provide the City with analysis, assessment, and recommendations regarding applications for establishment of additional districts and for recognition of Neighborhood Business District Associations.
I. Advise the City on priorities and policies regarding capital funding for improvements within Neighborhood Business District core areas. (Ord. 27737 Ex. A; passed Aug. 19, 2008)

1.47.050 Neighborhood Business District Program Services.

The City intends to regularly provide a liaison service to established and recognized Neighborhood Business Districts and their associations. Such services will focus on communication outreach, capacity-building and board development; promotional and marketing strategy assistance; assistance with prioritizing physical improvements; and identifying and providing resources to assist with the growth and diversification of its economic base.

Program Services Resource and Funding Allocation Guidelines

The City will give priority funding and resource consideration to Neighborhood Business Districts and their associations with the following characteristics:

1. Assessment by the City and the Cross District Association that determines that a Neighborhood Business District and its association is in need of, or otherwise qualified for, funding and resources; or
2. Formation of a Business Improvement Area in accordance with Chapter 35.87A RCW that includes the Neighborhood Business District core area; or

3. Availability of matching funds, pledges, or other investments have been acquired from the Neighborhood Business District Association or its member businesses and property owners through private fundraising efforts separate from City grants; or

4. Allocation or pledge of funds from the Neighborhood Council within which the Neighborhood Business District core area is located; AND

5. Current and complete record keeping and reporting requirements, as provided by state law or City contracts and is otherwise in good standing in terms of existing agreements with the City. (Ord. 27737 Ex. A; passed Aug. 19, 2008)

1.47.060 Capital Improvement Services.
From time to time the City may provide funding for capital improvements to create a sense of place, visually identify a Neighborhood Business District area; increase and improve public safety and walkability; and beautify the district.

Capital Improvement Funding Allocation Guidelines
The intent of the City is to leverage Neighborhood Business District Program funds; therefore, the City will give priority funding consideration to Neighborhood Business Districts and their associations with the following characteristics:

1. Existence of a Local Improvement District formed under TMC Chapters 10.04, 10.06, 10.08, and 10.09, that includes the Neighborhood Business District core area; or

2. Formation of a Business Improvement Area, in accordance with Chapter 35.87A RCW that includes the Neighborhood Business District core area; or

3. Availability of matching funds, pledges, or other investments from the Neighborhood Business District Association or its member businesses and property owners through private fundraising efforts separate from City grants; or

4. Allocation or pledge of funds from the Neighborhood Council within which the Neighborhood Business District core area is located; AND

5. Current and complete record keeping and reporting requirements, as provided by state law or City contracts and is otherwise in good standing in terms of existing agreements with the City. (Ord. 27737 Ex. A; passed Aug. 19, 2008)

1.47.070 Application Process.
An application to form a new Neighborhood Business District, or to be recognized as the supporting organization for a Neighborhood Business District, shall be submitted as follows:

A. Make a formal written request for establishment to the Cross District Association, which will trigger the official application request.

B. Be a fully recognized, paying member of the Cross District Association for at least one year (twelve months) and appoint two representatives (and one alternate) to sit on the Cross District Association Board of Directors.

C. Application to create a new Neighborhood Business District and/or to be recognized as the supporting organization shall be submitted on forms provided by the Director of the Community and Economic Development Department.

D. Applications that meet the criteria set forth in Section .030 shall be granted provisional approval.

E. After being granted provisional approval, the applicant shall join the Cross District Association Board of Directors, and shall participate in the Association’s mentoring and other programs for a period of one year (twelve months) after the date of provisional approval.

F. After the provisional period ends, and after receiving a recommendation from the Cross District Association Board of Directors, the Community and Economic Development Department Director or the Director’s designee shall make a determination regarding whether to permanently recognize the area boundaries and/or the supporting organization, and shall inform the applicant in writing of the decision. The decision shall include an analysis of applicable criteria. If the decision is to not permanently recognize the area/organization, the Director shall set forth her or his reasons in writing. (Ord. 27737 Ex. A; passed Aug. 19, 2008)

1.47.080 Appeal Process.
A. Any person aggrieved by a decision to establish or not establish an area or to recognize or not recognize an organization may appeal the decision within 30 working days of the date of the decision to the City Manager or designee.

B. The appellant has the burden to prove by a preponderance of the evidence that the decision was not substantially supported by the record or that the decision maker clearly erred in the application of the criteria set forth in this chapter. (Ord. 27737 Ex. A; passed Aug. 19, 2008)
1.47.090 Revocation of Recognition of Supporting Organization.

A. The Department shall review each Neighborhood Business District and supporting organization at least once every two years. Additionally, any person may file a complaint with the Department that a Supporting Organization no longer meets the criteria set forth in TMC 1.47.030.

B. If the Department determines that the Neighborhood Business District and supporting organization no longer meets the criteria set forth in TMC 1.47.030, it shall notify the Neighborhood Business District and supporting organization in writing of the deficiencies and shall give the Neighborhood Business District and supporting organization 90 working days to correct any deficiencies.

C. If, after the specified period, the Neighborhood Business District and supporting organization has not come back into compliance, the Director’s designee shall issue a letter revoking the City’s recognition of the Neighborhood Business District and supporting organization.

D. The Neighborhood Business District and supporting organization may contest the issuance of a letter revoking its recognition by appealing to the City Manager or designee within ten working days of the date of the letter. The appellant has the burden to prove by a preponderance of the evidence that the decision was not substantially supported by the record or that the decision maker clearly erred in the application of the criteria set forth in this chapter.

E. The City Manager or designee shall review the contesting letter and may hold a hearing. The City Manager or designee may affirm, modify, or reject the decision of the designee. The City Manager’s or designee’s decision shall be in writing and shall set forth the reasons for the decision. (Ord. 27737 Ex. A; passed Aug. 19, 2008)
TO: Planning Commission

FROM: Caroline Haynes-Castro, Acting Manager, Current Planning Division

SUBJECT: Land Use Code Enforcement – Review of Testimony and Recommendation

DATE: June 11, 2010

The Planning Commission conducted a public hearing on June 2, 2010, concerning proposed amendments to the Land Use Regulatory Code pertaining to code enforcement. At the meeting on June 16, the Planning Commission will review public comments on the proposed amendments.

Attached is a draft “Summary of Public Comments and Staff Responses” report for the amendments. This report summarizes the testimony received to date concerning the amendments and provides staff observations and/or recommendations pertaining to the comments as appropriate.

At this meeting, staff also intends to seek a final recommendation from the Commission regarding the proposed amendments. Accordingly, a draft recommendation letter and draft findings and recommendations have been included for the Commission’s review.

If you have any questions, please contact Dustin Lawrence at 591-5845 or dlawrence@cityoftacoma.org.

CHC:dl

c. Peter Huffman, Assistant Director

Attachments (3)
### SUMMARY OF PUBLIC COMMENTS AND STAFF RESPONSES REPORT

**as of June 10, 2010**

<table>
<thead>
<tr>
<th>COMMENTS</th>
<th>SOURCE(S)</th>
<th>STAFF RESPONSE</th>
</tr>
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<tbody>
<tr>
<td>1. Supports the proposed code amendments. Requested that liens be used as a means to gain compliance. Requested that City should require liens or certificate of complaint earlier in enforcement process. Requested a way to pursue violations against contractors who work without permits as well as home owners.</td>
<td>Marshall McClintock – North Slope Historic District</td>
<td>Support noted. Regarding liens, the City Attorney’s Office will be providing a memorandum that further explains the legality of using liens as a method to gain compliance with code requirements. Staff has incorporated a tool into the Land Use Enforcement Amendment that is somewhat similar to a lien, called a “certificate of complaint.” The certificate of complaint is a notice that is recorded with the Pierce County Auditor’s office and appears on a title report for the property. The certificate then alerts any potential buyer that there is a zoning violation on the property. Regarding requiring the certificate of complaint earlier, one of the goals of the land use code enforcement program is to maintain consistency with the nuisance code enforcement program so that staff from the Community Based Services Division will have a consistent and predictable system to use for enforcement of both codes. Regarding the request for a way to pursue contractors who work without permits as well as home owners, staff would note that there are a number of mechanisms in place in the Land Use Enforcement Amendment as well as other regulations that would allow either the Land Use Administrator or CBS staff to pursue contractors that consistently violate the land use or building code. The land use enforcement section now contains language that allows notice of violations and penalties to be issued to property owners and/or other known participants in the violation (such as a contractor). An additional mechanism includes working with the Tax and License Department to rescind business licenses. CBS staff work closely with this Department in their enforcement capacity and the amendments to the land use code will now allow the City to benefit from having full support of the CBS staff.</td>
</tr>
<tr>
<td>2. Raised concerns regarding the enforcement action related to a shipping container on his property. Raised concerns regarding how non-conforming uses/structures will be affected by the proposed amendments.</td>
<td>Bob Olson</td>
<td>Regarding enforcement of the shipping container on his property, this violation is currently under enforcement and civil penalties have been issued to encourage compliance. However, staff would note that the proposed amendments will not affect whether shipping containers are an allowed structure or not within any particular zoning district or whether these or other developments are considered nonconforming. The proposed amendments are limited to how the City handles enforcement of the land use code once a violation has been identified. Regarding the concern related to legally nonconforming structures and uses, staff would note that any particular use or structure that is legally nonconforming is not in violation of the code, and thus would not be subject to enforcement or penalties. Illegally nonconforming uses and structures are violations of the code and are currently, and will continue to be, subject to enforcement.</td>
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<td>No.</td>
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<td>1</td>
<td>McClintock</td>
<td>Marshall</td>
</tr>
<tr>
<td>2</td>
<td>Olson</td>
<td>Bob</td>
</tr>
</tbody>
</table>
June 16, 2010

HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL:

On behalf of the Planning Commission, it is my privilege to forward our recommendation pertaining to the land use code enforcement amendments. Enclosed you will find a copy of our “Findings and Recommendations” that summarizes the proposed amendments, the public review process, and the Commission’s actions.

The Commission believes that the recommendation being forwarded will substantially improve the City’s Land Use Code enforcement process and allow City staff to administer a consolidated and coordinated code enforcement program. This revised process is more consistent with how other neighboring jurisdictions enforce their respective land use codes and is consistent with how the City’s Community Based Services Division enforces the Nuisance Code. The amendments will increase the effectiveness of land use code enforcement by providing additional tools, such as civil penalties, and will decrease dependency on the City’s legal department for enforcement through criminal charges. Further, the proposed land use code enforcement amendments will allow for more flexibility when working with citizens to encourage voluntary compliance with code requirements.

The proposed amendments will better ensure that the goals and policies of the Comprehensive Plan are being implemented through improved enforcement of land use regulations. We ask the City Council adopt the Land Use Code Enforcement Amendments, as recommended by the Planning Commission.

Sincerely,

JEREMY C. DOTY
Chair

JCD:dl

Enclosure
A. SUMMARY OF PROPOSAL

The Land Use Code Enforcement Amendment is being proposed as a means to better handle various land use code violations within the City of Tacoma. The overall intent of the amendment is to accomplish the following:

- Consolidate enforcement processes, procedures, and penalties into one primary location under TMC 13.05, rather than distributed throughout the various code chapters.
- Ensure that the enforcement procedures for the various code chapters are consistent.
- Achieve overall compatibility with how the City administers enforcement, by providing the enforcement team in Community Based Services similar processes and tools as currently used for violations of the nuisance code.

See the proposed code text amendments in Exhibit “A” for additional information.

B. FINDINGS OF FACT

1. The Growth Management Act (GMA) requires any amendments to the Comprehensive Plan and development regulations to conform to the requirements of the Act.

2. GMA requires that any change to 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 City’s Land Use Regulatory Code is specifically intended to implement many of the policies of the Comprehensive Plan. Therefore, having an effective enforcement program is critical to ensuring that the City develops in a manner that is consistent with the land use regulations and Comprehensive Plan.

3. Chapter 13.02 of the Tacoma Municipal Code (TMC) sets forth the procedures and criteria for amending the Comprehensive Plan and development regulations and for area-wide zoning reclassifications.

4. Pursuant to TMC 13.02.040, the Planning Commission may review and make recommendations to formulate effective and efficient land use and development regulations and processes in order to implement the goals and policies of the Comprehensive Plan.

5. The Planning Commission began its review of the proposed amendments on March 17, 2010, when it established a draft schedule for review of the proposal. The Commission also reviewed and discussed the proposed amendments at its April 21 and May 5, 2010 meetings.

6. On May 5, 2010, the Planning Commission authorized the release of the draft code amendments for public review and comment.

7. A postcard mailer was sent on May 12, 2010 to more than 500 recipients, providing notification of the public hearing. Recipients included Neighborhood Councils, neighborhood business...
district associations, adjacent jurisdictions, other governmental agencies, Puyallup Tribal Nation, City staff, interested individuals and groups, City Commissions, property owners with existing violation cases, and civic organizations representing the environment, historic preservation, and the development community. Copies of the draft code amendments and staff report were forwarded to all branches of the Tacoma Public Library. Additionally, the public notice was posted on 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. Notice was also published in the Tacoma News Tribune on Saturday, May 29, 2010. In addition, an informational page was established on the City of Tacoma website (www.cityoftacoma.org/planning).

8. The Planning Commission conducted a public hearing on June 2, 2010, with the public comment period left open until June 11, 2010.

9. No written comments were received during the public comment period.

10. Two individuals provided testimony on record at the Planning Commission’s public hearing on June 2, 2010.

11. Of the public testimony received, one person voiced support for the proposed amendments and one person voiced concern. The concerns were related to a specific existing enforcement case and nonconforming uses and how such uses will be affected by the proposed amendments.

12. Pursuant to WAC 197-11 and Tacoma's SEPA procedures, a Preliminary Determination of Environmental Nonsignificance (DNS) was issued on May 12, 2010. This preliminary determination (SEPA File Number: SEP2010-40000146031) was made based upon a review of a completed environmental checklist. A legal notice concerning this environmental determination was advertised in the Tacoma Daily Index on May 12, 2010. To date, no comments have been received on this preliminary determination. Unless comments are received and this determination is reconsidered, the preliminary determination will become final on June 18, 2010.

13. Pursuant to RCW 36.70A.530(4), the Community and Economic Development Department notified the commander of McChord Air Force Base on May 12, 2010 of the City's intent to amend the enforcement and penalty sections of the Land Use Regulatory Code. No response has been received from the Commander and no response is anticipated within the 60-day comment period required by law. If no comments are received that will indicate the Commander has no objections to the proposed amendments.

14. In accordance with RCW 36.70A.106, the City of Tacoma, on May 12, 2010, notified the State Department of Commerce and other required State agencies of its intent to amend the enforcement and penalty sections of the Land Use Regulatory Code. To date, no comments have been received from the Department of Commerce or other State agencies and comments are not anticipated.

15. Pursuant to RCW 36.70A.370 and following the guidelines prepared by the Washington State Attorney General pursuant to RCW 36.70A.370, the draft amendments were reviewed by the City Attorney to assure that adoption of the changes will not result in an unconstitutional taking of property.

16. The Planning Commission reviewed all testimony from the public hearing. Additional analysis and other information pertaining to the testimony and the proposed amendments were presented to the Planning Commission by staff for their consideration on June 16, 2010.

18. The proposed land use code enforcement amendments are consistent with the following goals of the GMA:

   a. Property rights. Property rights, particularly of those who own property adjacent to violators, should be improved through these amendments. Better enforcement will ensure that all properties adhere to all regulations pertaining to zoning and land use, which help protect the general safety, health and welfare of the community and provide a level of predictability for property owners.

   b. Permits. The proposed amendments will ensure that permitting related to land use regulations is enforceable. Permits will continue to be processed in a timely and fair manner in order to ensure predictability. Further, the updated enforcement program will provide predictability in how enforcement is handled, be more consistent with how the City administers and enforces other codes, and better ensure that the enforcement process is timely and fair.

   c. Environment. Updating the enforcement and penalty sections of the land use code will give City staff better tools to ensure that the City’s environmental regulations, including those pertaining to SEPA, Shoreline Management, and Critical Areas Preservation, are upheld.

   d. Citizen Participation and Coordination. Citizens have been provided public notice and have had the opportunity to provide testimony and input regarding these proposed amendments.

   e. Historic Preservation. Updating the enforcement and penalty sections of the land use code will give City staff better tools to ensure that the City’s regulations pertaining to historic and landmarks preservation are upheld.

19. The proposed land use code enforcement amendments are consistent with the Comprehensive Plan and the adoption and amendment procedures and the review criteria contained in TMC 13.02.045.G. These amendments meet the review criteria as follows:

   a. Enforcement has always been integrated into the Land Use Regulatory Code, with penalties being subject to criminal misdemeanor. However, circumstances have changed that warrant the proposed amendment. Specifically, historically violations were less common and often only the most egregious were prosecuted. With the implementation of more rigorous development and design guidelines, critical area preservation and environmental regulations, historic building regulations, and other land use code requirements, subjecting all violations to a criminal penalty process has become cumbersome, unreasonable, and ineffective. The proposed amendment will give City staff better and more flexible tools to enforce the regulations of the Land Use Regulatory Code and will be more effective at achieving compliance.

   b. The development of additional land use regulations throughout the years without addressing enforcement and penalties has left City staff with only one, rigid enforcement process for land use violations. The proposed amendment will allow City staff to correct violations through administering a wide range of different tools that will better reflect the severity and complexity of the violation.

   c. The proposed amendment will better ensure that the provisions of the Comprehensive Plan and Land Use Regulatory Code, as well as land use permit approvals and conditions, are properly administered. In many cases, code and Comprehensive Plan provisions and permit conditions are specifically designed to ensure reasonable compatibility between developments.

   d. The ability to provide enforcement services has diminished under the current enforcement scheme, which treats violations of the Land Use Regulatory Code as criminal misdemeanors. This results in violations being subject to the criminal court system. As a result, lengthy
criminal proceedings and extensive research involving the City’s Legal Department is typical. The proposed amendments will allow the majority of violations to be administered by the City’s Community Based Services Division, with only the most egregious violations requiring the criminal penalty process.

C. CONCLUSIONS

The Planning Commission concludes that the proposed land use code enforcement amendments will improve the City’s ability to enforce its Land Use Regulatory Code. The increased consistency and flexibility provided in the proposed amendments will appropriately encourage voluntary efforts to achieve compliance while retaining necessary penalties to ensure effectiveness. By equipping City staff with better tools to enforce the Land Use Regulatory Code, Tacoma’s goals and policies, as set forth in the Comprehensive Plan, will be better implemented.

D. RECOMMENDATIONS

The Planning Commission recommends that the City Council adopt the proposed Land Use Regulatory Code amendments regarding enforcement procedures and penalties, as set forth in the enclosed Exhibit “A”.

E. EXHIBITS

A. Proposed Code Amendments to TMC Chapters 1.23, 13.04, 13.05, 13.06, 13.06A, and 13.11.
These proposed amendments include modifications to the following Sections of TMC Title 1, Administration and Personnel and Title 13, the Land Use Regulatory Code:

1.23 – Hearing Examiner

13.04 – Platting and Subdivisions

13.05 – Land Use Permit Procedures

13.06 – Zoning

13.06A – Downtown Tacoma

13.11 – Critical Areas Preservation

*Note – These amendments show all of the changes to the existing land use regulations. The sections included are only those portions of the code that are associated with these amendments. New text is underlined and text that is deleted is shown in strikethrough. In addition, changes that occurred after the May 5, 2010 draft have been highlighted.
Chapter 1.23

Hearing Examiner

* * *

1.23.050  Areas of jurisdiction.
A. The Examiner shall receive and examine relevant information, conduct public hearings, maintain a record thereof, and enter findings of fact, conclusions of law, and recommendations to the City Council or other order, as appropriate, in the following matters:

1. Applications for rezoning of property (Chapter 13.05);
2. Formation of Local Improvement Districts (Chapter 10.04);
3. Approval of Local Improvement District assessments (Chapter 10.04);
4. Dangerous sidewalks proceedings (Chapter 10.18);
5. Petitions for street and alley vacations (Chapter 9.22);
6. Appeals of administrative determinations of the City Council (Section 1.06.820);
7. Appeals from the decision of the Landmarks Preservation Commission regarding certificates of approval (Section 42.080); and
8. Appeals of a decision of the City Council to remove a member of a City board, commission, committee, task force, or other multi-member body from office (Chapter 1.46).

