

**Members**

Thomas M. Smith, Chair  
David A. Boe, Vice Chair  
Kevin Briske  
Mel Curtiss  
Carolyn L. Davidson  
Robert T. de Grouchy, III  
Thomas W. Donovan  
Jeremy C. Doty  
Scott Morris

**Community and Economic Development Department**

Ryan Petty, Director  
Peter Huffman, Planning Division Manager

**Public Works Department**

Charles Solverson, P.E., Building Official

**Tacoma Public Utilities**

Heather Pennington, Water Representative  
Cathy Leone-Woods, Power Transmission & Distribution Assistant Manager



# Agenda

## Tacoma Planning Commission

747 Market Street, Room 1036, Tacoma, WA 98402-3793  
Phone (253) 591-5365; FAX (253) 591-2002  
[www.cityoftacoma.org/planning](http://www.cityoftacoma.org/planning)

*The agenda and relevant information can be viewed at  
[www.cityoftacoma.org/planning](http://www.cityoftacoma.org/planning) > "Planning Commission" > "Agenda Packets"*

**MEETING:** Regular Meeting

**TIME:** Wednesday, January 16, 2008, 4:00 p.m.

**PLACE:** Tacoma Municipal Building, City Council Chambers  
First Floor, 747 Market Street, Tacoma, WA

**A. CALL TO ORDER**

**B. QUORUM CALL**

**C. APPROVAL OF MINUTES** – Regular Meeting on December 5, 2007  
Regular Meeting on December 19, 2007

**D. GENERAL BUSINESS**

**1. Critical Areas Preservation Ordinance Update**

Description: Review the draft proposed revisions to the Critical Areas Preservation Ordinance.  
Actions Requested: Authorize Public Distribution and Set Public Hearing Date  
Support Information: See "Agenda Item GB-1"  
Staff Contact: Molly Harris, 591-5383, [dstenger@cityoftacoma.org](mailto:dstenger@cityoftacoma.org)

**2. Capital Facilities Program 2009-2014**

Description: Review the process used in 2007 for the update of the Capital Facilities Program 2008-2013 and plan for the update in 2008.  
Actions Requested: Discussion, Direction  
Support Information: See "Agenda Item GB-2"  
Staff Contact: Greg Klump, 594-7903, [gklump@cityoftacoma.org](mailto:gklump@cityoftacoma.org)



**3. Chapter 13.17 Mixed Use Center Development**

Description: Review proposed revisions to the Land Use Regulatory Code, Chapter 13.17, concerning the Multifamily Tax Incentive (MFTI) to place procedural provisions into Title 6 Tax and License Code of the Tacoma Municipal Code.

Actions Requested: Authorize Public Distribution and Set Public Hearing Date

Support Information: See "Agenda Item GB-3"

Staff Contact: Jim Colburn, 591-5221, [jcolburn@cityoftacoma.org](mailto:jcolburn@cityoftacoma.org)

**4. Work Program for 2008-2009**

Description: Review the planning activities anticipated to occur over the next two years.

Actions Requested: Review, Discussion, Direction

Support Information: See "Agenda Item GB-4"

Staff Contact: Peter Huffman, 591-5373, [phuffman@cityoftacoma.org](mailto:phuffman@cityoftacoma.org)

**E. COMMUNICATION ITEMS**

1. Land Use Administrator's Reports and Decisions – "Agenda Item C-1"
2. Hearing Examiner's Reports and Recommendations – "Agenda Item C-2"

**F. COMMENTS BY PLANNING DIVISION**

**G. COMMENTS BY PLANNING COMMISSION**

**H. ADJOURNMENT**

**Members**

Thomas M. Smith, Chair  
David A. Boe, Vice-Chair  
Kevin Briske  
Melody Curtiss  
Carolyn L. Davidson  
Robert T. de Grouchy, III  
Thomas W. Donovan  
Jeremy C. Doty  
Scott Morris



# Minutes

## Tacoma Planning Commission

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**MEETING:** Regular Meeting

**TIME:** Wednesday, December 5, 2007, 4:00 p.m.

**PLACE:** Tacoma Municipal Building, City Council Chambers  
First Floor, 747 Market Street, Tacoma, WA

**Members Present:** Thomas Smith (Chair), David Boe (Vice-Chair, excused at 6:17), Kevin Briske, Melody Curtiss (arrived at 4:20 p.m./excused at 6:40), Robert de Grouchy, Thomas Donovan, Jeremy Doty, Scott Morris (arrived at 4:10)

**Members Excused:** Carolyn Davidson

**Staff Present:** Peter Huffman, Donna Stenger, Lihuang Wung, Brian Boudet, Steve Atkinson, Molly Harris, Elliott Barnett, Ric Teasley, Jim Colburn, Donna Bosinski (Community and Economic Development); Steve Gross (Legal); Charles Pearson, Peter Katich, Karla Kluge, Caroline Haynes-Castro, Shanta Frantz, Dustin Lawrence, Shirley Schultz, Karie Hayashi (Buildings and Land-use Services)

**Others Present:** Bob Bengford (Makers Architecture and Urban Design)

Chair Thomas Smith called the meeting to order at 4:05 p.m. The minutes for the regular meeting and public hearing of October 17, 2007, were approved as submitted. The minutes for the regular meeting of November 7, 2007, were approved as submitted.

### GENERAL BUSINESS

#### 1. Design Review Program

Mr. Brian Boudet explained that the discussion would contain two distinctive parts: The City's legal opinion regarding design review, as well as an update from the consultant, Mr. Bob Bengford, from Makers Architecture and Urban Design.



Mr. Steve Gross, Assistant City Attorney, stated that Tacoma's land-use regulations are part of the City's exercise of its police powers; and in doing so, caution should be given to due process, procedural violations, as well as Constitutional takings. In Washington State, limitations on the authority to utilize design review have not been clearly defined by the courts, particularly as far as regulations only intended to address aesthetics are concerned. He said that design review regulations cannot be vague and must provide meaningful guidance. He gave some examples of Seattle's management of design review and the explicit guidelines they utilize in doing so.

Commissioner Thomas Donovan inquired what the procedure would be if an applicant was denied the ability to build a particular building, based on the design review criteria, and how the applicant could challenge that. Mr. Gross stated that an appeal process would be built into the regulations, whether it would be to the design review board or administratively. At this time, the Land-Use Administrator and the Hearings Examiner have certain design review powers.

Vice-Chair David Boe asked about Landmarks Preservation Commission's appeal process for design review. Mr. Peter Huffman stated that Landmarks Preservation Commission's appeals are handled through the Hearings Examiner's office, whose responsibility is to determine if the Commission has appropriately applied the code, as well as the guidelines in that code, in making its decision.

Mr. Bob Bengford gave a PowerPoint presentation consisting of a chart which examined design related policies of the General Land-Use Element of the Comprehensive Plan. The chart consisted of nine categories: Character/Identity; Neighborhoods; Environmental/Sustainability; Open Space/Amenities; Pedestrian Access and Orientation; Design Quality; Building Mass and Variety; Viewpoints, Gateways and Focal Points; and Historic Preservation. He showed photographs of examples in each category.

As previously requested by the Commission, Mr. Bengford conducted studies of neighboring jurisdiction's design review processes, to include Walla Walla, Spokane, Pierce County, Olympia, Everett, and Vancouver. Most of those jurisdictions conduct administrative design reviews. Spokane has adopted a design review process for the downtown area, which will be studied more closely in the future. He stated that Pierce County had very detailed design standards for some of the districts, such as Fredrickson and the South Hill area.

Mr. Bengford concluded by asking the Commission to consider answers to basic options, such as should design review be city-wide, conducted administratively, by a Board, or only for large projects? Mr. Boudet reported that over the next few months, public outreach and workshops with the community will be conducted for further input.

Commissioner Donovan commented that, since most of the cities in the study utilize administrative review, was that system working well, according to their staff. Mr. Bengford reported that most staff people tend to be satisfied with the system. Most of the jurisdictions that have boards are areas where the community has a strong interest in having a more direct, stronger influence on the process, although there have been claims that the board process is more labor intensive because of the need for staff to help facilitate the process, throughout the project. He said that utilizing the Design Review Boards, which contain architects, Planning Commissioners, engineers, etc., may be more appropriate for some jurisdictions.

Commissioner Kevin Briske asked how design review might be linked to the Mixed-use Centers; and further, would the new or revised design standards apply to all commercial districts or would

they be focused on certain areas or certain zones? Mr. Boudet replied, that due to the size of the City, it would probably be necessary to focus any design review program, to some extent. This could be focused based on certain zones, areas, project size, etc. As the Mixed-Use Centers are one of the primary focuses for development and redevelopment in the City, it may be appropriate to consider them as one of the focuses for any design review program. Tacoma currently has design requirements, which are administratively enforced. Part of this process will be to define what the important design goals are, and then to decide what the appropriate process would be to best achieve those goals. He continued: "It is possible that some sort of hybrid of processes may be necessary, as some goals can probably be addressed through design requirements, while others may necessitate the more flexible, site-specific review associated with an administrative or citizen-board design review process". Commissioner Briske indicated that he had some experience with both types of design review processes, but generally preferred administrative design review.

Vice-Chair Boe remarked about a previous comment made by Mr. Bengford before a City Council's standing committee, stating that the City did not have a clear vision, relative to design. He asked how "vision" was relative in determining design review for the community. Mr. Bengford replied that, as part of the process, some of the neighborhood groups would be invited to give their input regarding design review. Mr. Boudet added that the "vision" had been articulated in various respects, such as stating that certain areas are pedestrian-friendly, requiring appropriate streetscaping, landscaping, open spaces, etc. There is a vision currently stated in the plan, but part of this process is to assess whether that vision is missing any significant parts and ensuring that we effectively communicate that vision in both the Comprehensive Plan and the Code.

A discussion ensued regarding the differences between a City's vision, and/or character, and/or theme. Mr. Huffman stated that there were endless interpretations of the word "vision." Vice-Chair Boe stated that there should be some mechanisms in which a developer could have some predictability. Mr. Huffman said that there were previous attempts to have a system with an administrative approach, prescriptive, but would allow for a departure. The departure would be equal, or better – and go into some type of small scale design review process, which could consist of a group of outside professional experts to assess the departure. He continued to state that the City Council had asked staff to reach out to the community for opinions on the subject of design review and vision.

## **2. Chapter 13.17 Mixed-Use Center Development**

Mr. Huffman explained how the multi-family tax incentive was under the Planning Commission's purview. He said that the City implemented the tax exemption program, based on State law for the purpose of creating density and encouraging multi-family development in urban centers to meet population growth goals. The City codified the legislation as a land-use regulation which is in Title 13 of the Tacoma Municipal Code (TMC). The Planning Commission is responsible for reviewing any amendments or changes to Title 13, the Land Use Regulatory Code.

There are administrative procedures relevant to the tax exemption application process. Currently, any changes to that process would necessitate going through the Planning Commission, holding a public hearing, having the Planning Commission make a recommendation to the City Council, and the City Council holding a public hearing before enacting any change. The proposed changes include moving the tax exemption administrative

provisions from Chapter 13.17 to Title 6 of the TMC, the Tax and License Code. The rationale for this proposed change is that the tax incentive program is primarily financial in nature, even though the long-term public purpose is to increase density in targeted locations. As such, Title 6 is a more logical section of the TMC for the program's procures and application requirements. Those portions of Chapter 13.17 which relate to land use and development would remain in the Land Use Regulatory Code, Mr. Huffman stated.

Mr. Jim Colburn stated that, in addition to moving the administrative procedures to Title 6, it was being proposed to incorporate other changes to the code based upon changes to the State legislation. He explained that previously the property tax exemption was for 10 years; however, in 2007, the State legislature changed the program to either an 8- or 12-year program, depending on the inclusion of affordable housing units. The standard exemption period is 8 years. To qualify for the 12-year exemption, at least 20 percent of the units must be affordable to renters with household incomes no greater than 80 percent of the Area Median Income (AMI – published annually by the Department of Housing and Urban Development), or home buyers with household incomes no greater than 115 percent of the AMI.

Other proposed changes include incorporating another State legislative change relative to excluding the program from areas within the University of Washington Tacoma's "campus facilities master plan", as well as amending the program to eliminate the tenant displacement provision, Mr. Colburn explained. It is anticipated that a Planning Commission public hearing date can be set for January 16, 2008, to have the City Council adopt the changes on March 11, 2008.

### **3. Critical Areas Preservation Ordinance Update**

Ms. Molly Harris reported that, according to the Central Puget Sound Growth Management Hearings Board (GMHB), Tacoma's Critical Areas Preservation Ordinance (CAPO) was not in compliance with the Growth Management Act (GMA). The City is currently in the process of updating the CAPO to come into compliance with the GMA. Since the GMHB mandated that Tacoma update its regulations by May 1, 2008, the schedule for doing so must be aggressive.

The City is also in the process of updating its Shoreline Master Program (SMP). Because of the required CAPO update, the SMP revisions will be completed in 2009, rather than 2008.

Mr. Steve Atkinson presented a Marine Riparian Zones matrix for each shoreline district, with a variety of buffer widths. The buffer widths represent some compromises to allow for certain uses to take place. There will be exemptions for water-dependent uses, water-related uses, public access, as well as existing structures and routine maintenance.

Chair Smith recalled a previous update for critical areas. He said that, at that time, groups such as Citizens for a Healthy Bay and Puget Creek Restoration Society were very involved in the process. Ms. Harris replied that both of those above-mentioned groups were still very much involved in both the CAPO and SMP updates and have expressed their concurrence with staff's direction. The Puyallup Tribe, Port of Tacoma, and many other stakeholders have been involved as well.

Ms. Harris invited the Commissioners to attend a stakeholder's workshop on January 10, 2008.

#### 4. Mixed-Use Center Code Revisions

Ms. Donna Stenger indicated that the discussion would be focused on density (the number of dwelling units per acre of land) in the Mixed-Use Centers. The size of the property, the type of housing, the height of the building, parking requirements, and the size of the dwelling unit are factors that determine the density of a project.

A chart was prepared showing the density achieved by completed multi-family property tax incentive projects, based on the year completed; and by Mixed-Use Center. Ms. Stenger proceeded to give some density examples and comparisons to demonstrate how many units were required to meet various minimum density requirements on various lot sizes.

Chair Smith inquired how acreage was defined relative to dwelling units per acre. Mr. Boudet clarified that the calculations were accomplished using net acreage. Commissioner Jeremy Doty asked if "net" was defined as allowable buildable area. Mr. Boudet said that "net" was defined as the square footage of the property, excluding public roads and sidewalks.

Vice-Chair Boe stated that on a 9,000 square-foot lot size, with all the design requirements, parking, transparency, retail, height, etc., it would be difficult to achieve seven dwelling units per acre. Mr. Huffman replied that those were the types of observations to be considered regarding minimum densities. Mr. Boudet indicated that it may not be appropriate to apply minimum density to mixed-use projects.

Ms. Stenger indicated that a determination should be made on whether or not the same minimum density should be applied in different categories of Mixed-Use Centers. Commissioner Doty asked: "If we are saying that 25 (du/ac) is what we want as a minimum density, are we not then saying that we are fine with all the development that has been happening"? Mr. Huffman replied that it depended on the intent of the zoning classification and, that part of this review, will be to identify barriers as to why development of a different type or density had not been occurring. He continued to state that RCX has a different purpose than NCX; therefore, if the zoning classification indicated that the intent and the vision of that zoning classification is more residential, then perhaps, the City may not want to have the mixed-use requirement.

Vice-Chair Boe: "If we are looking (on one hand) at getting more quality, good open spaces – having landscaping, etc. – is that now going against our ability to hit minimum density"? Mr. Huffman replied that landscaping and open space are examples of some of the desired improvements in the City's design guidelines. The intent is for projects with quality, as well as to achieve a balance, he said.

Commissioner Doty inquired of staff to research other jurisdictions that have achieved the appropriate balance between density and design review to determine how the outcome was achieved. Mr. Huffman thanked Commissioner Doty for the suggestion and stated that the study would be conducted and would be part of a future discussion with the Commission.

Mr. Huffman shared information from a previous stakeholder's meeting regarding minimum densities, etc. He reported that one of the suggestions was to incent for "public benefit" in an effort to obtain relief for a project that possibly did not meet the minimum density.

Chair Smith asked if height (in Mixed-Use Centers) was determined the same way as in residential zoning districts. Mr. Boudet replied that, outside of residential districts, the height limits are calculated, consistent with the building code. Mr. Huffman assured the Commission that the calculation of heights would be discussed in greater detail during the Mixed-Use Center Code revision process.

Mr. Huffman solicited comments and/or suggestions from the Commissioners with reference to the process of determining and analyzing data for future discussions regarding Mixed-Use Center Code Revisions. Vice-Chair Boe referred to matrices that had accompanied the staff report and commented that it had been helpful to see examples of how different projects had been summarized, thereby showing statistical data. Chair Smith agreed. He further stated that he would prefer that staff did not provide their opinions and specific recommendations; but, rather simply provide examples and options.

Commissioner Scott Morris inquired if the Puget Sound Regional Council (PSRC) sets recommended standards for density per acre for regional centers. Ms. Stenger reported that the PSRC actually defined density as "activity units", which is a combination of residential units and employment. They want to achieve activity levels that would support transit ridership. She said PSRC may be updating their minimum requirements, as part of the update to Vision 2040, which will be adopted in Spring 2008.

## **5. Residential Zoning Code Update**

Mr. Boudet briefly explained the intended discussion, to include reviewing the previous discussion of Phase I of the Residential Zoning Code Update (RZCU). Among the items remaining to be discussed in Phase I are accessory buildings, residential uses in the M-1 industrial district, small-lot development standards and the variance process and criteria. The design review process, single-family development standards, and multi-family development standards are also issues of significance to be discussed.

Ms. Shanta Frantz explained that, as defined in the code, small-lot development standards are for lots that are sub-standard in width, lot area, or both. She reported that requested variances for small lots are numerous. Modification of design elements and standards in all R District properties could provide better direction and relief of variances.

Ms. Frantz discussed the six required design elements for small lots in order to be eligible for a 10 percent reduction of the minimum lot size and lot width standards. She noted that pitched roofs were removed from this category and added to the requirements for between 10 to 20 percent of the minimum lot size and width standards. For lots between 10 and 20 percent below the standards, a formal application would be required and all of the design elements listed in the 10 percent category would be required, as well as at least three of the following design elements: sheltered front entrance, roof modulation, roof orientation (within the View-Sensitive Overlay District), façade modulation, enhanced window and door detailing, multiple exterior finish materials, eave embellishments, other special trim detailing, eave widths, shared driveways, and/or pitched roofs.

Mr. Cap Pearson, Tacoma's Buildings Engineer, has been involved in determining the logistics relative to the Code, as well as feasibility and economics were concerned, Ms. Frantz explained.



In addition, Makers Architecture and Urban Design will be consulting on the update to ensure that the RZCU does not conflict with policies and elements of the design review process.

Chair Smith inquired about "innocent purchasers" and if the growing trend should be addressed by the Commission. Ms. Frantz informed the Commission that "innocent purchasers" are relative to existing lots, rather than lots that are being created. Ms. Caroline Haynes-Castro said that for the creation of the lot, the innocent purchasers that the hearing process was to go through the Hearings Examiner. A variance would have to accompany that. She said that design standards possibly could be applied through a prescriptive process in situations where it would go beyond the 20 percent and needed to be addressed. Mr. Boudet said that a good policy question would be whether or not these standards should apply to only new lots; or possibly, to include existing lots as well.

Commissioner Morris commented that the "roof orientation requirement" being applied only within the View-Sensitive Overlay District was appropriate, but he asked that it be moved up into the required list for 0 to 10 percent reductions. He asked for clarification regarding alleys and whether or not the code required actual use of the alley, or could an applicant also put a driveway in the front of the building. Ms. Frantz said that the applicant must show that they have available space off the alley for access, as well as for parking; but they could also have parking from the front street (a driveway).

Ms. Frantz gave an example of where lot area and lot-width variances of more than 20 percent were issued, which may show why a cap of 20 percent reduction should not be applied. She cited that by allowing a variance of greater than 20 percent reduction of lot area and lot width, the result was considered to be a better design and compatibility for that particular neighborhood. Ms. Frantz outlined some of the proposed modifications to the existing variance criteria of TMC 13.06.645.B.1 to include hardship cases.

Mr. Peter Katich, Land Use Administrator, added that while discussing changes to the City's variance criteria, it should be understood that it will be a major policy decision that the Commission and the City Council will need to make. He explained that, in the past, Tacoma has had "fairly permissive" variance criteria, allowing for a liberal outcome when granting relief. Many other cities within Washington State, that have more restrictive hardship criteria, issue very few variances; while some do not issue variances whatsoever. He reported that every year Tacoma issues additional variances because, as requirements are added, they become more restrictive. He stated that in his ten years as Land Use Administrator, he could recall only one hardship case. Mr. Katich encouraged a "robust" discussion over the course of this update. "We need to identify the unintended consequences of some of the new code we will be bringing forward", he said.

Ms. Frantz stated that staff will hold a stakeholder's meeting in February 2008.

Mr. Elliott Barnett stated that staff previously had been requested to study residential uses within the M-1 Light Industrial District and explore any compatibility issues. He explained that Tacoma has three Industrial Districts: M-1, Light Industrial; M-2, Heavy Industrial; and PMI, Port Maritime Industrial.

City code currently allows residential uses within the M-1 District, and there is no minimum lot size or setbacks and the height limit is higher, landscaping is limited, and design regulations do not apply. Recently, there have been several residential developments occurring within the M-1

Districts. Uses that may generate nuisances (such as correctional facilities) are also currently allowed under the existing code, Mr. Barnett stated.

The Comprehensive Plan indicates the need of preserving adequate land for industry and employment-generating uses. The September 2007 Buildable Lands Report indicated that Tacoma had a deficiency of available land for job-generating activities. Industrial users have also expressed concern regarding residential uses in their areas, largely due to noise complaints, which causes incompatibility issues, Mr. Barnett explained.

Staff analyzed the issues regarding incompatibility of mixed uses within the M-1 Districts and has developed some recommended changes to address them:

- Restrict new residential development in M-1 areas to residential located within a mixed-use building. A minimum of one-third of the building must be used for non-residential activities;
- Amend M-1 landscaping requirements to require street trees along the street frontages of new development within the M-1 District;
- Address non-conformities resulting from the change in permitted uses on an area-specific basis; and
- Replace outdated reference to "Industry, Limited", with "Industry, Light".

New restrictions would create legal non-conformities, as there are numerous dwellings already in existence in the M-1 District, Mr. Barnett said.

Commissioner Doty commented that the wording for the minimum one-third use requirement for non-residential activities should be carefully chosen. Mr. Barnett agreed that the uses should be very specifically stated.

Mr. Boudet indicated that one of the things that this recent development has highlighted is the inability to construct townhouses in the City's multi-family zoning districts. As part of the Residential Zoning Code Update, there will be discussions regarding townhouses in multi-family zoning classifications.

## **6. Nomination for Officers for 2008**

Chair Smith opened the floor for nominations of Planning Commission Officers for 2008. Commissioner Donovan nominated Chair Smith for Chairman, and Vice-Chair Boe for Vice-Chairman. There were no other nominations.

### **COMMUNICATION ITEMS**

Chair Smith acknowledged receipt of the following:

1. Land-Use Administrator's Reports and Decisions.
2. Hearing Examiner's Reports and Recommendations.
3. Commuter Rail and Comprehensive Plan
4. Sound Transit Commuter Rail Urban Design Assessment

### **COMMENTS BY PLANNING DIVISION**

Mr. Huffman gave a synopsis of what occurred at the City Council meeting on December 4, 2007, regarding the Comprehensive Plan Amendment adoption process, as follows:

The Council approved the Open Space Current Use Assessment Program application for three parcels located along the slopes overlooking properties on Waterview Street and Ruston Way. Vice-Chair Boe and Commissioner Donovan were in attendance, as well as the property owners. The Council also approved the Boutique Winery Ordinance.

There are three amendments being proposed for the Comprehensive Plan Ordinances:

1. An amendment is sponsored by Councilmember Manthou. Because it will expand the Narrows Mixed-use Center, it required additional notice and will be held over until December 11<sup>th</sup>. It will add two parcels to the center; one of which is owned by the Tacoma Musical Playhouse. The proposed amendment affects two ordinances, because it will change center boundary and land use intensity, as well as amending the tax exemption eligibility area.
2. Councilmember Ladenburg proposed an amendment to expand the 72<sup>nd</sup> and Pacific Mixed-use Center southward, in order to add Mr. Bozich's properties and intervening properties. Public notification will be made to add seven properties on the east side of Pacific Avenue. The amendment will change the boundary and land use intensity, as well as amending the tax exemption eligibility.
3. Mayor Baarsma sponsored an amendment to strengthen policy language in the Comprehensive Plan policies regarding principles of sustainability for mixed-use center development

### **COMMENTS BY PLANNING COMMISSION**

There were none.

### **ADJOURNMENT**

The meeting adjourned at 6:50 p.m.



**Members**

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**MEETING:** Regular Meeting

**TIME:** Wednesday, December 19, 2007, 4:00 p.m.

**PLACE:** Tacoma Municipal Building, City Council Chambers  
First Floor, 747 Market Street, Tacoma, WA

**Members Present:** Thomas Smith (Chair), David Boe (Vice-Chair), Kevin Briske, Melody Curtiss (arrived at 4:10 p.m.), Robert de Grouchy, Thomas Donovan, Jeremy Doty, Scott Morris

**Members Excused:** Carolyn Davidson

**Staff Present:** Peter Huffman, Donna Stenger, Lihuang Wung, Brian Boudet, Jim Colburn, Denise Rakas (Community and Economic Development); Charles Pearson (Land-use Services)

**Others Present:**

Chair Thomas Smith called the meeting to order at 4:01 p.m.

No minutes were submitted for approval.

### **GENERAL BUSINESS**

#### **1. Election of Officers for 2008**

Mr. Peter Huffman stated Chair Thomas Smith was nominated as Chairman and Vice-Chair David Boe was nominated as Vice-Chairman. Chair Thomas Smith asked if there was any discussion regarding the nominations. Having established there was no discussion, the vote was taken. It was unanimously determined Thomas Smith would be Chairman and David Boe would be Vice-Chairman.



## **2. Chapter 13.17 Mixed-Use Center Development**

Mr. Jim Colburn presented the staff report regarding the proposed amendment to the Land Use Regulatory Code. An overview was presented to the Commission on December 5, 2007. He explained the staff recommendations to the code were based upon recent State legislation (House Bill 1910 and House Bill 2164 related to the University of Washington Tacoma), the need to delete the tenant displacement prohibition, and the need to move the tax exemption program provisions from one part of the Tacoma Municipal Code to another.

Mr. Colburn continued on Page 2 of the staff report to explain how the changes would maintain consistency with the Growth Management Act, the Comprehensive Plan, and the Land Use Regulatory Code by supporting concentrated development through use of the tax exemption program in the Mixed-Use Centers. He indicated the changes are programmatic and city-wide and not related to a specific site. He stated one of primary reasons for moving the tax exemption program to Title 6 in the Tax and License section of the Tacoma Municipal Code (TMC) was to give the City Council greater flexibility in the administration of the program.

Mr. Colburn stated that while the economic impact of the specific changes were minor, the added Council discretion and flexibility may encourage greater development of under-utilized and vacant parcels resulting in a significant increase in the tax base upon conclusion of the exemption period. The staff recommendation was to implement the changes as recommended.

Chair Smith asked why this was not an annual amendment to the Comprehensive Plan. Mr. Huffman replied it was more of an administrative change and such changes to the Tacoma Municipal Code are allowed more than once a year. The proposed changes are resulted from a study that was done on the program. There was a need to look at improvements to how the program is administered.

Chair Smith asked if it fell within the Comprehensive Plan amendment guidelines. Mr. Huffman stated no. Chair Smith asked why the regulations applied to only the University of Washington Tacoma, but not the Bates Technical College. Mr. Colburn stated the approved House Bill 2164 was designed to apply uniquely to University of Washington campuses (i.e. UW Tacoma) and does not apply to Tacoma Community College or any other state college.

Mr. Huffman summarized the changes stating that the administration of the tax exemption program was being moved from Chapter 13.17 to Title 6. If changed, the administrative rules and procedures for this program would no longer require Planning Commission review. Also, the tax exemption program was being updated to be consistent with new State law. Specifically, the program has gone from a ten-year program to eight-year program with a twelve-year option. There is also a local vacancy requirement that needs to be updated. Just this year, the Legislature also passed the UWT law that makes areas within the master plan footprint not eligible. As far as eligible Mixed-Use Centers for the program and other development standards that the City would like to place on projects receiving the exemption, those pieces still remain in Title 13 and still require Planning Commission review. If the City chose to expand from UWT to other large educational institutions, that could be done as part of the program guidelines. That would be a policy discussion as to where the City should or should not apply the program. Such a policy decision would go to the Planning Commission for review, public hearing and recommendation to the City Council. The change is to be consistent with State law.

Mr. Huffman asked the Commission to look at the revised code section on Page 2 in the portion of Chapter 13.17 that is being removed and put into Title 6. Under D Number 3 – Size - is the section that dictates the size threshold of the projects. Currently, the minimum is four units or more under State law. As the Mixed-Use Center designation is reviewed and minimum densities are discussed, there will be a need to reconcile those two in both sections of the TMC. As the Planning Commission reviews the zoning as related to minimum densities, staff will return and consider how that threshold of four units matches up with the minimum densities.

Chair Smith stated this was a minimum requirement and the Planning Commission can increase it. Mr. Huffman replied that minimum densities will override the minimum number of units in the tax exemption program. Thus, it was important that minimum thresholds for the program be consistent with minimum density thresholds. Chair Smith stated the Commission considers both the land area and the number of units. Mr. Huffman concurred, and stated the City Council may be changing that number relative to the minimum density discussion.

Commissioner Kevin Briske asked if every multi-family development in the Mixed-Use Center would be eligible for the tax incentive. Mr. Huffman replied, not necessarily. Currently, the minimum threshold for the tax exemption program is so low that applications are being submitted for four unit projects which may, in the future, not meet the minimum density thresholds. There will be discussion at the City Council level about the minimum thresholds for the tax exemption program and we will have to connect the two discussions so that we do not create a situation where applicants are submitting for the tax exemption program and the minimum densities would not allow the project to move forward.

Commissioner Briske stated: “Then the applicant would not receive the tax break, but it would not happen every time”. Mr. Huffman concurred. Mr. Colburn stated if the minimum density was established higher than four, then the program could change quickly by ordinance. If the City Council wanted to move to higher densities before the Commission changes it city-wide, that would give them that discretion as well.

