ORDINANCE NO. 28180

AN ORDINANCE relating to the Comprehensive Plan and Title 13 of the Tacoma Municipal Code superseding Ordinance No. 28034; authorizing the final adoption of an updated Tacoma Shoreline Master Program, which amends both the Comprehensive Plan and Land Use Regulatory Code, establishes both new and modified environmental designations and zoning classifications, amends zoning district boundaries, reclassifies certain properties to the new and revised shoreline zoning districts, and adopts revisions to Chapters 13.05, 13.06, and 13.11 of Title 13 of the Tacoma Municipal Code.

WHEREAS the Growth Management Act ("GMA") was amended to add the goals and policies of the Shoreline Management Act ("SMA") and to declare that the goals and policies of a shoreline master program shall be considered an element of the Comprehensive Plan and all other portions shall be considered development regulations, and

WHEREAS development regulations include, but are not limited to, zoning controls, area-wide zoning reclassifications, critical area ordinances, and other similar official controls found in the Land Use Regulatory Code, and portions of the Shoreline Master Program fall within the definition of development regulations, and

WHEREAS the Comprehensive Plan, as adopted in 1993 by Ordinance No. 25360 and amended annually by ordinance thereafter, is Tacoma’s comprehensive plan, as required by the GMA, and consists of several plan and program elements, including the Shoreline Master Program, and

WHEREAS the Shoreline Management Act of 1971 requires local Shoreline Master Programs be updated to: (1) give priority to uses that require a shoreline location; (2) promote public access and enjoyment opportunities; and (3) protect the environmental resources of state shorelines, and
WHEREAS the 2003 Department of Ecology ("DOE") guidelines, codified in Chapter 173-26 of the Washington Administrative Code ("WAC"), include substantive, procedural, and process requirements to be followed by local jurisdictions in their comprehensive update to a shoreline master program, and require the update to be based on scientific and technical information to assure no net loss of shoreline ecological functions, and

WHEREAS the SMA was amended to establish a timeline for local jurisdictions to adopt updated Shoreline Master Programs consistent with DOE guidelines, and the adoption deadline for the City was December 1, 2011, and

WHEREAS the City Council directed staff to initiate an update of the Shoreline Master Program three years ahead of the state's schedule in RCW 90.58.080(4) in order to integrate critical areas protection with the Shoreline Master Program, and

WHEREAS the City's update process began in earnest in 2005 and included the development of required supporting studies and implementation documents, and said studies and documents were adopted under separate legislative actions of the City Council as Resolution Nos. 38372, 38373, 38374, 38375, and 38376 on November 29, 2011, as required by DOE guidelines, as part of the adoption of the update to the Shoreline Master Program as a whole, and

WHEREAS, prior to November 29, 2011, the Planning Commission ("Commission") recommended changes to the Comprehensive Plan ("Plan") and the Land Use Regulatory Code ("Code"), pursuant to the SMA, and consistent with the GMA, and
WHEREAS, leading up to those recommendations being made, the Commission held a public hearing on June 1, 2011, on a draft Shoreline Master Program, draft Shoreline Restoration Plan, draft Shoreline Inventory and Characterization, draft Public Access Alternatives Plan, draft Thea Foss Waterway Design Guidelines, draft Cumulative Impacts Analysis, and draft changes to Chapter 13.05, Land Use Permit Procedures; Chapter 13.06, Zoning; and Chapter 13.11, Critical Areas Preservation, of the Tacoma Municipal Code (“TMC”), and
WHEREAS 41 citizens spoke at the public hearing and 52 written comments were submitted by the close of the comment period on June 10, 2011, and after review of said testimony, the Commission made modifications to the draft Shoreline Master Program and associated draft supporting documents, and
WHEREAS, pursuant to the State Environmental Policy Act (“SEPA”), the City issued a preliminary Determination of Environmental Nonsignificance (“DNS”) and Adoption of Existing Environmental Document on May 2, 2011, based upon a review of a completed environmental checklist, and, pursuant to WAC 197-11 and Tacoma’s SEPA procedures, the preliminary DNS, SEPA File Number SEP2011-40000162367, was made final on June 17, 2011, and
WHEREAS the determination was made that this project does not have a probable significant adverse impact on the environment, and
WHEREAS the Commission then formally recommended changes to the Comprehensive Plan and Land Use Regulatory Code on August 17, 2011, and conveyed the same to the City Council, in the form of a proposed Tacoma
Shoreline Master Program ("TSMP"), which was intended to rescind and replace in their entirety the City’s existing Master Program for Shoreline Development, an element of the Comprehensive Plan, and Chapter 13.10 TMC, which are the development regulations for shoreline areas, and