B. In regard to the matters set forth below, the Examiner shall conduct adjudicative proceedings, maintain a record thereof, and enter findings of fact, conclusions of law, and a final decision or other order, as appropriate:

1. Applications for preliminary plat approval for subdivisions exceeding nine lots (Chapter 13.04);
2. Appeals from decisions of the Land Use Administrator (Chapter 13.05);
3. Appeals from decisions of the City Engineer regarding removal of or pruning trees on City-owned property (Chapter 9.20);
4. Appeals from the decisions or order of the Health Officer regarding violations of the Infectious Waste Management Code (Section 5.04.170);
5. Appeals from the Health Officer’s denial of a permit to operate a swimming pool under Chapter 5.50 (Section 5.50.030);
6. Appeals from denial or revocation of a permit for sidewalk vending (Section 6.81.120);
7. Appeals regarding determinations of unlawful discriminatory practice under the Human Rights Commission chapter (Chapter 1.29);
8. Appeals from determinations of the Chief of Police, or his or her designee, regarding Potentially Dangerous Dogs and Dangerous Dogs (Chapter 17.04);
9. Appeals arising out of the Tax and License Code (Title 6);
10. Appeals arising out of the City Environmental Code, Chapter 13.12 (Section 13.12.680);
11. Appeals arising under the City’s commute trip reduction ordinance (Chapter 13.15);
12. Actions brought under the City’s Whistle Blower Policy;
13. Appeals from the film production coordinator’s decisions regarding productions of motion pictures within the City (Section 11.10.140);
14. Appeals from denial of special permits regarding solid waste recycling (Section 12.09.070);
15. Matters referred for adjudication by the Civil Service Board under its rules of procedure (Charter Section 6.11(c));

16. Appeals arising under the City’s concurrency management ordinance (Chapter 13.16);

17. Hearing of violations of the City’s Ethics Code (Chapter 1.46);

18. Appeals from the Public Works Director’s determination of civil penalties or any other charge, order, requirement, decision, or determination issued by the Director or his or her staff pursuant to the sewage disposal and drainage regulations ordinance (Chapter 12.08);

19. Appeals from the Public Works Director’s determination of civil penalties for violations of the solid waste ordinance and appeals arising out of the imposition by the Director, or his or her staff, of solid waste utility charges; provided, that the Hearing Examiner shall not adjudicate claims with respect to any rate set by the City Council in a rate ordinance nor hear any challenge to the rate-making process (Chapter 12.09);

20. Appeals from the decision of the Community and Economic Development Department Director denying or canceling a final Certificate of Tax Exemption under Tacoma’s Mixed-Use Center Development ordinance (Chapter 13.17);

21. Appeals arising from the imposition of charges for service issued by the Department of Public Utilities, as well as those arising from disputes concerning utility service, use of watershed or other Department property, and termination of any use; provided, that the Hearing Examiner shall not adjudicate claims with respect to any rate set by the City Council in a rate ordinance nor hear any challenge to the rate-making process (Chapters 12.06 and 12.10);

22. Appeals arising out of the City’s Minimum Building and Structures Code (Chapter 2.01);

23. Appeals from sign enforcement (Section 13.05.1050);

24. Applications for projects that require land use permits from the City of Tacoma as well as from a neighboring jurisdiction transferred to the jurisdiction of the Hearing Examiner in accordance with Section 13.05.040.F;

25. Appeals from Nuisance Code and Chronic Nuisance Code enforcement (Section 8.30.090) (Section 8.30A.080);

26. Appeals arising from a decision to deny a special street use permit (Section 16B.09.1.8);

27. Appeals arising from the establishment of a reimbursement assessment area and levying of a reimbursement assessment upon benefited property owners, pursuant to Chapter 35.72 RCW and applicable City ordinances;

28. Appeals from the decision of the Landmarks Preservation Commission regarding certificates of approval and decisions on demolition applications (Section 13.07.160);

29. Applications for wetland and stream development permits, wetland and stream assessments, and wetland delineation verifications in conjunction with a preliminary plat approval or reclassification.

30. Appeals regarding overpayment of wages (Section 1.12.071); and

31. Administrative hearings related to the breach or termination of cable television franchises granted, pursuant to Subtitle 16A.
13.04.315 Violations—Penalties.

Any person, firm, corporation, or association, or any agent of any person, firm, or corporation, or association who/which violates any provision of this chapter, including, but not limited to, the sale, offer for sale, lease, or transfer of any lot, tract, or parcel of land, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine in any sum not exceeding $300.00, or by imprisonment in the Pierce County Jail for a term not exceeding 90 days, or by both such fine and imprisonment, and each violation or each sale, offer for sale, lease or transfer of each separate lot, tract, or parcel of land in violation of any provision of these regulations shall be deemed a separate and distinct offense.
Chapter 13.05
LAND USE PERMIT PROCEDURES

* * *

Sections:
13.05.005 Definitions.
13.05.010 Application requirements for land use permits.
13.05.020 Notice process.
13.05.030 Land Use Administrator – Creation and purpose – Appointment – Authority.
13.05.040 Decision of the Land Use Administrator.
13.05.050 Appeals of administrative decisions.
13.05.060 Applications considered by the Hearing Examiner.
13.05.070 Expiration of permits.
13.05.080 Modification/revision to permits.
13.05.090 Land Use Administrator approval authority.
13.05.095 Development Regulation Agreements.
13.05.100 Enforcement.
13.05.105 Sign enforcement.
13.05.110 Violations – Penalties.

13.05.005 Definitions.

As used in this chapter, the following terms are defined as:

A. Abate: To repair, replace, remove, destroy, or otherwise remedy a condition which constitutes a violation of this title by such means and in such a manner and to such an extent as the Land Use Administrator determines is necessary in the interest of the public health, safety, and welfare of the community.

B. Aggrieved Person: In an appeal, an “aggrieved person” shall be defined as a person who is suffering from an infringement or denial of legal rights or claims.

C. Appeal, for Standing: An aggrieved person or entity has “standing” when such person or entity is entitled to notice under the applicable provision of the Tacoma Municipal Code, or when such person or entity can demonstrate that such person or entity is within the zone of interest to be protected or regulated by the City law and will suffer direct and substantial impacts by the governmental action of which the complaint is made, different from that which would be experienced by the public in general.

D. Application, Complete: An application which meets the procedural requirements outlined in Section 13.05.010.C.

E. Department: As used in this chapter, “Department” refers to the Community and Economic Development Department, Public Works Department.

F. Open Record Hearing: A hearing, conducted by a single hearing body or officer authorized to conduct such hearings that create a record through testimony and submission of evidence and information.

G. Owner: Any person having any interest in the real estate in question as indicated in the records of the office of the Pierce County Assessor, or who establishes, under this chapter, his or her ownership interest therein.

H. Person in Control of Property: Any person, in actual or constructive possession of a property, including, but not limited to, an owner, occupant, agent, or property manager of a property under his or her control.

I. Premises and property: Used by this chapter interchangeably and means any building, lot, parcel, dwelling, rental unit, real estate, or land, or portion thereof.

J. Project Permit or Project Permit Application: Any land use or environmental permit or license required for a project action, including, but not limited to, subdivisions, binding site plans, planned developments, conditional uses, shoreline substantial development permits, site plan review, permits or approvals required by the critical area
preservation ordinance, site-specific rezones authorized by a Comprehensive Plan or sub area plan, but excluding the adoption or amendment of a Comprehensive Plan, sub area plan, or development regulations, except as otherwise specifically included in this subsection. This chapter does not apply to Exempted Activities under Section 13.11.140.

**G.** Public Meeting: An informal meeting, hearing, workshop, or other public gathering of people to obtain comments from the public or other agencies on a proposed project permit prior to the decision. A public meeting does not constitute an open record hearing. The proceedings at a public meeting may be recorded and a report or recommendation shall be included in the project permit application file.

**L.** Violation: Any act which results in non-compliance with any of the standards outlined within this title or conditions imposed from land use permits granted by the City.

**M.** Work Plan: Any document containing information detailing all of the required approvals, processes, timelines, actions, reports, etc., that are necessary to remedy a violation of this title and that said approvals, processes, timelines, actions, reports, etc. will be undertaken in order to gain compliance with this title.

* * *

13.05.100   Enforcement.

**A.** Purpose. To ensure that the Land Use Regulatory Code, as well as conditions imposed on permits granted by the City, are administered, enforced, and upheld to protect the health, safety and welfare of the general public.

**B.** Applicability. A person who undertakes a development or use without first obtaining all required land use permits or other required official authorizations or conducts a use or development in a manner that is inconsistent with the provisions of this title, or who fails to conform to the terms of an approved land use permit or other official land use determination or authorization of the Land Use Administrator, Hearing Examiner, City Council or other authorized official, or who fails to comply with a stop work order issued under these regulations shall be considered in violation of this title and be subject to enforcement actions by the City of Tacoma, as outlined herein.

1. The Land Use Administrator, and/or their authorized representative, shall have the authority to enforce the land use regulations of the City of Tacoma.

2. The Land Use Regulatory Code shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.

3. It is the intent of this Land Use Regulatory Code to place the obligation of complying with its requirements upon the owner, occupier, or other person responsible for the condition of the land and buildings within the scope of this title.

4. No provision of, or term used in, this code is intended to impose upon the City, or any of its officers or employees, any duty which would subject them to damages in a civil action.

5. The enforcement provisions outlined in this chapter shall apply to all sections of Title 13 of the Tacoma Municipal Code. If a specific chapter contains its own set of enforcement provisions, then such provisions shall be used for enforcement of that chapter and are exempt from the enforcement provisions outlined herein.

**C.** Enforcement Process.

1. Violation Review Criteria. Each violation requires a review of all relevant facts in order to determine the appropriate enforcement response. When enforcing the provisions of this Chapter, the Land Use Administrator and/or their authorized representative should, as practical, seek to resolve violations without resorting to formal enforcement measures. When formal enforcement measures are necessary, the Land Use Administrator and/or their authorized representative should seek to resolve violations administratively prior to imposing civil penalties or seeking other remedies. The Land Use Administrator and/or their authorized representative should generally seek to gain compliance via civil penalties prior to pursuing abatement or criminal penalties. The Land Use Administrator may consider a variety of factors when determining the appropriate enforcement response, including but not limited to:
a. Severity, duration, and impact of the violation(s), including whether the violation has a probability of placing a person or persons in danger of death or bodily harm, causing significant environmental harm, or causing significant physical damage to the property of another;

b. Compliance history, including any identical or similar violations or notice of violation at the same site or on a different site but caused by the same party;

c. Economic benefit gained by the violation(s);

d. Intent or negligence demonstrated by the person(s) responsible for the violation(s);

e. Responsiveness in correcting the violation(s); and,

f. Other circumstances, including any mitigating factors.

2. Stop Work Order

a. The Land Use Administrator and/or their authorized representative shall have the authority to issue a Stop Work Order whenever any use, activity, work or development is being done without a permit, review or authorization required by this title or is being done contrary to any permit, required review, or authorization which may result in violation of this title. The Stop Work Order shall be posted on the site of the violation containing the following information:

(1) The street address or a description of the building, structure, premises, or land where the violation has occurred, in terms reasonably sufficient to identify its location;

(2) A description of the potential violation and a reference to the provisions of the Tacoma Municipal Code which may have been violated;

(3) A description of the action required to remedy the potential violation, which may include corrections, repairs, demolition, removal, restoration, or any other appropriate action as determined by the Land Use Administrator and/or their authorized representative;

(4) The appropriate department and/or division investigating the case and the contact person.

b. With the exception of emergency work determined by the Land Use Administrator and/or their authorized representative to be necessary to prevent immediate threats to the public health, safety and welfare and stabilize a site or prevent further property or environmental damage, it is unlawful for any work to be done after the posting or service of a Stop-Work Order until authorization to proceed is provided by the Land Use Administrator and/or their authorized representative.

3. Voluntary Compliance. The Land Use Administrator and/or their authorized representative may pursue a reasonable attempt to secure voluntary compliance by contacting the owner or other person responsible for any violation of this title, explaining the violation and requesting compliance. This contact may be in person or in writing or both.

4. Investigation and Notice of Violation.

a. The Land Use Administrator and/or their authorized representative, if he or she has a reasonable belief that a violation of this title exists and the voluntary compliance measures outlined above have already been sought and have been unsuccessful, or are determined to not be appropriate, may issue a Notice of Violation to the owner of the property where the violation has occurred, the person in control of the property, if different, or the person committing the violation, if different, containing the following:

(1) The street address or a description of the building, structure, premises, or land where the violation has occurred, in terms reasonably sufficient to identify its location;

(2) A description of the violation and a reference to the provisions of the Tacoma Municipal Code which have been violated;

(3) A description of the action required to remedy the violation, which may include corrections, repairs, demolition, removal, restoration, submittal of a work plan or any other appropriate action as determined by the Land Use Administrator and/or their authorized representative;
(4) A statement that the required action must be taken or work plan submitted within 18 days of receipt of the Notice of Violation, after which the City may impose monetary civil penalties and/or abate the violation in accordance with the provisions of this chapter;

(5) The appropriate department and/or division investigating the case and the contact person.

(6) A statement that the person to whom a Notice of Violation is directed may appeal the Notice of Violation to the Hearing Examiner, or his or her designee, including the deadline for filing such an appeal. Such Notice of Appeal must be in writing and must be received by the City Clerks Office, no later than 10 days after the Notice of Violation has been issued;

(7) A statement that if the person to whom the Notice of Violation is issued fails to submit a Notice of Appeal within 10 calendar days of issuance or fails to voluntarily abate the violation within 18 calendar days of issuance, the City may assess monetary penalties, as outlined in the Civil Penalties section below, against the owner of the property, and/or the person in control of the property, if different, and/or the person committing the violation, if different and readily identifiable.

b. The Notice of Violation shall be served by any one or any combination of the following methods:

(1) By first-class mail to the last known address of the owner of the property and to the person in control of the property, if different, and/or to the person committing the violation, if different and readily identifiable; or

(2) By posting the Notice of Violation in a prominent location on the premises in a conspicuous manner which is reasonably likely to be discovered; or

(3) By personal service upon the owner of the property and/or the person in control of the property, if different, and/or the person committing the violation, if different and readily identifiable.

c. The Land Use Administrator and/or their authorized representative may, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued inspection warrant, enter at reasonable times any building or premises subject to the consent or warrant to perform the duties imposed by the Land Use Regulatory Code.

d. At the end of the specified timeframe, the site will be re-inspected to see if the condition has been corrected. If the condition has been corrected, the case will be closed. If the condition has not been corrected, Civil Penalties, Abatement, or Criminal Penalties may be imposed against the person and/or persons named in the Notice of Violation, to the discretion of the Land Use Administrator or his/her designee, in accordance with TMC 13.05.100.C.5 through 13.05.100.C.8, below.

5. Civil Penalty

a. Any person who fails to remedy a violation or take the corrective action described by the Land Use Administrator and/or their authorized representative in a Notice of Violation within the time period specified in the Notice of Violation may be subject to monetary civil penalties. The Civil Penalty will be either:

(1) Prepared and sent by first-class mail to the owner of the property and/or the person in control of the property, if different, and/or the person committing the violation, if different and readily identifiable; or

(2) Personally served upon the owner of the property, and/or the person in control of the property, if different, and/or the person committing the violation, if different and readily identifiable; or

(3) Posted on the property or premises in a prominent location and in a conspicuous manner which is reasonably likely to be discovered.

b. The Civil Penalty shall contain the following:

(1) A statement indicating that the action outlined by the City in the Notice of Violation must be taken, or further civil penalties may be imposed to the discretion of the Land Use Administrator or his/her designee;

(2) The address of the site and specific details of the violation which is to be corrected;

(3) The abatement procedure that may be pursued to the discretion of the Land Use Administrator or his/her designee; and

(4) The appropriate department and/or division investigating the case and the contact person.
(5) A statement that the costs and expenses of abatement, if imposed, incurred by the City may be billed to the persons named in the Notice of Violation.

c. The site will be re-inspected to see if the condition has been corrected. If the condition has been corrected, the case will be closed. If the condition has not been corrected, a second Civil Penalty may be sent or delivered in accordance with subsection 13.05.100.C.5 above. The monetary civil penalties for violations of this chapter shall be as follows:

(1) First, second, and subsequent civil penalties, $250;

(2) Each day that a property or person is not in compliance with the provisions of this title may constitute a separate violation of this title and be subject to a separate civil penalty.

d. Civil penalties will continue to accumulate until the violation is corrected.

e. At such time that the assessed civil penalties associated with a violation exceeds $1,000, a Certificate of Complaint may be filed with the Pierce County Auditor to be attached to the title of the property. A copy of the Certificate of Complaint shall be sent to the property owner and any other identified parties of interest, if different from the property owner.

f. Any person to whom a civil penalty is issued may appeal the civil penalty, as outlined in Section 13.05.100.C.7

6. Abatement

a. In the event that compliance is not achieved through the measures outlined in 13.05.100.C.1 through 13.05.100.C.5, above, or that said measures are not an appropriate means to remedy a violation, to the discretion of the Land Use Administrator or his/her designee, the City may, in addition to collecting monetary civil penalties, remove or correct the violation through a means of abatement. A finding shall be made by the Land Use Administrator that the violation is a detriment to the public health, safety, and welfare and therefore, constitutes as a nuisance, as defined by the State.

b. Using any lawful means, the City may enter unsecured property and may remove or correct a violation which is subject to abatement. If the person in control of the premises does not consent to entry, the City may seek such judicial process in Pierce County Superior Court as it deems necessary at effect the removal or correction of such condition.

c. Abatement undertaken on properties regulated under Chapter 13.07 shall be reviewed and approved by the Tacoma Landmarks Preservation Commission, in accordance with the provisions contained in TMC 13.07, prior to abatement.

d. Recovery of Costs

(1) An invoice for abatement costs shall be mailed to the owner of the property over which a Notice of Violation has been directed and/or the party identified in the Notice of Violation, and shall become due and payable to the City of Tacoma within 30 calendar days from the date of said invoice.

(2) The term “incidental expense” includes, but is not limited to, personnel costs, both direct and indirect, including attorney’s fees; costs incurred in documenting the violation; hauling, storage, and disposal expenses; filing fees; and actual expenses and costs of the City in preparing notices, specifications, and contracts, and in accomplishing and/or contracting and inspecting the work; the costs of any required printing or mailing; and any and all costs of collection.

(3) Any debt shall be collectible in the same manner as any other civil debt owed to the City, and the City may pursue collection of the costs of any abatement proceedings under this Chapter by any other lawful means, including, but not limited to, referral to a collection agency.

7. Notice of Violation and Civil Penalty Appeals

a. A person to whom a Notice of Violation or Civil Penalty is issued may appeal the City’s notice or order by filing a request with the City Clerk no later than 10 calendar days after said Notice of Violation or Civil Penalty is issued. Each request for appeal shall contain the address and telephone number of the person requesting the hearing and the name and address of any person who may represent him or her. Each request for appeal shall set out the basis for the appeal.
b. If an appeal is submitted, the Hearing Examiner, or his or her designee, will conduct a hearing, as required by this Chapter, no more than 18 calendar days after the Hearing Examiner and/or his/her designee issues a Notice of Hearing.

c. If an appeal is submitted, the Hearing Examiner or his or her designee shall mail a Hearing Notice giving the time, location, and date of the hearing, by first-class mail to person or persons to whom the Notice of Violation or Civil Penalty was directed and any other parties identified in the appeal request.

d. The Hearing Examiner, or his or her designee, shall conduct a hearing on the violation. The Land Use Administrator and/or their authorized representative, as well as the person to whom the Notice of Violation or Civil Penalty was directed, may participate as parties in the hearing and each party may call witnesses. The City shall have the burden of proof to establish, by a preponderance of the evidence, that a violation has occurred and that the required corrective action is reasonable, or that the Civil Penalty was appropriately assessed for noncompliance with this Title.

e. The Hearing Examiner shall determine whether the City has established, by a preponderance of the evidence, that a violation has occurred and that the required corrective action is reasonable, or that the Civil Penalty was appropriate and reasonable, and, based on that determination, shall issue a Final Order that affirms, modifies, or vacates the Land Use Administrator’s decisions regarding the alleged violation, the required corrective action, and/or Civil Penalty. The Hearing Examiner’s Final Order shall contain the following information:

1. The decision regarding the alleged violation including findings of facts and conclusion based thereon;
2. The required corrective action, if any;
3. The date and time by which the correction must be completed;
4. Any additional conditions imposed by the Hearing Examiner regarding the violation and any corrective action;
5. The date and time after which the City may proceed with abatement, as outlined in TMC 13.05.100.C.6, if the required corrective action is not completed;
6. A statement that any associated civil penalties are affirmed, modified, or waived;
7. A statement of any appeal remedies;

f. A notice that if the City proceeds with abatement, the costs of said abatement may be assessed against the property owner, person in control of the property, or person committing the violation, if the costs of abatement are not paid in accordance with the provisions of this Chapter.

g. If the person to whom the Notice of Violation or Civil Penalty was directed fails to appear at the scheduled hearing, the Hearing Examiner will enter a Final Order finding that the violation has occurred, or the Civil Penalty Order was appropriate and reasonable, and that abatement may proceed.

h. The Final Order shall be served on the person by one of the methods stated in TMC 13.05.100.C.4 of this Chapter.

i. A Final Order of the Hearing Examiner shall be considered the final administrative decision and may be appealed to a court of competent jurisdiction within 21 calendar days of its issuance.

j. Hearing regarding cost of abatement.