Commissioner Briske asked if the applicants for the Tax Incentive Program submit the application prior to applying for building permits. Mr. Colburn stated that was correct. Mr. Huffman stated the approach would be to generate a contract between the City and the developer. The developer works with Mr. Colburn and goes through a review process that includes staff from the Public Works Department. The application is then submitted to the City Council for approval.

Commissioner Thomas Donovan asked what was the staff’s intention on requiring relocation assistance for tenants. Further, the City of Tacoma has never allowed relocation assistance for tenants and was that a State requirement? Mr. Colburn replied that the State used to require that any applicant with an existing building to make sure it was vacant for at least one year to avoid tenant displacement. That provision made the program difficult to administer if existing tenants were involved. An applicant is not necessarily going refrain on building for one year for it to be vacant before they turn around and demolish it. When the State became silent on the issue (with later iterations of the law), staff decided to recommend reasonable relocation assistance for existing tenants in place of the one year vacancy provision.

Commissioner Donovan stated that if a tenant was renting on a month-to-month lease, then the landlord has the legal ability to evict the tenant for no reason. Mr. Colburn stated we need to

work with the current fair housing laws; however, if the applicant wants a public subsidy, they need to make sure the tenant is adequately protected.

Commissioner Donovan asked if it was the City's policy position and whether we are willing to talk about relocation assistance for all types of tenants and all types of circumstances or just for this program. Mr. Huffman replied that it was just for this program. The original requirements in the State law were to prevent these types of situations: There is an occupied building and an application is made to rehabilitate the building; or tear the building down and build a new one; and the tenants are to be evicted. The original State law stated the building had to be vacant for 12 months. Since later versions of State law no longer include the 12-month vacancy provision, the staff concern was that it would encourage tenant evictions; thus the recommendation for a reasonable level of relocation assistance for tenants who are being evicted due to remodeling or demolition of the building. Mr. Colburn stated many of the applicants are either buying the properties from homeowners or are starting with vacant land. If the applicant is starting with a building or house that has been occupied, or is currently being rented, we want to make sure the tenant is protected, and can be found reasonable occupancy in another location.

Chair Smith stated if the occupants were receiving subsidized housing, they would have one year contracts. Mr. Colburn replied that he was not aware of any project occupants who were receiving Section 8 subsidy. Mr. Huffman replied this is an incentive, not an entitlement. It is an incentive to a property owner to build density to meet some greater objectives. The intent is not to create the dislocation of individuals.

Commissioner Donovan asked: "How do you draw the inference that someone is evicting a tenant to gain the benefit of this program? If I am a landlord and I have a tenant who has a lease for one year and it is 15 months into that lease, I can evict him for no reason whatsoever with 20 days notice. If he has to be given relocation assistance because of the program, is that within a certain timeframe? How do you draw that connection between what I think is an easy-to-utilize landlord/tenant statute and this statute, which states the occupant has to be given relocation assistance? Secondly, I think this is a disincentive for developers who want to come into this area. So my question is - how do you draw that connection?"

Mr. Huffman suggested that the Legal Department needed to come and talk to the Commission. Commissioner Donovan stated: "The City of Tacoma has decided not to give relocation assistance to tenants. As a general rule, the City of Seattle has decided to give it. I do not know of any other place in the code that allows relocation assistance to tenants and I do not think we want to do it here". Mr. Colburn replied that no direct money was being given to help pay for the relocation assistance, which should be the responsibility of the property owner. If the applicant applies for the subsidy, then they have to provide that accommodation. Mr. Huffman stated that if the applicant is to receive the incentive, the tenants would need to be taken care of.

Vice-Chair David Boe gave a scenario of buying a building that was full of tenants and evicting them all just prior to applying for the tax incentive. "The building is vacant, but it is not necessary to wait for one year to apply. After six weeks, clear out the building, I then apply for the tax incentive. When asked if there are any existing tenants, I can say 'no', since the building is vacant".

Commissioner Scott Morris asked for an historical explanation, because the original law was actually an amendment to the State law that started in Tacoma to change the law for the one



year vacancy. Mr. Huffman replied the purpose was to put these changes out for public hearing on January 16, 2008. We could have Mr. Ric Teasley, Housing Division Manager, as well as Ms. Debra Casparian, from the Legal Department, come and talk about some of the issues. Mr. Huffman confirmed the amendment to go from a 12-month vacancy period to a reduced approach was sponsored by the City of Tacoma. In addition to the displacement issue, there were buildings that sat vacant for 12 months and becoming blighted. Staff also did not want to have the incentive become an excuse for landlords to randomly, without reason or regard for tenants' rights, evict people to get the eight-year tax exemption. If the applicant is going to receive the exemption from the City, then assistance needs to be provided to get the tenants back into housing.

Commissioner Donovan stated he would like to confirm with the Legal Department that State law trumps local law. "The State law has given landlords the ability to evict someone on a month-to-month lease for whatever reason. I do not understand why we are circumventing that", he said. Chair Smith replied it is not an eviction since the correct term is termination of tenancy. He continued that can be done with a 20-day notice by the first of the month.

Commissioner Briske asked about the size on the minimum four dwelling units: "Can a simple statement be added and comply with the minimum density standards of the zoning code". Mr. Huffman replied there are eligibility requirements under the same section (E #5) that is not being deleted which requires projects to be consistent with all zoning and building codes.

Commissioner Jeremy Doty stated there were two different processes. One is for a tax exemption and the other is for a building permit. While the applicant may not know they are not meeting the tax exemption requirements until they apply for the building permit, all zoning requirements must still be met. Mr. Huffman stated that was correct. Commissioner Doty stated the discrepancy being talked about may not happen, since projects over the past 4-5 years have not been below the minimum density, even with the fourplexes that are being built. We are talking about something that may or may not come up, such as 25 units per acre as a minimum density. Mr. Huffman replied that the minimum densities were much lower than that. Commissioner Doty stated: "The current ones, yes. We are talking about going to 25 units an acre. Then only one of those projects from out of all of those that would not have met that density". Mr. Huffman replied that was correct. The data we will use to establish the minimum density is data from this program. There is a difference in understanding density and project size. There will probably be Council discussion about whether or not a fourplex is the right size of project regardless of density and if it should be eligible for this tax incentive. Obviously, size does not mean it is a dense project. There can be a lot of units on a large area and it can be low density. Conversely, a small project on a small lot may be high density project.

Commissioner Doty stated this is where it gets hazy when trying to create a new Chapter 6A.110 which relates to Chapter 13.17. Mr. Huffman stated the Commission's discussions regarding minimum density will dictate the size of projects or the number of units of a project regardless if the applicant receives the incentive or not. We want to make sure there is not too much of a discrepancy. We will come up with a density number that drives the project but the City Council will want to say you cannot have a project that is less than 15 units. There is a misunderstanding of the difference between project size and density – there can be a small project that is high density or a large project that is low density.

Commissioner Doty asked if the provisions of the tax exemption program could be referenced from the densities discussed in Chapter 13 rather than saying a minimum of four units. We

need to say projects must meet the minimum densities per zoning requirements. Then in the zoning requirements we say a minimum density plus a minimum number of units. That way we are leaving the administrative items in Chapter 6A110, but not pulling the land use items into it. Mr. Huffman stated the intent of some City Council members is big projects.

Vice-Chair Boe asked if the rationale for big projects is good. Mr. Huffman replied big projects represent the highest and best use. That is where the difficulty is. There can be a small project with six townhomes that meets the minimum densities or fourplex that is 133 units to the acre that is a dense project. However, a fourplex is not what some Council members want.

Commissioner Doty asked if this applied only to the Mixed-Use Centers. Mr. Huffman replied that is correct. Commissioner Doty asked since the Mixed-Use Centers are being changed and updated, why not refer them to the Mixed-Use Center policies that are being created now rather than saying size or density. Mr. Huffman stated he did not have an answer for the Commission at this time. Basically the City Council is not going to be comfortable saying that the project has to be X number of units per acre before it is eligible.

Commissioner Doty asked if it was correct the Commission could set a minimum number of units as well as density in the Mixed-Use Centers. Mr. Huffman replied that could be done in the zoning. The project needs to be consistent with the zoning. Regardless of the number that the City Council comes up with, the project will have to meet the zoning regulations.

Chair Smith stated staff recognized and told the Commission the problem. Commissioner Doty stated he understood what was being said. It is very confusing for an applicant to go for the multifamily tax incentive and think they have an approved project. Then they go to the building department and find out they cannot use the multifamily tax incentive.

Commissioner Melody Curtiss stated she felt it had to be done that way since not all Mixed-Use Centers are the same. The same answer does not apply for all of them. "I think it will actually help the City Council in considering how the tax incentive should apply to different Mixed-Use Centers so that the densities attach to the vision that you have for a specific Mixed-Use Center", she said.

Commissioner Doty stated it would be easier for the applicant. He referred to Mr. Huffman's statement that the City Council wants the ability to set minimum number of units in the Mixed-Use Centers in Chapter 6. Commissioner Curtiss stated she understood that, but the City Council is not considering how the different components of the Mixed-Use Centers should fit together. Mr. Huffman stated that it is not just the City Council; there is the general public and the policy makers that equate high density to big projects. The terms are used interchangeably. We will work on this and come back to the Commission. There is going to be the situation where some members of the Council and the public are not going to understand that density is the relationship between the number of units and the size of the property.

Vice-Chair Boe stated he agreed with most of the discussion, plus a need to do a little education for the City Council. What we are doing for the Mixed-Use Centers is trying to increase density and look at streetcars and downtown markets. They all have to do with density, not with the size of projects. If we can make them understand we want to promote highly dense projects, then we get the volume of people, shoppers, travelers, bus riders, etc. Maybe it is not a number of units but a density requirement. If you hit a certain density requirement you are going to be eligible for the tax incentive because that is the purpose of why we are doing the Mixed-Use

Centers. Mr. Huffman replied that whatever language the Commission decided upon through this process should be in the recommendation to the City Council, whether it is a minimum density or a combination of the two.

Vice-Chair Boe stated that it is especially important if we are going to give incentives for going higher with all these things potentially in the zoning code applied to Mixed-Use Centers. It really is tied to density and we want to give developers who are creating denser projects more benefit and the tax exemption should be one of those incentives. Mr. Huffman stated it is an incentive designed to achieve the development regulations in the vision that the Commission develops and recommends to the City Council.

Commissioner Morris asked if Accessory Dwelling Units (ADU's) are always associated with single-family housing or could a person put an ADU in a multifamily unit? Mr. Huffman stated there needed to be four or more dwelling units and the dwelling units are defined by the building code. Commissioner Morris stated that is a minimum unit size and it is tied into the Fair Housing Act. The question is an ADU only associated with single-family housing. Can a person put an ADU unit into a multifamily unit and claim it as a unit that would be for a low income person. Mr. Colburn stated there have been projects with relatively low square footage units such as studios and one bedroom apartments. It may not make that big of a difference, but we can certainly check it. Mr. Brian Boudet clarified that an ADU by code is only associated with single-family units.

Commissioner Doty asked if amendments to Chapter 6 need to go through public hearing. Mr. Colburn stated the City Council wants the flexibility to be able to change the tax exemption program by ordinance. There would be the opportunity to speak at the first reading of the ordinance, but there would not be an additional public process. Commissioner Doty asked if by leaving the number of units in Chapter 6 the City Council can change the minimum number of units by ordinance. Mr. Colburn stated the Council could go higher than the Commission's minimum standard.

Chair Smith stated the action is to authorize for public distribution and setting the public hearing date for January 16, 2008. Vice-Chair Boe so moved. Commissioner Doty seconded. Chair Smith called for further discussion. Commissioner Donovan stated he felt it was not nearly ready to go out for public distribution given the questions that were raised by the Commission. There still needs to be an answer from the Legal Department as to whether the provision for relocation assistance is in conflict with State law. I believe we should wait for these things to come back to us in the first of the year and then set a public hearing date. Vice-Chair Boe asked if there was a timeline issue or if it needed to be completed by a certain date. Mr. Huffman replied there was not a timeline issue.

Chair Smith asked if the Commission wanted to amend the motion that this be held over to a date to be determined, based upon the outcome of this meeting. Vice-Chair Boe accepted the modification to the motion. There was no further discussion relative to the amended motion. The amended motion carried, with Commissioner Briske voting against it. Mr. Huffman said that staff would return on January 16, 2008, with more information relative to the discussion. At that time, the Commission can determine if it would be appropriate to set a public hearing date.

Chair Smith asked Commissioner Briske if he would divulge his rationale regarding the negative vote on the motion. Commissioner Briske indicated that it was already contained in the Code, so any conflicts that were determined at this time, had already been in existence. He further

stated that he felt that it was simply being removed from one section and being written into another section. Mr. Huffman explained that the language shown in blue was not previously written in the Code. Based on a misunderstanding, Commissioner Briske changed his "nay" vote, and the motion then passed unanimously.

Mr. Colburn asked for a point of clarification from the Commission. Was the Commission talking about the paragraph on relocation assistance to be amended or to be deleted? The Commission responded it was to be deleted. He asked if the Commission's position was that the landlord/tenant laws adequately address this issue and that any relocation assistance does not need to be a part of this code. Commission stated that was correct.

Commissioner Robert de Grouchy stated he disagreed and was in favor of the program providing relocation assistance and he would like more information on this issue. He stated he understood Commissioner Donovan's concerns, but he would like to know more.

Mr. Huffman indicated the City Council wants to move along with the proposed code changes as quickly as possible. He reiterated the Legal Department has stated there is a need to comply with State law. Currently, the Code is more restrictive than the State law as far as the vacancy. Delaying this decision will not affect an applicant's ability to use the eight-year or twelve-year program. Mr. Colburn stated the office is currently accepting applications for the eight-year or twelve-year program and we are getting some clarification from the State. However, the current local law does still read ten year, even though changes to the State law were effective at the end of July.

Chair Smith stated the other item to come up was the minimum density issue.

Commissioner Donovan stated a third issue on Page 2 under Paragraph F item #2 regarding the definition of low and moderate income households. Is this defined by the Department of Housing Urban Development and why not reference it? And under Paragraph D what is meant by reasonable Relocation Assistance? Mr. Colburn answered low and moderate income households are defined at the beginning of the new section 6A under definitions. Commissioner Donovan asked what would be a reasonable amount of relocation assistance. Mr. Colburn replied it would be an administrative interpretation at this point. It is not specifically defined.

Vice-Chair Boe asked if other jurisdictions that have similar programs set minimum numbers, or set minimum densities or do they reference the zoning ordinance. Staff replied they would research it.

### **COMMUNICATION ITEMS**

Chair Smith acknowledged receipt of the following:

1. Land-Use Administrator's Reports and Decisions.
2. Hearing Examiner's Reports and Recommendations.

### **COMMENTS BY PLANNING DIVISION**

Mr. Huffman confirmed with Chair Smith the first Planning Commission meeting for 2008 would be on January 16, 2008, so the meeting of January 2, 2008 would be canceled. Mr. Huffman continued that at that time he would present the Commission with the work program for 2008-2009.

Chair Smith asked about a possible presentation by Ryan Petty, Community and Economic Development Director, to the City Council on the downtown that will then be sent to the Planning Commission. Chair Smith asked if Destination Downtown was going to be revised. Mr. Huffman stated Vice-Chair Boe is sitting on a panel with himself, Donna Stenger and Ryan Petty to interview consultants to assist with the project. Through 2008 the Destination Downtown document will be reviewed to see if updating is needed.

The question was asked if there would be the same Planning Commissioners in the upcoming year. Mr. Huffman stated three of the four Commissioners were reappointed.

### **COMMENTS BY PLANNING COMMISSION**

Chair Smith complimented the Commissioners on the very good job they did during the year. He also complimented the Planning Division staff and the excellent job done on the meeting minutes. Vice-Chair Boe agreed the minutes are very good and even the City Council has commented on the minutes. The Council reads the minutes and can see the discussion that goes on. Commissioner Morris also agreed that the Council seemed to read the minutes and appreciated the debate, and made good comments about the staff work.

Mr. Huffman stated one of the things procedurally he would like to discuss with the Commission over the course of 2008 (and there may be opportunities with some of the big projects that will be worked on) would be to have individual Commissioners more involved in interaction with the City Council. In the past, there have been joint study sessions. It becomes very helpful and beneficial for the City Council to talk directly with the Commission members. Chair Smith agreed with Mr. Huffman. He stated a presentation may be better at a standing committee rather than at a study session.

### **ADJOURNMENT**

The meeting adjourned at 4:57 p.m.





**City of Tacoma**  
**Community and Economic Development Department**

**Agenda Item**  
**GB-1**

TO: Planning Commission  
FROM: Peter Huffman, Manager, Planning Division  
SUBJECT: Critical Areas Preservation Ordinance Update  
DATE: January 10, 2008

At the meeting on January 16<sup>th</sup>, the Planning Commission will continue to review the proposed changes to the Tacoma Municipal Code Chapter 13.11 Critical Areas Preservation Ordinance (CAPO). Staff will request the Commission to authorize the proposed code revisions for public distribution and set a public hearing date of February 6, 2008.

As you will recall from your last two meetings, the Central Puget Sound Growth Management Hearings Board (GMHB) ruled in November that the City's CAPO does not comply with RCW 36.70A.130, which requires a timely update and revision of critical areas regulations. The petition brought before the GMHB centered on the lack of protections for marine critical areas. The GMHB mandated that Tacoma update its regulations by May 1, 2008.

Attached to facilitate your discussion on January 16<sup>th</sup> are a draft staff report, the comparison of Tacoma's proposed marine shoreline buffers and requirements with other jurisdictions, and the proposed changes to CAPO. More information on the CAPO update will be posted shortly on the City's website at [www.cityoftacoma.org/planning](http://www.cityoftacoma.org/planning) (click on "Critical Areas Preservation Ordinance").

If you have any questions, please contact Molly Harris at 591-5383 or [mharris@cityoftacoma.org](mailto:mharris@cityoftacoma.org).

PH:mh

Cc. Ryan Petty

Attachments





***PROPOSED AMENDMENTS TO  
The Critical Areas Preservation Ordinance, Tacoma Municipal Code Chapter 13.11***

<b>Applicant:</b>	City of Tacoma Community and Economic Development
<b>Application #:</b>	N/A
<b>Type of Amendment:</b>	Update to Critical Areas Regulations, TMC Chapter 13.11
<b>Current Land Use Intensity:</b>	Encompasses all land use intensities with shorelines and critical areas (City-wide)
<b>Current Area Zoning:</b>	Encompasses all zoning areas with shorelines and critical areas (City-wide)
<b>Size of Area:</b>	City-wide where shorelines and critical areas exist
<b>Location:</b>	City-wide where shorelines and critical areas exist
<b>Neighborhood Council area:</b>	City-wide
<b>Proposed Amendment:</b>	Revisions to Critical Areas Regulations, TMC Chapter 13.11, to include regulations for Fish and Wildlife Habitat Conservation Areas (FWHCAs) and marine

**General Description of the Proposed Amendment:**

The Critical Areas Preservation Ordinance (CAPO) update will address the following:

- Develop standards for Fish and Wildlife Habitat Conservation Areas (FWHCAs);
- Designate a Marine Riparian Buffer for each shoreline district that will protect the water-quality and large-scale habitats and functions of Tacoma’s shores;
- Develop administrative permitting procedures for in-water biological assessments, Habitat Management Plans, and Marine Riparian Areas.

Areas of the City that will be affected by the regulations include those marine areas of Tacoma (all shoreline districts) and other areas that contain FWHCAs.

The amendment is being proposed because the City of Tacoma was directed by the Central Puget Sound Growth Management Hearings Board (GMHB) to update its critical areas regulations to be compliant with the Growth Management Act (GMA). The GMHB ruled that the City of Tacoma must revise its critical areas regulations by May 1, 2008.

**Additional Information:**

On November 15, 2005, the City Council adopted Substitute Ordinance No. 27431, amending the City’s Critical Areas Preservation Ordinance (CAPO). On January 13, 2006, a Petition for Review was filed with the GMHB by Tahoma Audubon, Citizen’s for a Healthy Bay, People for Puget Sound, and Futurewise, challenging certain aspects of

the ordinance. The petitioners alleged that the City's updated CAPO was not in compliance with the GMA for failing to protect marine critical areas.

To address the petition, the City agreed to move forward with the Shoreline Master Program (SMP) update three years ahead of the state's schedule. The update was to be accomplished in two phases. Phase 1 was to consist of a city-wide inventory and characterization of shoreline functions and land use and proposed regulations to address the protection of critical areas. Phase 2 was to include environment designations, policies and use regulations, a restoration plan, and cumulative impacts analysis.

Working with the Department of Ecology to update the SMP in a phased manner, it became apparent that this approach was not workable due to numerous issues. The conclusion was that conducting a "comprehensive update" is the necessary regulatory approach to comply with the revised WAC guidelines for shoreline management. Numerous issues arose, including that conducting a phased approach with the phases being so close together would in many ways be overlapping and confusing to the public, as regulations and policies developed in Phase 1 would possibly need to be revisited in Phase 2. In addition, conducting two Planning Commission and two City Council public hearings might also be confusing, would cost more, and could delay our timeline.

The City went before the GMHB on October 18, 2007 to address the petition. On November 1, 2007 the GMHB determined that:

The City's action does not comply with RCW 36.70A.130, which requires a timely update and revision of critical areas regulations [.130(4)(a) and (8)(a)]; does not comply with RCW 36.70A.020(9) and (10), which articulate planning goals protective of fish and wildlife habitat and of the environment; does not comply with RCW 36.70A.060, which requires enactment of development regulations to protect critical areas; and does not comply with RCW 36.70A.172, which mandates the application of best available science in enacting critical areas protections, and calls for special consideration to the measures necessary to preserve salmon. The Board remands the Ordinance to the City to take legislative action to comply with the GMA.

The GMHB ruled that the City of Tacoma must revise its critical areas regulations by May 1, 2008.

**Applicable Provisions of the Growth Management Act (also other State laws):**

The City of Tacoma's Critical Areas Preservation Ordinance (CAPO) is a requirement of the State of Washington Growth Management Act (GMA). The GMA requires that critical areas, including wetlands/streams, flood hazard areas, aquifer recharge areas, mineral resource lands, and fish and wildlife habitat conservation areas, are designated

and protected utilizing the best available science (BAS) [1] to ensure “no net loss” of ecological function. The City of Tacoma’s CAPO is housed within the Tacoma Municipal Code, Chapter 13.11. While the GMA applies city-wide, the critical areas regulations overlap the State of Washington Shoreline Management Act (SMA), which provides additional protections and use regulations for all areas within 200 feet of the shoreline.

The SMA emphasizes three primary uses for shorelines of the state:

- Public access
- Water-dependent and water-related uses
- Ecological preservation and restoration

Per the SMA, all jurisdictions must develop a Master Program for their shorelines that demonstrate how that jurisdiction will implement the goals and policies of the SMA. The policies are contained within the City of Tacoma’s Shoreline Master Program and the corresponding development regulations are found within TMC 13.10.

For shoreline districts, the critical areas protections of the GMA must be integrated with the shoreline use regulations of the SMA [2]. The City of Tacoma is currently in the process of updating its Master Program to bring it into consistency with the updated Washington Administrative Code Chapter 173-26 guidelines and the goals and policies of the Shoreline Management Act (SMA). With the recent GMHB decision, the City is now moving forward with an update of the CAPO ahead of the SMP update. The CAPO will likely be modified again when the SMP is updated over the next two years. As part of this process, the City will be developing a strategy to integrate the CAPO with the Master Program in a way that protects site specific as well as large-scale ecological functions and values, while accommodating the priority uses that are encouraged in the SMA.

### **Applicable Provisions of the Comprehensive Plan:**

The *Environment Policy Element* of the City’s *Comprehensive Plan* contain a number of goals, policies, and intent relative to critical areas, including Fish and Wildlife Habitat Conservation Areas and marine shoreline areas. The proposed revisions should strengthen the ties and help to implement policy contained in the *Environmental Policy*

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[1]In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries (RCW 36.70A.172(1))

[2]From RCW 36.70A.480(4):“Shoreline master programs shall provide a level of protection to critical areas located within shorelines of the state that is at least equal to the level of protection provided to critical areas by the local government’s critical area ordinances adopted and thereafter amended pursuant to RCW 36.790A.060(2).”

*Plan.* A cursory staff analysis shows that the Comprehensive Plan is consistent with the proposed revisions.

A more detailed assessment of the revisions to Chapter 13.11 and applicable provisions of the Comprehensive Plan will be completed before the Planning Commission's public hearing.

### **Applicable Provisions of the Land Use Regulatory Code:**

Critical areas regulations are contained within Chapter 13.11 of the Tacoma Municipal Code. Proposed revisions to Chapter 13.11 include developing standards for Fish and Wildlife Habitat Conservation Areas (FWHCAs); designations of Marine Riparian Buffers for each shoreline district that will protect the water-quality and large-scale habitats and functions of Tacoma's shores; and developing administrative permitting procedures for in-water biological assessments, Habitat Management Plans, and Marine Riparian Areas. Developing these regulations will implement the intent of Chapter 13.11.

#### **13.11.120 Intent.**

A. Critical areas include critical aquifer recharge areas, fish and wildlife habitat conservation areas, flood hazard areas, geologically hazardous areas, stream corridors, wetlands, and any buffer zones. These critical areas serve many important ecological functions. Many of the critical areas in Tacoma have been lost or degraded through past development. Tacoma, as an urban growth area, is experiencing increasing growth and its land resource is diminishing. This increasing growth and diminishing land resource is creating pressure for the development of critical areas. New construction technology is also creating pressure on these sites by making development feasible on sites where it was formerly impractical to build.

#### **13.11.500 Fish and Wildlife Habitat Conservation Areas.**

This section is currently undeveloped but will be developed as part of this update.

A more detailed assessment of the revisions to Chapter 13.11 will be completed before the Planning Commission's public hearing.

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

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

Staff Analysis: Not applicable.

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

Staff Analysis: The proposal is consistent with the Comprehensive Plan's Generalized Land Use element and Environmental Policy Plan Element.

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

Staff Analysis: The CAPO amendments were last before the Planning Commission in 2005.

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

Staff Analysis: 1990, the Washington State Legislature adopted the Growth Management Act (GMA) which requires, among other things, the protection of critical areas and the environment. GMA also required that Tacoma take legislative action to review, and revise its comprehensive plan and development regulations to ensure they continue to comply with the Act's requirements by December 1, 2004. In 1995, the State legislature amended the GMA requiring that Best Available Science (BAS) be used in developing policies and regulations to protect critical areas. On November 15, 2005, the Tacoma City Council amended the CAPO to include BAS requirements; however, a Petition for Review was filed with the Growth Management Hearings Board (GMHB), challenging certain aspects of the ordinance. The petitioners alleged that the City's updated CAPO was not in compliance with the GMA for failing to protect marine critical areas. On November 1, 2007, the GMHB determined that the regulations were not compliant with the GMA requirements and would have to be revised. Thus, City needs have changed, and the amendment is being proposed because the City of Tacoma was directed by the GMHB to update its critical areas regulations by May 1, 2008.

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

Staff Analysis: The amendment is compatible with existing or planned land uses and the surrounding development pattern.

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

Staff Analysis: Critical areas include critical aquifer recharge areas, fish and wildlife habitat conservation areas, flood hazard areas, geologically hazardous

areas, stream corridors, wetlands, and any buffer zones. These critical areas serve many important ecological functions. Many of the critical areas in Tacoma have been lost or degraded through past development. Tacoma, as an urban growth area, is experiencing increasing growth and its land resource is diminishing. This increasing growth and diminishing land resource is creating pressure for the development of critical areas. New construction technology is also creating pressure on these sites by making development feasible on sites where it was formerly impractical to build.

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

Staff Analysis: See comment 6 above.

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

Staff Analysis: See comment 6 above.

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

Staff Analysis: Not applicable.

**10. Substantial similarities of conditions and characteristics can be demonstrated on abutting properties that warrant a change in land use intensity or zoning classification.**

Staff Analysis: Not applicable.

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

Staff Analysis: As per the GMHB's decision, Tacoma has been mandated to update its critical areas preservation ordinance by May 1, 2008. On November 1, 2007 the GMHB ruled that the City's CAPO does not comply with RCW 36.70A.130, which requires a timely update and revision of critical areas regulations [.130(4)(a) and (8)(a)]; does not comply with RCW 36.70A.020(9) and (10), which articulate planning goals protective of fish and wildlife habitat and of the environment; does not comply with RCW 36.70A.060, which requires enactment of development regulations to protect critical areas; and does not comply with RCW 36.70A.172, which mandates the application of best available science in enacting critical areas protections, and calls for special consideration to the measures necessary to preserve salmon. The Board remands the Ordinance to the City to take legislative action to comply with the GMA.

**Economic Impact Assessment:**

Staff does not believe that if the proposed exemptions and buffer reductions are retained, that major economic impacts will occur. A more detailed economic assessment, along with specific case studies, will be completed before the Planning Commission's public hearing.

**Staff Recommendation:**

Staff recommends that the Planning Commission approve the proposed text amendments for public review and set a public hearing date of **Wednesday, February 6, 2008**. Further, staff recommends that the Planning Commission accept all oral and written testimony and hold the record open until **5:00 p.m. on Friday, February 15, 2008** and that the Commission evaluate all testimony given at the public hearing and any written comments received as part of the record prior to making a recommendation to the City Council.