WHEREAS, in addition to adoption of the new TSMP, as referenced above, the following supporting studies and implementation documents associated with the TSMP were previously adopted by resolution:

- Shoreline Inventory and Characterization (Resolution No. 38372),
- Shoreline Restoration Plan (Resolution No. 38373),
- Public Access Alternatives Plan (Resolution No. 38374),
- Thea Foss Waterway Design Guidelines (Resolution No. 38375), and
- Cumulative Impacts Analysis (Resolution No. 38376), and

WHEREAS, in addition to final adoption of the new TSMP, amendments are being made by this ordinance to TMC 13.05, Land Use Permit Procedures; TMC 13.06, Zoning; and TMC 13.11, Critical Areas Preservation, to achieve consistency with the new TSMP, and

WHEREAS, upon approval by DOE of the TSMP, the development regulations for critical areas within the shorelines of the State located within the City shall be the regulations contained in the TSMP and designed to assure no net loss of shoreline ecological functions, and

WHEREAS policies and development regulations for public access and recreation have been developed consistent with the SMA and with DOE regulations in Chapter 173-26 WAC, including provisions that recognize constitutional
limitations on regulation of private property and a process for the evaluation of
nexus and proportionality in the review of shoreline permits for development on
private property, and

WHEREAS past subarea plans for the Thea Foss Waterway and Ruston
Way, including the Point Ruston site, established area-wide public access
standards to establish a linear public access system in conjunction with more
flexible use and development regulations, and

WHEREAS the policies and development standards of the Thea Foss
Waterway Design and Development Plan have been integrated into the TSMP, the
design guidelines have been incorporated into the new Thea Foss Waterway
Design Guidelines, and additional revisions have been undertaken to respond to
public comments and to more effectively implement the vision for the Waterway,
and

WHEREAS the policies and design guidelines of the Ruston Way Plan have
been integrated into the TSMP and additional revisions have been undertaken, and

WHEREAS policies and development regulations for public access and
recreation have been developed that promote and implement a comprehensive
public access system as envisioned in the Thea Foss Waterway Design and
Development Plan, Ruston Way Plan, Shoreline Trails Plan, and the Transportation
Element of the Comprehensive Plan, and

WHEREAS existing and planned public access sites found in the Shoreline
Trails Plan, the Thea Foss Waterway Design and Development Plan, and the
Ruston Way Plan have been identified and integrated into the Public Access Alternatives Plan, and

WHEREAS it is appropriate to rescind the Thea Foss Waterway Design and Development Plan (last amended in 2005), the Ruston Way Plan (1981), and the Shoreline Trails Plan (1989) as elements of the Shoreline Master Program; however, they are to be retained as elements of the Comprehensive Plan and shall remain in effect in that form and be applicable except when there is a conflict with the Shoreline Master Program, Thea Foss Waterway Design Guidelines, Shoreline Restoration Plan, or the Public Access Alternatives Plan, in which case the Shoreline Master Program, Thea Foss Waterway Design Guidelines, Shoreline Restoration Plan, or the Public Access Alternatives Plan shall prevail, and

WHEREAS the Thea Foss Waterway Design and Development Plan envisions the West side of the Foss Waterway as an area for retail commercial, office, hotel, and residential uses in mixed-use configurations, with a strong emphasis on residential development between South 15th and South 21st Streets, and

WHEREAS, since 1996, the mixed-use structures that have been built along the West side of the Foss Waterway have struggled to sustain the preferred uses on the ground level and have experienced high vacancy rates, and