1. Any person sent an invoice regarding the costs due for the abatement of a violation may appeal the invoice and request a hearing to determine if the costs should be assessed, reduced, or waived.
2. A request for appeal shall be made in writing and filed with the City Clerk no later than ten calendar days from the date of the invoice specifying the costs due for the abatement.
3. Each request for hearing shall contain the address and telephone number of the person requesting the hearing and the name and address of any person who will be present to represent him or her.
4. Each request for hearing shall set out the basis for the appeal.
5. Failure to appeal an abatement invoice within ten days from the date of the invoice shall be a waiver of the right to contest the validity of the costs incurred in abatement of the violation. The costs will be deemed to be valid and
the City may pursue collection of the costs by any lawful means, including, but not limited to, referral to a collection agency.

(6) The hearing:

(a) Shall be scheduled no more than 18 calendar days after the Hearing Examiner issues Notice of Hearing. The Hearing Examiner or his/her designee shall mail a notice giving the time, location, and date of the hearing by first class mail to person or persons to whom the notice of the costs due for the abatement was directed.

(b) Shall be held before the Hearing Examiner informally. The department and the person requesting the hearing may be represented by counsel, examine witnesses, and present evidence.

(c) The Hearing Examiner may uphold the amount billed for the cost of abatement, reduce the amount billed, or waive the costs. Costs shall be collected any lawful means, including, but not limited to, referral to a collection agency.

(d) The determination of the Hearing Examiner is the final administrative decision.

(7) A final Order of the Hearing Examiner may be appealed to a court of competent jurisdiction no more than 21 calendar days of its issuance.


In certain instances, such as an unanticipated and imminent threat to the health, safety, general welfare to the public or the environment which requires immediate action within a time too short to allow full compliance with this chapter, the City may seek emergency abatement in order to gain compliance with this title, to the discretion of the Land Use Administrator or his/her designee. Using any lawful means, the City may enter unsecured property and may remove or correct a violation which is subject to abatement. If the person in control of the premises does not consent to entry, the City may seek such judicial process in Pierce County Superior Court as it deems necessary at effect the removal or correction of such condition.


In certain instances, where the aforementioned enforcement and penalty provisions outlined in this Chapter do not result in compliance or are not an appropriate means for achieving compliance, the Land Use Administrator and/or their authorized representative may refer the matter to the City Attorney for criminal prosecution. Upon conviction, the owner of the property upon which the violation has occurred and/or the person in control of the property where the violation has occurred, if different, and/or the person committing the violation, if different, may be subject to a fine of up to $1,000, or imprisonment for not more than 90 days in jail, or by both such fine and imprisonment. Upon conviction and pursuant to a prosecution motion, the court shall also order immediate action by the property owner or person in control of the property to correct the condition constituting the violation and to maintain the corrected condition in compliance with this Title. The mandatory minimum fines shall include statutory costs and assessments.

10. Additional Relief.

Nothing in this chapter shall preclude the City from seeking any other relief, as authorized in other provisions of the Tacoma Municipal Code. Enforcement of this Chapter is supplemental to all other laws adopted by the City.

11. Revocation of Permits.

Any person, firm, corporation, or other legal entity found to have violated the terms and conditions of a discretionary land use permit within the purview of the Land Use Administrator, Hearing Examiner, City Council, or other authorized official, pursuant to this Title, shall be subject to revocation of that permit upon failure to correct the violation. Permits found to have been authorized based on a misrepresentation of the facts that the permit authorization was based upon shall also be subject to revocation. Should a discretionary land use permit be revoked, the use rights attached to the site and/or structure in question shall revert to uses permitted outright in the underlying zoning district, subject to all development standards contained therein. Revocation of a permit does not preclude the assessment of penalties outlined in Section 13.05.100.C, above. Appeals of the revocation order shall be in accordance with Section 13.05.050.
A. Enforcement.

1. The Land Use Administrator, and/or authorized representative, shall have the authority to enforce the land use regulations of the City of Tacoma.

2. The Land Use Administrator or duly authorized representative of the Land Use Administrator may, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued inspection warrant, enter at reasonable times any building or premises subject to the consent or warrant to perform the duties imposed by the Land Use Regulatory Code.

3. The Land Use Regulatory Code shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.

4. It is the intent of this Land Use Regulatory Code to place the obligation of complying with its requirements upon the owner, occupier, or other person responsible for the condition of the land and buildings within the scope of this code.

5. No provision of, or term used in, this code is intended to impose upon the City, or any of its officers or employees, any duty which would subject them to damages in a civil action.

B. Investigation and Notice of Violation.

1. An investigation shall be made of any structure or use which the Department reasonably believes does not comply with the standards and requirements of this Land Use Regulatory Code.

2. If, after an investigation, it is determined that the standards or requirements of this title have been violated, a notice of violation shall be served, by first class mail, upon the owner, tenant or other person responsible for the condition.

3. Time to Comply. The compliance period shall not be less than two weeks, except where substantial life safety issues exist. (Ord. 27017 § 7; passed Dec. 3, 2002; Ord. 25852 § 1; passed Feb. 27, 1996)

13.05.105 Sign enforcement.

A. Compliance with Other Applicable Codes. All signs erected or altered must comply with all applicable federal, state, and local regulations relating to signs, including Tacoma Municipal Code (“TMC”) 2.05. If any provision of this code is found to be in conflict with any provision of any zoning, building, fire, safety, or health ordinance or code of the City, the provision that establishes the higher standard shall prevail.

B. Sign Maintenance. All signs must be kept in good repair and in a safe manner at all times. The property owner must repair damaged or deteriorated signs within 30 days of notification by the City.

C. Civil Penalty.

1. Order to Correct Violation.

a. Issuance. Whenever a code enforcement officer determines that a violation of the sign regulations has occurred or is occurring, he/she may issue an order to correct the violation to the property owner or to any person causing, allowing, or participating in the violation.

b. Content. The code enforcement officer shall include the following in the order to correct the violation:

i. the name and address of the property owner or other person to whom the order to correct the violation is directed; and

ii. the street address or description sufficient for identification of the sign for which the violation has occurred or is occurring; and

iii. a description of the violation and a reference to that provision of the City’s Sign Code which has been violated; and

iv. a statement of the action required to be taken to correct the violation as determined by the code enforcement officer, and a date or time by which correction is to be completed; and
a. a statement that a monetary penalty in an amount per day for each violation as specified in Section C.3.a shall be assessed against the person, firm, or corporation for whom the order to correct the violation is directed for each and every day on which the violation continues, following the date set for correction.

b. Service of Order. The code enforcement officer shall serve the Order to Correct Violation upon the person, firm, or corporation to whom it is directed, either personally or by mailing a copy of the Order to Correct Violation by first-class mail to such person, firm, or corporation at the last known address, or by posting a copy of the Order to Correct Violation conspicuously on the affected property or sign. Proof of service shall be made at the time of service by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, and the manner by which the service was made.

c. Extension. Upon written request received prior to the correction date or time, the code enforcement officer may extend the date of correction for good cause.

2. Issuance of Civil Penalty.

a. General. Following the date or time by which the correction must be completed as required by an Order to Correct Violation, the code enforcement officer shall determine whether such correction has been completed.

b. Issuance. If the required correction has not been completed by the correction date or time specified in the Order to Correct Violation, the code enforcement officer may issue a civil penalty to each person, firm, or corporation to whom an Order to Correct Violation was directed; provided, however, that the code enforcement officer may issue a civil penalty without having issued an Order to Correct Violation when one of the following exists:

i. an emergency exists;
ii. the violation is a second or third violation; or
iii. the violation occurs on City right-of-way or on City property.

The civil penalty issued pursuant hereto represents a determination that a violation has been committed. This determination is final unless contested as provided herein.

c. Content. The code enforcement officer shall include all of the following in the civil violation:

i. all information required to be included in the Order to Correct Violation; and

ii. a statement that the person, firm, or corporation to whom the civil penalty was directed must complete correction of the violation and either pay to the City Clerk the monetary penalty imposed or appeal the civil violation.

d. Service of Civil Penalty. The code enforcement officer shall serve the civil penalty either personally or by mailing a copy of the civil penalty by first-class mail to such person, firm, or corporation at the last known address.

3. Monetary Penalty.

a. Amount. The amount of the monetary penalty per day, or portion thereof, for each civil penalty is as follows:

i. first violation – $125.00;
ii. second violation – $250.00;
iii. third and subsequent violations – $500.00.

b. Violations Defined. The first violation is defined as the first time the code enforcement officer notifies a person, firm, or corporation that a violation exists. Second and third violations are defined as subsequent substantially similar violations perpetrated by the same person, firm, or corporation.

c. Continued Duty to Correct. Payment of the monetary penalty pursuant to this chapter does not relieve a person of the duty to correct the violation. If the violation is not corrected by the date indicated on the civil penalty, additional monetary penalties may be imposed.

4. Review by the Land Use Administrator.

a. General. A person, firm, or corporation to whom a civil penalty is directed may request an administrative review of the civil penalty, including the determination that a violation exists.
b. How to Request Administrative Review. A person, firm, or corporation may request an administrative review of the civil penalty by filing a written request with the Building and Land Use Services Division of the Department of Public Works within 14 days of the issuance of the civil penalty. The request shall state in writing the reasons the Land Use Administrator should review the issuance of the civil penalty. Failure to state the basis for the review in writing shall be cause for dismissal of the review. Upon receipt of the request for administrative review, the Land Use Administrator shall review the information provided.

After considering all of the information provided, including information from the code enforcement officer and the City Attorney, or his/her designee, the Land Use Administrator shall determine whether a violation has occurred, and shall affirm, vacate, suspend, or modify the amount of any monetary penalty imposed by the civil penalty. The Land Use Administrator’s decision shall be mailed by first-class mail within seven days of the receipt of the request for administrative review.

The Land Use Administrator shall not modify or suspend the amount of any monetary penalty unless he/she finds that the intent of the request for administrative review was not solely to delay compliance, that the request is not frivolous, the applicant exercised reasonable and timely effort to comply with the Sign Code, and any other relevant factors.

5. Appeal to the Hearing Examiner. A person, firm, or corporation may appeal the issuance of a civil penalty, including the determination that a violation exists, by filing a written notice of appeal with the Office of the City Clerk within 14 days of the issuance of the decision or within seven days of the issuance of an administrative review decision of the Land Use Administrator. The appeal shall set forth the basis of appeal in writing. Failure to state the basis for appeal in writing shall be cause for dismissal of the appeal. Upon receipt of the appeal, the Hearing Examiner shall schedule a hearing to consider the appeal. The appellant shall be notified of the date, time, and place of the public hearing by first-class mail to the appellant’s address as indicated on the appeal request.

6. Monetary Penalty. The monetary penalty for a continuing violation does not accrue pending the appeal hearing; however, the Hearing Examiner may impose a daily monetary penalty not to exceed $500.00 per day from the date of service of the civil penalty if he/she finds that the appeal is frivolous or intended to delay compliance.


a. The Hearing Examiner shall conduct a public hearing to consider the appeal. The hearing shall be conducted in accordance with the Rules and Procedures of the Hearing Examiner for contested cases. The Land Use Administrator or his/her designee, or the City Attorney or his/her designee, shall present the City’s case at the hearing. The appellant shall then respond, setting forth the grounds for appeal and presenting any witnesses or exhibits. The code enforcement officer or City Attorney, or his/her designee, and the appellant shall have the opportunity for rebuttal.

b. After considering all testimony and exhibits presented at the public hearing, the Hearing Examiner shall determine whether the City has proven, by a preponderance of the evidence, that a violation has occurred, and shall affirm, vacate, suspend, or modify the amount of any monetary penalty imposed by the civil penalty, with or without written conditions. The Hearing Examiner’s Decision on Appeal, including written findings of fact, shall be mailed by first-class mail to the appellant within 14 days of the hearing.

8. Appeals of the Hearing Examiner’s Decision on Appeal. Appeals of the Hearing Examiner’s Decision on Appeal shall be made in accordance with TMC 1.23.

9. Modification or Suspension of Monetary Penalty. The Hearing Examiner shall not modify or suspend the amount of any monetary penalty unless he/she finds that the intent of the appeal was not solely to delay compliance, that the appeal is not frivolous, that the applicant exercised reasonable and timely effort to comply with the Sign Code, and any other relevant factors.


a. The monetary penalty constitutes an obligation of the person, firm, or corporation to whom the civil penalty is directed. Any monetary penalty assessed must be paid to the Public Works Department within 30 calendar days from the date of service of the civil penalty or, if an appeal is filed, within 30 days of the final Decision on Appeal.

b. Civil penalties that are not paid within 30 days shall be referred to a collection agency, officially approved by the City of Tacoma, for collection.
D. Additional Enforcement Procedures. The provisions of this chapter may be used in addition to other enforcement provisions or remedies authorized by this code or other applicable law.

E. Inspection. The Building Official or his/her designee, pursuant to normal enforcement of the Tacoma Municipal Code, is empowered to inspect any building, structure, or premises in the City, upon which, or where a sign is located, for the purpose of inspection of the sign, its structural and electrical connections, and to insure compliance with the provisions of the Tacoma Municipal Code. Such inspections shall be carried out during business hours, unless an emergency exists.

13.05.110 Violations—Penalties.

A. Any person, firm, corporation, or other legal entity found to have violated any provision of the Land Use Regulatory Code shall be guilty of a misdemeanor and shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding 90 days, or by both such fine and imprisonment. Upon a first conviction, there shall be imposed a fine of not less than $100; upon a second conviction, there shall be imposed a fine of not less than $500; and, upon a third or subsequent conviction, there shall be imposed a fine of not less than $1,000, or imprisonment for not more than 90 days, or by both such fine and imprisonment. Upon a conviction, and pursuant to a prosecution motion, the court shall also order immediate action by the person, firm, corporation, or other legal entity to correct the condition constituting the violation and to maintain the corrected condition in compliance with this title. The mandated minimum fines shall include statutory costs and assessments.

B. Revocation of Permits. Any person, firm, corporation, or other legal entity found to have violated the terms and conditions of a discretionary land use permit within the purview of the Land Use Administrator, pursuant to Section 13.05.030, shall be subject to revocation of that permit upon failure to correct the violation. Permits found to have been authorized based on a misrepresentation of the facts that the permit authorization was based upon shall also be subject to revocation. When required, corrective action shall be completed within 90 days of the issuance of the order of the Land Use Administrator to correct such violations. Should a discretionary land use permit be revoked, the use rights attached to the site and/or structure in question shall revert to uses permitted outright in the underlying zoning district, subject to all development standards contained therein. Revocation of a permit does not preclude the assessment of penalties in subsection A above. Appeals of the revocation order shall be in accordance with Section 13.05.050.
Chapter 13.06
ZONING

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Sections:

13.06.100 Residential Districts.
13.06.100.B.1 R-1 Single-Family Dwelling District.
13.06.100.B.2 R-2 Single-Family Dwelling District.
13.06.100.B.3 R-2 SRD Residential Special Review District.
13.06.100.B.4 HMR-SRD Historic Mixed Residential Special Review District.
13.06.100.B.5 R-3 Two-Family Dwelling District.
13.06.100.B.6 R-4-L Low-Density Multiple Family Dwelling District.
13.06.100.B.7 R-4 Multiple-Family Dwelling District.
13.06.100.B.8 R-5 Multiple-Family Dwelling District.
13.06.105 Repealed.
13.06.110 Repealed.
13.06.115 Repealed.
13.06.118 Repealed.
13.06.120 Repealed.
13.06.125 Repealed.
13.06.130 Repealed.
13.06.135 Repealed.
13.06.140 PRD Planned Residential Development District.
13.06.145 Small-lot single-family residential development.
13.06.150 Accessory dwelling units.
13.06.155 Day care centers.
13.06.200 Commercial Districts.
13.06.200.A District purposes.
13.06.200.B Districts established.
13.06.200.B.1 T Transitional District.
13.06.200.B.2 C-1 General Neighborhood Commercial District.
13.06.200.B.3 C-2 General Community Commercial District.
13.06.200.B.4 HM Hospital Medical District.
13.06.200.B.5 PDB Planned Development Business District.
13.06.200.C Land use requirements.
13.06.200.D Building envelope standards.
13.06.200.E Maximum setback standards on designated streets.
13.06.200.F Common requirements.
13.06.300 Mixed-Use Center Districts.
13.06.300.A District purposes.
13.06.300.B Districts established.
13.06.300.B.1 NCX Neighborhood Commercial Mixed-Use District.
13.06.300.B.2 CCX Community Commercial Mixed-Use District.
13.06.300.B.3 UCX and UCX-TD Urban Center Mixed-Use District.
13.06.300.B.4 RCX Residential Commercial Mixed-Use District.
13.06.300.B.5 CIX Commercial Industrial Mixed Use District.
13.06.300.B.6 NRX Neighborhood Residential Mixed-Use District.
13.06.300.B.7 URX Urban Residential Mixed-Use District.
13.06.300.B.8 HMX Hospital Medical Mixed-Use District.
13.06.300.C Applicability and pedestrian streets designated.
13.06.300.D Land use requirements.
13.06.300.E Building envelope standards.
13.06.300.F Maximum setback standards.
M. Billboards (outdoor advertising signs). Special regulations governing billboards are as follows:

1. a. Any person, firm, or corporation who maintains billboard structures and faces within the City of Tacoma shall be authorized to maintain only that number of billboard structures and faces that they maintained on April 12, 1988,
except for transfers permitted in subsection 1.c of this section. A person who maintains any such billboard structures and faces may, thereafter, relocate a billboard face or structure to a new location as otherwise authorized by this section. No other billboards shall be authorized, and there shall be no greater total number of billboard structures and faces within the City than the number that were in existence on April 12, 1988. That number of structures and faces shall include those for which permit applications had been filed prior to April 13, 1988. As unincorporated areas are annexed to the City of Tacoma, the total number of billboard structures and faces in that area will constitute an addition to the number authorized in the City of Tacoma.

b. Upon removal of an existing billboard face or structure, a relocation permit shall be issued authorizing relocation of the face to a new site. There shall be no time limit on the billboard owner’s eligibility to utilize such relocation permits. In the event that a billboard owner wishes to remove a billboard and does not have immediate plans for replacement at a new location, an inactive relocation permit shall be issued. There shall be no time limit on the activation of the inactive permit and such permits are transferable. The application for a relocation permit shall include an accurate site plan and vicinity map of the billboard face or structure to be removed, as well as a site plan and vicinity map for the new location. Site plans and vicinity maps shall include sufficient information to determine compliance with the regulations of this chapter. The above provisions shall not apply to billboards whose permit applications were applied for prior to April 13, 1988, and not erected, unless the applicants or owners agree within 60 days to have such billboards, subject to all the provisions of this chapter.

c. Relocation permits shall be transferable upon the billboard owner’s written permission.

d. In no case shall the number of billboard faces or structures increase, and the square footage of billboard sign area to be relocated shall be equal to or less than the square footage of billboard sign area to be removed. Removal of a billboard structure shall also require the issuance of a demolition permit, and removal of billboard faces and structures shall be completed prior to the installation of relocated billboard faces or structures. The billboard owner shall have the right to accumulate the amount of square footage to be allowed, at the owner’s discretion, to new sign faces and structures permitted under this chapter.