**Tacoma CAPO Amendment – January 2008**  
**Summary of Marine Shoreline Buffers and Requirements – Other Jurisdictions**

<b>Jurisdiction</b>	<b>Marine Buffer Size</b>	<b>Summary of Buffer Requirements</b>
Pierce County	<b>100 feet</b> from OHWM of marine waters designated as Marine Shoreline Critical Salmon Habitat (applied by specific species presence)	<ul style="list-style-type: none"> <li>▪ Buffer extended to include adjacent wetlands, landslide hazard areas and/or erosion hazard areas buffers;</li> <li>▪ Buffer width averaging may be proposed through submittal of a habitat assessment study or report;</li> <li>▪ Buffers should be adequately vegetated with native, non-invasive vegetation necessary to provide long term protection; and</li> <li>▪ Protection of significant trees required within buffer.</li> </ul>
King County	<b>115-165 feet</b> from aquatic areas including marine shorelines	<ul style="list-style-type: none"> <li>▪ Building setbacks of at least 15 feet from buffers;</li> <li>▪ Grading allowed only between May 1 and October 1;</li> <li>▪ Must minimize soil compaction or reestablish natural soil structure;</li> <li>▪ Retain hazard trees in aquatic area buffers;</li> <li>▪ Use of herbicides, hazardous substances, sealants or other liquid oily substances prohibited;</li> <li>▪ Limited trimming and pruning of vegetation for views allowed;</li> <li>▪ For recreational trails, buffers must be equal to the width of the trail corridor including disturbed areas.</li> </ul>
Whatcom County	<b>150 feet</b> from marine OHWM (marine nearshore habitat and associated vegetated marine riparian zone – applied uniformly).	<ul style="list-style-type: none"> <li>▪ Cut vegetation must be left within the critical area or buffer;</li> <li>▪ Clearing, pruning, and re-vegetation for view purposes is limited to once every 10 years;</li> <li>▪ View opening limited to min. necessary for view purposes not to exceed 15% of buffer length,</li> <li>▪ Trees greater than 12 inches diameter breast height (dbh) shall be preserved,</li> <li>▪ Low growing native vegetation shall be retained and/or planted in the view corridor.</li> </ul>
City of Seattle	<b>100 feet</b> from Ordinary High Water Mark	<ul style="list-style-type: none"> <li>▪ No required setback for water-dependent/ -related uses; mitigation required;</li> <li>▪ 25-ft setback and mitigation required for non-water dependent/related uses other than residential;</li> <li>▪ Bioengineered shoreline stabilization allowed within the 100' buffer;</li> <li>▪ New and major repair of bulkheads prohibited, except for continuation of water dependent / related use;</li> <li>▪ Permeable pavement preferred in buffer, where possible;</li> <li>▪ In-/over-water structures shall be designed and located to minimize impacts from shading.</li> </ul>
City of Olympia	<b>150-250 feet</b> for “Important Riparian Areas,” which include designated portions of marine shoreline (Budd Inlet)	<ul style="list-style-type: none"> <li>▪ Allows buffer reductions (up to 25%) with biological assessment.</li> </ul>

**Tacoma CAPO Amendment – January 2008**  
**Summary of “Interrupted Buffer” Provisions – Other Jurisdictions**

<b>Jurisdiction</b>	<b>Application</b>	<b>“Interrupted Buffer” code language</b>
King County	Applies to wetland buffers; and “aquatic area” buffers which include marine shorelines and streams	<p>[WETLANDS]</p> <p>4. Where a legally established roadway transects a wetland buffer, the department may approve a modification of the minimum required buffer width to the edge of the roadway if the part of the buffer on the other side of the roadway sought to be reduced:</p> <ul style="list-style-type: none"> <li>a. does not provide additional protection of the proposed development or the wetland; and</li> <li>b. provides insignificant biological, geological or hydrological buffer functions relating to the other portion of the buffer adjacent to the wetland."</li> </ul> <p>[AQUATIC AREAS – Including marine shorelines and streams]</p> <p>The department may approve a modification of buffer widths if:</p> <p>.....</p> <p>4. A legally established roadway transects an aquatic area buffer, the roadway edge closest to aquatic area shall be the extent of the buffer, if the part of the buffer on the other side of the roadway provides insignificant biological or hydrological function in relation to the portion of the buffer adjacent to the aquatic area; ...</p>
City of Gig Harbor	Applies to wetland buffers	<p>I. Where a legally established developed roadway transects a wetland buffer, the director may approve a modification of the minimum required buffer width to the edge of the roadway if the part of the buffer on the other side of the road does not provide any buffer functions to protect the wetland in question.</p> <p>J. Where a legally established bulkhead transects a wetland buffer, the director may approve a modification of the minimum required buffer width as long as the biologic, hydrologic and water quality functions of the wetland are protected. This modification would be evaluated on a case-by-case basis and rely upon a sensitive areas study provided by a qualified biologist where it can be demonstrated that an equal or greater protection of the wetland would occur. Measures may include bioengineering of shoreline protection, revegetation with native species, or other shoreline or buffer enhancement measures.</p>
City of Des Moines	Applies to wetland and stream buffers (SMP applies same standard for marine buffers)	<p>Where a legally established and constructed street transects a wetland/stream buffer, the city manager or designee may approve a modification of the standard buffer width to the edge of the right-of-way if the isolated part of the buffer does not provide additional protection of the wetland/stream and provides insignificant biological, geological or hydrological buffer functions relating to the wetland/stream. If the resulting buffer distance is less than 50 percent of the standard buffer for the applicable wetland/stream category, no further reduction shall be allowed through buffer reduction or averaging.</p>

## 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 Allowed activities.
- 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 and activities.
- 13.11.230 Application types.
- 13.11.240 Legal tests.
- 13.11.250 Review process.
- 13.11.260 General Mitigation Requirements
- 13.11.270 Bonds
- ~~13.11.2680~~ Conditions, appeals, 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 Bonds.~~
- 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 FWHCA buffers
- 13.11.540 FWHCA buffer modifications
- 13.11.550 FWHCA mitigation requirements
- ~~13.11.5360~~ 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.
- 13.11.800 Aquifer recharge areas.
- 13.11.810 Classification.
- 13.11.820 Standards
- 13.11.900 Definitions.

#### 13.11.110 Purpose.

The purpose of this chapter is to protect the public health, safety, and welfare by establishing a regulatory scheme based on Best Available Science that classifies, protects, and preserves Tacoma's critical areas; by providing standards to manage development in association with these areas; and by designating some of these areas as environmentally sensitive in accordance with the State Environmental Policy Act (SEPA). Many critical areas provide a variety of valuable and beneficial biological and physical functions that benefit the City and its residents, while others may pose a threat to human safety, or to public and private property. (Ord. 27431 § 13; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

#### 13.11.120 Intent.

A. Critical areas include critical aquifer recharge areas, fish and wildlife habitat conservation areas (FWHCAs), flood hazard areas, geologically hazardous areas, stream corridors, wetlands, and any buffer zones. These critical areas serve many important ecological functions. Many of the critical areas in Tacoma have been lost or degraded through past development. Tacoma, as an urban growth area, is experiencing increasing growth and its land resource is diminishing. This increasing growth and diminishing land resource is creating pressure for the development of critical areas. New construction technology is also creating pressure on these sites by making development feasible on sites where it was formerly impractical to build.

B. Because of the ecological benefits of critical areas, their past destruction, and the increasing pressure to develop them, the intent of this chapter is to ensure that the City's remaining critical areas are preserved and protected and that development in or adjacent to these areas is managed. The preservation standards are provisions designed to protect critical areas from degradation caused by improper development. These criteria and standards will secure the public health, safety, and welfare by:

1. Protecting members of the public and public resources and facilities from injury, loss of life, or property damage due to landslides and steep slope failures, erosion, seismic events, volcanic eruptions, flooding or similar events;
2. Maintaining healthy, functioning ecosystems through the protection of ground and surface waters,

wetlands, and fish and wildlife and their habitats, and to conserve biodiversity of plant and animal species;

3. Preventing cumulative adverse impacts to water quality, streams, ~~fish and wildlife habitat conservation area~~FWHCAs, and wetlands including the prevention of net loss of wetlands.
4. Providing open space and aesthetic value;
5. Providing migratory pathways for fish and birds;
6. Giving special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries;
7. Providing unique urban wilds that serve as natural laboratories for schools and the general public;
8. Avoiding public expenditures to correct damaged or degraded critical ecosystems;
9. Alerting appraisers, assessors, owners, potential buyers, or lessees to the potential presence of a critical ecosystem and possible development limitations; and
10. Providing City officials with information, direction, and authority to protect ecosystems when evaluating development proposals. (Ord. 27431 § 14; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

### **13.11.130 Scope and applicability.**

A. The provisions of this chapter apply to all lands, all land uses and development activities, and all structures and facilities in the City, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the City. This chapter specifically applies to any activity which would destroy the natural vegetation; result in a significant change in critical habitat, water temperature, physical, or chemical characteristics; or alter natural contours and/or substantially alter existing patterns of tidal, sediment, or storm water flow on any land which meets the classification standards for any critical area defined herein. Such activities include excavation, grading, filling, the removal of vegetation, and the construction, exterior alteration, or enlargement of any building or structure. In addition, this chapter applies to all public or private actions, permits, and approvals in or adjacent to a critical area and its buffer, including, but not limited to, the following:

1. Building, demolition, clearing and grading, filling, special, storm water, and sanitary sewer permits, and local improvement districts;
2. Subdivisions and short plats;

3. Reclassifications, site plan approvals, shoreline substantial development permits, and special and conditional use permits and variances.

B. Review of development activities within the jurisdiction of waterward of the ordinary high water mark of any body of water regulated by the Shoreline Management Act, including Puget Sound, Wapato Lake, or any stream where the mean annual flow is 20 cubic feet per second or greater are regulated under provisions of ~~both this Chapter and Chapter 13.10 and do not require a separate critical area permit. For critical areas landward of the ordinary high water mark (OHWM) and within a shoreline district, review of a development activity shall occur during the Shoreline Permit review process and a separate critical areas permit is not required.~~ If there are any conflicts between Chapter 13.10, Shoreline Management, and Chapter 13.11, the most restrictive requirements shall apply.

C. Critical areas may be located through the use of information from the United States Department of Agriculture Natural Resource Conservation Service, the United States Geological Survey, the Washington Department of Ecology, the Coastal Zone Atlas, the Washington Department of Fish and Wildlife Priority Habitat and Species Stream maps, the Washington Department of Natural Resources Aquatic Lands Program, the National Wetlands Inventory maps, Tacoma topography maps, the City's Generalized Wetland and Critical Areas Inventory maps, and Pierce County Assessor's maps. The City's Generalized Wetland and Critical Areas Inventory maps and other above-listed sources are only guidelines available for reference. The actual location of critical areas must be determined on a site-by-site basis according to the classification criteria. (Ord. 27431 § 15; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

### **13.11.140 Exempted Activities.**

A. Exemption request and review process. A written request for an exemption may be required for review and concurrence by the Land Use Administrator. The exemption request shall include, but not be limited to a description of the specific activity and the section of the code that applies, and a description of the reasonable methods to avoid and minimize impact to the critical area.

B. Exempt activities and impacts to critical areas. All exempted activities shall use best management practices to avoid potential impacts to critical areas. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the responsible party's expense.

C. Exempt Activities. The following activities are exempt from the provisions of this Chapter, provided they are not prohibited by any other ordinance or law. The exemption request and review process will apply to all exemptions unless specifically stated otherwise.

1. Emergencies. Those activities necessary to prevent an immediate threat to public health, safety, or welfare or pose an immediate risk of damage to private property and that require remedial or preventative action in a timeframe too short to allow for normal processing. Emergency actions that create an impact to a critical area or its buffer shall use best management practices to address the emergency and, in addition, the action must have the least possible impact to the critical area or its buffer.

The person or agency undertaking such action shall notify the City within one (1) working day following the commencement of the emergency activity. The Land Use Administrator shall determine if the action taken was within the scope of an emergency action and following that determination, may require the action to be processed in accordance with all provisions of this chapter including the acquisition of appropriate permits within thirty (30) days of the impact. The emergency exemption may be rescinded at any time upon the determination by the Land Use Administrator that the action was not, or is no longer necessary.

After the emergency, the person or agency undertaking the action shall fully fund and conduct necessary mitigative actions including, but not limited to, restoration and rehabilitation or other appropriate mitigation for any impacts to the critical area and buffers resulting from the emergency action in accordance with an approved mitigation plan. All mitigation activities must take place within one (1) year following the emergency action and impact to the critical area, or within a timeframe approved by the Land Use Administrator and reflected within an approved schedule. Monitoring will be required as specified in the Wetland General Mitigation Requirements (Section 13.11.260) Procedures.

2. Utility operations and infrastructure maintenance and repair.

a. Maintenance and repair of legally existing roads, structures, or facilities used in the service of the public to provide transportation, electricity, gas, water, telephone, telegraph, telecommunication, sanitary sewer, or other services and the installation or construction within improved street rights-of-way of structures or facilities used to provide such services are exempt from the requirements of this chapter; provided a one-time application for such exemption is made to and approved by the Land Use Administrator. All work must be conducted using

best management practices and comply with applicable manuals for the action, including but not limited to, the current Regional Road Maintenance Manual. The Land Use Administrator may place conditions on any such one-time exemption.

b. The maintenance and repair of legally existing roads, structures, or facilities used in the service of the public to provide storm water services may occur without application to and approval by the Land Use Administrator provided such work is conducted using best management practices, and is in compliance with the current City Surface Water Management Manual.

c. Holding basins and detention ponds that are part of the municipality's storm water system are exempt from the provisions of this chapter when such holding basin and detention pond is controlled by an engineered outlet.

3. Any potential wetland area that does not meet the wetland definition as described within this Chapter is exempt from the provisions of this Chapter. Non-jurisdictional wetland determination may require a Wetland Assessment.

4. Isolated Category III or Category IV wetlands, which have been classified and identified as having a total cumulative area of less than 1,000 square feet, regardless of property lines are exempt from the provision of this Chapter provided they:

a. Are of low habitat function (less than 20 points in the Washington Wetlands Rating System for Western Washington).

b. Are not part of a mosaic wetland system.

c. Are not an associated wetland that is part of a riparian habitat area, and

d. Are not critical habitat to local populations of priority species.

5. Any public or private project designed to improve fish or wildlife habitat or fish passage that qualifies for a shoreline substantial development permit exemption pursuant to RCW 90.58.147, RCW 90.58.515, WAC 173-27-040(2)(o), or WAC 173-27-040(2)(p), shall also qualify for a similar exemption from the permit requirements of this chapter when the City has determined that the project is consistent with the requirements of this chapter and either of the following apply:

a. The project has been approved by the Washington Department of Fish and Wildlife; or

b. The project has received Hydraulic Project Approval by the Washington Department of Fish and Wildlife, pursuant to RCW 77.55.

The Land Use Administrator shall issue a decision regarding the consistency of the project with the provisions herein and shall provide it by letter to the applicant within 45 days of complete application. (A complete application shall include written approval by the Washington Department of Fish and Wildlife, pursuant to (a) or (b) above.) The decision will be accompanied by a 14-day appeal period.

6. Fish habitat enhancement projects that conform to the provision of RCW 77.55.290 are exempt from the procedural and substantive requirements of Chapter 13.11.

7. The removal of refuse, debris, sediment, vegetation or other items determined by the Land Use Administrator to be detrimental to the critical area may be removed upon approval of a written request. The removal of any item that requires restoration, rehabilitation or other appropriate mitigation of the critical area may require the action to be processed in accordance with all provisions of this chapter including the acquisition of appropriate permits.

8. Geotechnical investigation activities may be performed provided that an access plan, protection measures, best management practices, and restoration is utilized to protect and maintain the critical area where possible. The access plan, protection measures, best management practices and mitigative actions must be submitted to the Land Use Administrator for review and approval.

9. Reconstruction, remodeling, or maintenance of existing single-family residential structures and accessory structures that are located outside a flood hazard area and active landslide hazard area, provided that a one-time only expansion of the building footprint does not increase by more than 25 percent and that the new construction or related activity extends away from the critical area or related buffer as determined through a previous wetland/stream/FWHCA permit process. The exemption shall not apply to reconstruction which is proposed as a result of structural damage associated with a critical area, such as slope failure in a landslide hazard area or flooding in a flood hazard area. Expansion up to 25 percent may also occur in a direction parallel to the critical area or related buffer if the expansion takes place upon existing impervious surfaces. A Notice on Title must be recorded with the previously issued permit to be eligible for this exemption.

10. Reconstruction, remodeling, or maintenance of structures, other than single-family structures and accessory structures that are located outside a flood hazard area and active landslide hazard area, provided that such reconstruction, remodeling, or maintenance does not increase the footprint area nor

extend beyond the existing ground coverage toward a critical area as determined under a previously issued wetland/stream/FWHCA permit. The exemption shall not apply to reconstruction which is proposed as a result of site or structural damage associated with a critical area, such as slope failure in a landslide hazard area or flood hazard area. A Notice on Title must be recorded with the previously issued permit to be eligible for this exemption.

11. Interrupted wetland, ~~and~~ stream, and FWHCA buffers.

a. Where a legally established, pre-existing use of the buffer exists (~~such as a road or structure that extends into the regulated wetland buffer~~), those proposed activities that are within the wetland, ~~or~~ stream, or FWHCA buffer, but are separated from the critical area by an existing permanent substantial improvement, which serves to eliminate or greatly reduce the impact of the proposed activity upon the critical area are exempt provided that the detrimental impact to the critical area does not increase. However, if the impacts do increase, the Land Use Administrator shall determine if additional buffer may be required along the impact area of the interruption. ~~A substantial improvement may include, but is not limited to a paved area, dike, levee, developed public infrastructure (roads, and railroads, dikes, and levees) and or other permanent buildings structure.~~ Substantial improvements do not include paved trails, sidewalks, parking areas, bulkheads. An exemption request for an interrupted buffer may require a functional analysis report. In determining whether a functional analysis is necessary, the Land Use Administrator shall consider the hydrologic, geologic, and/or biological habitat connection potential and the extent and permanence of the interruption.

b. Where a legally established, pre-existing structure or use is located within a regulated wetland or stream buffer area and where the regulated buffer is fully paved and does not conform to the interrupted buffer provision above, the buffer will end at the edge of pavement, adjacent to the ~~critical area~~ wetland or stream. (Ord. 27431 § 16; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

### **13.11.150 Allowed Activities.**

A. The uses and activities listed below may be allowed on a site specific basis without a Wetland/Stream/FWHCA Assessment or ~~Wetland~~ Development Permit, after consideration by the Land Use Administrator, to the extent they are not prohibited by any other ordinance or law. The work shall be conducted using best management practices to ensure that flow, circulation patterns, and chemical and biological characteristics of the stream, or

wetland or FWHCA are not impaired. Any unavoidable adverse impact affecting a wetland, or stream, or FWHCA and associated buffer must be mitigated.

1. The preparation and recording of Conservation Deeds and Conservation Easements in order to promote the preservation of soil, water, vegetation, fish, shellfish and other wildlife are exempt from the provisions of this Chapter.

2. Passive recreational activities, educational activities and scientific research that do not have a detrimental effect within the critical area are allowed. Outdoor passive recreational activities include but are not limited to fishing, bird watching, walking or hiking trails and non-motorized boating. Construction of pedestrian trails may be allowed within the buffer of a wetland or stream, lake or pond subject to the following criteria:

- a. The trail is constructed of pervious material.
- b. The trail does not cross or alter any regulated drainage features or waters of the state.

3. Vegetation removal activities.

- a. English Ivy (*Hedera helix*) may be removed from plants on which it is adhered, provided that appropriate removal methods are used to preserve and protect the underlying vegetation. Removal may be conducted by hand or with light equipment.
- b. Hazard trees that pose a threat to public safety or an imminent risk of damage to private property may be removed provided that a report from a certified arborist is submitted to the Land Use Administrator for review and approval. The report must include removal techniques, procedures for protecting the surrounding critical area and replacement of native trees. Where possible, the cut portions of hazard trees are to be left within the critical area as a habitat tree such as a standing snag or downed woody debris. (Ord. 27431 § 17; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

### **13.11.160 Pre-existing uses/structures.**

A. An established use or existing structure that was lawfully permitted prior to adoption of this chapter, but which is not in compliance with this chapter, may continue subject to the provisions of Tacoma Municipal Code (TMC) Section 13.11.140 and Section 13.06.630. (Ord. 27431 § 18; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

B. Such uses or structures described in 13.11.160A can expand according to requirements of the underlying zone, provided:

(1) the expansion does not exceed 25% of the existing footprint and disturbance of the critical area or its buffer is otherwise compliant with other provisions of this Chapter; or

(2) the expansion of the structure does not exceed 50% of the market value of the existing structure.

### **13.11.170 Critical area designation and SEPA.**

A. Pursuant to WAC 197-11-908 and Section 13.12.908 of the TMC, aquifer recharge areas, fish and wildlife habitat conservation areas (FWHCAs), flood hazard areas, geologically hazard areas, wetlands, and streams are hereby designated as critical areas. These areas are mapped on Tacoma's Generalized Critical Areas Maps available in the Tacoma Economic Development Department or as defined by this chapter. The following SEPA categorical exemptions shall not apply within these areas, unless the changes or alterations are confined to the interior of an existing structure: Section 13.12.801 of the TMC and the following subsections of WAC 197-11-800(1)(b); (2)(d) excluding landscaping, (e), (f), and (g); (3); 24(a), (b), (c), and (d); and (25)(h).

B. The scope of environmental review of actions within critical areas shall be limited to: (a) documenting whether the proposal is consistent with the requirements of this chapter; and (b) evaluating potentially significant impacts on the critical area resources not adequately addressed by development regulations, if any, including any additional mitigation measures needed to protect the critical areas in order to achieve consistency with SEPA and other applicable environmental review laws. (Ord. 27431 § 19; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

### **13.11.180 Abrogation and greater restrictions.**

A. It is not intended that this chapter repeal, abrogate, or impair any existing regulations, easements, covenants, or deed restrictions. However, where this chapter imposes greater restrictions, provisions of this chapter shall prevail.

B. Where one site is classified as containing two or more critical areas, the project shall meet the minimum standards and requirements for each identified critical area set forth in this chapter. (Ord. 27431 § 20; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

**13.11.190 Severability.**

If any clause, sentence, paragraph, section, or part of this chapter or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any part thereof to any other person or circumstances, and to this end, the provisions of each clause, sentence, paragraph, section, or part of this chapter are hereby declared to be severable. (Ord. 27431 § 21; passed Nov. 15, 2005)

**13.11.200 Notice on title.**

In addition to provisions of Chapter 13.05, the owner of any property upon which approval under Title 13, Tacoma Municipal Code, or Chapter 2.02, Building Code, of the TMC, is sought with a critical area or critical area buffer verified on site through a wetland/stream/FWHCA or building permit, shall record with the Pierce County Auditor a notice of presence of the critical area and buffer. Such recording shall contain notice of the critical area and buffer and the applicability of this chapter to said property. Such notification shall be in a form as specified by the Public Works Department, Building and Land Use Services Division. The notice shall be notarized and the applicant must submit proof that the notice has been legally recorded before the final approval for development is issued. The notice shall run with the land and failure to record such notice shall be in violation of this chapter. (Ord. 27431 § 22; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

**13.11.210 Residential density credits.**

A. For residential development proposals on lands containing fish and wildlife habitat conservation areas (FWHCAs), erosion hazard areas, landslide hazard areas or steep slopes, the density that would have been allowed in the critical area and buffer but for the provisions of this chapter is generally transferred to the remainder of the site not in the critical area or buffer. For residential development proposals on lands containing wetland or stream buffers, the density that would have been allowed in the buffer but for the provisions of this chapter is generally transferred to the remainder of the site not in the critical area or buffer. For wetlands and streams, density credits do not apply to the portion of the site occupied by the critical area. The allowable number of dwelling units shall be determined using the following formula, table, 125 percent maximum density rule and setback provisions.

B. The formula for determining the number of dwelling units allowed after the application of density credits is as follows:

Dwelling units allowed on site = (CA x DC + DA)/MLS, where:

CA = Critical acreage: The amount of land on the project site which is located in the critical area and required buffer and in which no regulated activity is allowed. For wetlands, ~~and~~ streams, and FWHCAs the critical acreage only includes the amount of land which is located in the required buffer and in which no regulated activity is allowed.

DC = Density credit: The percentage of the density that would have been allowed in the critical area and/or required buffer but for the provisions of this chapter that is allowed to be transferred to the remainder of the site. The density credit is based on the percentage of the site in the critical area and/or buffer and is determined using the table in subsection C below.

DA = Developable acreage: The amount of land on the project site which is not located in the critical area or the required critical area buffer.

MLS = Minimum lot size: The minimum amount of land required for a dwelling unit in a specific zoning district.

C. Table of density credits.

**Percentage of Site in Density**

**Critical Area and/or Buffer Credit**

1 – 10%	100%
11 – 20%	90%
21 – 30%	80%
31 – 40%	70%
41 – 50%	60%
51 – 60%	50%
61 – 70%	40%
71 – 80%	30%
81 – 90%	20%
91 – 99%	10%

D. The 125 percent maximum density rule provides that the maximum number of dwelling units cannot exceed 125 percent of the allowed number of dwelling units without a density credit on the developable acreage of the site.

E. The setback requirements shall be the same as the setback requirements for Planned Residential Developments as provided in Section 13.06.140.

F. The density credits can only be transferred within the same development proposal site. (Ord. 27431



§ 23; passed Nov. 15, 2005: Ord. 27294 § 2; passed Nov. 16, 2004)

### 13.11.220 Regulated uses/activities.

Pursuant to the requirements of this chapter, a permit shall be obtained prior to undertaking any of the following activities within a wetland, stream, fish and wildlife habitat conservation area (FWHCA) or adjacent associated buffer:

- A. Filling, placing, or dumping any soil, loam, peat, sand, gravel, rock, chemical substance, refuse, trash, rubbish, debris, or dredge material;
- B. Excavating, dredging, or clearing any soil, loam, peat, sand, gravel, rock, vegetation, trees, or mineral substance;
- C. Discharge of hazardous substances, including, but not limited to heavy metals, pesticides, petroleum products, or secondary effluent;
- D. Any act which results in draining, flooding, or disturbing the water level or table;
- E. Alteration, construction, demolition, or reconstruction of a structure or infrastructure, including driving pilings or placing obstructions;
- F. Destroying or altering vegetation through clearing, harvesting, shading, pruning, or planting vegetation that would alter the character of the site; and
- G. Any act or use which would destroy natural vegetation; result in significant change in water level, water temperature, physical, or chemical characteristics of the wetland or stream; substantially alter the existing pattern of tidal flow, obstruct the flow of sediment, or alter the natural contours of a site. (Ord. 27431 § 24; passed Nov. 15, 2005: Ord. 27294 § 2; passed Nov. 16, 2004)

### 13.11.230 Application types.

A. This chapter allows three types of wetland/stream/fish and wildlife habitat conservation area (FWHCA) applications which result in the issuance of an appealable decision. After the appeal period expires, an approved decision becomes the official permit for each project, so a separate permit is not issued. The Land Use Administrator issues a decision for each type of application consistent with Chapter 13.05. All applications shall be consistent with the sections of this chapter, including provisions described below.

1. Assessment. An assessment decision may be issued verifying whether a regulated wetland, or stream or FWHCA exists on the subject site or within 300 feet or more of the subject site depending on the type of critical habitat or species. Applications must

contain all submittal requirements as specified in 13.11.250. In conjunction with the assessment process, the Land Use Administrator may require additional information on the physical, biological, and anthropogenic features that contribute to the existing ecological conditions and functions of the site prior to a decision being issued. This information may be required to determine whether a formal ~~wetland~~-assessment decision is required.

An assessment may also be issued exempting a project from a wetland/stream/FWHCA development permit if the applicant can demonstrate the following:

- a. No adverse impacts will occur to the wetland or stream or FWHCA and/or adjacent buffer zones;
- b. The proposed use or structure is located beyond the required buffer zones based upon wetland category; and
- c. Stormwater runoff will be appropriately analyzed to maintain existing flows to critical areas and additional stormwater runoff will discharge into an approved storm drainage system in accordance with 13.11.250 (h).

2. Wetland/Stream/FWHCA Delineation Verification. An applicant may request verification of a wetland, or stream, or FWHCA delineation without submitting plans for a specific project.

3. Wetland/Stream/FWHCA -Development Permit. A Wetland/Stream/FWHCA -Development decision will be issued where, in the opinion of the Land Use Administrator, the proposal may result in possible adverse impacts to the wetland, ~~or~~ stream, or FWHCA; or the applicant cannot meet the minimum buffer requirements as provided in Sections 13.11.320, ~~or~~ 13.11.420, or 13.11.530.

- a. The applicant must meet the requirements of one of three legal tests; No Practicable Alternatives, Public Interest or Extraordinary Hardship, and
- b. Provide mitigation as required in accordance with this Chapter. (Ord. 27431 § 25; passed Nov. 15, 2005: Ord. 27300 § 1; passed Dec. 14, 2004: Ord. 27294 § 2; passed Nov. 16, 2004:)

### 13.11.240 Legal Test(s).

A. No Practicable Alternatives. An alternative is considered practicable if the site is available and the project is capable of being done after taking into consideration cost, existing technology, infrastructure, and logistics in light of overall project purposes. No practicable alternatives need be considered if the applicant can demonstrate all of the following:

- 1. The project cannot be reasonably accomplished using one or more other sites in the general region

that would avoid or result in less adverse impacts to the wetland or stream or fish and wildlife habitat conservation area (FWHCA);

2. The goals of the project cannot be accomplished by a reduction in the size, scope, configuration or density as proposed, or by changing the design of the project in a way that would avoid or result in fewer adverse effects on the wetland or stream or FWHCA; and

3. In cases where the applicant has rejected alternatives to the project as proposed, due to constraints on the site such as inadequate zoning, infrastructure or parcel size, the applicant has attempted to remove or accommodate such constraints, unless the applicant can demonstrate that such attempt would be futile.

B. Extraordinary Hardship. An extraordinary hardship exists when the standards of this chapter deny all reasonable economic use of the property. To demonstrate extraordinary hardship, the applicant must demonstrate all of the following:

1. There is no reasonable economic use or value with less impact on the wetland or stream or FWHCA;

2. There are no feasible on-site alternatives to the proposed activity or use (e.g., reduction in density or use intensity, scope or size, change in timing, phasing or implementation, layout revision or other site planning considerations) that would allow reasonable economic use with less adverse impact;

3. The proposed activity or use will be mitigated to the maximum practical extent and result in minimum feasible alteration or impairment of functional characteristics of the site, including contours, vegetation, fish and wildlife habitat, groundwater, surface water and hydrological conditions;

4. The proposed activity or use complies with all local, state, and federal laws and will not jeopardize the continued existence of endangered, threatened, sensitive or priority habitat or species; and

5. The inability to derive reasonable economic use is not the result of any action, such as but not limited to, in segregating or dividing the property in a way that makes the property unable to be developed after the effective date of the ordinance codified in this chapter.