WHEREAS the expectations for build-out of the West side of the Foss Waterway have changed significantly, and
WHEREAS conflicting frontage and location requirements for mixed-use structures have created a hindrance to achieving the preferred build-out of the Foss Waterway, and

WHEREAS the TSMP removes the design and development barriers for new mixed-use structures on the West side of the Waterway and allows non-water-oriented uses for a limited term until economic conditions improve to support the development of the preferred uses, consistent with the City’s overall growth strategy as expressed in the Generalized Land Use Element for the Downtown Mixed-Use Center, the Downtown Regional Growth Center designation, and Plan policies to foster commercial and civic uses and attractions of regional scale and high-density residential development, and

WHEREAS the Commission recommended the establishment of new shoreline district zoning classifications and modifications to the boundaries of existing shoreline districts as well as the reclassification of properties within the new and modified districts, most of which recommendations were followed by the City Council in enacting Ordinance No. 28034 on November 29, 2011, and

WHEREAS, as referenced above, the Commission adopted Findings and Recommendations on August 17, 2011, and conveyed these to the City Council, and

WHEREAS Chapter 13.02 TMC requires the City Council to hold a public hearing before adopting any change to the Plan and Code, and

WHEREAS, on September 27, 2011, the City Council held a public hearing to receive public comments on the Commission’s proposed TSMP, and
WHEREAS the City Council considered the testimony presented at the September 27, 2011, public hearing and other comments submitted on the draft TSMP, and also considered and generally concurred with the Findings and Recommendations of the Commission dated August 17, 2011, and

WHEREAS the City Council’s Committees for Economic Development and for Environment and Public Works, after reviewing the draft TSMP recommended by the Commission and all of the public testimony received, recommended modifications to the draft TSMP, and

WHEREAS thereafter, on November 29, 2011, in compliance with the State deadline referenced above, the Tacoma City Council provisionally enacted an updated TSMP by City Ordinance No. 28034, and

WHEREAS, in accordance with RCW 90.58.090, the update to the Shoreline Master Program was required to be submitted for review and approval by DOE prior to becoming effective, and such submittal was made prior to the December 1, 2011, deadline, and

WHEREAS after receiving comments, conducting its review, and completing additional process, DOE issued its conditional approval of the City’s proposed updated TSMP on August 19, 2013, and

WHEREAS DOE’s conditional approval included both required and recommended changes, and

WHEREAS the required changes had to either be accepted by the City, or the City had to propose alternatives that were acceptable to DOE prior to the updated TSMP being made effective, and
WHEREAS the required changes included several limited amendments to use allowances and development standards for aquaculture, amendments to specific definitions to bring them into alignment with the Washington Administrative Code, and amendments to the S-9 Puyallup River Shoreline District and the S-6/7 Schuster Parkway Transition Shoreline District, and

WHEREAS, by Resolution No. 38734, the City provided its formal notice to DOE of the City’s acceptance of all recommended changes and all required changes except DOE’s intent statement for the S6/7 Transition District, to which the City proposed an alternative version, as allowed by RCW 90.58.090, and

WHEREAS DOE has now provided the City with its written notice of final action approving the City’s TSMP including the alternative intent statement proposed in Resolution No. 38734, and pursuant to RCW 90.58.090, the TSMP will take effect 14 days from DOE’s final action, and

WHEREAS the TSMP, as presently constituted, has been developed in full compliance with Chapter 13.02 TMC and the Revised Code of Washington’s procedural requirements for amendments to the City’s Comprehensive Plan and development regulations, and

WHEREAS the TSMP appropriately balances the goals of the SMA and incorporates the most current, accurate, and complete scientific and technical information available, as per WAC 173-26-201, and

WHEREAS, in concert with the implementation of restoration actions in the City and other ongoing state and federal programs, the regulatory provisions of the
TSMP serve to maintain the overall condition of shoreline resources and in certain circumstances will serve to improve their overall condition, and

WHEREAS the TSMP is consistent with the City’s Comprehensive Plan, including the overall goal to “[e]nsure conservation, protection, enhancement and proper management of natural resources and shoreline areas, while providing for a balanced pattern of development . . .,” and