2. All billboards shall be maintained in good repair in compliance with all applicable building code requirements. The exposed area of backs of billboards must be covered to present an attractive and finished appearance.

3. Each sign structure must, at all times, include a facing of proper dimensions to conceal back bracing and framework of structural members. During periods of repair, alteration, or copy change, such facing may be removed for a maximum period of 48 consecutive hours.

4. a. Not more than a total of four billboard faces attached to not more than two support structures shall be permitted on both sides of a street within any distance of 1,000 feet measured laterally along the right-of-way, with a minimum of 100 feet between such structures.

b. There shall be at least 300 linear feet of land, which is properly zoned, which permits billboards on one side of the street in order to erect one billboard structure on that side of the street. There shall be at least 600 linear feet of land, which is properly zoned, which permits billboards on one side of the street in order to erect more than one billboard structure on that side of the street.

c. The property on the opposite side of the street from the proposed billboard location must also be properly zoned to permit billboards.

5. The maximum area of any one sign shall be 300 square feet, with a maximum vertical sign face dimension of 12.5 feet and maximum length of 25 feet, inclusive of any border and trim, but excluding the base or apron, supports, and other structural members; provided, cut-outs and extensions may add up to 20 percent of additional sign area.

6. The provisions of subsection 5 shall control, except in those instances where an applicant or owner can demonstrate that there exists a binding contract to allow a billboard sign that contains financial penalty provisions for early termination or the absence of termination provisions in the contracts with billboard companies. In those instances, a permit may be issued on the condition that when the contract for the billboard expires, or an option for renewal occurs, the billboard will then be removed, pursuant to subsection 5 above.

a. To insure compliance with this section, the property owner shall enter into an agreement with the City that identifies the termination date of the contract to allow the billboard and a provision that, if the billboard is not
removed, the sign permit issued pursuant to this section will be revoked and the sign will be removed, pursuant to subsection c below.

b. This provision shall only apply to contracts entered into prior to the adoption of these regulations (July 22, 1997).

c. Any business owner or property owner seeking to obtain a sign permit for a property that has a nonconforming billboard located on it, and can demonstrate that there are either penalty provisions or the absence of termination provisions in the contracts with billboard companies in the City, shall apply for approval in accordance with the following procedures:

(1) Application. Prior to installation of a sign, the property owner shall apply for a sign permit with the Building and Land Use Services Division of the Public Works Department. A complete application shall include a properly completed application form, structural plans, and fees, as prescribed in subsection c.(2) below.

(2) Fees. An applicant shall pay a fee for the inspection, notification, recording, and enforcement related to the continuation of nonconforming billboards, pursuant to Section 2.09.080, and is in addition to any other required fees.

(3) Concomitant agreement. Prior to the approval of the sign permit, the property owner shall execute a concomitant agreement with the City. Such agreement shall be in a form as specified by the Building and Land Use Services Division of the Public Works Department, and approved by the City Attorney, and shall include, at a minimum: (a) the legal description of the property which has been permitted for the sign permit; and (b) the conditions necessary to apply the restrictions and limitations contained in this section. The concomitant agreement will be recorded prior to issuance of a sign permit by the Building and Land Use Services Division. The concomitant agreement shall run with the land until the nonconforming billboard is removed from the property. The property owner may, at any time, apply to the Building and Land Use Services Division for a termination of the concomitant agreement. Such termination shall be granted, upon proof that the business sign no longer exists on the property or upon proof that the nonconforming billboard no longer exists on the property.

(4) Permit issuance. Upon receipt of a complete application, application fees, completed concomitant agreement, and upon approval of the structural plans, a sign permit shall be approved.

(5) Violations. A violation of this section regarding provision of ownership shall be governed by Section 43.05.105, 13.05.100.

(6) Amortization. All legal nonconforming billboard signs shall be discontinued and removed or made conforming within ten years from the effective date of this section, on or before August 1, 2007, and all billboard signs, which are made nonconforming by a subsequent amendment to this section, shall be discontinued and removed or made conforming within ten years after the date of such amendment (collectively the “amortization period”). Upon the expiration of the amortization period, the billboard sign shall be brought into conformance with this section, with a permit obtained, or be removed. Nonconforming billboard signs that are removed prior to the end of the amortization period shall be given an inactive relocation permit, pursuant to subsection M.1.b. of this section.

* * *
13.06.610—Enforcement of land use regulatory code.

A. Enforcement.

1. The Land Use Administrator, and/or authorized representative, shall have the authority to enforce the land use regulations of the City of Tacoma.

2. The Land Use Administrator, or duly authorized representative of the Land Use Administrator, may enter, with the consent of the owner or occupier of a building or premises, or pursuant to a lawfully issued inspection warrant, at reasonable times any building or premises subject to the consent or warrant to perform inspections for the purpose of enforcing the requirements of the Land Use Regulatory Code.

3. The Land Use Regulatory Code is enforced for the benefit of the health, safety, and welfare of the general public, and not for the benefit of any particular person or class of persons.

4. It is the intent of this Land Use Regulatory Code to place the obligation of complying with its requirements upon the owner, occupier, or other person responsible for the condition of the land and buildings within the scope of this code.

5. No provision of, or term used in, this code is intended to impose upon the City, or any of its officers or employee, any duty, which would subject them to damages in a civil action.

B. Investigation and notice of violation.

1. Investigation. An investigation may be made of any structure or use which the Department reasonably believes does not comply with the standards and requirements of this Land Use Regulatory Code.

2. Notice. If, after an investigation, it is determined that the standards or requirements of this title have been violated, a notice of violation may be served, by first-class mail, upon the owner, tenant, or other person responsible for the condition.

13.06.620 Severability.

Should any section, clause, or provision of this chapter be declared by the court to be invalid, the same shall not affect the validity of the chapter as a whole or any part thereof, other than the part so declared to be invalid.

13.06.625 Violations—Penalties.

Any person, firm, corporation, or other legal entity found to have violated any provision of the Land Use Regulatory Code shall be guilty of a misdemeanor and shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding 90 days, or by both such fine and imprisonment. Upon a first conviction, there shall be imposed a fine of not less than $100; upon a second conviction, there shall be imposed a fine of not less than $500; and, upon a third or subsequent conviction, there shall be imposed a fine of not less than $1,000, or imprisonment for not more than 90 days, or by both such fine and imprisonment. Upon a conviction, and pursuant to a prosecution motion, the court shall also order immediate action by the person, firm, corporation, or other legal entity to correct the condition constituting the violation and to maintain the corrected condition in compliance with this title. The mandated minimum fines shall include statutory costs and assessments.
Chapter 13.06A

DOWNTOWN TACOMA

***

Sections:
13.06A.010 Purpose.
13.06A.020 Applicability.
13.06A.030 Definitions.
13.06A.040 Downtown Districts and uses.
13.06A.050 Additional use regulations.
13.06A.055 Nonconforming Development.
13.06A.060 Development standards.
13.06A.070 Basic design standards.
13.06A.080 Design standards for increasing allowable FAR.
13.06A.090 Special features required for achieving maximum Floor Area Ratio.
13.06A.100 Downtown Master Planned Development (DMPD).
13.06A.110 Variances.
13.06A.120 Enforcement.
13.06A.130 Serverability.

***

13.06A.120 Enforcement.

It shall be the duty of the Director of Public Works, or designee, of the City of Tacoma to enforce this chapter.
Chapter 13.11
CRITICAL AREAS PRESERVATION
* * *

13.11.100 General Provisions.
The 100 section contains the general provisions, including the following:

13.11.110 Purpose.
13.11.120 Intent.
13.11.130 Scope and Applicability.
13.11.140 Exempted Activities.
13.11.150 Repealed.
13.11.160 Pre-existing Uses/Structures.
13.11.170 Critical Area Designation and SEPA.
13.11.180 Abrogation and Greater Restrictions.
13.11.190 Severability.
13.11.200 Notice on Title.
13.11.210 Residential Density Credits.
13.11.220 Regulated Uses/Activities.
13.11.230 Application Types.
13.11.240 Legal Test(s).
13.11.260 General Mitigation Requirements.
13.11.270 Sureties.
13.11.280 Conditions and Appeals and Enforcement.
13.11.300 Wetlands.
13.11.310 Wetland Classification.
13.11.320 Wetland Buffers.
13.11.330 Wetland Buffer Modifications.
13.11.340 Wetland Standards.
13.11.350 Wetland Mitigation Requirements.
13.11.360 Repealed.
13.11.400 Streams and Riparian Habitats.
13.11.410 Stream Classification.
13.11.420 Stream Buffers.
13.11.430 Stream Buffer Modification.
13.11.440 Stream Crossing Standards.
13.11.450 Stream Mitigation Requirements.
13.11.500 Fish and Wildlife Habitat Conservation Areas (FWHCAs).
13.11.510 Classification.
13.11.520 Standards.
13.11.530 FWHC’s Shoreline – Marine Buffers.
13.11.540 FWHC’s Marine Buffer Modifications.
13.11.550 FWHC’s Mitigation Requirements.
13.11.560 FWHC’s Management Areas.
13.11.580 Habitat Zones.
13.11.600 Flood Hazard Areas.
13.11.610 Classification.
13.11.620 Standards.
13.11.700 Geologic Hazardous Areas.
13.11.710 Designation.
13.11.720 Classification.
13.11.730 General Development Standards.
13.11.280 Conditions and Appeals and Enforcement.
A. The Land Use Administrator shall have the authority, in accordance with Chapter 13.05, to attach such conditions to the granting of any permit under this chapter deemed necessary to mitigate adverse impacts and carry out the provisions of this chapter. In addition, such conditions may include, but are not limited to, the following:
1. Placement of Notice on Title on the subject parcels;
2. Limitations on minimum lot size;
3. Provisions for additional vegetative buffer zones depending on the intensity of the use or activity;
4. Requirements that structures be elevated on piles, limited in size or located with additional setback requirements;
5. Dedication of utility easements;
6. Modification of waste disposal or water supply facilities;
7. Imposition of easement agreements or deed restrictions concerning future use including conservation easements within fish and wildlife habitat conservation area (FWHCA), wetland, stream or other natural area tracts and subdivision of lands;
8. Limitation of vegetation removal;
9. Setting minimum open space requirements;
10. Erosion control and storm water management measures, including restrictions on fill and other activities in the FWHCA, wetland or stream;
11. Development of a plan involving the creation or enhancement of a stream corridor, wetland, or FWHCA or restoration of a damaged or degraded stream corridor, wetland, or FWHCA to compensate for adverse impacts;
12. Permanent Signs may be required on each lot or FWHCA, wetland, stream or natural area tract, and shall be prepared in accordance with the approved City of Tacoma template for signs. Additional custom signs may be required for areas with sensitive species that require specific protection measures;
13. Fencing is required when the Land Use Administrator determines that a fence will prevent future impacts to a protected FWHCA, wetland or stream or other natural habitat area. Fencing installed as part of a proposed activity shall not interfere with species migration, including fish runs, nor shall it impede emergency egress; and
14. Subdivisions. The subdivision and short subdivision of land in FWHCAs or wetlands and associated buffers is subject to the following and Chapter 13.04.310:
   a. Land that is located partially within a FWHCA, wetland or its buffer may be subdivided provided that an accessible and contiguous portion of each new lot is located outside the wetland and its buffer.
   b. Access roads and utilities serving the proposed subdivision may be permitted within the wetland and associated buffers only if the Land Use Administrator determines that no other feasible alternative exists and the project is consistent with the remaining provisions of this chapter.
   c. A protection covenant such as a Conservation Easement shall be recorded with the Pierce County Assessor’s Office for FWHCA, wetland, stream or natural area tracts that are created as part of the permitting process.
B. Compensation as a condition. As a condition of a permit or as an enforcement action under this chapter, the City shall require, where not in conflict with a reasonable economic use of the property, that the applicant provide
compensation to offset, in whole or part, the loss resulting from an applicant’s or violator’s action or proposal. Such compensation may include the enhancement of a FWHCA, stream corridor or wetland, the restoration of a damaged or degraded wetland, FWHCA or stream; or the creation of a new FWHCA, wetland or stream. In making a determination as to whether such a requirement will be imposed, and if so, the degree to which it would be required, the Land Use Administrator may consider the following:

1. The long-term and short-term effects of the action and the reversible or irreversible nature of the impairment to or loss of the FWHCA, wetland or stream;
2. The location, size, and type of and benefit provided by the original and altered FWHCA, wetland or stream;
3. The effect the proposed work may have upon any remaining critical area or associated aquatic system;
4. The cost and likely success of the compensation measures in relation to the magnitude of the proposed project or violation;
5. The observed or predicted trend with regard to the gains or losses of the specific type of wetland or stream; and
6. The extent to which the applicant has demonstrated a good faith effort to incorporate measures to minimize and avoid impacts within the project.

C. Appeals. An appeal of a decision regarding a critical area, except for staff decisions regarding exemptions which are not subject to an administrative appeal, may be made in accordance with the provisions of Chapter 13.05 and Chapter 1.23 of the Tacoma Municipal Code.

D. Enforcement and penalties. No regulated activity, as defined in Section 13.11.220 hereof, shall be conducted without a permit and without full compliance with this chapter. Enforcement and fines shall be conducted and applied in accordance with Chapter 13.05.

1. The Land Use Administrator shall have authority to enforce this chapter, issue delineation verifications, permits, and violation notices, and process violations through the use of administrative orders and/or civil and criminal actions. Law enforcement officers or other authorized officials with police power shall assist the Building and Land Use Services Division in carrying out the duties necessary for compliance. All costs, fees, and expenses in connection with enforcement of such actions may be recovered as damages against the violator. Any person who commits, takes part in or assists in any violation of any provision of this chapter shall be guilty of a misdemeanor and upon conviction may be fined in an amount not to exceed $1,000 for each offense, be imprisoned for a term not exceeding 90 days or be both fined and imprisoned. Each violation of this act shall be considered a separate offense, and in case of continuing violation, each day’s continuance shall be deemed to be a separate and distinct offense.

2. In the event of violation, the City shall have the authority to order restoration, enhancement, or creation measures to compensate for the destroyed or degraded critical area. If work is not completed in a reasonable time following the order, the City may implement a process to restore or enhance the affected site or create new FWHCAs, wetlands or streams to offset loss as a result of a violation in accordance with Section 13.11.250 hereof. The violator shall be liable for all costs of such action, including administrative costs.
TO: Planning Commission
FROM: Donna Stenger, Acting Manager, Long-Range Planning Division
SUBJECT: Shoreline Master Program Update
DATE: June 10, 2010

At the Planning Commission’s meeting on June 16, 2010, staff will provide a review and discussion of the public comment that was provided to the City Council on April 28, 2010 at a joint meeting of the Environment and Public Works Committee and Economic Development Committee. Comment was primarily concentrated around issues of public access and industrial uses. In addition, Council has had further discussions at the Committee of the Whole and asked staff to respond to a number of questions on shoreline districts, uses, and Department of Ecology guidelines. Staff responded to the Council questions at a joint meeting of the Environment and Public Works Committee and Economic Development Committee on June 9, 2010.

Attached is the Weekly Letter response to the Council’s questions. Staff will review the questions and discussion for the Commission.

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

DS:sa

c. Peter Huffman, Assistant Director

Attachment
Memorandum

TO: Eric Anderson, City Manager

FROM: Ryan Petty, Director
Community and Economic Development Department
Dick McKinley, Director
Public Works Department

SUBJECT: Master Program for Shoreline Development

DATE: June 3, 2010

At the Committee of the Whole meetings of May 4th and May 18th, City Council members requested a response to a number of questions pertaining to the update to the Master Program for Shoreline Development. The questions are recapped below along with responses from staff. At the request of Deputy Mayor Fey, staff will discuss these responses further at a joint meeting of the Environment and Public Works Committee and the Economic Development Committee scheduled for June 9, 2010 at 4:30 pm in Room 248.

1. Does the timeline for the Shoreline Master Plan allow for developing a comprehensive Foss Master Plan including transportation issues, public access, etc.?

One component of the Master Program for Shoreline Development is the Thea Foss Waterway Design and Development Plan originally adopted in 1992 and last amended in 2005. As part of the mandated update to the Master Program, the current Thea Foss Plan is being reviewed and potentially modified. Although the Thea Foss Plan review is part of the overall effort to re-do the Master Program, it is being accomplished under a separate consultant contract although closely coordinated with other shoreline planning work.

In late 2006, the City hired Reid Middleton as lead consultant to assist in the update to the Thea Foss Plan. The re-evaluation includes an economic analysis and a review of the vision, policies, design guidelines, and implementing regulations.

In 2007, 2008 and 2009, the City hosted public workshops to solicit comment on different aspects of the Thea Foss Plan to affirm whether or not the Foss Plan was still working. The workshops were well-attended and citizens discussed various aspects of the Plan including:

- Design Standards and Site Development
- Public Access, Views and Open Space
- Parking and Circulation
- Land Uses and Vision

What came out of these discussions was a sense that the overarching Thea Foss vision as expressed in the Plan was still appropriate but perhaps needed some minor course corrections.
These comments are being used to develop draft amendments to both the Foss Plan and shoreline regulations that retain the intent of the Foss vision and that meet the requirements of the state guidelines. One issue of note: although the desire for a continuous public walkway around the Waterway was affirmed, some concerns were expressed about public safety and impacts of public access requirements on existing uses on the east side of the Waterway. As a result of public comment and stakeholder input, the consultant and staff have begun developing a draft public access plan, identifying options for revising regulations and design guidelines, and evaluating design considerations for a pedestrian walkway on the eastside of the Waterway.

Based upon what we have heard from the public, the Thea Foss vision as articulated in the current plan is still valid and should be retained. The current Plan is comprehensive in its scope and with some adjustments to reflect changed conditions provides the necessary guidance for future actions. For a more thorough discussion of the history of planning for the Thea Foss waterway including recent issues that have re-emerged concerning the eastside of the waterway, please see Attachment D.

2. **Provide an overview on what elements of the Shoreline Master Plan (SMP) will likely be approved by DOE and what are the likely constraints that may not be approved. This should cover issues like incompatibility of uses, difficulty of applying SEPA and Shoreline Plan, public access, etc.**

Washington’s Shoreline Management Act was passed by the legislature in 1971 and was affirmed by statewide referendum in 1972. The Act designates marine shorelines and certain freshwater lakes and streams as “shorelines of statewide significance.” The state puts added emphasis on these areas to ensure that they are protected for the long-term interests of the people of the state. The Shoreline Management Act is codified in RCW 90.58 and is implemented through the Washington Administrative Code Guidelines (WAC) 173-26. The stated policy intent in RCW 90.58.020 is to “provide for the management of the shoreline of the state by planning for and fostering all reasonable and appropriate uses” and to “insure the development of these shorelines in a manner which, while allowing for limited reduction of the rights of the public in navigable waters, will promote and enhance the public interest.”

In 2003 updated Guidelines went into effect, establishing a timeline for local jurisdictions to update their Master Programs in compliance with the WAC. The City of Tacoma is required to have the update complete by the end of 2011. The Guidelines set both the substantive and procedural requirements that local jurisdictions must follow in updating a Master Program ([http://www.ecy.wa.gov/programs/sea/sma/laws_rules/173-26/SMP_Guidelines_Final.pdf](http://www.ecy.wa.gov/programs/sea/sma/laws_rules/173-26/SMP_Guidelines_Final.pdf)).

It is important to note that the updated Guidelines do not apply retroactively, but only to new development in the shoreline. The Department of Ecology provides local jurisdictions with a submittal checklist that summarizes the essential and minimum elements of a Master Program (see Attachment E) and establishes the parameters for local Master Programs. The essential elements include:
Goals, broad expressions of the community’s desire for the shoreline;

- General policies and regulations that apply to the entire shoreline area;
- Policies and regulations for shoreline uses, such as commercial, industrial, and recreation;
- Policies and regulations for shoreline modification activities, including dredging, piers, and bulkheads;
- Environment designations that classify shorelines based upon their physical, biological and development characteristics;
- Administrative regulations for permits and enforcement.