C. Public Interest. In determining whether a proposed use or activity in any wetland or stream or FWHCA is in the public interest, the public benefit of the proposal and the impact to the wetland or stream or FWHCA must be evaluated by the Land Use Administrator. The proposal is in the public interest if its benefit to the public exceeds its detrimental impact on the wetland or stream or FWHCA. In

comparing the proposal's public benefit and impact, the following should be considered:

1. The extent of the public need and benefit;

2. The extent and permanence of the beneficial or detrimental effects of the use or activity;

3. The quality and quantity of the wetland or stream or FWHCA that may be affected;

4. The economic or other value of the use or activity to the general area and public;

5. The ecological value of the wetland or stream or FWHCA;

6. Probable impact on public health and safety, fish, plants, and wildlife; and

7. The policies of the comprehensive plan. (Ord. 27431 § 26; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

### **13.11.250 Review Process.**

A. Overview. Application for an Assessment, Delineation Verification or Development Permit for wetlands, streams and ~~streams~~ fish and wildlife habitat conservation areas (FWHCAs) by one or more property owners or applicants shall be made in accordance with the provisions of Chapter 13.05 to the Public Works Department, Building and Land Use Services Division. The Building and Land Use Services Division may utilize information from the United States Department of Agriculture Natural Resource Conservation Service, the United States Geological Survey, the Washington Department of Ecology, the Coastal Zone Atlas, the Washington Department of Fish and Wildlife stream maps and Priority Habitat and Species maps, Washington DNR Aquatic Lands maps, the National Wetlands Inventory maps, Tacoma topography maps, the City's Generalized Wetland and Critical Areas Inventory maps, and Pierce County Assessor's maps to establish general locations and/or verify the location of any wetland, or stream, or FWHCA site. The City's Generalized Wetland and Critical Area Inventory maps and other above-listed sources are only guidelines available for reference. The actual location of critical areas must be determined on a site-by-site basis according to the classification criteria.

B. Preparation by a qualified ~~wetland specialist~~ professional wetland specialist. A wetland delineation or fish and wildlife habitat or stream report shall be prepared by a qualified ~~wetland specialist~~ professional as specified in 13.11.900 ~~Q~~.

C. Application Submittal Requirements:

1. Applications for all types of permit decisions shall contain the following information with the exception that an applicant who is only requesting a wetland delineation verification is not required to submit information concerning a specific development project. A written report shall be submitted and the Land Use Administrator shall review all information submitted as to its validity and may reject it as incomplete or incorrect.

a. A Joint Aquatic Resource Permit Application including, but not limited to, the name and contact information of the applicant, the name, qualifications, and contact information for the primary author(s) of the Wetland/Stream/FWHCA -Delineation report, a description of the proposal, and identification of all the local, state and/or federal wetland related permit(s) required for the project, and a vicinity map for the project;

b. A surveyed site plan with an accompanying legal description of the delineated wetland/FWHCA boundary or the stream's ordinary high water mark and an electronic copy of the data;

c. Documentation of any fieldwork performed on the site, including field data sheets for delineations, functional assessments, baseline hydrologic data, etc. Wetland Delineations shall be prepared according to the currently adopted Department of Ecology, Washington State Wetlands Identification and Delineation Manual; FWHCA Delineations and ordinary high water mark shall be prepared according to professional standards.

d. A description of the methodologies used to conduct the ~~wetland~~ delineations, functional assessments, or impact analyses including references;

e. Identification and characterization of all critical areas, wetlands, water bodies, shorelines, floodplains and buffers on or adjacent to the proposed project area. For areas off-site of the project site, estimate conditions within 300 feet of the project boundaries, or more, if specified by agency guidelines, using best available information. In the event of conflicts regarding information in the delineation report, the Land Use Administrator may, at the applicant's expense, obtain competent expert services to verify information and establish a final delineation;

f. For each wetland/stream/FWHCA identified on-site and within 300 feet of the project site, or more if specified by agency guidelines, provide the wetland rating, stream type or FWHCA type per the provisions of the Title, required buffers, hydrogeomorphic classification, wetland or FWHCA acreage based on a professional survey from the field delineation (acreages for on-site portion and entire wetland/FWHCA area including off-site portions); For wetlands provide the Cowardin classification of

vegetation communities including vegetation characterization, habitat elements, soil conditions based on site assessment, soil information, and to the extent possible, hydrologic information such as location of inlet/outlets (if they can be legally accessed), estimate water depths within the wetland, estimated hydro-period patterns based on visual cues (e.g., algal mats, drift lines, flood debris, etc.). Provide square foot estimates, classifications, and ratings based on entire wetland complexes, not only the portion present on the proposed project site;

g. The written report shall contain a discussion of the potential direct and indirect physical and biological impacts to the wetland(s), stream(s), FWHCA(s) and associated impacts with anticipated hydro period alterations from the project;

h. A hydrologic study for the wetland or stream identifying the contributing basin and demonstrating that pre and post development flows will be maintained;

i. Shall demonstrate that all runoff from pollution generating surfaces discharging to wetlands or stream or FWHCA shall receive water quality treatment in accordance with the current City's Surface Water Management Manual. Water quality treatment is required for all sites irrespective of the thresholds established in this Manual; and

j. A description of the proposed actions including an estimation of square footage of impacts to wetland and buffers based on the field delineation and survey, and an analysis of site development alternatives including a no development alternative.

2. A copy of the site plan sheet(s) for the project must be included with the written report and must include, at a minimum:

a. Maps to scale depicting delineated and surveyed wetland, stream and required buffers on-site, including buffers for off-site critical areas that extend onto the project site; the development proposal; other critical areas; grading and clearing limits; and areas of proposed impacts to wetland(s), stream(s) and buffer(s), (include square footage estimates);

b. A depiction of the proposed stormwater management facilities and outlets (to scale) for the development, including estimated areas of intrusion into the buffers of any critical areas;

c. Two-foot contours, terrain, and drainage-flow, significantly vegetated areas, specific location and species name of trees/shrubs with => 6-inch caliper, existing site improvements/structures (calculate square feet and percentage of coverage/impervious surfaces), existing grading, drainage control facilities (natural and artificial), and existing utilities above and below ground; and

d. The specifications of all proposed draining, excavation, filling, grading or dredging, including exact locations, amounts and methods, control facilities and utilities.

3. For Wetland/Stream/FWHCA Development Permits, the additional following information is required.

a. A description of reasonable efforts made to apply mitigation sequencing pursuant to Section 13.11.260.D, Mitigation Sequencing, to avoid, minimize, and mitigate impacts to critical areas;

b. A mitigation plan for impacts associated with actions contained within a development permit application. The mitigation plan must be in conformance with the General Mitigation Requirements under Section 13.11.350260 and the mitigation requirements specified under each critical area 13.11.450 Mitigation Requirements;

c. Identification of which test(s) the applicant believes applies for a Development Permit application, an explanation of why the applicant believes it applies and an analysis of how the applicant intends to meet the requirements of the test(s);

d. Assessment and documentation of the FWHCA's, wetland's or stream's functional characteristics, along with its ecological, aesthetic, economic, and other values. Evaluation of functions for the FWHCA, wetland or stream and adjacent buffer using a functions assessment method recognized by local or state agency staff and including the reference for the method and all data sheets;

e. An assessment of the probable cumulative impacts to the FWHCAs, wetlands, streams and buffers resulting from the proposed development;

f. Study of potential flood, erosion or other hazards on the site and provisions for protective measures that might be taken to reduce such hazards as required by the Land Use Administrator;

g. Any other information deemed necessary to verify compliance with the provisions of this chapter; and

h. A Construction Stormwater Pollution Prevention Plan shall be submitted by the applicant in accordance with the current City's Surface Water Management Manual. (Ord. 27431 § 27; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

*[Section 13.11.260 and 270, below are the relocated, mitigation and bonds section with modifications that were previously in the Wetlands section.]*

### **13.11.260 General Mitigation Requirements**

A. The applicant shall avoid all impacts that degrade the functions and values of critical areas wetland and their buffers. Unless otherwise provided in this Title, if alteration to the a wetland, stream, FWHCA, or its buffer is unavoidable, all adverse impacts resulting from a development proposal or alteration shall be mitigated using the best available science, so as to result in no net loss of critical area functions and values.

B. Mitigation shall be in-kind and on-site, when possible, and sufficient to maintain the functions and values of the critical area wetland.

C. Mitigation shall not be implemented until after permit approval of the Land Use Administrator and shall be in accordance with all reports and representations made therein.

D. Mitigation Sequencing. When an alteration to a critical area or its buffer is proposed, such alteration shall be avoided, minimized, or compensated for in the following order of preference.

1. Avoiding the impact altogether by not taking a certain action or parts of an action.

2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.

3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

4. Reducing or eliminating the impact over time by preservation and maintenance operations.

5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments.

6. Monitoring the required mitigation and taking remedial action where necessary.

E. Mitigation for Lost or Affected Functions. Compensatory mitigation shall address the functions affected by the proposed project or alteration to achieve functional equivalency or improvement and shall provide similar critical area wetland functions as those lost, except when:

1. The lost critical area or buffer wetland provides minimal functions as determined by a site-specific functional assessment, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal

Washington state watershed assessment plan or protocol; or

2. Out of kind replacement of wetland, stream or FWHCA type or functions will best meet watershed goals formally identified by the City, such as replacement of historically diminished critical areas.

GF. Type and Location of Mitigation. Unless it is demonstrated that a higher level of ecological functioning would result from an alternative approach, compensatory mitigation for ecological functions shall be either in-kind and on-site, or in-kind and within the same stream reach, subbasin, or drift cell (if estuarine wetlands are impacted). Mitigation action shall be conducted within the same sub-drainage basin and on the site of the alteration except when all of the following apply:

1. There are no reasonable on-site or in subdrainage basin opportunities (e.g. on-site options would require elimination of high functioning upland habitat), or on-site and in subdrainage basin opportunities do not have a high likelihood of success based on a determination of the natural capacity of the site to compensate for impacts. Considerations should include: anticipated wetland/stream/FWHCA mitigation ratios, buffer conditions and proposed widths, available water to maintain anticipated hydrogeomorphic classes of wetlands, or streams when restored, proposed flood storage capacity, potential to mitigate riparian fish and wildlife impacts (such as connectivity);

2. Off-site mitigation has a greater likelihood of providing equal or improved critical area wetland functions than the impacted critical area wetland; and

3. Off-site locations shall be in the same sub-drainage basin unless established watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the City and strongly justify location of mitigation at another site.

HG. Timing of Compensatory Mitigation. It is preferred that compensation projects will be completed prior to activities that will disturb the on-site critical area. If not completed prior to disturbance, compensatory mitigation shall be completed immediately following the disturbance and prior to the issuance of final certificate of occupancy. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.

The Land Use Administrator may authorize a one-time temporary delay in completing construction or installation of the compensatory mitigation when the applicant provides a written explanation from a

qualified ~~or wildlife~~ professional as to the rationale for the delay (i.e. seasonal planting requirements, fisheries window).

JH. ~~Wetland~~Critical Area Enhancement as Mitigation. Impacts to critical area ~~wetland~~ functions may be mitigated by enhancement of existing significantly degraded ~~wetland~~critical areas, but should be used in conjunction with restoration and/or creation where possible. Applicants proposing to enhance critical areas or their buffers ~~wetlands~~ must include in a report how the enhancement will increase the functions of the degraded critical area or buffer ~~wetland~~ and how this increase will adequately mitigate for the loss of ~~wetland~~critical area and function at the impact site. An enhancement proposal must also show whether any existing ~~wetland~~critical area functions will be reduced by the enhancement action.

KI. Innovative ~~Wetland~~ Mitigation. The Land Use Administrator may approve innovative mitigation projects that are based on best available science including but not limited to activities such as advance mitigation and preferred environmental alternatives. The Land Use Administrator shall consider the following for approval of an innovative mitigation proposal:

1. Creation or enhancement of a larger system of natural areas and open space is preferable to the preservation of many individual habitat areas;

2. The applicant demonstrates that long-term protection and management of the habitat area will be provided;

3. There is clear potential for success of the proposed mitigation at the proposed mitigation site;

4. Mitigation according to the mitigation sequencing section of the code is not feasible due to site constraints such as parcel size, stream type, wetland category, or excessive costs;

5. ~~a~~A wetland of a different type is justified based on regional needs or functions and values;

6. The replacement ratios are not reduced or eliminated; unless the reduction results in a preferred environmental alternative; and

67. Public entity cooperative preservation agreements such as conservation easements.

7. ~~Public entity cooperative preservation agreements such as conservation easements.~~

J. Mitigation Plan Requirements.

1. Compensatory mitigation shall be provided for all unavoidable adverse alterations to a critical area or buffer. A mitigation plan shall be consistent with best

available science. The intent of these provisions is to require a level of technical study and analysis sufficient to protect critical areas and/or protect developments and occupants from critical areas involving hazards. The analysis shall be commensurate with the value or sensitivity of a particular critical area and relative to the scale and potential impacts of the proposed activity.

2. The mitigation plan shall provide for construction, maintenance, monitoring, and contingencies as required by conditions of approval and consistent with the requirements of this chapter.

3. The mitigation plan shall be prepared by a qualified professional; provided, that the Land Use Administrator may waive the requirement to hire a qualified professional to prepare a mitigation plan when the required mitigation involves standard planting or enhancement practices. The waiver shall not be granted for mitigation practices involving wetland-critical area creation, rehabilitation and/or restoration.

4. The mitigation plan shall contain the following information:

a. A description and scaled drawings of the activities proposed to reduce risks associated with geologic hazards and/or flooding, and/or to mitigate for impacts to critical area functions and values. This shall include all clearing, grading/excavation, drainage alterations, planting, invasive weed management, installation of habitat structures, irrigation, and other site treatments associated with the development activities.

b. Specific information on construction or the proposed mitigation activity including timing, sequence, equipment needs, and best management practices.

c. A description of the functions and values that the proposed mitigation area(s) shall provide, and/or a description of the level of hazard mitigation provided.

d. The goals, objectives, and performance standards that the proposed mitigation action(s) shall achieve.

e. A description of how the mitigation area(s) will be evaluated and monitored to determine if the performance standards are being met.

f. A program and schedule for construction and postconstruction monitoring of the mitigation project.

g. An evaluation of potential adverse impacts on adjacent property owners resulting from the proposed mitigation and measures to address such impacts. Mitigation projects shall not result in adverse impacts to adjacent property owners.

h. Identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates that project performance standards are not being met.

i. Plan sheets showing the edge of the critical area and buffer area. The affected area shall be clearly staked, flagged, and/or fenced prior to and during any site clearing and construction to ensure protection for the critical area and buffer during construction.

j. A description of other permits and approvals being sought, including the need for permits from state and/or federal agencies.

k. Additional information as required by the subsequent articles of this chapter.

### **13.11.270 Bonds.**

Performance and Monitoring and Maintenance Bonds shall be posted prior to issuance of any development permits including but not limited to clearing and grading permits and building permits.

A. Performance Bonds. Except for public agencies, applicants receiving a permit involving compensation for mitigation are required to post a cash performance bond or other acceptable security to guarantee compliance with this chapter prior to beginning any site work. The surety shall guarantee that work and materials used in construction are free from defects. All bonds shall be approved by the City Attorney. The surety or bonds cannot be terminated or cancelled without written approval. The Land Use Administrator shall release the bond after documented proof that all structures and improvements have been shown to meet the requirements of this chapter.

B. Monitoring and Maintenance Bonds. Except for public agencies, an applicant shall be required to post a cash maintenance bond or other acceptable security guaranteeing that structures and improvements required by this chapter will perform satisfactorily for a minimum of five years after they have been

constructed and approved. The value of the bond shall be based on the average or median of three contract bids that establish all costs of compensation, including costs relative to performance, monitoring, maintenance, and provision for contingency plans. The amount of the bond shall be set at 150 percent of the average expected cost of the compensation project. All bonds shall be on a form approved by the City Attorney. Without written release, the bond cannot be cancelled or terminated. The Land Use Administrator shall release the bond after determination that the performance standards established for measuring the effectiveness and success of the project have been met. (Ord. 27431 § 35; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

### **13.11.2680 Conditions, 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, ~~or wetland, or~~ FWHCA or restoration of a damaged or degraded

stream corridor, ~~or wetland, or~~ FWHCA to compensate for adverse impacts;

12. Permanent Signs ~~shall~~ may be required on each lot or FWHCA, wetland, stream or natural area tract, ~~affected by a wetland, stream or their buffer~~ 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 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. (Ord. 27431 § 28; passed Nov. 15, 2005; Ord. 27300 § 2; passed Dec. 14, 2004; Ord. 27294 § 2; passed Nov. 16, 2004)

### **13.11.300 Wetlands.**

The 300 section contains the regulations for wetlands, including the following:

- 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 Bonds

(Ord. 27431 § 29; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

#### **13.11.310 Wetland classification.**

A. Wetlands shall be classified Category I, II, III, and IV, in accordance with the criteria from the revised Washington State Wetlands Rating System for Western Washington developed by the Washington Department of Ecology, Publication Number 04-06-025, August 2004.

1. Category I wetlands are those that 1) represent a unique or rare wetland type; or 2) are more sensitive to disturbance than most wetlands; or 3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or 4) provide a high level of functions.

Category I wetlands include the following types of wetlands: Estuarine wetlands, Natural Heritage wetlands, Bogs, Mature and Old-growth Forested wetlands; wetlands in Coastal Lagoons; wetlands that perform many functions very well and that score 70 or more points in the Washington Wetlands Rating System for Western Washington.

2. Category II wetlands are those that are difficult to replace, and provide high levels of some functions. These wetlands occur more commonly than Category I wetlands, but still need a relatively high level of protection.

Category II wetlands include the following types of wetlands: Estuarine wetlands, Interdunal wetlands, and wetlands that perform functions well and score between 51-69 points.

3. Category III wetlands are those that perform functions moderately well and score between 30-50 points, and interdunal wetlands between 0.1 and 1 acre in size. These wetlands have generally been disturbed in some way and are often less diverse or



more isolated from other natural resources in the landscape than Category II.

4. Category IV wetlands are those that have the lowest levels of functions (less than 30 points) and are often heavily disturbed. These are wetlands that may be replaced, and in some cases may be improved.

5. In addition, wetlands that require special protection and are not included in the general rating system shall be rated according to the guidelines for the specific characteristic being evaluated. The special characteristics that should be taken into consideration are as follows:

- a. The wetland has been documented as a habitat for any Federally listed Threatened or Endangered plant or animal species. In this case, “documented” means the wetland is on the appropriate state or federal database.
- b. The wetland has been documented as a habitat for State listed Threatened or Endangered plant or animal species. In this case “documented” means the wetland is on the appropriate state database.
- c. The wetland contains individuals of Priority Species listed by the WDFW for the State.
- d. The wetland has been identified as a Wetlands of Local Significance. (Ord. 27431 § 30; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

**13.11.320 Wetland buffers.**

A. General. A buffer area shall be provided for all uses and activities adjacent to a wetland area to protect the integrity, function, and value of the wetland. Buffers adjacent to wetlands are important because they help to stabilize soils, prevent erosion, act as filters for pollutants, enhance wildlife diversity, and support and protect plants and wildlife. A permit may be granted if it has been demonstrated that no adverse impact to a wetland will occur and a minimum buffer width will be provided in accordance with this section. The buffer shall be measured horizontally from the delineated edge of the wetland. The buffer shall be vegetated with the exception of areas that include development interruptions as described within this chapter.

**B. Minimum Requirement.**

1. Wetlands. Wetland buffer widths shall be established according to the following tables which are based on wetland classification, habitat function, land use intensity, and local significance:

**Table 1. Land use impact “intensity” based on development types**

<b>Table 1. Land use impact “intensity” based on development types</b>	
<b>Rating of impact from proposed changes in land use</b>	<b>Land Use Types</b>
High	Commercial, Urban, Industrial, Institutional, Retail Sales, Residential with more than 1 unit/acre, new agriculture (high intensity processing such as dairies, nurseries and green houses, raising and harvesting crops requiring annual tilling, raising and maintaining animals), high intensity recreation (golf courses, ball fields), hobby farms
Moderate	Residential with less than or equal to 1 unit/acre, moderate intensity open space (parks), new agriculture (moderate intensity such as orchards and hay fields)
Low	Forestry, open space (low-intensity such as passive recreation and natural resources preservation)

<b>Table 2. Examples to minimize disturbance*</b>		
<b><u>Disturbance element</u></b>	<b><u>Minimum measures to minimize impacts</u></b>	<b><u>Activities that may cause the disturbance</u></b>
Lights	Direct lights away from wetland	Parking Lots, Warehouses, Manufacturing, High Density Residential
Noise	Place activity that generates noise away from the wetland	Manufacturing, High Density Residential
Toxic runoff	Route all new untreated runoff away from wetland,  Covenants limiting use of pesticides within 150 feet of wetland	Parking Lots, Roads, Manufacturing, residential Areas, Application of Agricultural Pesticides, Landscaping
Change in water regime	Infiltrate or treat, detain and disperse into buffer new runoff from surface	Any impermeable surface, lawns, tilling

Pets and Human disturbance	Fence around buffer,  Plant buffer with “impenetrable” natural vegetation appropriate for region	Residential areas
Dust	Best Management Practices for dust	Tilled fields

\*Washington State Department of Ecology and Washington State Department of Fish and Wildlife’s Wetlands in Washington State; Volume 2: Guidance for Protecting and Managing Wetlands, Buffer Alternative 3

Wetland Characteristics	Buffer Widths by Impact of Land Use (feet)	Other Measures Recommended for Protection
Natural Heritage Wetlands	Low - 125  Moderate – 190  High – 250	No additional discharges of surface water.  No septic systems within 300 feet.  Restore degraded parts of the buffer.
Bogs	Low – 125  Moderate – 190  High – 250	No additional surface discharges.  Restore degraded parts of the buffer.
Forested	Low – 150  Moderate – 225  High - 300	If forested wetland scores high for habitat, need to maintain connectivity to other natural areas.  Restore degraded parts of the buffer.
Estuarine	Low – 100  Moderate – 150  High – 200	N/A

Wetlands in Coastal Lagoons	Low – 100  Moderate – 150  High – 200	N/A
High level of function for habitat (score for habitat 29-36 pts.)	Low – 150  Moderate – 225  High – 300	Maintain connectivity to other natural areas.  Restore degraded parts of the buffer.
Moderate level of function for habitat (score for habitat 20-28 pts.)	Low – 75  Moderate – 110  High – 150	N/A
High level of function for water quality improvement (24-32 pts.) and low for habitat (less than 20 pts)	Low – 50  Moderate – 75  High – 100	No additional discharges of untreated runoff.
Not meeting any criteria above	Low – 50  Moderate – 75  High – 100	N/A

\*Washington State Department of Ecology and Washington State Department of Fish and Wildlife’s Wetlands in Washington State; Volume 2: Guidance for Protecting and Managing Wetlands, Buffer Alternative 3

Wetland Characteristics	Buffer Widths by Impact of Land Use (feet)	Other Measures Recommended for Protection
High level of function for habitat (score for habitat 29-36 pts.)	Low – 150  Moderate – 225  High – 300	Maintain connectivity to other natural resources
Moderate level of function for habitat (score for habitat 20-28 pts.)	Low – 75  Moderate – 110  High – 150	N/A

<b>Table 4. Buffer width for category II wetlands located within a Habitat Zone*</b>		
High level of function for water quality improvement and low for habitat (score for water quality 24-32 pts.; habitat less than 20 pts.)	Low – 50 Moderate – 75 High – 100	No additional discharges of untreated runoff
Estuarine	Low – 75 Moderate – 110 High – 150	N/A
Interdunal	Low – 75 Moderate – 110 High – 150	N/A.
Not meeting any criteria above	Low – 50 Moderate – 75 High – 100	N/A

\*Washington State Department of Ecology and Washington State Department of Fish and Wildlife’s Wetlands in Washington State; Volume 2: Guidance for Protecting and Managing Wetlands, Buffer Alternative 3

<b>Table 5. Buffer width for category III wetlands located within a Habitat Zone*</b>		
<b>Wetland Characteristics</b>	<b>Buffer Widths by Impact of Land Use (feet)</b>	<b>Other Measures Recommended for Protection</b>
Moderate level of function for habitat (score for habitat 20-28 points)	Low – 75 Moderate – 110 High – 150	N/A
Not meeting the above criteria	Low – 40 Moderate – 60 High – 80	N/A

\*Washington State Department of Ecology and Washington State Department of Fish and Wildlife’s Wetlands in Washington State; Volume 2: Guidance for Protecting and Managing Wetlands, Buffer Alternative 3

<b>Table 6. Buffer width for category IV wetlands located within a Habitat Zone*</b>		
<b>Wetland Characteristics</b>	<b>Buffer Widths by Impact of Land Use (feet)</b>	<b>Other Measures Recommended for Protection</b>

Score for functions less than 30 pts.	Low –25 Moderate –40 High –50	N/A.
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\*Washington State Department of Ecology and Washington State Department of Fish and Wildlife’s Wetlands in Washington State; Volume 2: Guidance for Protecting and Managing Wetlands, Buffer Alternative 3

<b>Table 7. Buffer width for all wetlands outside the perimeter of a Habitat Zone*</b>	
<b>Wetland Category</b>	<b>Buffer Width (feet)</b>
<b>Category I</b>	<b>200</b>
<b>Category II</b>	<b>100</b>
<b>Category III</b>	<b>75</b>
<b>Category IV</b>	<b>50</b>

\*Best Available Science Review, City of Tacoma, Critical Areas Preservation Ordinance, Tacoma, Washington, June 15, 2004, prepared by GeoEngineers

<b>Table 8. Wetlands of local significance*</b>	
<b>Site</b>	<b>Buffers (feet)</b>
Snake Lake	300
China Lake	300
Delong Park	300
Wapato Lake	300
McKinley Park	300

\*Best Available Science Review Recommendation from City of Tacoma Critical Areas Task Force June 2004

(Ord. 27431 § 31; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

### 13.11.330 Wetland Buffer Modifications.

A. Buffer Reduction. Buffer reduction does not apply to Table “7”, unless the reduction of the buffer is the result of a No Practicable Alternatives legal test or the Extraordinary Hardship legal test.

Buffer widths that are recommended for land uses with high intensity impacts to wetlands can be reduced to those widths recommended for moderate intensity impacts if the following criteria are met:

1. Wetlands that score moderate or high for habitat (20 points or more). The width of the buffer around the wetland can be reduced if both of the following criteria are met;

a. A relatively undisturbed vegetated corridor at least 100 feet wide is protected between the wetland and any other Priority Habitats as defined by the Washington State Department of Fish and Wildlife. The corridor must be protected for the entire distance between the wetland and the Priority Habitat via

some type of legal protection such as a conservation easement; and

b. Measures to minimize the impacts identified in Table “2” are applied.

2. Wetlands that score less than 20 points for habitat. The buffer width can be reduced to that required for moderate land use impacts if measures to minimize the impacts identified in Table “2” are applied.

#### B. Buffer Averaging.

The widths of buffers may be averaged if this will improve the protection of wetland functions, or if it is the only way to allow for use of the parcel. Averaging may not be used in conjunction with the provisions for reductions in buffers listed above.

1. Averaging to improve wetland protection may be permitted when all of the following conditions are met:

a. The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a dual-rated wetland with a Category I area adjacent to a lower rated area, and

b. The buffer is increased adjacent to the high-functioning area of habitat or more sensitive portion of the wetland and decreased adjacent to the lower-functioning or less sensitive portion; and

c. The total area of the buffer after averaging is equal to the area required without averaging; and

d. The buffer at its narrowest point is never less than  $\frac{3}{4}$  of the standard width.

2. Averaging to allow a reasonable use of a legal lot of record may be permitted when all of the following are met:

a. There are no feasible alternatives to the site design that could be accomplished without buffer averaging; and

b. The averaged buffer will not result in degradation of the wetland’s functions and values as demonstrated by a report from a qualified wetland expert;

c. The total area of the buffer after averaging is equal to the area required without averaging; and

d. The buffer at its narrowest point is never less than  $\frac{3}{4}$  of the standard width.

C. Buffer Increases. The widths of the buffers may be required to be increased if the following conditions are found on the subject site.

1. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with non-native species that do not perform needed functions, the buffer must either be planted to create the appropriate plant community or the buffer must be widened to the maximum buffer for the land use intensity to ensure that adequate functions in the buffer are provided.

2. If the buffer for a wetland is based on the score for water quality, rather than habitat, then the buffer should be increased by 50% if the slope is greater than 30% (a 3-foot rise for every 10 feet of horizontal distance).

3. If the wetland provides habitat for a particularly sensitive species (such as threatened or endangered species), the buffer must be increased to provide adequate protection for the species based on its particular life history needs as required by the Washington State Department of Fish and Wildlife. (Ord. 27431 § 32; passed Nov. 15, 2005)

#### 13.11.340. Wetland Standards.

A. General permit standards. The Land Use Administrator shall issue wetland or stream development permits in accordance with the wetland or stream classification. No regulated activity or use shall be permitted within a wetland or stream corridor without prior approval and without meeting the provisions of this section. A permit for development in or adjacent to wetlands or stream corridors shall only be granted if it has been demonstrated that the permit, as conditioned, is consistent with the provisions of this chapter and provided:

1. The applicant has taken appropriate action to first, avoid adverse impacts, then minimize impacts and finally, compensate or mitigate for unavoidable impacts;

2. The result of the proposed activity is no net loss of wetland functions;

3. The existence of plant or wildlife species appearing on the federal or state endangered or threatened species list will not be jeopardized;

4. The proposal will not lead to significant degradation of groundwater or surface water quality; and

5. The proposal complies with the remaining standards of this chapter, which include those pertaining to wetland compensation and the provision of bonds.

B. Low-impact uses and activities consistent with the stream or wetland buffer function may be permitted within a buffer that has not been reduced depending upon the sensitivity of wetland and intensity of activity or use. These may include pedestrian trails,

viewing platforms, utility easements and storm water management facilities such as grass-lined swales that are used to sustain existing hydrologic functions of the critical area.

C. Yard Reduction. In order to accommodate for the required buffer zone, the Land Use Administrator may reduce the front and/or rear yard set-back requirements on individual lots. The front and/or rear yard shall not be reduced by more than 50 percent. In determining whether or not to allow the yard reduction, the Land Use Administrator shall consider the impacts of the reduction on adjacent land uses.

D. As an incentive, the buffer area between a wetland or stream and regulated activity may be reduced or averaged, not less than ¾ of its standard regulated buffer width, depending upon the intensity of use and the wetland category or stream type, if the wetland or stream and its buffer area are dedicated to the public by deeding the property to the City, with City approval. (Ord. 27431 § 33; passed Nov. 15, 2005)

[Moved portions of Section 13.11.350 to 13.11.260]

### **13.11.350 Wetland Mitigation Requirements.**

A. The applicant shall avoid all impacts that degrade the functions and values of wetland and their buffers. Unless otherwise provided in this Title, if alteration to the wetland or its buffer is unavoidable, all adverse impacts resulting from a development proposal or alteration shall be mitigated using the best available science, so as to result in no net loss of critical area functions and values.

B. All wetland mitigation will comply with applicable mitigation requirements specified in 13.11.260 and 13.11.270, including, but not be limited to, mitigation plan requirements, monitoring and bonding.