WHEREAS the TSMP has been designed to increase the public’s opportunities to enjoy the physical and aesthetic qualities of the shoreline to the greatest extent feasible, and

WHEREAS, pursuant to RCW 36.70A.370 and following the guidelines prepared by the Washington State Attorney General pursuant to RCW 36.70A.370, the TSMP was reviewed by the City Attorney to prevent against the adoption of the changes resulting in an unconstitutional taking of property, and

WHEREAS enacting the TSMP is in the public interest and will benefit the City as a whole, will not adversely affect the City’s public facilities and services, and advances and supports the general health, safety, and welfare of the citizens of this City; Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

Section 1. That the recitals set forth above are hereby adopted as the Findings of the City Council and are by this reference incorporated herein as if set forth in their entirety.

Section 2. That City Resolution Nos. 38372, 38373, 38374, 38375, and 38376, originally passed on November 29, 2011, are hereby incorporated by this
reference into this ordinance for the purposes intended in each as supporting
studies and implementation documents to the TSMP.

Section 3. That the City Council hereby adopts the Tacoma Shoreline
Master Program as modified and approved by the Department of Ecology
(superseding City of Tacoma Ordinance No. 28034) repealing and replacing
Chapter 13.10 of the Land Use Regulatory Code; and that the goals and policies
thereof replace the shoreline element of the Comprehensive Plan, as shown in
Amended Exhibit “A,” attached hereto, and substantially in the form of the
amendments on file in the office of the City Clerk.

Section 3. That the City Council adopts the shoreline district classifications
for S-1 to S-15 as the official shoreline zoning classification and boundaries as
generally described and depicted in Amended Exhibit “B,” attached hereto as listed
below:

Exhibit B-1  S-1a Western Slope South Shoreline District Map and
Boundary Description;
Exhibit B-2  S-1b Western Slope South Shoreline District Map and
Boundary Description;
Exhibit B-3  S-2 Western Slope Central Shoreline District Map and
Boundary Description;
Exhibit B-4  S-3 Western Slope North Shoreline District Map and Boundary
Description;
Exhibit B-5  S-4 Point Defiance Natural Shoreline District Map and
Boundary Description;
Exhibit B-6  S-5 Point Defiance Conservancy Shoreline District Map and Boundary Description;

Exhibit B-7  S-6 Ruston Way Shoreline District Map and Boundary Description;

Exhibit B-8  S-6/7 Schuster Parkway Transition Shoreline District Map and Boundary Description;

Exhibit B-9  S-7 Schuster Parkway Shoreline District Map and Boundary Description;

Exhibit B-10 S-8 Thea Foss Waterway Shoreline District Map and Boundary Description;

Exhibit B-11 S-9 Puyallup River Shoreline District Map and Boundary Description;

Exhibit B-12 S-10 Port Industrial Area Shoreline District Map and Boundary Description;

Exhibit B-13 S-11 Marine View Drive Shoreline District Map and Boundary Description;

Exhibit B-14 S-12 Hylebos Creek Shoreline District Map and Boundary Description;

Exhibit B-15 S-13 Marine Waters of the State Shoreline District Map and Boundary Description;

Exhibit B-16 S-14 Wapato Lake Shoreline District Map and Boundary Description;
Exhibit B-17 S-15 Point Ruston/Slag Peninsula Shoreline District Map and Boundary Description.

Section 4. That the City Council adopts changes to Chapter 13.05, Land Use Permit Procedures, as shown in Exhibit “C.”

Section 5. That the City Council adopts changes to Chapter 13.06, Zoning, as shown in Amended Exhibit “D.”

Section 6. That the City Council adopts changes to Chapter 13.11, Critical Areas Preservation, as shown in Exhibit “E.”

Section 7. That if any section, subsection, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or situation, should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.
Section 8. That, pursuant to RCW 90.58.090, the Tacoma Shoreline Master Program takes effect after the passage of 14 days from the Department of Ecology’s written notice of final action approving the same.

Passed____________________

___________________________
Mayor

Attest:

___________________________
City Clerk

Approved as to form:

___________________________
Deputy City Attorney