Many of these elements are contained in the existing City of Tacoma Master Program for Shoreline Development. However, as part of this update, the City must demonstrate that these elements have been re-evaluated consistent with the updated Guidelines. For instance, the assignment of uses to certain shoreline areas must be consistent with the proposed environment designation, which must in turn be consistent with both the Inventory and Characterization and the Use Analysis that the City developed between 2007 and 2009 (Attachment E outlines the essential elements of these studies). After a draft has been developed, the City must then assess how the proposed policies and regulations cause, avoid, minimize, and mitigate cumulative impacts to achieve no net loss of shoreline function.

The checklist includes a number of elements which are ‘new’ for local shoreline planning. These include the requirements to meet “no net loss of ecological function” and a Restoration Plan (See Attachment E for further detail on these elements). In addition, all of the use and modification standards must be reviewed according to both the guidelines and the best available technical information.

The Guidelines also provide detailed requirements for specific uses. For example, new non-water-oriented uses are generally prohibited, with certain exceptions (see Attachment A for further discussion and definition of water-oriented uses). Likewise, new overwater residences and floating homes are prohibited. Where some of the Guidelines provide gray area for local discretion, these specific use requirements offer less flexibility.

The Guidelines also provide some language addressing “use conflicts” in the shoreline. For instance, priority should be given to water-dependent uses as opposed to non-water-dependent uses; where public access would cause a safety, security or environmental hazard, the requirements can be waived or provided in a different manner; and public access should not jeopardize the operations of water-dependent uses. Where there is an irreconcilable conflict between a water-dependent use or physical public access and an adjacent view, the use and access take priority over the view.

With regard to public access, the State views the shoreline as an area of statewide significance, and as development occurs, the public’s ability to access and enjoy the “shorelines of the state” are impacted. The WAC states “Local Master Programs shall: Promote and enhance the public
interest with regard to rights to access waters held in public trust by the state while protecting private property rights and public safety.”

The State recognizes that there is a tradeoff as new development occurs, that the public gives up some of its rights for private development. The promotion of public access is a primary objective of the Shoreline Act and should be provided as new development occurs in the shoreline, but there is some discretion as to how the City promotes access, the types of access the City promotes (walkway, viewing platform, fishing pier) and which areas in the shoreline it is located.

The following table compares the existing public access requirements to what is currently under discussion.

<table>
<thead>
<tr>
<th>Current requirement</th>
<th>Proposed requirement</th>
<th>Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>Access is only required for new development</td>
<td>Same.</td>
<td>The WAC Guidelines do not apply retroactively but only to new development.</td>
</tr>
<tr>
<td>All uses, including water-dependent uses, are required to incorporate public access to the extent feasible.</td>
<td>Same.</td>
<td>All new development in the shoreline impacts the public’s ability to access the public waters. This approach meets the WAC requirements in the submittal checklist and recognizes that the provision of access to the shoreline is a shared responsibility for both public and private development.</td>
</tr>
<tr>
<td>Continuous walkway required around the Thea Foss Waterway, as new development occurs</td>
<td>Same.</td>
<td>A continuous walkway has been a centerpiece of the Foss Plan and Vision since its inception. Staff has proposed some updates to the design guidelines for the walkway to reflect the distinct character of the east side of the Foss.</td>
</tr>
<tr>
<td>Waiver process for public safety, health hazards, security concerns, and detrimental impact to operations.</td>
<td>The waiver criteria are still applicable; however, rather than an outright exemption, the waiver process can be used to exempt a project from providing access “on site.” In addition, staff is proposing that water-dependent industrial development be identified as exempt from the requirement for on-site access.</td>
<td>Assumes that water dependent industrial uses meet the waiver criteria and provides a more straightforward permit path. However, access would still be required at another location (off-site) or through a fee-in-lieu mechanism.</td>
</tr>
<tr>
<td>Allow off-site provision of access.</td>
<td>Requires off-site provision of access, consistent with the objectives of an adopted public access plan, when access cannot be provided on-site.</td>
<td>An applicant who cannot meet the public access requirement on-site, can still meet the intent by providing access off-site in an appropriate location. The Shoreline Public Access Plan will identify sites and projects that can be implemented when access cannot be provided on-site.</td>
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<tr>
<td>Fee-in-lieu provision.</td>
<td>Provides an option to meet the public access requirement. Project applicants would provide a fee to be used for acquisition, development, improvement, and maintenance of public access sites that have been pre-identified in an approved public access plan.</td>
<td></td>
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</tbody>
</table>

Attachment B provides additional discussion of the WAC requirements for public access.

Within the overall process there is some flexibility to account for both public goals and community desires. Certain areas of the update are more amenable to local discretion and process; for instance, the assignment of uses to certain shoreline areas and the identification of public access sites and opportunities. Certain changes however, may initiate discussions with the DOE over what they will or will not approve. For example, DOE will be unlikely to accept revisions to the public access requirement if they weaken the City’s ability to achieve “on-the-ground” improvements, nor would DOE likely approve a Master Program that allowed new overwater residential uses. Ultimately, the City will need to make the case that the elements contained within the submittal checklist have been met.

3. Council would like another joint meeting with staff and other affected parties on SMP.

A joint meeting between the Environment and Public Works Committee and the Economic Development Committee has been scheduled for June 9, 2010 at 4:30 pm in Room 248. Staff’s intent is to present the material contained in this memo and to answer any other questions that the Committee members may have.

4. Can the geographic boundaries of the SMP be altered (broken into smaller parts)?

One of the essential elements of the Master Program is the classification of shoreline environments. Shoreline environment designations establish the character of the area and set
policy preferences for use and development standards. The WAC Guidelines provide local jurisdictions with a methodology for designating shorelines, factors for analysis, and a recommended classification system. In evaluating shoreline areas for designation, the City must consider the existing biological conditions, use patterns, level of shoreline alteration, as well as community goals and desires. The recommended classification system is as follows: Natural, Aquatic, Rural-Conservancy, Urban-Conservancy, Shoreline Residential, and High Intensity. In addition, the WAC provides some flexibility for local jurisdictions to craft an alternative system. Attachment C describes specific requirements for shoreline environment designations, maps of existing and proposed designations, as well as purpose statements for each designation.

The existing Shoreline Master Program for the City of Tacoma contains three shoreline designations: Urban, Conservancy and Natural. Typically, in other jurisdictions, the shoreline environment designations would overlay residential, commercial or industrial zoning districts, but the City has a series of zoning districts specific to the shoreline. These are the “S-Districts.” These zoning districts are specifically developed to implement the environment designations. This provides the City with greater ability to craft zoning districts that are specific to the shoreline areas, rather than a “one-size-fits-all” approach. For example, two different zoning districts may be designated “Conservancy” but still have a different set of allowed uses and development standards. The “Conservancy” designation would achieve a high level of consistency between the districts, while still allowing distinctions.

Furthermore, staff has proposed some changes to the City’s existing designations to better reflect the conditions in the City’s shoreline as they exist today. First, staff has proposed to the Planning Commission that the City adopt the recommended classification system, with one exception: that the Thea Foss Waterway have its own unique designation as a “Downtown Waterfront.” Increasing the diversity of designation types allows the City to craft more specific zoning standards to better reflect the City’s geography. This change would increase the designation types from three to six.

Likewise, staff has made similar recommendations to revise existing shoreline districts to maintain consistency with the designations. For example, staff has recommended creating a unique shoreline district for the Point Ruston and Slag Peninsula site that will recognize the particular character and conditions of that area. Likewise, in the existing Master Program, the S-1 District includes a high intensity marina, commercial uses, multifamily housing, and single family residential. The staff proposal would create two distinct districts, one that would be primarily single-family residential and another that would reflect the higher intensity commercial and multifamily uses. The City currently has 14 shoreline districts, but staff has proposed the creation of 3 new districts. In addition, some changes to district boundaries have been proposed. For example, staff has proposed that the Chinese Reconciliation Park site become part of the S-6 Ruston Way Shoreline District rather than remain a part of the S-7 Schuster Parkway Shoreline District which is a predominantly industrial shoreline area.
Per Council direction, staff could review other proposed shoreline designations and districts according to the methodology that the WAC outlines for designating shoreline areas. Attachment E includes specific WAC requirements related to environment designations.

5. Provide status report and summary on the transportation study for the Foss Waterway. Has there been a formal adoption of the plan? Is there work in progress on the goals and has this translated into the 6 Year Transportation Plan?

In 2005 the City Council adopted a resolution which called for establishing a transportation corridor generally along the alignment of East D Street to "serve as a barrier to encroachment of nonindustrial development to the east of East D Street." The East Thea Foss Waterway Transportation Corridor Study was guided by a steering committee that included representatives of the Tacoma-Pierce Chamber of Commerce, Port of Tacoma, City of Tacoma and Foss Waterway Development Authority. The process included interviews with stakeholders on the Foss Peninsula as well as a public workshop. The Study was completed in June 2008 and the findings were presented to the Environment and Public Works Committee in July 2008. At that time, the Council instructed staff to continue stakeholder dialogue to gauge interest in public/private funding opportunities for right-of-way improvements.

City staff has met on four occasions since November 2008 with area stakeholders. City staff’s role has been transparent facilitation, presentation of capital improvement options, and idea exchanges. The East Foss group has discussed the recommended roadway projects identified in the study but made no decisions. The last stakeholder meeting was held on July 1, 2009. The group decided that they would need to develop an agreeable vision for the peninsula before decisions on projects, costs, and financing could be carried out. No meetings have been planned so far in 2010. The City has a pending grant application to help fund a feasibility study for the SR-509 slip ramps project which is one of the East Foss recommended projects; pending completion of this study the City has commitments from both public and private sources of up to $17.5 million towards this $19 million project.

At this time two of the recommended improvement projects have been added to the 6-Year Transportation Improvement Plan: the SR-509 slip ramps project and the intersection improvements at East F Street and 11th Street. The full text of the Transportation Study can be found at: http://cms.cityoftacoma.org/CRO/Report_TheaFossv3.pdf.

If you or members of the City Council have questions about this information please contact Donna Stenger, Acting Manager for the Long-Range Planning Division, at 591-5210 or dstenger@cityoftacoma.org.

RP:ds
Attachments
Allowed, Conditional and Prohibited Uses in Shoreline Management

Allowed Uses
The WAC requires that jurisdictions prioritize shoreline land uses by their degree of water-orientation. Water-dependent uses have the greatest preference for location in shoreline areas. The WAC requires that the City estimate projected future demand for water-dependent uses and to provide a sufficient land supply within shoreline jurisdiction to meet future needs.

The WAC generally defines water-oriented uses according to the following classifications:

"Water-dependent use" means a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

Examples: Moorage float, boat launch, marina, ferry terminal, container terminal

"Water-related use" means a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:
   a. The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or
   b. The use provides a necessary service supportive of water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

Examples: Port cargo storage and staging areas; petroleum storage, transport, and refineries; boat repair and construction, marine services

"Water-enjoyment use" means a recreational use or other use which through location, design, and operation facilitates physical public access to the shoreline or aesthetic enjoyment of the shoreline for a substantial number of people and . In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

Examples: Woody’s, Johnny’s Dock, 21st Street Park, Youth Marine Center, Seaport, restaurants, aquarium

Conditional Uses
The WAC generally prohibits non-water-oriented uses except in very limited circumstances. Non-water-oriented uses may be located in the shoreline area as part of a mixed-use project, on sites where water-dependent uses cannot locate, or where there is excess land supply to meet the needs of water-dependent uses. In most cases, non-water-oriented uses, when they are permitted in the shoreline, are permitted as a conditional use which requires Department of Ecology approval.

In the City of Tacoma’s case, the most likely scenario for non-water-oriented uses to be permitted in the shoreline is in circumstances where it is a part of a mixed-use project that includes a water-oriented component. For example, an office building could potentially locate on the Foss Waterway if it were to also provide an enjoyment use, such as a restaurant or retail, as well as public access and shoreline enhancement.
Additionally, the WAC requires that any use that has a detrimental impact on a critical saltwater habitat, such as an eelgrass bed or spawning area, be permitted only as a conditional use. Shoreline modification activities, such as new bulkheads, landfill or breakwater, are also generally required to be permitted as conditional uses.

Prohibited Uses

The WAC Guidelines prescribe limitations on specific use types. For example:

- New piers and docks are prohibited except for water-dependent uses and public access
- New residential uses are prohibited over-water
- New non-water-dependent commercial uses are prohibited over-water
- New non-water-oriented industrial uses are prohibited unless the use is part of a mixed-use project or where navigation is limited.
Shoreline Public Access Guidelines and Requirements

Maximizing the public’s ability to access and enjoy the shorelines of statewide significance is one of the three primary goals of the Shoreline Management Act.

The WAC Guidelines define public access as “... the ability of the general public to reach, touch, and enjoy the water’s edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations.”

Public access sites can include trails or promenades, beach parks, viewing platforms, picnic areas, transient moorage, fishing platforms and sites for the hand launch of water craft. The WAC Guidelines require jurisdictions to plan for the future demand for public access and recreation and to “seek to increase the amount and diversity of public access to the state's shorelines consistent with the natural shoreline character, property rights, public rights under the Public Trust Doctrine, and public safety (WAC 173-26-221(4)(d)(ii)).” In addition, the WAC requires that local master programs identify public access opportunities and needs and explore actions to enhance access and recreation.

At a minimum, the WAC specifically requires that local master programs implement the following:

- Policies and regulations to protect and enhance both physical and visual access (WAC 173-26-221(4)(d)(i)).
- Public entities are required to incorporate public access measures as part of each development, unless access is incompatible with safety, security, or environmental protection (WAC 173-26-221(4)(d)(ii)).
- Non-water-dependent uses and subdivisions of land into more than four parcels include standards for dedication and improvement of public access (WAC 173-26-221(4)(d)(iii)).
- Maximum height limits, setbacks, and view corridors minimize impacts to existing views from public property or substantial numbers of residences (WAC 173-26-221(4)(d)(iv)).

The existing City of Tacoma Shoreline Master Program and TMC 13.10 requires all shoreline development and uses, except for single family residential, to provide public access to the shoreline. TMC 13.10 states that “All proposed developments shall be designed to maximize the public view and public access to and along the shoreline where appropriate.” Projects are reviewed on a case-by-case basis to determine compliance with the access requirements. However, the existing code identifies certain circumstances where a development or use can have the requirement waived. These circumstances include:

- Unavoidable health or safety hazards
- Inherent security requirements of the use
- Unacceptable environmental harm
- Significant undue and unavoidable conflict between the proposed access and adjacent uses

In practice, the waiver criteria has resulted in less on the ground public access than would otherwise have been achieved, as well as an unevenly applied requirement, where some uses are able to have the access requirement waived in its entirety while others are not.
In those circumstances where the access cannot be provided on site, the City of Tacoma does not currently have a mechanism to require an applicant to provide public access off-site or via a fee-in-lieu mechanism, except in limited circumstances.

One of the primary policy decisions is whether to change these criteria from a waiver from the public access requirement to a waiver from providing the required access on-site. Although the current code recognizes that public access is not always compatible with site-specific conditions, it does little to recognize a shared responsibility among public and private parties to implement the public access policies of the Shoreline Management Act and the Tacoma Shoreline Master Program.

Altering the current practice does not mean that every use, in every shoreline location would be required to provide access on-site, but rather, that new development would provide for access where it is appropriate. For water-dependent industrial uses, that could mean providing for access off-site, consistent with an adopted shoreline public access plan, or via a fee-in-lieu program. For example, new development in the port industrial area could choose to implement identified public access projects that enhance boating facilities, scenic viewpoints, or walkways and trails in locations that would prevent any detrimental impact to the operations, safety, and security of industrial activities. However, where a restaurant or retail use is locating on the shoreline, on-site public access would be more appropriate. Providing flexibility for the provision of public access at off-site locations is intended to provide better access for the public, by locating it in appropriate areas and by developing an integrated access system, and as a means for minimizing conflicts between public access and water-dependent uses.

The following map is a draft of a public access concept map that was developed in late 2008, which identifies some potential public access opportunities in the City’s shoreline areas. The map incorporates a number of shoreline access elements that have been adopted in previous planning efforts, including the Shoreline Trails Plan as well as some new elements. The map was developed as part of the required documentation for the Shoreline Master Program and shows both potential locations as well as potential access types. As other sites are identified or discussed as part of the public process, the map will be revised and expanded. Since this map was developed, other planning efforts have taken place or are ongoing that will be incorporated where applicable, such as the
Mobility Master Plan. Likewise, staff is working with consultants at ESA Adolfson and Reid Middleton to develop an inventory of these sites with names, locations, descriptions, and cost estimates for priority projects. This plan can provide direction and priorities for off-site public access and for a potential fee-in-lieu option, as well as certainty for water-dependent uses that are unable to provide access on-site.

Consultants and staff are currently exploring administrative procedures for establishing a fee-in-lieu option and methodologies for determining an appropriate fee including a nexus for the fee and the threshold for new development that would be eligible for the fee option.

In addition, the current draft of public access policies and regulations proposes the following:

- Require the provision of public access to be consistent with all relevant constitutional and other limitations that apply to requirements placed upon private property; and
- Require that public access not compromise the rights of navigation and space necessary for water-dependent uses.
Summary of Proposed Environment Designations

The Shoreline Management Act is implemented through two primary mechanisms: 1) General policies and regulations that apply to all shoreline areas, including standards for public access, vegetation conservation, cultural and archaeological resource protection, use standards, no-net-loss requirements, and shoreline modification standards; and 2) Shoreline environment designations that establish specific use and development standards for distinct shoreline areas and conditions.

The WAC recognizes that “Shoreline management must address a wide range of physical conditions and development settings along shoreline areas” and that “effective shoreline management requires that the shoreline master program prescribe different sets of environmental protection measures, allowable use provisions, and development standards for each of these shoreline segments (WAC 173-26-191(d))”.

Shoreline environment designations are intended to characterize areas with distinct patterns of use, existing conditions, and ecological functions, establishing use preferences, height allowances, setbacks, and other development standards that reflect the unique characteristics of those shoreline segments.

The WAC recommends a classification system consisting of six basic environments: “High-intensity,” “shoreline residential,” “urban conservancy,” “rural conservancy,” “natural,” and “aquatic”. Each classification has criteria that local jurisdictions must consider in designating shoreline areas.

In applying shoreline environment designations, the City must base its analysis on the Shoreline Characterization and Inventory Report and Waterfront Land Use Analysis which provide a base line of existing ecological functions, levels of alteration of the shoreline environment, and existing uses and use patterns.

A map of the existing City of Tacoma shoreline environment designations is shown below.
Proposed Shoreline Environment Designations

Natural Environment

Purpose
The purpose of the "natural" environment is to protect those shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions intolerant of human use. These systems require that only very low intensity uses be allowed in order to maintain the ecological functions and ecosystem-wide processes.

Aquatic Environment

Purpose
The purpose of the "aquatic" environment is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high-water mark.

Shoreline Residential Environment

Purpose
The Shoreline Residential designation accommodates residential development and accessory structures that are consistent with this chapter. An additional purpose is to provide appropriate public access and recreational uses.

Urban Conservancy Environment

Purpose
The “urban conservancy” environment is intended to protect and restore the public benefits and ecological functions of open space, natural areas and other sensitive lands where they exist, while allowing a variety of compatible uses. It is the most suitable designation for shoreline areas that possess a specific resource or value that can be protected without excluding or severely restricting all other uses. It should be applied to those areas that would most benefit the public if their existing character is maintained, but which are also able to tolerate limited or carefully planned development or resource use. Permitted uses may include recreational, cultural and historic uses provided these activities are in keeping with the goals of protection and restoration as stated.

High-Intensity Environment

Purpose
The purpose of the "high-intensity" environment is to provide for high-intensity water-oriented commercial, transportation, and industrial uses while protecting existing ecological functions and restoring ecological functions in areas that have been previously degraded.