~~B. Mitigation shall be in-kind and on-site, when possible, and sufficient to maintain the functions and values of the wetland.~~

~~C. Mitigation shall not be implemented until after permit approval of the Land Use Administrator and shall be in accordance with all reports and representations made therein.~~

#### ~~D. Mitigation Sequencing~~

~~1. Avoiding the impact altogether by not taking a certain action or parts of an action.~~

~~2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.~~

~~3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.~~

~~4. Reducing or eliminating the impact over time by preservation and maintenance operations.~~

~~5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments.~~

~~6. Monitoring the required mitigation and taking remedial action where necessary.~~

#### ~~E. Mitigation for Lost or Affected Functions.~~

~~Compensatory mitigation shall address the functions affected by the proposed project or alteration to achieve functional equivalency or improvement and shall provide similar wetland functions as those lost, except when:~~

~~1. The lost wetland provides minimal functions as determined by a site specific functional assessment, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington state watershed assessment plan or protocol; or~~

~~2. Out of kind replacement of wetland type or functions will best meet watershed goals formally identified by the City, such as replacement of historically diminished wetlands.~~

~~FC. Preference of Mitigation Actions. Methods to achieve compensation for wetland functions shall be approached in the following order of preference:~~

~~1. Restoration (re-establishment and rehabilitation) of wetlands on upland sites that were formerly wetlands.~~

~~2. Creation (Establishment) of wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of non-native introduced species. This should only be attempted when there is an adequate source of water and it can be shown that the surface and subsurface hydrologic regime is conducive for the wetland community that is being designed.~~

~~3. Enhancement of significantly degraded wetlands in combination with restoration or creation. Such enhancement should be part of a mitigation package that includes replacing the impacted area and meeting appropriate ratio requirements.~~

~~G. Type and Location of Mitigation. Unless it is demonstrated that a higher level of ecological functioning would result from an alternative approach, compensatory mitigation for ecological functions shall be either in-kind and on-site, or in-~~

kind and within the same stream reach, subbasin, or drift cell (if estuarine wetlands are impacted). Mitigation action shall be conducted within the same sub-drainage basin and on the site of the alteration except when all of the following apply:

1. There are no reasonable on-site or in subdrainage basin opportunities (e.g. on-site options would require elimination of high-functioning upland habitat), or on-site and in subdrainage basin opportunities do not have a high likelihood of success based on a determination of the natural capacity of the site to compensate for impacts. Considerations should include: anticipated wetland mitigation ratios, buffer conditions and proposed widths, available water to maintain anticipated hydrogeomorphic classes of wetlands when restored, proposed flood storage capacity, potential to mitigate riparian fish and wildlife impacts (such as connectivity);
2. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and
3. Off-site locations shall be in the same sub-drainage basin unless established watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the City and strongly justify location of mitigation at another site.

H. Timing of Compensatory Mitigation. It is preferred that compensation projects will be completed prior to activities that will disturb the on-site wetlands. If not completed prior to disturbance, compensatory mitigation shall be completed immediately following the disturbance and prior to the issuance of final certificate of occupancy. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.

The Land Use Administrator may authorize a one-time temporary delay in completing construction or installation of the compensatory mitigation when the applicant provides a written explanation from a qualified wetland professional as to the rationale for the delay (i.e. seasonal planting requirements, fisheries window).

#### HD. Mitigation ratios.

1. The ratios contained within Table "9" shall apply to all Creation, Re-establishment, Rehabilitation, and Enhancement compensatory mitigation.
2. Increased replacement ratios. The Land Use Administrator may increase the ratios under the following circumstances:

- a. Uncertainty exists as to the probable success of the proposed restoration or creation;
- b. A significant period of time will elapse between impact and replication of wetland functions;
- c. Proposed mitigation will result in a lower category wetland or reduced function relative to the wetland being impacted; or
- d. The impact was an unauthorized impact.

J. Wetland Enhancement as Mitigation. Impacts to wetland functions may be mitigated by enhancement of existing significantly degraded wetland, but should be used in conjunction with restoration and/or creation where possible. Applicants proposing to enhance wetlands must include in a report how the enhancement will increase the functions of the degraded wetland and how this increase will adequately mitigate for the loss of wetland area and function at the impact site. An enhancement proposal must also show whether any existing wetland's functions will be reduced by the enhancement action.

K. Innovative Wetland Mitigation. The Land Use Administrator may approve innovative mitigation projects that are based on best available science including but not limited to activities such as advance mitigation and preferred environmental alternatives. The Land Use Administrator shall consider the following for approval of an innovative mitigation proposal:

1. Creation or enhancement of a larger system of natural areas and open space is preferable to the preservation of many individual habitat areas;
2. The applicant demonstrates that long-term protection and management of the habitat area will be provided;
3. There is clear potential for success of the proposed mitigation at the proposed mitigation site;
4. Mitigation according to the mitigation sequencing section of the code is not feasible due to site constraints such as parcel size, stream type, wetland category, excessive costs, a wetland of a different type is justified based on regional needs or functions and values;
5. The replacement ratios are not reduced or eliminated; unless the reduction results in a preferred environmental alternative; and
6. Public entity cooperative preservation agreements such as conservation easements.
7. Public entity cooperative preservation agreements such as conservation easements.

**Table 9. Mitigation ratios for projects in Western Washington that do not alter the hydro-geomorphic setting of the site\*\*\***

<u>Category and Type of Wetland</u>	<u>Re-establishment or Creation</u>	<u>Rehabilitation</u>	<u>1:1 Re-establishment or Creation (R/C) and Enhancement (E)</u>	<u>Enhancement only</u>
<u>All Category IV</u>	<u>1:5:1</u>	<u>3:1</u>	<u>1:1 R/C and 2:1 E</u>	<u>6:1</u>
<u>All Category III</u>	<u>2:1</u>	<u>4:1</u>	<u>1:1 R/C and 2:1 E</u>	<u>8:1</u>
<u>Category II Estuarine</u>	<u>Case-by-case</u>	<u>4:1 rehabilitation of an estuarine wetland</u>	<u>Case-by-case</u>	<u>Case-by-case</u>
<u>Category II Interdunal</u>	<u>2:1 Compensation has to be interdunal wetland</u>	<u>4:1 compensation has to be interdunal wetland</u>	<u>1:1 R/C and 2:1 E</u>	<u>8:1</u>
<u>All other Category II</u>	<u>3:1</u>	<u>8:1</u>	<u>1:1 R/C and 4:1 E</u>	<u>12:1</u>
<u>Category I Forested</u>	<u>6:1</u>	<u>12:1</u>	<u>1:1 R/C and 10:1 E</u>	<u>24:1</u>
Category I based on score for functions	4:1	8:1	1:1 R/C and 6:1 E	16:1
Category I Natural Heritage site	Not considered possible	6:1	Case-by-case	Case-by-case
Category I Coastal lagoon	Not considered possible	6:1	Case-by-case	Case-by-case
Category I Bog	Not considered possible	6:1	Case-by-case	Case-by-case
Category I Estuarine	Case-by-case	6:1	Case-by-case	Case-by-case

\*Natural heritage site, coastal lagoons, and bogs are considered irreplaceable wetlands, and therefore no amount of compensation would replace these ecosystems. Avoidance is the best option. In the rare cases when impacts cannot be avoided, replacement ratios will be assigned on a case-by-case basis. However, these ratios will be significantly higher than the other ratios for Category I wetland.

\*\*Rehabilitation ratios area based on the assumption that actions judged to be most effective for that site are being implemented.

\*\*\*Washington State Department of Ecology and Washington State Department of Fish and Wildlife's Wetlands in Washington State; Volume 2: Guidance for Protecting and Managing Wetlands, Buffer Alternative 3

EL. Compensatory Mitigation Plan Requirements.

When a project involves wetland or buffer impacts, a compensatory mitigation report shall be required, meeting the following minimum standards:

1. Preparation by qualified Wetland Specialist. A compensatory mitigation report for wetland or buffer impacts shall be prepared by a qualified Wetland Specialist as specified in 13.11.900.W.
2. A Wetland Delineation Report or stream report must accompany or be included in the compensatory mitigation report.
3. Compensatory Mitigation Report. Must include a written report and plan sheets that must contain, at a minimum, the following elements as found below. Full guidance can be found in the Draft Guidance on

Wetlands Mitigation in Washington State, Part 2, 2004 (Washington State Department of Ecology, US Army Corps of Engineers Seattle District, and US Environmental Protection Agency Region 10; Ecology Publication number 0406-013B). The written report must contain, at a minimum:

- a. The name and contact information of the applicant, the name, qualifications, and contact information for the primary author(s) of the Compensatory Mitigation Report, a description of the proposal, a summary of the impacts and proposed compensation concept, and identification of all the local, state, and federal wetland related permit(s) required for the project, plus a vicinity map for the project;

- b. Description of the existing wetland and buffer areas proposed to be impacted including: square footage based on professional surveys of the delineations; Cowardin classifications including dominant vegetation community types (for upland and wetland habitats); the results of a functional assessment for the entire wetland and the portions proposed to be impacted; wetland rating based on the provisions of this Title;
- c. An assessment of the potential changes in wetland hydroperiod for the proposed project and how the design has been modified to avoid, minimize or reduce impacts to the wetland hydroperiod;
- d. A description of the proposed conceptual compensation actions for wetland and upland areas. Describe future vegetation community types for years 1,5,10 and 25 post-installation including the succession of vegetation community types and dominants expected. Describe the successional sequence of expected changes in hydroperiod for the compensation site(s) for the same time periods as vegetation success. Describe the change in habitat characteristics expected over the same 25 year time period;
- e. An assessment of existing conditions in the zone of the proposed compensation, including; vegetation community structure and composition, existing hydroperiod, existing soil conditions, existing habitat functions. Estimate future conditions in this location if the compensation actions are NOT undertaken (i.e. how would this site progress through natural succession?);
- f. The field data collected to document existing conditions and on which future condition assumptions are based for hydroperiod (e.g. existing hydroperiod based on piezometer data, staff/crest gage data, hydrologic modeling, visual observations, etc.) and soils (e.g. soil pit data-hand dug or mechanically trenched, soil boring data; do not rely on soil survey data for establishing existing conditions);
- g. A discussion of ongoing management practices that will protect wetlands after the project site has been developed, including proposed monitoring and maintenance programs. The monitoring plan should include a period of not less than 5 years, and establish the responsibility for long-term removal of non-native, invasive vegetation;
- h. Contingency plans which clearly define course of action or corrective measures needed if performance standards are not met; and
- i. A bond estimate for the entire compensatory mitigation including the following elements: site preparation, plant materials, construction materials,

installation oversight, maintenance twice/year for up to 5 years, annual monitoring field work and reporting, and contingency actions for a maximum of the total required number of years for monitoring.

4. The scaled plan sheets for the compensatory mitigation must contain, at a minimum:
  - a. Existing wetland and buffer surveyed edges, proposed areas of wetland and/or buffer impacts, location of proposed wetland and/or buffer compensation action, and a legal description of the wetland, stream and buffer for the proposed development site;
  - b. Existing topography, ground-graded, at two foot contour intervals in the zone of the proposed compensation actions if any grading activity is proposed to create the compensation area(s). Indicate the existing cross-sections of on-site wetland areas that are proposed to be impacted. Provide cross-section(s) (estimated one-foot intervals) for the proposed areas of wetland or buffer compensation c. Surface and subsurface hydrologic conditions including an analysis of existing and proposed hydrologic regimes for enhanced, created, or restored compensatory mitigation areas. Illustrate how data for existing hydrologic conditions were utilized to form the estimates of future hydrologic conditions;
  - d. Proposed conditions expected from the proposed action on site including future HGM types, vegetation community types by dominant species (wetland and upland), and future hydrologic regimes;
  - e. Required wetland buffers for existing wetlands and proposed compensation areas. Identify any zones where buffers area proposed to be reduced or enlarged outside of the standards identified in this title;
  - f. A plant schedule including all species by proposed community type and hydrologic regime, size and type of plant material to be installed, spacing of plants, "typical" clustering patterns, total number of each species by community type, timing of installation, nutrient requirements, watering schedule and where appropriate measures to protect plants from destruction;
  - g. Performance standards (measurable standards reflective of years post-installation) for upland and wetland communities, monitoring schedule, reporting requirements to the City, and maintenance schedule and actions for each year of monitoring.
  - h. The applicant must demonstrate fiscal, administrative, and technical competence to successfully execute the overall project through completion. This compensation project shall be monitored for a minimum of five years, with monitoring reports provided to the City in accordance



with the approved performance and maintenance agreement. In the event of a breach of any condition of said agreement, the Land Use Administrator may institute an action in court and prosecute the same to judgment and execution. Final approval for the completed compensation project involving creation, enhancement or restoration shall be granted by the Land Use Administrator when the applicant submits documentation that all requirements of this section have been completed. (Ord. 27431 § 34; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

[Moved Section 13.11.360 to 13.11.270.]

### **13.11.360 Bonds.**

~~Performance and Monitoring and Maintenance Bonds shall be posted prior to issuance of any development permits including but not limited to clearing and grading permits and building permits.~~

~~A. Performance Bonds. Except for public agencies, applicants receiving a permit involving compensation for mitigation are required to post a cash performance bond or other acceptable security to guarantee compliance with this chapter prior to beginning any site work. The surety shall guarantee that work and materials used in construction are free from defects. All bonds shall be approved by the City Attorney. The surety or bonds cannot be terminated or cancelled without written approval. The Land Use Administrator shall release the bond after documented proof that all structures and improvements have been shown to meet the requirements of this chapter.~~

~~B. Monitoring and Maintenance Bonds. Except for public agencies, an applicant shall be required to post a cash maintenance bond or other acceptable security guaranteeing that structures and improvements required by this chapter will perform satisfactorily for a minimum of five years after they have been constructed and approved. The value of the bond shall be based on the average or median of three contract bids that establish all costs of compensation, including costs relative to performance, monitoring, maintenance, and provision for contingency plans. The amount of the bond shall be set at 150 percent of the average expected cost of the compensation project. All bonds shall be on a form approved by the City Attorney. Without written release, the bond cannot be cancelled or terminated. The Land Use Administrator shall release the bond after determination that the performance standards established for measuring the effectiveness and success of the project have been met. (Ord. 27431 § 35; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)~~

### **13.11.400 Streams and riparian habitats.**

The 400 section contains the regulations for streams, including the following:

- 13.11.410 Stream Classification.
- 13.11.420 Stream Buffers.
- 13.11.430 Stream Buffer Modifications
- 13.11.440 Stream Crossing Standards
- 13.11.450 Stream Mitigation Requirements

(Ord. 27431 § 36; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

### **13.11.410 Stream classification.**

A. Streams shall be generally classified in accordance with the Washington State Water Typing System set forth in WAC 222-16-030 to describe Type “S”, “F”, “Np” and “Ns” streams. Additional ~~typing criteria~~ for “F1”, and “F2” and “Ns1” and “Ns2” streams are included within this section.

For permits previously issued, and pre-existing uses and structures, refer to WAC 222-16-031, the interim water typing system that describes stream categories utilized prior to the adoption of this Chapter. The new water typing system described in WAC 222-16-030 separates streams and other water courses into Type S, F, Np and Ns Water. The interim water typing system described in WAC 222-16-031 separates streams into Type I, II, III, IV, and V streams and their respective conversions to the types described in WAC-222-16-030.

General descriptions of the new water typing system are as follows:

1. Type “S” Water means all streams or rivers, within their bankfull width, inventoried as “shorelines of the state” or “shorelines of statewide significance” under the Tacoma Shoreline Management Program (TMC 13.10) or chapter 90.58 RCW and the rules promulgated pursuant to chapter 90.58 RCW, including periodically inundated areas of their associated wetlands.

2. Type “F” Water means segments of natural waters other than Type S Waters, which are within the bankfull widths of defined channels and periodically inundated areas of their associated wetlands, to within lakes, ponds, or impoundments having a surface area of 0.5 acre or greater at seasonal low water and which in any case contain fish habitat or as further described within WAC 222-16-031. Type “F1” Water means segments of natural waters containing salmonid fishes. Type “F2” Water means segments of natural water containing fish that are not salmonids.

33. Type “Np” Water means all segments of natural waters within the bankfull width of defined channels that are perennial nonfish habitat streams. Perennial streams are waters that do not go dry any time of a year of normal rainfall or as further described within WAC 222-16-031.

34. Type “Ns” Water means all segments of natural waters within the bankfull widths of the defined channels that are not Type S, F, or Np Water. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np Water. “Ns1” Waters must be physically connected by an above ground channel system to Type, F, or Np Waters. “Ns2” Waters may not be physically connected by an above ground channel system to Type, F, or Np Waters. (Ord. 27431 § 37; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

**13.11.420 Stream buffers.**

A. General. A buffer area shall be provided for all uses and activities adjacent to a stream to protect the integrity and function of the stream. Buffers adjacent to streams are important because they help to stabilize soils, prevent erosion, act as filters for pollutants, enhance wildlife diversity, and support and protect plants and wildlife. An assessment permit may be granted if it has been demonstrated that no adverse impact to a stream will occur and a minimum buffer width will be provided in accordance with this section. The buffer shall be measured horizontally from the edge of the ordinary high water mark. The buffer shall be vegetated with the exception of areas that include development interruptions as described within this Chapter.

**B. Minimum Requirement.**

1. Streams. Stream buffer widths shall be established according to the following table which is based on stream classification:

<b>Table 10. Stream Types</b>	
Stream Type	Buffer (feet)
Type S or Streams of local significance	150
Type F1 (Salmonids)	150
Type F2 (Non-Salmonids)	100
Type Np (No fish)	100
Type Ns1 (Connected to S, F, or Np)	75
Type Ns2 (Not connected to S, F, or Np)	25

<b>Streams of local significance</b>	
Name	Buffer (feet)
Puyallup River	150
Hylebos Creek	150
Puget Creek	150
Wapato Creek	150
Swan Creek	150

(Ord. 27431 § 38; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

**13.11.430 Stream buffer modification.**

A. Stream Buffer Increase. The required buffer widths shall be increased as follows;

1. When the Land Use Administrator determines that the recommended width is insufficient to prevent habitat degradation and to protect the structure and functions of the habitat area;
2. When the frequently flooded area exceeds the recommended buffer width, the buffer area shall extend to the outer edge of the frequently flooded area;
3. When a channel migration zone is present, the riparian habitat area width shall be measured from the outer edge of the channel migration zone;
4. When the habitat area is in an area of high blowdown potential, the riparian habitat area width shall be expanded an additional fifty feet on the windward side; or
5. When the habitat area is within an erosion or landslide area, or buffer, the riparian habitat area width shall be the recommended distance, or the erosion or landslide hazard area or buffer, whichever is greater.

B. Stream Buffer Averaging. The Land Use Administrator may allow the recommended stream buffer width to be reduced in accordance with a stream habitat analysis report only if:

1. The stream buffer areas that are reduced through buffer averaging will not reduce stream or habitat functions, including those of nonfish habitat;
2. The stream buffer areas that are reduced will not degrade the habitat, including habitat for anadromous fish;
3. The proposal will provide additional habitat protection;
4. The total area contained in the stream buffer of each stream on the development proposal site is not decreased;

5. The recommended stream buffer width is not reduced by more than twenty-five (25%) percent in any one location;
6. The stream buffer areas that are reduced will not be located within another critical area or associated buffer; and
7. The stream buffer areas that are reduced and required mitigation are supported by best available science. (Ord. 27431 § 39; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

### **13.11.440 Stream Crossing Standards.**

A. Type F1, F2, Np, and Ns1, and Ns2 streams may be relocated or placed in culverts provided it can be demonstrated that:

1. There is no other feasible alternative route with less impact on the environment;
2. Existing location of the stream would prevent a reasonable economic use of the property;
3. No significant habitat area will be destroyed;
4. The crossing minimizes interruption of downstream movement of wood and gravel;
5. The new channel or culvert is designed and installed to allow passage of fish inhabiting or using the stream;
6. The channel or culvert is large enough to accommodate a 100-year storm;
7. The applicant will, at all times, keep the channel or culvert free of debris and sediment to allow free passage of water and fish;
8. The applicant will provide a bond or other financial security to ensure maintenance as provided in Section 13.11.360 hereof;
9. Roads in riparian habitat areas or buffers shall not run parallel to the water body;
10. Trails shall be located on or near the outer edge of the riparian area or buffer, where possible, except for limited viewing platforms and crossings;
11. Crossing, where necessary, shall only occur as near to perpendicular with the water body as possible;
12. Road bridges are designed according to Washington Department of Fish and Wildlife Design of Road Culverts for Fish Passage, 2003, and the National Marine Fisheries Service Guidelines for Salmonid Passage at Stream Crossing, 2000; and
13. Where possible, trails and associated viewing platforms shall not be made of continuous impervious materials. Natural trails with pervious surfaces such

as, but not limited, to bark chip are encouraged. (Ord. 27431 § 40; passed Nov. 15, 2005)

### **13.11.450 Stream mitigation requirements.**

All proposed alterations in the buffer of a stream with riparian habitat shall be in accordance with the standards for the applicable wetland category. Where riparian habitat does not exist, restoration, enhancement or creation will be required within the standard or modified buffer width.

All stream mitigation will comply with applicable ~~wetland~~ mitigation requirements specified in 13.11.260 and 13.11.270, including, but not be limited to, mitigation plan requirements, monitoring and bonding.

In the event stream corridor alterations or relocations, as specified above, are allowed, the applicant shall submit an alteration or relocation plan prepared ~~by a wetlands specialist in association with a qualified professional~~ with expertise in this area. In addition to the general mitigation plan standards, the plan shall address the following information:

1. Creation of natural meander patterns and gentle side slope formations;
2. Creation of narrow sub channel, where feasible, against the south or west bank;
3. Provisions for the use of native vegetation;
4. Creation, restoration or enhancement of fish spawning and nesting areas;
5. The proposed reuse of the prior stream channel;
6. Provision of a qualified consultant, approved by the City, to supervise work to completion and to provide a written report to the Land Use Administrator stating the new channel complies with the provisions of this chapter; and
7. When streambank stabilization is necessary, bioengineering or soft armoring techniques are required, where possible.

The Washington Department of Fish and Wildlife has authority over all projects in State Waters which impact fish. Construction in State Waters is governed by Chapter 75.20 RCW, Construction Projects in State Waters. (Ord. 27431 § 41; passed Nov. 15, 2005)

### **13.11.500 Fish and wildlife habitat conservation areas.**

The 500 section contains the regulations for fish and wildlife habitat conservation areas (FWHCAs), including the following:

13.11.510 Classification.

13.11.520 Standards.  
13.11.530 FWHCA Buffers  
13.11.540 FWHCA Buffer Modifications  
13.11.550 FWHCA Mitigation Requirements  
13.11.560 Habitat Zones.

(Ord. 27431 § 42; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

### 13.11.510 Classification.

A. Fish and wildlife habitat conservation areas are areas identified by the Washington Department of Wildlife as being of critical importance to the maintenance of fish and wildlife species. These areas may include other critical areas such as geologically hazardous areas, stream corridors, wetlands, and these critical areas' associative buffers.

1. ~~Potential~~ Fish and Wildlife Habitat Conservation Areas (FWHCAs). Fish and Wildlife habitat areas may include:

- a. Lands containing priority habitats and species.
- b. All public and private tidelands or bedlands suitable for shellfish harvest, including any shellfish protection districts established pursuant to Chapter 90.72 RCW. The Washington Department of Health's classification system shall be used to classify commercial shellfish areas.
- c. Kelp and eelgrass beds and herring, sand lance, and smelt spawning areas. Kelp and eelgrass beds may be classified and identified by the Washington Department of Natural Resources Aquatic Lands Program and the Washington Department of Ecology. Locations are compiled in the WDNR Aquatic Lands ShoreZone Inventory, and the Puget Sound Environmental Atlas, Volumes 1 and 2. Herring, sand lance, and surf smelt spawning times and locations are outlined in RCW 220-110, Hydraulic Code Rules and the Puget Sound Environmental Atlas.
- d. Natural ponds under 20 acres and their submerged aquatic beds that provide critical fish or wildlife habitat.
- e. Waters of the State, which are defined in WAC Title 222, Forest Practices Rules and Regulations. Waters of the State must be classified using the system in WAC 222-16-030. In classifying waters of the state as ~~fish and wildlife habitat conservation area~~ FWHCAs the following may be considered:

(1) Species present which are endangered, threatened, sensitive, or priority;

(2) Species present which are sensitive to habitat manipulation;

(3) Historic presence of priority species;

(4) Existing surrounding land uses that are incompatible with salmonid habitat;

(5) Presence and size of riparian ecosystem;

(6) Existing water rights; and

(7) The intermittent nature of some of the higher classes of Waters of the State.

f. Lakes, ponds, streams and rivers planted with game fish, including those planted under the auspices of a federal, state, local, or tribal program and waters which support priority fish species as identified by the Washington Department of Fish and Wildlife.

~~g. State natural area preserves and natural resource conservation areas, which are defined, established, and managed by the Washington Department of Natural Resources.~~

~~2. Minimum Fish and Wildlife Habitat Conservation Areas. Any property meeting the requirements of subparagraphs a through g above may be classified as a fish and wildlife habitat conservation area. At a minimum, all property meeting any of the following characteristics will be classified as a fish and wildlife habitat conservation area:~~

~~a. Lands containing endangered or threatened species or habitats for endangered or threatened species; and~~

~~b. Streams containing salmonids. (Ord. 27431 § 43; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)~~

### 13.11.520 Standards.

A. No development shall be allowed within a fish and wildlife habitat conservation area with which state or federally endangered, threatened or sensitive species have a primary association.

B. Alteration of fish and wildlife habitat conservation areas (FWHCAs) may reduce the likelihood that the species will survive or reproduce. Activities allowed in fish and wildlife habitat conservation area FWHCAs shall be consistent with the species located there and all applicable state and federal regulations regarding that species. In determining allowable activities for priority habitats and species that are known or that become known, the provisions of the Washington State Hydraulic Code and Department of Fish and Wildlife's (WDFW) Management Recommendations for Washington Priority Habitats and Species shall be reviewed. Development in these areas shall be in accordance with the requirements of the underlying

zone and any overlapping critical area classification. (Ord. 27431 § 44; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

C. As of the date of this ordinance, the following terrestrial priority habitat and species are known to be located in the city of Tacoma and will require preparation of a habitat management plan for approval by the City and WDFW prior to issuance of a FWHCA Development Permit:

- 1) Bald eagles;
- 2) Great blue herons;
- 3) Mountain quails;
- 4) Ospreys;
- 5) Peregrine falcons;
- 6) Pigeon guillemots;
- 7) Purple martins;
- 8) Seabird colonies;
- 9) Waterfowl concentrations;
- 10) Wood ducks;
- 11) Oak woodlands

D. Standards for two of the most common of these FWHCAs, Bald eagles and Great blue herons, include the following:

- 1) Bald eagles:
  - a) The wildlife habitat conservation area is an area with a four-hundred-foot radius from an active nest;
  - b) Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292).
  - c) Between March 15 and April 30, alterations are not allowed within eight hundred feet of the nest; and
  - d) Between January 1 and August 31, land clearing machinery, such as bulldozers, graders or other heavy equipment, may not be operated within eight hundred feet of the nest.

2) Great blue heron:

The wildlife habitat conservation area is an area with a nine hundred-foot radius from the outermost nest tree;

- a) Between January 1 and July 31, no clearing, grading or land disturbing activity shall be allowed within nine hundred (900) feet of the rookery unless approved by the Land Use Administrator and the Washington Department of Fish and Wildlife.
- b) Approval of permits for activities within 900 feet shall not occur prior to the approval of a habitat management plan by the Land Use Administrator and the Washington Department of Fish and Wildlife.

B. As of the date of this ordinance, the following aquatic priority habitat and species are known to be located in the city of Tacoma and will require preparation of a habitat management plan for approval by the City and WDFW prior to issuance of a FWHCA Development Permit:

- 1) Orcas (Killer whale);
- 2) Seals and sea lions
- 3) Anadromous fish;
- 4) Reticulate sculpins;

E. Standards for the most common of these FWHCAs, Anadromous fish, include the following:

- 1) Anadromous fish:
  - a) all activities, uses, alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall be given special consideration to the preservation and enhancement of anadromous fish habitat, including but not limited to the following standards;
  - b) Activities shall be timed to occur only during the allowable work window as designated by WDFW for applicable species;
  - c) The activity is designed to provide an overall improvement in the function of the fish habitat or other critical areas; and
    - i) Any impacts to the functions fo the habitat conservation area are mitigated in accordance with the approved critical area.
- 2) Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies currently or historically used by anadromous fish. Fish bypass facilities shall be provided that allow the upstream migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed.
- 3) Fills, when authorized the Land Use Administrator, shall not adversely impact anadromous fish or their habitat or shall mitigate any unavoidable impacts, and shall only be allowed for water-dependent and water-related activities and uses.

### **13.11.530 FWHCA Buffers**

A. General. A buffer area shall be provided for all uses and activities adjacent to a FWHCA to protect the integrity and function of the FWHCA. Buffers shall consist of an undisturbed area of native vegetation or areas identified for restoration established to protect the integrity, functions, and values of the affected habitat. An assessment permit may be granted if it has been demonstrated that no

adverse impact to a FWHCA will occur and a minimum buffer width will be provided in accordance with this section. The buffer shall be measured horizontally from the edge of the ordinary high water mark for marine habitat. The buffer shall be vegetated with the exception of areas that include development interruptions as described within this Chapter.

**B. Minimum Requirement.**

1. Wetland and Stream Habitat. Where a designated FWHCA geographically coincides with a stream or wetland, the appropriate wetland or stream buffer and associated buffer requirements shall apply as described within this Chapter.

2. Terrestrial Habitat. Terrestrial habitats that do not geographically coincide with wetlands or streams may be protected by buffers specific to the species (e.g., bald eagle – 800 feet from an active nest or within ¼ mile of an active nest in a shoreline foraging area, great blue heron- 900 feet from outermost nest trees in the rookery) as established by Washington Department of Fish and Wildlife site-specific Management Recommendations for Washington’s Priority Species.

3. Marine Habitat. Beneficial nearshore habitat functions that can be provided by landward buffers include feeder bluff input, water quality, sediment control, wildlife habitat, microclimate, nutrient input, fish prey production, shade, and habitat structure such as large woody debris.

Buffer widths shall be established according to Table 11. The buffer shall be measured horizontally from the edge of the marine ordinary high water mark. Where the marine ordinary high water mark cannot be located, the line of mean higher high tide shall be used.

<b><u>Table 11. Minimum Marine Habitat Buffers</u></b>	
<b><u>Marine Habitat</u></b>	<b><u>Buffer Width (feet)</u></b>
<u>Tacoma Narrows South (from south city limits to centerline of SR 16)</u>	<u>115</u>
<u>Tacoma Narrows North &amp; Point Defiance (from centerline of SR 16 to Ruston city limits)</u>	<u>150</u>
<u>Commencement Bay West (Ruston city limits to Thea Foss Waterway)</u>	<u>115</u>
<u>Commencement Bay Waterways (industrial waterways)</u>	<u>50</u>

<u>Commencement Bay East (East 11<sup>th</sup> Street to city limits)</u>	<u>115</u>
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**13.11.540 FWHCA Buffer Modifications**

A. Where a designated FWHCA geographically coincides with a stream or wetland, provisions for increasing buffers, buffer averaging, and buffer reduction shall apply as described within this chapter.

B. Alteration of a FWHCA buffer is prohibited except when:

1. Alteration is necessary to accommodate an essential public facility or public utility where no feasible alternative location will accommodate the facility and the facility is located, designed, and constructed to minimize and, where possible, avoid FWHCA buffer disturbance to the maximum extent feasible; or

2. Alteration is necessary to accommodate a water-dependent or water-related activity or use permitted in accordance with the Tacoma Shoreline Management Program (SMP; TMC 13.10) where the facility is operated, located, designed and constructed to minimize and, where possible, avoid FWHCA buffer disturbance to the maximum extent feasible; or

3. Alteration is allowed either under 13.11.140 Exempted Activities or under 13.11.150 Allowed Activities; or

4. The proposed project can demonstrate through a habitat management plan to have no net loss to FWHCA functions.

**13.11.550 FWHCA Mitigation Requirements**

A. All proposed alterations in a FWHCA or its buffer shall be in accordance with the standards of this section. If riparian habitat does not exist, mitigation in the form of restoration, enhancement or creation will be required within the standard or modified buffer width.

B. All FWHCA mitigation will comply with applicable mitigation requirements specified in 13.11.260 and 13.11.270, including, but not limited to, mitigation plan requirements, monitoring and bonding.

C. Where a designated FWHCA geographically coincides with a stream or wetland, mitigation will comply with applicable mitigation requirements described within this chapter.

D. Habitat Management Plan. If the critical area review process as described in this chapter (13.11.250) determines that a Habitat Management Plan shall be prepared as part of a development proposal to avoid or minimize impacts to FWHCAs or buffers, the following standards shall apply.

1. A habitat management plan shall be prepared in coordination with the Washington State Department of Fish and Wildlife by a qualified professional.

2. A habitat management plan shall contain, at a minimum, the following:

a. Analysis and discussion on the project's effects on critical fish and wildlife habitat;

b. An assessment and discussion on special management recommendations which have been developed for species or habitat located on the site by any federal or state agency;

c. Proposed mitigation measures which could minimize or avoid impacts;

d. Assessment and evaluation of the effectiveness of mitigation measures proposed; and

e. Assessment and evaluation of ongoing management practices which will protect critical fish and wildlife habitat after development of the project site, including proposed monitoring and maintenance programs.

### **13.11.5360 Habitat Zones.**

Habitat Zones. Areas designated and mapped that depict high quality, relatively undisturbed natural open spaces that provide valuable functions and values beyond the individual natural habitats contained within. Habitat Zones are lands mapped in the City of Tacoma for their biological diversity and remaining natural habitats for all flora and fauna native to the local environment, including special consideration for anadromous fish. The map depicting these lands is contained within the Environmental Policy Plan element of the Comprehensive Plan. Any parcel that is fifty percent (50%) or more within a mapped Habitat Zone shall be considered fully contained within the Habitat Zone. (Ord. 27431 § 45; passed Nov. 15, 2005)

### **13.11.600 Flood hazard areas.**

The 600 section contains the regulations for flood hazard areas, including the following:

13.11.610 Classification.

13.11.620 Standards.

(Ord. 27431 § 46; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

#### **13.11.610 Classification.**

Classifications of flood hazard areas shall be consistent with the most recent official map of the Federal Insurance Administration that delineates areas of special flood hazards and includes the risk premium zones applicable to the City. Also known as "flood insurance rate map" or "FIRM."

Where the flood insurance map and studies do not provide adequate information, the City, through its Public Works Department, shall consider and interpret information produced by the Army Corps of Engineers, Natural Resource Conservation Service, Department of Housing and Urban Development, or any other qualified person or agency to determine the location of Flood Hazard Areas and Coastal High Hazard Areas. (Ord. 27431 § 47; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

#### **13.11.620 Standards.**

All development proposals shall comply with Sections 2.12.040 through 2.12.050, Flood Hazard and Coastal High Hazard Areas, and Chapter 12.08 Surface Water Management Manual of the TMC for general and specific flood hazard protection. Development shall not reduce the base flood water storage ability. Construction, grading, or other regulated activities which would reduce the flood water storage ability must be mitigated by creating compensatory storage on- or off-site. Base flood data and flood hazard notes shall be shown on the face of any recorded plat or site plan, including, but not limited to, base flood elevations, flood protection elevation, boundary of floodplain, and zero rise floodway. (Ord. 27431 § 48; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

#### **13.11.630 General development standards.**

*(Deleted by Ord. 27431 § 49; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)*

#### **13.11.700 Geologically hazardous areas.**

The 700 section contains the general provisions, including the following:

13.11.710 Designation.

13.11.720 Classification.

13.11.730 General Development Standards.

(Ord. 27431 § 50; passed Nov. 15, 2005; Ord. 27300 § 3; passed Dec. 14, 2004; Ord. 27294 § 2; passed Nov. 16, 2004)

### 13.11.710 Designation.

A. Designation of Geologically Hazardous Areas. Geologically hazardous areas include areas susceptible to erosion, sliding, earthquake, or other geological events. Areas susceptible to one or more of the following types of geo-hazards shall be designated as a geologically hazardous area:

1. Erosion hazard;
2. Landslide hazard;
3. Seismic hazard;
4. Mine hazard;
5. Volcanic hazard; and
6. Tsunami hazard.

(Ord. 27431 § 51; passed Nov. 15, 2005)

### 13.11.720 Classification.

A. Classification of specific hazard areas.

1. Erosion hazard areas. Erosion hazard areas generally consist of areas where the combination of slope and soil type makes the area susceptible to erosion by water flow, either by precipitation or by water runoff. Concentrated stormwater runoff is a major cause of erosion and soil loss. Erosion hazard critical areas include the following:

- a. Areas with high probability of rapid stream incision, stream bank erosion or coastal erosion, or channel migration.
- b. Areas defined by the Washington Department of Ecology Coastal Zone Atlas as one of the following soil areas: Class U (Unstable) includes severe erosion hazards and rapid surface runoff areas, Class Uos (Unstable old slides) includes areas having severe limitations due to slope, Class Urs (Unstable recent slides), and Class I (Intermediate).
- c. Any area characterized by slopes greater than 15 percent; and the following types of geologic units as defined by draft geologic USGS maps: m (modified land), Af (artificial fill), Qal (alluvium), Qw (wetland deposits), Qb (beach deposits), Qtf (tide-flat deposits), Qls (landslide deposits), Qmw (mass-wastage deposits), Qf (fan deposits), Qvr and Qvs series of geologic material types (Vashon recessional outwash and Steilacoom Gravel), and Qvi (Ice-contact deposits).
- d. Slopes steeper than 25% and a vertical relief of 10 or more feet.

2. Landslide Hazard Areas. Landslide hazard areas are areas potentially subject to landslides based on a combination of geologic, topographic, and hydrologic

factors. They include areas susceptible because of any combination of bedrock, soil, slope, slope aspect, structure, hydrology, or other factors. Landslide hazard areas are identified as any area with all three of the following characteristics:

- a. Slopes steeper than 25 percent and a vertical relief of ten (10) or more feet.
- b. Hillsides intersecting geologic contacts that contain impermeable soils (typically silt and clay) frequently inter-bedded with permeable granular soils (predominantly sand and gravel), or impermeable soils overlain with permeable soils.
- c. Springs or groundwater seepage.
- d. Any area which has exhibited movement during the Holocene epoch (from 10,000 years ago to present) or that are underlain or covered by mass wastage debris of that epoch.
- e. Any area potentially unstable due to rapid stream incision stream bank erosion or undercutting by wave action.
- f. Any area located on an alluvial fan presently subject to, or potentially subject to, inundation by debris flows or deposition of stream-transported sediments.
- g. Any area where the slope is greater than the angle of repose of the soil.
- h. Any shoreline designated or mapped as Class U, Uos, Urs, or I by the Washington Department of Ecology Coastal Zone Atlas.

3. Seismic hazard areas. Seismic hazard areas shall include areas subject to severe risk of damage as a result of seismic-induced settlement, shaking, lateral spreading, surface faulting, slope failure, or soil liquefaction. These conditions occur in areas underlain by soils of low cohesion or density usually in association with a shallow groundwater table. Seismic hazard areas shall be as defined by the Washington Department of Ecology Coastal Zone Atlas (Seismic Hazard Map prepared by GeoEngineers) as: Class U (Unstable), Class Uos (Unstable old slides), Class Urs (Unstable recent slides), Class I (Intermediate), and Class M (Modified) as shown in the Seismic Hazard Map.

4. Mine Hazard Areas. Mine hazard areas are those areas underlain by or affected by mine workings such as adits, gangways, tunnels, drifts, or airshafts, and those areas of probable sink holes, gas releases, or subsidence due to mine workings. Underground mines do not presently exist within City limits.

Note: An underground structure, consisting of a partially completed underground railroad tunnel, exists within City limits, as defined in the mine



hazard areas map. The tunnel was constructed in 1909 and discontinued that same year due to excessive groundwater flows within the tunnel. The dimensions of the tunnel are presently unknown, and it was reportedly backfilled with wood, sand, and gravel in 1915.

5. Volcanic Hazard Areas. Volcanic hazard areas are areas subject to pyroclastic flows, lava flows, debris avalanche, and inundation by debris flows, lahars, mudflows, or related flooding resulting from volcanic activity. The most likely types of volcanic hazard within the City are mudflows, lahars, or flooding relating to volcanic activity. The boundaries of the volcanic hazard areas within the City are shown in the volcanic hazard map.

6. Tsunami hazard areas. Tsunami hazard areas are coastal areas and large lake shoreline areas susceptible to flooding and inundation as the result of excessive wave action derived from seismic or other geologic events. Currently, no specific boundaries have been established in the City limits for this type of hazard area. (Ord. 27431 § 52; passed Nov. 15, 2005)

### 13.11.730 General Development Standards.

The standards in this section apply only to geologically hazardous areas. Other critical area standards may apply to areas which are exempted from the standards for geologically hazardous areas. The following definitions apply to this section:

“Geo-setback” is the minimum building setback from the applicable geo-hazard area.

“Geo-buffer” is a zone within a geo-setback area required to be vegetated with either native or non-native vegetation.

#### A. Erosion hazard areas.

1. Structures and improvements shall be required to maintain a minimum 50 foot geo-setback from the boundary of all erosion hazard areas (Note: where no distinct break exists, the top of a steep slope is the upper most limit of the area where the ground surface drops greater than 10 feet or more vertically within a horizontal distance of 25 feet). No geo-setback shall be required where the vertical relief of the slope is 10 feet or less. The geo-setback may be reduced to 30 feet where the vertical relief of the slope is greater than 10 feet but no more than 20 feet.

The 30-foot or 50-foot geo-setback may be reduced to a minimum of 10 feet for the following conditions:

a. Construction of one-story detached accessory structures (garages, sheds, playhouses of similar structures not used for continuous occupancy) with

less than 1,000 square feet of floor area, whichever is greater for existing residences.

b. Addition to existing residences, including decks that have a maximum 250 square feet footprint of building, deck or roof area, whichever is greater, and are not closer to the top or bottom of the slope than the existing residence.

c. Installation of fences where they do not impede emergency access.

d. Clearing only up to 2,000 square feet during May 1 to October 1, if determined by the Building Official to not cause significant erosion hazard.

e. Grading up to 5 cubic yards during April 1 to October 1 over an area not to exceed 2,000 square feet, if determined by the Building Official that such grading will not cause a significant erosion hazard.

f. Removal of noxious or invasive weeds, provided such areas are protected from erosion with either native vegetation or other approved erosion protection.

g. Forest practices regulated by other agencies.

h. The construction of public or private utility corridors; provided it has been demonstrated that such construction will not significantly increase erosion risks.

i. Trimming and limbing of vegetation for the creation and maintenance of view corridors, removal of site distance obstructions as determined by the City Traffic Engineer, removal of hazardous trees, or clearing associated with routine maintenance by utility agencies or companies; provided that the soils are not disturbed and the loss of vegetative cover will not significantly increase risks of landslide or erosion.

j. The construction of approved public or private trails; provided they are constructed in a manner which will not contribute to surface water runoff.

k. Remediation or critical area restoration project under the jurisdiction of another agency.

l. Where it can be demonstrated through an erosion hazard analysis prepared by a geotechnical specialist that there is no significant risk to the development proposal or adjacent properties, or that the proposal can be designed so that any erosion hazard is significantly reduced, the geo-setback may be reduced as specified by the geotechnical specialist. This geo-setback may be increased where the Building Official determines a larger geo-setback is necessary to prevent risk of damage to proposed and existing development. The development must also comply with the Specific Development Standards for Erosion and Landslide Hazard Areas. The erosion

hazard analysis shall provide the following information:

- (1) Alternative setbacks to the erosion hazard area.
- (2) Recommended construction techniques for minimizing erosional damage.
- (3) Location and methods of drainage and surface water management.
- (4) Recommended time of year for construction to occur.
- (5) Permanent erosion control (vegetation management and/or replanting plan) to be applied at the site.

m. In addition to the erosion hazard analysis, a Construction Stormwater Pollution Prevention Plan shall be required that complies with the requirements in the currently adopted City Stormwater Management Manual. Clearing and grading activities in an erosion hazard area shall also be required to comply with the City amendments to the most recently adopted International Building Code.

2. Erosion hazard areas that are also landslide hazard areas shall be required to comply with all standards for landslide hazard areas as well.

#### B. Landslide hazard areas.

1. Structures and improvements shall be required to maintain a minimum 50-foot geo-setback from the boundary of all landslide hazard area. (Note: where no distinct break exists, the top of a steep slope is the upper most limit of the area where the ground surface drops greater than 10 feet or more vertically within a horizontal distance of 25 feet). No geo-setback shall be required where the vertical relief of the slope is 10 feet or less. The geo-setback may be reduced to 30 feet where the vertical relief of the slope is greater than 10 feet but no more than 20 feet.

The 30-foot or 50-foot geo-setback may be reduced to a minimum of 10 feet for the following conditions:

- a. Construction of one-story detached accessory structures (garages, sheds, playhouses of similar structures not used for continuous occupancy) with less than 1,000 square feet of floor area, whichever is greater.
- b. Addition to existing residences, including decks that have a minimum 250 square feet footprint of building, deck or roof area, whichever is greater, and are not closer to the top or bottom of the slope than the existing residence.
- c. Installation of fences where they do not impede emergency access.

d. Clearing only up to 2,000 square feet during May 1 to October 1, if determined by the Building Official to not cause significant landslide hazard.

e. Grading up to 5 cubic yards during April 1 to October 1 over an area not to exceed 2,000 square feet, if determined by the Building Official that such grading will not cause a landslide hazard.

f. Removal of noxious or invasive weeds, provided such areas are protected from erosion with either native vegetation or other approved erosion protection.

g. Forest practices regulated by other agencies.

h. Slopes modified by an engineered cut or fill engineered retaining wall system, where setbacks, if any, were established by the previous engineered design.

i. Steep slopes resulting for right-of-way improvements (streets, alleys, sidewalks, etc) may be exempted by the Building Official if improvements will not decrease slope stability on said property or adjacent properties.

j. The construction of an approved public surface water conveyance, provided it will result in minimum vegetation removal and soil disturbance on the slope.

k. The construction of approved public or private trails; provided they are constructed in a manner which will not contribute to surface water runoff.

l. The construction of public or private utility corridors; provided it has been demonstrated that such construction will not significantly increase landslide risks.

m. Trimming and limbing of vegetation for the creation and maintenance of view corridors, removal of site distance obstructions as determined by the City Traffic Engineer, removal of hazardous trees, or clearing associated with routine maintenance by utility agencies or companies; provided that the soils are not disturbed and the loss of vegetative cover will not significantly increase risks of landslide or erosion.

n. Remediation, critical area restoration, or mining and quarrying where local regulation is pre-empted by state or federal law.

o. Where it can be demonstrated through a geotechnical analysis prepared by a geologic hazards specialist that there is no significant risk to the development proposal or adjacent properties, or that the proposal can be designed so that any landslide hazard is significantly eliminated, the geo-setback may be reduced as specified by the geotechnical engineer. The geo-setback may be reduced to no less than 10 feet where slopes are 40 percent or greater.

This geo-setback may be increased where the Building Official determines a larger geo-setback is necessary to prevent risk of damage to proposed and existing development. The development must also comply with all applicable Development Standards. The geotechnical analysis report shall include the following:

- (1) A description of the extent and type of vegetative cover.
- (2) A description of subsurface conditions based on data from site-specific explorations.
- (3) Descriptions of surface runoff and groundwater conditions, public and private sewage disposal systems, fills and excavations, and all structural improvements.
- (4) An estimate of the bluff retreat rate that recognizes and reflects potential catastrophic events such as seismic activity or a 100-year storm.
- (5) Consideration of the run-out hazard of landslide debris and/or the impacts of landslide run-out on down slope properties.
- (6) A study of the slope stability, including an analysis of proposed cuts, fills, and other site grading; and the effect construction and placement of structures will have on the slope over the estimated life of the structures.
- (7) Recommendations for building site limitations, specifically, a recommendation for the minimum geo-buffer and minimum-setback.
- (8) Recommendations for proposed surface and subsurface drainage, considering the soil and hydrology constraints of the site.

#### C. Specific Development Standards for Erosion and Landslide Hazard Areas.

1. The development shall not increase surface water discharge or sedimentation to adjacent properties beyond pre-development conditions. Note that point discharges onto adjacent properties is not permitted without approved easements. Dispersed flows meeting pre-developed flows will be permitted provided other development standards can be met.
2. The development shall not decrease slope stability on adjacent properties.
3. Such alterations shall not adversely impact other critical areas.
4. The proposed development shall not decrease the factor of safety for landslide occurrences below the limits of 1.5 for static conditions and 1.2 for dynamic conditions. Analysis of dynamic conditions shall be based on a minimum horizontal acceleration as

established by the current version of the International Building Code.

5. Structures and improvements shall minimize alterations to the natural contour of the slope, and the foundation shall be tiered where possible to conform to existing topography. Terracing of the land; however, shall be kept to a minimum to preserve natural topography where possible. Structures and improvements shall be located to preserve the most critical portion of the site and its natural landforms and vegetation.

6. Development shall be designed to minimize impervious lot coverage. All development shall be designed to minimize impervious lot coverage and should incorporate understructure parking and multi-level structures within the existing height limit.

7. Roads, walkways, and parking areas should be designed parallel to topographic contours with consideration given to maintaining consolidated areas of natural topography and vegetation.

8. Removal of vegetation shall be minimized. Any replanting that occurs shall consist of trees, shrubs, and ground cover that is compatible with the existing surrounding vegetation, meets the objectives of erosion prevention and site stabilization, and does not require permanent irrigation for long-term survival.

9. The proposed development shall not result in greater risk or need for increased geo-buffers on neighboring properties.

10. Structures and improvements shall be clustered where possible. Driveways and utility corridors shall be minimized through the use of common access drives and corridors where feasible. Access shall be in the least sensitive area of the site.

#### D. Seismic hazard areas.

1. A hazard analysis report will be required for structures and improvements in a seismic hazard area. All developments shall be required to comply with the requirements of the most recently adopted edition of the International Building Code. The following types of projects will not require a seismic hazardous analysis report;

a. Construction of new buildings with less than 2,500 square feet footprint of floor or roof area, whichever is greater, and which are not residential structures or used as places of employment or public assembly.

b. Additions to existing residences, including decks that have a maximum 250 square feet footprint of building, deck or roof area, whichever is greater.

c. Installation of fences where they do not impede emergency access.

d. The exceptions above may not apply to areas that are also landslide hazard areas.

2. The hazard report shall include the following:

a. Known and mapped faults within 200 feet of the project area.

b. Analysis of the potential impacts of seismic activity on the site.

c. Evaluation of the physical properties of the subsurface soils and their liquefaction potential, and mitigation measures.

3. All developments shall be required to comply with the requirements of the most recently adopted edition of the International Building Code.

E. Volcanic hazard areas. Development in volcanic hazard areas shall comply with the zoning and Building Code requirements of the TMC. New developments in volcanic hazard areas shall be required to submit an evacuation and emergency management plan, with the exception of the following:

1. Construction of new buildings with less than 2,500 square feet of floor area or roof area, whichever is greater, and which are not residential structures or used as places of employment or public assembly;

2. Additions to existing residences, including decks that have a maximum 250 square feet footprint of building, deck or roof area, whichever is greater; and

3. Installation of fences where they do not impede emergency egress.

F. Mine hazard areas. Critical facilities, as defined by the currently adopted version of International Building Code, are not permitted in the area of the former railroad tunnel. Other development within 50 feet of the mapped location of the former railroad tunnel shall be required to perform a hazard analysis that identifies the following:

1. Location of the development relative to the former tunnel.

2. Evaluation of the potential effects of tunnel subsidence on the proposed structures.

3. Recommendations for mitigation of any potential subsidence.

G. Tsunami hazard areas. Development in tsunami hazard areas shall comply with the zoning and Building Code requirements of the TMC. There are no other specific development standards for tsunami hazard areas. (Ord. 27431 § 53; passed Nov. 15, 2005; Ord. 27294 § 2; passed Nov. 16, 2004)

### **13.11.800 Aquifer recharge areas.**

The 800 section contains the regulations for aquifer recharge areas, including the following:

13.11.810 Classification.

13.11.820 Standards.

(Ord. 27431 § 54; passed Nov. 15, 2005)

#### **13.11.810 Classification.**

Classification of recharge areas as critical areas shall be based upon the susceptibility of the aquifer to degradation and contamination. High susceptibility is indicative of land uses which produce contaminants that may degrade groundwater and low susceptibility is indicative of land uses which will not. The following criteria should be considered in designating areas with critical recharging effects:

A. Availability of adequate information on the location and extent of the aquifer;

B. Vulnerability of the aquifer to contamination that would create a significant public health hazard. When determining vulnerability, depth of groundwater, macro and micro permeability of soils, soil types, presence of a potential source of contamination and other relevant factors should be considered; and

C. The extent to which the aquifer is an essential source of drinking water. (Ord. 27431 § 55; passed Nov. 15, 2005)

#### **13.11.820 Standards.**

Standards for development in aquifer recharge areas shall be in accordance with the provisions in Chapter 13.09, South Tacoma Groundwater Protection District, of the TMC and other local, state, and federal regulations. (Ord. 27431 § 56; passed Nov. 15, 2005)

#### **13.11.900 Definitions.**

Words and phrases used in this chapter shall be interpreted as defined below. Where ambiguity exists, words or phrases shall be interpreted so as to give this chapter its most reasonable application in carrying out its regulatory purpose.

13.11.900.A

Adjacent means immediately adjoining (in contact with the boundary of the influence area) or within a distance that is less than that needed to separate activates from critical areas to ensure protection of the functions and values of the critical areas. Adjacent shall mean any activity or development located:

a. On a site immediately adjoining a critical area;

- b. A distance equal to or less than the required critical area buffer width;
- c. A distance equal to or less than one-half mile (2,640 feet) from a bald eagle nest;
- d. A distance equal to or less than three hundred (300) feet upland from a stream, wetland, or water body;
- e. Bordering or within the floodway, floodplain or channel migration zone; or
- f. A distance equal to or less than two hundred (200) feet from a critical aquifer recharge area.

**Anadromous fish.** Fish that spawn and rear in freshwater and mature in the marine environment. While Pacific salmon die after their first spawning, adult char (bull trout) can live for many years, moving in and out of saltwater and spawning each year. The life history of Pacific salmon and char contains critical periods of time when these fish are more susceptible to environmental and physical damage than at other times. The life history of salmon, for example, contains the following states; upstream migration of adults, spawning, inter-gravel incubation, rearing, smoltification (the time period needed for juveniles to adjust their body functions to live in the marine environment), downstream migration, and ocean rearing to adults.

**Aquifer.** A geologic formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

**Aquifer critical recharging areas.** Areas that, due to the presence of certain soils, geology, and surface water act to recharge groundwater by percolation.

#### 13.11.900.B

**Base flood.** A flood event having a one percent (1%) chance of being equaled or exceeded in any given year, also referred to as the 100-year flood. Designations of base flood areas on flood insurance map(s) always include the letters A or V.

**Best available science.** The current science information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 925. Sources of best available science are included in "Citations of Recommended Sources of the Best Available Science for Designating and Protecting Critical Areas" published by the Washington State Office of Community, Trade and Economic Development.

**Best management practices. (BMP's).** Conservation practices or systems of practices and management measures that:

- a. Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, and sediment;
- b. Minimize adverse impacts to surface water and ground water flow and circulation patterns and to the chemical, physical, and biological characteristics of wetlands;
- c. Protect trees and vegetation designated to be retained during and following site construction and use native plant species appropriate to the site for revegetation of disturbed areas; and
- d. Provide standards for proper use of chemical herbicides within critical areas.

**Bioengineering.** A combination of engineering techniques and natural products that increase the strength and structure of the soil through biological and mechanical means.

**Buffer zone.** An area required by this chapter that is contiguous to and protects a critical area which is required for the continued maintenance, functioning, and/or structural stability of a critical area. The area may be surrounding a natural, restored, or newly created critical area.

#### 13.11.900.C

**Class, wetland.** One of the wetland classes in the United States Fish and Wildlife Service publication, *Classification of Wetlands and Deepwater Habitats of the United States* (December 1979). A class describes the general appearance of the habitat in terms of either the dominant vegetation life form or the physical geography and composition of the substrate.

**Clearing.** The destruction or removal of logs, scrub-shrubs, stumps, trees or any vegetative material by burning, chemical, mechanical or other means.

**Compensatory mitigation.** Replacing project-induced losses or impacts to a critical area, and includes, but is not limited to, the following:

- a. **Restoration.** Actions performed to reestablish wetland functional characteristics and processes that have been lost by alterations, activities, or catastrophic events within an area that no longer meets the definition of a wetland.
- b. **Creation.** Actions performed to intentionally establish a wetland at a location where it did not formerly exist.
- c. **Enhancement.** Actions performed to improve the condition of existing degraded wetlands so that the functions they provide are of a higher quality,
- d. **Preservation** actions taken to ensure the permanent protection of existing high quality wetlands.

Conservation easement. A legal agreement that the property owner enters into to restrict uses of the land. Such restrictions can include, but are not limited to, passive recreation uses such as trails or scientific uses and fences or other barriers to protect habitat. The easement is recorded on a property deed, runs with the land, and is legally binding on all present and future owners of the property, therefore, providing permanent or long-term protection.

Critical areas. Critical areas include the following ecosystems: areas with a critical recharging effect on aquifers used for drinking water, fish and wildlife habitat conservation areas (FWHCAs), frequently flooded areas, geologically hazardous areas, wetlands, and streams.

#### 13.11.900.E

Ecosystem. The system of interrelationships within and between a biological community and its physical environment.

Emergent wetland. A wetland with at least thirty percent (30%) of the surface area covered by erect, rooted, herbaceous vegetation extending above the water surface as the uppermost vegetation strata.

Endangered species. A regional plant or animal species which is in danger of extinction throughout all or a significant portion of its range. Such animal species are designated by the Washington Department of Wildlife pursuant to RCW 232-12 or United States Fish and Wildlife Service. Such plant species are designated by the Washington Department of Natural Resources, Washington Natural Heritage Program or United States Fish and Wildlife Service.

Enhancement means the manipulation of the physical, chemical, or biological characteristics present to develop a wetland site to heighten, intensify or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention or wildlife habitat. Activities typically consist of planting vegetation, controlling nonnative or invasive species, modifying site elevations or the proportion of open water to influence hydro-periods, or some combination of these. Enhancement results in a change in some wetland functions and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres.

Erosion. Wearing away of earth's surface as a result of movement of wind, water, ice, or any means.

Erosion hazard areas. Areas which contain soils classified by the United States Department of

Agriculture Soil Conservation Service that may experience severe to very severe erosion hazards.

Establishment (Creation) means the manipulation of the physical, chemical, or biological characteristics present to develop a wetland on an upland or deepwater site, where a wetland did not previously exist. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydroperiod, create hydric soils, and support the growth of hydrophytic plant species. Establishment results in a gain in wetland acres.

Exotic. A species of plants or animals that is foreign to the area in question.

#### 13.11.900.F

Fill. Dumping or placing, by any means, any material on any soil or sediment surface, including temporary stockpiling of material.

Fish and wildlife habitat conservation areas (FWHCA). Areas identified as being of critical importance to the maintenance of fish and wildlife species.

Flood hazard areas. Lands in a floodplain including areas adjacent to lakes, streams, oceans or other bodies of water lying outside the ordinary bank of the water body and which are periodically inundated by flood flow with a one percent or greater expectancy of flooding in any given year.

Flood water storage. The ability to hold and slow down flood waters. Construction in a floodway reduces the flood water storage capacity and the removal of vegetation from a floodway reduces the floodway's ability to slow down flood waters.

Forested wetland. A wetland with at least thirty percent (30%) of the surface area covered by woody vegetation greater than (20) feet in height that is at least partially rooted within the wetland.

Function and values. The beneficial roles served by critical areas including, but are not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, ground water recharge and discharge, erosion control, wave attenuation, protection from hazards, historical and archaeological and aesthetic value protection, educational opportunities, and recreation. These beneficial roles are not listed in order of priority.

#### 13.11.900.G

Geologic hazards specialist. A professional geologist or engineering geologist with a degree in the geologic sciences from an accredited college or university with a minimum of four years' experience in geologic practice involving geologic hazards. A qualified

geotechnical engineer, licensed as a civil engineer with the state of Washington, with a minimum of four years' experience in landslide evaluation, may also qualify as a geologic hazards specialist.

Geologically hazardous areas. Areas that may not be suited to development consistent with public health, safety or environmental standards, because of their susceptibility to erosion, sliding, earthquake, or other geological events as designated by WAC 365-190-080(4). Types of geologically hazardous areas include: erosion, landslide, seismic, mine, and volcanic hazards.

Geo-buffer is a zone within a geo-setback area required to be vegetated with either native or non-native vegetation.

Geo-setback means the minimum building setback from the applicable geologically hazardous area.