Downtown Waterfront

Purpose
The purpose of the Downtown Waterfront Designation is to:
• Foster a mix of private and public uses, including parks and recreation facilities, that are linked by a comprehensive public access system, including a continuous walkway encircling the entire Thea Foss Waterway;

• Strengthen the pedestrian-orientation of development on the Thea Foss Waterway;

• Promote the design vision for the Thea Foss Waterway through the establishment and implementation of design guidelines and standards;

• Promote the east side of the Foss Waterway as a center for industries and firms specializing in clean technology;

• Encourage a mix of uses, including water-oriented industrial and commercial uses that are compatible with public access objectives, and residential uses, except for that area north of 11th Street on the east side;

• Retain and enhance characteristics of the Thea Foss Waterway that support marine and recreational boating activities;

• Manage the shoreline area in a way that optimizes circulation, public access, development, and environmental protection;

• Encourage and provide opportunities for mixed-use development that supports water-oriented uses and provides significant public benefit and enjoyment of the Waterway for the citizens of Tacoma.

Tacoma has divided its 42 miles of shoreline into 3 environment designations and 14 separate districts. With the update, 3 additional designations are proposed based upon the shoreline inventory analysis, as well as 3 additional districts. Each shoreline area has an environment designation as well as a corresponding shoreline zone. The “S” zoning Districts directly implement the policies of the environment designation and allow the City to craft regulations for each shoreline district so that two districts with the same environment designation can have distinct use and development standards. The shoreline zoning districts are inherently “mixed-use” in that they are not as use specific as the City’s other zoning districts, instead, these districts view uses through general categories of commercial, residential, boating facilities, recreation, and industrial development and through the lens of water-orientation.
Map of Proposed Shoreline Zoning Districts
Thea Foss Waterway Design and Development Plan

In 1974, the City adopted the City Waterway Policy Plan (the City Waterway is now known as the Thea Foss Waterway) that provided the foundation to transform the former shipping terminal and industrial area into an urban waterfront with a mix of public and private uses emphasizing public access and enjoyment. The 1974 Plan was the first of many studies and plans to follow which were developed over the years by both the City and civic organizations interested in the redevelopment of the blighted and contaminated waterfront. From the beginning, these plans envisioned redevelopment with uses that included marinas, restaurants, public spaces, residential (upland only), hotel/motel and water-oriented commercial uses. The 1974 Plan’s vision was echoed in the implementing S-8 shoreline regulations of the time, which applied to the west side of the waterway and wrapped around the east side terminating at the centerline of East 15th Street. However, the 1974 Plan recommended that the eastside shoreline area north of 15th be included in the S-8 Shoreline District to achieve redevelopment of the entire Foss waterfront area. Studies and plans that followed the 1974 Plan also concluded that both sides of the waterway needed to be planned together.

The Thea Foss Waterway Design and Development Plan (The Foss Plan) adopted in 1992, provides policy and design guidelines for all new public and private development in and surrounding both sides of the Thea Foss Waterway. This Plan, in conjunction with development regulations in the shoreline code, guides redevelopment of Thea Foss Waterway. The Foss Plan envisions a mixed use community, attuned to the intrinsic qualities of its water setting and inseparable from the city around it. It strives to attain the “ABC’s” of waterfront development: Access, Boating and Character.
The Thea Foss area is also part of the downtown Tacoma Mixed Use Center which is the primary growth center for the city and is also designated as a Regional Growth Center in Vision 2040. The Master Program characterizes the Thea Foss Waterway in the following terms:

“The greatest use and redevelopment potential of the Thea Foss Waterway is for mixed use development, including cultural facilities, residential, marinas, water-oriented commercial, water-oriented public park and public facilities development, and waterborne transportation. The waterfront and proximity to the downtown offer a combination that should be utilized in developing a transition area with unique character. In order to achieve this, many improvements will have to be undertaken including a beautification program, changes in land uses and the addition of recreation facilities. In other words, a complete renewal of the area is necessary maintaining only those facilities which are compatible with the desired character.”

The intent statement indicates that the Foss Waterway is to be unique from other waterways. Its connection to downtown is to be emphasized and a continuation of mixed-use development is encouraged.

In contrast, the intent for the other waterways which are all designated as S-10 Port Industrial is that “Future use activities in the Port Industrial area are expected to remain the same, with an increase in the intensity of development and greater emphasis on terminal facilities within the City.” The Master Program recognizes the distinct difference between the Foss Waterway and all other port waterways. Tacoma’s planning for all of its shoreline areas has designated the port waterways for port maritime uses but has set aside the Foss Waterway as its downtown waterfront.
Considerable public investment has occurred on the Foss Waterway in public acquisition, amenities and environmental clean up. Although most expenditure to date has been focused on the west side, some public improvements and environmental remediation has occurred on the east side, most notably the development of Urban Waters as an anchor for attracting future clean technology industries.

**Eastside of the Foss**

The *Master Program* also provides an intent for the east side of the Foss Waterway:

> “The east side of the waterway contains active industrial and commercial development. The long-range intent of the plan is to encourage a transition to mixed-use development, but allow existing industrial uses to remain and provide for new industrial uses in appropriate locations.”

The Foss Plan also includes an entire chapter devoted to the east side. The development concept for the east side takes into consideration the viable industrial uses. The Plan encourages and supports the continuation of these uses and assists their continued viability through allowing repair, replacement, or modernization of the existing facilities. Expansion is permitted within their current property boundaries. The active industrial uses are encouraged to remain as long as the businesses are viable. These uses provide employment, benefit the economy, and contribute to the working waterfront character. A change from active industrial uses occurred on the west side, which at one time also had viable industrial uses that slowly over time relocated or discontinued use. It should be noted that no new industrial use has located to the Foss Waterway.

Given that the industrial businesses exist, the Plan makes special considerations for their unique development aspects. For example, although increasing public access is one of the five primary goals for the entire waterfront’s redevelopment, the guidance for the east side acknowledges that public access such as the planned esplanade may conflict or create safety concerns with industrial operations. The development concept and design guidelines therefore provide alternative means to meet the public access goals without interfering with the viability of industrial uses.

**Eastside Zoning**

The S-8 Shoreline District on the eastside of the Waterway is a narrow band along the water’s edge generally extending landward to East D Street. Across D Street is a band of M-2 Heavy Industrial zoning, the PMI Port Marine Industrial Zoning and the S-10 Shoreline Districts, all of which prohibit residential uses but do allow commercial as well as industrial uses.

In 1995 the northeast section of the Foss Waterway was rezoned to S-8. Because of concerns raised by east side property owners north of 15th Street, the S-8 regulations were modified to allow new water-dependent or water-related industrial uses as a permitted use and non-water dependent or water-related industrial activities as a conditional use. Existing industrial operations are allowed to continue and expand within the existing property footprint used for industrial activities.

Since the change in regulations, the area remains much the same as it was in 1995. The northeast district contains bulk fuel storage and distribution facilities and a marine paint and sandblasting facility among other uses. These uses were in existence when the shoreline regulations were revised in 1995 to include this area in the S-8 shoreline district. One change that has occurred since the 1995 revision is new homeland security requirements. The fuel distribution facilities must meet new federal standards which include fencing, concertina wire and perimeter surveillance.

In 2005, the regulations were amended again at the request of the Chamber of Commerce. The regulation change prohibits new residential and hotel/motel uses north of the Murray Morgan Bridge. The ban on residential uses does not preserve or guarantee that any eastside properties on the Foss will be used for industry. The suitability of the eastside shoreline properties may not lend themselves for some industrial uses. The narrow depth of the waterside properties may not be adequate. Within the S-
8 shoreline district, many uses are allowed and could be developed based upon private property owner’s intent and market conditions. These other permitted uses include restaurants, marinas, offices, and other commercial, cultural, or institutional uses.

**Industrial Uses**
Industrial land is indeed a commodity worthy of protection. The City has designated over 99 percent of the Tacoma tide flats with land use intensity and zoning for industrial uses. The eastside of the Foss represents less than 0.2% of the tideflats area. The City is very supportive of maintaining industrial lands for marine industries. In fact, in 2002, the City in partnership with the Port of Tacoma, specifically amended its industrial zoning regulations to create the Port Maritime Industrial zone and modified its regulations to give preference to maritime industries within this zone. This zone is separate from the S-8 shoreline district and lies eastward generally of East F Street.
ATTACHMENT E
SHORELINE MASTER PROGRAM UPDATE

SHORELINE MASTER PROGRAM SUBMITTAL CHECKLIST
This checklist is for use by local governments to satisfy the requirements of WAC 173-26-201(3)(a), relating to submittal of Shoreline Master Programs (SMPs) for review by the Department of Ecology (Ecology) under Chapter 173-26 WAC. The checklist does not create new or additional requirements beyond the provisions of that chapter.

**DOCUMENTATION OF SMP DEVELOPMENT PROCESS**

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<td>Commercial Development WAC 173-26-241(3)(D)</td>
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<tr>
<td>Forest Practices WAC 173-26-241(3)(E)</td>
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<td>Industry WAC 173-26-241(3)(F)</td>
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<tr>
<td>In-Stream Structures WAC 173-26-241(3)(G)</td>
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<td>Mining WAC 173-26-241(3)(H)</td>
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<td>Recreational Development WAC 173-26-241(3)(I)</td>
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<tr>
<td>Residential Development WAC 173-26-241(3)(I)</td>
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<tr>
<td>Transportation Facilities WAC 173-26-241(3)(K)</td>
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<td>Utilities WAC 173-26-241(3)(L)</td>
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<tr>
<td><strong>SMP Administrative Provisions</strong></td>
<td>21</td>
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</tbody>
</table>
INSTRUCTIONS

This checklist is intended to help in preparation and review of local shoreline master programs (SMPs). Local governments should include a checklist with all SMPs submitted for review by Ecology.

Information provided at the top of the checklist identifies what local jurisdiction and specific amendment (e.g. comprehensive update, environment re-designation or other topic) the checklist is submitted for, and who prepared it. Indicate in the location column where in the SMP (or other documents) the requirement is satisfied. If adopting other regulations by reference, identify what specific adopted version of a local ordinance is being used, and attach a copy of the relevant ordinance (see example 1, below).

Draft submittals: For draft submittals, local governments may use the Comments column to note any questions or concerns about proposed language. Ecology may then use the Comment field to respond (see example 2, below).

Final submittals: When submitting locally-approved SMPs for Ecology review, leave the comment field blank. Ecology will use the comment field to develop final comments on the SMP.

Ecology has attempted to make this checklist an accurate and concise summary of rule requirements, however the agency must rely solely on adopted state rules and law in approving or denying a master program. This document does not create new or additional requirements beyond the provisions of state laws and rules [WAC 173-26-201(3)(a)].

EXAMPLE 1: reference other documents if necessary

<table>
<thead>
<tr>
<th>STATE RULE (WAC) REQUIREMENTS</th>
<th>LOCATION</th>
<th>COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inventory of existing data and materials. WAC 173-26-201(3)(c)(i) through (x).</td>
<td>Appendix A: Shoreline Inventory and Analysis, Section 2.</td>
<td></td>
</tr>
<tr>
<td>Wetland buffer requirements are adequate to ensure wetland functions are protected and maintained in the long-term, taking into account ecological functions of the wetland, characteristics of the buffer, and potential impacts associated with adjacent land uses. WAC 173-26-221(2)(c)(i)(B)</td>
<td>City Ordinance CA 19.072, adopted July 17 2003, p. 32</td>
<td></td>
</tr>
</tbody>
</table>

EXAMPLE 2: for draft submittals, use Comments column

<table>
<thead>
<tr>
<th>STATE RULE (WAC) REQUIREMENTS</th>
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<tbody>
<tr>
<td>High-intensity environment designation criteria: Areas within incorporated municipalities, “UGAs,” and “rural areas of more intense development” (see RCW 36.70A.070) that currently support or are planned for high-intensity water-dependent uses. WAC 173-26-211(5)(d)(iii)</td>
<td>Urban Industrial, p. 15 Urban Mixed, p. 18 Also see Appendix B, Use Analysis, Chapter 3, p. 12.</td>
<td>Local government: SMP includes two urban designations that meet high-intensity criteria – Urban Industrial, and Urban Mixed. These alternative designations allow more specificity for public access, view and amenity requirements for the mixed use areas. Ecology: Proposed alternative designations are consistent with the purposes and policies of the high-intensity criteria, as per WAC 173-26-211(4)(c).</td>
</tr>
</tbody>
</table>

Acronyms and abbreviations


For more information

# SHORELINE MASTER PROGRAM SUBMITTAL CHECKLIST

**Prepared for:**
(Jurisdiction Name)  

**Name of Amendment:**

**Prepared by:**
(Name)  

**Date:** / /  

## STATE RULE (WAC) REQUIREMENTS

<table>
<thead>
<tr>
<th>DOCUMENTATION OF SMP DEVELOPMENT PROCESS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Public involvement, communication, and coordination</strong></td>
</tr>
<tr>
<td>Documentation of public involvement throughout SMP development process. WAC 173-26-201(3)(b)(i) and WAC 173-26-080 and 100. For SSWS, see WAC 173-26-251(3)(a)</td>
</tr>
<tr>
<td>Documentation of communication with state agencies and affected Indian tribes throughout SMP development. WAC 173-26-201(3)(b)(ii) and (iii), WAC 173-26-100(3). For saltwater shorelines, see WAC 173-26-221(2)(c)(iii)(B). For SSWS, see WAC 173-26-251(3)(a).</td>
</tr>
<tr>
<td>Demonstration that critical areas regulations for shorelines are based on the SMA and the guidelines, and are at least equal to the current level of protection provided by the currently adopted critical areas ordinance. WAC 173-26-221(2)(b)(ii),(iii) and (c).</td>
</tr>
<tr>
<td>Documentation of process to assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights. See &quot;State of Washington, Attorney General's Recommended Process for Evaluation of Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property.&quot; WAC 173-26-186(5).</td>
</tr>
</tbody>
</table>

**Final submittal** includes:
- evidence of local government approval (or a locally approved "statement of intent to adopt");
- new and/or amendatory text;
- environment designation maps (with boundary descriptions and justification for changes based on existing development patterns, biophysical capabilities and limitations, and the goals and aspirations of the local citizenry);
- a summary of the proposal together with staff reports and supporting materials;
- evidence of SEPA compliance;
- copies of all comments received with names and addresses. WAC 173-26-110

Submittal must include clear identification and transmittal of all provisions that make up the SMP. This checklist, if complete, meets this requirement. WAC 173-26-210(3)(a) and (h).
<table>
<thead>
<tr>
<th>STATE RULE (WAC) REQUIREMENTS</th>
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<tbody>
<tr>
<td><strong>Shoreline Inventory</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Inventory</strong> of existing data and materials. WAC 173-26-201(3)(c)(i) through (x).</td>
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</tr>
<tr>
<td>For jurisdictions with critical saltwater habitats, see WAC 173-26-221(2)(c)(iii)(A)&amp;(B).</td>
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<tr>
<td><strong>Shoreline Analysis</strong></td>
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<tr>
<td><strong>Characterization</strong> of shoreline ecosystems and their associated ecological functions that:</td>
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<tr>
<td>identifies ecosystem-wide processes and ecological functions;</td>
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<td></td>
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<tr>
<td>assesses ecosystem-wide processes to determine their relationship to ecological functions;</td>
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<tr>
<td>identifies specific measures necessary to protect and/or restore the ecological functions and ecosystem-wide processes. WAC 173-26-201(3)(d)(i)(A).</td>
<td></td>
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</tr>
<tr>
<td>Demonstration of how characterization was used to prepare master program policies and regulations that achieve no net loss of ecological functions necessary to support shoreline resources and to plan for restoration of impaired functions. WAC 173-26-201(3)(d)(i)(E).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>For vegetation, see WAC 173-26-221(5). For jurisdictions with critical saltwater habitats, see WAC 173-26-221(2)(c)(iii)(B).</td>
<td></td>
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</tr>
<tr>
<td>Description of data gaps, assumptions made and risks to ecological functions associated with SMP provisions. WAC 173-26-201(2)(a)</td>
<td></td>
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<tr>
<td>Characterization includes maps of inventory information at appropriate scale. WAC 173-26-201(3)(c)</td>
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<tr>
<td>STATE RULE (WAC) REQUIREMENTS</td>
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<td>COMMENTS</td>
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<tr>
<td><strong>Use analysis</strong> estimating future demand for shoreline space and potential use conflicts based on characterization of current shoreline use patterns and projected trends. Evidence that SMP ensures adequate shoreline space for projected shoreline preferred uses. Public access needs and opportunities within the jurisdiction are identified. Projections of regional economic need guide the designation of &quot;high-intensity&quot; shoreline. WAC 173-26-201(3)(d)(ii) &amp; (v); WAC 173-26-211(5)(d)(ii)(B)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>For SMPs that allow mining, demonstration that siting of mines is consistent with requirements of WAC 173-26-241(3)(h)(i).</td>
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</tbody>
</table>
| For **SSWS**: evidence that SMP preserves adequate shorelands and submerged lands to accommodate current and projected demand for economic resources of statewide importance (e.g., commercial shellfish beds and navigable harbors) based on statewide or regional analyses, requirements for essential public facilities, and comment from related industry associations, affected Indian tribes, and state agencies.  
Evidence that public access and recreation requirements are based on demand projections that take into account activities of state agencies and interests of the citizens to visit public shorelines with special scenic qualities or cultural or recreational opportunities. WAC 173-26-251(3)(c)(ii) & (iii)  
**Optimum implementation** directives incorporated into comp plan and development regulations. WAC 173-26-251(2) & (3)(e) |
| For GMA jurisdictions, SMP recreational provisions are consistent with growth projections and level-of-service standards contained in comp plan. WAC 173-26-241(3)(i) |
| **Restoration plan** that:  
identifies degraded areas, impaired ecological functions, and potential restoration sites;  
Establishes restoration goals and priorities, including SMP goals and policies that provide for restoration of impaired ecological functions;  
Identifies existing restoration projects and programs;  
Identifies additional projects and programs needed to achieve local restoration goals, and implementation strategies including identifying prospective funding sources sets timelines and benchmarks for implementing restoration projects and programs;  
provides mechanisms or strategies to ensure that restoration projects and programs will be implemented according to plans and to appropriately review the effectiveness of the projects and programs in meeting the overall restoration goals. WAC 173-26-186(8)(c); 201(2)(c)&(f) |
<p>| For critical freshwater habitats: incentives to restore water connections impeded by previous development. WAC 173-26-221(2)(c)(iv)(C)(III). |
| For <strong>SSWS</strong>, identification of where natural resources of statewide importance are being diminished over time, and master programs provisions that contribute to the restoration of those resources. WAC 173-26-251(3)(b) |</p>
<table>
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<tr>
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<tr>
<td><strong>Evidence that each environment designation</strong> is consistent with guidelines criteria [WAC 173-26-211(5)], as well as existing use pattern, the biological and physical character of the shoreline and the goals and aspirations of the community. WAC 173-26-211(2)(a). WAC 173-26-110(3)</td>
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<tr>
<td>Lands designated as “forest lands of long-term significance” under RCW 36.70A.170 are designated either natural or rural conservancy shoreline environment designations. WAC 173-26-241(3)(e).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>For <strong>SSWS</strong>, demonstration that environment designation policies, boundaries, and use provisions implement SMA preferred use policies of RCW 90.58.020(1) through (7). WAC 173-26-251(3)(c)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Assessment of how proposed policies and regulations cause, avoid, minimize and mitigate cumulative impacts to achieve no net loss policy. Include policies and regulations that address platting or subdividing of property, laying of utilities, and mapping of streets that establish a pattern for future development.</strong> Evaluation addresses:</td>
<td></td>
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<tr>
<td>(i) <strong>current circumstances</strong> affecting the shorelines and relevant natural processes;</td>
<td></td>
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<tr>
<td>(ii) reasonably <strong>foreseeable future development</strong> and use of the shoreline (including impacts from unregulated activities, exempt development, and other incremental impacts); and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(iii) <strong>beneficial effects</strong> of any established regulatory programs under other local, state, and federal laws. WAC 173-26-201(3)(d)(iii) and WAC 173-26-186(8)(d)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>For jurisdictions with critical saltwater habitats, identification of methods for monitoring conditions and adapting management practices to new information. WAC 173-26-221(2)(c)(iii)(B).</td>
<td></td>
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</tr>
<tr>
<td>For <strong>SSWS</strong>, evidence that standards ensuring protection of ecological resources of statewide importance consider cumulative impacts of permitted development. WAC 173-26-251(3)(d)(i)</td>
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<td></td>
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</tbody>
</table>