Grading. Excavating, filling, leveling, or artificially modifying surface contours.

#### 13.11.900.H

Habitat. The specific area or environment in which a particular type of animal lives.

Habitat conservation areas means areas designated as fish and wildlife habitat conservation areas.

Habitats of local importance. Those areas that include a seasonal range or habitat element with which a given species has a primary association, and which, if altered may reduce the likelihood that the species will maintain and reproduce over the long-term. These might include areas of high relative density or species richness, breeding habitat, winter range, and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alternations such as cliffs, talus, and wetlands.

Habitat Zones. Areas designated and mapped that depict high quality, relatively undisturbed critical areas and natural open spaces that provide valuable functions and values beyond the individual natural habitats contained within. Habitat Zones are lands mapped in the City of Tacoma for their biological diversity and remaining natural habitats for all flora and fauna native to the local environment, including the special consideration for anadromous fish. The map depicting these lands is contained within the Environmental Policy Plan element of the Comprehensive Plan. Any parcel that is fifty percent (50%) or more within a mapped Habitat Zone shall be considered fully contained within the Habitat Zone.

Hazard trees. Trees that are damaged, diseased, or have fully matured and their health is in decline and

that pose a threat to life or property due to their location and increasing potential of falling.

Hydraulic project approval (HPA). A permit issued by the Department of Fish and Wildlife for modifications to waters of the state in accordance with Chapter 75.20 RCW.

Hydric soil. Soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the uppermost level.

Hydrogeomorphic or HGM. A system used to classify wetlands based on the position of the wetland in the landscape (geomorphic setting), the water source for the wetland and the flow and fluctuation of the water once in the wetland.

Hydroperiod. The seasonal occurrence of flooding and/or soil saturation which encompasses the depth, frequency, duration, and seasonal pattern of inundation.

Hydrophytic vegetation. Macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. The presence of hydrophytic vegetation shall be determined following the methods described in the Washington State Wetland Identification and Delineation Manual.

Hyporheic zone. The saturated located beneath and adjacent to streams that contains some portion of surface water, serves as a filter for nutrients, and maintains water quality.

#### 13.11.900.I

Impervious surfaces. A hard surface that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development or that causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam or other surfaces which similarity impede the natural infiltration of stormwater.

In-kind compensation. To replace critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity. It does not mean replacement "in category."

Isolated wetlands. Those wetlands that are outside of and not contiguous to any 100-year floodplain of lake, river or stream, and have no continuous hydric soil or hydrophytic vegetation between the wetland and any surface water.

13.11.900.J.

Joint Aquatic Resource Permit Application (JARPA). A single application form that may be used to apply for hydraulic project approvals, shoreline management permits, approvals of exceedance of water quality standards, water quality certifications, coast guard bridge permits, Department of Natural Resources use authorization, and Army Corps of Engineers permits.

13.11.900.L

Lahars. Mudflows and debris flows originating from the slope of a volcano.

Land modification. A human-induced action which affects the stability of an erosion hazard area, landslide hazard area, or steep or moderate slope. Land modification includes clearing, grading, and other soil disturbances. It does not include pruning of vegetation; provided such pruning is not so extensive as to disturb the soil stability.

Landslide. An episodic down slope movement of a mass of soil and/or rock.

Landslide hazard areas. Areas potentially subject to landslides based on a combination of geologic, topographic, and hydrologic factors. They include areas susceptible because of any combination of bedrock, soil, slope aspect, structure, hydrology, or other features.

13.11.900.M

Mine hazard areas are those areas underlain by or affected by mine workings such as adits, gangways, tunnels, drifts, or airshafts, and those areas of sink holes, gas releases, or subsidence due to mine workshops. Underground mines do not presently exist within the City of Tacoma.

Mitigation. Avoiding, minimizing, or compensating for adverse critical areas impacts. Mitigation, in the following sequential order of preference, is:

- a. Avoiding the impact altogether by not taking a certain action or parts of an action.
- b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps such as project redesign, relocation, or timing, to avoid or reduce impacts.
- c. Rectifying the impact to wetlands by repairing, rehabilitation, or restoring the affected environment to the conditions existing at the time of the initiation of the project:
- d. Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through engineered or other methods.

e. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action.

f. Compensating for the impact to wetlands by replacing, enhancing, or providing substitute resources or environments.

g. Monitoring the hazard or other required mitigation and taking remedial action when necessary.

Mitigation for individual actions may include a combination of the above measures.

Monitoring. Evaluating the impacts of development proposals on the biological, hydrological, and geological elements of such systems and assessing the performance of required mitigation measures throughout the collection and analysis of data by various methods for the purposes of understanding and documenting changes in natural ecosystems and features, and includes gathering baseline data.

Mosaic wetlands are wetlands that should be considered one unit when each patch of wetland is less than 1 acre, and each patch of wetland is less than 100 feet apart, on the average, and the areas delineated as vegetated wetland are more than 50% of the total area of the wetlands and the uplands together, or wetlands, open water, and river bars.

13.11.900.N

Native vegetation. Vegetation comprised of plant species which are indigenous to the area in question.

13.11.900.O

Off-site compensation. To replace critical areas away from the site on which a critical area has been impacted.

On-site compensation. To replace critical areas at or adjacent to the site on which a critical area has been impacted.

Ordinary high water mark. A mark that has been found where the presence and action of waters are common, usual, and maintained in an ordinary year long enough to create a distinction in character between water body and the abutting upland.

13.11.900.P

Parties of record. Individuals, entities and groups who have commented on a proposal in writing or in person or who have asked to be included on a mailing list for a specific proposal.

Priority habitats. Seasonal range or habitat element with which a given species is primarily associated and which, if altered, may reduce survival potential of that species over the long term. Priority habitats are designated by the Washington Department of



Wildlife, Priority Habitat and Species Program, and may include habitat areas of high relative density or species richness, breeding habitat or habitats used as winter range or movement corridors. Habitats of limited availability or with high vulnerability to alteration, such as cliffs, talus, and wetlands, may also be included.

Priority species. Species which are of concern because of their population status and sensitivity to habitat alteration. Priority species are designated by the Washington Department of Wildlife, Priority Habitat and Species Program, and may include endangered, threatened, sensitive, candidate, monitored, or game species.

Protection/Maintenance (Preservation) means removing a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This includes the purchase of land or easements, repairing water control structures or fences, or structural protection such as repairing a barrier island. This term also includes activities commonly associated with preservation. Preservation does not result in a gain of wetland acres, and may result in a gain of functions.

#### 13.11.900.Q

Qualified professional. A person, who at a minimum, has earned a degree from an accredited college/university in the relevant scientific or engineering discipline appropriate to the critical area subject and two years of related professional work experience; or eight years of professional work experience in the relevant critical area subject.

#### 13.11.900.R

Re-establishment means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Activities could include removing fill material, plugging ditches, or breaking drain tiles. Re-establishment results in a gain in wetland acres.

Rehabilitation means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions of a degraded wetland. Activities could involve breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres.

Repair or maintenance. An activity that restores the character, scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill,

flood, or otherwise alter critical areas are not included in this definition.

Restoration. The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded wetland. For the purposes of tracking net gains in wetland acres, restoration is divided into Re-establishment and Rehabilitation.

Riparian zone. Areas adjacent to aquatic systems with flowing water that contain elements of both aquatic and terrestrial ecosystems that mutually influence each other. The width of these areas extends to that portion of the terrestrial landscape that directly influences the aquatic ecosystem by providing shade, fine or large woody material, nutrients, organic and inorganic debris, terrestrial insects, or habitat for riparian-associated wildlife. Width shall be measured from the ordinary high water mark or from the top of bank if the ordinary high water mark cannot be identified. It includes the entire extent of the floodplain and the extent of vegetation adapted to wet conditions as well as adjacent upland plant communities that directly influence the stream system. Riparian habitat areas include those riparian areas severely altered or damaged due to human development activities.

#### 13.11.900.S

Scrub-shrub wetland. A wetland with at least thirty percent (30%) of its surface area covered by woody vegetation less than twenty (20) feet in height as the uppermost strata.

Seismic hazard areas means areas subject to severe risk damage as a result of seismic induced settlement, shaking, lateral spreading, surface faulting, slope failure or soil liquefaction. These conditions occur in areas underlain by soils low cohesion or density usually in association with a shallow groundwater table. Seismic hazard areas shall be defined by the Washington Department of Ecology Coastal Zone Atlas (Seismic Hazard Map prepared by GeoEngineers) as: Class U (Unstable), Class Uos (Unstable old slides), Class Urs (Unstable recent slides, Class I (intermediate) and Class M (Modified) as shown in the Seismic Hazard Map.

Species-Any group of animals or plants classified as a species or subspecies as commonly accepted by the scientific community.

Species, endangered. Any plant, fish or wildlife species that is threatened with extinction throughout all or a significant portion of its range and is listed by the state or federal government as an endangered species.

Species, priority. Any plant, fish or wildlife species requiring protection measures and/or management

guidelines to ensure their persistence as genetically viable population levels as classified by the Department of Fish and Wildlife, including endangered, threatened, sensitive, candidate and monitor species, and those of recreational, commercial or tribal importance.

Species, threatened. Any plant, fish or wildlife species that is likely to become an endangered species within the foreseeable future throughout a significant portion of its range without cooperative management or removal of threats, and is listed by the state or federal government as a threatened species.

Streams. Lands and waters contained within a channel which support hydrophytes and where the substrate is predominantly undrained hydric soils, nonsoil and/or is saturated with water or covered by water each growing season.

Streams of Local Significance. Streams that contain salmon, steelhead, and bull trout.

Stream corridor. Perennial, intermittent or ephemeral waters included within a channel of land and its adjacent riparian zones which serves as a buffer between the aquatic and terrestrial upland ecosystems.

Subclass, wetland. One of the wetland subclasses in the United States Fish and Wildlife Service publication, Classification of Wetlands and Deepwater Habitats of the United States (December 1979). A subclass is based on finer distinctions in life forms and/or substrate materials. Examples of subclasses of vegetation include needle-leaved evergreen, broad-leaved evergreen, needle-leaved deciduous and broad-leaved deciduous.

#### 13.11.900.T

Toe of slope. A distinct topographic break in slope at the lowermost limit of an area where the ground surface drops 10 feet or more vertically within a horizontal distance of 25 feet.

Tsunami hazard areas are coastal areas and large lake shoreline areas susceptible to flooding and inundation as the result of excessive wave action derived from seismic or other geologic events. Currently, no specific boundaries have been established in the City of Tacoma limits for this type of hazard area.

#### 13.11.900.U

Unavoidable impacts. Impacts to a wetland or stream or associated buffers that will remain after project completion, when it has been demonstrated that no practicable alternatives exist, that extraordinary hardship exists or that the project is in the public interest.

#### 13.11.900.V.

Volcanic hazard areas are areas subject to pyroclastic flows,

#### 13.11.900.W

Water-dependent activity. Activity or use ~~that requires the use of surface water to fulfill the basic purpose of the proposed project~~ which requires direct contact with the water and cannot exist at a non-water location due to the intrinsic nature of its operation.

Water-related activity. Activity or use which is not intrinsically dependent on a waterfront location, but whose operation cannot occur economically without a waterfront location.

Wetlands. Areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Wetlands generally include small lakes, ponds, streams, swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including but not limited to irrigation and drainage ditches, grass-lined swales, canals, detention facilities, farm ponds, and landscape amenities if routinely maintained for those purposes. Wetlands do not include those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. However, wetlands do include those artificial wetlands intentionally created to mitigate conversion of wetlands.

Wetlands of Local Significance. Wetlands that are of special concern to the City of Tacoma and require additional protection measures beyond that afforded to them through the buffers required for each wetland category. Wetlands of Local Significance may be nominated through a process described in the Environmental Policy Plan Element of the City of Tacoma Comprehensive Plan

Wetland Specialist. A person with professional work experience and training in wetland issues and with experience in performing delineations, analyzing wetland functions and values, analyzing wetland impacts, and recommending wetland mitigation and restoration. Qualifications include: (1) Bachelor of Science or Bachelor of Arts or equivalent degree in biology, botany, environmental studies, fisheries, soil science, wildlife or related field, and two years of related professional work experience, including a minimum of one year experience delineating wetlands using the Unified Federal Manual and preparing wetland reports and mitigation plans. Additional education may substitute for one year of

related work experience; or (2) Four years of related professional work experience and training, with a minimum of two years experience delineating wetlands using the Unified Federal Manual and preparing wetland reports and mitigation plans. The person should be familiar with the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, Corps of Engineers Wetlands Delineation Manual 1987 and corresponding guidance letters, March 1997 Washington State Wetland Identification and Delineation Manual, Washington State Wetlands Rating System for Western Washington, City of Tacoma wetland development regulations and the requirements of this chapter.

Water resource inventory area (WRIA). One of sixty-two (62) watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in Chapter 173-5000 WAC as it existed on January 1, 1997. (Ord. 27431 § 57; passed Nov. 15, 2005)

DRAFT





**City of Tacoma**  
**Community and Economic Development Department**

**Agenda Item**  
**GB-2**

TO: Planning Commission  
FROM: Peter Huffman, Manager, Planning Division  
SUBJECT: Capital Facilities Program 2009-2014  
DATE: January 10, 2008

At the January 16<sup>th</sup> meeting, staff from the Budget and Research Office, Finance Department, will be asking the Planning Commission's feedback on the amendment process for completing the 2008-2013 Capital Facilities Program (CFP), and requesting the Commission's input and direction in planning for the process in 2008 concerning the 2009-2014 CFP.

Specifically, staff will ask for feedback surrounding the following questions:

- Was the process and timeline adequate and clear for the 2008-2013 CFP?
- Were there enhancements/improvements to the 2008-2013 CFP document that you found particularly helpful or useful?
- What should we change to make it easier for you to complete the review of the CFP?
- What additional information can we provide to you surrounding the CFP?

These questions are suggestions to facilitate the discussion, and are not intended to limit the feedback or comments that the Planning Commission wishes to offer. Please refer questions to Greg Klump, at 594-7903 or [gklump@cityoftacoma.org](mailto:gklump@cityoftacoma.org).

PH:gk

c: Ryan Petty  
Amy Palmer





**City of Tacoma**  
**Community and Economic Development Department**

**Agenda Item**  
**GB-3**

TO: Planning Commission  
FROM: Peter Huffman, Manager, Planning Division  
SUBJECT: Multifamily Tax Incentive Code Revisions  
DATE: January 9, 2008

At the Planning Commission's last meeting on December 19th, members asked staff to address two questions prior to proceeding with setting a public hearing date regarding the proposed Multifamily Tax Incentive code revisions including relocating applicable regulations from Chapter 13.17.030 of the Tacoma Municipal Code (TMC) to a new TMC Chapter 6A.110. Attached is a brief discussion of the questions and staff responses which have been incorporated into an updated staff report as well as the new Chapter 6A.110. The remaining sections of Chapter 13.17 pertaining to mixed-use center and residential target area designations will remain intact.

Also attached is the revised staff report which incorporates recommendations to address the two questions regarding the proposed amendment as well as recommended text changes to the Tacoma Municipal Code (TMC). Staff will be requesting the Commission to approve the proposed amendment for public review purposes and set a public hearing date of February 20, 2008 for public comment.

If you have any questions, please contact Jim Colburn at 591-5221 or [jcolburn@cityoftacoma.org](mailto:jcolburn@cityoftacoma.org).

PH:jc

c: Ryan Petty

Attachments

Planning Commission Questions  
Multifamily Tax Incentive Code Revisions  
(from meeting of December 19, 2007)

Planning Commission Question #1:

The Commission asked if the new section 6A.110.020 Part D relating to Relocation Assistance went beyond the State requirements in mandating the provision of “reasonable relocation assistance” by applicants for their existing tenants who may be displaced. Some members felt that the existing landlord-tenant laws adequately address this issue and further requirements are not needed as part of this program.

Staff Response:

The proposed requirements related to relocation assistance did represent an expansion of the State law as reflected in Section 5 of Substitute House Bill 1910 approved by the Legislature in 2007. After further discussion, staff decided to recommend elimination of the previously proposed language for relocation assistance and retain only the State mandated language as related to rehabilitation projects. This specific wording reads as follows:

*Section 5 (subpart 5) Property proposed to be rehabilitated must fail to comply with one or more standards of the applicable state or local building or housing codes on or after July 23, 1995. If the property proposed to be rehabilitated is not vacant, an applicant shall provide each existing tenant housing of comparable size, quality and price and a reasonable opportunity to relocate;*

This language has been incorporated into the latest draft for Section 6A.110 of the Tacoma Municipal Code.

Planning Commission Question #2:

The Commission also asked about compliance regarding size, density and other development standards in the processing and administration of applications for the property tax exemption. There was concern that applicants need to fully comply with all land use regulations along with all program and financial requirements.

Staff Response:

The staff responded at the December 19<sup>th</sup> meeting that the proposed TMC Section 6A.110.020 (subpart E) requires under subsection 5 (Compliance with Guidelines and Standards) that all projects “*must be designed to comply with the City’s comprehensive plan, building, housing and zoning codes and any other applicable regulations in effect at the time the application is approved.*” Subsequently, staff further discussed the issue and it was determined that the proposed language would be broad enough to address this concern of the Commission.

It should be further noted the relocation of the tax program to TMC Section 6A.110 is being made to give the Council greater discretion in making administrative program changes. The tax section of the municipal code is a more logical placement of the program as evidenced by other cities such as Seattle and Spokane. While financial and administrative-related considerations are appropriate for TMC Title 6, program concerns related to development issues such as eligibility locations, zoning and density will continue to be administered under TMC Title 13.

*(as of January 9, 2008)*



**PROPOSED AMENDMENT TO THE LAND USE REGULATORY CODE**

<b>Applicant:</b>	Tacoma Community & Economic Development Department
<b>Type of Amendment:</b>	Municipal Code Revisions (Title 13 & Title 6)
<b>Current Land Use Intensity:</b>	Various
<b>Current Area Zoning:</b>	Various
<b>Size of Area:</b>	Citywide
<b>Location:</b>	Designated Mixed Use Centers
<b>Neighborhood Council area:</b>	All
<b>Proposed Amendment:</b>	Amend TMC 13.17.030 (related to the City’s Multifamily Property Tax Incentive program) and add a new code section TMC 6A.110. The relocation of the tax program application procedures to TMC 6A.110 will provide greater flexibility in adjusting program application criteria. Changes will also include incorporating revisions for consistency with recent State legislative amendments.

**General Description of the Proposed Amendment:**

The proposed amendment would revise the Tacoma Municipal Code (TMC) Chapter 13.17 as well as create a new Chapter 6A.110. The amendment will improve the implementation of the City’s Multifamily Property Tax Incentive program by providing greater flexibility in changing program criteria as well as incorporating additional 2007 State legislative changes. Specific program changes will include the following:

(1) Incorporating 2007 State legislative changes (HB 1910) which changes the exemption period from 10 years to either an 8 or 12 year option depending upon inclusion of affordability provisions;

(2) Incorporating a 2007 State legislative change (HB2164) which precludes applications for tax exemption for any housing project located within the boundaries of a campus facilities master plan. As defined in the State legislation, “*campus facilities master plan means the area that is defined by the University of Washington as necessary for the future growth and development of its campus facilities for branch campuses authorized under RCW 28.45.020.*” For Tacoma’s tax exemption program, it will mean the boundary that is defined by the University of Washington Tacoma as necessary for future growth and development of its campus facilities in the downtown area;

(3) Moving the tax exemption provisions from Chapter 13.17.030 to a new Chapter 6A.110 of the Tacoma Municipal Code. The rationale is the tax program is primarily financial in nature. Those portions of Chapter 13.17 relating to land use and mixed use development would remain in the Land Use Regulatory Code. (i.e. tax program relocation to TMC Section 6A.110 is being made to give the City Council greater discretion in making financial and administrative-related considerations appropriate for TMC Title 6. All project concerns related to development issues such as eligibility locations, zoning and density will continue to be administered under TMC Title 13).

### **Additional Information:**

The applicant believes the changes would enhance the implementation of the property tax exemption program while allowing future changes to occur in a more timely manner.

### **Applicable Provisions of the Growth Management Act (GMA / RCW 84.14):**

- *State Growth Management Act (GMA) - Two overall planning goals stated in GMA are to (a) “encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner” and (b) to “encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock”.*
- *RCW 84.14 – New & Rehabilitated Multiple-Unit Dwellings in Urban Centers*  
*The key purpose for authorization of property tax exemption is “to stimulate the construction of new multifamily housing and the rehabilitation of existing vacant and underutilized buildings for multifamily housing in urban centers having insufficient housing opportunities ...”*

**Discussion:** The stated public purposes for growth areas and for the State authorization of tax exemptions are to facilitate the provision of additional residential units in urban areas. This amendment addresses these objectives by providing added flexibility in program criteria and guidelines and incorporating new State legislative changes to meet these long range objectives.

### **Applicable Provisions of the Comprehensive Plan:**

The proposed amendment is consistent with the goals and policies of the Growth and Development Element, the Generalized Land Use Element (e.g. Mixed-Use Centers), and the Housing Elements of the comprehensive plan as described below:

- *GLUP Growth and Development Goal– (LU-GGD-3 Concentrated Development)*  
*– The policy states: “Growth and development throughout the urban area should be regulated, stimulated and otherwise guided toward the development of compact concentrated areas to discourage sprawl, facilitate economical and efficient provision of utilities, public facilities and services, and expand transportation options to the public.”*
- *GLUP Mixed-Use Centers Goal – The overall mixed-use centers goal states: “To achieve concentrated centers of development with appropriate transportation linkages that promote a balanced pattern of growth and development, reduce sprawl, foster economies in the provision of public utilities and services and yield energy savings.”*

- *Housing Element – The overall housing goal states: “To maintain and support vibrant and stable residential neighborhoods while promoting a variety of housing opportunities to meet the needs of all residents .”*

**Discussion:** The overall goal of developing livable mixed-use centers for existing and future residents is facilitated by the use of the Property Tax Exemption program. The aforementioned goals and polices from the comprehensive plan are implemented, in part, by the use of the tax program.

**Applicable Provisions of the Land Use Regulatory Code (LURC):**

Applicable provisions proposed to be amended and/or relocated out of the LURC are 13.17.020 and 13.17030 as stated as follows:

- Section 13.17.020 of the LURC relates to *Residential target area designation and standards*. This section will remain in Title 13. Section 13.17.030 of the LURC relates to *Tax exemptions for multi-family housing in residential target areas*. This section will be moved to the tax and license section of the TMC in a new section 6A.110. The change is appropriate since the program relates to the provision of tax benefits more applicable to this part of the TMC.

**Discussion:** The proposed amendment will facilitate timely legislative changes to the program while incorporating mandated changes by the State legislature. The changes are consistent with and supportive of the various City plans and programs

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

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

Staff Analysis: Does not apply.

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

Staff Analysis: The proposed amendment is generally consistent with the goals and policies of the comprehensive plan in terms of growth and development, housing and economic development by encouraging concentrated investment within the boundaries of the designated mixed-use centers.

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

Staff Analysis: Does not apply.

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

Staff Analysis: The need to incorporate State legislation affecting the current tax exemption program as well as the need for additional flexibility in the implementation and amendment of the program represents a recent change necessitating the amendment.

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

Staff Analysis: The amendment will facilitate more extensive use of the Property Tax Exemption program resulting in the provision of additional housing opportunities in the designated mixed-use centers. The provision in additional housing opportunities is compatible with and supports planned land uses and future development objectives.

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

Staff Analysis: Does not apply.

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

Staff Analysis: Does not apply.

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

Staff Analysis: Does not apply.

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

Staff Analysis: Does not apply.

- 10. Substantial similarities of conditions and characteristics can be demonstrated on abutting properties that warrant a change in land use intensity or zoning classification.**

Staff Analysis: Does not apply.

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

Staff Analysis: Does not apply.

**Economic Impact Assessment:**

The proposed amendment will likely have relatively minor short term economic impacts within the City. However, the recent programmatic revisions by the State may support the potential for more affordable housing opportunities for projects located within the designated mixed-use centers. The availability of additional affordable housing opportunities for (both low and moderate income households) should have indirect economic benefits in terms of facilitating opportunities for employees to live and work in the same community. As the need for providing “work force” housing becomes more acute, the provision of such housing in the community increases its competitive advantage in securing a viable workforce insuring long range economic benefits.

The redevelopment of unused or underutilized parcels will significantly increase the tax base upon the conclusion of the tax exemption. Taxes on land and non-residential improvements will still be paid and will be increasing during the period of the exemption.

**Conclusion:**

As previously stated, the proposed amendment could increase opportunities for economic development directly and indirectly. However, property taxes on the residential improvements for new housing projects will continued to be exempted for either an eight or twelve year period. The amendment will provide the City Council, staff and other stakeholders the flexibility to change the program in a timely manner in response to market conditions.

**Staff Recommendation:**

The proposed amendment to implement code changes to the Property Tax Exemption program is recommended for approval in order to facilitate implementation of future housing development projects in the mixed-use centers. It is anticipated that a portion of future project applications will be for the twelve year tax exemption option facilitating the provision of additional affordable housing opportunities, including “work force” housing for moderate income households.

**Attachments:**

**TMC Chapter 13.17**  
**New section TMC Chapter 6A.110**



## Chapter 13.17

### MIXED-USE CENTER DEVELOPMENT

Sections:

- 13.17.010 Definitions.
- 13.17.020 Residential target area designation and standards.

~~13.17.030 Tax exemptions for multi-family housing in residential target areas.~~

#### 13.17.010 Definitions.

A. "Multi-family housing" means building(s) having four or more dwelling units designed for permanent residential occupancy resulting from new construction or rehabilitation or conversion of vacant, underutilized, or substandard buildings.

B. "Owner" means the property owner of record.

C. "Mixed-use center" means a center designated as such in the land use element of the City's comprehensive plan. A mixed-use center is a compact identifiable district containing several business establishments, adequate public facilities, and a mixture of uses and activities, where residents may obtain a variety of products and services.

D. "Director" means the Director of the Community and Economic Development Department or authorized designee.

E. "Permanent residential occupancy" means multifamily housing that provides either rental or owner occupancy for a period of at least one month. This excludes hotels and motels that predominately offer rental accommodation on a daily or weekly basis.

F. "Rehabilitation improvements" means modifications to existing structures that are vacant for 12 months or longer, [that are made to achieve a condition of substantial compliance with existing building codes](#) or modification to existing occupied structures which ~~convert nonresidential space to residential space and/or~~ increase the number of multi-family housing units.

G. "Residential target area" means an area within a mixed-use center that has been designated by the City Council as lacking sufficient, available, desirable, and convenient residential housing to meet the needs of the public. (Ord. 27466 § 43; passed Jan. 17, 2006; Ord. 26386 § 39; passed Mar. 23, 1999; Ord. 25789 § 3; passed Nov. 21, 1995)

#### 13.17.020 Residential target area designation and standards.

A. Criteria. Following a public hearing, the City Council may, in its sole discretion, designate one or more residential target areas. Each designated target area must meet the following criteria, as determined by the City Council:

1. The target area is located within a designated mixed-use center;
2. The target area lacks sufficient available, desirable, and convenient residential housing to meet the needs of the public who would likely live in the mixed-use center if desirable, attractive, and livable places were available; and
3. The providing of additional housing opportunity in the target area will assist in achieving the following purposes:
  - a. Encourage increased residential opportunities within the target area; or
  - b. Stimulate the construction of new multi-family housing and the rehabilitation of existing vacant and underutilized buildings for multi-family housing.

In designating a residential target area, the City Council may also consider other factors, including, but not limited to: whether additional housing in the target area will attract and maintain a significant increase in the number of permanent residents; whether an increased residential population will help alleviate detrimental conditions and social liability in the target area; and whether an increased residential population in the target area will help to achieve the planning goals mandated by the Growth Management Act under RCW 36.70A.020. The City Council may, by ordinance, amend or rescind the designation of a residential target area at any time pursuant to the same procedure as set forth in this chapter for original designation.

B. Target Area Standards and Guidelines. For each designated residential target area, the City Council shall adopt basic requirements for both new construction and rehabilitation [supported by the City's property tax exemption for multi-family housing program](#), including the application ~~process and~~ procedures [specified in Section 6A.110.020](#). The City Council may also adopt guidelines including the following:

1. Requirements that address demolition of existing structures and site utilization; and
2. Building requirements that may include elements addressing parking, height, density, environmental impact, public benefit features, compatibility with the surrounding property, and such other amenities as will attract and keep permanent residents and will properly enhance the livability of the residential target area.

# Tacoma Municipal Code

The required amenities shall be relative to the size of the proposed project and the tax benefit to be obtained.

C. Designated Target Areas. The proposed boundaries of the "residential target areas" are the boundaries of the 17 mixed-use centers listed below and as indicated on the Generalized Land Use Plan and in the Comprehensive Plan legal descriptions which are incorporated herein by reference and on file in the City Clerk's Office.

MIXED-USE CENTER	CENTER TYPE
South 56th and South Tacoma Way	Neighborhood
Downtown Tacoma	CBD
North 26th and Proctor	Neighborhood
Tacoma Mall Area	Urban
South 11th and MLK Jr. Way	Neighborhood
Westgate	Community
South 38th and "G" Street	Neighborhood
6th Avenue and Pine Street	Neighborhood
Tacoma Central Plaza/Allenmore	Community
South 72nd and Pacific Avenue	Community
South 72nd and Portland Avenue	Neighborhood
Stadium (North 1st and Tacoma)	Neighborhood
James Center/TCC	Community
Lower Portland Avenue	Community
South 34 <sup>th</sup> and Pacific Avenue	Community
McKinley	Neighborhood
Narrows	Neighborhood

(Ord. 25823 § 1; passed Jan 16, 1996; Ord. 25789 § 3; passed Nov. 21, 1995)

### ~~13.17.030 Tax exemptions for multi-family housing in residential target areas.~~

~~A. Intent. Limited 10-year exemptions from ad valorem property taxation for multi-family housing in mixed-use centers are intended to:~~

- ~~1. Encourage increased residential opportunities within mixed-use centers designated by the City Council as residential target areas;~~
- ~~2. Stimulate new construction or rehabilitation of existing vacant and underutilized buildings for multifamily housing in residential target areas to increase and improve housing opportunities;~~
- ~~3. Assist in directing future population growth to designated mixed-use centers, thereby reducing development pressure on single-family residential neighborhoods; and~~

~~4. Achieve development densities which are more conducive to transit use in designated mixed-use centers.~~

~~B. Duration of Exemption. The value of improvements qualifying under this chapter will be exempt from ad valorem property taxation for ten successive years beginning January 1 of the year immediately following the calendar year of issuance of the Final Certificate of Tax Exemption.~~

~~C. Limits on Exemption. The exemption does not apply to the value of land or to the value of improvements not qualifying under this chapter, nor does the exemption apply to increases in assessed valuation of land and non-qualifying improvements. In the case of rehabilitation of existing buildings, the exemption does not include the value of improvements constructed prior to submission of the completed application required under this chapter.~~

~~D. Project Eligibility. A proposed project must meet the following requirements for consideration for a property tax exemption:~~

~~1. Location. The project must be located within a residential target area, as designated in Section 13.17.020.~~

~~2. Tenant Displacement Prohibited. The project must not displace existing residential tenants of structures that are proposed for redevelopment. Existing dwelling units proposed for rehabilitation must have been unoccupied for a minimum of 12 months prior to submission of application and must have one or more violations of the City's minimum housing code. Applications for new construction cannot be submitted for vacant property upon which an occupied residential rental structure previously stood, unless a minimum of 12 months has elapsed from the time of most recent occupancy.~~

~~3. Size. The project must include at least four units of multi-family housing within a residential structure or as part of a mixed-use development. A minimum of four new units must be constructed or at least four additional multi-family units must be added to existing occupied multi-family housing. Existing multi-family housing that has been vacant for 12 months or more does not have to provide additional units so long as the project provides at least four units of new, converted, or rehabilitated multi-family housing.~~

~~4. Permanent Residential Housing. At least 50 percent of the space designated for multi-family housing must be provided for permanent residential occupancy, as defined in Section 13.17.010.~~

~~5. Proposed Completion Date. New construction multi-family housing and rehabilitation improvements must be scheduled to be completed within three years from the date of approval of the application.~~



# Tacoma Municipal Code

~~6. Compliance With Guidelines and Standards. The project must be designed to comply with the City's comprehensive plan, building, housing, and zoning codes, and any other applicable regulations in effect at the time the application is approved. Rehabilitation and conversion improvements must comply with the City's minimum housing code. New construction~~

~~must comply with the Uniform Building Code. The project must also comply with any other standards and guidelines adopted by the City Council for the residential target area in which the project will be developed.~~

~~E. Application Procedure. A property owner who wishes to propose a project for a tax exemption shall complete the following procedures:~~

~~1. File with the Community and Economic Development Department the required application along with the required fees. The application fee to the City shall be \$1,000 for four units, plus \$100 per additional multi-family unit, up to a maximum total fee to the City of \$5,000. If the application shall result in a denial by the City, the City will retain that portion of the fee attributable to its own administrative costs and refund the balance to the applicant.~~

~~2. A complete application shall include:~~

~~a. A completed City of Tacoma application form setting forth the grounds for the exemption;~~

~~b. Preliminary floor and site plans of the proposed project;~~

~~e. A statement acknowledging the potential tax liability when the project ceases to be eligible under this chapter; and~~

~~d. Verification by oath or affirmation of the information submitted.~~

~~For rehabilitation projects, the applicant shall also submit an affidavit that existing dwelling units have been unoccupied for a period of 12 months prior to filing the application and shall secure from the City verification of properly noncompliance with the City's minimum housing code.~~

~~F. Application Review and Issuance of Conditional Certificate. The Director may certify as eligible an application which is determined to comply with the requirements of this chapter. A decision to approve or deny an application shall be made within 90 days of receipt of a complete application.~~

~~1. Approval. If an application is approved, the applicant shall enter into a contract with the City, subject to approval by resolution of the City Council regarding the terms and conditions of the project.~~

~~Upon Council approval of the contract, the Director shall issue a Conditional Certificate of Acceptance of Tax Exemption. The Conditional Certificate expires three years from the date of approval unless an extension is granted as provided in this chapter.~~

~~2. Denial. The Director shall state in writing the reasons for denial and shall send notice to the applicant at the applicant's last known address within ten days of the denial. An applicant may appeal a denial to the City Council within 30 days of receipt of notice. On appeal, the Director's decision will be upheld unless the applicant can show that there is no substantial evidence on the record to support the Director's decision. The City Council's decision on appeal will be final.~~

~~G. Extension of Conditional Certificate. The Conditional Certificate may be extended by the Director for a period not to exceed 24 consecutive months. The applicant must submit a written request stating the grounds for the extension, accompanied by a \$50.00 processing fee. An extension may be granted if the Director determines that:~~

~~1. The anticipated failure to complete construction or rehabilitation within the required time period is due to circumstances beyond the control of the owner;~~

~~2. The owner has been acting and could reasonably be expected to continue to act in good faith and with due diligence; and~~

~~3. All the conditions of the original contract between the applicant and the City will be satisfied upon completion of the project.~~

~~H. Application for Final Certificate. Upon completion of the improvements agreed upon in the contract between the applicant and the City and upon issuance of a temporary or permanent certificate of occupancy, the applicant may request a Final Certificate of Tax Exemption. The applicant must file with the Community and Economic Development Department the following:~~

~~1. A statement of expenditures made with respect to each multi-family housing unit and the total expenditures made with respect to the entire property;~~

~~2. A description of the completed work and a statement of qualification for the exemption; and~~

~~3. A statement that the work was completed within the required three-year period or any authorized extension.~~

~~Within 30 days of receipt of all materials required for a Final Certificate, the Director shall determine which specific improvements satisfy the requirements of this chapter.~~

## Tacoma Municipal Code

~~I. Issuance of Final Certificate. If the Director determines that the project has been completed in accordance with the contract between the applicant and the City and has been completed within the authorized time period, the City shall, within ten days, file a Final Certificate of Tax Exemption with the Pierce County Assessor.~~

~~1. Denial and Appeal. The Director shall notify the applicant in writing that a Final Certificate will not be filed if the Director determines that:~~

~~a. The improvements were not completed within the authenticated time period;~~

~~b. The improvements were not completed in accordance with the contract between the applicant and the City; or~~

~~c. The owner's property is otherwise not qualified under this chapter.~~

~~2. Within 14 days of receipt of the Director's denial of a Final Certificate, the applicant may file an appeal with the City's Hearing Examiner, as provided in Section 1.23.070 of the Tacoma Municipal Code. The applicant may appeal the Hearing Examiner's decision in Pierce County Superior Court, if the appeal is filed within 30 days of receiving notice of that decision.~~

~~J. Annual Compliance Review. Within 30 days after the first anniversary of the date of filing the Final Certificate of Tax Exemption, and each year thereafter, for a period of ten years, the property owner shall file a notarized declaration with the Director indicating the following:~~

~~1. A statement of occupancy and vacancy of the multi-family units during the previous year;~~

~~2. A certification that the property continues to be in compliance with the contract with the City; and~~

~~3. A description of any subsequent improvements or changes to the property.~~

~~City staff shall also conduct on-site verification of the declaration. Failure to submit the annual declaration may result in the tax exemption being canceled.~~

~~K. Cancellation of Tax Exemption. If the Director determines the owner is not complying with the terms of the contract, the tax exemption will be canceled. This cancellation may occur in conjunction with the annual review or at any other time when noncompliance has been determined. If the owner intends to convert the multi-family housing to another use, the owner must notify the Director and the Pierce County Assessor within 60 days of the change in use.~~

~~1. Effect of Cancellation. If a tax exemption is canceled due to a change in use or other noncompliance, the Pierce County Assessor may impose an additional tax on the property, together with interest and penalty, and a priority lien may be placed on the land, pursuant to State legislative provisions.~~

~~2. Notice and Appeal. Upon determining that a tax exemption is to be canceled, the Director shall notify the property owner by certified mail. The property owner may appeal the determination by filing a notice of appeal with the City Clerk within 30 days, specifying the factual and legal basis for the appeal. The Hearing Examiner will conduct a hearing at which all affected parties may be heard and all competent evidence received. The Hearing Examiner will affirm, modify, or repeal the decision to cancel the exemption based on the evidence received. An aggrieved party may appeal the Hearing Examiner's decision to the Pierce County Superior Court. (Ord. 27466 § 44; passed Jan. 17, 2006; Ord. 27321 § 1; passed Mar. 1, 2005; Ord. 26492 § 1; passed Aug. 10, 1999; Ord. 26386 § 40; passed Mar. 23, 1999; Ord. 25789 § 3; passed Nov. 21, 1995)~~

**-Chapter 6A.110**

**PROPERTY TAX EXEMPTIONS FOR  
MULTI-FAMILY HOUSING**

Sections:

- 6A.110.010 Definitions.
- 6A.110.020 Property Tax Exemption – Requirements and Process.

**6A.110.010 Definitions.**

A. “Multi-family housing” means building(s) having four or more dwelling units designed for permanent residential occupancy resulting from new construction or rehabilitation or conversion of vacant, underutilized, or substandard buildings. (TMC Section 13.17.010)

B. “Owner” means the property owner of record. (TMC Section 13.17.010)

C. “Mixed-use center” means a center designated as such in the land use element of the City’s comprehensive plan. A mixed-use center is a compact identifiable district containing several business establishments, adequate public facilities, and a mixture of uses and activities, where residents may obtain a variety of products and services. (TMC Section 13.17.010)

D. “Director” means the Director of the Community and Economic Development Department or authorized designee. (TMC Section 13.17.010)

E. “Permanent residential occupancy” means multifamily housing that provides either rental or owner occupancy for a period of at least one month. This excludes hotels and motels that predominately offer rental accommodation on a daily or weekly basis. (TMC Section 13.17.010)

F. “Rehabilitation improvements” means modifications to existing structures that are vacant for 12 months or longer, that are made to achieve a condition of substantial compliance with existing building codes or modification to existing occupied structures which increase the number of multi-family housing units. (TMC Section 13.17.010)

G. “Residential target area” means an area within a mixed-use center that has been designated by the City Council as lacking sufficient, available, desirable, and convenient residential housing to meet the needs of the public.

H “Affordable housing” means residential housing that is rented by a person or household whose monthly housing costs, including utilities other than telephone, do not exceed thirty percent of the household’s monthly income. For the purposes of housing intended

for owner occupancy, “affordable housing” means residential housing that is within the means of low or moderate-income households.

I. “Household” means a single person, family, or unrelated persons living together.

J. “Low-income household” means a single person, family, or unrelated persons living together whose adjusted income is at or below eighty percent of the median family income adjusted for family size, for the county where the project is located, as reported by the United States department of housing and urban development.

K. “Moderate-income household” means a single person, family, or unrelated persons living together whose adjusted income is more than eighty percent but is at or below one hundred fifteen percent of the median family income adjusted for family size, for the county where the project is located, as reported by the United States department of housing and urban development.

L. “Campus facilities master plan” means the area that is defined by the University of Washington as necessary for the future growth and development of its campus facilities for branch campuses authorized under RCW 28B.45.020.

**6A.110.020 Property Tax Exemption – Requirements and Process**

A. Intent. Limited 8 or 12-year exemptions from ad valorem property taxation for multi-family housing in mixed-use centers are intended to:

1. Encourage increased residential opportunities within mixed-use centers designated by the City Council as residential target areas;

2. Stimulate new construction or rehabilitation of existing vacant and underutilized buildings for multifamily housing in residential target areas to increase and improve housing opportunities;

3. Assist in directing future population growth to designated mixed-use centers, thereby reducing development pressure on single-family residential neighborhoods; and

4. Achieve development densities which are more conducive to transit use in designated mixed-use centers.

B. Duration of Exemption. The value of improvements qualifying under this chapter will be exempt from ad valorem property taxation for eight or twelve successive years (depending on whether the property includes affordable housing component as described in subsection E and F below) beginning January 1 of the year immediately following the calendar year of issuance of the Final Certificate of Tax Exemption.

## Tacoma Municipal Code

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C. Limits on Exemption. The exemption does not apply to the value of land or to the value of improvements not qualifying under this chapter, nor does the exemption apply to increases in assessed valuation of land and non-qualifying improvements. In the case of rehabilitation of existing buildings, the exemption does not include the value of improvements constructed prior to submission of the completed application required under this chapter.

D. Rehabilitation Provisions. Property proposed to be rehabilitated must fail to comply with one or more standards of the applicable state or local building or housing codes on or after July 23, 1995. If the property proposed to be rehabilitated is not vacant, an applicant shall provide each existing tenant housing of comparable size, quality and price and a reasonable opportunity to relocate.

E. Eight-year exemption Project Eligibility. A proposed project must meet the following requirements for consideration for a property tax exemption:

1. Location. The project must be located within a residential target area, as designated in Section 13.17.020. Potential projects to be sited within the boundaries of the University of Washington Tacoma "campus facilities master plan" within the Downtown Tacoma Mixed Use Center will not be considered.

2. Size. The project must include at least four units of multi-family housing within a residential structure or as part of a mixed-use development. A minimum of four new units must be constructed or at least four additional multi-family units must be added to existing occupied multi-family housing. Existing multi-family housing that has been vacant for 12 months or more does not have to provide additional units so long as the project provides at least four units of new, converted, or rehabilitated multi-family housing.

3. Permanent Residential Occupancy. At least 50 percent of the space designated for multi-family housing must be provided for permanent residential occupancy, as defined in Section 13.17.010.

4. Proposed Completion Date. New construction multi-family housing and rehabilitation improvements must be scheduled to be completed within three years from the date of approval of the application.

5. Compliance With Guidelines and Standards. The project must be designed to comply with the City's comprehensive plan, building, housing, and zoning codes, and any other applicable regulations in effect at the time the application is approved. Rehabilitation and conversion improvements must comply with the City's minimum housing code. New construction must comply with the Uniform Building Code. The project must also comply with any other standards and

guidelines adopted by the City Council for the residential target area in which the project will be developed.

F. Twelve-year exemption Project Eligibility. A proposed project must meet the following requirements for consideration for a twelve year property tax exemption:

1. All requirements set forth in subsection E above; and

2. The applicant must commit to renting or selling at least twenty percent of the multifamily housing units as affordable housing units to low and moderate-income households respectively, and the property must satisfy that commitment and any additional affordability and income eligibility conditions adopted by the local government under this chapter. In the case of projects intended exclusively for owner occupancy, the minimum requirement of this subsection may be satisfied solely through housing affordable to moderate income households.

G. Application Procedure. A property owner who wishes to propose a project for a tax exemption shall complete the following procedures:

1. File with the Community and Economic Development Department the required application along with the required fees. The application fee to the City shall be \$1,000 for four units, plus \$100 per additional multi-family unit, up to a maximum total fee to the City of \$5,000. If the application shall result in a denial by the City, the City will retain that portion of the fee attributable to its own administrative costs and refund the balance to the applicant.

2. A complete application shall include:

a. A completed City of Tacoma application form setting forth the grounds for the exemption;

b. Preliminary floor and site plans of the proposed project;

c. A statement acknowledging the potential tax liability when the project ceases to be eligible under this chapter; and

d. Verification by oath or affirmation of the information submitted.

H. Application Review and Issuance of Conditional Certificate. The Director may certify as eligible an application which is determined to comply with the requirements of this chapter. A decision to approve or deny an application shall be made within 90 days of receipt of a complete application.

1. Approval. If an application is approved, the applicant shall enter into a contract with the City, subject to approval by resolution of the City Council regarding the terms and conditions of the project. Upon Council approval of the contract, the Director

## Tacoma Municipal Code

shall issue a Conditional Certificate of Acceptance of Tax Exemption. The Conditional Certificate expires three years from the date of approval unless an extension is granted as provided in this chapter.

2. Denial. The Director shall state in writing the reasons for denial and shall send notice to the applicant at the applicant's last known address within ten days of the denial. An applicant may appeal a denial to the City Council within 30 days of receipt of notice. On appeal, the Director's decision will be upheld unless the applicant can show that there is no substantial evidence on the record to support the Director's decision. The City Council's decision on appeal will be final.

I. Extension of Conditional Certificate. The Conditional Certificate may be extended by the Director for a period not to exceed 24 consecutive months. The applicant must submit a written request stating the grounds for the extension, accompanied by a \$50.00 processing fee. An extension may be granted if the Director determines that:

1. The anticipated failure to complete construction or rehabilitation within the required time period is due to circumstances beyond the control of the owner;

2. The owner has been acting and could reasonably be expected to continue to act in good faith and with due diligence; and

3. All the conditions of the original contract between the applicant and the City will be satisfied upon completion of the project.

J. Application for Final Certificate. Upon completion of the improvements agreed upon in the contract between the applicant and the City and upon issuance of a temporary or permanent certificate of occupancy, the applicant may request a Final Certificate of Tax Exemption. The applicant must file with the Community and Economic Development Department the following:

1. A statement of expenditures made with respect to each multi-family housing unit and the total expenditures made with respect to the entire property;

2. A description of the completed work and a statement of qualification for the exemption; and

3. A statement that the work was completed within the required three-year period or any authorized extension.

4. If applicable, a statement that the project meets the affordable housing requirements as described in subsection F above.

Within 30 days of receipt of all materials required for a Final Certificate, the Director shall determine which specific improvements satisfy the requirements of this chapter.

K. Issuance of Final Certificate. If the Director determines that the project has been completed in accordance with the contract between the applicant and the City and has been completed within the authorized time period, the City shall, within ten days, file a Final Certificate of Tax Exemption with the Pierce County Assessor.

1. Denial and Appeal. The Director shall notify the applicant in writing that a Final Certificate will not be filed if the Director determines that:

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2. Within 14 days of receipt of the Director's denial of a Final Certificate, the applicant may file an appeal with the City's Hearing Examiner, as provided in Section 1.23.070 of the Tacoma Municipal Code. The applicant may appeal the Hearing Examiner's decision in Pierce County Superior Court, if the appeal is filed within 30 days of receiving notice of that decision.

L. Annual Compliance Review. Within 30 days after the first anniversary of the date of filing the Final Certificate of Tax Exemption, and each year thereafter, for a period of eight or twelve years, the property owner shall file a notarized declaration with the Director indicating the following:

1. A statement of occupancy and vacancy of the multi-family units during the previous year;

2. A certification that the property continues to be in compliance with the contract with the City; and, if applicable, a certification of affordability based on documentation that the property is in compliance with the affordable housing requirements as described in section 6.A.110.020.F;

3. A description of any subsequent improvements or changes to the property.

City staff shall also conduct on-site verification of the declaration. Failure to submit the annual declaration may result in the tax exemption being canceled.

M. Cancellation of Tax Exemption. If the Director determines the owner is not complying with the terms of the contract, the tax exemption will be canceled. This cancellation may occur in conjunction with the annual review or at any other time when noncompliance has been determined. If the owner intends to convert the multi-family housing to another use, the owner must notify the Director and the Pierce County Assessor within 60 days of the change in use.

## Tacoma Municipal Code

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**City of Tacoma**  
**Community and Economic Development Department**

**Agenda Item**  
**GB-4**

TO: Planning Commission  
FROM: Peter Huffman, Manager, Planning Division  
SUBJECT: 2008-2009 Work Program  
DATE: January 10, 2008

At your next meeting, staff will provide an overview of the planning activities anticipated to occur over the next two years. Attached is the Draft 2008-2009 Work Program which includes a brief summary of the applications submitted by private entities by the deadline of December 31, 2007 for amending the Comprehensive Plan and Land Use Regulatory Code to be considered in 2008. These applications will be more thoroughly discussed at your meeting on February 5, 2008.

The draft Work Program identifies two categories of project activities for the Planning Division, i.e., projects underway or committed and projects under discussion (possible additions to the Work Program.

If you have any questions, please contact me at 591-5373 or [phuffman@cityoftacoma.org](mailto:phuffman@cityoftacoma.org).

PH:ds

c: Ryan Petty

Attachment





**DRAFT**  
**City of Tacoma Community and Economic Development Department**  
**Planning Division**

**2008-2009 WORK PROGRAM**

**Planning Commission Presentation**  
**January 16, 2008**

Following is a list of projects and activities that are either scheduled to be completed in the Planning Division's 2008-2009 Work Program or are under consideration for inclusion in the Work Program. A short paragraph is provided to discuss the general intent and outcome of the planning activity.

The first category of projects includes projects which will continue from 2007 into this biennium or will be initiated in this biennium. These projects are required either by State law, Council/CMO directives or private applications. The second category is for projects that have been suggested by staff and others but a commitment to initiate has not been given yet.

**1. PROJECTS UNDERWAY OR COMMITTED**

**McKinley Mixed Use Center Expansion (Annual Amendment Application #2008-01)**

A private amendment application has been submitted to expand the boundaries of the McKinley Mixed Use Center in the north-western section to add properties that are already zoned for multifamily uses. The proposed amendment would also designate the expanded area as a residential target area for purposes of eligibility for the Multifamily Tax Exemption.

**Pt. Ruston Mixed Use Center (Annual Amendment Application #2008-02)**

A private amendment application has been submitted to designate the former ASARCO site within the City of Tacoma's jurisdiction as a mixed use center. The proposed amendment would also designate the area as a residential target area for purposes of eligibility for the Multifamily Tax Exemption.

**S-7 amendments (Annual Amendment Application #2008-03)**

A private amendment application has been submitted to amend TMC 13.10 to change the physical description of the S-7 shoreline district, create a new shoreline district and amend shoreline regulations to create a requirement that new permit requests shall not be issued in an historic district or in adjacent or adjoining influencing property if prior permit work has not been completed.

**Puget Sound Area Wide Rezone (Annual Amendment Application #2008-04)**

A private amendment application has been submitted to change the zoning classification for the west side of Puget Sound Avenue from South 68<sup>th</sup> to 70<sup>th</sup> Streets from R-2 Single-Family to C-2 Commercial to allow for the expansion of existing home-occupation and South Tacoma Way businesses.

**Browns Point Blvd Land Use Intensity Revision (Annual Amendment Application #2008-05)** A private amendment application has been submitted to change the land use intensity designation for an approximately 8 acre property at 5339 Browns Point Blvd from Single-Family to Low, which would be the first step for a subsequent rezone of the properties to allow for development of senior housing.

### **Master Program for Shoreline Development**

The City Council provided funds to initiate and complete the State mandated update of the Master Program sooner than required by State law. ESA Adolfson and Assoc. is providing consultant assistance which will result in an overhaul of shoreline policies and regulations consistent with new State guidelines. Included within the scope are the following planning activities:

- **Thea Foss Waterway Planning**

The Planning Commission recommended and the City Council directed that a comprehensive review of the Foss Waterway development planning be undertaken to address land use compatibilities, future development and uses, design standards and other issues. The City Council provided funds for this review. Reid Middleton has been hired to assist this effort. This planning will be coordinated with the Master Program update described above and completed by the end of 2009.

- **S-1 Shoreline Code Amendment Review**

In 2004, the City Council approved an amendment to the S-1 shoreline district to clarify condos as a permitted use in the district. DOE objected to this change without a study concerning the impacts to the environmental habitat of this shoreline district. The habitat is being inventoried and characterized as a part of the Master Program update. This amendment will be re-evaluated as a part of the Master Program update.

### **Critical Areas Regulations**

The lack of regulations/protections for critical areas located in shoreline districts resulted in an appeal to the Growth Management Hearings Board. Resolution of the appeal is tied to adopting critical area protections in shoreline areas.

### **South Tacoma Manufacturing/Industrial Center-Regional Designation**

The City Council provided funds for this activity. The Comprehensive Plan was amended in 2004 to locally designate the South Tacoma industrial area as a manufacturing/industrial center. This designation is a part of the Comprehensive Plan's growth strategy to direct future industrial development into the center. The local designation is a first step for regional designation. The regional designation requires that the center be recognized through an amendment to the Countywide Planning Policies and then designated in the multicounty policies (Vision 2040) by PSRC. Regionally designated centers are priority areas for the allocation of transportation dollars. This activity will develop the necessary planning requirements and documentation for the countywide and regional designation process.

### **Urban Design Review Program**

The City Council provided funds for this activity and provided direction through the adoption of Resolution 36685 in October 2005. The first step involves a community dialogue on design review followed by an analysis of options to create a design review program. The activity also would result in amendments to the Comprehensive Plan to establish the design parameters and the regulatory standards, process and procedures to carry it out. The development of the program will likely take two years. Makers, Inc. has been hired to provide assistance.

### **Open Space Habitat and Management Plan**

The City Council approved the expenditure of open space funds for this purpose. The plan will continue and supplement efforts to protect, preserve and manage natural areas and will comprise a new element of the Comprehensive Plan. The project began in late 2006 and will continue through 2008.

### **Recreation and Open Space Facilities Plan**

The City is required to conduct planning and programming for open space and park facilities to maintain eligibility for State IAC grants. The IAC monies have been used in the past to develop park amenities on Ruston Way and the Thea Foss. In addition, Metro Parks has now completed a plan for its facilities and has recommended that the City's Comprehensive Plan be amended to be compatible and consistent with their plan. The existing plan element needs to be amended to address both the open space planning and the Metro Parks plan.

### **Downtown and Tacoma Dome Area Planning**

At the request of the City Council staff has been directed to revisit Destination Downtown in light of the current development activity occurring in Tacoma's downtown. In addition, with the current update of the Puget Sound Regional Council's Vision 2020 document (Vision 2040), a review of the Downtown Regional Growth Center boundary has also been requested to reflect potential policy revisions both at the local and regional level and address issues associated with increasing development in downtown and its surrounding neighborhoods. These two efforts, which will include a review of the Tacoma Dome Area Plan, would constitute an assessment or "check in" as far as the City's development goals and strategies for the larger downtown area.

### **Residential Zoning Code Update**

The project to streamline the Zoning Code has been ongoing for several years per the direction of the City Manager and concurrence by the City Council. Substantial changes have occurred in the downtown area, industrial and commercial districts, sign code, and landscaping requirements. The last section of the code covers residential uses, both single-family and multifamily. This project was delayed in 2005-2006 due to the special needs housing moratorium and in 2007 by the PRD moratorium. In 2008, the first phase of regulatory changes will occur. Other minor changes to the Regulatory Code will be incorporated as well.

### **Mixed-Use Center Regulatory Review**

This project is one of the City Council's priority projects and received additional funding. AHBL, Inc. has been hired to assist the planning effort. In 2007, the Comprehensive Plan was amended. In 2008, this activity will review the mixed use zoning classifications, consider new

mixed use zoning classifications, revise development standards and propose area wide zoning reclassifications of properties within the designated centers.

### **Multifamily Tax Incentive Revisions (MFTI)**

The MFTI regulations will be modified for consistency with State law and to place administrative procedures in a new section of the Tacoma Municipal Code.

### **Mixed Use Center Streetscape Design Guidelines and Standards**

The City has been awarded a \$75,000 Growth Management Act (GMA) Competitive Planning Grant by the State Department of Community, Trade and Economic Development (CTED) for the period of January 2008 through June 30, 2009. The grant funds will be used to facilitate development of streetscape design guidelines for mixed use centers. The streetscape guidelines will bring state-of-the-art transportation and land use planning tools to the implementation of the mixed use centers' vision, which calls for creating vibrant streetscapes that accommodate the full range of transportation choices.

### **13.07 Landmarks Preservation Revisions**

Chapter 13.07 will be revised to address street and driveway standards within historic districts. The proposed revisions also include housekeeping amendments.

### **South Tacoma and West End Historic Districts**

Per the direction and funding by the City Council, surveys will be conducted in two areas to determine the possible designation of these areas as locally designated historic districts. at the conclusion of the survey if a historic district is appropriate and funding is proved by the City Council, the process to designate the areas will proceed. This process will involve public hearings by the Landmarks Preservation Commission and the Planning Commission.

### **Commute Trip Reduction (CTR) Planning**

The legislature amended the Commute Trip Reduction Act (CTR) in 2006. The changes will require the City to amend its ordinance to comply with the new changes. With the changes, the law now requires regional coordination and certification of the City's CTR planning. State guidelines have been developed to guide the effort. Part of the review will include the evaluation of some new options for achieving reduction in single occupancy vehicles and vehicle miles traveled to meet the Act's new requirements. The City will need to revise its ordinance and Comprehensive Plan in 2008.

### **Growth and Transportation Efficiency Center**

One aspect of the new CTR legislation is the designation of a Growth Transportation Efficiency Center (GTEC) as a means to address the new goals to reduce single occupant vehicles and vehicle miles traveled. Downtown Tacoma has been selected as one of seven centers statewide. WSDOT is providing limited funding to reduce the number of trips by single occupant vehicles over the next 18 months. Consultant services will be used.

### **Capital Facilities Program**

The Planning Commission annually reviews the program for consistency with the Comprehensive Plan.

### **Eastside Foss Transportation Study**

The City Council directed that a study be conducted concerning transportation and land use compatibilities for the area between the eastside of the Foss Waterway and the Puyallup River. Consultant services will be used. The study is in collaboration with Traffic Engineering and was initiated in 2007.

### **ASARCO Redevelopment**

The City is facilitating the redevelopment of the former ASARCO site in collaboration with the Town of Ruston as well as Metro Parks.

## **2. PROJECTS UNDER DISCUSSION – POSSIBLE ADDITIONS TO WORK PROGRAM**

### **Buildable Lands**

GMA requires an updated inventory of buildable lands and analysis of five year development trends to ensure the City is achieving its density goals and that an adequate supply of land is available to meet anticipated growth. This activity was completed in 2007. Pierce County is responsible for compiling the 2007 report in collaboration with staff from all jurisdictions. Tacoma may need to amend its Comprehensive Plan or development regulations to address the report's findings. The City will also participate in a review of the methodology used to determine the redevelopment potential of certain lands which could change the next required report in 2012.

### **Concurrency Regulations**

A review of the City's requirements for concurrency needs to be conducted including the level of service standards for public facilities.

### **Master Planning Requirements for Institutional Uses**

One of the recommendations from the mixed use center review was the need to establish master planning requirements for large institutions. Community members have also expressed an interest for a process whereby the long range development plans of large institutions such as hospitals and schools would be reviewed and commented upon prior to implementation.

### **Floodplain Maps**

FEMA Flood Insurance Rate Maps (FIRM) floodplain maps have been preliminary revised. Once FEMA formally approves the revised FIRM floodplain maps, the critical area maps in the Environmental Policy Plan Element showing the old FIRM maps will be out of date.

### **Transfer of Development Rights Program (TDR)**

As part of the mixed use center review, the centers were identified as potential receiving sites if a transfer of development rights program were initiated. This year TDR is being explored as a tool for open space preservation. Also Pierce County has established a TDR program for the preservation of agricultural lands and has indicated an interest in establishing receiving sites in urban areas.

### **Nonmotorized Transportation Update**

Increasing community emphasis and State, regional and local nonmotorized transportation initiatives have created the need to review and update the City's policies, standards and guidelines for nonmotorized transportation. Updates to the City's nonmotorized map, including its trail network, bike lanes and pedestrian network will be part of this effort.