**SMP CONTENTS**

<p>| Any <strong>goals</strong> adopted as part of the SMP are consistent with the SMA. (Note: Goal statements are not required.) | | |
| <strong>Policies</strong> (A) are consistent with guidelines and policies of the SMA; (B) address elements of RCW 90.58.100; and (C) include policies for environment designations, accompanied by a map or physical description of designation boundaries in sufficient detail to compare with comprehensive plan land use designations. (D) are consistent with constitutional and other legal limitations on regulation of private property. WAC 173-26-191(2)(a)(i) | | |
| SMP implements <strong>preferred use</strong> policies of the SMA. WAC 173-26-201(2)(d) | | |
| <strong>Regulations</strong>; (A) are sufficient in scope and detail to ensure the implementation of SMA, SMP guidelines, and SMP policies; (B) include environment designation regulations; (C) include general regulations, use regulations that address issues of concern in regard to specific uses, and shoreline modification regulations; and, (D) are consistent with constitutional and other legal limitations on the regulation of private property. WAC 173-26-191(2)(a)(ii) | | |</p>
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<tr>
<th>STATE RULE (WAC) REQUIREMENTS</th>
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</thead>
<tbody>
<tr>
<td>ENVIRONMENT DESIGNATIONS</td>
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</tr>
<tr>
<td>Each environment designation includes: Purpose statements, classification criteria, management policies, and regulations (types of shoreline uses permitted, conditionally permitted, and prohibited; building or structure height and bulk limits, setbacks, maximum density or minimum frontage requirements, and site development standards). WAC 173-26-211(2)(4).</td>
<td></td>
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<tr>
<td>An up-to-date map accurately depicting environment designation boundaries on a map. If necessary, include common boundary descriptions. WAC 173-26-211(2)(b); WAC 173-26-110(3);</td>
<td></td>
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<tr>
<td>Statement that undesignated shorelines are automatically assigned a conservancy environment designation. WAC 173-26-211(2)(e).</td>
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<tr>
<td>Natural environment. WAC 173-26-211(5)(a)</td>
<td></td>
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</tr>
<tr>
<td>Designation criteria: Shorelines that are ecologically intact and performing functions that could be damaged by human activity, of particular scientific or educational interest, or unable to support human development without posing a safety threat. WAC 173-26-211(5)(a)(iii)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prohibition on new: uses that would substantially degrade ecological functions or natural character of shoreline. WAC 173-26-211(5)(a)(ii)(A)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial uses; industrial uses; nonwater oriented recreation; roads, utility corridors, and parking areas. WAC 173-26-211(5)(a)(ii)(B)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>development or significant vegetation removal that would reduce the capability of vegetation to perform normal ecological functions. WAC 173-26-211(5)(a)(ii)(G)</td>
<td></td>
<td></td>
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<tr>
<td>subdivision of property in a configuration that will require significant vegetation removal or shoreline modification that adversely impacts ecological functions. WAC 173-26-211(5)(a)(ii)(G)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>For single family residential development: limits on density and intensity to protect ecological functions, and requirement for CUP; WAC 173-26-211(5)(a)(ii)(C)</td>
<td></td>
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</tr>
<tr>
<td>For commercial forestry: requirement for CUP, requirement to follow conditions of the State Forest Practices Act. WAC 173-26-211(5)(a)(ii)(D)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>For agriculture: low intensity use allowed if subject to appropriate limits or conditions to assure that the use does not expand or practices don’t conflict with purpose of the designation. WAC 173-26-211(5)(a)(ii)(E)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low intensity public uses such as scientific, historical, cultural, educational research uses, and water-oriented recreational access allowed if ecological impacts are avoided. WAC 173-26-211(5)(a)(ii)(F)</td>
<td></td>
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</tr>
</tbody>
</table>
## Rural conservancy. WAC 173-26-211(5)(b)

**Designation criteria:** areas outside municipalities or UGAs with: (A) low-intensity, resource-based uses, (B) low-intensity residential uses, (C) environmental limitations such as steep banks or floodplains, (D) high recreational or cultural value, or (E) low-intensity water-dependent uses. WAC 173-26-211(5)(b)(iii)

Restrictions on **use and development that would degrade or permanently deplete resources.** Water-dependent and water-enjoyment recreation facilities are preferred uses. Low intensity, water-oriented commercial and industrial uses limited to areas where those uses have located in the past or at sites that possess conditions and services to support the development. WAC 173-26-211(5)(b)(ii)(A) and (B)

For SMPs that allow mining, see WAC 173-26-241(3)(h).

Prohibition on **new structural shoreline stabilization and flood control works** except where there is documented need to protect an existing primary structure (provided mitigation is applied) or to protect ecological functions. WAC 173-26-211(5)(b)(ii)(C).

Development standards for **residential use** that preserve existing character of the shoreline. Density, lot coverage, vegetation conservation and other provisions that ensure no net loss of shoreline ecological functions.

Density or lot coverage limited to a maximum of ten percent total impervious surface area within the lot or parcel, or alternative standard that maintains the existing hydrologic character of the shoreline. (May include provisions allowing greater lot coverage for lots legally created prior to the adoption of a master program prepared under these guidelines, if lot coverage is minimized and vegetation is conserved.) WAC 173-26-211(5)(b)(ii)(D).

## Aquatic. WAC 173-26-211(5)(c)

**Designation criteria:** Areas waterward of the ordinary high-water mark (OHWM). WAC 173-26-211(5)(c)(iii)

New **over-water structures:**

- allowed only for water-dependent uses, public access, or ecological restoration. WAC 173-26-211(5)(c)(ii)(A)
- limited to the minimum necessary to support the structure's intended use. WAC 173-26-211(5)(c)(ii)(B)

**Multiple use** of over-water facilities encouraged. WAC 173-26-211(5)(c)(ii)(C)

**Location and design** of all developments and uses required to:

- minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration. WAC 173-26-211(5)(c)(ii)(D)
- prevent water quality degradation and alteration of natural hydrographic conditions. WAC 173-26-211(5)(c)(ii)(F)

**Uses that adversely impact ecological functions** of critical saltwater and freshwater habitats limited (except where necessary for other SMA objectives, and then only when their impacts are mitigated). WAC 173-26-211(5)(c)(ii)(E)
### High-intensity. WAC 173-26-211(5)(d)

**Designation criteria:** Areas within incorporated municipalities, “UGAs,” and “rural areas of more intense development” (see RCW 36.70A.070) that currently support or are planned for high-intensity water-dependent uses. WAC 173-26-211(5)(d)(iii)

**Priority** given first to water-dependent uses, then to water-related and water-enjoyment uses. New non-water oriented uses prohibited except as part of mixed use developments, or where they do not conflict with or limit opportunities for water oriented uses or where there is no direct access to the shoreline. WAC 173-26-211(5)(d)(ii)(A)

**Full use of existing urban areas required** before expansion of intensive development allowed. WAC 173-26-211(5)(d)(ii)(B)

**New development** does not cause net loss of shoreline ecological functions. Environmental cleanup and restoration of the shoreline to comply with relevant state and federal laws assured. WAC 173-26-211(5)(d)(ii)(C)

**Visual and physical public access** required where feasible. Sign control regulations, appropriate development siting, screening and architectural standards, and maintenance of natural vegetative buffers to achieve aesthetic objectives. WAC 173-26-211(5)(d)(ii)(D) and (E)

### Urban conservancy. WAC 173-26-211(5)(e)

**Designation criteria:** Areas within incorporated municipalities, UGAs, and rural areas of more intense development that are not suitable for water-dependent uses and that are either suitable for water-related or water-enjoyment uses, are flood plains, have potential for ecological restoration, retain ecological functions, or have potential for development that incorporates ecological restoration. WAC 173-26-211(5)(e)(iii)

**Allowed uses** are primarily those that preserve natural character of area, promote preservation of open space, floodplain or sensitive lands, or appropriate restoration. WAC 173-26-211(5)(e)(ii)(A)

Priority given to water-oriented uses over non-water oriented uses. For shoreline areas adjacent to commercially navigable waters, water-dependent uses given highest priority. WAC 173-26-211(5)(e)(ii)(D)

For SMPs that allow mining, see WAC 173-26-241(3)(h).

**Standards** for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications that ensure new development does not result in a net loss of shoreline ecological functions or degrade other shoreline values. WAC 173-26-211(5)(e)(ii)(B)

**Public access** and recreation required where feasible and ecological impacts are mitigated. WAC 173-26-211(5)(e)(ii)(C)
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<tr>
<td><strong>Shoreline residential. WAC 173-26-211(5)(f)</strong></td>
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<tr>
<td><strong>Designation criteria:</strong> Areas within incorporated municipalities, Urban Growth Areas (UGAs), “rural areas of more intense development,” and “master planned resorts” (see RCW 36.70A.360) that are predominantly residential development or planned and platted for residential development. WAC 173-26-211(5)(f)(iii)</td>
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<tr>
<td><strong>Standards</strong> for density or minimum frontage width, setbacks, buffers, shoreline stabilization, critical areas protection, and water quality protection assure no net loss of ecological function. WAC 173-26-211(5)(f)(ii)(A)</td>
<td></td>
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<tr>
<td>Multifamily and multi-lot residential and recreational developments provide public access and joint use for community recreational facilities. WAC 173-26-211(5)(f)(ii) (B)</td>
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<tr>
<td><strong>Access, utilities, and public services</strong> required to be available and adequate to serve existing needs and/or planned future development. WAC 173-26-211(5)(f)(ii)(C)</td>
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<tr>
<td>Commercial development limited to water-oriented uses. WAC 173-26-211(5)(f)(ii)(D)</td>
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<tr>
<td><strong>GENERAL POLICIES AND REGULATIONS</strong></td>
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<tr>
<td><strong>Archaeological and Historical Resources. WAC 173-26-221(1)</strong></td>
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<tr>
<td>Developers and property owners required to stop work and notify the local government, state office of archaeology and historic preservation and affected Indian tribes if archaeological resources are uncovered during excavation. WAC 173-26-221(1)(c)(i)</td>
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<tr>
<td>Permits issued in areas documented to contain archaeological resources require site inspection or evaluation by a professional archaeologist in coordination with affected Indian tribes WAC 173-26-221(1)(c)(ii)</td>
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<tr>
<td><strong>Critical areas. WAC 173-26-221(2)</strong></td>
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<tr>
<td><strong>Policies and regulations</strong> for critical areas (designated under GMA) located within shorelines of the state: (i) are consistent with SMP guidelines, and (ii) provide a level of protection to critical areas within the shoreline area that is at least equal to that provided by the local government’s existing critical area regulations adopted pursuant to the GMA for comparable areas other than shorelines. WAC 173-26-221(2)(a) and (c)</td>
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<tr>
<td><strong>Planning objectives</strong> are for protection and restoration of degraded ecological functions and ecosystem-wide processes. <strong>Regulatory provisions</strong> protect existing ecological functions and ecosystem-wide processes. WAC 173-26-221(2)(b)(iv)</td>
<td></td>
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<tr>
<td>Critical area provisions promote human uses and values, such as public access and aesthetic values, provided they do not significantly adversely impact ecological functions. WAC 173-26-221(2)(b)(v)</td>
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<tr>
<td>If SMP includes <strong>optional expansion</strong> of jurisdiction: Clear description of the inclusion of any land necessary for buffers of critical areas that occur within shorelines of the state, accurately depicting new SMP jurisdiction consistent with RCW 90.58.030(2)(f)(ii) and WAC 173-26-221(2)(a).</td>
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</table>

**Wetlands. WAC 173-26-221(2)(c)(i)**

- Wetlands **definition** are consistent with WAC 173-22.
- Provisions requiring wetlands **delineation** method are consistent with WAC 173-22-035.
- Regulations address all **uses and activities** listed in WAC 173-26-221(2)(c)(i)(A) to achieve no net loss of wetland area and functions including lost time when the wetland does not perform the function. [WAC 173-26-221(2)(c)(i)(A) + (C)]
- Wetlands **rating** or categorization system is based on rarity, irreplaceability, or sensitivity to disturbance of a wetland and the functions the wetland provides. Use Ecology Rating system or regionally specific, scientifically based method. WAC 173-26-221(2)(c)(i)(B)
- **Buffer** requirements are adequate to ensure wetland functions are protected and maintained in the long-term, taking into account ecological functions of the wetland, characteristics of the buffer, and potential impacts associated with adjacent land uses. WAC 173-26-221(2)(c)(i)(B)
- Wetland **mitigation** requirements are consistent with WAC 173-26-201(2)(e) and which are based on the wetland rating. WAC 173-26-221(2)(c)(i)(E) and (F)
- **Compensatory mitigation** allowed only after mitigation sequencing is applied and higher priority means of mitigation are determined to be infeasible.
  - Compensatory mitigation requirements include (I) replacement ratios; (II) Performance standards for evaluating success; (III) long-term monitoring and reporting procedures; and (IV) long-term protection and management of compensatory mitigation sites. WAC 173-26-221(2)(c)(i)(F)
  - Compensatory mitigation requirements are consistent with preference for “in-kind and nearby” replacement, and include requirement for watershed plan if off-site mitigation is proposed. WAC 173-173-26-201(2)(e)(B)

**Geologically Hazardous Areas. WAC 173-26-221(2)(c)(ii)**

- Prohibition on **new development** (or creation of new lots) that would:
  - cause foreseeable risk from geological conditions during the life of the development prohibited. WAC 173-26-221(2)(c)(ii)(B)
  - require structural shoreline stabilization over the life of the development. (Exceptions allowed where stabilization needed to protect allowed uses where no alternative locations are available and no net loss of ecological functions will result.) WAC 173-26-221(2)(c)(ii)(C)
<table>
<thead>
<tr>
<th>STATE RULE (WAC) REQUIREMENTS</th>
<th>LOCATION</th>
<th>COMMENTS</th>
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<tbody>
<tr>
<td><strong>New stabilization structures</strong> for existing primary residential structures allowed only where no alternatives (including relocation or reconstruction of existing structures), are feasible, and less expensive than the proposed stabilization measure, and then only if no net loss of ecological functions will result. WAC 173-26-221(2)(c)(ii)(D)</td>
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<tr>
<td><strong>Critical Saltwater Habitats. WAC 173-26-221(2)(c)(iii)</strong></td>
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<tr>
<td>Prohibition on new docks, bulkheads, bridges, fill, floats, jetties, utility crossings and other human-made structures that intrude into or over critical saltwater habitats, except where:</td>
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<td>- public need is clearly demonstrated;</td>
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<td>- avoidance of impacts is not feasible or would result in unreasonable cost;</td>
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<td>- the project include appropriate mitigation; and</td>
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<td>- the project is consistent with resource protection and species recovery.</td>
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<tr>
<td>Private, non-commercial docks for individual residential or community use allowed if it is infeasible to avoid impacts by alternative alignment or location and the project results in no net loss of ecological functions. WAC 173-26-221(2)(c)(iii)(C)</td>
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<tr>
<td>Where inventory of critical saltwater habitat has not been done, all over water and near-shore developments in marine and estuarine waters require habitat assessment of site and adjacent beach sections. WAC 173-26-221(2)(c)(iii)(C)</td>
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<tr>
<td><strong>Critical Freshwater Habitats. WAC 173-26-221(2)(c)(iv)</strong></td>
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<tr>
<td>Requirements that ensure new development within stream channel, channel migration zone, wetlands, floodplain, hyporheic zone, does not cause a net loss of ecological functions. WAC 173-26-221(2)(c)(iv)(C)(I) and WAC 173-26-221(2)(c)(iv)(B)(II)</td>
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<tr>
<td>Authorization of appropriate restoration projects is facilitated. WAC 173-26-221(2)(c)(iv)(C)(III)</td>
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<tr>
<td>Regulations protect hydrologic connections between water bodies, water courses, and associated wetlands. WAC 173-26-221(2)(c)(iv)(C)(IV)</td>
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<tr>
<td><strong>Flood Hazard Reduction. WAC 173-26-221(3)</strong></td>
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<tr>
<td>New development within the channel migration zone or floodway limited to uses and activities listed in WAC 173-26-221(3)(b) and (3)(c)(i)</td>
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<tr>
<td>New structural flood hazard reduction measures allowed only:</td>
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<tr>
<td>- where demonstrated to be necessary, and when non-structural methods are infeasible and mitigation is accomplished.</td>
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<td>- landward of associated wetlands and buffer areas except where no alternative exists as documented in a geotechnical analysis. WAC 173-26-221(3)(c)(ii) &amp; (iii)</td>
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<td>New publicly funded dikes or levees required to dedicate and improve public access (see exceptions). WAC 173-26-221(3)(c)(iv)</td>
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<td>STATE RULE (WAC) REQUIREMENTS</td>
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<tr>
<td><strong>Removal of gravel for flood control</strong> allowed only if biological and geomorphological study demonstrates a long-term benefit to flood hazard reduction, no net loss of ecological functions, and extraction is part of a comprehensive flood management solution. WAC 173-26-221(3)(c)(v)</td>
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<td><strong>Public Access. WAC 173-26-221(4)</strong></td>
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<tr>
<td>Policies and regulations protect and enhance both physical and visual access. WAC 173-26-221(4)(d)(i)</td>
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<td>Public entities are required to incorporate public access measures as part of each development project, unless access is incompatible with safety, security, or environmental protection. WAC 173-26-221(4)(d)(ii)</td>
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<tr>
<td>Non-water-dependent uses (including water-enjoyment, water-related uses) and subdivisions of land into more than four parcels include standards for dedication and improvement of public access. WAC 173-26-221(4)(d)(iii)</td>
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<tr>
<td>Maximum height limits, setbacks, and view corridors minimize impacts to existing views from public property or substantial numbers of residences. WAC 173-26-221(4)(d)(iv); RCW 90.58.320</td>
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<tr>
<td><strong>Vegetation Conservation (Clearing and Grading). WAC 173-26-221(5)</strong></td>
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<td>Vegetation standards implement the principles in WAC 173-26-221(5)(b). Methods to do this may include setback or buffer requirements, clearing and grading standards, regulatory incentives, environment designation standards, or other master program provisions. WAC 173-26-221(5)(c)</td>
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<td>Selective pruning of trees for safety and view protection is allowed and removal of noxious weeds is authorized. WAC 173-26-221(5)(c)</td>
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<td><strong>Water Quality. WAC 173-26-221(6)</strong></td>
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<tr>
<td>Provisions protect against adverse impacts to water quality and storm water quantity and ensure mutual consistency between SMP and other regulations addressing water quality. WAC 173-26-221(6)</td>
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### SHORELINE MODIFICATIONS

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<th>STATE RULE (WAC) REQUIREMENTS</th>
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**SMP:** (a) allows structural shoreline modifications only where demonstrated to be necessary to support or protect an allowed primary structure or a legally existing shoreline use that is in danger of loss or substantial damage or are necessary for mitigation or enhancement;  
(b) limits shoreline modifications in number and extent;  
(c) allows only shoreline modifications that are appropriate to the specific type of shoreline and environmental conditions for which they are proposed;  
(d) gives preference to those types of shoreline modifications that have a lesser impact on ecological functions. Policies promote “soft” over “hard” shoreline modification measures  
(f) incorporates all feasible measures to protect ecological shoreline functions and ecosystem-wide processes as modifications occur;  
(g) requires mitigation sequencing.  
WAC 173-26-231(2); WAC 173-26-231(3)(a)(ii) and (iii);

**Shoreline Stabilization. WAC 173-26-231(3)(a)**

**Definition:** structural and nonstructural methods to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, tides, wind, or wave action. WAC 173-26-231(3)(a)(i)

Definition of new stabilization measures include enlargement of existing structures. WAC 173-26-231(3)(a)(ii), last bullet; WAC 173-26-231(3)(a)(iii)(B)(I), 5th bullet)

Standards setting forth **circumstances under which shoreline alteration is permitted**, and for the design and type of protective measures and devices. WAC 173-26-231(3)(a)(ii)

**New development (including newly created parcels)** required to be designed and located to prevent the need for future shoreline stabilization, based upon geotechnical analysis.

New development on steep slopes and bluffs required to be set back to prevent need for future shoreline stabilization during life of the project, based upon geotechnical analysis.

New development that would require shoreline stabilization which causes significant impacts to adjacent or down-current properties and shoreline areas is prohibited. WAC 173-26-231(3)(a)(iii)(A)

**New structural stabilization measures** are not allowed except when necessity is demonstrated. Specific requirements for how to **demonstrate need** are established for:  
(I) existing primary structures;  
(II) new non-water-dependent development including Single Family Residences;  
(III) water-dependent development; and  
(IV) ecological restoration/toxic clean-up remediation projects. WAC 173-26-231(3)(a)(iii)(B)

**Replacement** of existing stabilization structures is based on demonstrated need. Waterward encroachment of replacement structure only allowed for residences occupied prior to January 1, 1992, or for soft shoreline stabilization measures that provide restoration of ecological functions. WAC 173-26-231(3)(a)(iii)(C)
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<th>STATE RULE (WAC) REQUIREMENTS</th>
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<tr>
<td>Geotechnical reports prepared to demonstrate need include estimates of rate of erosion and urgency (damage within 3 years) and evaluate alternative solutions. WAC 173-26-231(3)(a)(iii)(D)</td>
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<td>Shoreline stabilization structures are limited to the <strong>minimum size</strong> necessary. WAC 173-26-231(3)(a)(iii)(E)</td>
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<td><strong>Public access</strong> required as part of publicly financed shoreline erosion control measures. WAC 173-26-231(3)(a)(iii)(E)</td>
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<td><strong>Impacts to sediment transport</strong> required to be avoided or minimized. WAC 173-26-231(3)(a)(iii)(E)</td>
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<tr>
<td><strong>Piers and Docks. WAC 173-26-231(3)(b)</strong></td>
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<td><strong>New piers and docks:</strong></td>
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<td>allowed only for water-dependent uses or public access restricted to the minimum size necessary to serve a proposed water-dependent use.</td>
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<td>permitted only when specific need is demonstrated (except for docks accessory to single-family residences).</td>
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<td>Note: Docks associated with single family residences are defined as water dependent uses provided they are designed and intended as a facility for access to watercraft. WAC 173-26-231(3)(b)</td>
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<tr>
<td>When permitted, <strong>new residential development</strong> of more than two dwellings required to provide joint use or community docks, rather than individual docks. WAC 173-26-231(3)(b)</td>
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<tr>
<td><strong>Design and construction</strong> of all piers and docks required to avoid, minimize and mitigate for impacts to ecological processes and functions and be constructed of approved materials. WAC 173-26-231(3)(b)</td>
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<tr>
<td><strong>Fill. WAC 173-26-231(3)(c)</strong></td>
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<tr>
<td><strong>Definition</strong> of “fill” consistent with WAC 173-26-020(14)</td>
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<tr>
<td><strong>Location, design, and construction</strong> of all fills protect ecological processes and functions, including channel migration. WAC 173-26-231(3)(c)</td>
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<tr>
<td>Fill <strong>waterward of the OHWM</strong> allowed only by shoreline conditional use permit, for:</td>
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<td>water-dependent use;</td>
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<td>public access;</td>
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<td>cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan;</td>
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<tr>
<td>disposal of dredged material in accordance with DNR Dredged Material Management Program;</td>
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<td>expansion or alteration of transportation facilities of statewide significance currently located on the shoreline (if alternatives to fill are shown not feasible);</td>
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<tr>
<td>mitigation action, environmental restoration, beach nourishment or enhancement project. WAC 173-26-231(3)(c)</td>
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<td>STATE RULE (WAC) REQUIREMENTS</td>
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<tr>
<td><strong>Breakwaters, Jetties, and Weirs. WAC 173-26-231(3)(d)</strong></td>
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<tr>
<td>Structures <strong>waterward of the ordinary high-water mark</strong> allowed only for water-dependent uses, public access, shoreline stabilization, or other specific public purpose. WAC 173-26-231(3)(d)</td>
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<tr>
<td>Shoreline <strong>conditional use permit</strong> required for all structures except protection/restoration projects. WAC 173-26-231(3)(d)</td>
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<tr>
<td>Protection of critical areas and appropriate mitigation required. WAC 173-26-231(3)(d)</td>
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<tr>
<td><strong>Dunes Management. WAC 173-26-231(3)(e)</strong></td>
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<tr>
<td><strong>Development setbacks</strong> from dunes prevent impacts to the natural, functional, ecological, and aesthetic qualities of the dunes. WAC 173-26-231(3)(e)</td>
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<tr>
<td><strong>Dune modifications</strong> allowed only when consistent with state and federal flood protection standards and result in no net loss of ecological processes and functions. WAC 173-26-231(3)(e)</td>
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<tr>
<td>Dune modification to protect <strong>views</strong> of the water shall be allowed only on properties subdivided and developed prior to the adoption of the master program and where the view is completely obstructed for residences or water-enjoyment uses and where it can be demonstrated that the dunes did not obstruct views at the time of original occupancy. WAC 173-26-231(3)(e)</td>
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<tr>
<td><strong>Dredging and Dredge Material Disposal. WAC 173-26-231(3)(f)</strong></td>
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<tr>
<td><strong>Dredging and dredge material disposal avoids or minimizes</strong> significant ecological impacts. Impacts which cannot be avoided are mitigated. WAC 173-26-231(3)(f)</td>
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<tr>
<td><strong>New development siting and design</strong> avoids the need for new and maintenance dredging. WAC 173-26-231(3)(f)</td>
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<tr>
<td><strong>Dredging to establish, expand, relocate or reconfigure navigation channels</strong> allowed only where needed to accommodate existing navigational uses and then only when significant ecological impacts are minimized and when mitigation is provided. WAC 173-26-231(3)(f)</td>
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<tr>
<td><strong>Maintenance dredging</strong> of established navigation channels and basins restricted to maintaining previously dredged and/or existing authorized location, depth, and width. WAC 173-26-231(3)(f)</td>
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<tr>
<td><strong>Dredging for fill materials</strong> prohibited except for projects associated with MTCA or CERCLA habitat restoration, or any other significant restoration effort approved by a shoreline CUP. Placement of fill must be <strong>waterward of OHWM</strong>. WAC 173-26-231(3)(f)</td>
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<tr>
<td><strong>Uses of dredge material</strong> that benefits shoreline resources are addressed. If applicable, addressed through implementation of regional interagency dredge material management plans or watershed plan. WAC 173-26-231(3)(f)</td>
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### State Rule (WAC) Requirements

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<tr>
<th>STATE RULE (WAC) REQUIREMENTS</th>
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<tr>
<td>Disposal within river channel migration zones discouraged, and in limited instances when allowed, require CUP. (Note: not intended to address discharge of dredge material into the flowing current of the river or in deep water within the channel where it does not substantially effect the geo-hydrologic character of the channel migration zone). WAC 173-26-231(3)(f)</td>
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<tr>
<td><strong>Shoreline Habitat and Natural Systems Enhancement Projects.</strong> WAC 173-26-231(3)(g)</td>
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<tr>
<td>Provisions that foster habitat and natural system enhancement projects, provided the primary purpose is restoration of the natural character and functions of the shoreline, and only when consistent with implementation of the restoration plan developed pursuant to WAC 173-26-201(2)(f)</td>
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### Specific Shoreline Uses

#### Agriculture. WAC 173-26-241(3)(a)

- Use of agriculture related terms is consistent with the specific meanings provided in WAC 173-26-020. WAC 173-26-241(3)(a)(ii) and (iv)
- Provisions address new agricultural activities, conversion of agricultural lands to other uses, and other development not meeting the definition of agricultural activities.
- Provisions assure that development in support of agricultural uses is: (A) consistent with the environment designation; and (B) located and designed to assure no net loss of ecological functions and not have a significant adverse impact on other shoreline resources and values. WAC 173-26-241(3)(a)(ii) & (v)
- Shoreline substantial development permit is required for all agricultural development not specifically exempted by the provisions of RCW 90.58.030(3)(e)(iv)
- Conversion of agricultural land to non-agricultural uses is consistent with the environment designation, and regulations applicable to the proposed use do not result in a net loss of ecological functions. WAC 173-26-241(3)(a)(vi)

#### Aquaculture. WAC 173-26-241(3)(b)

- Location and design requirements for aquaculture facilities avoid: loss of ecological functions, impacts to eelgrass and macroalgae, significant conflict with navigation and water-dependent uses, the spreading of disease, introduction of non-native species, or impacts to shoreline aesthetic qualities. Impacts to functions are mitigated. WAC 173-26-241(3)(b)

#### Boating Facilities. WAC 173-26-241(3)(c)

- Definition: Boating facility standards do not apply to docks serving four or fewer SFRs. WAC 173-26-241(3)(c)
- Boating facilities restricted to suitable locations. WAC 173-26-241(3)(c)(i)
- Provisions ensuring health, safety, and welfare requirements are met. WAC 173-26-241(3)(c)(ii)
<table>
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<tr>
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<tr>
<td>Provisions to avoid or mitigate aesthetic impacts. See WAC 173-26-241(3)(c)(iii)</td>
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<tr>
<td>Public access required in new boating facilities. WAC 173-26-241(3)(c)(iv)</td>
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<td>Impacts of live-aboard vessels are limited. WAC 173-26-241(3)(c)(v)</td>
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<tr>
<td>Provisions assuring no net loss of ecological functions as a result of development of boating facilities while providing public recreational opportunities. WAC 173-26-241(3)(c)(vi)</td>
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<tr>
<td>Navigation rights are protected. WAC 173-26-241(3)(c)(vii)</td>
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<tr>
<td>Extended moorage on waters of the state without a lease or permission is restricted, and mitigation of impacts to navigation and access is required. WAC 173-26-241(3)(c)(viii)</td>
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<tr>
<td><strong>Commercial Development. WAC 173-26-241(3)(d)</strong></td>
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<tr>
<td>Preference given first to water-dependent uses, then to water-oriented commercial uses. WAC 173-26-241(3)(d)</td>
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<tr>
<td>Water-enjoyment and water-related commercial uses required to provide public access and ecological restoration where feasible and avoid impacts to existing navigation, recreation, and public access. WAC 173-26-241(3)(d)</td>
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<tr>
<td>New non-water-oriented commercial uses prohibited unless they are part of a mixed-use project, navigation is severely limited, and the use provides a significant public benefit with respect to SMA objectives. WAC 173-26-241(3)(d)</td>
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<tr>
<td>Non-water-dependent commercial uses over water prohibited except in existing structures, and where necessary to support water-dependent uses. WAC 173-26-241(3)(d)</td>
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<tr>
<td><strong>Forest Practices. WAC 173-26-241(3)(e)</strong></td>
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<tr>
<td>Forest practices not covered by the Forest Practices Act, especially Class IV-General forest practices involving conversions to non-forest use result in no net loss of ecological functions and avoid impacts to navigation, recreation and public access. WAC 173-26-241(3)(e)</td>
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<tr>
<td>SMP limits removal of trees on shorelines of statewide significance (RCW 90.58.150). Exceptions to this standard require shorelines conditional use permit. WAC 173-26-241(3)(e)</td>
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<td><strong>Industry. WAC 173-26-241(3)(f)</strong></td>
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<tr>
<td>Preference given first to water-dependent uses, then to water-oriented industrial uses. WAC 173-26-241(3)(f)</td>
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<tr>
<td>Location, design, and construction of industrial uses and redevelopment required to assure no net loss of ecological functions. WAC 173-26-241(3)(f)</td>
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<tr>
<td>Industrial uses and redevelopment encouraged to locate where environmental cleanup and restoration can be accomplished. WAC 173-26-241(3)(f)</td>
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<tr>
<td>Public access required unless such a requirement would interfere with operations or create hazards to life or property. WAC 173-26-241(3)(f)</td>
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<tr>
<td>New non-water-oriented industrial uses prohibited unless they are part of a mixed-use project, navigation is severely limited, and the use provides a significant public benefit with respect to SMA objectives. WAC 173-26-241(3)(f)</td>
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<tr>
<td><strong>In-Stream Structures. WAC 173-26-241(3)(g)</strong></td>
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<td><strong>Definition:</strong> structure is waterward of the ordinary high water mark and either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. WAC 173-26-241(3)(g)</td>
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<tr>
<td>In-stream structures protect and preserve ecosystem-wide processes, ecological functions, and cultural resources, including, fish and fish passage, wildlife and water resources, shoreline critical areas, hydrogeological processes, and natural scenic vistas. WAC 173-26-241(3)(g)</td>
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<td><strong>Mining. WAC 173-26-241(3)(h)</strong></td>
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<tr>
<td>Policies and regulations for new mining projects: require design and operation to avoid and mitigate for adverse impacts during the course of mining and reclamation achieve no net loss of ecological functions based on required final reclamation give preference to proposals that create, restore or enhance habitat for priority species are coordinated with state Surface Mining Reclamation Act requirements. assure subsequent use of reclaimed sites is consistent with environment designation and SMP standards. See WAC 173-26-241(3)(h)(ii)(A) – (C)</td>
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<td>Mining waterward of OHWM is prohibited unless: (I) Removal of specified quantities of materials in specified locations will not adversely impact natural gravel transport; (II) The mining will not significantly impact priority species and the ecological functions upon which they depend; and (III) these determinations are integrated with relevant SEPA requirements. WAC 173-26-241(3)(h)(ii)(D)</td>
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<tr>
<td>Renewal, extension, or reauthorization of in-stream and gravel bar mining activities require review for compliance with these new guidelines requirements. WAC 173-26-241(3)(h)(ii)(D)(IV)</td>
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<tr>
<td>Mining within the Channel Migration Zone requires a shoreline conditional use permit. WAC 173-26-241(3)(h)(ii)(E)</td>
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<tr>
<td><strong>Recreational Development. WAC 173-26-241(3)(i)</strong></td>
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<tr>
<td>Definition includes both commercial and public recreation developments. WAC 173-26-241(3)(i)</td>
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<tr>
<td>STATE RULE (WAC) REQUIREMENTS</td>
<td>LOCATION</td>
<td>COMMENTS</td>
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<td><strong>Priority</strong> given to recreational development for access to and use of the water. WAC 173-26-241(3)(i)</td>
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<tr>
<td><strong>Location, design and operation</strong> of facilities are consistent with purpose of environment designations in which they are allowed. WAC 173-26-241(3)(i)</td>
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<tr>
<td>Recreational development achieves <strong>no net loss</strong> of ecological processes and functions. WAC 173-26-241(3)(i)</td>
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<tr>
<td><strong>Residential Development.  WAC 173-26-241(3)(j)</strong></td>
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<tr>
<td><strong>Definition</strong> includes single-family residences, multifamily development, and the creation of new residential lots through land division. WAC 173-26-241(3)(j)</td>
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<tr>
<td><strong>Single-family residences</strong> identified as a priority use only when developed in a manner consistent with control of pollution and prevention of damage to the natural environment. WAC 173-26-241(3)(j)</td>
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<tr>
<td>No net loss of ecological functions assured with specific <strong>standards</strong> for setback of structures sufficient to avoid future stabilization, buffers, density, shoreline stabilization, and on-site sewage disposal. WAC 173-26-241(3)(j)</td>
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<tr>
<td>New <strong>over-water residences and floating homes</strong> prohibited. Appropriate accommodation for existing floating or over-water homes. WAC 173-26-241(3)(j)</td>
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<tr>
<td>New <strong>multifamily residential development</strong> (including subdivision of land for more than four parcels) required to provide community and/or public access in conformance to local public access plans. WAC 173-26-241(3)(j)</td>
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</tbody>
</table>
| New **(subdivided) lots** required to be designed, configured and developed to:  
(i) Prevent the loss of ecological functions at full build-out;  
(ii) Prevent the need for new shoreline stabilization or flood hazard reduction measures; and  
(iii) Be consistent with applicable SMP environment designations and standards. WAC 173-26-241(3)(j) | | |
<p>| <strong>Transportation Facilities.  WAC 173-26-241(3)(k)</strong> | | |
| Proposed transportation and parking facilities required to <strong>plan, locate, and design</strong> where routes will have the least possible adverse effect on unique or fragile shoreline features, will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water dependent uses. WAC 173-26-241(3)(k) | | |
| Circulation system plans include systems for <strong>pedestrian, bicycle, and public transportation</strong> where appropriate. WAC 173-26-241(3)(k) | | |
| Parking allowed only as necessary to support an authorized shoreline use and which minimize environmental and visual impacts of parking facilities. WAC 173-26-241(3)(k) | | |</p>
<table>
<thead>
<tr>
<th><strong>STATE RULE (WAC) REQUIREMENTS</strong></th>
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<tr>
<td><strong>Utilities. WAC 173-26-241(3)(l)</strong></td>
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<tr>
<td><strong>Design, location and maintenance</strong> of utilities required to assure no net loss of ecological functions. WAC 173-26-241(3)(l)</td>
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<tr>
<td>Utilities required to be <strong>located in existing rights-of-ways</strong> whenever possible. WAC 173-26-241(3)(l)</td>
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<tr>
<td>Utility production and processing facilities and transmission facilities required to be <strong>located outside of SMA jurisdiction</strong>, unless no other feasible option exists. WAC 173-26-241(3)(l)</td>
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<tr>
<td><strong>SMP ADMINISTRATIVE PROVISIONS</strong></td>
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<tr>
<td>The statement: “All proposed uses and development occurring within shoreline jurisdiction must conform to chapter 90.58 RCW, the Shoreline Management Act and this master program” whether or not a permit is required. WAC 173-26-191(2)(a)(iii)(A)</td>
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<tr>
<td>Administrative provisions ensure permit procedures and enforcement are conducted in a manner consistent with relevant constitutional limitations on regulation of private property. WAC 173-26-186(5) and WAC 191(2)(a)(iii)(A)</td>
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<tr>
<td>Identification of specific uses and development that require a shoreline <strong>conditional use permit (CUP)</strong>. Standards for reviewing CUPs and variances conform to WAC 173-27. WAC 191(2)(a)(iii)(B) and WAC 173-26-241(2)(b)</td>
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<tr>
<td>Administrative, enforcement, and permit review procedures conform to the SMA and state rules (see RCW 90.58.140, 143, 210 and 220 and WAC 173-27). WAC 191(2)(a)(iii)(C), WAC 173-26-201(3)(d)(vi)</td>
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<tr>
<td>Mechanism for tracking, and periodically evaluating the cumulative effects of all project review actions in shoreline areas. WAC 173-26-191(2)(a)(iii)(D)</td>
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<tr>
<td>SMP definitions are consistent with all definitions in WAC 173-26-020, and other relevant WACs.</td>
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WETLAND/STREAM
DEVELOPMENT PERMIT AND
SHORELINE SUBSTANTIAL DEVELOPMENT
PERMIT FOR:
Port of Tacoma
Post Office Box 1837
Tacoma, WA 98401-1837

SUMMARY OF REQUEST:
The Port of Tacoma is requesting a Wetland Development Permit and Shoreline Substantial Development Permit to fulfill unmet conditions of a prior land use permit, which allowed for the industrial use of the subject property by the prior tenant. Unmet conditions of the permit include enhancement of the buffer for Hylebos Creek and the Morningside Ditch. Un-permitted activities occurred subsequent to issuance of the permit and include placement of approximately 630 square feet of fill in the Morningside Ditch and disturbance to the buffers that extend from Hylebos Creek and the Morningside Ditch. The Port of Tacoma is also proposing to rectify and compensate for impacts of the un-permitted activities.

LOCATION:
1621 Marine View Drive. Parcel Numbers: 0321364043, 0321364047, and 0421313048, 0421313049.

DECISION:
The Wetland/Stream Development and Shoreline Substantial Development Permits are APPROVED subject to conditions.

NOTE:
Appeal period closes June 11, 2010

The effective date of this decision is June 14, 2010, provided no requests for reconsideration or appeals are timely filed as identified in APPEAL PROCEDURES of this report and decision.

For additional information concerning this land use permit please contact:
Shannon Stragier, 253-594-7852
Senior Environmental Specialist
Community and Economic Development Department, Building and Land Use Services
747 Market Street, Room 345
Tacoma, WA 98402
Email: sstragier@cityoftacoma.org